

**INTERNATIONAL MIGRATION PAPERS**

**68**

**Challenging discrimination in  
employment: A summary of research  
and a typology of measures**

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*The International Labour Organisation (ILO) was founded in 1919 to advance the cause of social justice and,*

*by so doing, to contribute to universal and lasting peace. The ILO was later incorporated into the United Nations system as a specialized agency. A unique feature of its structure is that representatives of workers and employers take part with government representatives in ILO governance and activities.*

*ILO has built up a code of international labour standards in the form of Conventions and Recommendations. A major part of ILO work consists of the provision of expert advice and technical assistance to individual countries, through training, employment promotion, development of cooperatives, social security, occupation safety and health, workers' education, and industrial relations. The International Labour Office in Geneva is the Organisation's secretariat, operational headquarters, research body and publishing house.*

*The ILO International Migration Branch focuses on three major areas of activity. These include provision of technical assistance and policy advice to governments towards effective labour migration governance, protection of rights and dignity of migrant workers, and research and documentation on international labour migration, including maintenance of the on-line International Labour Migration Database.*

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## Foreword

The ILO's International Migration Programme publishes two working paper series (*International Migration Papers* and *Perspectives on Labour Migration*) with the goal of making quickly available to ILO tripartite social partners, and the general public, current research on global migration trends, conditions of employment of migrants, and the impact of State policies on migration and the treatment of migrants. Their main objective is to contribute to an informed debate on how best to manage labour migration, taking into account the shared concerns of countries of origin and employment for generating full and productive employment of their nationals, while at the same time respecting the basic rights of individual migrant workers and members of their families.

Geneva, September 2004

Manolo I. Abella  
Director  
International Migration Programme





## Summary

Since 1991, the ILO has conducted a project on *Combating Discrimination Against Migrant and Ethnic Minority Workers in The World of Work*. The project was undertaken in recognition of the need to assist countries in applying international standards so as to assure the protection of the rights of migrant and ethnic minority workers, and as a means of assisting its tri-partite constituencies in addressing discrimination in employment.

The objective of the ILO anti-discrimination project was to reduce discrimination against long-term, legally documented migrant workers and ethnic minorities by informing policy makers, employers, workers, NGOs and persons engaged in anti-discrimination activities on how legislation, training activities and other measures can be rendered more effective. The project aimed to demonstrate and document how discrimination occurred and, through a comparison of the different remedial measures and activities in place in the countries surveyed, draw certain conclusions as to the effectiveness of different measures. The research project focused on a number of countries in Western Europe and North America, and to date have included Belgium, Canada, Denmark, Finland, France, Germany, Italy, the Netherlands, Spain, Sweden, the United Kingdom and the United States.

An important component of the project has been “practice testing,” conducted to date in seven countries, to measure levels of discrimination in hiring. The project’s findings showed significant and disturbing levels of discrimination in access to employment in all countries surveyed. Migrant and ethnic minority workers face numerous problems in the labour market, and are in many ways at a disadvantage when compared with members of the majority or dominant population.<sup>1</sup> While some of these problems are connected with disadvantages such as inadequate education and training, lack of access to networks and connections to employers, and for migrants, non-recognition of qualifications gained abroad or inadequate command of the host country’s language. Moreover, the research demonstrated that migrants and ethnic minorities experienced discrimination specifically on the grounds of their actual or perceived nationality, colour, religion, “race”, or ethnic origin. This project also conducted inventories and impact analysis of anti-discrimination legislation and training activities in a number of countries.

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1 See Zegers de Beijl (1990).

An ILO High Level Meeting on Achieving Equality in Employment was held in Geneva 8-11 March 2000 to conclude the initial stage of this ILO anti-discrimination effort. This tri-partite meeting with participation from 14 countries served as a forum within which the results and implications of this project could be summarised. The Meeting outcome and recommendations pointed towards a new set of activities in combating discrimination and achieving equality for migrant and minority workers, at national, bilateral, regional and global levels. These activities took stock of the lessons learned and the models identified in the project.

Subsequent work by the Office concerned the elaboration of a compendium of anti-discrimination measures applicable by governments, employers, trade unions and civil society organisations. An initial compilation of “practice profiles” was made available “on the web” in September 2004. Parallel to profile compilation, ILO developed a typology of identified practices. Based on earlier research and project findings, six general categories of measures have been elaborated. These include:

- (1) **Organisational initiatives:** measures adopted by employers and other organisations, including trade unions, focusing on internal policy and management;
- (2) **Collective action:** co-operative initiatives taken up by labour organisations, community groups, associations of employers and NGOs;
- (3) **Legislative and legal measures:** measures implemented by judicial and extra-judicial bodies of the State;
- (4) **Administrative measures, regulations and practices:** measures taken by local and national authorities;
- (5) **Political/educational action:** opinion shaping efforts by political leaders, educational institutions and communications media; and
- (6) **International standards and programmes.**

This evolving typology currently includes some 50 different kinds of measures or activities, ranged across the six general categories which are described in this paper. The practice profiles are available at [www.ilo.org/migrant/profiles](http://www.ilo.org/migrant/profiles).



## 1. Why is discrimination a problem?

As this report will demonstrate, ILO research has shown that migrants and ethnic minorities are subject to widespread labour market discrimination. What can induce policy-makers, legislators, employers, consumers, NGOs, trade unions and service-providers to change this state of affairs? A number of reasons can be given; several are outlined below.

### *Moral reasons*

The moral ‘values-based’ argument for non-discrimination carries a great deal of weight in both international and national spheres. It stems from the basic human rights premise that all human beings are equal and deserve to be treated as such. Such principles are embedded in the UN Charter, the Universal Declaration of Human Rights, and the ILO Declaration of Philadelphia. These principles have received virtually universal acceptance. In committing to outlaw discriminatory practices, many States have voluntarily adopted international instruments to protect human rights and maintain international standards against various forms of discrimination.<sup>2</sup> The moral reasons for treating all human beings equally appear to be intuitive, and are regularly cited by politicians<sup>3</sup> as justifying a specific policy, or signature of a human rights instrument.<sup>4</sup>

### *Social reasons*

The social argument to combat discrimination is that social order and peace degenerate under discrimination. Race riots, race-related arson attacks, racially motivated murders, the proliferation of neo-Nazi and skinhead organisations are all the socially detrimental consequences of discrimination.<sup>5</sup> Equally, violent backlashes against inequality are more likely to occur when discrimination is not addressed.<sup>6</sup> With considerable numbers of non-nationals and members of ethnic minorities living permanently in migrant-receiving countries, failure to establish or to implement effective anti-discrimination measures, indifference to discriminatory practices in the workplace and inertia in taking collective action towards achieving equality may all contribute to societal disintegration<sup>7</sup>.

### *Economic reasons*

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2 The most important international instruments relevant here include ILO Migration for Employment Convention (Revised), 1949 (No. 97); ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111); ILO Equality of Treatment in Social Security Convention, 1964 (No. 118); ILO Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1978 (No. 143); ILO Establishment of an International System for the Maintenance of Rights in Social Security, 1986 (No. 157); United Nations International Convention on the Elimination of All Forms of Racial Discrimination (1965), United Nations International Covenant on Civil and Political Rights (1966); United Nations International Covenant on Economic, Social and Cultural Rights (1966); United Nations Convention on the Protection of the Rights of All Migrant Workers and Their Families (1990) (not yet in force).

3 See Dex (1992), p. 6, for examples of political citations on the immorality of discrimination.

4 For a further discussion of the moral argument against discrimination, see Banton (1994) and Edwards (1995).

5 *ibid.*

6 For a concrete example of social unrest resulting from discrimination, see Wrench (1997), pp. 33-36.

7 On the issue of corporate responsibility in relation to migrant and ethnic minority workers, see Lindburg (1998), p. 5.

Not only the worker, but also the individual employer and society as a whole pay the costs of discrimination. By discriminating, employers are not tapping into the full potential of human resources available to them. A number of economic arguments against discrimination and in favour of equal treatment can be given as follows:

1. Firstly, by discriminating in recruitment, employers may be passing over some of the best-qualified candidates for the job, on irrelevant grounds, such as nationality or race. If they recruited only on the basis of aptitude, there need not be any sacrifice of potential productivity.<sup>8</sup>
2. Similarly, it has also been shown that where discrimination occurs in the workplace, tensions between employees undermine team-work, result in higher absenteeism, and reduce morale and commitment.<sup>9</sup> Bad publicity, where discrimination is alleged, may also harm a firm's reputation and consumer loyalty.
3. On the positive side, particularly with regard to globalisation of trade and investments, migrants may offer privileged insight into markets abroad and may speak the language.
4. Migrants and ethnic minorities are also consumers and often make up large communities.<sup>10</sup>
5. The employer of a multi-ethnic workforce is more likely to attract talented job applicants and investors, than the employer who practices discrimination.<sup>11</sup>
6. Diverse workforces add value to business activities through increased creativity and better problem-solving capacities.<sup>12</sup>

The economic argument against discrimination is a strong one and is well documented.<sup>13</sup> However, the fact remains that discrimination is prevalent in the countries studied, suggesting that there is still much need for informative work to be done.

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8 For specific examples on how companies have benefited from non-discrimination in the United Kingdom, see Confederation of British Industry (1991). For examples of other European countries, see Stewart and Lindburg (1997).

9 See Wrench (1997), p. vi. and p. 36. For statistics on the cost of racial harassment and discrimination in the workplace to employers, in relation to the United Kingdom, see CRE (1995b), pp. 11-13.

