



# THE HUMAN RIGHTS AND BUSINESS PAGES

## NON-DISCRIMINATION AND EQUALITY

Two metalworkers in the harbour of Rotterdam, the Netherlands, 2005.  
©Jan van der Ploeg

Amnesty International  
section the Netherlands  
Keizersgracht 177  
P.O. Box 1968  
1000 BZ Amsterdam  
the Netherlands  
T: 0031 (0) 20 626 44 36  
F: 0031 (0) 20 624 08 89  
E: [amnesty@amnesty.nl](mailto:amnesty@amnesty.nl)  
I: [www.amnesty.nl](http://www.amnesty.nl)  
Economic Relations Department  
06/07



*Support our fight for human rights*

# CONTENTS

	<b>PREFACE</b> .....	<b>5</b>
	<b>SUMMARY</b> .....	<b>6</b>
<b>1.</b>	<b>INTRODUCTION</b> .....	<b>6</b>
<b>2.</b>	<b>STATES, COMPANIES AND HUMAN RIGHTS</b> .....	<b>9</b>
<b>3.</b>	<b>DISCRIMINATION: A LEGAL FRAMEWORK</b> .....	<b>14</b>
<b>4.</b>	<b>FROM POLICY TO PRACTICE – DILEMMAS IN THE WORKPLACE</b> .....	<b>18</b>
<b>5.</b>	<b>CASE STUDIES</b> .....	<b>25</b>
<b>6.</b>	<b>RECOMMENDATIONS</b> .....	<b>31</b>
	<b>ENDNOTES</b> .....	<b>34</b>
	<b>BIBLIOGRAPHY</b> .....	<b>38</b>

# SUMMARY

The International Labour Organization (ILO) defines discrimination in employment as follows: *"To discriminate in employment and occupation is to treat people differently on the basis of race, colour, or sex, among other reasons, irrespective of their capabilities of the job."*<sup>1</sup> The organisation considers freedom from discrimination as one of its fundamental objectives.

Discrimination does not spring exclusively from government policies or actions by the state that effectively marginalize groups of peoples or individuals. Discrimination also results, to a considerable extent, from acts by non-state actors, like companies. In these circumstances, the government is obliged to take action to ensure that the individual citizen is not discriminated against.

*What could companies do to respect the freedom from discrimination in the workplace?*

Companies need to ensure that they do not discriminate directly, for instance by excluding certain groups of people from employment or by systematically disadvantaging workers based on grounds other than objective merits. Questions raised in this publication include how to objectify the concept of merit? One of the situations that is discussed, is that of Dalits in India. This group of people is systematically discriminated against. A vicious circle emerges; since this group often has enjoyed less chances for education Dalits are less equipped for higher and middle-income job positions.

*What could companies do to protect the freedom from discrimination in the workplace?*

Companies need to define policies and take measures against discrimination. They need to communicate these to their employees and partners to ensure that its corporate policies are implemented throughout the organisation. Several companies face scepticism among employees towards non-discrimination policies. Clear communication of standards, training programs and mentoring projects could help to create a climate where discrimination does not play a role. To verify if corporate policies are implemented, a company could install reporting procedures and complaint mechanisms. In this publication experiences from companies show the difficulties they experience regarding the reluctance of people to file complaints. In order to build trust in the system, it is vital companies show that complaints are taken seriously and that management acts accordingly.

*What could companies do to fulfil the freedom from discrimination in the workplace?*

Companies could aim to be a force for good by showing conduct that has a positive impact on the wider society where the company operates. For instance, recruitment policies could be used to create diversity in the workforce that could impact the social structure and behaviour of the wider community. By publicly communicating its corporate stance on the freedom of discrimination, the company could raise public awareness. Marketing practices and public communication could play a role here. In this publication the situation is illustrated of companies operating in conflict and post-conflict situations. In such situations companies could try and reduce ethnic tensions and minimise prejudices among groups by promoting an atmosphere within the companies' direct sphere of influence that could contribute to normalising social relations in the community where the company operates.

Chapter 6 lists a set of recommendations that could help companies to define policies and develop implementation strategies.

# PREFACE

This publication on non-discrimination and equality is the third in a series: *The Human Rights and Business Pages*. Each issue in this series will provide the reader with an introduction to a particular issue in the area of business and human rights. The main aim of this series is to link human rights themes to actual business practices. Earlier editions focused on the rights to freedom from forced labour and freedom of association. The current publication aims to inform companies about the right to freedom from discrimination and its consequences for companies in their daily business activities. We hope that as a synthesis of expertise on human rights and actual business experience, it will be helpful for those formulating corporate policies on discrimination.

*The Human Rights and Business Pages* series is published by the Dutch section of Amnesty International. In producing this series, Amnesty International-Netherlands has collaborated and consulted with companies that participate in the section's Round Table. The Round Table's primary objective is to provide a forum for (currently) fifteen multinationals<sup>2</sup> and Amnesty International to assess the best ways in which companies can meet their human rights responsibilities. It also aims to contribute to awareness within the Dutch business community of the importance of human rights as an essential element of company policy, and to promote best practice in fulfilling these responsibilities. While the Round Table meets four times a year, separate working groups explore human rights themes more thoroughly throughout the year.

This document places the right to freedom from discrimination within the context of the workplace. In this introduction the definition and scope of discrimination is given. In chapter 2 the obligations – both direct and indirect – that stem from human rights law are discussed, including the role and responsibilities companies have. Chapter 3 describes the international legal framework with respect to the right to freedom from discrimination. This Chapter also contains information on the European regional legal framework and points to the fact that there are numerous non-legislative regulations and initiatives in existence aimed at tackling discrimination. Chapter 4 seeks to show how non-discrimination policies can be and have been implemented, while highlighting a few of the particular problems that can arise. To illustrate the challenges of implementation, case studies are included in Chapter 5, focusing in particular on the challenges of implementing non-discrimination policies in different settings. A set of recommendations to companies is provided at the end of this document that we hope will help companies define policies and develop effective implementation strategies.

### What is discrimination?

Human rights apply to all people simply because they are human. Yet some people, or groups of people, face particular difficulties in realising their rights because of who they are or what they believe. People are discriminated against on a wide range of discrimination grounds such as their gender, race, ethnicity, lack of citizenship, sexual orientation, health, property, age or disability. Many people suffer from discrimination on a number of grounds at the same time. This is often referred to as ‘multiple discrimination’ or ‘intersectional discrimination’. Discrimination is an attack on the very notion of human rights – a denial of every human being’s equality in dignity and worth.

Discrimination may **directly** result from discriminatory legislation or regulations, in which an explicit distinction is made on the basis of ethnic background for example. The International Labour Organisation (ILO) states “Discrimination is direct when regulations, laws and policies explicitly exclude or disadvantage workers on the basis of characteristics such as political opinion, marital status or sex. (...) Job advertisements that exclude or overtly discourage applications from married workers or people over a certain age or of a certain colour/complexion are other examples of direct discrimination.”

Legislation or regulations may also **indirectly** discriminate against particular groups of people. Governments as well as non-state actors such as companies may sustain discriminatory practices even if they do not **intend** to do so. “Indirect discrimination may occur when apparently neutral rules and practices have negative effects on a disproportionate number of members of a particular group irrespective of whether or not they meet the requirements of the job.”<sup>3</sup>

### The effects of discrimination

Being discriminated is an abuse of a person’s dignity and worth. In addition, people who are discriminated against will have increasing difficulty realizing other human rights like access to health care facilities, access to housing, to work, to a fair trial, to redress, etc. Minority groups discriminated against will have more risk of being tortured in police custody or being bullied by policemen on the street.

## **Discrimination in the workplace**

The ILO defines discrimination in employment as follows: "To discriminate in employment and occupation is to treat people differently on the basis of race, colour, or sex, among other reasons, irrespective of their capabilities for the job."<sup>4</sup> The ILO considers freedom from discrimination as one of its fundamental objectives.

Discrimination can have its effect on access to employment, access to a particular occupation or chances of promotion. It can occur in conditions of employment like remuneration, working hours, paid holidays, maternity leave, social security or health and safety. There can also be incidents of employees discriminating against each other and discrimination can lead to harassment.

There are circumstances where employers deliberately discriminate on various grounds. In most circumstances however, discrimination will not be overt, but rather the result of prevailing cultural, social or economic norms and practices. It may also arise from the application of particular policies, which on the face of things appear neutral but in their effect are detrimental to one group or another. For example, if an employer advertises only in a particular language, or claims a job demands particularly stringent qualifications, the effect may be that members of one group are less competent to apply for the job. In such circumstances an employer should be able to justify the imposition of the requirement. Discrimination in employment can occur - as identified by the International Finance Corporation (the private sector arm of the World Bank<sup>5</sup>) - during recruitment of new workers, in the process of retrenchment and restructuring, in decisions concerning payment and promotion, in decisions regarding dismissal, in opportunities for training and development, in harassment at work and in relation to (lack of) facilities for maternity protection.<sup>6</sup>

*Human Rights Chamber under the Dayton Agreement<sup>7</sup>:*

*"Any differential treatment is discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized."*

## **The scope of the right to freedom from discrimination**

The right to freedom from discrimination as discussed in this publication focuses on equal treatment. The right to freedom of discrimination and the right to equal treatment are interlinked. No one is allowed to discriminate and sometimes extra measures are needed to guarantee that people have *equal opportunities*. For instance, guaranteeing *equal opportunities for all children to primary education* may mean that special measures are needed for disabled children or for children with parents not able to pay school fees. Or a company may be compelled to provide special measures for women to make sure they are not discriminated against based on their role bearing children.

A company can add something extra by applying affirmative action instruments that seek to support particular groups or individuals to ensure they can obtain their equal enjoyment of rights.<sup>8</sup> For instance, to be able to achieve a diverse workforce extra measures are needed to make sure certain minority groups are represented in the company. IBM, for example, includes in its definition of affirmative action on its website “taking steps to ensure that everyone is allowed to compete on an equal basis. It provides practical assistance to people in groups historically excluded from participating in our economic system.” It further emphasises that “the intent is not to provide advantage, but to eliminate disadvantage.”

