

The elimination of discrimination in respect of employment and occupation

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Bahamas

Means of assessing the situation

Assessment of the institutional context

The principle of the elimination of discrimination in respect of employment is recognized in the Bahamas. There are work areas, which used to be predominantly male-oriented, and which now engage female workers at the same pay scales, for example:

- construction industry;
- contractors in the construction industry;
- plumbers and electrical technicians;
- telecommunications linesmen and many other non-traditional occupations formerly dominated by males.

The principle is recognized by governmental regulations through ministerial portfolios and the Department of Labour Inspectorate Team.

The trade unions monitor and call to Government's attention any discriminatory practices employed in the private sector. The problem is eliminated in the public sector in respect to wages and employment. The public service has a structured salary scale for all public officers.

Other groups who will bring attention to bear should discriminatory practices be alleged are political activist groups, political opposition groups, Bahamas Christian Council and the National Umbrella Organizations for workers.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The objectives of the Government with a view to the observance, promotion or realization of these principles and rights are reflected in industrial agreements of quasi-governmental corporations, the establishment of a minimum wage for all government works providing manual labour.

Although the Government has not ratified Convention No. 111, its principles and practices are observed.

The Government is considering the ratification of the same.

Representative employers' and workers' organizations to which copies of the report have been sent

The representative employers' and workers' organizations to which copy of this report was sent are:

- Bahamas Employers' Confederation;
- National Congress of Trade Unions;
- Commonwealth, Bahamas Trade Union Congress.

Observations received from employers' and workers' organizations

No comments.

Bahrain

Means of assessing the situation

Assessment of the institutional context

This principle is recognized in the Constitution and laws in force in the State of Bahrain.

Articles 4, 26 and 18 of the Constitution state that equality and equal opportunity between all citizens are one of the pillars of society guaranteed by the State, and that all persons enjoy the same dignity as humans, that citizens are equal before the law, in rights and public duties, without any discrimination based on sex, origin or language, and that all citizens enjoy equal opportunity in assuming public functions according to the terms laid down by the law. This was further reaffirmed by the Bahrain Labour Code in the public sector and the laws setting out appointment in government jobs and in the public sector.

Discrimination is defined by that degree by which it impedes the achievement of equality and equal opportunity.

The texts of legislation in force, especially the Labour Code and Employment Law, adopt the same principles set out in the Constitution in articles 4, 16 and 18.

There are certain provisions for a given category of persons arising out of their special circumstances such as their sex, age, disability or others. These provisions recognize their need for special protection.

Examples: the provisions of the Labour Law regarding the employment of women, articles 59-65, the disabled, articles 49-58, or the setting aside in the government and public service of certain jobs or posts for the disabled. The special treatment of these categories is not intended as discrimination against their peers, even if allowed by the Convention, but rather an attempt to give special attention to their requirements and needs.

In respect to categories of jobs excluded, in setting such exclusions due attention is taken of their suitability to the conditions of those excluded as well as their needs.

The Constitution and legislation mainly, and implementing decrees, are the means of implementing the principle.

Assessment of the factual situation

As the discrimination is not based on any provisions in the Constitution or its laws, there is no need to take measures to seek to eliminate it.

**Efforts made or envisaged to ensure respect,
promotion and realization of these principles
and rights**

The objectives of the Government with a view to the observance, promotion or realization of those principles and rights are to continuously seek to entrench equality.

It can be generally said that the Constitution and legal system contain those principles and rules that guarantee the establishment of those rights.

**Representative employers' and workers'
organizations to which copies of the
report have been sent**

The General Committee of Bahrain Workers, the Bahrain Chamber of Commerce and Industry.

**Observations received from employers'
and workers' organizations**

No comments to be made on this subject.

China

Means of assessing the situation

Assessment of the institutional context

The principle of the elimination of discrimination in respect of employment is recognized in China.

The principle of elimination of discrimination in respect of employment is fully incorporated into the Chinese legislation.

The Constitution of the People's Republic of China stipulates in article 33 that "All citizens of the People's Republic of China are equal before the law. Every citizen is entitled to the rights and at the same time must perform the duties prescribed by the Constitution and the law".

Labour Law of the People's Republic of China stipulates in article 3 that "Labourers shall have the right to be employed on an equal basis, choose occupations, obtain remuneration for their labour, take rest, have holidays and leave, obtain protection of occupational safety and health, receive training in vocational skills, enjoy social insurance and welfare, and submit applications for settlement of labour disputes, and other rights relating to labour as

stipulated by law". It further stipulates in article 12 that "Labourers shall not be discriminated against in employment, regardless of their ethnic community, race, sex, or religious belief". And, in article 13 that "Females shall enjoy equal rights as males in employment. It shall not be allowed, in the recruitment of staff and workers, to use sex as a pretext for excluding females from employment or to raise recruitment standards for females, except for the types of work or posts that are not suitable for females as stipulated by the State". In addition, the provisions on the prohibition of discrimination in respect of employment can be found in other laws and regulations such as: Trade Union Law; Law for Protecting Women's Rights and Interests; Law on Regional National Autonomy; Law on Vocational Education; Law for Protecting Disabled People; Law on Corporations; Regulations Regarding the Labour Protection of Female Staff and Workers; Regulations Concerning the Transformation of Operational Mechanisms of Industrial Enterprises Owned by the Whole People; Interim Regulations on State Civil Servants; Regulations on Dealing with Labour Disputes in Enterprises, as well as a series of sectoral regulations.

There is no definition of discrimination in Chinese legislation. The regulations concerning the prohibition of discrimination in respect of employment and occupation apply to all ethnic communities, races and religions as well as to both sexes, etc. No persons or categories of persons are excluded from the implementation of principle and right relating to the elimination of discrimination in respect of employment and occupation. No categories of jobs or work or sectors are excluded or omitted from the applicable legislation.

Apart from administrative and legislative measures, the Government also resorts to other means of action to combat discrimination. In this regard, the State Council established under its authority the Women and Children's Affairs Commission, the State Nationalities Affairs Commission and the State Religious Affairs Commission, which all assume the responsibility of safeguarding the rights of women and minority nationalities and of protecting the freedom of religious beliefs of all citizens. Moreover, All-China Women's Federations and women's federations at various levels, as well as female staff and workers' affairs committee of All-China Federation of Trade Unions and those of trade unions at various levels all play a positive role in promoting the equal status of women with men.

Assessment of the factual situation

Statistics on women's employment are available [not reproduced].

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The State establishes the principle through relevant laws and regulations and raises the people's awareness of these laws and regulations.

The Government strictly enforces the laws by administrative methods. It constantly supervises employment unions to detect whether there exists any discrimination in respect of recruitment, promotion and dismissal. If such cases are found out, an order will be issued for timely correction.

The International Labour Organization organized in April 1999 in Beijing a seminar on the Employment and Occupation Convention, No. 111, and, in September the same year in Urumqi and Chongqing, respectively, other seminars on the same theme.

Female staff and workers' affairs committees of trade unions receive complaints from female staff and workers and may request arbitration on their behalf.

The objectives of the Government are to further promote the principle of the elimination of discrimination in respect of employment and occupation, advocate equality and ensure the all round implementation of the laws of the country.

The conditions needed are: further disseminate the domestic laws and the corresponding international norms, increase cooperation with the International Labour Organization, and develop the statistics of employment disaggregated by sex.

Representative employers' and workers' organizations to which copies of the report have been sent

The copies of this report have been sent to China Enterprises' Federation and All-China Federation of Trade Unions.

Observations received from employers' and workers' organizations

No observations have been received.

Democratic Republic of the Congo

Means of assessing the situation

Assessment of the institutional context

The provisions of Constitutional Executive Order No. 003 of 27 May 1997 relating to the organization and exercise of power in the Democratic Republic of Congo guarantee that employment is non-discriminatory.

- Legislative Ordinance No. 67/310 of 9 August 1967 concerning the Labour Code makes provision for equal opportunities and equal treatment in respect of employment and occupation;
- Act No. 81/003 of 17 July 1981 providing the staff regulations for permanent civil servants also guarantees that employment is non-discriminatory.

Article 2 of the Constitutional Executive Order guarantees the exercise of individual and collective rights and freedoms provided that the law, public order and morality are observed.

Whilst article 4, paragraph (a), of the Labour Code grants the status of worker to any individual irrespective of age, sex, or nationality who has undertaken to place his

occupational activity in the service of an employer within the context of an employment contract.

Decree No. 71/0051 of 20 April 1971 relating to the placement of workers excludes any form of discrimination in this field. Article 5 of that decree stipulates that any individual who is unemployed but able to work and seeking work, irrespective of his/her age, sex or occupation is under the obligation to enrol at the Employment Office or at the local branch of that Office.

Furthermore, article 2 of the Labour Code stipulates that it is the right and duty of every individual to work. It is a moral obligation for all those who are not prevented from working due to their age or physical unfitness.

In addition, the following is laid down in article 72 of the Labour Code: “Wages shall be equal for all workers irrespective of their origin, sex or age, where conditions of work, vocational qualification and productivity are equal”.

And finally, article 37 of the national interoccupational collective labour agreement (which was revised in 1995) provides that “Women shall enjoy the same rights as men in accordance with the provisions laid down in laws and regulations”.

The statutes and regulations in force refer to the definition of discrimination set out in Convention No. 111 concerning discrimination in respect of employment and occupation. The criteria prohibiting discrimination are simply cited rather than defined in statutes and regulations. In principle no categories are excluded. There is no category known to be excluded. There is no committee on the elimination of discrimination.

Assessment of the factual situation

There are no indicators or statistics and no information in writing.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

An effort has been made at the national level to achieve the ratification of Convention No. 111 concerning discrimination in respect of employment and occupation. The text of the ratification is currently under approval at the level of the Office of President of the Republic.

The means deployed are as follows:

- by our Government:
 - application is monitored by the Labour Inspectorate;
- by the Organization:
 - no mission of experts has been instigated to define this problem;
- by other bodies:
 - trade union action aiming to eliminate all forms of discrimination.

The objectives are to gradually eliminate all forms of discrimination in respect of employment and occupation.

A survey should be conducted on the matter. Seminars should be organized to raise awareness and general employment surveys should be organized.

**Representative employers' and workers'
organizations to which copies of the
report have been sent**

Employers:

1. Federation of Enterprises of Congo (FEC)
2. National Association of Investment Enterprises (ANEP)
3. Confederation of Congolese small and medium-sized enterprises (COPEMECO)

Workers:

1. National Union of Workers of Congo (UNTC)
2. Trade Union Confederation of Congo (CSC)
3. Democratic Confederation of Labour of Congo (CDT)
4. Central InterProfessional Union of Workers and Professionals of Congo (SOLIDARITE)
5. Organisation of Unified Workers of Congo (OTUC)
6. Cooperation of Unions in Public and Private Enterprises in Congo (COOSEPP)

**Observations received from employers'
and workers' organizations**

The present report has been drawn up with the collaboration of the FEC and of the UNTC.

Eritrea

Eritrea has ratified on 15 October 1999 the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The relevant instruments of ratification have been sent to the ILO for official registration.

Meanwhile, this report has been prepared in consultation with social partners in order to assess the national situation of Eritrea and the Government's objectives to ensure respect, promotion and realization of the principle of elimination of discrimination in respect of employment and occupation.

[Note by the Office: Up to 31 January 2000, the original instruments of ratification of the abovementioned Conventions had not been registered with the Director-General of the ILO.]

Means of assessing the situation

Assessment of the institutional context

The principle of elimination of discrimination in respect of employment and occupation is recognized in Eritrea by article 14 of the National Constitution of 23 May 1997. This article provides that:

- (i) all persons are equal under the law;
- (ii) no person may be discriminated against on account of race, ethnic origin, language, colour, gender, religion, disability, age, political view, or social or economic status or any other improper factors, and;
- (iii) the National Assembly shall enact laws that can assist in eliminating inequalities existing in the Eritrean society. In general terms, article 5 of the same text provides that: "Without consideration to the wording of any provision in this Constitution with reference to gender, all of its articles shall apply equally to both genders."

In addition, Labour Proclamation No. 8/1991 (article 47, copy attached (text not reproduced)) sets down the principle of equal pay for equal work and provides that it shall be unfair labour practice when an undertaking commits discrimination on the ground of race, tribe, religion or sex (article 96.7, copy attached (text not reproduced)). However, some provisions of this law are being revised by the Government, in consultation with social partners, in order to take into consideration the suggestions made by the ILO concerning the principle of elimination of discrimination in respect of employment and occupation. Further information in this respect will be provided once this revision process is completed.

The means of implementing the principle of elimination of discrimination in respect of employment and occupation are both administrative and legal, especially through judiciary and labour inspection, as well as Labour Proclamation No. 8/1991, under revision. Further information in this respect will be provided once the legislative revision process is completed.

Assessment of the factual situation

Eritrean courts are not familiar with cases of discrimination in respect of employment and occupation. However, the factual assessment of the national situation in this respect is currently difficult to appraise due to lack of data and statistical information.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The elimination of discrimination in respect of employment and occupation is supervised by the Department of Labour (DOL) of the Ministry of Labour and Human Welfare (MOLHW), especially through labour inspection, employment and labour relation services.

In general terms, one objective of the Government, in accordance with its Macro-Policy document of November 1994, is to empower victims of war, disadvantaged persons, such as demobilized combatants, refugees and displaced persons, and other vulnerable groups,

in order to enable them become productive members of society. Continuous sensitization programmes are to be conducted to enhance and promote the participation of society in the care of these groups (cf. section 13.4 of the Macro-Policy (not reproduced)).

With regard to gender issues, all efforts will continue to be undertaken to sensitize and enhance the awareness of the society on the decisive role of women for the socio-economic, political, and cultural transformation of the country. In this respect, the equal rights of women will be upheld and all laws that subtract from this right will be changed. Participation of women in education and economic activities and employment will be expanded. Appropriate labour saving technologies will be introduced to reduce the drudgery of women in the household and other activities (water, fuel, wood, child care centres, etc.) (cf. section 13.5(a), (b), (c) and (d) of the Macro-Policy (not reproduced)).

The Government is considering specific actions on discrimination issues in the framework of the county objective programme being prepared.

As promotional actions, the Eritrean Relief and Refugees Commission is carrying out special programmes in favour of disadvantaged groups.

The ILO has organized in Asmara in August 1999 a National Workshop on International Labour Standards and the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Many officers from the MOLHW, other ministries, prisons as well as social partners, stakeholders and NGO members participated in this workshop which proved very useful in terms of awareness creation and training on international labour standards content and procedures.

During the same period, the ILO EAMAT, Addis Ababa and ILO Cairo, has assisted the Government in defining its country objective programme under the Support for Policy and Programme Development (SPPD) Project in which the issue of discrimination in respect of employment and occupation has been taken into account.