10 This strategy known as >micro marketing= is described by Anholt who says Amarketing people [in the US and Australia] long ago discovered that if you speak to people in their own language C and, a more complex and more subtle point, in their own culture C they tend to prefer you to companies that can=t or won=t@. See Anholt (1997).

11 For specific company examples, see CRE (1995a).

12 See Lindburg (1998), p. 6.

13 For an overview of the economic argument against discrimination (albeit in terms of gender discrimination) from the employers= perspective, see ILO (1996b).

## 2. The ILO project on combating discrimination

Broadly speaking, the ILO is mandated to elaborate, promote and monitor implementation of international standards regarding treatment of labour; to provide orientation and technical assistance to its tripartite constituents; and to address contemporary issues affecting workers, employers and governments world-wide. In this context, ILO has addressed the treatment of migrant workers since its inception 80 years ago, and has elaborated standards and measures to uphold workers basic rights and dignity and to protect them from all types of discrimination in employment.

In response to concerns expressed by ILO constituents and those arising out of the Office's own mandate, the ILO launched a project "Combating discrimination against (im)migrant and ethnic minority workers in the world of work" in 1991. The project aimed to document and seek remedies to discrimination in access to employment in a number of ILO member States in North America and Western Europe. It focused on reducing discrimination against regular-entry, long-stay migrant workers and ethnic minorities by informing policy makers, employers, workers, NGOs and persons engaged in anti-discrimination training, on how legislative measures and training activities can be rendered more effective. In doing this, it compared the effectiveness of the measures and activities currently in place in the international arena.

The countries involved in one or more of the components of the project included Belgium, Canada, Denmark, Finland, France, Germany, Italy, the Netherlands, Spain, Sweden, the United Kingdom and the United States.

The scope of this project was defined by the mandate of the ILO. It therefore focused on the employment relationship as it relates specifically to migrant and ethnic minority workers. The normative basis for this investigation is rooted in the three ILO Conventions addressing equality of opportunity and non-discrimination in most aspects of employment, such as recruitment matters, contract conditions, vocational training, promotion at work, and job security. ILO has also established two Conventions covering the many issues affecting non-national migrant workers. These issues include entry procedures, alternative employment, freedom of movement, medical services, assistance on settling into the host society, participation in the cultural life of the state as well as the maintenance of their own culture, transfer of earnings and savings, family reunification and visits, termination of employment, expulsion and assistance in coping with return to the home country. These conventions have become binding upon member States upon ratification.

The Discrimination (Employment and Occupation) Convention, No.111 (1958) is considered one of the five fundamental instruments of the ILO. It prohibits discrimination in employment based on a broad definition of discrimination, including on grounds of *race, colour, sex, religion, political opinion, national extraction or social origin* (Article 1(1)(a)) (see below). It has been widely ratified, as of January 2002 by 160 States, including all but two countries among the 45 member states of the Council of Europe.<sup>14</sup>

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<sup>14</sup> Listing of ratifications of ILO instruments can be found on the ILO website at [www.ilo.org](http://www.ilo.org) under ILOLEX, the ILO database on International Labour Standards.

The Migration for Employment Convention (Revised), 1949 (No. 97) prohibits “discrimination in respect of nationality, race, religion or sex” (Article 6(1)) with regards to working conditions and related matters such as training. It has been ratified by 42 States, including thirteen in Europe: Belgium, Bosnia-Herzegovina, Cyprus, France, Germany, Italy, Netherlands, Norway, Portugal, Slovenia, Spain, the United Kingdom and the Federation of Yugoslavia.

The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) stipulates that (Article 10) “Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation...” It has been ratified by 18 countries, including Bosnia-Herzegovina, Cyprus, Italy, Norway, Portugal, San Marino, Slovakia, Sweden and the Federation of Yugoslavia.

Comprehensive domestic anti-discrimination law and policy is, however, by no means apparent in many states. Coupled with the fact that international anti-discrimination law specifically protecting migrant workers is weakly adhered to it is clear that migrants and ethnic minorities are, more than ever, in need of comprehensive protection of their rights and fundamental freedoms.<sup>15</sup> ILO’s fundamental activity extends far beyond standard setting and monitoring, to include research and documentation, technical advice, identifying options, etc. in the interests of supporting its constituents to implement effective policies and practices in accordance with agreed international standards.

### ***Defining the issue: Inequalities faced by (im)migrant and ethnic minority workers***

#### **ILO definition of discrimination**

The ILO Discrimination (Employment and Occupation) Convention No.111, 1958, states in *Article 1* that:

*For the purpose of this Convention the term “discrimination” includes-*

*(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;*

*(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employer’ and workers’ organisations, where such exist, and with other appropriate bodies.*

Migrants and ethnic minorities experience discrimination on the grounds of their actual or perceived nationality, colour, “race”,<sup>16</sup> or ethnic origin. Migrant and ethnic minority workers

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15 The 1990 (UN) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families includes a considerable number of provisions that effectively inhibit discrimination against migrant workers. Drafted with considerable input from the ILO, it entered into force in 2003.

16 The concept of >race= has long been exposed as a fallacy and as scientifically void. The term >race=, however, continues in wide usage, and its derivative >racial discrimination= has come to mean discrimination on the ground of perceived race, as opposed to factual race (which does not exist). Acknowledging that >race= is a subjective concept, the term >race= should be read as >perceived race= and >racial discrimination= as >discrimination based on the grounds of perceived race=. For ease of legibility, quotation marks are not inserted

have disproportionately higher rates of unemployment and underemployment in the formal sector than nationals in the countries surveyed by the ILO.<sup>17</sup>

One of the reasons for this relatively poor performance is the practice of discrimination by labour market gate-keepers.<sup>18</sup> Another factor is the lack of a network of contacts in the world of work. Unequal starting points or disadvantages, together with discriminatory behaviour, are the key reasons why migrant and ethnic minority workers face greater obstacles than the majority population.<sup>19</sup> In some countries, the accumulated effects of discriminatory acts in the past may have led to a contemporary environment that is itself discriminatory. In contrast to individual acts of discrimination, societal discrimination consists of arbitrary barriers against the advancement of minorities; the whole “system” disfavours individuals because they are members of a certain group.

Additional factors for migrants, contributing to their marginalisation, include lack of sufficient knowledge of the host country’s language, lack of appropriate education or training, and unfamiliarity with local customs and culture. Beyond linguistic disadvantages, some disadvantages faced especially by more recent migrants stem from poor educational opportunities in their home countries. However, the longer such migrants and their offspring live and work in a host society, the more likely it is that prejudice and discrimination prevent them from reaching similar economic and educational attainments as the majority population.

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around the term. The ILO Committee of Experts on the Application of Conventions and Recommendations adopts a similar position. See ILO (1996a). For a scientific discussion of the concept of >race=, see UNESCO (1950).

17 The countries surveyed are Belgium, Canada, Denmark, Finland, France, Germany, Italy, the Netherlands, Spain, Sweden, the United Kingdom and the United States.

18 The term labour market “gate-keeper” was used in the ILO research to refer to persons with key roles in the employment hiring process, including personnel managers, trade union officials, staff of public and private employment placement services, etc., who all shared the basic characteristic of having far-reaching effects on the employment prospects and career decisions of workers. Some of the reasons perceived at first sight as >objective= handicaps preventing employment can also be recognized as forms of indirect discrimination. Thus, to insist upon perfect, accent-free knowledge of the host countries= language for a manual or semi-skilled job, where this is not necessary for the performance of the job, constitutes indirect discrimination, since it adversely affects migrant and ethnic minority workers more than the majority population.

19 Additional explanations for the high under- and unemployment of migrant and ethnic minority workers can be found in macro-economic developments, including the constant reduction of unskilled industrial manual labour. See Abella et al. (1997), p. 9.

### ***Defining the target group***

The project sought to focus on migrant/immigrant workers and their descendants. However, for a number of reasons, the research could not disaggregate the data and situations facing migrant workers from those of visible ethnic minority workers. In a number of countries, the available control data from census and population statistics did not differentiate immigration status from other characteristics. This was because in some national data systems, ethnic minority and migrant categories were thoroughly mixed. In practical terms, popular stereotypes that confuse ethnic and migratory characteristics made impossible a consistent differentiation between “migrants” and “minorities”.

The term “migrant” or “immigrant” may be used to cover a whole range of individuals, including those admitted to a country temporarily, persons with a permanent residence permit, or those whose presence is unauthorised<sup>20</sup> (also referred to as irregular or undocumented.) The ILO study focused on migrants “who are economically active in a country of which they are not nationals,” as per the definition in ILO Convention 97.<sup>21</sup> Several categories of short-term migrants, including seasonal workers, project-tied workers and time-bound workers, were not included among the primary target group of the research. The status of these workers in the eyes of the State and in relation to specific problems they may face on a day-to-day basis can be very different than those of regular entry, and long-term migrants. Protection of and discrimination against irregular or unauthorised migrant workers were not specifically addressed by this study, but urgently need attention in future research and response activity. The legal problems facing these workers are distinct from those facing regular status migrants and ethnic minorities who suffer discrimination despite holding all the necessary documentation required by the State. At the same time, perceptions of “illegality” may exacerbate racial and ethnic discrimination against migrants generally, especially those at the lower end of the socio-economic spectrum.

Ethnic minorities are those persons of physiological, cultural and other characteristics distinct from those of the dominant or majority population, who have the nationality of the state. They are sometimes offspring or descendants of migrants; however, some ethnic minorities have shared the same territory for centuries or more. Despite their status as nationals, members of ethnic minorities often continue to be viewed by sections of the majority population as “foreigners” due to phenotypic, cultural or other differences, as well as unresolved historical tensions, even generations after naturalisation has taken place.<sup>22</sup> The problems facing ethnic minorities in this regard are, for the large part, identical to those faced by first generation or non-naturalised migrants, and for this reason, the study dealt with discrimination as it is experienced by both of these groups.