### What are human rights?

Human rights are those rights that people have as a consequence of being human. They do not need to be given, bought, earned or inherited. Human rights are those basic standards without which people cannot live in dignity. The foundation of international human rights standards is the *Universal Declaration of Human Rights* (UDHR), adopted on 10 December 1948 by the General Assembly of the United Nations (UN).<sup>9</sup> The UDHR has inspired and formed the basis of numerous subsequent standards adopted by the UN and other international organisations that have defined in greater detail the scope and content of international human rights law.

International human rights law requires states, not companies, to ratify conventions, protocols and other human rights instruments. States are therefore accountable for compliance with human rights treaties, some of which are monitored by specific bodies set up by the UN. Nonetheless, the UDHR in its preamble calls on “every individual and every organ of society” to play its part in securing the observance of the rights enshrined in it.

*Preamble of the Universal Declaration of Human Rights:*

*“... the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and **every organ of society**, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”*

There is growing corporate and public awareness that corporate reputation is at risk if companies become implicated in human rights violations and abuses. The so-called ‘licence to operate’ needs to be gained and continually justified. The benefits of integrating human rights into mainstream corporate business practices are not easy to calculate, but are generally acknowledged. More and more, (multinational) companies are taking human rights considerations into account in their operations. In March 2007 the Business and Human Rights Resource Centre claimed that there are 112 companies with a human rights policy statement.<sup>10</sup> Financial institutions have included human rights considerations in their credit lending decisions. Some companies routinely carry out human rights compliance checks as part of a due diligence process when making new investment decisions in a country. Multinational companies sometimes prescribe uniform rules of behaviour for their operating companies, in particular with regard to human rights issues. They are able to monitor compliance through periodic social audits (although only a few companies carry out periodic audits). Some companies have programmes for their suppliers to make sure that their business partners are aware of human rights issues and comply with the relevant standards.

## **The impact of international human rights obligations on companies**

In fulfilling their duty to protect rights, states need to take steps – including the enactment of laws and regulations and other mechanisms – to regulate and monitor the activities of companies. If a state fails to act to prevent human rights abuses or to investigate and punish abuses after they occur, the state can itself be held responsible for the violation.<sup>11</sup>

Since international human rights law has been widely incorporated in national legislation (as part of a country's compliance on ratification of human rights treaties), many companies are already subject to laws that regulate them in relation to human rights. Under these circumstances, individual employees may bring cases before national courts and the company can be prosecuted. This makes international human rights law *indirectly* applicable to companies via the national legislature (see also Chapter 3 below). In situations where relevant national law is absent, litigation is increasingly being used at an international level in the context of multinational enterprises to establish liability for human rights abuses.<sup>12</sup> SustainAbility, a UK consulting company, writes in a 2004 report: "Human Rights lawyers are increasingly turning to litigation as a tool for change. Notably, courts in the US and UK are becoming more willing to hear cases where the violation occurred outside of the court's geographic location. And national courts are increasingly sensitive to human rights claims."<sup>13</sup> "The laws of Canada, France, Norway, the United Kingdom and the United States of America all have legal frameworks that permit businesses to be held liable under civil or criminal law for activities of such businesses when operating abroad."<sup>14</sup>

International law imposes some duties directly on non-governmental bodies, such as companies and other private actors. For example non-governmental bodies are prohibited under customary international law and under certain treaties from (contributing to) committing crimes such as piracy, genocide, war crimes and crimes against humanity. The extent of the liability of non-governmental bodies under customary international law is highly uncertain. Currently, companies cannot be held liable under international criminal law in international courts. Management or employees, however, can be prosecuted before international courts and tribunals under international criminal law.

This does not exonerate companies from moral scrutiny and responsibilities with regard to human rights. Many companies therefore refer to the need to comply with national laws, including national human rights legislation, but international and national regulation (in certain countries) may diverge at certain issues. Some companies therefore refer in their policies to both international and national law and state that they will abide by the strictest one in case of conflicting legislation.

### **Developments in the United Nations – work in progress**

*The United Nations Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*<sup>15</sup> was adopted by the UN Sub-Commission on the Promotion and Protection of Human Rights in its 2003 session. The document includes a comprehensive outline of human rights duties for companies. In April 2004, the UN Commission on Human Rights considered the document and, by consensus, noted the importance of the issue of corporate human rights responsibility. In 2005 the Commission identified existing gaps in current regulations and the need for clear standards

with respect to corporate human rights obligations. It was agreed to appoint a Special Representative of the UN Secretary-General. The Special Representative on the issue of Human Rights, Transnational Corporations and Other Business Enterprises has been mandated to identify standards of corporate accountability for businesses; “to elaborate on the role of states in effectively regulating the role of businesses, including through international cooperation; to research and clarify concepts such as ‘complicity’ and ‘sphere of influence’; to develop materials and methodologies for undertaking human rights impact assessments of business activities; and to compile a compendium of best practices of states and businesses.”

### **Different human rights obligations for states and companies**

Governments are obliged to take action to ensure that the rights of the individual citizen – including the right to be free from discrimination - are not abused. In other words, apart from the obligation to **respect** the right to freedom from discrimination and other rights, there rests a heavy burden on the state to **protect** and **fulfil** these rights. This positive obligation requires governments to regulate and monitor the practices of non-state actors. While it is clear that companies have a different responsibility for human rights than governments, that responsibility is nevertheless significant. Distinguishing between respecting, protecting and fulfilling human rights might help to clarify the responsibilities of companies in relation to human rights.<sup>16</sup>

#### **1 Respecting human rights**

The government’s obligation to respect human rights requires states to refrain from interfering directly or indirectly with people’s enjoyment of human rights. This is an immediate obligation. It includes respecting efforts people themselves take to realise their rights. Governments must not torture, unduly inhibit the right to strike, arbitrarily close private schools teaching in minority languages, or carry out forced evictions without due process of law or providing alternative accommodation, for example.<sup>17</sup> The ‘obligation to respect’ human rights is a negative obligation not to violate human rights. One could translate this into a corporate obligation to abstain from direct interference with the rights of its employees and others within its direct sphere of influence. Academics have defined this concept as: A corporation should abstain from acts independently or through participation that result in violations of the human rights of individuals.<sup>18</sup>

#### **2 Protecting human rights**

Under the obligation to protect human rights, states must prevent, investigate, punish and ensure redress for the harm caused by abuses of human rights by third parties – private individuals, commercial enterprises or other non-state actors. This is an immediate obligation. Governments must regulate and monitor, for instance, corporate use of private security firms, potentially hazardous industrial emissions, the treatment of workers by their employers, and the adequacy and appropriateness of services that the state delegates or privatises, including private medical practices and private schools.<sup>19</sup> The ‘obligation to protect’ human rights could be interpreted as ‘the responsibility to take due care.’ This concept is positive in character. It could be said that within their direct sphere of influence, companies are expected to take measures, through contracts or other means (such as codes of conduct), to ensure that their partners do not abuse human rights.

### 3 Fulfilling human rights

States have an obligation to fulfil human rights by taking legislative, administrative, budgetary, judicial and other steps towards the full realization of human rights. This obligation includes duties to facilitate (increase access to resources and means of attaining rights) and provide (ensure that the whole population may realize their rights where they are unable to do so themselves). The authorities must, for example, provide defendants with any necessary interpretation so that they can understand court proceedings, or introduce meaningful vocational training to ensure that students benefit from education. Above all, governments must give priority to meeting the minimum essential levels of each right, especially for the most vulnerable.<sup>20</sup> States are primarily responsible for the obligation to fulfil human rights. However, one could argue that a corporation has a degree of (moral) responsibility towards society that goes beyond respecting and protecting human rights. For instance, when a company operates in a territory where the state is unable to fulfil the rights of its people, a company could be asked to act in order to ensure that individuals have access to those resources needed for survival.

Report of the United Nations High Commissioner on Human Rights on the responsibilities of transnational corporations and related business enterprises with regard to human rights, 2005, p. 4-5:

#### **Existing initiatives and standards**

*Initiatives and standards relevant to corporate social responsibility have increased rapidly over the last 15 years. The consultation process for the Report of the UNHCHR alone identified over 200 existing initiatives and standards. Annex II of the Report contains a description of the initiatives and standards that stakeholders raised most frequently in the consultation process. Existing initiatives and standards can be categorized as follows:*

- a International instruments.** *International instruments such as treaties and declarations can be directed at States but are of relevance to business - such as the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions - and directed specifically at business - such as the International Labour Organization Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the OECD Guidelines for Multinational Enterprises;*
- b Nationally based standards.** *Legislative measures at the national level include constitutional provisions, national laws and national regulations of relevance to business activities. Nationally based standards can also have extraterritorial effect, such as the United States Alien Tort Claims Act;*
- c Certification schemes.** *Certification schemes are programmes established by an organization, group or network that require adherence to a set of principles. Upon adherence, the scheme is generally monitored independently to ensure compliance. The Worldwide Responsible Apparel Production (WRAP) certification programme, the SA8000 certification scheme and the Kimberley Process Certification Scheme are examples;*
- d Voluntary initiatives.** *Voluntary initiatives include codes of conduct, directives, policies, third-party and self-reporting initiatives established by individual companies, groups of companies, intergovernmental organizations or civil society groups and adopted*

by business on a voluntary basis. The Secretary-General's United Nations Global Compact provides an example of a voluntary initiative backed by the United Nations. Intergovernmental voluntary initiatives include the Voluntary Principles on Security and Human Rights for the extractive and energy sectors and the Extractive Industries Transparency Initiative. Non-governmental voluntary initiatives include the Global Sullivan Principles, the Caux Round Table Principles for Business and International Peace Operations Associations Code of Conduct. As part of the UN's consultation process, individual companies - BASF, BP, Gap, Nexen, Pfizer, Rio Tinto, Shell, SONOFON, Storebrand and Telefonica - provided information on their voluntary initiatives;

- e Mainstream financial indices.** These are sets of social and environmental indices based on objective criteria against which companies are monitored as a means of changing the nature of business activities through investors and markets. Examples include the FTSE4Good Index and the Goldman Sachs Energy Environmental and Social Index;
- f Tools, meetings and other initiatives.** These initiatives seek to promote greater understanding of and respect for human rights in a variety of forms including methodologies for undertaking human rights impact assessments, management tools, training manuals, workshops, pilot projects, multi-stakeholder consultations, public-private partnerships and so on. The Business Leaders' Initiative for Human Rights (BLIHR) and the Danish Institute for Human Rights and Business Project represent examples in this category.