In October 1999, a national tripartite delegation participated in the First African Regional Workshop on Promoting the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up organized in Dakar, Senegal.

In November 1999, the Specialist on International Labour Standards briefed the DOL and social partners on the 1998 ILO Declaration and assisted the Government in preparing reports under the 1998 ILO Declaration in consultation with the social partners.

The National Eritrean Women's Association is undertaking several actions in favour of women in general, including in the workplace.

In order to eliminate discrimination in respect of employment and occupation, the Government is planning to develop specific actions, such as:

- (1) to sensitize policy-makers to understand the concept of discrimination in respect of employment and occupation;
- (2) to collect information on the forms and extent of discrimination in respect of employment and occupation;
- (3) to gather, assess and analyse data on discrimination in respect of employment and occupation;

- (4) to enhance and promote the application of the provisions of the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

These considerations should be taken into account in the framework of a national survey which will come up with recommendations for action in promoting the elimination of all forms of discrimination in respect of employment and occupation.

The national survey on discrimination in respect of employment and occupation, together with its recommendations should therefore be discussed in national tripartite forum extended to stakeholders, NGOs and other relevant bodies, in order to define a national strategy to combat and progressively eliminate all forms of discrimination in respect of employment and occupation.

This national strategy should involve:

- plan of action;
- targets;
- objectives;
- time frame;
- results;
- evaluation;
- follow-up actions, etc.

In order to successfully develop this strategy, the DOL needs to be trained and strengthened in its action to combat discrimination in respect of employment and occupation.

The Government would welcome any ILO assistance to carry out the above national programme of action on discrimination in respect of employment and occupation.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of this report has been sent to:

- the Eritrea Federation of Employers (EFE); and
- the National Confederation of Eritrean Workers (NCEW).

Observations received from employers' and workers' organizations

Any possible comments made by these organizations will be forwarded to the ILO upon reception by the Government.

Annexes (not reproduced)

The National Constitution of Eritrea of 23 May 1997.

Labour Proclamation No. 8/1991 (available in Tigrinyan only).

Macro-Policy, document, November 1994.

Estonia

Means of assessing the situation

Assessment of the institutional context

Estonia has not ratified the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Equal Remuneration Convention, 1951 (No. 100) was ratified on 10 May 1996.

The principle of abolition of discrimination on employment and occupation is recognized and implemented. Problems of discrimination in employment are regulated by the Constitution and labour laws. The abolition of discrimination is provided for, in the following laws.

Under paragraph 12 of the Constitution, everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds.

The Employment Contracts Act (paragraph 10, subsection 1: Illegal preferences and restriction of rights) states that: It is illegal to allow or give preferences, or to restrict rights on the grounds of the sex, nationality, colour, race, native language, social origin, social status, previous activities, religion, political or other opinion, or attitudes towards the duty to serve in the armed forces by employees or employers. It is also illegal to restrict the rights of employees or employers on the grounds of marital status, family obligations, membership in citizens' associations, or representation of the interests of employees or employers.

The Wages Act (paragraph 5: Unlawful reduction or increase in wages) states that it is prohibited to increase or reduce wages on the grounds of an employee's sex, nationality, colour, race, native language, social status, previous activities, religion, political or other opinion, or attitude towards the duty to serve in the armed forces. It is prohibited to reduce wages on the grounds of marital status, family obligations, membership in citizens' associations, or representation of the interests of employees or employers.

No persons and categories of persons are excluded from implementation of the principle and right relating to the elimination of discrimination.

The Employment Contracts Act does not extend to work in religious organizations for a person conducting religious services, if the fundamental document of such an organization does not require entry into employment contract with such person. Some jobs or work are forbidden for women.

Under the Employment Contracts Act (paragraph 35: Work for which employment of women is prohibited), it is prohibited to hire and employ women for heavy work, work which poses a health hazard or underground work. The list of work which is prohibited for women shall be determined by the Government of the Republic.

According to paragraph 10, subsection 2, of this Act, it is not contrary to subsection 1 of this paragraph to take into account the sex of an employee in hiring or assigning duties, if this is unavoidable due to the nature of the work or working conditions.

In order to implement the principle of equality, the Bureau of Equal Rights has been established in the Ministry of Social Affairs.

Assessment of the factual situation

The Estonian Statistics Office has data by age and sex structure, wages and working hours by sex and occupations and ethnic group. Information about the labour market and labour force is available from the Labour Force Survey and information on working conditions is available from the Working Life Barometer. Both sources include data on ethnic origin, age and sex. We have no data about religion and race. These problems do not exist in Estonia. In 2000, there will be a population census. Data on religion, ethnic origin and language group are to be included. The annual and monthly statistics, Labour Force Survey and Working Life Barometer, show that, in the 1990s, wage segregation has grown. The ethnic composition and age structure of the unemployed have changed due to the restructuring of the economy.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Problems relating to equal rights are included in study programmes of universities and made widely known through the mass media. Provisions prohibiting discrimination are included in national legislation. A project, for training unemployed persons of Russian minority groups to set up their own enterprises or to become self-employed in north-east Estonia, was recently initiated by the Confederation of Employers and Industry. The project is financed by the Government.

An action plan for the revision of legislation envisages the drafting of a separate legal act on equal rights.

In Estonia, over 160 women's organizations have been founded. They are also involved in activities relating to equal rights. Estonia is also participating in the ILO Pilot Project on More and Better Jobs for Women.

The Government's objective is to continue promoting these principles and to support the activities of NGOs and the social partners. With the assistance of the ILO Equality and Human Rights Coordination Branch, we are planning to hold a tripartite seminar on the principles of Convention No. 111 in the first half of 2000.

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of the report have been sent to the Confederation of Employers and Industry and the Association of Trade Unions.

Observations received from employers' and workers' organizations

The tripartite ILO Council will re-examine Convention No. 111 in the first half of 2000 after a tripartite seminar on the principle of equal rights at work.

Gambia

Means of assessing the situation

Assessment of the institutional context

The Gambia participated in the Tripartite Workshop on the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up mechanisms held in Dakar from 6 to 8 October 1999. The Dakar meeting agreed that participating countries fulfil the reporting obligations and complete the works initiated in Dakar. In that regard, the Department of State for Trade, Industry and Employment, which is responsible for labour matters and is the parent body of the Department of Labour, initiated tripartite consultation to solicit views from workers' and employers' representatives. The objective of the consultation is to seek input on the strategies that need to be adopted in implementing the Declaration and its attendant obligations.

The Gambia has advanced in the ratification of the seven fundamental Conventions. As we write this report, the National Assembly of the Gambia has included the ratification of the seven fundamental Conventions in the agenda of the next sitting of the National Assembly in two weeks. The Conventions have been approved for ratification by the Gambian Cabinet, the Ministry of Justice and the procedure leading to ratification involved extensive consultation with workers and employers as recommended in the relevant ILO Conventions and Recommendations.

The elimination of discrimination in employment is indeed recognized and practised in the Gambia.

It is recognized in the Gambia Constitution, in the laws of the Gambia, in civil service hiring procedures, in all service rules of private companies that have been certified by the Department of Labour. It is also recognized through ratification of international instruments and the relevant ILO Conventions.

Discrimination is defined in the laws of the Gambia.

The relevant statutes define the criteria whereby discrimination in respect of employment and occupation is prohibited.

There are no exceptions to the application of this principle.

Means of implementing this principle: implementing agencies (administrative) include Inspectorate Unit of the Department of Labour; legal instruments used are those specified in the laws of the Gambia and other national policies and legislation enacted by the National Assembly.

Assessment of the factual situation

There is a lack of accurate, timely and relevant statistics in this area.

Trends cannot be determined since there are no statistics.

Information that could give a better assessment of the situation include: the Gambia Poverty Study, the Background Information to the National Employment Policy and the Macroeconomic Framework 1998-2000, National Population Census 1993 Report. Assistance is needed in undertaking a survey or research in this area.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Measures taken to promote the principle: enactment of laws, ratification of the relevant international conventions. Planned activities form the strategies to be adopted and implemented.

Means deployed: as for the Government there will be sensitization of national assembly members, members of the judiciary and policy-makers in the Government. Also, national workshops and a mass sensitization campaign are planned if funding can be secured.

The objective of the Government will be to promote understanding of the principles, co-opt political leaders and policy-makers into the debate and seek their support for the formulation and implementation of appropriate national policies, programmes and projects.

Conditions needed to meet these objectives include technical cooperation (expert service for review of relevant laws), technical cooperation (financial support for strengthening the various implementing agencies in the Labour Administrative System), technical cooperation in the design and implementation of surveys, research and workshops/seminars. Finally, funding will be needed to undertake a national workshop on the issue.

Because of the progress made in the ratification process, it has been determined that the Gambia should focus more on follow-up and implementation of the Declaration on Fundamental Principles and Rights at Work. Thus, the three parties (government, employers and workers) have consulted to evolve plans for follow-up and implementation of such plans.

The plans envisaged will be undertaken in various organs such as legislature, civil society, executive (public administration and policy-making environment in government), the judiciary and law enforcement, employers and trade unions. It will also include institutional support and strengthening of the Department of Labour and the Employment Division of the Department of State for Trade, Industry and Employment. It will involve legislative reform (especially of the Gambia Labour Laws) and enactment, mass awareness

campaigns using among other things print and electronic media, research and publication, IEC strategies.

**Representative employers' and workers'
organizations to which copies of the
report have been sent**

The employers' organization which has been sent a copy of this report is the Gambia Chamber of Commerce and Industry (GCCCI). The workers' organizations which have been sent a copy of this report include the Gambia Workers' Union and the Gambia National Trade Union Congress.

**Observations received from employers'
and workers' organizations**

Input has been received from workers' and employers' representatives.

Japan

Means of assessing the situation

Assessment of the institutional context

The principle pertaining to the abolition of discrimination in employment is recognized within Japan. In paragraph 1 of article 14 of the Constitution of Japan: "All of the people are equal under the law and in political, economic or social relations there shall be no discrimination on the basis of race, creed, sex, social status or family origin. (Excerpt.)" Discriminatory measures in contravention of the constitutional provisions in laws and/or regulations are not allowed, and in fact, no such laws or regulations and/or administrative measures exist.

With regard to working conditions, it is provided in the Labour Standards Law that no employer shall discriminate against any worker by reason of nationality, creed or social status (article 3 of the Law) or discriminate against women with respect to wages (article 4 of the Law).

Any person who violates the provisions of articles 3 and 4 of the Labour Standards Law shall be punished by penal servitude of not more than six months or a fine of not more than 300,000 yen (article 119 of the Labour Standards Law and article 6 of the Mariners Law).

With respect to the purpose of enforcement of the provisions of articles 3, 4 and 119 of the Labour Standards Law, since the Labour Standards Bureau in the Ministry of Labour, Prefectural Labour Standards Offices and Labour Standards Inspection Offices as local branches are established, the proper number of necessary personnel are allocated at each agency. However, with respect to seamen, the Seafarers Department of the Maritime Technology and Safety Bureau in the Ministry of Transport and District Transport Bureau as the local branches are established and the proper number of necessary personnel are allocated at these agencies.

Since all individuals are guaranteed free choice to any job (article 22 of the Constitution of Japan, article 2 of the Employment Security Law, article 2 of the Mariners Employment Security Law), with respect to employment placement and vocational guidance, in accordance with the Employment Security Law and the Mariners Employment Security Law, it is stipulated that “no one shall be discriminated by reason of race, nationality, creed, sex, social status, family origin, previous profession, membership to a trade union, etc.” (article 3 of the Employment Security Law, article 4 of the Mariners Employment Security Law).

As regards enforcement of the Employment Security Law (mariners excluded), there are the Employment Security Bureau at the Ministry of Labour, the employment security divisions (sections) and public employment offices at the prefectural level. Furthermore, for the enforcement of the Mariners Employment Security Law subject to mariners, the Seafarers Department of the Maritime Technology and Safety Bureau in the Ministry of Transport and the District Transport Bureau as the local branches are established.

With respect to prohibition of sexual discrimination in employment, in accordance with Equal Employment Opportunity Law, the Government of Japan intends to ensure equal opportunity and treatment between men and women in employment and also to ensure the health of female workers with respect to employment during pregnancy and after childbirth (article 1 of the said Law).

Except for public employees and mariners, the Women’s Bureau in the Ministry of Labour and Prefectural Women’s and Young Workers’ Offices as local branches of the Ministry of Labour enforce the Equal Employment Opportunity Law. In addition, the Seafarers Department of the Maritime Technology and Safety Bureau at the Ministry of Transport and district transport bureau as the local branches are established.

With regard to national and local public employees, in article 27 of the National Public Service Law and article 13 of the Local Public Service Law, there are provisions concerning the principle of equal treatment to the effect that in the application of those laws, there must be no discrimination by reason of race, religious faith, sex, social status, family origin, or political opinions or affiliation.

The National Personnel Authority is responsible for enforcing the provisions of article 27 of the National Public Service Law. The Authority is an administrative commission, which exercises its own competence with independence from the general administrative jurisdiction. Fairness and neutrality of its organization and function is ensured. Any person who violates the provisions of article 27 of the National Public Service Law shall be punished with penal servitude not to exceed one year or a fine not to exceed 30,000 yen (article 109 of the National Public Service Law). The Personnel Commission and the Equity Commission, which are organized according to the type and the scale of local public bodies, are responsible for enforcement, etc. of the provisions of article 13 of the Local Public Service Law. They are administrative commissions that exercise their own competence with independence from the general administrative jurisdiction, and the fairness and neutrality of their organization and exercise of their authority is ensured. Any person who violates the provisions of article 13 of the Local Public Service Law shall be punished with penal servitude of not more than one year or a fine not exceeding 30,000 yen (article 60 of the Local Public Service Law).

Furthermore, in view of the present situation that some establishments in the private sector continue to be discriminatory in employment, planned and continuous training is being provided to personnel managers in establishments of more than the prescribed scale. At the

same time, with respect to documents that job applicants submit to establishments at the time of recruitment, by eliminating discriminatory forms, education and instruction are being promoted with employers to recruit on the basis of aptitude and ability.

With regard to vocational training conducted in accordance with the Human Resources Development Promotion Law, although there is no specified legislative or administrative measures, there is no discriminatory treatment on the basis of race, skin colour, sex, religion, political opinion, national extraction or social status.

Incidentally, in 1967 Japan ratified the ILO Convention No. 100 (Convention concerning equal remuneration for men and women workers for work of equal value).