### ***Findings and impact of the ILO research***

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20 The term “unauthorized” is used to refer to migrants who either do not have legal permission for entry or residence by the host State or who do not have authorization for employment. The designation of migrants or immigrants as “illegal” is considered inappropriate as it can imply disregard for the fundamental right spelled out in the Article 4 of the Universal Declaration of Human Rights and in other instruments that all persons are guaranteed the right to recognition before the law.

21 ILO Migration for Employment Convention (Revised), 1949 (No. 97), article 11.

22 On equal treatment and opportunity of ethnic minorities see also Hodges-Aeberhard and Raskin (1997).

## Documenting occurrence

As migration pressures result in increasingly diversified communities throughout Europe, ILO tripartite constituents have found themselves grappling with the challenges posed by discrimination against migrants and the lack of integration of immigrants and their descendants. In response to this concern, and following the elaboration by Prof. Dr. Frank Bovenkerk of a methodology for the documentation of discrimination,<sup>23</sup> ILO has conducted research to determine the occurrence of discrimination in access to employment in the United States, Belgium, Germany, the Netherlands, and Spain, and most recently in Italy. The methodology prescribed in detail how to document whether or not migrant or minority workers were discriminated against when trying to find a job. In these so-called *practice tests*, equally qualified (im)migrant/ethnic minority and citizen-profile candidates applied simultaneously for advertised vacancies. By testing migrants' and minorities' chances in numerous application procedures for different sorts of jobs comprising a cross-section of the labour market, the programme documented the incidence of discrimination against these workers in different sectors and locations.

The project's findings<sup>24</sup> showed discrimination in access to employment to be a phenomenon of considerable and significant importance in all countries covered by the research. Overall net-discrimination rates of up to 35 per cent were not uncommon, meaning that in at least one out of three application procedures migrants/minorities were discriminated against. In interpreting these results, it should be kept in mind that, as a consequence of the rigorous research methodology, the discrimination rates uncovered by the project were assumed to be conservative estimates of what is happening in reality.

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23 F. Bovenkerk (1992).

24 See F. Bovenkerk, M. Gras and D. Ramsoedh, (1995); A. Goldberg and D. Mourinho(1996); Colectivo IOE, (1996); M. Bendick Jr (1997); B. Smeesters and A. Nayer (eds.)(1998).

### Rate of discrimination in five European countries

	Belgium	Germany	Netherlands	Spain	Italy
First stage: telephone call	19	13	23	25	27
Second stage: invitation to interview	12	6	9	8	12
Third stage: offer of work	2	not done	5	3	2
Total rate of discrimination	33	19*	37	36	41

Sources: Zegers de Beijl, 2000; for Italy, Allasino et al., ILO International Migration Papers, 67

\* Partial total given that third stage testing was not conducted in Germany for technical reasons.

The research findings showed discrimination occurring in, broadly, three stages of the recruitment process. The first, and most common form of discrimination tended to occur at the first contact between migrant/minority applicant and employer. Blatant, direct discrimination at this stage meant that migrant/minority applicants were often not even able to present their credentials. Often the migrant/minority applicant was simply told that the vacancy was already filled, while the citizen-profile applicant would be invited to be interviewed for the post. In other instances, the migrant candidate, distinguishable by his/her foreign-sounding name, was told straight away that foreigners were not wanted. The second stage of discrimination occurred when both applicants were invited for an interview. At this stage, there were a considerable number of cases where the migrant/minority candidate was subjected to additional qualification requirements while the national candidate was not. The third stage showed that, if the migrant/minority candidate was offered a job, the terms and conditions of employment tended to be inferior to those offered to the citizen-profile applicant. Above average discrimination rates were detected particularly in privately owned small and medium sized enterprises in the services sector, especially for jobs that involve direct contact with clients. This is all the more troubling as it is notably the services sector in which demand for labour is relatively high and new jobs are being created.



## Assessing effectiveness of legislation and other measures

Studies on the effectiveness of anti-discrimination legislation, the project's second phase, were carried out in Belgium, Canada, Denmark, Finland, Germany, Italy, the Netherlands, Spain, Sweden, the United Kingdom and the United States.

These research findings<sup>25</sup> indicated that criminal law prohibitions of discrimination provided limited redress to victims of unlawful discrimination in employment. Rather, comprehensive civil legislation appeared to establish far more effective mechanisms for the identification, intervention, redress and monitoring of discriminatory treatment. Research also indicated that recourse to legal remedies for discriminatory acts was facilitated when such legislation not only clearly outlawed both direct and indirect discrimination, but also contained straightforward definitions of both types of discriminatory acts. To ensure the relevance of anti-discrimination law for non-national migrant workers as well as ethnic minorities, nationality, colour, religion, "race" and ethnic origin should be amongst the grounds for discrimination covered in the legislation. Given the substantial difficulties involved in proving discriminatory practices, some studies indicated the need for civil anti-discrimination legislation to allow the reversal of the burden of proof, where this was not automatically the case. When a complainant produced plausible or prima facie evidence of discrimination, the alleged perpetrator would have to prove that the disadvantageous treatment was not based on any prohibited grounds

Experience in several countries showed that legal requirements for monitoring and reporting by employers on the diversity of their workforce are extremely useful tools. Equally indispensable were requirements to adopt positive action programmes actively promoting migrants' and minorities' equal participation in employment, as well as provisions which exclude companies proven to engage in discrimination from the award of governmental contracts.<sup>26</sup>

As regards the crucial issue of law enforcement, the findings clearly demonstrated that a specialised institution in the field of equality of treatment and non-discrimination provides the most effective way of guaranteeing effective enforcement and promotion of anti-discrimination legislation. Such an institution should handle all individual allegations of discriminatory treatment and try to arrive at a mediated solution. To be fully effective, the institution should have wide investigative powers. Should mediation fail, the agency should be empowered to issue '*cease and desist*' orders aimed at obliging the discriminator to cease the practice and put remedial and preventive measures in place. It also ought to have the power to bring cases to court. As discrimination is rarely a one-off act, provisions that allow for group complaints would also enhance the impact of anti-discrimination legislation.<sup>27</sup>

## Inventory and evaluation of anti-discrimination training activities

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25 See R. Zegers de Beijl (1991); G. Rutherglen, (1993); C. Ventura (1995); R. Zegers de Beijl in W. R. Böhning and R. Zegers de Beijl (1995); U. Kulke in: A. Goldberg, D. Mourinho and U. Kulke (1996); R. Pérez Molina in Colectivo IOE and R. Pérez Molina (1996); K. Vuori (1996); D.N. Addy (1997); N.-E. Hansen and I. McClure (1998); J. Doomernik (1998); B. Smeesters and A. Nayer (1999).

26 For similar recommendations see *Equality in employment and occupation*, Report III (part 4B) ILO, Geneva, 1996; Consultative Commission on Racism and Xenophobia: Final report, European Commission, Brussels, 1995.

27 For more details see W.R. Böhning and R. Zegers de Beijl (eds.) (1995)

The project's third activity consisted of making inventories and evaluations of equal opportunity and non-discriminatory behaviour training, assessing the training methods used and the effect of training on trainees. . This kind of training had been developed in a number of countries. However, prior to the launching of this research, little was known about the content, methodology and, most importantly, the effects of these various training efforts.

Here too, a standard methodology was developed.<sup>28</sup> Based on this methodology, research was carried out in Belgium, Finland, the Netherlands, Spain, the United Kingdom and the United States. The research considered the effectiveness of anti-discrimination training on persons involved in hiring decisions, the so-called "gate-keepers" of the labour market. This group of persons comprised personnel managers, trade union officials, staff of public and private employment placement services, etc., all holding influential positions vis-a-vis the employment prospects and career decisions of workers.

The findings<sup>29</sup> showed a great disparity, both qualitative and quantitative, between training and education measures implemented. In some countries, such as the United States, a high demand for anti-discrimination training had existed for several decades, which was reflected on the supply side by a vast array of training approaches. In the Netherlands and the United Kingdom anti-discrimination training had been developed, notably during the past decade. In other countries, such as Finland and Spain, significant demand for this type of training was not yet apparent, although measures aimed at migrants, such as language and cultural training were relatively widespread. In Belgium, attempts to move from training directed at migrants to training aimed at representatives of the societal majority met with significant resistance, which countered some of the potential effects of a wide variety of anti-discrimination training measures and led to a number of initiatives being discontinued.

The research findings pointed to the limited utility of training approaches that aimed to provide information on international migration and the migrants' culture. The assumption that correct and balanced information will automatically yield non-discriminatory behaviour was not borne out by the evaluation. Similarly, training which aims to change trainees' attitudes did not appear to be effective in changing actual behavior and resulted, in several instances, in achieving a contrary effect. By contrast, training which informs employers about statutory obligations and governmental and company policies with respect to equal treatment appeared more successful in changing their behavior in day to day contact with migrant workers. In order for training to achieve its objective of changing the behavior of employees throughout an organisation, all employees should be trained, the training should form part of a wider programme of equal opportunity policies and these policies should be actively promoted by the organisation's top-management. Nevertheless, the research findings reveal room for improvement in terms of training delivery and design. Both employers and workers could play a pivotal role in creating an environment ensuring optimum results from anti-discrimination training.

