

Chapter VIII

DISCRIMINATION

1. Although not all forms of social exclusion derive from discrimination, all forms of discrimination lead to exclusionary behaviour. Examination of social exclusion provides additional insights into the problems of poverty and unemployment. This approach has been defined as a "way of analyzing how and why individuals and groups fail to have access to a benefit from the possibilities offered by societies and economies".¹ It identifies excluded population groups needing assistance and allows for more targeted policies to ensure their participation and integration in the development process.

2. Viewing poverty through the prism of social exclusion highlights the essence of poverty and deprivation as well as the mechanisms that lead to them. Societal and economic forces create and intensify various forms of exclusion. In the extreme, individuals move from vulnerability to dependence to marginality. Patterns of development in which the benefits of economic growth are shared by only certain identifiable groups increase exclusion.

3. The issue of livelihood (or its absence) can also be viewed through the prism of exclusion. In this context, exclusion takes various forms, including exclusion from land, from other productive assets, from markets for goods and, particularly in urban areas, from the labour market. Some scholars have suggested that severe ethnic and racial antagonisms can often be traced to the point at which groups first find themselves competing in the labour market.² This theory argues that all discrimination by race or ethnic groups originates through this dynamic, in which groups mobilize political and economic resources to further their material interests. The goal of such actions is the exclusion of the competing group from the labour market or, failing this, the creation of a caste system that provides the dominant group with preferential treatment.

4. It is essential that policies for productive work and the reduction of poverty be accompanied by the application of the principles of rights, social equity and justice. The World Summit for Social Development devoted particular attention to this point, stressing that "policies to eradicate poverty, reduce disparities and combat social exclusion require the creation of employment opportunities, and would be incomplete and ineffective without measures to eliminate discrimination and promote participation and harmonious social relationships among groups and nations".³ In enunciating the principle of social integration the Summit emphasized the unacceptability of discrimination and called for its elimination in all its dimensions.

5. What is discrimination? Various United Nations human rights instruments define the meaning and content of the principles of discrimination and equality.⁴ The Charter of the United Nations prohibits discrimination on the basis of race, sex, language or religion. The Universal

Declaration of Human Rights, adopted in 1948, enlarged the list to include colour, sex, political or other opinion, national or social origins and other status. Other major international anti-discrimination instruments are shown in table 8.1.

6. Non-discrimination is also established in regional human rights instruments, including the European Convention, the European Social Charter and the Declaration Regarding Intolerance: A Threat to Democracy, all adopted by the Council of Europe; the African Charter on Human and Peoples' Rights, adopted by the Organization of African Unity; and the American Convention of Human Rights, adopted by the Organization of American States.

7. Some United Nations conventions define discrimination. Article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 2106 A (XX), annex) defines the term "discrimination" as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (Assembly resolution 34/180, annex) defines "discrimination against women" as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

8. Section A below describes how discrimination operates, and identifies various discriminated-against groups. Section B examines the salient gender discrimination issues, describes the problems faced by discriminated-against social groups, including minorities, and reviews the major international instruments that deal with discrimination against minorities. Section C reviews specific policy options for combating discrimination.

A. ANATOMY AND PATTERNS OF DISCRIMINATION

1. *Anatomy of discrimination*

9. Discrimination reflects a complex set of attitudes towards individuals or social groups within a society. It is usually based on social, biological or cultural differences and can appear in different areas and be applied in different forms.

10. Three types of discrimination can be distinguished:

TABLE 8.1. MAJOR INTERNATIONAL ANTI-DISCRIMINATORY INSTRUMENTS

Declarations

U.N. Declaration on the Elimination of All Forms of Racial Discrimination (20 November 1963)	U.N. Declaration on the Rights of Mentally Retarded Persons (20 December 1971)	UNESCO Declaration on Race and Racial Prejudice (27 November 1978)	U.N. Declaration on the Human Rights of Individuals Who Are not Nationals of the Country in Which They Live (13 December 1985)
U.N. Declaration on the Elimination of Discrimination against Women (7 November 1967)	U.N. Declaration on the Rights of Disabled Persons (9 December 1973)	U.N. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (23 November 1981)	U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (18 December 1992)