# 3

## DISCRIMINATION: A LEGAL AND REGULATORY FRAMEWORK

### International law

International human rights law provides a comprehensive framework for the protection of the right to freedom from discrimination. While its application (and enforceability) applies most directly to states, companies, as 'organs of society', should nonetheless be aware of its effect as a body of law that is of universal relevance.

Article 2 of the UDHR states that everyone is entitled to the rights it proclaims "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". This principle is reflected in the International Covenant on Civil and Political Rights (ICCPR)<sup>21</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR), and virtually every other major international and regional human rights instrument, as well as in the UN Charter<sup>22</sup>. Over 80 percent of the world's states have ratified the ICCPR<sup>23</sup> and/or the ICESCR<sup>24</sup>.

In addition to these two treaties, member states of the United Nations have expanded on the right to freedom from discrimination in the *International Convention on the Elimination of all forms of Racial Discrimination* (CERD)<sup>25</sup> and the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW).<sup>26</sup> For example Article 2(d) of CERD provides that "Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization." Article 11 of CEDAW provides that women should have the same rights as men in relation to work.

Both CERD and CEDAW are monitored by UN Committees that require state parties to report on compliance. Those Committees periodically examine these reports and recommendations made to state parties as to how they can better protect rights. In addition, individuals can submit complaints to the Committees concerning discriminatory practices by states including failure to protect against discrimination by non-state actors.<sup>27</sup>

### Danish Bank accused of discriminatory practices

In 1997, a Tunisian national filed a complaint with the CERD Committee against Denmark. This individual had been refused a bank loan "on the sole ground of his non-Danish nationality and was told that the nationality requirement was motivated by the need to ensure that the loan was repaid."<sup>28</sup> The Committee found that "nationality is not the most appropriate requisite when investigating a person's will or capacity to reimburse a loan." The Danish authorities were found to have failed to investigate properly the alleged discrimination by the non-state actor. The Committee found that Denmark had violated the Convention.<sup>29</sup>

This case illustrates the words of Andrew Clapham, professor in international law: "not only does the Convention extend to the private sector, but the discrimination obligations for the non-state actor also extend to indirect discrimination. The bank did not discriminate on grounds of race as such: their policy related to nationality. Nevertheless, the complaint demanded that the bank and the authorities examine the indirect effect of the policy to ascertain whether there was racial discrimination. The complaint admits that the policy might be justified, but that it was for the private body and the public authorities to properly ensure that there were no unintended effects that would amount to racial discrimination."<sup>30</sup>

Apart from consequences resulting from these UN treaties, companies could also be confronted with governments taking measures implementing relevant *Conventions of the International Labour Organisation (ILO)*.<sup>31</sup> These Conventions (i.e. treaties that are legally binding for ratifying states) have been formulated by the UN agency in which workers and employers organisations are represented alongside states. The elimination of discrimination is a core labour right and the obligation to protect this right is imposed on ILO members, including employer organisations and their members, regardless of any Conventions.<sup>32</sup>

The *ILO Discrimination Convention* and the *ILO Equal Remuneration Convention* provide practical definitions on discrimination in the employment sphere. For instance, the Discrimination Convention (No. 111) requires governments, in co-operation with employers' and workers' organisations, to pursue national policies to eliminate discrimination that "has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation."<sup>33</sup> Exceptions to the non-discrimination principle are solely admitted where distinctions on these grounds are among the inherent requirements of a particular job. The Equal Remuneration Convention (No.100) provides that ratifying states should – by means appropriate to methods in operation for determining rates of remuneration – promote and, insofar as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women for work of equal value. This implies that rates of remuneration must be determined without reference to gender.<sup>34</sup>

### **Regional legal frameworks**

- **Companies operating within Council of Europe member states**

Member states of the Council of Europe<sup>35</sup> must ensure that rights to which they have committed themselves by ratifying the *European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)* are guaranteed "without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Companies within the Council of Europe that operate in a manner that is seen to be discriminatory may be confronted with complaints filed by individuals alleging a failure by the state to secure the right to non-discrimination.<sup>36</sup> In the event that the European Court of Human Rights (established to enforce the European Convention) finds that a business practice is discriminatory, the relevant state will be required to ensure that the company concerned takes corrective measures.

- **Companies operating within European Union member states**

Within the European Union, companies face quite extensive regulation with respect to the right to non-discrimination. In 2000 the European Council adopted two directives<sup>37</sup> that have raised significantly the level of protection against discrimination across the EU. The first directive, adopted in June, bans direct and indirect discrimination, as well as harassment and instructions to discriminate, on grounds of racial or ethnic origin. It covers employment, training, education, social security, healthcare, housing and access to goods and services. The second directive, adopted in November, establishes a general framework for equal treatment in employment and occupation as well as vocational training. It deals with direct and indirect discrimination, as well as harassment and includes important provisions concerning reasonable accommodation, with a view to promoting access of persons with disabilities to employment and training. In 2006 a new consolidated gender

directive was adopted, in which many of the existing gender equality directives were brought together.<sup>38</sup>

EU directives are obligatory for all member states. Though states have some leeway in the manner of implementation, the result should be the same in all countries. The Directives have led to significant changes to national law in all member states, even for those that already had comprehensive anti-discrimination legislation. For the first time in many member states, the Directives have introduced protection against discrimination on certain grounds. They have required the introduction of new definitions and legal concepts and have also led to the establishment of new specialised equality bodies.<sup>39</sup>

The three EU Directives mentioned above contain some important principles that warrant particular attention. Firstly, they reverse burden of proof of discrimination in favour of the victim.<sup>40</sup> Secondly, the Directives provide for some exceptions to the principle of non-discrimination: "by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out difference of treatment is proportionate".<sup>41</sup> The Directives further confirm that positive action is legitimate "to prevent or compensate for disadvantages linked to racial or ethnic origin".<sup>42</sup> Finally, the Directives stipulate that if collective agreements or individual contracts contain discriminatory provisions, these could be declared null and void.<sup>43</sup>

### **National legal frameworks**

As mentioned previously, those countries that have ratified relevant UN and ILO treaties or regional standards are obliged to incorporate them into national law. While the degree of incorporation (and implementation of provisions) can vary widely, where national legislation reflects non-discrimination principles, companies are bound to uphold them. International human rights standards can provide an important benchmark against which national legal systems can be assessed.

A study by the ILO notes a shift from laws that prohibit discrimination to laws that provide for a positive duty to prevent discrimination and promote equality.<sup>44</sup> "A growing number of countries have moved away from a legal approach exclusively based on the imposition of the negative duty not to discriminate to a broader one encompassing a positive duty to prevent discrimination and promote equality. While an anti-discrimination legal model based on prohibiting discriminatory practices has proven successful in eliminating the most blatant forms of discrimination, such as direct pay discrimination, it has encountered less success with more subtle forms, such as occupational segregation. Moreover, its effectiveness in eliminating discrimination is heavily dependent on litigation and this prevents it from reaching those workers who are the most disadvantaged and vulnerable to discrimination. These workers tend not to make use of the law to have redress because of ignorance or fear of retaliation."<sup>45</sup>

### **A non-legal framework**

Apart from the national regulations through which states implement international standards, numerous voluntary initiatives are in existence that have often been established in co-operation with companies themselves, giving practical directions for appropriate business practices.

Many of these have been established at an international level and some of them are referred to previously. For instance, the *Tripartite Declaration of Principles of the International Labour Organisation* and the *OECD Guidelines for Multinational Enterprises* provide relevant instructions for companies. *The (draft) Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* were adopted by the UN Sub-commission on the Promotion and Protection of Human Rights in 2003. These articles provide a useful guideline regarding discrimination in the corporate context. Essentially, the ILO and UN based instruments state that “corporations (..) shall ensure equality of opportunity and treatment, (..)for the purpose of eliminating discrimination based on (..) [any] status of the individual unrelated to the inherent requirements to perform the job, or of complying with special measures designed to overcome past discrimination against certain groups.”<sup>46</sup>

**Non-discrimination policies**

Many companies have included references to discrimination in their business principles, codes of conduct and global policy statements.