Assessment of the factual situation

The number of violations and number of cases sent to the prosecutor's office pertaining to the provisions of articles 3 (equal treatment) and 4 (principle of equal wages for men and women) of the Labour Standards Law are as follows:

	Number of violations at the time of periodical inspection		Number of cases sent to the prosecutor's office	
	Article 3 of the Labour Standards Law	Article 4 of the Labour Standards Law	Article 3 of the Labour Standards Law	Article 4 of the Labour Standards Law
1994	1	1	1	0
1995	0	7	0	0
1996	0	11	0	0
1997	0	9	0	0
1998	0	1	0	0

With respect to the equal Employment Opportunity Law, the Prefectural Women's and Young Workers' Offices as local branches of the Ministry of Labour counselled nearly 37,000 workers and enterprises and implemented individually administrative guidance for approximately 3,000 cases under the said Law in 1998.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

In order to ensure the implementation of the Labour Standards Law, etc. guidance is being implemented for establishments deemed to have problems as a matter of the Labour Standards Law. When a violation against the related laws and regulations is recognized, its correction is being promoted

For the purpose of ensuring equal opportunity and treatment between men and women and promoting expansion at locations, where female workers are able to select occupations and display their abilities, the Equal Employment Opportunity Law was revised in June 1997 and entered into force completely in April 1999.

Major revisions include the prohibition of discrimination against women workers in all fields of employment from recruitment, hiring and mandatory retirement age, retirement, dismissal, the introduction of a system to publicly announce name of enterprises that do not obey administrative guidance, the improvement of a mediation system that enables the

start mediation with application from one side, establishment of new provisions such as assistance for employers who take positive action or employers' obligation to do effort of the prevention of sexual harassment in the workplace and employees' obligations to take measures control the health of women workers during pregnancy or after child birth. In addition, in order to expand the occupational range of women and further promote equal treatment between men and women, the Labour Standards Law was revised to abolish restrictions on overtime and holiday work and night work by women workers.

If an individual dispute between woman worker and employer arises with respect to equal treatment between men and women, at the request of one or both parties concerned, a Prefectural Women's and Young Workers' Office promotes rapid and smooth solution of the dispute through advice, guidance and recommendation provided by the director of the Office, or through mediation by an Equal Opportunity Mediation Commission as a third and neutral party.

Furthermore, in order to observe the Equal Employment Opportunity Law in accordance with the said Law, a Prefectural Women's and Young Workers' Office visits offices in a planned manner and grasps the employment management system of each enterprise and actual conditions of its application. If a violation against the said Law is exposed, administrative guidance is implemented.

In addition, in order to realize smooth employment management in line with the Equal Employment Opportunity Law, education activities for the complete dissemination is implemented throughout the year. For example, June is recognized as the "One Month Campaign on Equal Employment Opportunity between Men and Women" during which concentrated and special educational activities are held. The following programmes are being implemented in order to promote fair hiring practices and a screening system by employers (1998):

- (i) to call for industrial organizations worldwide to recruit and screen in writing (107 economic and industrial organizations);
- (ii) to distribute various educational materials such as posters and calendars to enterprises nationwide;
- (iii) to carry out educational activities through various PR media such as newspapers;
- (iv) to provide training for human right promoters for fair recruitment and screening (825 times nationwide);
- (v) to provide training for business management (453 times nationwide).

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report have been sent to Japan Federation of Employers' Association and the Japanese Trade Union Confederation.

Observations received from employers' and workers' organizations

The Japanese Trade Union Confederation requests the “early ratification of ILO key labour standards and promotes the reaching of an agreement on its global necessity” (request for a 1999 to 2000 policy framework).

Japan

Observations submitted to the Office by the Japanese Trade Union Confederation (JTUC–Rengo)

Abolition of discrimination in employment

The global prohibition of discrimination on employment, incorporated in Convention No. 111, is regarded to be mainly of a promotional nature, since the distinction between discrimination and difference varies from country to country, and even within the same country at different times. Although Japan has not ratified this Convention, Rengo considers it important to ratify this Convention. Because, under the globalization of society, this Convention gives the occasion to know the international criteria and reality. On that basis, the comparison with the international reality can be done effectively and the improvement, if necessary, of the Japanese situation can be promoted. With the knowledge of the nature of this Convention, Rengo supports this Convention and requests the Government to ratify it as soon as possible.

Kenya

Means of assessing the situation

Assessment of the institutional context

The principle of the elimination of discrimination in respect of employment and occupation is recognized in Kenya.

This is covered by:

- Chapter V of the Constitution of Kenya (copy of the chapter enclosed).
- Ratification of international covenants, e.g. the following:
 - Charter of the United Nations (Art. 55);
 - Universal Declaration of Human Rights.
- National laws.
 - In their provisions, national laws do not make any distinctions with regard to sex, creed, rural or ethnic origin, etc.

Section 82(3) of the Constitution defines the term “discriminatory” (manner) as:

... affording different treatment to different person attributable wholly or mainly to their respective description by race, tribe, place of origin or residence or other local connection, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

The criteria are defined in the paragraphs above.

The provisions for leave in the Employment Act, Cap. 226 discriminate in relation to female employees thus:

... a woman employee who has taken two months' maternity leave shall forfeit her annual leave in that year.

This amounts to discrimination on account of sex.

The following also tend to be excluded to some extent:

- informal sector workers;
- employees of foreign missions; and
- employees working in export processing zones (EPZs).

Categories excluded or omitted from the applicable legislation:

- casual employment;
- temporary employment; and
- work in the EPZs.

Administratively, the Government ensures that discrimination is not practised through enforcement of the relevant laws. There is a Women's Bureau (a government department). There are also committees and associations, e.g. the International Federation of Women Lawyers (FIDA), Maendeleo ya Wanawake Organization (a women's organization) and the Kenya Anti-Rape Organization.

Assessment of the factual situation

Employment by sector (1990), sex distribution (%)

Sector	Male	Female
Public	74	26
Parastatal	*	*
Private	81	19

*Figures unavailable.

Source: Facts and Figures 1995, Central Bureau of Statistics

Population by level of education (around 1990), sex distribution (%)

Education level	Male	Female
Primary	52	48

Secondary	60	40
Higher*	72	28

*Including: post secondary, teacher training and university.
Source: Facts and Figures 1995, Central Bureau of Statistics

Data envisaged:

- school enrolment figures;
- employment figures by sex and occupation;
- any information following the Beijing Conference.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Measures taken:

Policy statements against discrimination.

Pronouncements by various institutions.

Action has been progressively taken by the Government to promote and appoint people (who were previously discriminated against) to various positions and occupations.

The Government has mounted various courses on the subject.

There are courses on equal opportunities in Turin. A lot of activity by the ILO (with regard to elimination of discrimination) is envisaged within the scope of the Declaration as evidenced by the First Workshop in Dakar, Senegal.

A team of Kenyan officials from departments dealing with administration of justice recently completed a three-week course (held in both Kenya and Sudan) in International Humanitarian Law. It was sponsored by the Swedish International Development Agency (SIDA) through the Raoul Wallenberg Institute, Lund, Sweden. The course had a direct bearing on discrimination.

The objective is to eliminate discrimination in respect of employment and occupation as a sure way of ensuring equality and both social and economic progress, through the enactment of and full implementation of law on discrimination.

Availability of adequate technical cooperation resources is important for achieving the following: training and seminars; translation and production of material for advocacy; and development of an information unit for data storage and dissemination.

Representative employers' and workers' organizations to which copies of the report have been sent

Both the Central Organization of Trade Unions (Kenya) and the Federation of Kenya Employers have been sent a copy of this report.

Observations received from employers' and workers' organizations

No observation had been received at the time of reporting. However, observations were expected as soon as a brief on the ILO Dakar Workshop (6-8 October, 1999) was made to the tripartite Labour Advisory Board meeting scheduled for the end of November 1999.

Annexes (not reproduced)

Chapter 5 of the Constitution of Kenya.

Kuwait

Means of assessing the situation

Assessment of the institutional context

There is no contradiction between the provisions of Convention No. 111 and the provisions of the Kuwait Labour Law. Article 27 of the Labour Law states that: "A woman worker shall receive a wage equivalent to that of a man worker doing the same job."

However, since the Labour Law does not provide for a minimum wage, ratification of this Convention would expose Kuwait to criticism from the Committee of Experts on the Application of Standards and would require the establishment of a minimum wage to use as a yardstick for equal remuneration for men and women workers for the work of equal value.

Assessment of the factual situation

Methods used for the assessment of wage levels and measures taken to ensure equal pay for men and women workers, are confined to monitoring employer implementation of Labour Law provisions concerning equality. This is done through labour inspection and the review and certification of employment contracts and the granting of related work permits as well as the endorsement employer organization statutes and regulations. Equality is most evident in the work of oil companies whose statutes provide for equality in remuneration for men and women workers for work of equal value. Employment in these companies is based on fixed grades for fixed jobs. As for the measures adopted for the objective assessment of services on the basis of work required, Kuwait has no special methods for that purpose but relies on the determination of wage averages and on the employment contract drawn up between employers and workers provided they do not violate the principle of equal remuneration. Compliance with such contracts is monitored.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Measures taken to reduce wage disparities between men and women include education and training to promote their competence and competitiveness which ultimately lead to equality in remuneration or to the reduction of disparities. The State is providing a variety

of training and rehabilitation programmes and has also authorized the transfer of wages to banks (Ministerial Decision No. 110 of 1995).

Cooperation with employers' and workers' organizations is effected through their representation on committees for the implementation of state legislation and through engaging them in dialogue on suggestions and recommendations related to international labour standards and other international conventions. Decision No. 41 of 1995 establishing the Higher Advisory Committee is a case in point.

The competent authority in charge of the implementation of legislative and administrative provisions is the Ministry of Labour and Social Affairs which, by virtue of Labour Law No. 38 of 1964, is in charge of all matters related to the world of work, including wages, which are monitored through inspections carried out by Ministry staff.

Tribunals have ruled on questions related to equal remuneration for men and women on the basis of individual contracts and employer and enterprise regulations rather than implementation of the convention subject of this reply which has not yet been ratified.

Luxembourg

Means of assessing the situation

Assessment of the institutional context

Under the terms of (new) article 11, paragraph 4, of the Constitution, "the law guarantees the right to work and ensures that *every* citizen can exercise that right". Paragraph 5 of the same article states that "the law provides arrangements for social security, health protection and rest for workers, and safeguards trade union freedoms". Equality in matters of employment and labour law thus has the status of a constitutional guarantee with regard to all past and future measures in this area. Furthermore, any discrimination in respect of employment and occupation has recently become liable to criminal sanctions. A law of 19 July 1997, supplementing the Penal Code with amendments to the provisions on racism and introducing provisions on revisionism and other conduct based on unlawful discrimination, amended section 454 of the Penal Code with a provision according to which:

Any distinction between persons on grounds of their origin, skin colour, sex, sexual orientation, family situation, state of health, disability, morals, political or philosophical opinions, trade union activities, or adherence or non-adherence, real or supposed, to an ethnic group, nation, race or religion, shall be deemed to constitute discrimination.

Under the terms of section 455 of the Penal Code as amended by the Act of 19 July 1997, such discrimination is punishable by imprisonment of between eight days and two years and a fine of between 10,001 and 1,000,000 Luxembourg francs (248–24,789 euros), or by one or other of these sanctions, if the discrimination involves:

- refusal to hire, imposition of sanctions or dismissal;
- making an offer of employment conditional on one of the factors referred to in section 454.

A copy of the Act in question is attached to this report. (not reproduced)

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The Ministry of Labour and Employment is finalizing a Bill to approve a number of ILO Conventions, including the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Representative employers' and workers' organizations to which copies of the report have been sent

The present report has been communicated to the following employers' organizations: (a) the Federation of Luxembourg Manufacturers; (b) the Federation of Craftsmen; (c) the Luxembourg Confederation of Trade.

Workers' organizations: (a) the Independent Confederation of Trade Unions (OGB-L); (b) the Luxembourg Confederation of Christian Trade Unions.

Observations received from employers' and workers' organizations

On 5 August 1999, the ILO Declaration was submitted to the Chamber of Deputies and, to affirm its commitment to the ILO's fundamental standards, the Government will be proposing ratification of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The organizations of employers and workers have been informed of this and have not made any comments.

Malaysia

Means of assessing the situation

Assessment of the institutional context

The principle of the elimination of discrimination in respect of employment is recognized in Malaysia. In policy and practice, all Malaysians have equal opportunity in employment. Malaysia also encourages fair distribution of employment opportunities among the different ethnic groups in the country to promote racial harmony and social integration.

Malaysia has ratified Convention No. 100. There is no specific provision in the law concerning equal treatment for men and women in respect of remuneration. But as a policy, and in practice, equal treatment has been accorded to men and women workers who are engaged in work of equal value. The provisions in the Employment Act 1955 concerning statutory benefits and labour protection are applicable to all workers irrespective of sex, religion and national extraction.

While discrimination is not specifically defined, Malaysia does not condone discrimination in respect of employment and occupation.

The Malaysian Constitution clearly prohibits inclusion in any law provisions that would render different treatment to the citizens in respect of trade, business or occupation.

No person is excluded from the implementation of principles and rights relating to the elimination of discrimination in respect of employment and occupation.

No categories of jobs or work or sectors are excluded from the application of the principle. However, due to religious beliefs, a certain segment of the population exclude themselves on their own accord and not by provisions of the law, from certain types of occupation.

The Employment Act 1955, enforced by the Labour Department, is applicable to all workers without distinction. It even contains specific provisions prohibiting discrimination between local and foreign workers.

Assessment of the factual situation

The Ministry of Human Resources seldom receives complaints relating to discrimination. In the few cases received it was found that most of the complaints were unfounded.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The measures taken to promote the elimination of discrimination in respect of employment and occupation are the Labour Education Programmes to create awareness, and the fair enforcement of the provisions of the law.

Inspection of workplaces, enforcement of the minimum labour standards, taking actions on complaints and grievances.

The Government's objectives are to ensure industrial harmony in the country, to create a favourable investment climate, to enhance employment opportunities for all, and to promote the economic development of the country.

Representative employers' and workers' organizations to which copies of the report have been sent

The Malaysian Employers' Federation (MEF) and the Malaysian Trades Union Congress (MTUC) have been notified of these comments.

Observations received from employers' and workers' organizations

No comments were received from either of these organizations.

Mauritania

Means of assessing the situation

Assessment of the institutional context

According to the Mauritanian Constitution, all citizens are free and equal before the law. Article 7 of Book 1 of the Labour Code and article 37 of the General Collective Labour Agreement provide the following in clear terms: “Equal remuneration for work of equal value: Where conditions of work and output are equal, classification and wages shall be the same for all workers irrespective of origin, sex, age or status.”