Conventions

Convention relating to the Status of Refugees (14 December 1950)	Convention on the Nationality of Married Women (29 January 1957)	Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (7 November 1962)	U.N. Convention on the Elimination of All Forms of Discrimination against Women (18 December 1979)
ILO Equal Remuneration Convention (29 June 1951)	UNESCO Convention against Discrimination in Education (14 December 1960)	U.N. International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1963)	International Convention against Apartheid in Sports (10 December 1985)
Convention on the Political Rights of Women (20 December 1952)	ILO Discrimination (Employment and Occupation) Convention (15 June 1960)	International Convention on the Suppression and Punishment of the Crime of Apartheid (30 November 1973)	Convention Concerning Indigenous and Tribal Peoples in Independent Countries (27 June 1989)
Convention Relating to the Status of Stateless Persons (26 April 1954)	Protocol Instituting a Conciliation and Good Offices Commission to be responsible for Seeking a Settlement of Any Dispute Which May Arise between States Parties to the Convention against Discrimination in Education (10 December 1962)		International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (18 December 1990)
Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (26 June 1957)			

(a) Political discrimination, which includes denial of political rights, restriction of access to political decision-making, lack of adequate representation in legislative bodies and restrictions on freedom of expression, voting, free movement and place of residence;

(b) Socio-economic discrimination, which includes limited access to labour markets, resources and social services;

(c) Cultural discrimination, which includes restrictions on the use of language, the observation of cultural practices and religious traditions, and so forth.

11. Discrimination against social groups is often based on deeply embedded social mechanisms, and may take the form of established social practices or explicit public policies. Social practices are often supplemented by public policies, which accounts for the persistent nature of discrimination. The effects of discrimination against social groups are reflected in phenomena such as unjustified inequalities and lack of empowerment and equal opportunities, which can in turn lead to social tensions and political instability.

12. Many theories have been offered to explain discrimination. Some scholars consider discrimination a psychological phenomenon, tied to personality types and group rivalry. Economic and social factors may also contribute to the psychological explanation.

13. Other scholars stress factors such as organized social actions and certain principles of social organization. Social organization based on hierarchical structures assigns social roles on the basis of factors such as property, power and status, race, ethnicity or gender. Complex social structures often lead to specific forms of discrimination against social groups. Social practices and public policies must be modified to prevent inequalities, social exclusion or discrimination based on the characteristics of social groups.

14. Institutionalized forms of social discrimination against groups also exist. This form of discrimination is caused by political, economic and cultural factors. Institutional mechanisms and their underlying social norms must be adjusted to ensure that the rights of social groups are protected. Doing so requires establishing a balance between the rights of States and the rights of individuals and social groups. Legal norms established on the basis of prevailing values of dominant segments must be modified so that they do not restrict the rights of socially different groups.

15. Balance between the vested interests of dominant segments and those of specific social groups must be achieved. The granting of rights to discriminated against social groups may be seen as a threat to the legitimate rights of dominant social groups. Social integration requires recognition of the identity of minority social groups without forcing assimilation of such groups. Prevention of discrimination requires adequate political, legal and socio-economic regimes (rules and norms) in order to minimize the potential for conflict and destabilization.

2. *Categorization of discriminated against groups and evaluation of patterns of discrimination*

16. Multilateral legal instruments define different social groups which are subject to discrimination. A minority group is defined as a "group which is numerically

inferior to the rest of the population of a State and in a non-dominant position. The members of minority groups possess ethnic, religious and cultural/linguistic characteristics which differ from those of the rest of the population and who, if only implicitly, maintain a sense of solidarity, directed toward preserving their culture, traditions and language".⁵

17. Minority groups can be characterized by their absolute and relative size within the total population, their geographical concentration and dispersion, their citizenship, their social characteristics, their relationship to other sectors of the population and their legal position within the State. They can be identified by national, ethnic, religious, cultural or linguistic characteristics.

18. New trends in international law deal with the rights of social groups, although the nation-State remains the primary beneficiary of international law, and commitment to the sovereignty and territorial integrity of nation-States is one of the basic principles of the United Nations. International human rights instruments are related to the political, social and economic rights of individuals.