Several examples (to be found on the websites of these companies) are included here:

**DSM values; Respect for Peoples**

*We do not discriminate in any manner on the basis of race, ethnic background, age, religion, gender, sexual orientation or disability.*

**Philips - General Business Principles (GDP); 4.3 Equal and fair treatment**

*Every employee has equal opportunities and will be treated equally in employment and occupation regardless of personal background, race, gender, nationality, age, sexual preference or religious belief. The same applies to the recruitment of employees. Philips strives to offer equal pay for equal work performed at equal levels at similar locations. No form of harassment or discrimination will be tolerated.*

**Philips- GBP Directives; 1.5 Discrimination**

*Every employee has equal opportunities and will be treated equally in employment and occupation. Philips offers equal pay for equal work performed at equal levels at similar locations. No form of harassment or discrimination in respect of employment and occupation will be tolerated, such as discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

**Heineken- Business Principles**

*Heineken will keep in place a policy that is aimed at the development of skills in line with the natural talents of its employees. For the appointment or career prospects of employees, Heineken will pay attention only to the suitability of the candidate (education, personality, skills, working experience) and his or her legitimate demands. Heineken will base its decisions regarding (future) employees solely on the basis of objective criteria. It respects reasonable personal convictions or qualities of (future) employees.*

**Akzo Nobel - Business Principles specifications; Human rights - Discrimination**

*Our employees must be recruited, selected, and promoted on the basis of objective and non-discriminatory criteria. No harassment or discrimination of any kind will be tolerated, such as discrimination based on race, colour, sex, or religion. In the case of disability or chronic illness, including HIV/AIDS, employees should be able to work for as long as medically fit in available, appropriate work, avoiding prejudice and discrimination in the process (Corp. Directive on Disability, Chronic Illness, HIV/AIDS).*

**Rabobank - Equal Employment Opportunity**

*Rabobank provides equal opportunity in employment to all employees and applicants for employment. No person shall be discriminated against in employment because of race, color, creed, religion, national origin, alienage or citizenship status (if legally eligible for employment), age, sex, sexual orientation, marital status, disability or any other status protected by applicable law.*

Elements of the definition of discrimination as used in the ILO Discrimination Convention (No.111) can be found in all the above statements. Similarly, elements of the ILO Equal Remuneration Convention (No.100) are mentioned in the statement by Philips. However, it is notable that hardly any of these policies specifically refer to relevant international standards. Specific references to international standards such as the ILO Conventions would clarify the logic, meaning and use of terminology within these policies. Using such standard definitions would contribute to a common understanding of what non-discrimination policies are trying to achieve and avoid the danger of cultural interpretation of various concepts such as the “natural talents of employees”.

### **The business case**

A September 2005 publication by the European Commission<sup>47</sup> reports the results of two surveys (in total 919 responses) carried out during 2005 among companies in the 25 member states of the European Union. It states that an increasing number of European companies are adopting diversity and equality strategies; not only for ethical and legal reasons but also for the business benefits they are expected to deliver. It concludes that among the most important of these benefits are enhanced employee recruitment and retention of a wider pool of high quality workers, improved corporate image and reputation, greater innovation and enhanced marketing opportunities. Reasons given by the companies to develop non-discrimination and diversity policies include: 1. Resolving labour shortages and retaining high quality staff partly due to Europe’s changing demographics; 2. Its ability to enhance a company’s reputation and image and its standing with local communities; 3. The opportunity of workplace diversity to improve innovation, leading to new products and services and potential new markets (innovation and creativity as benefit); 4. Internal diversity is leading to marketing and product developments that cater for new market segments and traditionally excluded groups.

### **Diversity policies**

In many cases, a company’s non-discrimination policies and diversity programs are interlinked. Diversity policies include all efforts to ensure that the workforce reflects society. At Philips, the term “diversity” is said to stand for its recognition of the individual. The company underlines the differences between people. It recognises that a diverse workforce makes the company “better understand our customers and better identify their needs”, since such a workforce mirrors its worldwide customer base. By the term “inclusion” the company underlines that “each person is valued for his or her distinctive talents (skills, experiences, perspectives, etc)”. It states, “An inclusive working environment engages people, enhances decision-making, and increases creativity and innovation in support of our vision and brand positioning.”<sup>48</sup> Shell stipulates on its website its commitment to diversity and inclusiveness in order “to create a working environment that values differences.” This covers “visible differences such as age, gender, ethnicity and physical appearance, as well as underlying differences in thought styles, religion, nationality and education.”<sup>49</sup>

## **Implementation of policies**

Implementing non-discrimination policies requires substantial and continuing efforts, particularly by corporate management.

These Indicators could be used by corporate management to ensure the implementation of non-discrimination policies and measure their effectiveness:

- Commitment shown: Steering clear of discrimination in the workplace requires a clear written commitment of the board. A business principle about non-discrimination and equality is an essential first step.
- Policies in place: Such a statement needs to be followed up by an intensive implementation policy and strategy and permanent practical enforcement guidelines for staff. (all decisions in the field of hiring, placement, remuneration, advancement, training, discipline and termination decisions should be based on objective factors and be transparent procedures.)
- Specify job descriptions and define objective criteria for recruitment, promotion and wages (make sure women do not have to sign any pledges relating to having children).
- Ideally someone on the board should be appointed to be responsible for the implementation of corporate non-discrimination policies.
- Communication: Clear communication of policies is essential. The business principle and directive need to be communicated through websites or intranet.
- Training given: Employees need to be aware and convinced of the importance of the prohibition of discrimination and the need for non-discrimination policies. Therefore training plays an important role.
- Assessments in place: Companies could choose a strict compliance-driven non-discrimination policy. All business operations could be obliged to file an annual self-assessment with corporate headquarters.
- Reporting mechanisms are essential to provide a clear picture of the issue so that an assessment of the effectiveness of corporate policies can be made and possible patterns of discrimination noted.
- Provide access to complaints mechanisms: Complaints mechanisms and whistle blower systems could play an important role in the assessment of the effectiveness of policies (see below).
- Data available: Data collecting about discrimination is crucial as to be able to identify the effect of your policies and find solutions

## **Challenging elements of implementation**

The concept is straightforward; companies shall ensure equality of opportunity and treatment for the purpose of eliminating discrimination unrelated to the inherent requirements to perform the job.<sup>50</sup> Nevertheless, the experiences of companies that have dealt with discrimination cases show that there are dilemmas in implementing a comprehensive non-discrimination policy. Though the company might not intend to discriminate directly, its policies could indirectly have such an effect. This section briefly discusses a few of the issues that companies are confronted with while implementing these policies. It also contains some practical measures that companies have employed to address these issues.

### **Complaints procedures**

All workers should be able to file a complaint about discrimination without fear of any setbacks in their future career, or even dismissal.

There are at least three mechanisms for filing grievances:

1. In the first, employees can contact their line managers to discuss their concerns and these concerns are handled locally – this is how the majority of cases are dealt with;
2. In the second, employees could contact a trusted representative or an ombudsman, to file their complaint;
3. As a last resort, employees could phone a free hotline that offers them the possibility of reporting serious wrongdoing in their own language with the possibility of anonymity being guaranteed.

Procedures that ensure anonymity of complainants can encourage complainants to file cases. However, there are problems associated with this. In some jurisdictions privacy policies do not permit anonymity and can make complaints difficult to investigate. To build trust in a complaints procedure it is essential that complaints be handled promptly and fairly.

The management in any case needs to show that complaints are taken seriously and are followed up. By publishing best practices on how complaints have been handled and how they have led to changes in policy, trust could be enhanced. The complainant needs to be shown that something has been done about the complaint and be provided with timely feedback.

The widespread reluctance of individuals to file complaints for fear of social stigma needs to be addressed. In May 2006 in the Netherlands the National Bureau against Racial Discrimination (*Landelijk Bureau ter Bestrijding van Rassendiscriminatie*, LBR) and the European Antiracism Network commissioned research on individuals who filed complaints of discrimination. The research found that in the majority of cases there was a negative impact on the complainant and he or she eventually left his or her job. These complaints did not result in an improvement of the overall situation nor a change in policies either.

The large majority of issues are resolved at a local level with line managers. This often means that in many companies complaints are not recorded in a central system, with the result that there is no overview of data on complaints at the senior level. Such a system could provide the management with an insight about the effectiveness of policies. The number of complaints made as such cannot give an accurate picture of the effectiveness of a complaints system, since there are wide variations in the culture of filing complaints.

### **Merit**

Distinction in employment between people based on 'merit', as is mentioned in Heineken's business principles for example, is legitimate, as "Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination."<sup>51</sup> A 2006 report by the International Finance Corporation (IFC) underlines the need for differences between people to be recognised. "Both non-discrimination and equal opportunity are rooted in the principle that all employment decisions are based on the ability of the individual to do the job in question without regard to personal characteristics that are unrelated to the inherent

requirements of the job.”<sup>52</sup> Both these definitions explain that an employer is allowed to distinguish between employees or job applicants based on merit. The question immediately arises as to who defines merit?

Despite theories and policy statements on the concept of ‘merit’ the reality of the workplace is complex. For example some companies prefer senior managers and board members who have broad experience in international markets. A key requirement is often geographical mobility, which, more often than not tends to favour male employees over their female counterparts. This could be seen as discriminatory and requires a company to put effort into supporting other groups to qualify for such positions. In case companies distinguish between employees based on merit, they should always define criteria to justify their actions in relation to the knowledge and skills required for the job.

#### **Merit according to the ILO (2003)**

“Distinctions based on individual merit do not count as discrimination in employment and occupation. The concept of merit or ability refers to a relationship between a person’s talents, knowledge and skills and those required for performance of a particular job. Merit permits the best person for the job to be identified. In practice, however merit is difficult to define and measure, and its determination are prone to bias. Merit is not an absolute, static concept and the notion of what defines a best-qualified applicant is often determined by social values, including prejudices. Moreover the value of different experiences and different work histories is not usually adequately measured.”<sup>53</sup>

#### **Cultural differences and social patterns**

Internal opposition to non-discrimination policies applied in the workplace is common to most businesses. This is one of the conclusions of a survey commissioned by the European Commission.<sup>54</sup> Business practice shows that it remains a challenge to manage issues relating to diversity of the local workforce, in particular with companies operating in different parts of the world.

Some companies experience a lack of acceptance of female managers in predominantly male working environments, reluctance by local people in a predominantly Muslim country to work for a ‘western multinational company’ and so on.

Cultural sensitivity is seen as a challenge for several companies although it is acknowledged that it is vital for effective implementation of non-discrimination and diversity policies. While general and objective policies of equal treatment are guiding it may be needed to allow for regional variations in implementation of policies. In any case a company should try to be objective, consistent and transparent.