## **Discussion and dissemination of findings**

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28 John Wrench and Paul Taylor (1993)

29 Colectivo IOE (1996); K. Vuori (1997); J.P. Abell *et al* (1997); P. Taylor *et al* (1997); F. Castelain- Kinet *et al* (1998); M. Bendick, M. L. Egan and S. Lofhjelm (1998).

The fourth main activity of the initial stage of the ILO project consisted of disseminating the project's research findings at national and international seminars organised throughout 1997 and 1998 and to the incorporation of project findings into national policy making processes. National and regional seminars were held in Belgium, Finland, the Netherlands, Spain and the United Kingdom.<sup>30</sup>

The ILO "High Level Meeting on Achieving Equality in Employment for Migrant Workers" held in Geneva 8-11 March 2000 concluded the first seven-year phase of the ILO research project on combating discrimination against migrant workers.<sup>31</sup> Thirty-three government, employer and worker delegates participated from the 14 Western European and North American countries in which research was carried out, namely Belgium, Canada, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland, United Kingdom and the United States. More than 40 observers from United Nations and regional inter-governmental organisations, national anti-discrimination monitoring bodies, specialised non-governmental organisations and migrant groups as well as researchers contributed to the debate.

The meeting examined the findings and implications of the ILO research, proposed a framework and inventory of measures and mechanisms to combat discrimination and promote equality of opportunity, identified an initial listing of best practice measures replicable elsewhere, and elaborated a set of recommendations for future follow-up activity. The recommendations drawn up at this meeting have served as signposts towards subsequent ILO Migration Programme activity in the area of anti-discrimination.

Participants emphasized the importance of ILO "serving as the catalyst in promoting and stimulating action, and in disseminating information on best practices and their impact in support of initiatives at the level of enterprises, workers' and employers' organisations, and local and national governments to promote equality." Future activities should involve countries of origin as well.

A number of specific recommendations were made towards future ILO and constituent activities in areas of *research and information dissemination, statistics and monitoring, standard-setting and advisory services, and facilitating exchange and cooperation*. Follow up action was recommended specifically for the World Conference Against Racism and Xenophobia and in cooperating with the Council of Europe, the Office of the High Commissioner for Human Rights and relevant UN treaty bodies.

### **World Conference against Racism and Xenophobia (WCRX)**

Following recommendations of the March 2000 High Level Meeting and ILO's own strategic objectives, the project entered a second stage. A first activity comprised active engagement in the

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30 See "Is anti-discrimination training effective?" Report of a workshop held at The Department for Education and Employment, 19 May 1997, ILO, Geneva, 1997; *Report on the Regional Seminar in Catalonia, Barcelona* 12 May 1997, ILO, Geneva, 1998; *Report on the National Seminar in Spain, Madrid*, 27 November 1997, ILO, Geneva, 1998; *Report on the seminars organized in Belgium to evaluate the results of research conducted in association with the ILO project*, ILO Geneva, 1998; *Ethnic Relations and Discrimination in the Labour Force; Report of a seminar held in Helsinki, Finland*, 17 October 1997, ILO, Geneva, 1998.

31 See ILO (April 2000): *High Level Meeting on Achieving Equality in Employment for migrant workers (Geneva, 8-11 march 2000) Summary Report*

WCRX. A common perspective on issues was elaborated jointly with the OHCHR the International Organization for Migration (IOM) and the Office of the UN High Commissioner for Refugees (UNHCR) which contributed to the elaboration of some 45 paragraphs of text adopted at the WCRX that, taken together, constitute a comprehensive global plan of action to combat discrimination and xenophobia against migrants and refugees. These same agencies jointly prepared a discussion paper *International Migration, Racism, Discrimination and Xenophobia* widely distributed at the Durban conference and at subsequent events.

### **Compilation of “Practice Profiles”**

A compilation of profiles of practical government, employer, worker and NGO anti-discrimination measures and practices is also underway. These “Practice Profiles” describe a wide variety of strategies employed at national, state and local levels to address integration challenges. Some are innovative and context-specific, while others involve classic, rights-based establishment of norms. Some were pilots or addressed a specific short-term goal; others are still in effect, and have established clear and measurable outcomes. While some may be more suitable to replicability than others, all represent significant initiative by a range of stakeholders not only to manage, but also to take advantage of the productive potential of a diverse workforce. A compendium of these profiles has been developed for access through an interactive ILO website.

### **“Promoting Equality in Diversity” Project (INTI)**

The most recent programmatic stage of this project was formulated in 2003, and with funding from the European Union (EU), will be formally launched in September 2004. The INTI project aims to support broad community engagement on integration and discrimination issues throughout the EU member countries by disseminating effective practice, identifying indicators of integration, developing evaluation tools, and convening social partner networking opportunities. This project has targeted the broadest possible array of participants, including employer’s associations and federations; trade unions; public authorities; national equality/anti-discrimination commissions; academic institutions, communications media, migrant and minority community organizations and other civil society groups.

As part of the INTI project, the practice profiles collected during earlier stages of the project will be expanded to include at least 300 examples. Equally important, however, will be the development of evaluative standards and indicators for the assessment of these profiles in terms of their effectiveness, viability for continuation and potential replicability in other EU contexts. A study will also be carried out of European experiences with integration efforts, with the goal of producing a tool kit to facilitate implementation by project partners and others. Tool kits will include conceptual literature, guidelines, models of practice and pamphlets for specific audiences. Finally, a European social partner forum on integration and discrimination will be convened so that experiences and practices may be shared, and stimulate wider and more effective engagement and cooperation at national and regional levels. ILO hopes through this process to catalyze a sustained campaign through which shared knowledge will generate new approaches as challenges arise and circumstances change.

### 3. Typology of Measures

The results of the ILO survey amply demonstrate that action to prevent discrimination and promote equality of opportunity in employment, as well as in other arenas, is the shared responsibility of all social partners. In employment matters these partners notably include government, both national and local, employers and their associations, and workers' organisations.

Research and models developed by experts, particularly Tariq Modood and John Wrench<sup>32</sup>, drawing on earlier work by Jenkins, established four broad categories of measures which may be taken to address workplace discrimination. The exchange and discussion at the March 2000 ILO High Level Meeting proposed some modification and expansion to this categorisation, in order to be fully inclusive of different and complementary approaches, and to highlight the policy and opinion shaping roles of political leaders, educational institutions, and news and communications media.

The preliminary typology presented below is derived from the compendium of profiles, and describes those experiences encountered in compiling practices. Some additional categories have been added to earlier listings, yet it is important to keep in mind that this descriptive categorization is not a systematised and comprehensive framework. The categories are not mutually exclusive; there is overlap between descriptors and some may duplicate, serve as components or reinforce other measures.

A national effort to combat discrimination and promote equality could only hope to achieve results if the various measures are implemented by all sectors concerned: employers, workers and community organisations, government, political and opinion leaders, in concert with international standards and programs.

The revised categorisation therefore includes:

**1. Organisational Initiatives:** measures adopted by employers and other organisations, including trade unions, focusing on internal policy and management.

1. Equal opportunities statements and action plans
2. Equality targets or benchmarks for recruitment and management
3. Recruitment initiatives to encourage ethnic minority applications
4. Measures to improve the qualifications of minority applicants, trainees and employees
5. Elimination of arbitrary barriers
6. Job accommodation measures
7. Audits and ethnic monitoring of migrant/minority employees
8. Recruiter and Management Training
9. Diversity Management

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32 See John Wrench and Tariq Modood, *The effectiveness of employment equality policies in relation to immigrants and ethnic minorities in the UK*, ILO, Geneva, 2001

**2. *Collective Action:*** co-operative initiatives taken up by labour organisations, community groups, associations of employers and NGOs.

1. Developing charters, guidelines and rules on equal opportunity
2. Encouraging minority participation within unions
3. Supporting minority self-organisation within unions and community groups
4. Identifying bias in hiring, in opportunities for training and advancement, in appraisals
5. Supporting action on grievances concerning discrimination
6. Collective agreements
7. Monitoring of equal opportunities practices
8. Organising and protecting migrants and minorities
9. Anti-harassment policies

**3. *Legislative And Legal Measures:*** measures implemented by judicial and extra-judicial bodies of the State.

1. Constitutional law
2. Civil legislation
3. Criminal legislation
4. Labour law
5. Monitoring bodies
6. Judicial process and civil proceedings

**4. *Administrative Measures, Regulations and Practices:*** measures taken by local and national authorities.

1. Technical advice and guidance
2. Contract compliance
3. Positive Action and training
4. Recruitment for Public Employment
5. Targeting Long-Term Unemployed
6. Incentives for entry jobs
7. Affirmative action
8. Codes of practice
9. Labour force surveying

**5. *Political/Educational Action:*** opinion-shaping efforts by political leaders, educational institutions and communications media.

1. Opinion shaping efforts by political leaders
2. Role of communications media.
3. Public education campaigns
4. Diversity festivals
5. Curricula for schools and universities
6. Research

**6. *International Standards and Programmes***

1. Conventions and treaty standards
2. Resolutions and recommendations adopted by inter-governmental bodies
3. Recommendations by international conferences
4. Rulings by international judicial bodies
5. Advisory functions of relevant international agencies
6. Training and capacity building offered through international agencies and other institutions

This classification is of particular application in the tripartite context of the ILO since several of the given categories relate to the three constituencies of the Office. The sixth category takes into account the role of international institutions including the ILO and the United Nations, as well as regional instruments and initiatives. By extension, the following compendium should be applicable in other contexts subject to discriminatory practices including, for instance, education, health and social services. In other such spheres, the relevant institutions involved are similarly responsible for addressing discrimination in their internal structures and their operations. Likewise, client, community, and popular organisations have roles to play, and could find this framework a useful model. Within the categories outlined above are included the following specific measures:

### ***1. Organisational initiatives***

*Organisational initiatives* refer to those policies and practices established and implemented by employers in order to reduce discrimination and promote equality of opportunity in the workplace. The term *voluntary measures* has often been used to denote workplace measures put in place by businesses. Participants in the March 2000 ILO meeting noted that work-place measures may not always be *voluntary*, for example where established as the result of a binding collective agreement. They also can apply to trade unions, community organisations and government offices as employers.