19. The identification of specific groups and the examination of potential and actual discrimination raise the issue of specific group rights in addition to individual rights. The basis for the emphasis on group rights is the fact that the individual-centred approach, even if combined with the non-discrimination rule, cannot ensure the rights of individuals as members of a group or the rights of the group itself. The approach of protecting the rights of specific groups is being incorporated in new human rights instruments in which the need to harmonize the rights of the State, the individual and the group is recognized.

20. The Charter of the United Nations makes no reference to the rights of specific groups. It reflects the view that in order to ensure a stable society individual human rights must be protected by the principles of equality and non-discrimination. The focus on minority or group rights was later supplemented by legal instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (General Assembly resolution 47/135, annex), which deal with specific group rights.

21. The adoption of legal instruments defining group rights, the monitoring of discrimination against identified groups, and the formulation of international and national policies and strategies to reduce and eliminate group discrimination are indispensable. The basic objectives of such mechanisms should be:

(a) To guarantee the rights and preserve the identity of ethnic, religious and cultural/linguistic groups;

(b) To ensure equality for these groups and prohibit discrimination;

(c) To ensure the rights of individuals to identify with the group and to be different without being forced to assimilate;

(d) To equalize opportunities for discriminated groups by adopting special measures.

22. Non-dominant ethnic, religious and linguistic groups should be entitled to equality and permanency in societies that respect their identities. But enhancing group rights without threatening States' right to sovereignty and territorial integrity poses a challenge.

23. Patterns of discrimination against specific social groups can be determined by:

(a) Identifying discriminated groups (by size and social characteristics, for example);

(b) Examining specific forms of political, socio-economic and cultural discrimination;

(c) Examining the negative effects of social discrimination for the identified groups.

24. Policies, institutional structures and legal and social norms that prevent or reduce discrimination against specific social groups must be adopted.

B. GENDER DISCRIMINATION

25. At the beginning of this century most societies viewed as natural a gender division of labour in which men and women were assigned specific functions, responsibilities and obligations. During the past four decades, however, the distinctions between female and male responsibilities have become increasingly blurred as women have entered areas of activity traditionally dominated by men. This change in the gender division of labour has generated an asymmetry between cultural perceptions of gender roles and contemporary reality.

26. In most regions of the world today women are represented in a wide range of professions and occupations, but they continue to be stereotyped as dependent upon a male breadwinner within a family unit, lacking commitment to their work and ready to leave the workforce or reduce their workday in order to be with their children. These stereotypes affect expectations about girls' education, female capabilities and ultimately the nature of the paid and unpaid work carried out by women in society. The mismatch between women's actual role and cultural perceptions about their role also delays adjustment by institutions and organizations to the new realities. The gender-biased environment within which women now operate induces discriminatory attitudes and practices that condition and restrict women's participation in socio-economic and political life. As the Fourth World Conference on Women noted "changes in women's roles have been greater and much more rapid than changes in men's roles. In many countries, the differences between women's and men's achievements and activities are still not recognized as the consequences of socially constructed gender roles rather than immutable biological differences" (A/CONF.177/20, chap. I, resolution I, annex II, para. 27).

1. *Changes in the gender division of labour*

27. Under the traditional gender division of labour both urban and rural women were expected to maintain the household, care for children and old and sick members of the family, and participate in the economic activities of the household without remuneration. Men were expected to earn income and to protect the family from economic hardships and the violence of outsiders. The social space was separated into a male, or public, domain and a female, or private, domain, and gender relations were maintained by relations of power, subordination and dependency, or "patriarchal" relations.

28. There has been a dramatic change in the gender division of labour, and patriarchy can be found in its purest form only in some developing countries. Women have

shifted from the non-remunerated to remunerated work, and there has been a redistribution of activities between men and women within the household.

29. In the vast majority of countries women have entered the labour market on a massive scale. As figure 8.1 shows, between 1950 and 1995 participation by women in the labour force increased almost everywhere, with the most dramatic increases registered in North America (22 percentage points), Oceania (19 percentage points) and Latin America (15 percentage points). In contrast, female participation in Africa remained unchanged.