As cultural differences determine to a large extent the awareness about issues of discrimination, awareness raising and training for employees is vital to creating a climate where dignity and respect for diversity are a reality in practice. In order to change the social climate, reduce prejudice, stereotyping and stigmatisation, support is needed from company leadership, middle managers and line managers. Internal complaints mechanisms need to be positively embraced and complainants

need to be protected in order to avoid (re)victimization. Some companies have established a system of mentors in which future leaders from the company are brought together with people from the company in a project group on non-discrimination.

The above-mentioned European Commission survey of 2006 recommends: "Good practice companies have extensive internal cultural change programmes for senior leaders and staff to address significant obstacles such as discriminatory attitudes and behaviours. These include awareness raising activities aimed at fostering greater understanding of the benefits and practices of diversity in the workplace and beyond."<sup>55</sup>

### **National law that impacts on non-discrimination policies**

Discriminatory national legislation constitutes a major problem for companies that would like to implement corporate non-discrimination policies. Those discriminatory practices that existed under the apartheid regime in South Africa generated intense international debate on whether companies should or should not continue operations in such extreme political situations. For several companies the overt racial discrimination of the state and all other sectors of society, and the accompanying violence, were reason to leave the country and suspend their business activities. The Sullivan Principles, redefined in 1999, were an attempt to define recommendations for companies as to how to operate in similar situations.<sup>56</sup>

### **Gender**

The example of the Gulf States included in the subsequent chapter illustrates how gender discrimination in national law can present an obstacle to companies. In these situations it is vital to have a thorough understanding of the relevant legislation (and any amendments) as well as emerging case law. While in some countries legislation may be discriminatory towards women, in others there are no legal obstacles as such but simply rigid social and religious stigmas that have a similar effect of undermining non-discrimination and diversity policies.

Companies need to know whether national law complies with international standards. They need to inform themselves about the human rights situation and the possible risks to human rights before they start operating in a particular context. Reports by Amnesty International, Human Rights Watch and others can provide useful information about national and local situations. A joint publication by Amnesty International and the Prince of Wales International Business Leaders Forum (2002) provides information on "where companies are most vulnerable to the costs and reputation damage associated with human rights violations".<sup>57</sup> It also indicates countries where the right to freedom from discrimination is at particular risk. Companies need to find ways to operate in these countries while complying with their own policies and international standards.

### **(Ethnic) tension and prejudice in the community**

The community in which a company operates is an important stakeholder. Employees, clients, suppliers and business partners are all part of these communities. The 'culture' of a community affects business operations in several ways. Possible ethnic tensions or social conflicts could have an impact on a company's operations and its license to operate.

On the other hand, the company could influence these communities in several ways, for instance in how a corporation engages its marketing activities and uses advertising. Social stigma or prejudice could be sustained by the tone of a company's public pronouncements. Its communications could alternatively be used to minimise or reduce such sentiments or prejudices.

### **Migrant workers**

A case about China in the following chapter sheds a light on the difficult position of rural migrant workers working in the urban areas in China. Internal migrant workers, due to their insecure legal status, social isolation, their sense of cultural inferiority, and relative lack of knowledge concerning their rights, labour under some of the worst conditions and experience some of the worst abuses in the workplace.<sup>58</sup> Nearly all countries are concerned by the recent numbers of migration, whether as sending, transit or receiving countries. Undocumented migrants, through lack of legal status, do not have access to a minimal degree of protection and are not able to claim their rights.

Providing all employees with the same rights and treat all of them equally can become difficult when some of them do not have the same legal status and therefore do not enjoy rights other citizens consider normal. Companies should always take care that workers performing the same job are equally treated and paid.

### **Harassment in the workplace**

Although harassment takes place in each country and in each culture there is more risk of it taking place in a discriminatory surrounding. While women are the main subjects of sexual harassment, men may also experience it. The distinction between what is perceived as sexual harassment and what can be substantiated as sexual harassment is a subject of much continuing debate. General Recommendation 19 of the Committee on the Elimination of Violence against Women (CEDAW) defines sexual harassment as including: "such unwelcome sexually determined behaviour as physical contact and advances, sexual remarks, showing pornography, and sexual demands, whether by words or by actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment."

Some companies have implemented strict policies aimed at ensuring fair and equal treatment of women to ensure that the incidence of sexual harassment is reduced to the barest minimum and to offer protection to disadvantaged members of the workforce. The IFC *Good Practice Note on Non-discrimination and Equal Opportunity* states that "changing behaviour and attitudes is one of the most effective ways of ensuring a harassment-free workplace. This includes having a clear anti-harassment policy coupled with anti-harassment training for all staff. If harassment is alleged, those involved should know their rights and responsibilities. Employees who commit acts of bullying or harassment should be dealt with appropriately, while employees subjected to harassment should have confidential means of placing a grievance or seeking support."<sup>59</sup>

### Introduction

The examples below show situations where discrimination is widespread in society. These situations require an additional effort from companies and sometimes an innovative approach. Apart from complying with international norms and their own corporate business principles, companies might consider actively playing a positive role in such situations and acting as a so-called 'force for good' in society as is the case in some of the examples below.

### Migrant workers in China

Internal migrant workers in China – Chinese citizens from rural areas who live and work in Chinese cities – experience wide-ranging violations of their human rights and are discriminated against based on their social – i.e. rural – origin. They are shut out of a wide range of services, state benefits, and entitlements enjoyed by other urban residents, and many remain at risk of forcible removal back to their hometowns.

China's *hukou* system provides the legal basis for violations of the rights of internal migrant workers in the areas of health care, education and employment, by conditioning the enjoyment of a wide range of rights and benefits on citizens' *hukou* designation, a status inherited from one's parents at birth. Internal migrants are routinely forced to work overtime, denied time off and sick leave, and are denied their fair wages through exploitative regimes of fines and penalties. Employers routinely withhold their wages, with the result that internal migrants typically are owed two to three months back wages. The majority are never provided with a labour contract, depriving them of the legal basis upon which to protect their rights in the workplace. Based on their *hukou* status, internal migrants are excluded from many municipality-based health care schemes offered to other urban residents. Because of their low wages, the majority cannot afford private insurance nor pay out of pocket for health care, leaving them virtually excluded from all forms of health care.

The children of internal migrants are discriminated against in the enjoyment of their right to free compulsory education, this right being conditioned on the *hukou* status of their parents. This has shut large numbers of them out of the state school system in the place where they reside. More than 20 million children are estimated to have been "left behind" in the countryside due in part to lack of adequate schooling in the cities, often without adequate guardians.<sup>60</sup>

### Ethnic discrimination in conflict and post-conflict zones

#### Bosnia and Herzegovina

During the war in Bosnia and Herzegovina in the 1990's, ethnic discrimination led to thousands of workers being unfairly dismissed from their jobs. Discriminatory dismissals were in many cases the first step in aggressive campaigns of ethnic cleansing, which included killings, forcible transfers and deportations. Amnesty International's 2006 report *Bosnia and Herzegovina Behind closed gates: ethnic discrimination in employment*<sup>61</sup> highlights continuing discrimination against workers from ethnic minorities including equal access to work, compensation and other forms of reparation for unfair dismissal and concludes that discrimination in employment continued to be one of the most

serious obstacles to the return of refugees and internally displaced people to their homes in Bosnia and Herzegovina.

In the ten years after the end of the war, about half of the two million people displaced by the conflict have returned to their homes. In returning, minority returnees have struggled to overcome persistent endemic discrimination in accessing employment. Without employment, many returnees have been unable to ensure or maintain an adequate standard of living and, facing destitution, many have either decided to go where they were originally displaced to, or commute there to continue working.

Amnesty International's report describes the situation in two companies operating in the region at the time of the conflict:

*Aluminij aluminium factory in Mostar (Federation of Bosnia and Herzegovina)*

Before the war *Aluminij* was one of the largest state-owned companies in Yugoslavia. During and after the war, non-Croat workers were unfairly dismissed on the grounds of their ethnicity. In the divided city of Mostar, *Aluminij* has pursued a policy of ethnic discrimination, the effects of which continue to be felt, and elements of which continue to be practised. While in the past the company had a significant number of employees from each of the three major ethnic communities, *Aluminij* currently has an overwhelmingly Croat workforce.

*Ljubija iron ore mines near Prijedor (Republika Srpska)*

At the beginning of the war the then state-owned mines came under the control of the local Bosnian Serb *de facto* authorities. The new management of the *Ljubija mines* systematically discriminated against at least 2,000 non-Serb workers, by dismissing them *en masse* solely because of their ethnicity. Thousands of Bosnians and Bosnian Croats in the area, reportedly including former workers at the mines, were taken to the Omarska detention camp, which was situated in the Ljubija mines complex. In Omarska, torture and mass killings were carried out. Unfairly dismissed Ljubija workers have not been reinstated in their jobs, nor have they received other forms of reparation. In 2004 the international corporation LNM Holdings (now part of Mittal Steel) signed a joint-venture agreement to establish a new company, the New Ljubija Mines, 51 per cent of which is owned by the foreign investor.

The legacy of war-time ethnic discrimination in employment, as in the region of Bosnia and Herzegovina, and a pattern of ongoing discrimination in employment as documented in this Amnesty International report, constitute serious and continuing human rights violations, which particularly affect marginalized groups, such as minority and returnee communities. Ethnic discrimination is not only legally impermissible but also economically inefficient in that it restricts the pool of potential candidates for any given job. Victims of discrimination are denied justice by the failure of the authorities to provide an effective remedy to workers affected by discriminatory dismissals. War-time discriminatory dismissals were sometimes the first step in aggressive campaigns of "ethnic cleansing" which included killings and forcible transfers or deportations.