#### *1. Equal opportunities statement and action plan*

A growing number of employers, from transnational corporations to small businesses, trade union organisations, and government offices have adopted basic public policy statements indicating that they offer equal opportunities for employment and promotion and equal working conditions for women, ethnic minorities and immigrants. It has been found in a number of countries that a greater proportion of companies with a stated equal opportunity policy actually engage in fair practices than those without.

These statements are often accompanied by equal opportunity action plans. These plans allocate responsibilities to ensure that staff is familiar with what is expected of them with regards to an equal opportunities programme. They usually identify specific objectives and targets as well as deadlines for when these should be reached. Plans can also specify in what way and by whom the progress of each part of the action plan will be measured and assessed. An important component of an equal opportunity action plan is an equality target or benchmark by which results can be assessed.

## 2. *Equality targets or benchmarks for recruitment and management*

An equality target consists of a percentage of ethnic minority employees that an employer may aim to reach by a specific date, through both positive action and through measures to eliminate direct and indirect discrimination. Targets may be defined in relation to the percentage of ethnic minority population in the relevant area or labour market, but they are not quotas. Such equality targets relate to numbers or proportions of under represented groups in, or recruited to, particular jobs or grades. They often cover jobs that require higher-grade skills, carry additional responsibility or provide essential experience for long-term career development, and can be expressed, where appropriate, in terms of composition of the workforce as a whole.

Setting targets based on proportional representation of different groups has often been a difficult exercise, due to imprecise local data. Targets can be more precisely defined where census data allows for calculating the ethnic group composition of the population within an area and also the ethnic composition of the age groups and occupations from which labour is being recruited. Such data can be used as a relatively accurate benchmark against which to compare the ethnic group composition of an organisation's employees.<sup>33</sup>

## 3. *Recruitment initiatives to encourage ethnic minority applicants*

Measures to encourage more ethnic minority applications are widely undertaken in the public and private sectors. Many companies use equal opportunity statements in job advertisements and place job advertisements in ethnic minority press and use ethnic minority images in their publicity material. Other recruitment initiatives include translation of job advertisements into ethnic minority languages, circulation of job vacancy advertisements to ethnic minority organisations and positive action pre-recruitment training.

Measures to encourage minority applications also include company and government agency presentations in universities and schools with a large number of minority students, vacancy advertisements in newspapers read especially by migrant or ethnic minority groups and networking efforts targeting migrant and minority groups.

## 4. *Measures to improve the qualifications of minority applicants, trainees and employees*

Measures to improve the qualifications of minority applicants include pre-employment training or scholarships for training targeting primarily designated group members who lack such skills, language courses in the host country's language and management and leadership training for designated group members.

Employers have also instituted targeted programs to improve qualifications of migrant and minority trainees and/or employees. The proportion of positive action trainees progressing into employment is high. Many employers surveyed report that most of their trainees subsequently gain employment.

## 5 *Elimination of arbitrary barriers*

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33 Wrench and Modood (2001) section 4, p.55



Measures to eliminate arbitrary barriers include anti-discrimination training to labour market gatekeepers, the elimination of tests and requirements which are not necessary for the job or which are culturally biased, the review of recruitment procedures to ensure non-discriminatory treatment and the inclusion of minority group members on selection boards.

#### 6. *Job accommodation measures*

Job accommodation measures include flexible hours which allow, for example the observance of religious traditions, dress codes which accommodate cultural and religious imperatives of minority groups, procedures to deal with cases of discriminatory harassment in the workplace, and the provision of anti-discrimination training for co-workers.<sup>34</sup>

#### 7. *Audits and ethnic monitoring of migrant/minority employment*

In the development of a strategy to promote equality of opportunity, some companies seek to monitor statistical data on the current composition of their workforce, where ethnic minority staff is employed in the organisation, and how their progress compares with that of national staff overall. This ethnic profile of the workforce provides a baseline against which progress can be measured. Following an initial audit, it is usually important for an organisation to continue ethnic monitoring of the workforce and of the decisions made at each stage of the personnel process, from recruitment, selection and promotion to lay-off and termination. . Such ongoing data gathering can reveal unintentional discriminatory outcomes and allow employers to deal with problem areas by reviewing standard practices and providing specific training to increase awareness and introduce new techniques to ensure fairer outcomes.

#### 8. *Recruiter and Management Training*

Anti-discrimination training can take various forms, and is often characterized by the specific personnel involved, such as supervisors or management or those involved in recruiting and selecting employees. Such training is generally aimed at eradicating discriminatory practices by changing individual behavior. Once an employer has chosen to initiate training, it is usually provided by an external consultant, but can also take the form of in-house training. Training varies considerably according to different factors: the frequency and duration of the training, the employer's commitment and the voluntary or mandatory nature of training attendance.

#### 9. *Diversity Management*

Diversity management is an approach emphasising that organisations can validate differences amongst employees to the benefit of the company. It is based on an approach that treats individual differences and collective diversity as advantages, and fosters an organisational culture of recognition and respect for difference, rather than a culture encouraging homogeneity.

Experiences in some companies demonstrate that diversity management approaches lead to demonstrably greater efficiency and increased productivity. Proponents assert that organisations validating higher levels of diversity can also better address and reduce discrimination than

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34 ILO (1998), p. 76.

organisations whose internal culture demands homogeneity, privileging the values and characteristics of one ethnic, social or national identity, usually the dominant one.<sup>35</sup>

## **2. *Collective Action***

This term is applied to the numerous and diverse measures worker organisations, employers and business associations, and community groups including concerned NGOs can implement, within their own institutions and networks, in the work-place and in society. Some of the measures outlined below focus on initiatives particularly relevant for trade unions and community groups.

### *1. Developing Charters, Guidelines and Rules on Equal Opportunity*

In some countries, an increasing number of trade unions and employer associations have set up separate committees or structures to deal with race relations and/or equal opportunities issues and have adopted equal opportunity policies and anti-racist statements.

Union charters aim at encouraging unions to be more active on the issue. Such charters usually include the following main points:

- the need to remove barriers which prevent ethnic minority and migrant workers from reaching the union office;
- the need for vigorous action on employment grievances concerning racial discrimination;
- a commitment to countering racist propaganda;
- the necessity for appropriate personnel recruitment and promotion procedures ;
- the production of union material in relevant ethnic minority languages when necessary, and
- the inclusion of equal opportunity clauses in collective agreements.

Unions can also establish internal rules condemning discrimination and racism. These can include the power to sanction those who have discriminated on the grounds of race.

Employers associations in some countries have developed good practice guidelines to encourage better practices by businesses, and provide models for organisational measures to be adopted by employers.

### *2. Encouraging Minority Participation within Unions*

To encourage equal opportunity of access to elected posts and other responsibilities, unions have also engaged in positive action measures. These include monitoring their own membership and composition of union decision-making bodies by ethnic origin, setting targets for proportions of ethnic minority members on executive councils and other major committees and developing closer links between race structures and bargaining structures. Other measures include advertising to ethnic minority and immigrant members their willingness to pursue grievance procedures and tribunal claims in cases of discrimination and harassment, and establishing training for full-time officers dealing with discrimination cases.

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35 *Op.cit.*, p.90.

Some unions have a special committee dealing specifically with equal opportunity issues and have taken positive action steps, such as organising conferences for ethnic or minority members and producing literature in ethnic minority languages. More unions are giving special training for ethnic minority members to encourage their participation in union positions.<sup>36</sup>

### 3. *Supporting minority self-organisation within unions and community groups*

Demands for minority self-organisation originate in the need to catalyze progress within unions in addressing racism, in encouraging minority participation and in negotiating race-related equal opportunities issues. However, “self-organisation” does not usually mean the establishment of separate minority unions, but rather refers to the convening of minority members’ groups at all levels in existing unions. Supporters of such self-organisation argue that it provides an extra means for achieving the main goals of the organisation while ensuring that ethnic minority issues and rights are addressed by the trade union in a way acceptable to ethnic minority members. Union structures can support articulation of minority and immigrant concerns by establishing ethnic minority workers committees with representatives from branches and regions, and facilitating special conferences, equal opportunities newsletters and group mailings for their ethnic minority membership.

### 4. *Identifying bias in hiring, in opportunities for training and advancement, in appraisals*

Unions in some countries are setting up counseling networks, often composed of ethnic minority members so that ethnic or minority members have a representative to turn to. Unions are also using their structures of ethnic minority membership to identify bias in selection for redundancy, promotion, and opportunities for training and career development, and in appraisals regarding performance related pay. They have discovered, for instance, that the introduction of performance-related pay has led to new possibilities for discrimination. Not only are some managers biased, but ethnic minority workers are also more likely to be in jobs in which it is difficult for anyone to collect the “credits” for better performance. Ethnic workers’ structures can pick up on such phenomena, of relevance to ethnic members, which might otherwise go unnoticed.<sup>37</sup>

### 5. *Supporting action on grievances concerning discrimination*

Experience shows that discrimination-related grievances are more likely to succeed if the claimant obtains the support of his or her union. Trade unions involved with members’ racial discrimination complaints have been encouraged by the results and it has been argued that the small success rate of such cases is improving with the involvement.