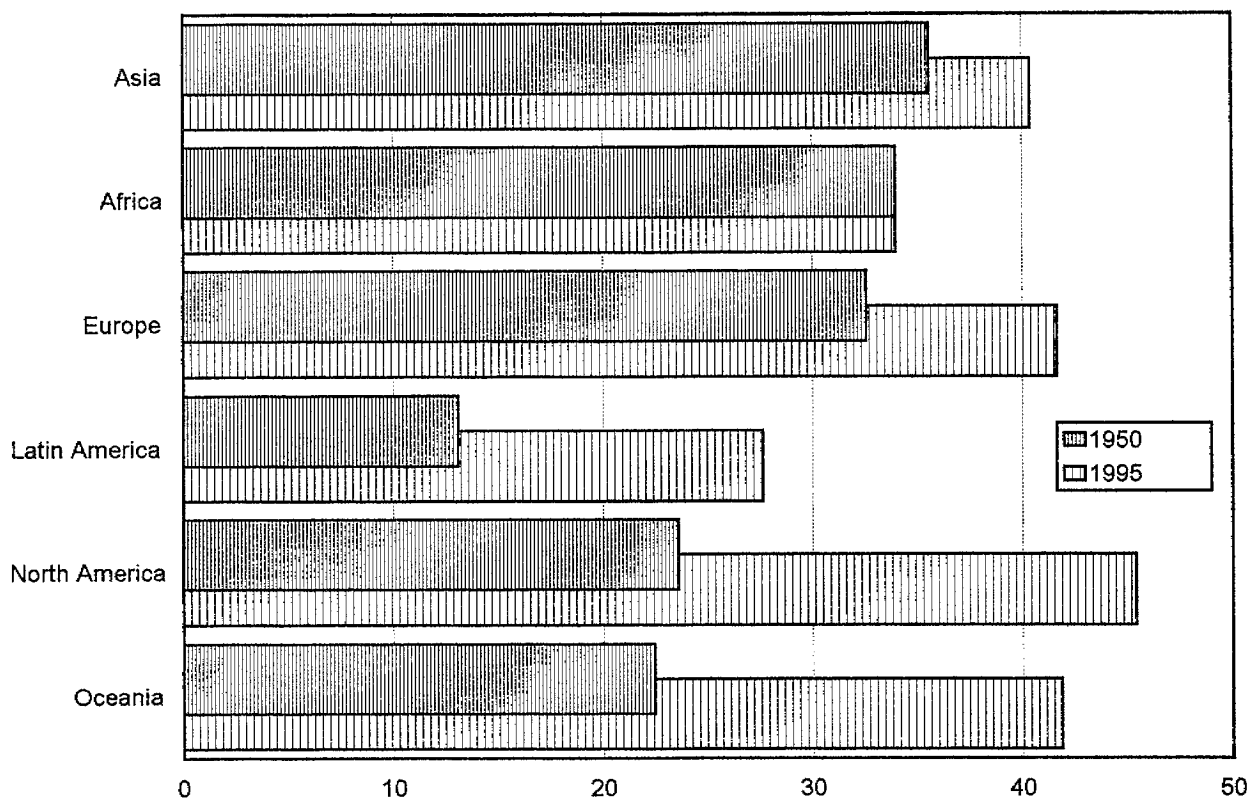
30. This increase in female participation in the labour force has consequences for the distribution of labour for household activities. In the United States, for example, the total number of hours spent by women in remunerated employment increased from 18.7 to 24.5 between 1965 and 1986, while the number of hours spent on household and family decreased from 37.8 to 31.9.⁶ In Germany men's share of housework increased by 17 percentage points in meal preparation, 13 percentage points in childcare, and 14 percentage points in shopping between 1965 and 1992. Men increased their participation in childcare activities by 10 percentage points in the Republic of Korea between 1987 and 1990 and by 5 percentage points in Japan between 1986 and 1991.⁶

31. Although women now work more outside the home, in most countries they continue to perform their traditional domestic functions. As a result the overall workload—inside and outside the home—tends to be much heavier for women than for men. Polish women, for example, work 7.9 hours more per week on average than Polish men, while Japanese women work 3 hours more than Japanese men.⁶