The Labour Inspectorate is responsible for applying the provisions set out above. Any violation reported to or observed by that authority is suppressed by fines, which are imposed directly by the labour inspector. Any form of discrimination also entails the prohibition for the establishment concerned to benefit from a public market. Furthermore, victims can take legal action against their employer.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The measures envisaged by the Mauritanian Government aim to strengthen the arsenal of laws suppressing practices of this nature, which, it must be stated, are not common in our country. These measures will take the form of the passing of a new Labour Code. However, the Labour Inspectorate, which is responsible for the application of the relevant legal provisions, does not have adequate human or financial resources at its disposal to carry out its mission successfully. In order to do so ILO assistance in the efforts to strengthen the capacities of the Labour Inspectorate is absolutely essential.

The ILO drew up a programme in this context in 1993 with a view to redynamizing and strengthening the capacities of the Inspectorate, but no development has been registered to date as regards obtaining the necessary funds for running that programme, which now needs to be updated.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of the present report has been forwarded to the most representative workers' and employers' organizations: the Union of Workers of Mauritania (UTM) and the general Confederation of employers of Mauritania (CGEM).

Observations received from employers' and workers' organizations

We have received no comments to date.

Mauritius

Means of assessing the situation

Assessment of the institutional context

The Government recognizes the principle of elimination of discrimination in respect of employment. Section 3 of the Constitution of Mauritius guarantees to every individual protection against discrimination by reason of race, place of origin, political opinions, colour, creed or sex. By virtue of the provisions of the Constitution, in particular section 17, an aggrieved person may seek redress of his right by applying to the Supreme Court.

Section 16 of the Constitution provides that no law shall make any provision that is discriminatory either to itself or in its effect. “*Discriminatory*” is defined as “*affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour, creed or sex, whereby persons of one such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description*”.

Given that the Constitution is the supreme law of Mauritius, the criteria laid down in section 16 equally apply to discrimination in respect of employment and occupation.

No person or category of persons are excluded from the implementation of principle and right relating to the elimination of discrimination in respect of employment and occupation. No category of jobs or work and no sectors are excluded or omitted from the application of the Constitution.

There exists a voluntary Code of Practice under the Industrial Relations Act, 1973, which, inter alia, calls on employers to develop, in consultation or negotiation with workers’ representatives, clear and comprehensive employment policies which avoid discrimination on grounds of race, place of origin, political opinions, colour or creed; and promote equal opportunity in employment.

The officers of the Labour Relations Branch of the Ministry of Labour and Industrial Relations, through routine visits at workplaces encourage employers’ and workers’ representatives to implement the above Code of Practice in their dealings.

Assessment of the factual situation

Over the years more and more women have been taking up employment in the secondary and the tertiary sectors whilst there is a decline in the primary sector. Progress has been noted in women empowerment in Mauritius.

Both men and women have equal access to education from the primary to the tertiary level. Vocational training, irrespective of the area of occupation, is equally accessible to both males and females.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Various amendments to legislation have been made to promote gender equality:

- The Code Napoleon has undergone major changes. A woman can choose her profession, set up a business, open accounts or borrow without the permission of her husband.
- The Labour and Industrial Relations Act and the National Remuneration Orders and the Export Processing Zone Acts guarantee the equality of men and women with respect to the individual's constitutional right to work and protection from unlawful dismissal. The Labour Acts also contain specific provisions applicable to women only, concerning childbirth, maternity leave, the nursing of unweaned children and restrictions on night work.
- The National Pensions Act was amended in 1987 to waive out the discrepancy between men and women concerning the payment of a lump sum to the surviving spouse should the insured person die before 60, the official age for retirement.
- The Criminal Code has been amended in 1998 to increase penalties for offences against children, including sexual abuse. The offence of sexual harassment has been introduced and penalties are provided for the abandonment of a pregnant spouse, failure to pay alimony, etc.
- Nationality laws have been amended so that in cases of women marrying foreign citizens, the latter may obtain Mauritian nationality. Work permit regulations are being amended to allow foreign spouses of Mauritian women to work in Mauritius without requiring a work permit.

The Government is considering the possibility of fixing wages on a job content basis, as against gender basis in the following economic sectors: field crop and orchard; sugar industry; salt-manufacturing industry; and tea industry. The Ministry of Labour and the Ministry for Women hold workshops and talks (sometimes jointly) on equality issues. Activities are organized by the Women's Unit of the Ministry of Women, Family Welfare and Child Development.

The ILO helped (at a national tripartite seminar held in September-October 1996 in Mauritius) to identify obstacles to the ratification of Conventions Nos. 100 and 111.

A number of NGOs are actively engaged in raising public awareness about the need to eliminate discrimination.

Government intends to sensitize all the stakeholders about the elimination of discrimination and further strengthen appropriate legislation.

Technical cooperation from the ILO would be useful in the promotion of the principle in practice.

Representative employers' and workers' organizations to which copies of the report have been sent

The following representative employers' and workers' organizations have been sent a copy of this report:

- Mauritius Employers' Federation;

- Mauritian Confederation of Workers;
- *Fédération des Syndicats des Corps Constitués*;
- United Workers' Federation;
- Federation of Civil Service Unions;
- Federation of Progressive Unions;
- General Workers' Federation;
- Mauritius Labour Congress;
- Mauritius Labour Federation;
- State Employees' Federation;
- Free Democratic Union Federation;
- National Trade Union Confederation; and
- National Trade Union Congress.

Observations received from employers' and workers' organizations

Observations were received on this report from the Mauritius Employers' Federation and the Mauritius Labour Congress (reproduced).

Annexes (not reproduced)

Extracts from the Constitution of Mauritius (Chapter II, secs. 3, 16 and 17).

Extract from Industrial Relations Act (Third Schedule, Part III), secs. 19 and 20.

Labour Statistics.

Extract from the Draft National Gender Action Plan (women empowerment, amendments in legislation).

Web page of Ministry of Women, Family Welfare and Child Development (<http://ncb.intnet.mu/mwfw/womunit.htm>).

Mauritius

Observations submitted to the Office by the Mauritius Employers' Federation (MEF)

Equal Remuneration Convention, 1951 (No 100)

It is our considered opinion that remuneration should be related to jobs and not to gender. Whenever a difference in pay arises it should be attributable to factors inherent to the job.

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

Given the social and cultural context of the Mauritian society, it will be difficult to ratify this Convention.

Mauritius**Observations submitted to the Office by the
Mauritius Labour Congress
(MLC)****Means of assessing the situation*****Assessment of the institutional context***

The principle of the elimination of discrimination in respect of employment and occupation is recognized in Mauritius, in the laws and regulations.

To a limited extent, persons or categories are excluded from the implementation of the principle.

In the sugar industry, there is a level of discrimination against women.

The means for implementing the principle exist, especially for women and minorities. There are also safeguards for migrant workers.

Assessment of the factual situation

Statistics for assessing the factual situation are available, including in publications of industries and enterprises.

**Efforts made or envisaged to ensure respect,
promotion and realization of these principles
and rights**

Our laws already cater for measures to promote the elimination of discrimination.

The Government has taken legislative measures.

The ILO has been invited to offer advice.

Information on activities by other bodies is not available.

**Representative employers' and workers'
organizations to which copies of the
report have been sent**

All workers' federations have been sent a copy of the report.

Observations received from employers' and workers' organizations

The MLC believes that the Government's objectives need to be redefined.

The MLC feels that the Government needs to pass the Equal Opportunity Act as early as possible. Technical support from specialized bodies like the ILO should be sought.

The MLC has called on the Government to ratify the Convention.

Myanmar

Means of assessing the situation

Assessment of the institutional context

The principle of the elimination of discrimination in respect of employment and occupation is recognized in Myanmar.

Discrimination is never practised throughout the country.

Means of implementing the principle: Recruitment policies of the Government and labour laws have always disregarded sex, race, religion, etc.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Measures taken to promote these principles and rights: By virtue of recruitment policies (see above).

- (i) Means deployed by the Government. Please see remarks above ("Assessment of the institutional context").
- (ii) Other:
 - National Women Committee (NWC);
 - Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Objectives of the Government: Please see under "Assessment of the institutional context".

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report were sent to the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI); Myanmar Maternal and Child Welfare Association (MMCWA); Committee concerning Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); National Women Committee (NWC); and Workers' Welfare Association (WWA).

Observations received from employers' and workers' organizations

Comments were received.

Namibia

Means of assessing the situation

Assessment of the institutional context

The principle of the elimination of discrimination in respect of employment is recognized in the Constitution and laws of Namibia.

Constitution

Article 10 of the Namibian Constitution deals with equality and freedom from discrimination. Paragraph 2 of that article prohibits discrimination on the basis of, among others, "social or economic status"; others include sex, race, colour, ethnic origin, religion and creed.

Law

Section 107 of Part XIII of the Namibian Labour Act (Act 6 of 1992) deals with unfair discrimination or harassment in employment. It cites discrimination regarding sex, race, colour, ethnic origin, religion, creed, social or economic status, political opinion or marital status or sexual orientation, family responsibilities or disabilities.

The said section provides that upon an application, made to the Labour Court regarding discrimination, the Labour Court may issue an order in terms of which such person is ordered:

- to discontinue any such acts as may be specified in such order;
- to refrain from performing any act specified in such order;
- to discontinue any such publication or display or to refrain from publishing or displaying any such advertisements or notice;
- to make any such order as the circumstances may require.

Legislation

- Affirmative Action (Employment) Act No. 29 of 1998:
This Act is aimed at achieving equal opportunity in employment in accordance with articles 10 (equality and freedom of association) and 23 (apartheid and affirmative action) of the Namibian Constitution.
- Racial Discrimination Prohibition Amendment Act (Act No. 26 of 1991). Racial group is defined in this Act as a group of persons defined by reference to colour, race, nationality or ethnic or national origin.

Discrimination is defined and criteria regarding prohibition of discrimination in respect of employment and occupation are to be found in section 107 of the Labour Act, in the Constitution and in various legislation referred to above (not reproduced).

No persons or categories of persons are excluded from the implementation of principle and right relating to the elimination of discrimination in respect of employment and occupation.

The Labour Act (Act 6 of 1992) makes no distinction regarding categories of jobs or work or sectors to be excluded or omitted.

The legislation referred to above relates only to affirmative action in employment.

Assessment of the factual situation

No indicators or statistics will be available until the first or even second Affirmative Action Plans and Reports are produced and submitted to the Commission by all relevant employers. Until such time Namibia will not be in a position to provide any indicators or statistical reports.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

As regards measures taken to promote the elimination of discrimination in respect of employment and occupation, the Namibian Employment Equity Commission was inaugurated in July 1999. All relevant employers were notified through Government Gazette of August 1999 to submit their Affirmative Action Plan: by August 2000 (Public Service Sector); by February 2001 (Private Sector).

Means have been deployed to promote the elimination of discrimination in respect of employment and occupation by:

- (i) The Government:
 - establishment of the tripartite Employment Equity Commission, composed of 15 commissioners;
 - policy advocacy.
- (ii) The Organization:

ILO's technical assistance was sought and utilized towards:

 - development of the legislation;
 - establishment of the Commissions;
 - training of the commissioners;
 - training of review officers.
- (iii) Other bodies:
 - Namibian Ministry of Justice;
 - Labour Advisory Council;
 - workers' and employers' organizations.

The objectives of the Government are to fully support the activities of the Namibian Employment Equity Commission.

The conditions deemed necessary to meet these objectives include:

Technical cooperation:

- development of database on affirmative action plans and reports;
- establishment of a data bank;
- capacity development in handling and operating the database system.

Promotion of the affirmative action principle:

- information meeting with stakeholders/communities, envisaged taking place in the 13 political regions of Namibia.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of this report has been sent to representative employers' and workers' organizations:

- Namibia Employers' Federation;
- National Union of Namibian Workers.

Observations received from employers' and workers' organizations

No observations have been received. The social partners have been advised to send their observations directly to the ILO and copy to Government.

Annexes (not reproduced)

Constitution of the Republic of Namibia;

Labour Act (Act No. 6 of 1992);

Affirmative Action (Employment) Act (Act No. 29 of 1998);

Married Persons' Equality Act (Act No. 1 of 1996);

Racial Discrimination Prohibition Act (Act No. 26 of 1991).

Nigeria

Means of assessing the situation

Assessment of the institutional context

The principle of the elimination of discrimination in respect of employment and occupation is recognized in section 42 of the Constitution of the Federal Republic of Nigeria, which prohibits any discrimination based on community, ethnic groups, place of origin, sex, religion or political opinion.

Section 42 of the Constitution prohibits different types of discrimination.

No person or categories of persons, categories of jobs or sectors are in principle excluded or omitted from the implementation of the principle and right relating to the elimination of discrimination in respect of employment and occupation.

The implementation of the principle on the elimination of discrimination in employment and occupation is observed and protected through the Human Rights Commission, Public Complaint, civil courts and labour inspection.

Assessment of the factual situation

No indicators or statistics are available.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The elimination of discrimination in respect of employment and occupation is promoted through labour inspection.

No specific measure has been taken by the Government in respect of discrimination in employment and occupation. However, Part II, section 27, of the draft National Employment Policy (copy not reproduced) provides for the safeguard of the basic human rights and interest of workers, including the principle of non-discrimination and equality of opportunities and treatment. Moreover, a request has been sent to the ILO for assistance in the sensitization and training of labour officers, as well as the establishment of focal points on gender issues in both the public and private sectors. The establishment of a Gender Mainstreaming Project is provided in the Country Objective Programme.

Presentations on the Declaration and its Follow-up were made by the specialist on international labour standards.

UNICEF has organized, in collaboration with the Federal Ministry of Women Affairs and Youth Development, a Workshop on Gender Mainstreaming and Sensitization in July 1999.

A survey on discrimination issues in the workplace should be carried out at national level to address, among others, on the following matters:

- (a) statistics on discrimination practices;

- (b) analysis of data and determination of possible discrimination problems, including the legal framework;
- (c) recommendations on specific ways to promote the elimination of possible discrimination.

The survey, together with its recommendations, would be discussed at a national tripartite workshop along with other relevant bodies (NGOs, stakeholders, etc.) in order to draw up a national strategy on the elimination of discrimination in respect of employment and occupation. This exercise should lead to:

- plan of action;
- targets;
- objectives;
- time frame;
- results;
- evaluation;
- follow-up.

The Government welcomes ILO assistance to undertake the abovementioned activities.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of this report has been sent to:

- the Nigeria Employers' Consultative Association (NECA); and
- the Nigeria Labour Congress (NLC).

Annexes (not reproduced)

Excerpts of the Constitution.

Draft National Employment Policy.

Qatar

Means of assessing the situation

Assessment of the institutional context

Labour Law No. 3 of 1962 defines wage (article 2(6)) as “the basic pay plus all other entitlements due to a worker in consideration of own work”. This includes overtime emoluments and any other allowances such as cost of living and family allowances, bonuses, and similar periodic grants. It does not include transport or travel allowances or any other emoluments or any contributions by the employer to a worker benefit scheme.