In November 2001, the OSCE (Organisation for Co-operation and Security in Europe) adopted the Fair Employment Practices Strategy, which laid down standards for employment practices and mechanisms to promote inclusive and non-discriminatory hiring practices by private and public employers in Bosnia and Herzegovina and to enhance free movement of workers. This strategy put forward fair employment principles, based on international standards as well as national legislation (see box).<sup>62</sup>

The fair employment practices:

1. All workers have the right to equal treatment regardless of sex, race, colour, nationality, language, religion, political or other opinion, ethnic or social origin, property, birth, membership or non-membership of a trade union, disability or other status.
2. These principles do apply to all conditions of employment, including recruitment, promotion, discipline, dismissal, lay-off, benefits, facilities, services, transfer, training and membership and benefits of workplace organisations. In particular, employment opportunities at all levels including management, should be publicly and widely advertised according to objective criteria and open to all.
3. Workers have the right not to be subjected to harassment on the above grounds where this had the purpose or effect of creating an intimidating, hostile, offensive or disturbing environment. In particular, political, nationalistic or religious images or phrases and other manifestations that have this purpose or effect should be removed.
4. Workers should not be subjected to apparently neutral criteria that adversely impact workers to whom any of the above grounds apply, unless those criteria are objectively justified and proportionate.
5. Employers should ensure that all workers are aware of these principles and that these principles are put into effect.

### **Rwanda**

The 1994 genocide in Rwanda took the lives of at least half a million of people. The conflict was characterised by a clash between the Tutsi minority that was considered to be the aristocracy during Belgian colonial rule and the Hutu majority that took over after independence in 1962. In subsequent years the Hutu oppressed the Tutsis through systematic discrimination and acts of violence. As a result, over 200,000 Tutsis fled to neighbouring countries and formed a rebel guerrilla army: the Rwandan Patriotic Front. In April 1994, massacres were sparked following the shooting down of a plane carrying the Rwandan President Habyalimana and Burundi's new President, Cyprien Ntaryamira (the two presidents had held several peace meetings with Tutsi rebels). During the killings that followed an estimated 800,000 persons were killed.<sup>63</sup>

Dutch brewery Heineken had been operating in Rwanda since 1959. The company had implemented a comprehensive non-discrimination policy aiming to show that ethnicity was not a consideration in Heineken's business practice. When the genocide started in Rwanda in 1994, Heineken decided to withdraw its expatriate managers from the country for security reasons. When Heineken returned after four months, the company faced challenges in the management of local human resources, principal among which was the challenge of restoring confidence and trust among the two main ethnic groups in the country. The approach adopted by Heineken was to signal to the government, society and its employees that people were not to be distinguished on the basis of their ethnic background but that performance and merit would be key drivers in their employment.

Heineken managed to regain a diversified workforce after the 1994 genocide, but nonetheless it still experiences tensions based on ethnic considerations from time to time. In 2005 the company was accused of discrimination by a leading newspaper, after its dismissal of several employees. Although the company published the grounds for dismissal and substantiated these with facts, the local media accused the company of discriminatory practices.

## Caste discrimination in India

The hierarchical system of castes in India can affect (the workforce of) companies. The caste system, prevalent in India as well as neighbouring Nepal, determines the place of a person in society by birth and traditionally also determines the occupation of a person. There are four general castes ('varnas') ranging from Brahmins (priests), Kshatriyas (rulers and warriors), Vaishyas (traders) and Shudras (farmers and labourers). The 'varnas' are again sub-divided into thousands of sub-castes ('jatis') within which it is the custom for people to marry. Outside the caste system are a group of people formerly known as 'untouchables' but who are officially now named 'scheduled castes' (see below). This group of more than 160 million people are also unofficially known as 'Dalits'. Dalits are seen by many as 'lesser human beings' and have traditionally been employed to do menial work including the disposal of human and animal bodies and human excrement. To this day it is very difficult for Dalits, especially in rural areas, to get other work. Also in urban areas there remain stories of well-educated Dalits being refused employment because of their background. Recruitment often takes place informally along caste lines.

Recent research<sup>64</sup> in large parts of India shows that in 25 per cent of the investigated villages, Dalits were paid lower wages than others; they were subjected to much longer working hours, delays in payment and verbal and physical abuse (including sexual harassment and rape of women); in more than a third of the villages Dalit workers were paid at a distance, to avoid physical contact between employer and employee; and at times of the year when work was scarce Dalits were excluded. Dalit women often suffer the triple discrimination of being poor, women and Dalit.

The Indian government has sought to end caste discrimination through an affirmative action policy, better known in India as the 'Reservation Policy'. It reserves seats in elected political bodies, government jobs and educational institutions mainly for *scheduled castes* and *scheduled tribes* (so-called Adivasis, many of whom still live in forests and mountain areas but who are increasingly being absorbed as casual labourers in 'mainstream' society).

Despite the fact that caste discrimination is illegal, impunity is widespread as it is deeply embedded society. There is a degree of taboo attached to raising the issue of caste in public that also affects companies. Companies (especially foreign companies) also face the problem of how to determine the caste from which a potential employee originates. There are hardly any statistics available, though a recent survey indicated for example that in Hindustan Lever (a subsidiary of Unilever) the number of Dalits and tribal people in its workforce did reflect their share of the general population.<sup>65</sup> Dalits and other groups lag behind others in their educational attainment, making it difficult for employers to recruit them to posts based on merit.

The UN recognizes caste discrimination as a form of 'work and descent-based discrimination'.<sup>66</sup> General Recommendation 29 of the CERD Committee specifically deals with 'descent-based discrimination'. It calls upon states "to take special measures to promote the employment of members of affected communities in the public and private sectors." The present Indian government has promised to create more employment opportunities for Dalits and Adivasis in the private sector. A political debate continues as to whether this form of affirmative action should be mandatory, through 'reservations', or voluntary.

Descent-based discrimination is an international phenomenon. Companies operating in a number of countries need to be aware of this situation and need to adapt their business practices accordingly. To help with this, representatives of NGOs in caste-affected countries together with NGOs from western countries (part of the International Dalit Solidarity Network (IDSN)) have defined the so-called Ambedkar Principles.<sup>67</sup> These principles are an attempt to address the problem of caste discrimination in South Asia and aim to “enable foreign investors or companies trading in the region to contribute to eliminating caste discrimination in the labour market.” As part of its Human Rights Compliance Assessment, the Danish Institute for Human Rights has recently developed a Caste Discrimination Checklist that will reportedly be available in 2007.

### **Gender discrimination in the Middle East**

In 2005 Amnesty International published the report *Gulf Cooperation Council (GCC) States: Women Deserve Better Respect and Dignity*.<sup>68</sup> It looks at violence against women in the family and the failure of the state authorities, particularly the police, to provide protection. It also looks at social and legal practices that facilitate and perpetuate violence against women, and prevent their escape from violence in the home. The report examines the situation of migrant domestic workers, including violence against them, the multiple forms of discrimination they face, violations by the authorities, and abuses by employers. The report was the result of field research conducted in 2004 in Gulf Cooperation Council countries, which include Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and United Arab Emirates.

Between 20 and 40 per cent of the growing number of migrants in the GCC countries are women. Most of them work in domestic service. They are deprived of a wide range of human rights protections. They are at considerable risk of discrimination and gender-based violence, committed by both the state authorities and private individuals and employers.

All the GCC countries, with the exception of Oman, have ratified ILO Convention No.111 on Discrimination (Employment and Occupation). In practice however, women in the GCC countries are legally restricted from entering certain professions. In particular, labour codes in the GCC countries prohibit women from working in occupations perceived to be dangerous or hazardous. In Bahrain, for example, the Labour Law states that women are not allowed to work between the hours of 8pm and 7am and cannot be employed in ‘dangerous’ occupations. Oman’s Labour Law and the UAE’s Labour Law contain similar provisions. Saudi Arabia’s Labour Code stipulates that all Saudi Arabian workers have an equal right to work in all parts of the kingdom without discrimination. However, this general guarantee is undermined by Article 160, which prohibits the employment of women in ‘hazardous operations’. Although it is to be welcomed that there are strict laws with regard to hazardous occupations, in these cases the labour codes fail to specify what occupations or operations are considered ‘dangerous’ or ‘hazardous’. When Amnesty International asked officials in Bahrain whether there was a list detailing what would be regarded as ‘dangerous’ professions, officials said that there was no such list. While in certain situations special provisions may be needed to protect women in employment (for example, provisions to protect women in pregnancy or while breastfeeding) and safeguards against dismissing a woman because of her pregnancy (such as Article 63 of the Bahrain Labour Law), no such rationale has been offered as a basis for restricting women from participating in certain occupations. For example in Bahrain, chemical

engineering was deemed until recently to be a 'dangerous' profession that women were not allowed to work in.

Apart from legal restrictions on their participation in certain occupations, the reasons for women's lack of participation in the workforce can be traced to social and cultural perceptions of women in GCC countries. It is common for people to consider that a 'woman's place is the home', and women themselves often shy away from jobs in mixed gender sectors. In addition, women in employment often leave work once they get married, never to return.

In the Amnesty International report, *Saudi Arabia: Open for business*, published in 2000, an example was provided of a consulting company operating in Saudi Arabia.<sup>69</sup> The international consulting company entrusted with a project to develop a new city, was perplexed to find that there was no provision for schools for girls in that particular area. When the consulting company asked the government authorities for the reason, the authorities replied there was no need to have a school for girls in that particular area. The consultants objected successfully and schools for girls were built.

#### **Harassment in Latin America**

During an internal audit of suppliers conducted by Chiquita in 2002, cases of sexual harassment were discovered in one location in Latin America. Information was received from union representatives at a farm level and also from workers. Action reportedly taken by the company following the audit report included: dismissal of involved supervisors after investigation; training of all women workers at the location concerning sexual harassment, their rights, and the duties of supervisors and management; training of all management, administrative and supervisory personnel at the location concerning the criminal nature of sexual harassment, the action to be taken in the event of detection, and the penalties applicable; training of all employees worldwide on respect in the workplace and sexual harassment. During the following internal audit in 2003, no cases of sexual harassment were found in this (or any other) location.<sup>70</sup>

The following recommendations to companies are based on the experiences of the companies participating in the Round Table established by Amnesty International Netherlands and the literature that can be found in the bibliography. Recommendations made by the ILO and the International Finance Corporation (the private sector arm of the World Bank) are included.