32. The majority of economically active women in the world work in the informal sector, where working conditions are generally less secure than in the formal sector. Most informal enterprises operate outside the law and do not comply with prevailing labour legislation. Informal employers do not provide health insurance, non-wage benefits or annual leave and they do not make social security contributions. Working conditions are often difficult, and tools and technology employed are rudimentary. Nonetheless, according to some studies, informal economic activities by women have become an important, if not the most important, source of family income in some developing countries. In the urban informal economic sector of many developing countries women are engaged predominantly in the economic activities which are at the bottom of the urban labour market structure (itinerant trade, garbage picking, stallholding, and provision of personal and domestic services). In rural areas women now work in all capacities, including ploughing, cultivation, post-harvest operations, marketing, animal husbandry and related activities.⁷

33. In formal labour markets women tend to concentrate in activities traditionally viewed as female (nursing, food preparation, teaching, cleaning, and garment making) or in other low-technology industries. Women tend to be separated from men in the labour market structure both horizontally (across economic sectors and subsectors) and vertically (within occupational hierarchies). Figure 8.2 shows that in all countries sampled women continue to be underrepresented in economic activities traditionally regarded as male (construction, mining,

Figure 8.1. Female participation in the labour force, by region, 1950 and 1995
(Percentage)



Source: E. Denti and E. Ruhumuliza, "Evolution de la population active de 1950 a 1995", *Bulletin of Labour Statistics*, 1996-1, (Geneva, ILO, 1996).

transportation and production of gas, electricity and water); in manufacturing their representation more closely reflects their representation in the labour force. Within occupations, in most countries the majority of clerical and related workers, sales workers, service workers and professional, technical and related workers are women (table 8.2).

34. In developed countries temporary employment is on the rise. In Spain the incidence of temporary employment among women rose from 18.4 per cent in 1983 to 37.9 per cent in 1994. Over the same period temporary employment grew from 3.4 per cent to 12.4 per cent in France and from 9.3 per cent to 15 per cent in the Netherlands. In almost all of the OECD countries the incidence of temporary employment was higher among women than among men.⁸

35. Across countries, economic sectors and occupations, and educational groups women's wages are generally significantly lower than men's. In 1990 the male/female hourly wage ratio in manufacturing ranged from 41 per cent (in Japan) to 97 per cent (in Australia), with no country for which data were available achieving male/female wage parity.⁹

36. Within countries immense differences exist in the degree of female shortfall in wages across regions and ethnic groups and races. In India, for example, the lowest female/male agricultural wage ratios were in the states of