The wage may be paid on a yearly basis, monthly, weekly, daily or hourly basis or may be determined per piece as agreed. Article 2(2) of this same Law defines the worker as “any person not specifically excluded from the provisions of this Law and who has signed a contract of service with an employer”.

Article 28 prohibits the conclusion of an employment contract in which employer and worker agree to a wage below the minimum wage set by decision of the Emir.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The provisions cited above show that the Qatari Labour Code does not distinguish between male and female workers with regard to men and women workers receiving equal remuneration for work of equal value. Furthermore, it does not address the question of wage rate determination and job appraisals on the basis of work to be performed. Wages are determined by agreement between worker and employer. The Public Civil Service Law and its Executive Regulations address the provisions stipulated in the Convention.

Representative employers’ and workers’ organizations to which copies of the report have been sent

Copies of this report have been sent to:

- the Qatar Chamber of Commerce and Industry (Employers);
- the Workers Committee at the Qatar General Establishment for Oil (Workers).

Observations received from employers’ and workers’ organizations

No comments have been received from either.

Annexes (not reproduced)

Laws relevant to this issue.

The Labour Law and the Public Civil Service Law.

Laws attached to reports.

Singapore

Means of assessing the situation

Assessment of the institutional context

Constitutional and legal provisions giving effect to the principle

Although Singapore has no legislative provisions or established bodies to enforce the observance of equality in employment and occupation, the right to equal treatment and the principle of non-discrimination are firmly entrenched in the Constitution of Singapore which states under Article 12(1) that “all persons are equal before the law and entitled to the equal protection of the law”.

Furthermore, article 12(1) prohibits discrimination against Singapore citizens on grounds of religion, race, descent or place of birth in any law, administration of any law, and in the appointment to any office or employment under a public authority.

The Singapore Government does not condone any form of discrimination against job applicants. We are of the view that the selection of candidates for jobs should be based on merit and not on grounds such as race, religion and descent which are of no relevance to a job. Apart from the inherent job requirements, employers in Singapore are generally not gender biased.

Current measures against discriminatory practices

In Singapore, the choice of occupation and terms and conditions of employment are determined through mutual agreement between the employer and employee. The Employment Act which stipulates the minimum labour standards offers protection to employees regardless of race, religion, sex, descent or origin. Moreover, there are avenues for an employee, who is aggrieved by discriminatory practices, to seek redress. For example, section 14(2) of the Employment Act allows for an employee who feels that he has been unfairly dismissed to make representations to the Minister for Manpower for reinstatement.

The Ministry of Manpower frowns upon discriminatory practices in employment and investigates discriminatory employment advertisements and complaints made about companies that adopt discriminatory practices. If investigation reveals discriminatory practices, the Ministry would warn these companies and advise them not to repeat such practices.

At present, discriminatory employment practices are neither prevalent nor serious enough to require the enactment of employment laws to deal with them. The Singapore Government has adapted an educational and promotional approach to encourage employers to use objective criteria in the selection of candidates for jobs. This is advantageous compared to a legislative approach, which creates rigidities in the job market and may ultimately be detrimental to economic growth and job creation.

The Tripartite Guidelines on Non-Discriminatory Job Advertisements

The Ministry of Manpower, together with the National Trades Union Congress (NTUC) and the Singapore National Employers' Federation (SNEF), issued a set of Tripartite

Guidelines on Non-Discriminatory Job Advertisements on 12 March 1999. The Guidelines, which were distributed to employers (including all government ministries and statutory boards), human resource practitioners and employment agencies, urge employers to adopt selection criteria that are job-related and objective. Employers may advertise and hire candidates based on their capabilities, skills or knowledge or personal attributes, such as personality traits, and not based on race, religion, age, gender or other discriminatory criteria.

The Tripartite Guidelines were disseminated through the following channels:

- brochures and pamphlets;
- seminars, talks and meetings with the employers and human resource practitioners;
- on-site company visits;
- distribution through employer and employee associations, such as the SNEF and NTUC, to their members;
- other relevant professional societies and associations such as the Singapore Human Resource Institute (SHRI).

Assessment of the factual situation

The latest survey of job advertisements confirmed that discriminatory job advertisements are no longer rampant (table not reproduced). In October 1999, only less than 0.2 per cent of the job advertisements carried discriminatory criteria such as gender, age and/or religion, as compared to 32 per cent in January 1999. Age and gender criteria are most commonly cited in job advertisements.

As in the past surveys, 80 per cent (compared to 83 per cent in the previous survey) of job advertisements which stipulated discriminatory criteria were placed by small enterprises.

Wage determination mechanism and occupational wage differences

Market forces of demand and supply determine wages in Singapore. Hence, there is no danger of women's wage being suppressed artificially as the economy operates on a system of meritocracy. There are favourable indications that the difference between the sexes in the average monthly earnings has narrowed over the years. In 1986, the average monthly earnings of females was 88 per cent of the males. This improved to 76 per cent in 1997. While there is a wage gap between the sexes, this is not the result of discrimination. On the contrary, it is due to the differences in years of work experience as women tend to drop out of the workforce after marriage and to devote more time to childcare, and the generally lower educational attainment among the cohort of other female workers. With increasingly better educated female entrants to the job market, their earnings have increased progressively over the decade.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

In the case of the public sector, the Government has instituted the principle of equal pay for equal work since 1962 and this has set the ideal to be aimed at in employment.

Discrimination in employment does not exist in Singapore. The Singapore Government has strongly advocated and practised the principle of meritocracy for both sexes in all sectors of the economy in regard to employment and occupation, promotion and career development. This policy is incorporated in the planning and implementation of government policies and programme. Singapore's efforts in this regard were recognized by the UNDP in its Human Development Report of 1997, where Singapore was classified as one of the countries which had "succeeded in enhancing the basic human capabilities of both women and men".

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report were sent to the Singapore National Employers' Federation and the National Trades Union Congress.

Suriname

Means of assessing the situation

Assessment of the institutional context

The principle of elimination of discrimination in respect of employment and occupation is recognized in Suriname.

According to the Constitution of Suriname, no one may be discriminated against on the grounds of birth, sex, race, language, religion, education, political beliefs, economic position or any other status (article 8, paragraph 2).

Furthermore, article 27, paragraph 1(c), states that it is the duty of the State to guarantee the right to work maximally by guaranteeing equal opportunity in the choice of profession and type of work and forbidding that access to any function or profession be prevented on grounds of someone's sex.

Article 28 of the Constitution gives all employees, independent of age, sex, race, nationality, religion or political opinion, the right to:

- remuneration for their work corresponding to quantity, type, quality and experience on the basis of equal pay for equal work;
- the performance of their task under humane conditions;
- safe and healthy working conditions; and
- sufficient rest and recreation.

Article 35, paragraph 6, of the Constitution states that working women are entitled to fully paid maternity leave.

The Collective Bargaining Agreement Act (GB. 1962, No. 106), provides in article 21 that a clause by which the employer binds himself to employ workers of a particular religious or political conviction or who are members of an association or particular association or

not, to employ such workers exclusively, is void. The Labour Exchange Act (GB. 1965 No. 10) provides in section 3, paragraph 2, that the religious, political or social conviction, and the (non) membership of an association of persons who make use of the Employment Service of the Ministry of Labour shall not lead to negative or positive preference in the mediation, unless the person who calls in the mediation has made certain reasonable wishes in this respect.

Suriname has also ratified the UN Conventions on the elimination of racial discrimination and elimination of discrimination against women.

Discrimination as a word is not defined, but in article 8, paragraph 2, of the Constitution, gives an extensive enumeration of the basis on which discrimination is not allowed.

There is no discrimination on grounds of birth sex, race, language, religion, education, political beliefs, economic position, or any other status.

The Constitution states that no one may be discriminated against.

The Labour Act (GB. 1963, No. 163), article 20, provides that women and youth are not allowed to perform night work or work dangerous to their health or morality.

The principle of the elimination of discrimination is being implemented viz:

- Committee on the Elimination of Discrimination against Women: Women Workers' Rights;
- women's organizations;
- the Foundation "Stop violence against women";
- Organization for Haitians (Migrant Workers); and
- Legal: Gender Bureau of the Ministry of Internal Affairs.

Assessment of the factual situation

No indications or statistics are available.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Measures taken to promote the elimination of discrimination are:

- vocational training which is aimed at the abovementioned objectives. The centre for Labour Mobilisation and Development (SAO) falls under the Ministry of Labour;
- public information by the Ministry of Labour on the application of Labour Law.

Means deployed to promote the elimination of discrimination by:

- (i) the Government:
 - in the Government statement delivered by the President of Suriname, the President stated that the policy of the Government is aimed at guaranteeing equal quality of life for everyone, especially women;

- public information given by the Ministry of Labour (Labour Inspection);
 - the necessary literacy programmes;
 - the continuing reform of the educational system to reduce and remove social inequality;
- (ii) other bodies:
- the Steering Committee for Women Workers' Rights organizes seminars and training sessions;
 - workers' education by the Suriname Labour College (SIVIS) sponsored by the social partners;
 - activities by organizations of women workers and employers.

Objectives of the Government are:

- modification of the legal system;
- ratification of the Convention.

Conditions deemed necessary to meet these objectives are:

- legal provisions for minimum wages;
- dealing with discrepancies between wages in the various sectors of the economy;
- there is a substantial lack of data on the situation of workers in the rural sector and workers in the informal sector on wages and unemployment.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of this report has been sent to the following representative organizations of employers:

- *Associate van Surinaamse Fabrikanten*;
- *Vereniging Surinaams Bedrijfsleven*;

workers:

- *Centrale van Landsdienaren Organisaties*;
- *Federatie van Agrariers en Landarbeiders*;
- *AVVS "de Moederbond"*;
- *Progressive Werknemers Organisatie*;
- *Organisatie van Samenwerkende Autonome Vakbonde*; and
- *Vakcentrale C-47*.

Observations received from employers' and workers' organizations

No comments have been received from these employers' and workers' organizations.

Tanzania, United Republic of

Means of assessing the situation

Assessment of the institutional context

The principle of the elimination of discrimination in respect of employment is recognized in Tanzania.

It is recognized by:

- (i) the Constitution of the United Republic of Tanzania;
- (ii) the Security of Employment Act, Chapter 574, section 8(b);
- (iii) the ratification of the Convention on the Elimination of All Forms of Discrimination against Women which was ratified in 1985. Copies of the above, have been sent to the ILO, Geneva under article 22 of the Constitution in respect of other ratified Conventions.

The Constitution of the United Republic, article 13(4), stipulates: "No person shall be treated in a discriminatory manner by any person acting by virtue of any law in the discharge of the functions of any state office."

The Constitution of the United Republic, being the fundamental law of the land, is the foundation upon which all other laws, by-laws, administrative rules and regulations base their essence.

Furthermore article 13(2) of the Constitution provides that no legislative authority in the United Republic shall make any provision in any laws that is discriminatory.

Assessment of the factual situation

At the moment there are no statistics that are available or might be envisaged as means of assessing the situation.

However, a number of activities aimed at poverty alleviation and women's economic empowerment is being undertaken in the country. This is in response to the Beijing Conference and the Social Summit of Copenhagen.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

A lot has been undertaken to ensure that all old laws are being revised and new ones are being enacted to ensure that discrimination is totally removed, i.e. review of labour and other labour-related laws with emphasis on promotion of women's employment in the

context of structural adjustment programme, land law review, enactment of sexual harassment law, review of the National Employment Policy which addresses gender concern and to equal opportunities in the world of work.

Special programmes are being implemented such as More and Better Jobs for Women to ensure that there is no discrimination in employment nor occupation based on sex.

Projects for women are also undertaken by the National Income Generation Programme (NIGP). Although NIGP project activities target people who are not working or who are facing the near-term prospect of unemployment, the programme is gender-sensitive. It requires that about 50 per cent of its beneficiaries in individual projects should be women. The list of projects is attached as Annex I (not reproduced).

Other means deployed by the Government to promote the principle are:

- The establishment of a gender-coordinating desk which focuses on opportunities and development, gender and employment.
- A Tripartite Task Force on Gender and Employment has been formed in order to ensure in practice the realization of the right of women to work and equal access to employment.

The ILO supports women's promotion of employment in the context of a structural adjustment programme and the project also facilitates the process of reviewing labour and other labour-related laws.

Other support includes tripartite task force training (promotion of women's employment in the context of SAP), 23-26 August 1999.

The objectives of the Government are to enhance human rights, democracy and good governance.

The ILO should follow up with a national seminar which will involve the relevant government ministries, employers and trade unions.

The ILO could support:

- a national seminar for employers, trade unions and Members of Parliament on the principle;
- capacity building for the technical staff responsible for preparation of reports on ILO standards and the Declaration in particular.

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report have been sent to:

- the Association of Tanzania Employers;
- the Organization of Tanzania Trade Unions.

Annexes (not reproduced)

List of NIGP-supported projects.

Thailand

Means of assessing the situation

Assessment of the institutional context

As a member State of the ILO and the United Nations, Thailand fully respects the principle of human rights. It adheres to the Universal Declaration on Human Rights and many relevant United Nations instruments.

Thailand strongly adheres to the principle of the elimination of discrimination. Equality of treatment is a prerequisite to development. Without development, and the elimination of inequalities and discrimination of all forms, there cannot be lasting peace. Oppression and domination based on power, gender, race, religion and culture are commonly rooted in prejudice and unenlightened notions of self-interest.

Thailand has traditionally been a multicultural and open society. People of Thai origin mix freely with others of Chinese, Indian, Burmese, Cambodian and Laotian origin, as well as with several ethnic minorities. Our country has embraced many different religions. For centuries, the predominantly Buddhist religion has existed peacefully together with Muslim, Christian and other religions.

As for gender issue, the Thai Government has so far recognized the significance of the equality of participation by women at every level. Friendly relations and cooperation among social partners and civil society will contribute to the cause of development, to the advancement of the status of women and to the promotion of equal rights in all spheres of life.

As regards political will, successive Thai Governments have supported the elimination of discrimination in respect of employment and occupation. The present Government, on 20 November 1997, Prime Minister Chuan Leekpai announced the policy to the Parliament, stating: "The law and regulation will be improved for increasing the effectiveness of labour protection. Particularly women and young workers will receive fair wages and work in safe environment."

In Thailand the principle of the elimination of discrimination is translated into action, as follows:

The Constitution of the Kingdom of Thailand B.E. 2540 (1997) newly adopted since October 1997 provides for greater rights to the people.

It also guarantees the elimination of discrimination in certain sections as follows:

Section 30. All persons are equal before the law and shall enjoy equal protection under the law. Men and women shall enjoy equal rights.

Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, physical or health condition, personal status,

economic or social standing, religious belief, education or constitutionally political view, shall not be permitted.

Measures determined by the State in order to eliminate obstacles or to promote persons' ability to exercise their rights and liberties as other persons do, shall not be deemed as unjust discrimination under paragraph three.