### 6. *Collective Agreements*

Collective labour agreements negotiated with employers provide a locus for inclusion of language expressing common concern with discrimination in employment. Such collective bargaining agreements have in a number of cases contained specific anti-discrimination language

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36 Wrench, and Modood (2001) p. 65.

37 Wrench and Modood (2001) section 5.

and the promotion of equal opportunity for all. A common approach is to include “equal opportunity” clauses in such agreements.

### 7. *Monitoring of equal opportunities practices*

Community groups and unions can monitor the application of employer equal opportunity policies in practice and have an important role in opposing racial injustice in employment. For example, a bank employee may suffer racist remarks from a customer who does not want to be served by him or her. If the management simply moves the employee off the counter, the union can remind it of the company’s equal opportunity policy, pressing the bank to adopt a policy of not accepting such behavior from its clients. In some countries, unions are concerned about the low employment of ethnic minorities in the finance sector as a whole, even though the sector is primarily located in urban areas. Thus, the union discusses recruitment strategies with the employers.<sup>38</sup>

### 8. *Organising and protecting migrant and minorities*

In a number of countries, particular unions or the labour movement in general have given renewed attention to recruiting among immigrant and ethnic minority communities to assure better protection against discrimination through collective labour action. This has also arisen in response to economic restructuring, recession, and structural unemployment that have eroded organised labour in sectors which have traditionally provided the mainstay of trade union membership, and to the increased relative significance of immigrant and ethnic minority sectors.

It is to be noted that anti-discrimination protection can only be effective in the context of reasonable minimum standards of employment protection. For people with insecure employment status, including undocumented workers and asylum seekers, anti-discrimination law is almost irrelevant.<sup>39</sup>

### 9. *Anti-harassment policies*

A considerable number of employers’ and workers’ organisations have developed and implemented policies to identify and discourage harassment between persons, particularly on sexual and racial bases. Such policies usually provide specific definitions and procedures for raising, reviewing and resolving complaints; in some cases they indicate specific penalties for persons determined to be perpetrators. Anti-harassment policies and procedures thus provide specific mechanisms allowing victims to address what can be especially severe manifestations of racism, intolerance or discrimination. As with other anti-discrimination policies in the workplace, these measures are intended to address destabilizing dynamics which may have civil or even criminal implications if allowed to continue.

## 3. *Legislative and Legal Measures*

Legislation plays an essential role in discouraging discrimination and promoting equal treatment. By adopting general standards and rules, legislators can positively influence societal behaviour

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38 *Op.cit.*

39 *Op.cit.*

and individuals may be persuaded to act in certain ways. For those already accepting and following such standards as just or self-evident, legislation will reinforce their beliefs and actions.

Comprehensive anti-discrimination provisions are contained in international norms. In adopting national legislation to comply with international obligations, States may often have discretion to decide whether to adopt constitutional, civil, criminal and/or labour law prohibitions of discrimination.

### *1. Constitutional law*

Constitutional law plays a pivotal role in defining the commitment of a State to legal principles of non-discrimination. Generally, constitutions include provisions that no one can be deprived of any civil or political rights on the grounds of political opinion, faith or national origin. Although many countries include in their Constitution a specific right to equal treatment for all citizens, often the scope of the provision does not cover differential treatment on the ground of nationality.

Constitutional provisions regarding equal treatment and/non discrimination provide an important basis for the elaboration and enactment of anti-discrimination legislation to protect migrant and ethnic minority workers, however.<sup>40</sup>

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40 Hansen and McClure (1998), p. 6.

## 2. *Civil legislation*

Almost all countries surveyed favour a civil law approach to combating discrimination against migrant and ethnic minority workers in employment. It is particularly important in this regard that civil legislation prohibits discrimination on the grounds of nationality, race, colour, ethnic or national origin and also:

- specifically prohibits direct and indirect discrimination;
- includes a positive action clause<sup>41</sup>;
- contains a clear-cut list of admissible exceptions for direct discrimination and a narrowly construed exceptions clause for indirect discrimination;
- provides the possibility of shifting the burden of proof from the plaintiff to the defendant;
- includes a provision that holds employers liable for discriminatory acts committed by employees in the workplace;
- includes a specific provision declaring acts of victimisation unlawful.

One of the advantages of civil law is the flexibility it provides in determining remedies. It leaves room for courts to design tailor-made remedies, enabling them to take the particularities of each and every case into consideration.

## 3. *Criminal Law*

Criminal law fulfils the function of penalising discriminatory acts which are directed against a specific group or when there are no complainants bringing civil proceedings. From the perspective of the victims, whether or not they win the case, the procedural costs are generally born by the offender or the State. In civil law suits, on the other hand, the unsuccessful litigant generally has to reimburse the other party. Criminal law and civil law also provide very different remedies. While criminal law emphasises the punishment of the offender, only civil law can grant compensation or reparation to victims for the harm suffered in the form of payments or reinstatement.<sup>42</sup>

In general, migrants and ethnic minorities have generally found civil courts to be more accessible. In order to access criminal justice, a complainant must first make a complaint to the police, who report to the public prosecutor, who, in turn, initiates proceedings, if the case is found to have merit. Since migrants and members of ethnic minorities often share a lack of trust in the authorities, they may be inhibited, as victims of discrimination, from approaching the police, particularly given the potential lack of follow-through on the part of the prosecutor.<sup>43</sup> Also, the standard and burden of proof are more difficult to meet by plaintiffs in a criminal case.

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41 The term “positive action” refers to voluntary measures taken by employers to recruit and retain minorities, and should be distinguished from legislated “affirmative action” policies.

42 ILO (1998) pp. 39-42.

43 This was eloquently pointed out by the UN Special Rapporteur on Criminal Justice, who stated: “discriminatory treatment against members of racial, ethnic, religious or linguistic groups at the various levels in the administration of justice is, in a number of jurisdictions, a fact of current life ... many minority groups feel that the criminal legal system is heavily weighted against them and that the police represent a foreign, alien power”, Chowdury (1982), [conclusion](#).

For these reasons, criminal law provisions alone have been shown to be insufficient to combat discrimination against migrant and ethnic minority workers. In countries that have extensive, or exclusively, criminal legislation in force against employment-related discrimination, few cases are brought before tribunals and even fewer succeed.

#### 4. *Labour Law*

In a number of countries, national labour laws incorporate provisions prohibiting racial discrimination in employment and providing individual victims with the right to access the civil courts and industrial tribunals. Such laws spell out precisely how it is unlawful to discriminate at any stage of recruitment and how employees, once recruited, cannot be discriminated against in regard to their terms, conditions and security of employment or opportunities for career development. Similarly, in a number of countries, racist insults, harassment, threatening behavior and bullying by other employees are prohibited by such laws.

#### 5. *Monitoring Bodies*

A variety of extra-judicial mechanisms have been instituted with the aim of encouraging the resolution of complaints and the enforcement of anti-discrimination legislation. These monitoring agencies aim to encourage the settlement of disputes without resort to court proceedings and can contribute to solving cases of discrimination and eradicating the of discriminatory practices that generate complaints. These mechanisms can take the form of national commissions, ombudsmen, centres or offices. An enforcement agency can take the form of a body with a wider mandate, covering both racial and sexual discrimination for instance, or human rights in general.

The powers of such bodies include the ability to investigate on two levels: through general inspections of recruitment practices across a sector of employment and formal investigations involving formal cases of alleged discrimination. The monitoring body can provide the victim of discrimination with legal assistance as well as translation and interpretation services. It is usually entitled to analyse and make suggestions for the improvement of existing anti-discrimination law and its enforcement. An essential element of its enforcement function is promotional work, through information and training, as a preventive measure against the creation of a discriminatory environment.

The monitoring body may act as either a mediator or arbitrator in settling disputes. Mediation or arbitration is often less costly, more straightforward and speedier than court proceedings. It can be particularly effective in cases of alleged indirect discrimination, when the defendant may not be aware that a particular policy was discriminatory. Some States have opted to make mediation and/or arbitration compulsory in cases of discrimination. Another virtue of mediation or arbitration is that it resolves many disputes before a court hearing is required and therefore lightens the potential case-load for the courts.

In some countries, monitoring bodies are also given powers to take cases of discrimination to court should the preliminary remedial procedures fail to resolve the case. This can include both the power to take cases to court on the monitoring body's own behalf, and to assist and represent individuals<sup>44</sup>.

#### 6. *The Judicial Process and Civil Proceedings*

Courts play an important role in enforcing anti-discrimination legislation, and in the granting of compensation for material or moral damages. They also supervise and ensure the proper functioning of the enforcement body and thereby the protection of the rights of all parties involved. Where enforcement bodies are equipped with broad powers, it is also necessary to provide for a means of appeal against erroneous decisions of the agency, a function that the court system also usually provides.

In dealing with the admissibility of individual cases, laws in some countries provide for easy and informal access to protection by the judiciary. In the procedural rules of some countries it is possible to reverse or shift the burden of proof to the defendant requiring that he disprove allegations of discrimination once a *prima facie* case has been established by the complainant. The remedies provided by courts may either return a situation to the *status quo ante* (all negative consequences of a discriminatory act are removed, as if the harmful act had not occurred), or grant compensation for past harm suffered. The compensatory remedies provided by courts, range from material and/or moral damages to compensation for injured feelings. Punitive damages represent a controversial concept in law that is not widely recognized. The publication of the vindicating decision in a newspaper has been resorted to as another means of satisfying moral damages, although it is difficult to predict how effective such a remedy might be, particularly as public exposure may negatively affect the relationship between the employee and the employer. The threat of public exposure may however serve to deter employers from discriminating against migrant and ethnic minority workers more generally.<sup>45</sup>

#### 4. *Administrative Measures, Regulations and Practices*

Measures, regulations and practices established under the administrative authority of national, state, and local government can be effective tools for demonstrating and carrying out the will of the State to discourage discrimination and promote equal opportunity. A number of types of measures developed and practised in different countries are outlined below.