Punjab (0.06) and Haryana (0.10); the highest were in Madhya Pradesh (0.60).¹⁰

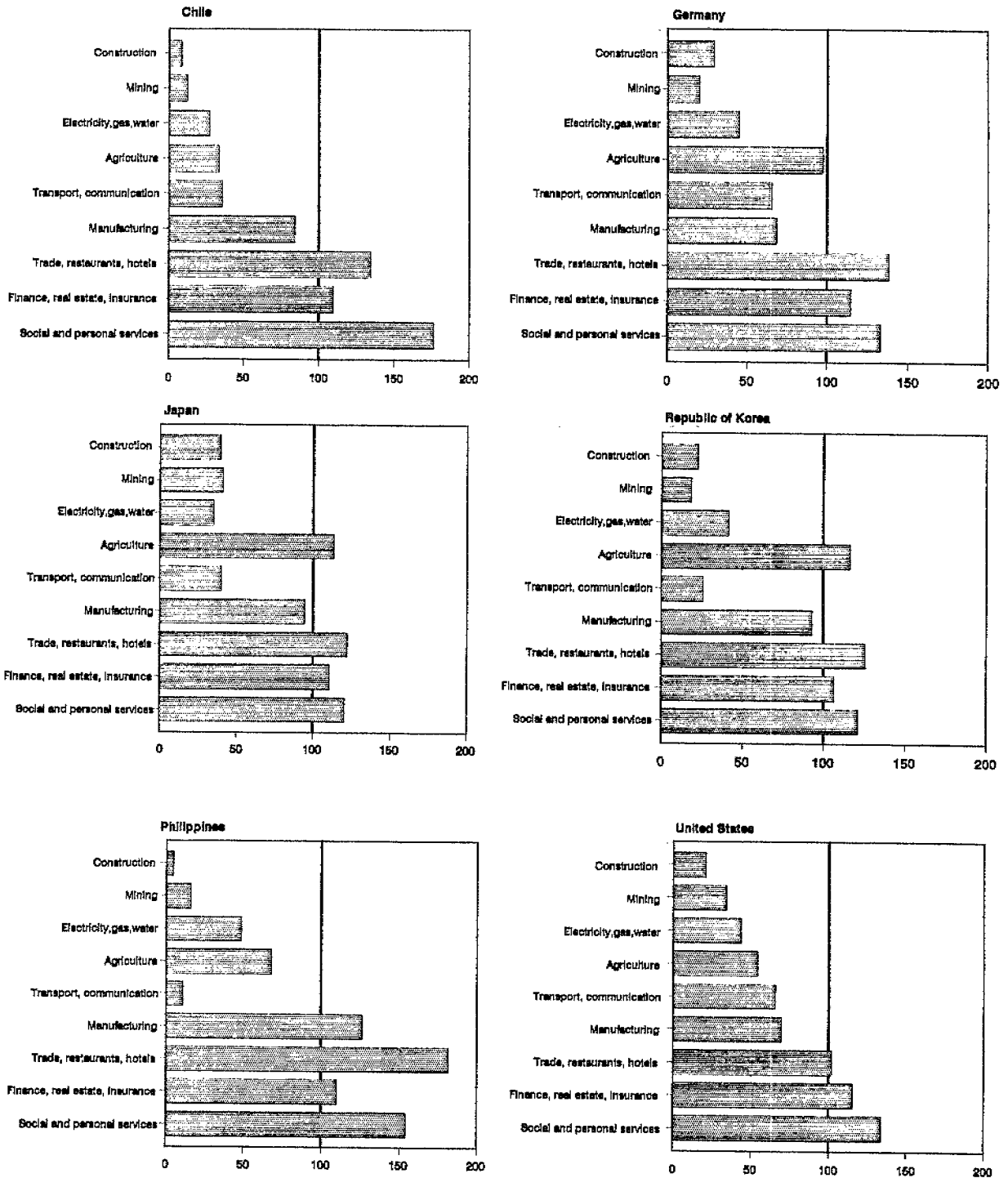
37. There is no question that an economic gap persists between men and women. But is this phenomenon a result of discrimination that forces women into certain activities, or is it a result of voluntary choice by women concerning education, careers and their use of time? To what extent do the male/female wage differentials reflect a market response to differences in free choices made by the two groups, and to what extent are they a product of discrimination against females?

2. Political discrimination

38. Although women have the right to vote and hold public office in most countries of the world today, they are grossly under-represented in political institutions. In 1994 women held only 10 per cent of seats in parliamentary bodies (the figures were 12 per cent in industrial countries, 10 per cent in developing countries and 8 per cent in transition countries). As of July 1996, women served as head of State of only 8 countries and as head of Government of only 4 countries. Worldwide, women occupied only 5.6 per cent of ministerial posts. The gender distribution of ministerial posts also reflects stereotyping. In 1994 women held 3.1 per cent of ministerial posts in political affairs and 11.1 per cent of posts in social affairs.

Figure 8.2. Female dominance in sectors of economic activity in selected countries, early 1990s

(ratio of the female share in each economic sector to the female share in total labour force)
 (Indices, female share in total labour force = 100)



Source: Yearbook of Labour Statistics, 1995 (Geneva, International Labour Office).

TABLE 8.2. FEMALE DOMINANCE IN SELECTED OCCUPATIONS, EARLY 1990S
(Ratio of the female share in each occupation to the female share
in total labour force times 100)

Country	Clerical and related workers	Sales workers	Service workers	Professional, technical and related workers	Administrative and managerial workers
Developing countries					
Chile	145	146	216	159	65
Colombia	142	101	166	105	74
Costa Rica	168	126	201	153	82
Honduras	190	184	226	160	98
Malaysia	156	102	120	130	34
Pakistan	21	21	101	144	24
Philippines	151	189	157	179	84
Republic of Korea	102	117	152	112	10
Thailand	112	131	124	114	41
Uruguay	126	113	168	152	46
Developed countries					
Australia	112	25	184	59	101
Canada	176	99	125	123	93
Denmark	134	112	151	134	39
Finland	154	114	145	131	55
Germany	152	142	144	107	48
Japan	150	95	134	103	20
Netherlands	145	114	160	110	41
Norway	171	112	157	127	64
Spain	151	133	172	143	27
United States	172	107	130	114	91