Section 80. The State shall protect and develop children and the youth, promote equality between women and men, and create, reinforce and develop family integrity and the strength of communities.

The State shall provide aid to the elderly, the indigent, the disabled or handicapped and the underprivileged for their good quality of life and ability to depend on themselves.

Significantly it provides greater guarantee of the human rights which is in closer conformity with the international norms. In this regards it sets up the National Human Rights Commission acting as a human rights watchdog to supervise, monitor and assure the implementation of the human rights principles, in Chapter 8, sections 199 and 200.

Labour Protection Act B.E 2541 (1998) enacted since August 1998 provides for more labour protection which is in closer conformity with ILO standards. As regards the elimination of discrimination in respect of employment and occupation, in this Act it is provided as follows:

Section 15. An employer shall equally treat male and female employees in employment with the exception that the description or nature of work prevents such treatment.

Section 16. An employer or a person who is a chief, supervisor, or inspector shall be prohibited to do an act of sexual harassment against an employee who is a woman or a child.

Section 43. An employer shall not terminate the employment of a female employee due to pregnancy.

Section 53. In case where the work is of the same nature and quality and equal quantity, an employer shall fix equal wages, overtime pay, holiday pay and holiday overtime pay to be paid to an employee, notwithstanding the employee is male or female.

At the international level Thailand has expressed a strong commitment to international community as recognized in its ratification of the ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) and the Equal Remuneration Convention, 1951 (No. 100). Thailand also adopts the Beijing Declaration and Platform of Action for Advancement of Women, and the United Nations Declaration on the Elimination of Violence against Women, etc.

In Thailand discrimination is defined in section 30 of the present Constitution of the Kingdom of Thailand. Criteria are defined whereby discrimination in respect of employment and occupation (sex, race, religion, national extraction, etc.) is prohibited. No person and no category of persons is excluded from the implementation of the principle and right relating to the elimination of discrimination in respect of employment and occupation either explicitly or because they are not covered by the applicable legislation.

No category of jobs, no work and no sector is excluded or omitted from the applicable legislation.

As regards the means of implementing the principle, any person who violates or fails to comply with section 15 of the Labour Protection Act of 1998 will be penalized with a fine not exceeding 20,000 baht.

Assessment of the factual situation

To assess the factual situation, statistics on labour inspections, grievances and terminations of employment are available as a crucial means. According to the report on labour inspection nationwide in the year of 1998, there were 993,312 inspected women workers and 853,423 inspected men workers. There were no cases of grievance on discriminatory termination of employment.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Different efforts have been made to ensure respect, promotion and realization of the elimination of discrimination in respect of employment and occupation. Major policies are determined to eliminate the discrimination in particular those aimed at the enhancing of women's opportunity and the equal treatment in remuneration, promotion and development of quality of life.

Measures in terms of both legislation and implementation are taken to translate such policies. Legal measures have been earlier stated.

For implementation measures, significant actions have been taken and some dealing with women's matters are needed to be addressed as follows:

- Firstly the National Commission on Women's Affairs (NCWA) was established in 1989 in its present form with part of its mandate being to spearhead the programmes for the advancement of women in Thailand as a state organization for women. The NCWA is also responsible for monitoring and evaluating programmes for women as well as initiating gender-sensitive research.
- Secondly, the Ministry of Labour and Social Welfare is responsible for ensuring women workers the full protection of rights and benefits under the law as well as to promote the development for better quality of life of women workers. The Ministry of Labour and Social Welfare has a range of programmes and services for promoting employment, labour inspection and welfare of women workers.
- Thirdly, social measure, the Government has had various programmes and projects for the promotion and development of skills of women workers. Some significant projects and programmes are the Project on Promotion of the Quality of Life for Women Workers; the Project on Establishing Women Workers' Counsellors at the Workplace; and the Local Job Training Project.

For equal employment opportunity, employment services are provided and vocational counselling and guidance for the general public are rendered so as to ensure that there is no discriminatory practice against any jobseeker. Any jobseeker, regardless of race, colour, sex, religion, political opinion and social status, will obtain equal opportunities and

treatment with respect to access to employment and vocational training. A great number of foreign immigrants are employed in Thailand. Some careers which were reserved for males are now also available for female workers. At present a number of women are predominantly holding very high-ranking positions both in public and private sectors.

The Thai Government has strong objectives with a view to the observance, promotion or realizations of the termination of discrimination. Therefore, the targets for development of the efficiency of the justice system and civil rights protection are set forth in the 8th National Economic and Social Development Plan as follows:

- (1) extend the legal assistance to the underprivileged such as providing the advocate;
- (2) publicize the legal rights protection and revise related laws and regulations on women's and children's rights and welfare in accordance with social and economic change as well as support the legal operation of the government agencies and the non-government organizations protecting the child and youth benefits additionally;
- (3) support the women rights equality to men by increasing opportunities for women in decision-making and economic, social and political activities at all levels;
- (4) enhance the efficiency of women's groups including the educational, training, skills and employment opportunity equal to men;
- (5) revise laws and regulations for the elimination of all forms of women discrimination; and
- (6) conduct a campaign against woman and child torture such as raising social awareness on the said problems and effects, also to extend counselling services to afflicted families.

It is to reaffirm that Thailand is strongly aware of gender equality in employment. In this 8th National Plan are also integrated the Beijing Declaration and Platform of Action as a major component. Conceptual and direction of women's development indicated: to develop women to their full potential in all aspects; to focus on all aspects of women's environment as related to family development, communities development; to eliminate discrimination against women; and communities and society must be free from violence against women. Significantly all the above set forth in the National Plan have already been translated into action.

To meet these objectives, technical assistance from ILO is given a priority. The development of relevant indicators or statistics is also deemed necessary.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of this report has been sent to the most representative employers' and workers' organizations as follows:

- (1) Employers' Confederation of Thailand;
- (2) Employers' Confederation of Thai Trade and Industry;
- (3) Labour Congress of Thailand; and
- (4) The National Congress of Thai Labour.

Observations received from employers' and workers' organizations

No comment has been so far received from any of these organizations.

Annexes (not reproduced)

Excerpts from the Constitution of the Kingdom of Thailand (1997).

Labour Protection Act (1998).

Number of labour organizations in the Kingdom, 1998 and 1999.

Women and children — inspection in whole Kingdom, 1997 and 1998.

Uganda

Means of assessing the situation

Assessment of the institutional context

The principle of the elimination of discrimination in respect of employment is recognized in Uganda.

Although ILO Conventions Nos. 100 and 111 are not yet ratified, Uganda is signatory to the United Nations Convention on the Elimination of All Forms of Discrimination against Women and the Vocational Rehabilitation Employment (Disabled Persons) Convention, 1983 (No. 159).

At the same time, the National Constitution 1995 recognizes the above principle. In Part XIV, General social and economic objectives, it is stated that the State shall endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall particularly ensure that:

- all developmental efforts are directed at ensuring the maximum socio and economic well-being of all the people; and
- all Ugandans enjoy rights and opportunities and access to education, health service, clean and safe water, work, decent shelter and adequate clothing, food security, pension and retirement benefits.

Article 21 of the Constitution also specifically provides for equality of opportunity and freedom from discrimination. There is an entire Ministry responsible for Gender, Labour and Social Development.

A National Gender Policy has also been put in place to ensure that gender matters are integrated in all aspects of national planning and development.

Disadvantaged groups such as women and persons with disability and youths have representation in Parliament. Local committees also have a person representing the interests of women and youths at the grass-roots level.

Discrimination is defined to cover all forms of discrimination as outlined in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Although the National Constitution provides for recognition of the broad principle, the existing labour legislation, namely the Employment Decree No. 4 of 1975, does not cover the informal sector and domestic service, where most women and youths are concentrated. However, labour legislation concerning employment is under review to widen scope and cover specific questions concerning sexual harassment and migrant workers.

As mentioned above, the informal sector is excluded from application of the law. Underground work for women is not permitted under the Employment Decree. It is however, noted that women discriminate themselves from certain jobs due to the pressure caused by tradition/cultural beliefs in the society.

Assessment of the factual situation

Statistical data and information on women's occupations, wages, promotions, fringe benefits, training, injuries suffered by women and information from education and training institutions would provide some indicators on assessing the situation. Unfortunately, such disaggregated data are still very limited.

It is known that more than 50 per cent of the population are women. Over 80 per cent of the employed women are in the category of agricultural workers which is also not yet fully covered by legislation.

In the public and private sector, the majority of women still occupy low cadre jobs such as secretarial services and office attendants.

Women also represent a large proportion of workers in health care services. Occupational safety and health hazards resulting from exposure to x-rays and other wastes cannot be ignored. There is evidence that health care providers who happen to be women are increasingly contracting HIV/AIDS through unprotected work.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The Government has put in place bodies such as the Human Rights Commission to ensure all people enjoy equal rights and among others to investigate, at its own initiative, or on a complaint made by any person or group of persons against violation of any human right.

A new structure, the Equal Opportunities Commission is in the making, in the Ministry of Gender, Labour and Social Development, to address issues related to all the disadvantaged groups.

The Government has put in place Universal Primary Educating (UPE) starting with four children per family to promote equality of opportunity to education, subsequently training and employment to both girls and boys.

Affirmative action in higher education, training institutions and the university is an ongoing government effort to reduce discrimination for education and subsequently employment.

A lot of work has also been done in the area of advocacy and awareness creation using workshops and the media. Promotion of self-help and popular participation at the grass-roots level is also having some impact.

The ILO has assisted Uganda in formulating a Comprehensive National Employment Policy which, among others, covers promotion of employment for disadvantaged groups.

A number of ILO missions related to reviewing labour legislation have been fielded in the country. Training programmes both in Turin, Italy, and the African Regional Labour Administration Centre, ARLAC have benefited the country. Meanwhile an ILO subregional workshop on equality of opportunity is expected to be hosted in Kampala in the year 2000.

NGOs such as FIDA (Association of Female Lawyers), the National Union of Disabled Persons of Uganda (NUDIPU), the National Council of Women and the Uganda Women Media Association are also doing considerable work in collaboration with the Government.

As earlier mentioned, the objectives of the Government are to promote enjoyment of equal rights and opportunities including education, health services, clean and safe water, work, decent shelter, adequate clothing, food security, pension and retirement benefits.

Engagement of all the key partners in policy formulation and development of programmes is required. Certain legislation especially the labour legislation, needs to be harmonized in conformity with the provisions of the National Constitution and the principle relating to discrimination (Conventions Nos. 100 and 111).

Research work is urgently required to provide accurate and quality data in order to assess the real situation and to identify the particular groups which occur to be in difficult situation as well as developing indicators.

Greater collaboration with NGOs is also needed as well as strengthening the capacity of the social partners to adequately articulate the interests of the affected groups.

An effective monitoring system especially the Labour Inspectorate is required to provide regular reports on the progress of implementation of different measures put in place by the Government. This will go hand in hand with training of officers in the Labour Inspectorate in collection of disaggregated data and data analysis.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of this report has been sent to the Federation of Uganda Employers (FUE) and the National Organisation of Trade Unions (NOTU).

Observations received from employers' and workers' organizations

Any possible comments made by these organizations will be forwarded to the ILO upon reception by the Government.

United States

Means of assessing the situation

Assessment of the institutional context

The Government of the United States recognizes and is committed to the fundamental principle of the elimination of discrimination in respect of employment and occupation and as it relates to equal remuneration for men and women workers for equal work through existing United States constitutional law. Specifically, the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution precludes any state from denying its citizens the equal protection of the laws. Through the Due Process Clause of the Fifth Amendment, that prohibition is also applicable to the Government of the United States. The United States Government further pursues the elimination of discrimination in respect of employment and occupation in regards to race, color, religion, sex, national origin, political opinion, age, disability and gender-based wage discrimination primarily through Title VII of the Civil Rights Act of 1964 and the Equal Pay Act of 1963. These federal statutes are supplemented by legislation including, the Civil Rights Act of 1991, the Civil Service Reform Act of 1978, the Women's Educational Equality Act of 1978, Executive Order 11478, Executive Order 11590, the Classification Act, the Wagner-Peyser Act, the Job Training Partnership Act, and the Carl D. Perkins Vocational Education Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, together with state constitutions, state legislation, state and federal regulations, and private agreements.

Constitution of the United States

The Fourteenth Amendment of the Constitution of the United States contains the Equal Protection Clause which precludes any state from denying its citizens "the equal protection of the laws". Through the Due Process Clause of the Fifth Amendment, that prohibition is also applicable to the federal Government and has been interpreted as a direction that all persons similarly situated should be treated alike. In essence, it precludes governments from adopting unjustifiable legal distinctions between groups of people. When subjected to court challenge on equal protection grounds, gender-based distinctions must satisfy the requirements of "intermediate scrutiny". Under that standard, a gender-based distinction is justifiable only if it serves an "important governmental objective" and is "substantially related" to the achievement of that objective. While not as searching as the strict scrutiny standard that courts apply to racial or ethnic distinctions, this standard of review nevertheless requires that gender-based distinctions be supported by an exceedingly persuasive justification. Absent such a showing, gender-based distinctions violate the Equal Protection Clause. Further, the Equal Protection Clause has been interpreted to apply only to intentional discrimination. Accordingly, its prohibitions do not reach laws or practices which are on their face gender-neutral but which have a disparate impact on women.

Statutory laws and practices of the Government of the United States

The principle of the elimination of discrimination in respect of employment and occupation is facilitated principally in the statute governing employment discrimination in the United States, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.). Title VII makes it unlawful for any employer which employs 15 or more employees to discriminate with regard to any aspect of employment with regard to race, color, religion,

sex or national origin (42 U.S.C. § 2000e-2(a)). Title VII also prohibits discrimination by labor organizations and employment agencies (42 U.S.C. §§ 2000e-2(b) and (c)).

Race and color

In addition to Title VII, several other federal statutes pertain to discrimination based on race and color. The most significant statutes include the following.

Section 1981 of the Civil Rights Act of 1866 establishes that “all persons within the jurisdiction of the United States shall have the same right ... to make and enforce contracts ... as is enjoyed by white citizens” (42 U.S.C. § 1981). Section 1981 makes all employers subject to lawsuits claiming discrimination in employment on the basis of race and alienage. In 1991, section 1981 was amended and strengthened by the Civil Rights Act of 1991 (“CRA”). Under the CRA, the provisions of 42 U.S.C. § 1981 apply to all aspects of the employment relationship and not solely to the initial formation of the employment contract.

Section 1983 of the Civil Rights Act of 1871 provides that any person who deprives another person of “any rights, privileges or immunities secured by the Constitution and laws” shall be legally liable to the injured party (42 U.S.C. § 1983). Section 1983 was intended to override any discriminatory or unconstitutional state laws, and to provide a remedy for civil rights where state law was inadequate or unavailable in practice.