##### 1. *Technical Advice and Guidance*

Some governmental agencies provide advice and guidance to employers, trade unions and others, on the promotion of equal opportunity policies and other issues relating to a multi-racial workforce. In particular, they help with recruitment and selection issues and the formulation of equal opportunity policies.

In a number of cases, they issue guides covering equal opportunities for women and people with disabilities as well as for ethnic minorities where generally employers are encouraged to:

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44 *Op.cit.*, pp. 44-53.

45 *Op.cit.*, pp. 54-58.



- develop an equal opportunity policy, embracing recruitment, promotion and training.
- set an action plan including targets.
- provide training for all to help people throughout the organisation understand the importance of equal opportunities and provide additional training for staff who recruit, select and train.
- assess current conditions in order to establish the starting point and monitor progress in achieving objectives
- review recruitment, selection, promotion and training procedures regularly.
- draw up clear and justifiable job criteria.
- offer pre-recruitment training.
- develop the organisation's image within the community.<sup>46</sup>

## 2. *Contract compliance*

This measure entails making the awarding of governmental contracts, either local or national, for the provision of goods and services, conditional on the employer's compliance with anti-discrimination provisions and its active implementation of positive action measures as specified in law. By limiting the award of governmental contracts to employers who meet such criteria, clear incentives are given by the government to employers to achieve workplace equality. The possibility of being excluded from potentially valuable contracts or losing current contract funding often provides more motivation to the employer to incorporate good practices than the threat of a formal investigation or a court hearing.<sup>47</sup>

## 3. *Positive action measures and training*

Positive action measures are intended to encourage the advancement of members of designated groups. Employers and other labour market gatekeepers should be encouraged to adopt and implement schemes that ensure equal opportunities for all members of society in recruitment, promotion and training. The term refers to both voluntary and mandatory measures. Included are incentive measures, such as encouragement of minority applications, measures to improve the qualifications of minority applications and the elimination of arbitrary barriers and job accommodation measures. Positive action measures should be distinguished from those involving a degree of constraint, as affirmative action can.

The extent to which States oblige or pressure employers to adopt certain positive action measures varies considerably. Such measures were found to be more effective if certain legal obligations and enforcement mechanisms are introduced. Some countries use contract compliance to make employers adopt positive action measures. Some require employers with more than 35 employees, others, more than 100 employees, to report publicly each year on the representation of members of designated groups among their employees<sup>48</sup>. Otherwise government may be used as a role-model, inspiring private sector employers, where it adopts administrative measures that positively influence the employment of migrant or ethnic minorities in the public sector.

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46 Wrench and Modood (2001) section 4.

47 ILO (1998), pp. 77-80.

48 ILO (1998) pp. 74-75.

All countries surveyed had enacted policies that promote or prescribe activities to improve the standing of migrant and ethnic minority workers in employment. There exist substantial differences in means and tools chosen to achieve this. Some countries restrict their efforts to government-sponsored language courses, counselling and job training for migrants. Some countries have had considerable success working through voluntary community-based organisations in providing such services, which has had the additional advantage of reaching wider numbers and particular groups of migrant workers. Provision of child-care, for instance, has demonstrably improved the participation of working migrant women in such courses. Integration courses have also been offered in this context, providing basic orientation to host country laws, customs and cultural orientation. Experience in Norway highlights the value of combining a ‘critical combination of language instruction, vocational training or retraining and adaptation of individual plans of action.’ An important aspect of these programmes is the payment of social benefits, as a kind of salary, contingent on the full participation in such training.<sup>49</sup> Labour market orientation programmes also improve the chances of migrant insertion into the labour market. In addition to language training, these include the development of contacts between employers, employment agencies and immigrants regarding job opportunities, information regarding re-qualification and on-the-job training.

Other countries have developed much more extensive promotional schemes. These include the adoption of quotas, for example, where migrant or minority workers may be hired even where they are not the best qualified for the job, on the condition that they will receive on-the-job training and experience to enhance their qualifications.

#### 4. *Recruitment to Specific Professions*

Some countries and local authorities have made special efforts to target immigrants for recruitment and training for specific professions related to public service. These include police, tax authorities, social insurance offices, employment offices, teaching and health professions. The employment of ethnic minorities or migrants in such positions impacts positively on the extension of public services to needy immigrant communities. Services can often be provided more effectively where those responsible for their provision are familiar with the different communities.

#### 5. *Targeting Long-Term Unemployed*

In several countries specific initiatives have been focused on the long-term unemployed among immigrant and ethnic minority populations. These initiatives make a determined attempt to identify, work with and assist in job placement for those persons who have been out of the labour market for a significant time and are often then considered unattractive for potential employers. Elements of such measures include work-trials, where persons are given an opportunity for provisional employment in order to demonstrate skills and abilities; job-finder grants, travel grants for job interviews and work-based learning or re-training.

#### 6. *Incentives for entry jobs*

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49 Council of Europe (October 2000).

In a number of countries, government entities and programmes have developed economic and other incentives to directly assist businesses employing few or no migrant or ethnic minority workers to recruit workers of migrant origin. In Denmark, direct subsidies were offered for businesses to hire such workers under a so-called “ice-breaker” programme. The arrangement there was considered a success; more than half of the migrants recruited through the Ice-Breaker Arrangement have been employed under normal conditions within the company after the subsidy ended. In Norway and Sweden employers have been offered ‘start-up’ grants to encourage them to hire migrants involved in labour orientation programmes. Other kinds of incentives, including tax reductions, have been offered in several countries to promote equality in business recruitment and staff policies.<sup>50</sup>

#### 7. *Positive and Affirmative Action*

Positive action measures provide members of groups, considered to have suffered discrimination, such as women and ethnic minorities, a degree of compensatory preferential treatment. Quotas, targets, or other stipulations purposely taking factors of gender, race or other determinants of discrimination into account to remedy past discrimination, are implemented for the benefit of these groups. They are intended to be temporary measures to “level the playing field” in employment and to facilitate equal opportunity. In some countries, positive action plans have been adopted at the administrative and employer levels. In others, affirmative action measures have been established by legislation or the courts, and have also sometimes been challenged and subsequently limited by the courts.

#### 8. *Codes of Practice*

Government bodies, particularly a national enforcement body or commission, may issue a code of good employment practice. Such a code may not necessarily impose legal obligations but it can have authoritative value, even in court proceedings. As with the status of the enforcement body itself, so the legal status of a code of good employment practice can vary. The purpose of a code can be twofold: providing employers, employees, trade unions and labour market gatekeepers with a better understanding of anti-discrimination legislation, and encouraging employers to implement equal opportunities and positive action policies.

Business organisations, employer associations and other groups have also developed voluntary codes of good practice in order to influence the practices of their constituents.<sup>51</sup>

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50 Hansen and McClure (1998) p. 9.

51 Wrench and Modood (2001), p. 49.

## 9. *Labour Force Surveying*

Labour force surveying involves reviewing the ethnic and/or national profile of the workforce in an organisation with the aim of verifying whether it accurately reflects the demographic composition of ethnic minorities/non-nationals in the local area, or in the State as a whole. It is usually a temporary measure used only until the degree of representation deemed appropriate is reached.

Labour force surveying, known more widely as “monitoring”, has aroused considerable controversy and debate in recent years. In some countries ethnic monitoring is required by law while in others it is prohibited by law. Effective survey methodology comprises five components encompassing record keeping, collection of statistics, analysis of data, presentation of data in appropriate report form, and utilisation of reports to review and revise employment practices.

Labour force surveying entails specific roles for the different actors in the employment field. It is essentially a measure undertaken by the employer with the co-operation of workers, through trade unions. However an enforcement body also has a role to play by providing national and local data on the ethnic and national proportion of the working population, and advising and educating employers as to how best to put monitoring into practice. The State needs to determine whether labour force surveying should be mandatory or voluntary. Employers, volunteering to conduct such surveys, will incur costs that employers, choosing not to do so, will not bear. Where the procedure is made mandatory however, no employer gains an unfair advantage in this manner.<sup>52</sup>

## 5. *Political and Educational Action*

The development, implementation and eventual success of anti-discrimination measures in the workplace depend to a significant degree on the political and social climate that fosters and reinforces workplace action. Political leaders, communications media and educational institutions each have key roles in shaping or modifying public attitudes regarding discrimination.

### 1. *Opinion shaping efforts by political leaders*

As evidenced by recent political developments in a number of countries, national and local political leaders can have an enormous influence on attitudes by encouraging or discouraging opinions and practices regarding migrant and ethnic minority members of society. However, recognition of the need to discourage political leaders and certain political movements from fostering racist and discriminatory sentiments has not resulted in a diminution of such attitudes. A major challenge is twofold, that of identifying effective means to discredit and isolate voices promoting discrimination and, at the same time, encouraging political leaders and opinion-shapers to more prominently voice support for principles and practices of equality.

It is similarly desirable for corporate and trade union leaders to speak up and act as visible champions of equality principles.

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52 *Op.cit.*, pp. 60-64.