#### **Intention and commitment**

- Management should acknowledge that discrimination occurs in the company and its sphere of influence.
- The company should set an example by explicitly stating that it will work towards creating a 'safe haven' where discrimination is non-existent. The company should publicly communicate this goal through marketing and/or other methods.
- The company's leadership should send a strong internal message about how it expects people to behave in the workplace. It should communicate a policy of zero tolerance with regard to discrimination to all people within the company.

#### **Get informed**

- Be aware of international, regional and national law relevant to discrimination in the workplace. Identify gaps related to non-discrimination within the national legislation of the country the company operates in. The international standards should be of guidance in this process. In addition, ensure that you are fully informed of regulations and voluntary codes as well as emerging case law relating to discrimination and relevant legislative amendments that could have an impact on your company's operations.
- Companies should evaluate all present policies, both related to their own employees as with regard to their external relations, as to check where discrimination might exist and be prepared to make changes to improve policies. Be prepared to draft (new) policies for the whole of your organisation, including steps needed for addressing discrimination in the supply chain.
- Before and during new operations in another country, engage in a dialogue with different groups in society to ensure a thorough understanding of the issues related to discrimination that occur in the country in which the company operates. Engage in a constructive dialogue with workers' representation.

#### **Define Non-discrimination policies**

- Company policies should be based on international standards and regulations regarding non-discrimination and refer to these explicitly. These are listed in part 3.
- Define specific (regional or thematic) policies that cover international standards and principles towards the context in which the company operates, taking into account the different forms of discrimination that exist within that specific context. For example companies operating in India should consider integration of the Ambedkar Principles into their policies as a means of avoiding caste discrimination.
- Policies should include steps to address both direct as well as indirect discrimination.

- Draft national or local policies that are relevant to the local context the company operates in by identifying which groups run the most risk of discrimination - for example members of certain castes, women, or migrant workers. Adopt policies that address specific issues related to these groups. For example make sure that female employees have specific maternity rights, employees of a religious minority have equal praying opportunities, disabled people have the right to the necessary facilities or accommodation etc.
- Make sure that the principle of non-discrimination is explicitly mentioned in different policies where discrimination might occur like remuneration policies, employee contracts, hiring procedures etc.
- Define job descriptions and objective criteria in processes dealing with recruitment, dismissal, promotion etc. Apply them as consistent as possible.
- Be transparent about the used procedures and criteria.
- Draft and implement a specific anti-harassment policy accompanied by a complaint mechanism and training for all staff. Staff should be aware of their rights and responsibilities in the event that a complaint of harassment is made.
- Ensure vacancies are widely advertised to members of all communities.

#### **Raise awareness**

- Ensure that employees are aware of their rights by making company principles available in the workers' own languages. Where illiteracy is a problem, companies could arrange for oral briefings. Provide training programs for employees to ensure policies are understood and effectively implemented.
- Consider instituting a mentoring program to raise awareness of what discrimination is and train staff within the company in how to recognise and deal with discrimination. Employees who are taught to respect diversity may be less likely to engage in discriminatory behaviour. Ensure that training addresses cultural prejudices present within the culture /society the employees come from.
- Promote and foster a culture of inter-ethnic dialogue and tolerance.

#### **Implementation of policies**

- Incorporate company principles, including the principle of non-discrimination, in all contracts with joint venture partners and sub-contractors, and ensure that these principles are built into the monitoring of business partners' practices. In the event of non-compliance, the company should be ready to engage in a dialogue with its partners.
- Make a board member responsible for the implementation of the non-discrimination policy. Make staff responsible for the implementation of policies at national, regional and local offices.
- Aim to be consistent in the implementation of policies and practices worldwide. Take account of regional differences and adapt your strategy alike. However guarantee that international standards and principles are leading.
- Contribute to creating a climate of non-discrimination and tolerance through all your actions. For example, take care that your advertisements do not enhance discrimination or confirm stereotypes.
- Make sure that your recruitment policies are non-discriminatory throughout the procedure as well as in use of terminology in job descriptions or advertisements. Provide for a fair and transparent recruitment process. Avoid systematic use of job requirements that would disadvantage certain

groups. Work on a case-by-case basis to evaluate whether certain requirements are necessary for the job.

- Be publicly transparent when selection criteria are based on merit. This is particularly important in situations where discrimination is apparent in the society from which you are drawing employees. Managers must be able to explain the reasons and criteria if staff is chosen on the basis of merit.
- Ensure that vacancies are widely advertised to members of all communities in various media and that all groups have an equal opportunity to respond and apply.
- Make sure that your remuneration policies are non-discriminatory. Identify payment discrepancies for women and minority groups in each country.
- Institutionalise company policies that make neutral and objective qualifications, skills and experience the basis for recruitment, training and advancement of staff at all levels. Ensure that these policies and processes are open to scrutiny and avoid discriminatory application of policies.
- Connect with external stakeholders – develop links with organisations like trade unions or employer organisations that often have useful policies and information on non-discrimination.
- Develop transparent complaint procedures to address complaints, handle appeals and provide recourse for employees. Actively follow up on reported grievances and cases of harassment or discrimination. Be aware of formal structures and informal cultural issues that can prevent employees from raising concerns and grievances.
- Employ an officer who is responsible for receiving complaints relating to harassment and discrimination in the workplace, and ensure that appropriate action is taken where such complaints are substantiated.
- Ensure that the privacy of both the complainant and the defendant is guaranteed in all cases.

#### **Monitoring, compliance and reporting**

- Measure compliance – develop a set of goals and benchmarks for successful implementation of your policy and devise ways in which you can collect (statistical) information that tells you how well you are doing in ensuring discrimination does not take place in the workplace. Any compliance measurement system should ensure regular assessments as well as the possibility of taking corrective action. Consider subjecting these systems and procedures to external verification.
- Keep up to date records on recruitment, training and promotion and evaluate these on the basis of your non-discrimination policy.
- Keep up to date records of incidents of discrimination at all levels in the organisation as well as about how these incidents have been dealt with.
- Be publicly transparent (where this does not impinge on the privacy of individuals) about how discrimination has been dealt with in the organisation and how successful this effort was. Report regularly on this issue in (annual) reports.
- Regularly review your anti-discrimination initiatives and consider their effectiveness.

#### **Other**

- Be prepared to raise concerns about persecution of employees by state authorities with relevant government officials either through silent diplomacy or by speaking out when the need arises.
- Cooperate fully with any human rights investigations linked to your organisation's operations.

# ENDNOTES

- 1 International Labour Organisation, *Time for Equality at work*, International Labour Conference 91st session 2003, p. 7
- 2 The companies participating in the Round Table are: ABN AMRO, ING Group, Rabobank, Royal Dutch Shell, Philips, Akzo Nobel, DSM, Ahold, Heineken, Boskalis, Vendex KBB, C&A, Sara Lee, Numico and Unilever.
- 3 International Labour Organisation, *Time for Equality at work*, International Labour Conference 91st session 2003, p. 20.
- 4 Ibid. p. 7.
- 5 The International Finance Corporation is the private sector arm of the World Bank and provides loans, equity, structured finance & risk management products, and advisory services to build the private sector in developing countries.
- 6 International Finance Corporation, *Good Practice note on Non-discrimination and Equal Opportunity*, January 2006, n. 5, p.4-5.
- 7 Annex 6 of the Dayton Agreement (The General Framework Agreement for Peace in Bosnia and Herzegovina) provided for the establishment of a Commission on Human Rights. The Commission consisted of the Office of the Human Rights Ombudsman and the Human Rights Chamber, a mixed national-international court empowered to issue decisions on individual applications which are final and binding upon parties. The mandate of the Human Rights Chamber expired on 31 December 2003. A special Human Rights Commission within the Bosnia and Herzegovina Constitutional Court is currently dealing with the backlog of cases registered with the Human Rights Chamber before its closure. In: AI, *Bosnia and Herzegovina Behind closed gates: ethnic discrimination in employment*, 2006, pp 11-12.
- 8 Article 1(4) of the Convention on the Elimination of Racial Discrimination states: "Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."
- 9 In the 1993 *Vienna Declaration and Program of Action* representatives of 171 states "reaffirm(ed) their commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights."
- 10 <http://www.businesshumanrights.org/Categories/Company policysteps/Policies/Companieswithhumanrightspolicies>.
- 11 Due diligence is a term used for the performance of an act with a certain standard of care. It can be a legal obligation but the term will more commonly apply to voluntary investigations.
- 12 Joseph, S., *Corporations and Transnational Human Rights Litigation*, 2004, p. 151 details and analyses the developments in recent civil cases "to serve as a guide to the new ways in which corporations may be liable in domestic courts for human rights abuses. Even though there are no final merits judgements, the interim decisions to date give important clues as to the possible extent of modern transnational corporate human rights liability."
- 13 SustainAbility, 2004, p.27., Joseph, S., *Corporations and Transnational Human Rights Litigation*, 2004, p.12.
- 14 International Peace Academy, Fafo, *Business and International Crimes: Assessing the liability of business entities for grave violations of international law*, December 2004.