Section 1985 of the 1871 Act also provides a cause of action for acts in furtherance of a private conspiracy which cause injury to a person or a deprivation of a right or privilege (29 U.S.C. § 1985). Both sections 1983 and 1985 have been used in various ways as a means to prevent employment discrimination.

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The statute is designed to control discrimination in government spending programs. If the spending program is intended to provide employment, Title VI would prohibit discrimination in the spending program on the proscribed grounds.

Executive Order 11246 (appendix W (not reproduced)) requires any employer who has a contract with the federal Government to take affirmative actions to hire and promote women and racial minorities (see 2 C.F.R. § 339). In fiscal year 1993, for example, the United States Government granted over 176,000 prime contracts worth over \$160 billion. The requirements of Executive Order 11246, therefore, directly affected over 17,000 corporations and institutions of higher education.

Executive Order 11478 further declares that “[i]t is the policy of the United States to provide equal opportunity in federal employment to all persons”, and requires that all executive agencies take affirmative action to implement this policy.

Finally, it should also be noted that as of 1993, 47 of the 50 states had state statutes similar to Title VII governing employment discrimination. Each of these statutes prohibits employment discrimination based on race or color. These statutes, along with Title VII, clearly state the United States national policy concerning employment discrimination based on race and color.

Sex

As indicated above, Title VII specifically prohibits discrimination based on sex. Title VII not only prohibits direct discrimination based on sex, but also prohibits policies or practices which have a disproportionate impact based on sex as well as the form of discrimination commonly referred to as sexual harassment.

In addition to Title VII, several other federal statutes pertain to discrimination based on sex and so are relevant to the United States declaring and pursuing a national policy concerning employment discrimination. The most significant statutes include the following.

Since the early 1960s, Congress has further strengthened the protections for women in the workplace through passage of the Pregnancy Discrimination Act of 1978, which amends Title VII and prohibits discrimination based on pregnancy, and the Civil Rights Act of 1991, which, for the first time, provides victims of intentional sex discrimination compensatory and punitive damages.

Title IX of the Education Amendments (20 U.S.C. § 1681), prohibits discrimination based on sex in the administration of education programs. It prohibits sex discrimination in employment at educational institutions receiving federal funding even if the federal funding does not directly finance employment. Recently, the United States strengthened Title IX with the enactment of the Civil Rights Restoration Act of 1987 (Pub. L. 100-259). Through the passage of the Civil Rights Restoration Act, Congress has made it clear that all programs with a school receiving federal aid must comply with employment discrimination statutes. Executive Orders 11246 and 11478, discussed above under the category of race and color, also apply equally to discrimination based on sex. The aforementioned statutes, along with Title VII, clearly state the United States policy concerning employment discrimination based on sex. Such statutes and the enforcement of them are designed to promote equality of opportunity and treatment in employment with respect to sex.

Religion

A cornerstone of the United States political and social system is freedom of religion. The First Amendment to the United States Constitution states, in part, that “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof”. Thus, no national or state religion exists in the United States and each individual is free to follow the dictates of his or her conscience concerning religious matters.

In addition, as noted above, Title VII prohibits employment discrimination based on religion (42 U.S.C. § 2000e-2(a)). Title VII also requires that employers accommodate their employees’ religious observances and practices unless the employer can establish that such accommodation would impose undue hardship on the conduct of the business (42 U.S.C. § 2000e-(j)).

Thus, the United States has clearly stated its policy concerning employment discrimination based on religion through the protections of the First Amendment as well as legislation such as Title VII. The effectiveness of this policy is demonstrated by the widespread religious tolerance in the United States and the fact that discrimination claims based on religion are exceedingly rare. In those instances where a meritorious employment discrimination claim based on religion is alleged, an adequate legal remedy is provided under United States laws.

National origin/national extraction

As indicated above, Title VII also prohibits discrimination based on national origin. The term “national origin” has been defined as the country where a person is born, or more broadly, the country from which the person’s ancestors came (see 29 C.F.R. § 1606.1 (Equal Employment Opportunities Commission guidelines on national origin discrimination)). The prohibition against discrimination on the basis of national origin has been applied to a wide variety of ethnic groups in the United States. Title VII, however, does not prevent an employer from discriminating on the basis of citizenship unless such discrimination has the purpose of discriminating on the basis of national origin.

Also, as discussed above, section 1981 of the Civil Rights Act of 1866 establishes that “all persons within the jurisdiction of the United States shall have the same right ... to make and enforce contracts ... as is enjoyed by white citizens”. Section 1981 protects from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics.

In 1986 the Congress of the United States passed the Immigration Reform and Control Act which further strengthened United States law with respect to discrimination on the basis of national origin by making such discrimination an unfair immigration related employment practice (8 U.S.C. § 1324b(a)(1) (appendix X) (not reproduced)). These above statutes, along with Title VII, clearly state the United States policy concerning employment discrimination based on national origin. These statutes and the enforcement of these statutes are designed to promote equality of opportunity and treatment in employment with respect to national origin.

Political opinion

The specific law and practice in the United States provides numerous protections against discrimination based on political opinion. These protections are granted to more than 18 million Americans who work for the local, state and federal governments. They are anchored in the First Amendment of the United States Constitution and its freedoms of speech and association which are applied to state and local governments through the Fourteenth Amendment. These constitutional rights are zealously protected by the courts in the United States. Thus, any government entity in the United States, whether it is federal, state or local, may not lawfully hire, discharge, promote, transfer or recall a person solely because of their political affiliations or beliefs unless those political beliefs are an appropriate requirement of the job.

While there is no federal statute in the United States which explicitly prohibits private employers from basing employment decisions on an employee’s political opinions, employment discrimination based on political opinion has not been a significant problem in the United States because of the country’s long-standing traditions of individual and political freedom. For example, inquiries to the American Civil Liberties Union (ACLU), the country’s principal private organization concerned with issues of individual freedom, have indicated that employment discrimination by private employers based on political opinion is virtually non-existent in the United States. Because discrimination based on political opinion is not endorsed by the Government of the United States, there is no obligation to include in its non-discrimination legislation the elimination of discrimination based on political opinion.

In addition, there are statutes which provide protections for certain aspects of political expression. At least three jurisdictions provide very broad protections from discrimination

based on political opinion (see C.F.S.A. § 31-51(q) (Connecticut); D.C. Code § 1-2512 (District of Columbia); L.P.R.A. § 146 (Puerto Rico)). Other statutes are more narrow and provide protections in more limited circumstances. For example, numerous federal and state statutes protect the fundamental means of political expression, the vote, from influence by other individuals, including employers.

Thus, there are no violative government practices in the United States concerning employment discrimination based on political opinion and, in fact, discrimination based on political opinion is exceedingly rare in the United States. Moreover, public and private sector employees are protected from such discrimination in a variety of ways as described above. Therefore, the United States is committed to declaring and pursuing a national policy designed to promote equality of opportunity and treatment in employment with respect to political opinion.

Additional areas of protection

The United States has clearly stated a national policy concerning equality of opportunity and treatment in respect of employment and occupation in various other areas. For example, the United States provides extensive protections in the areas of employment discrimination based on age and disability. The principal federal statutes providing protections in these areas are: the Age Discrimination Employment Act (“ADEA”) (29 U.S.C. §§ 621-631 (appendix Z)); the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq. (appendix AA)); and the Americans with Disabilities Act (“ADA”) (42 U.S.C. § 12101 et seq. (appendix BB)) (Annexes not reproduced).

Also, the United States clearly stated national policy concerning equality of opportunity and treatment in respect of employment and occupation is further supplemented by the principle of equal remuneration for men and women workers through the Equal Pay Act of 1963 (or “EPA”) (29 U.S.C. § 206(d) (appendix A)). The Equal Pay Act of 1963 is directed specifically at sex discrimination in wages. In contrast, Title VII of the Civil Rights Act of 1964 is directed at all forms of sex discrimination in employment and occupation.

The Equal Pay Act (29 U.S.C. § 206(d)), is an amendment to the minimum wage provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 et seq. (appendix D)), which was enacted to establish work standards, including minimum wages. The Equal Pay Act standards apply regardless of sex, to workers in federal, state, and local governments and workers engaged in “trade, commerce, transportation, transmission, or communication among the several states or between any state and any place outside thereof”(see 29 U.S.C. § 203(b)). The EPA requires an employer to pay equal wages in an establishment to men and women doing equal work on jobs requiring equal skill, effort, and responsibility which are performed under similar working conditions. However, the Equal Pay Act does not prohibit payment of wages at lower rates to one sex for equal work when the wage differential is based on: (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) a differential based on any factor other than sex. The Equal Pay Act covers all employers regardless of the number of employees. Moreover, both private and public employers, including states, are subject to the Act.

Additionally, a number of court cases have established that jobs need be only substantially equal not identical in order to be compared for purposes of the Equal Pay Act of 1963 (see, e.g., *Brennan v. Prince William Hospital Corp.*, 503 F.2d 282, 285, 291 (4th Cir. 1974), cert. denied, 420 U.S. 972 (1975); *Shultz v. Wheaton Glass Co.*, 421 F.2d 259 (3d. Cir.),

cert. denied, 398 U.S. 905 (1970)). Some states have also enacted statutes that provide for equal pay for equal or substantially equal work; for example, Georgia and New York have such legislation (26 Ga. Code Annat. SS 34-5-1 — 34-5-7; 30 N.Y. Laws Annot. §§ 194-198a). Collective bargaining agreements between employers and employees also incorporate such standards.

Discrimination in employment and occupation under Title VII of the Civil Rights Act of 1964, by the terms of its provisions, is generally defined as the making of employment decisions — which includes hiring or firing; compensation, assignment, or classification of employees; transfer, promotion, lay-off, or recall; job advertisements; recruitment; testing; use of company facilities; training and apprenticeship programs; fringe benefits; pay retirement plans, and disability leave; or other terms and conditions of employment on the basis of race, color, religion, sex, national origin, disability, or age.

Discrimination in employment and occupation, as it specifically relates to equal remuneration, is not defined in Title VII of the Civil Rights Act of 1964. However, the EEOC generally has defined sex-based wage discrimination as the discriminatory application of a wage policy or system, the discriminatory use of wage-setting techniques, such as job evaluations or market surveys, barriers to equal access to jobs based on sex, or the intentionally depression of wages based on the sex of the occupants of the job.

With respect to the manner in which discrimination is defined under the Equal Pay Act, discrimination in respect of equal remuneration is not expressly defined in that statute. However, the EEOC generally defines such sex-based wage discrimination as the making of employment decisions resulting in the payment of greater wages to male employees when such payment is not related to any extra tasks or when such employees receive higher pay without doing the extra work, and the basic jobs are substantially equal to those of the women employees.

Under Title VII of the Civil Rights Act of 1964, employers with 14 or fewer employees are excluded from the implementation of the principle and right related to the elimination of discrimination in employment and occupation (see 42 U.S.C. § 2000e). The Civil Rights Act of 1964 also excludes employers with respect to the employment of aliens outside any state, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities (see 42 U.S.C. § 2000e-1(a)). Section 2000e-2 and section 2000e-3 of the Civil Rights Act of 1964, prohibit certain employment practices, including discrimination by employers against any individual with respect to the compensation, terms, conditions, or privileges of employment, because of such individual's gender, is not applicable to employers, corporations and certain committees, organizations and programs with respect to an employee in a workplace in a foreign country if compliance with this section would violate the law of the foreign country in which such workplace is located (see 42 U.S.C. § 2000e-1(b)).

Additionally, other categories of persons are excluded from the implementation of the principle and right related to the elimination of discrimination, as reflected in the Equal Pay Act of 1963. Specifically, the Equal Pay Act of 1963, amending the Fair Labor Standards Act of 1938 [FLSA] (29 U.S.C. § 206(d)) is applicable only to those individuals subject to the provisions of the FLSA. Pursuant to section 3(e)(4)(A) of the FLSA (29 U.S.C. § 203(e)(4)(A)), the provisions of that statute are not applicable to any individual who volunteers to perform services for a public agency which is a state, a political subdivision of a state, or an interstate governmental agency if the individual receives no

compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered, or such services are not the same type of services which the individual is employed to perform for such public agency. Therefore, the Equal Pay Act of 1963 is not applicable to any such individual.

Title VII of the Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act only cover private employers, state and local governments, and education institutions that employ 15 or more employees. The Age Discrimination in Employment Act only covers private employers with 20 or more employees. However, Title VII's non-discrimination policy is also supplemented by other federal statutes and executive orders where there is no small employer exception. These include section 1981 of the Civil Rights Act of 1871 (race) and Executive Order 11246 (race and sex). Section 102 of the Immigration Reform and Control Act of 1986 (national origin), for example, excepts employers with fewer than three employees. In addition, 47 of the 50 states have non-discrimination statutes similar to Title VII. Of these, 34 have lower employee thresholds of coverage than does Title VII. Finally, various state and local discrimination laws, as well as federal administrative policies, permit the application of the national non-discrimination policy to employers with fewer than 15 employees. So effectively, the United States policy concerning employment discrimination includes small employers and independent contractors.

The federal Civil Rights Acts typically provide statutory remedies; for example, under the 1871 Act (42 U.S.C. § 983), a person complaining of discrimination resulting from actions taken under color of state law may seek civil damages and injunctive relief against the responsible state official. Federal officials may be sued for damages directly under provisions of the Constitution (damages suits against federal officials arising out of alleged sex discrimination in violation of equal protection requirements may be brought directly under the Fifth Amendment).

The Civil Rights Division of the United States Department of Justice has principal responsibility for the effective enforcement of federal civil rights laws, in particular for the Civil Rights Acts of 1964 and 1991 and Executive Order No. 12250 (appendix CC (not reproduced)) (which requires all executive departments and agencies to eliminate racial, religious and sex discrimination). Where Congress has so provided, the federal Government may itself bring civil actions to enjoin acts or patterns of conduct that violate constitutional rights, and in some instances is empowered to prosecute those who use force or threat of force to violate a person's rights to non-discrimination.

The Equal Employment Opportunity Commission, an independent agency within the executive branch established by the Civil Rights Act of 1964, has oversight and compliance responsibilities concerning the elimination of discrimination based on race, color, religion, sex, national origin, disability or age by private employers in all aspects of the employment relationship. As the principal enforcement agency for employment discrimination, the Commission has undertaken to seek the cooperation of employers' and workers' organizations, as well as others, in promoting acceptance and observance of the United States policy against employment discrimination. The Commission's efforts in this regard include the following.

First, the Commission publishes Notices of Proposed Rulemaking to solicit public comment on the guidelines it adopts to implement federal anti-discrimination laws. The Commission's guidelines or regulations, which are ultimately published in the United States Code of Federal Regulations, are an important source of guidance for employers and

labor organizations, among others, about the requirements of Title VII, the ADA, EPA and ADEA.