## 2. *Role of communications media*

News and other mass communications media have a social responsibility that complements governmental, employer and worker organisation measures to achieve equality. First and foremost is the presentation of accurate, positive images of the presence, roles and contributions of migrants and ethnic minorities to the societies in which they live. Coverage of anti-discrimination efforts and of successful pro-equality efforts is also an important element. To encourage positive coverage by news media contacts need to be developed with correspondents and editorial staff and regular ‘feeds’ of information need to be provided in the form, for instance, of news releases, feature stories, opinion editorials, and interviews with prominent personalities.

Business, employer and trade union communications media and publications can be vehicles of first resort for communicating anti-discrimination messages to the workplace “front-line” constituencies.

## 3. *Public education campaigns*

Organised public national or regional campaigns can be particularly visible and effective ways of encouraging respect for diversity, discouraging discrimination and building public pressure on institutions to adopt concrete measures to promote equality.

A *campaign* generally involves a planned effort to undertake a series of co-ordinated and multifaceted initiatives over a period of time, to give greater visibility to an issue and achieve certain results such as new legislation, changed policy, and modified public attitudes. Building a successful campaign requires co-operation among a range of concerned institutions and actors, necessitates a planning and co-ordination body, and requires resources to implement the various aspects, such as publicity materials, advertisements in communications media, training kits, co-ordinating staff, etc.

Campaigns can also be built within specific arenas, such as within a national trade-union movement or among employers in specific geographical or sectoral areas of activity.

## 4. *Diversity Festivals*

Public events or festivals organised around themes of celebrating diversity and sharing cultural traditions from different immigrant and ethnic communities have emerged as an important way to acknowledge and value the diverse cultural and social identities present in host countries. These events represent a way of reaching a broad public audience with messages of encouraging respect for diversity and understanding differences. As well as providing a medium for ethnic music, dance, art and food, some diversity festivals also include seminars and debates on relevant public policy issues such as multi-cultural engagement, integration of foreigners, national immigration policies and anti-discrimination efforts.

These events usually need logistical and financial support from civic authorities to ensure their success. Such support and participation by local and national authorities and politicians is also a

means of expressing official recognition and encouragement for diversity and cross-cultural dialogue.

### 5. *Curricula for schools and universities*

Educational institutions, from primary schools to universities have major influence on shaping the views of young people. They also offer opportunities for people of different backgrounds to build mutual familiarity and relationships. Teaching materials at all levels need to address diversity and anti-discrimination, include discussion of principles of equality and respect for differences, and be devoid of discriminatory stereotypes. Relevant government institutions can play a crucial role by reviewing the existing curricula and proposing the introduction of standards and elements to ensure an anti-discrimination component to school curricula at all levels. Civil society organisations can also contribute both to reviewing curricula and encouraging local school boards to introduce such innovations in schools.

Teaching personnel can be trained in relevant diversity management skills to both appropriately teach equality and to intervene to prevent or resolve instances of discriminatory behavior among pupils and students.

### 6. *Research*

Ongoing research, both by public and private institutions, is necessary to drive the collection and analysis of data, and to further build the case for anti-discrimination efforts. It may be instrumental in identifying and evaluating measures for combating discrimination and in ensuring their continuing suitability and direction.

As the ILO anti-discrimination project has demonstrated, little research on quantifying workplace discrimination or on identifying and evaluating remedies to discrimination had been conducted prior to the early 1990's. In addition, research that had been carried out on this topic had been limited to a few European and North American countries. Until then, no comparative international studies or analysis had been attempted. More research in a larger number of countries is now underway, but much more remains to be done in Western countries, and efforts have yet to begin in other countries.<sup>53</sup>

## 6. *International Standards and Programmes*

International standards, recommendations, mechanisms and services established by international inter-governmental institutions provide a comprehensive framework for and offer direct assistance with implementation of national and sectoral anti-discrimination measures.

### 1. *Conventions and treaty standards*

The rights of migrant and ethnic minority workers have been enumerated in various international instruments. These instruments reflect an attempt by the international community to establish minimum standards for the treatment of victims of discrimination and their families. They can

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53 An on-line compendium of good anti-discrimination practices is available through the ILO website, at [www.ilo.org/migrant](http://www.ilo.org/migrant)

take the form of Conventions, Recommendations or Resolutions. Conventions are international treaties, subject to ratification by the States party to them, which provide standards and often prescribe specific language to be adopted in the form of national legislation.

Recommendations are non-binding instruments, typically dealing with the same subject matter as Conventions, setting out guidelines to orient national policy and action.

In Europe, both the European Commission and the Council of Europe have developed standards, guidelines, recommendations and other measures to assist, guide and strengthen the action of their Member States in addressing discrimination and promoting equality of opportunity.

## 2 *Resolutions Adopted by Inter-governmental Bodies*

The UN General Assembly, the UN Economic and Social Council (ECOSOC), the UN Commission on Human Rights and various subsidiary bodies conduct studies and make recommendations for the purpose of assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. The legal effect, if any, of such resolutions is dependent on a variety of factors. It is clear however that they have significant authoritative value in certain circumstances whether or not they are legally binding.

Of current interest is the activity of thematic Special Rapporteurs as well as working groups to monitor compliance by States with international human rights law and to investigate alleged violations of human rights, including by dispatching fact-finding missions to all parts of the world. Two special rapporteurs currently focus on relevant discrimination issues: the Special Rapporteur on Racism and Racial Discrimination and the Special Rapporteur on Human Rights of Migrants.

## 3. *Recommendations Adopted by International Conferences*

Several major International Conferences have developed programmes of action and made recommendations for States in relation to discouraging discrimination against migrant and ethnic minority workers. These include the Vienna World Conference on Human Rights, 1993, the Cairo World Conference on Population and Development, 1994, the Copenhagen World Summit for Social Development, 1995, the Beijing World Conference on Women, 1995 and most recently the Durban World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Relevant sections of the respective Programmes of Action offer considerable guidance to States and other actors in elaborating appropriate measures for tackling discrimination and also provide a framework within which policies and practices may be harmonised transnationally.<sup>54</sup>

## 4. *Rulings by International Judicial Bodies*

Several mechanisms under the UN offer procedures enabling the examination of complaints or situations of discrimination. The 1503 procedure, so-called because of the resolution number adopted by the Economic and Social Council, created a procedure for the consideration of situations revealing 'a consistent pattern of gross and reliably attested violations of human

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54 IOM, *Migrant workers and recent UN conferences*, 1997.

rights'. A special working group was appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities to consider complaints made under this procedure. The Optional Protocol to the International Covenant of Political and Civil Rights permits the submission and examination by the Human Rights Committee of individual complaints of violations of that Convention by a State Party.

Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination establishes a procedure that makes it possible for an individual or a group who claims to be victim of racial discrimination to lodge a complaint with the Committee on the Elimination of Racial Discrimination (CERD) against their State.<sup>55</sup>

Articles 24 and 26 of the ILO Constitution create procedures for representations and complaints against any State Party for violations of ratified ILO conventions.

The European Court of Human Rights accepts inter-State complaints and individual petitions claiming violations of the European Convention of Human Rights. Cases considered have included allegations of the violation of article 14 of the European Convention that prohibits discrimination.<sup>56</sup> Similarly, the Inter-American Court issued a landmark opinion in September 2003 reinforcing the application of international labour standards to non-national workers, particularly those in irregular status.<sup>57</sup>

#### 5. *Advisory functions of relevant international agencies*

The ILO, the International Organisation for Migration and the Office of the UN High Commissioner for Human Rights offer advisory services, through technical co-operation programmes, to governments, intergovernmental agencies, non-governmental organisations and others on issues related to the treatment of migrant and minority workers. As a specific outcome of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the OHCHR established at the end of 2001 a new unit of discrimination with a mandate to combat racism, racial discrimination, xenophobia and related intolerance to promote equality and non-discrimination.<sup>58</sup> These programmes and initiatives respond to the needs of governments to develop coherent responses in the development and implementation of migration policy, legislation and management.

Both ILO and the International Organisation for Migration (IOM) currently provide technical assistance, training and equipment to governmental authorities to promote the establishment of effective migration systems within which anti-discrimination legislation and administrative policies are acknowledged as a fundamental component.<sup>59</sup>

#### 6. *Training and capacity building offered through international agencies and other institutions*

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55 UNHCHR, *Introduction to the Convention Mechanisms (treaty bodies)*, 1999.

56 The European Court of Human Rights, *Historical background, organisation and procedure*, 1999.

57 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.

58 See Durban Programme of Action paragraph 191c

59 IOM Legal Services, *IOM and effective respect for migrants' rights*, 1997.



A number of training programmes have been developed by regional and international bodies to assist governments and other institutions in developing and improving their capacity to address and resolve problems of discrimination. These projects generally assist States in fighting discrimination by informing policy-makers, employers' and workers' organisations, persons engaged in anti-discrimination activities and non-governmental organisations on how legislative and related mechanisms and training activities can be rendered more effective.<sup>60</sup>

### **A concluding note**

The compendium of measures detailed in this paper represents very much a work in progress. The compendium is primarily based on data from European and North American contexts. New measures continue to be initiated and developed in different countries. It is hoped that this ILO effort will encourage identification and elaboration of other measures. The ILO anticipates further identifying and publishing an evolving listing of "good practice" examples within each of the identified categories, to make them accessible as models and references for wider implementation.

Comments and contributions towards further research and documentation on discrimination in employment, towards elaboration of this compendium, and towards the compilation of "best practices" are welcome.

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60 ILO Migration Programme, *Discrimination against migrants or permanently settled persons*, 1998.

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