- 15 UN Doc. E/CN.4/Sub.2/2003/38/Rev.2 (2003).
- 16 The tripartite typology of obligations was first developed by Henry Shue in 1980. In 1987 the tripartite typology was reintroduced by Asbjorn Eide, at that time the UN Special Rapporteur on the Right to Food. Jägers applied this typology in the context of corporations in her dissertation *Corporate Human Rights Obligations: in Search of Accountability*, 2002.
- 17 Amnesty International, *Human rights for human dignity, A primer on economic, social and cultural rights*, 2005, p. 27.
- 18 Jägers, N., *Corporate Human Rights Obligations: in Search of Accountability*, 2002, p. 82.
- 19 Amnesty International, *Human rights for human dignity, A primer on economic, social and cultural rights*, 2005, p.27.
- 20 Ibid. pp. 27-28.
- 21 General Recommendation 18, para 7 of the Human Rights Committee (which monitors implementation of the ICCPR): "The term 'discrimination' as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms."
- 22 For instance ICCPR article 2.1 states should respect and ensure all of the rights of the convention without discrimination; ICESCR article 2.2 the rights of the Covenant " ..Will be exercised without discrimination of any kind as to race, colour, sex, language,.."; CERD article 5 (e) (i) prohibition of racial discrimination in the right to work and to equal pay for equal work, and to just and favourable conditions of work."
- 23 As of 1 November 2006, 160 states had ratified the ICCPR.
- 24 As of 1 November 2006 155 states had ratified the ICESCR.
- 25 CERD came into force in 1966 and as of 1 November 2006 173 states had ratified the Convention.
- 26 CEDAW came into force in 1988 and as of 1 November 2006 185 states had ratified the Convention.
- 27 Under CERD, states must make a declaration under Article 14(1) of the Convention in order for individual complaints to be submitted to the Committee. Under CEDAW, states must ratify the Optional Protocol to the Convention in order for individual complaints to be permitted.
- 28 Clapham, A., *Human Rights Obligations of non-state actors*, 2006, p. 320.
- 29 Zian Ben Ahmed Habassi v. Denmark, Communication No.10/1997. UN Doc.CERD/C/54/D/10/1997(1999).
- 30 Clapham, A., *Human Rights Obligations of non-state actors*, 2006, p. 320.
- 31 The ILO is the specialised UN agency that seeks the promotion of social justice and internationally recognised human rights and labour rights. Its tripartite stucture, including the participation of governments along with the most representative workers' and employers' organisations, is unique.
- 32 Other core labour rights are forced labour, freedom of association and the right to collective bargaining and freedom from child labour.
- 33 International Labour Organisation, *Time for Equality at work*, International Labour Conference 91st session 2003, p.16.
- 34 International Finance Corporation, *Good Practice note on Non-discrimination and Equal Opportunity*, January 2006, n. 5, p. 8.
- 35 46 states, [http://www.coe.int/T/e/Com/about\\_coe/](http://www.coe.int/T/e/Com/about_coe/)
- 36 Clapham, A., *Human Rights Obligations of non-state actors*, 2006, p.149. Protocol 12 offers the

possibility “of complaints concerning discrimination by non-state actors alleging a failure by the state to secure non-discrimination rights opposable against non-state actors in domestic law.” It is possible to file a complaint at the European Court of Human rights after all national procedures are exhausted.

- 37 Council Directive 2000/43/EC on 29 June 2000, Council Directive 2000/78/EC of 27 November 2000.  
38 Council Directive 2006/54/EC.  
39 European Commission, *Equality and non-discrimination in an enlarged European Union* Green Paper, May 2004, p.11.  
40 Article 8 of the Directive 2000/43/EC stating that *it shall be for the respondent to prove that there has been no breach of the principle of equal treatment*. Directive 2000/43/EC Article 8, Directive 2006/54/EC, Article 19 and Directive 2000/78/EC Article 10.  
41 Directive 2000/43/EC, Article 4, and Directive 2006/54/EC Article 14,2 .  
42 Directive 2000/43/EC, Article 5, Directive 2006/54/EC, Article 3 and Directive 2000/78/EC, Article 7.  
43 Article 14 of Directive 2000/43/EC states that member states need to ensure that any provisions contrary to the principle of equal treatment, which are included in individual or collective contracts or agreements, (...) are or may be declared null and void or are amended”. Directive 2000/43/EC Article 14, Directive 2000/43/EC Article 16, and Directive 2006/54/EC Article 23, sub b.  
44 International Labour Organisation, *Time for Equality at work*, International Labour Conference 91st session 2003.  
45 Ibid. p. 60.  
46 UN Norms on the Responsibilities of Transnational Corporations and Business Enterprises with regard to human rights, 2003.  
47 European Commission, *The Business Case for Diversity: good practice in the working place*. September 2005.  
48 www.philips.com  
49 www.shell.com  
50 UN Norms on the responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, UN Doc, E/CN.4/Sub.2/2003/38/Rev.2 (2003) Article 2: (...) *corporations (...) shall ensure equality of opportunity and treatment (...) for the purpose of eliminating discrimination (...) unrelated to the inherent requirements to perform the job (...)*.  
51 Article 1(2) of ILO Convention 111.  
52 International Finance Corporation, *Good Practice note on Non-discrimination and Equal Opportunity*, January 2006, n. 5, p. 1.  
53 International Labour Organisation, *Time for Equality at work*, International Labour Conference 91st session 2003, p. 22.  
54 The European Commission, *The business case for diversity, Good Practices in the Workplace*, 2005, p. 6.  
55 Ibid.  
56 The Global Sullivan Principles of Social Responsibility (GSP) is a voluntary code of conduct that seeks to enhance human rights, social justice, protection of the environment and economic opportunity for all workers, in all industries, in all nations. The Principles were designed for adoption on a voluntary basis, by all types of organizations around the globe, with the spirit of exchanging ideas so that society as a whole can benefit. <http://www.thesullivanfoundation.org/gsp/principles/gsp/default.asp>  
57 Amnesty International and The Prince of Wales International Business Leaders Forum, *Business & Human Rights A geography of corporate risk*, 2002.

- 58 Amnesty International, *People's Republic of China Internal Migrants: Discrimination and abuse The Human Cost of an economic miracle*, 2007.
- 59 International Finance Corporation, *Good Practice note on Non-discrimination and Equal Opportunity*, January 2006, n. 5, p.14.
- 60 Amnesty International, *People's Republic of China Internal Migrants: Discrimination and abuse The Human Cost of an economic miracle*, 2007, pp 1-2.
- 61 AI Index: EUR 63/001/2006.
- 62 See OSCE, OHR, OHCHR and UNHCR, *Prevention and Elimination of Discrimination in Employment, Fair Employment Practices Strategy, Revised Policy Paper*, October 2001. (The OSCE is currently continuing to promote fair employment practices in the context of its new Corporate Governance Project). In: AI Bosnia and Herzegovina behind closed gates: ethnic discrimination in employment, 2006, pp 29.
- 63 [http://www.unitedhumanrights.org/Genocide/genocide\\_in\\_rwanda.htm](http://www.unitedhumanrights.org/Genocide/genocide_in_rwanda.htm)
- 64 Shah, Mander, Thorat, Deshpande, Baviskar, *Untouchability in rural India*, Sage Publications, 2006.
- 65 Sandeep Bamzai, Deepak Joshi, *Government pushes quota envelope*, in *Hindustan Times*, April 20 2006.
- 66 Caste discrimination also occurs in Nepal where Dalits constitute some 20 percent of the total population, as many as 80 percent of whom live below the poverty line and share only one percent of the total cultivable land. Descent-based discrimination is also found among the Baraku in Japan, the AI-Akhdam in Yemen and in several populations in Africa.
- 67 The Ambedkar Principles can be downloaded from the website of the International Dalit Solidarity Network at [www.idsn.org](http://www.idsn.org).
- 68 *Gulf Cooperation Council (GCC) countries: Women deserve dignity and respect*, May 2005, AI Index: MDE 04/004/2005.
- 69 Amnesty International *Saudi Arabia: Open for business*, AI Index: MDE 23/082/2000.
- 70 Chiquita Annual Report to the Ethical Trading Initiative 2003, Feb. 2004 - <http://www.chiquita.com/chiquita/corpres/ETI2003.pdf>

# BIBLIOGRAPHY

- Amnesty International, *Bosnia and Herzegovina Behind closed gates: ethnic discrimination in employment*, AI Index: EUR 63/001/2006.
- Amnesty International, *Human Rights for Human Dignity, a primer on economic, social and cultural rights*, 2005.
- Amnesty International, *People's Republic of China Internal Migrants: Discrimination and abuse. The Human cost of an economic miracle*, AI Index: ASA 17/008/2007.
- Amnesty International, *Saudi Arabia; Open for Business*, AI Index: MDE/23/2000.
- Amnesty International and the Prince of Wales International Business Leaders Forum, *Business & Human Rights, A geography of corporate risk*, 2002.
- Clapham, A., *Human Rights Obligations of non-state actors*, Oxford University Press, 2006.
- Danish Institute for Human Rights, *Human Rights Compliance Assessment (HRCA) 'Quick Check'*, 2004.
- European Commission, *The Business Case for Diversity, Good Practices in the Workplace*, 2005.
- European Union, *What can employers do to tackle discrimination and promote diversity?*
- International Finance Corporation, *Good Practice note on Non-discrimination and Equal Opportunity, World Bank Group*, January 2006.
- International Labour Organisation, *Time for Equality at Work*, International Labour Conference 91st session, 2003.
- Jägers, N., *Corporate Human Rights Obligations; in Search of Accountability*, Intersentia Publishers, 2004.
- Joseph, S., *An overview of the Human Rights Accountability of Multinational Enterprises*, Hart Publishing, 2004.
- Ghanshyam, Shah, *Untouchability in rural India*, Sage Publications, 2006.



# SUPPORT OUR FIGHT FOR HUMAN RIGHTS

Amnesty International's vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. In pursuit of this vision, Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights.

Amnesty International  
P.O. Box 1968  
1000 BZ Amsterdam  
the Netherlands  
T 0031 (0) 20 626 44 36  
F 0031 (0) 20 624 08 89  
E [amnesty@amnesty.nl](mailto:amnesty@amnesty.nl)  
I [www.amnesty.nl](http://www.amnesty.nl)