Notices of Proposed Rulemaking are published before regulations are put into final form to allow all interested parties to provide input during the drafting process. The Commission's Notices of Proposed Rulemaking ensure that the public is kept fully informed about, and can influence, considerations underlying the adoption of substantive anti-discrimination policies. Commission guidelines that have been adopted through this process include those governing discrimination on the basis of national origin; discrimination on the basis of pregnancy; standards for the validation of employment tests; and standards under the EPA, ADA and ADEA.

When implementing the ADA, for example, the Commission issued an "advance" Notice of Proposed Rulemaking to solicit public input before the Commission had even drafted its proposed rules. Between September and November of 1990, the Commission held 62 input meetings throughout the country to obtain suggestions for the proposed rules. In addition, under the ADEA, the Commission has utilized negotiated rulemaking in which interested parties are called in prior to the issuance of regulation so that the parties and the Commission can negotiate a regulation which reflects, to the greatest extent possible, the legitimate interests of the parties.

Beyond soliciting public input before finalizing its written policy pronouncements, the Commission also has long encouraged employers, unions, and others to express their views through meetings, telephone calls, or correspondence with Commission officials and employees. For example, the Commission has undertaken an extensive and systematic series of outreach meetings designed to involve the public in Commission decisions about the enforcement of federal law. On 4 March 1995, President Clinton issued a memorandum directing agencies, including the Commission, to "promptly convene groups consisting of front line regulators and the people affected by their regulations." In response, the Commission scheduled meetings that included more than 18,000 individuals to discuss how the Commission implements its responsibilities under the different laws it enforces.

Finally, the Commission is required by Presidential mandate to circulate proposed guidelines and regulations affecting federal sector employment to other government agencies. In coordinating with federal agencies, the Commission uses a broad standard in determining which agencies are "affected" to ensure the widest possible circulation. For example, when regulations governing federal sector employment procedures were being developed, all federal agencies were given the opportunity to comment since their development would ultimately affect all agencies' individual employment practices. A similar process was employed in relation to prohibitions of discrimination based on disability because federal agencies would be required to comply with new standards governing their employment activities.

Also, the United States Commission on Civil Rights collects information on discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin or in the administration of justice in such areas as voting rights, enforcement of federal civil rights laws, and equality of opportunity in education, employment and housing. It evaluates federal laws and makes recommendations to the President and the Congress concerning the effectiveness of governmental equal opportunity and civil rights programs.

Other federal departments and agencies also have enforcement responsibilities. For example, within the United States Department of Education, the Office for Civil Rights is

charged with administering and enforcing the civil rights laws related to education. The Office of Civil Rights within the United States Department of Health and Human Services administers laws prohibiting employment-related discrimination in federally assisted health and human services programs.

Additionally, authorities within the United States Department of Labor administer programs dedicated to equality in government contracting. For example, the Office of Federal Contract Compliance Programs (“OFCCP”) is responsible for enforcing Executive Order 11246, as amended. That Executive Order promotes equal opportunities for all persons employed or seeking employment with government contractors or with contractors performing under federally assisted construction contracts, without regard to sex. It also prohibits certain federal contractors and subcontractors from discriminating in employment decisions on various bases, including sex. Pursuant to 29 C.F.R. Part 30, which requires equal opportunity, OFCCP is empowered to investigate complaints, review apprenticeship programs, negotiate resolution of violations, and, when appropriate, refer cases for enforcement action.

The Government Employee Rights Act of 1991 (“GERA”) (2 U.S.C. §§ 1201-1224), provides procedures to protect the right of United States Senate and other government federal employees, with respect to their public employment, to be free from discrimination in employment and occupation. The Office of Senate Fair Employment Practices, pursuant to 2 U.S.C. § 1203, administers these procedures for consideration of alleged violations of the GERA. The hearing board of the Office of Senate Fair Employment Practices is authorized to investigate complaints of alleged violations and may order certain awards provided under Title VII of the Civil Rights Act of 1964 (see 42 U.S.C. §§ 2000e-5, (g), (k)), and may also order awards as would be appropriate if awarded under the Civil Rights Act of 1991 (see 42 U.S.C. §§ 1981, 1981a).

Data and statistics from investigations conducted pursuant to certain of the abovementioned federal statutes become part of various reports, such as the Fair Labor Standards Administration Wage and Hour Division 4-D Report, the Annual Report of the US Department of Labor to Congress, and the Annual Report of the Equal Employment Opportunity Commission to Congress. Information from these investigations and others by various federal agencies also form the basis of lawsuits brought by the United States Department of Labor, the United States Department of Justice, and the United States Equal Employment Opportunity Commission to remedy violations of the Fair Labor Standards Act of 1938, the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, and other laws. Unions and private individuals also assist in enforcement by initiating lawsuits challenging violations of these laws.

Existing United States law further provides extensive remedies and avenues for seeking redress for acts of gender-based wage discrimination. For instance, a person claiming to have been denied a constitutionally protected right, for example under the Due Process or Equal Protection Clauses of the Fifth or Fourteenth Amendments, may assert that right directly in state or federal court.

Finally, the constitutions of 16 states now include provisions for the protection of women’s rights. In addition, most of the states and many large cities have adopted their own statutory and administrative schemes for protecting individuals from discrimination on the basis of gender in fields actively regulated by state and local governments. For example, state constitutions and statutes typically protect individuals from discrimination in housing, employment, public accommodations, government contracting, credit transactions and education. As a result, a particular discriminatory act might well violate federal, state and

local law — each with its own sanction. To varying degrees, states may provide protections which differ from or exceed the minimum requirements of federal law. Where such protections exist, state or municipal law also provides judicial or administrative remedies for victims of discrimination.

Assessment of the factual situation

Relevant indicators and statistics (government sources) include the following:

- Workforce demographics (Department of Commerce Census Bureau and Department of Labor Bureau of Labor Statistics)
- Wage and occupational data for women (Women's Bureau of the Department of Labor)
- Enforcement data, including information relating to investigations and litigation (Equal Employment Opportunity Commission; Department of Justice Civil Rights Division; Department of Labor Wage and Hour Division; and Office of Federal Contract Compliance Programs)

Additionally, the United States Department of Labor, Women's Bureau has conducted a series of studies concerning the impact of various federal employment laws on working women. Such studies have included Title VII of the Civil Rights Act of 1964 and the Equal Pay Act, which are enforced by the EEOC. One such study was issued by the Women's Bureau on 10 June 1998, entitled "Equal Pay: A Thirty-Five Year Perspective" (appendix EE (not reproduced)). This publication provides indicators or statistics accessing the effect of the Equal Pay Act on women in the labor force over the past 35 years and provides data, trends and other factors currently available, including economic, demographic, training and education factors.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Following is a discussion of various federal programs and activities aimed at promoting awareness among all working people of their rights to equal opportunity in employment and at eliminating discrimination in employment and occupation.

EEOC's processing of charges alleging employment discrimination

EEOC's strategically designed administrative enforcement program manages between 75,000 and 80,000 charges that are filed annually, alleging unlawful discrimination in employment. Under the Commission's charge processing system, charges are prioritized into one of three categories for purposes of investigation and resource allocation. Also, the EEOC has launched a mediation-based alternative dispute-resolution program. The mediation program is guided by principles of informed and voluntary participation at all stages, confidential deliberation by all parties, and neutral mediators. The EEOC has made substantial progress in the implementation of its mediation program. From the inception of the program in fiscal year 1996 through the end of fiscal year 1998, EEOC resolved over 2,400 charges through mediation and obtained benefits of approximately \$27.8 million for charging parties.

As a direct result of these initiatives, by the end of fiscal year 1998, the number of charges pending before the EEOC was reduced by 53 per cent, from an all-time high of 111, 345 in the third quarter of fiscal year 1995. However, while EEOC's pending inventory of charges has declined, by the end of fiscal year 1998, there were 52,011 charges still pending before the Commission. This backlog of EEOC charges resulted from limited budgets throughout the 1980s and into the 1990s, when the EEOC's complement of full-time employees fell from a high of 3,390 in 1980, to 2,544 at the end of fiscal year 1998 (see, e.g., "Statement of Paul M. Igasaki, Chairman, US Equal Employment Opportunity Commission Before the Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies Committee on Appropriations US House of Representatives April 1, 1998"). (Attached to original report. Text not reproduced).

To assist in combating this problem, in fiscal year 1999, the United States Congress appropriated additional funds to continue the EEOC's progress in reducing the inventory of charges. As a result, EEOC expects that the number of charges carried into fiscal year 2000 will be approximately 10,000 fewer than those pending at the end of fiscal year 1998. Also, with the additional resources provided by Congress, the agency expects to reduce the 1999 year-end inventory by 15 per cent, which also will substantially reduce the average time charging parties must wait to have their charges resolved (see "Statement for the Record Ida L. Castro, Chairwoman, US Equal Employment Opportunity Commission Submitted to Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies Committee on Appropriations US House of Representatives April 21, 1999"). (Attached, not reproduced).

Elimination of discrimination in employment in the federal sector

The Government of the United States recognizes that there are concerns with respect to the existence of discrimination in employment and occupation in the federal sector and is committed to promoting the elimination of such discrimination. In this regard, an Interagency EEO Task Force on the Federal Sector was launched in October of this year. The Task Force initiative is part of the Administration's continuing effort to cut red tape and streamline agency operations to create a government that works better, costs less, and gets results Americans care about. This Task Force will spark innovation and best practices to reduce bias and discrimination, allowing federal employees to be more productive. The Task Force also will examine the federal sector complaint process. Its main objective is to advance the fairness and efficiency of the EEOC system and stimulate changes that will prevent discrimination in the federal workplace (see EEOC's website — [ww.eeoc.gov/](http://www.eeoc.gov/)).

The applicability of discrimination employment laws to unauthorized and undocumented workers

Until recently, the policy of the Government of the United States concerning the applicability of certain anti-discrimination employment laws to unauthorized and undocumented workers in the United States was not clearly defined. Generally, it has been the position of the EEOC not to enforce such laws under its jurisdiction in cases concerning workers in certain work status. Consequently, unauthorized and undocumented workers in the United States have been particularly vulnerable to employment discrimination and have been denied relief available to other workers, including back pay and other appropriate damages.

To clarify the United States policy on this issue, in October of this year, the EEOC issued a new enforcement policy guidance modifying its position on remedies available to unauthorized and undocumented workers under federal employment discrimination laws.

(See EEOC's website — www.eeoc.gov/, "EEOC Issues Guidance on Remedies for Undocumented Workers Under Laws Prohibiting Employment Discrimination"). The new guidance addresses recent legal developments and explains the basic remedies available to this class of workers under EEOC enforced laws. It also addresses the availability of remedies under those laws. As provided under the new policy guidance, unauthorized and undocumented workers who are subjected to unlawful employment discrimination generally are entitled to the same relief as other victims of discrimination. Also, the new policy guidance emphasizes that anti-discrimination employment laws protect all employees in the United States, regardless of their citizenship or work eligibility. As a result, employers may no more discriminate against unauthorized and undocumented workers than they may discriminate against any other workers. Thus, the Government of the United States is committed to declaring and pursuing a national policy to assure that, in its enforcement of the anti-discrimination employment laws, these classes of workers are protected to the same degree as all other workers.

Additional programs and activities

Information concerning other programs and activities aimed at promoting awareness among all working people of their rights to equal opportunity in employment may be found in the following documents:

- Women's Bureau Strategic Plan FY 1997-2002 and Fair Pay Clearinghouse (<http://www2.dol.gov/dol/wb/>)
- EEOC Enforcement Activities (www.eeoc.gov/)
- Employment Standards Administration Strategic Plan FY 1997-2002 (www.dol.gov/dol/esa/)

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report have been mailed to the US Council for International Business as well as to the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). In addition, the draft report was reviewed by members of the Tripartite Advisory Panel on International Labor Standards, a subgroup of the President's Committee on the ILO which includes representatives from the US Council for International Business and the AFL-CIO.

Observations received from employers' and workers' organizations

No observations have been received.

Annexes (not reproduced)

- A. Equal Pay Act of 1963, 29 U.S.C. § 206(d)
- B. Title VII of the Civil Rights Act of 1964
42 U.S.C. §§ 2000e-2000e-17
- C. Civil Rights Act of 1991,

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- 42 U.S.C. §§ 1981, 1981a, 2 U.S.C. §§ 1201-1207, 1219-1224
- D. Fair Labor Standards Act, 29 U.S.C. § 201 et seq.
 - E. Walsh-Healey Act, 41 U.S.C. §§ 35-45
 - F. Civil Service Reform Act of 1978, 5 U.S.C. §§ 2301, 2301(b)(2)
 - G. Civil Service Reform Act of 1978, 5 U.S.C. § 2301(b)(3)
 - H. Executive Order No. 11478, 34 Fed. Reg. 12985 (1969)
 - I. US Postal Rate Commission in Executive Order No. 11590,
36 Fed. Reg. 7,831 (1971)
 - J. Classification Act 5 U.S.C. § 5101(a)(A)
 - K. Bennett Amendment, 42 U.S.C. § 2000e-2(h)
 - L. Government Employee Rights Act of 1991
2 U.S.C. §§ 1201-1224
 - M. Wagner-Peyser Act of 1933, 29 U.S.C. §§ 49 -51
 - N. National Apprenticeship Act of 1937, 29 U.S.C. §§ 50, 50a, and 50b
 - O. Job Training Partnership Act, 29 U.S.C. § 1501, et seq.
 - P. Carl D. Perkins Vocational Education Act, 20 U.S.C. § 2301, et seq.
 - Q. Women’s Educational Equity Act of 1978
 - R. Workmen’s Compensation Act, 5 U.S.C. § 8101, et seq.
 - S. Unemployment compensation provisions covering federal employees,
5 U.S.C. §§ 8501-23
 - T. Social Security Act, unemployment compensation provisions,
42 U.S.C. §§ 501-4
 - U. Social Security Act, federal old-age, survivors’ and disability insurance provisions
42 U.S.C. §§ 401-33
 - V. Child Support Enforcement Amendments of 1984, 42 U.S.C. §§ 602,
603, 606, 651-658, 664, 667, 671, 1315, and 1396a
 - W. Executive Order No. 11246
 - X. Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b(a)(1)
 - Y. Civil Service Reform Act of 1978, 5 U.S.C. § 2302(b)(1)(E)
 - Z. Age Discrimination Employment Act, 29 U.S.C. §§ 621-631
 - AA. Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq.
 - BB. Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
 - CC. Executive Order No. 12250
 - DD. Office of Federal Contract Compliance Programs
 - EE. Equal Pay: A Thirty-Five Year Perspective
 - FF. Paycheck Fairness Act, H.R.541, S.8.