Source: *Yearbook of Labour Statistics 1995* (Geneva, International Labour Office, 1995)

39. At the beginning of this decade political representation by women within the former communist countries fell markedly. In the former Czechoslovakia, for instance, representation of women in the federal legislature dropped from 13-26 per cent to 10.7 per cent after the June 1990 election and to 8.7 per cent after the election in June 1992.¹¹ A similar trend was observed in Romania, where representation fell from about 33 per cent to 5 per cent, in Hungary, where it fell from 21 per cent to about 8 per cent, and in Bulgaria, where it fell from 21 per cent to about 9 per cent.¹²

40. In many countries major political parties treat women's issues as secondary. This lack of gender sensitivity undermines female interest in participating in formal politics. In some countries unstable political conditions and continuing military involvement in politics have encouraged women to withdraw from political life. In countries in which major political parties have opened their doors to women, women have failed to advance in the party hierarchy, with most women remaining rank-and-file party members.

3. Discrimination in education

41. Despite the introduction of compulsory primary education everywhere and a rapid extension of educational services to rural areas in developing regions, significant gender differentials in educational attainment and skills exist in many countries. In 1995 the female literacy rate in the developing world was 61.7 per cent, much lower than the 78.9 per cent rate among men

(table 8.3). School enrolment rates of girls in many countries continue to be lower than those of boys, and some societies impose formal restrictions on acquisition of education by girls and women.¹³ As a result, women often lack formal education, an important determinant of success in the labour market.

42. In principle, initial educational disparities could be ameliorated by on- or off-the-job-training. Some studies show, however, that women are often by-passed for such training.¹⁴ A study on training among young Americans, for example, found that men were more likely than women to receive employer-provided training and to participate in apprenticeships.¹⁵

43. The role of the household and the family in the transmission of knowledge and skills to children remains very important. Child socialization within the rural patrilineal household of many developing countries continues to be governed by tradition. By customary law, for example, some field operations are assigned only to men, and access to machines and fertilizers is considered to be a male prerogative. Among many Hindu tribes ploughing is an exclusively male function, whereas sowing seeds is assigned to women. In many Arab countries the use of fertilizers is assigned exclusively to men, and boys are taught skills that are important for performing field work and machine operations; girls continue to be oriented towards the traditional roles of wife and mother. Such gender-biased training in household activities shapes children's future choice of employment and, hence, their future earnings.

TABLE 8.3. MALE AND FEMALE LITERACY RATES, BY REGION, 1980, 1990 AND 1995
(Percentage)

Region	Male			Female			Total		
	1980	1990	1995	1980	1990	1995	1980	1990	1995
World	77.2	81.9	83.6	61.9	68.7	71.2	69.5	75.3	77.4
Developed countries	98.0	98.7	98.9	95.4	97.7	98.4	96.6	98.2	98.7
Developing countries	68.9	76.3	78.9	46.8	57.8	61.7	58.0	67.2	70.4
Sub-Saharan Africa	51.8	61.8	66.6	29.2	41.1	47.3	40.2	51.3	56.8
Arab States	55.0	64.5	68.4	26.2	38.1	44.2	40.8	51.7	56.6
Latin America and the Caribbean	82.1	86.4	87.7	77.5	83.5	85.5	79.7	84.9	86.6
Eastern Asia and Oceania	80.4	88.2	90.6	58.0	72.2	76.3	69.3	80.3	83.6
Southern Asia	52.8	59.8	62.9	24.5	32.6	36.6	39.1	46.6	50.2

Source: UNESCO, *Statistical Yearbook 1995*, table 2.2.

44. Persistent gender gaps in school enrolment also reflect the bias of patrilineal households against investment in the education of girls. Some rural societies attach a negative value to female education and thus discourage families from sending girls to school. In the Niger, for example, a local honour code values marriage over education. When a daughter marries she becomes her family's permanent ambassador in her husband's family. Any misconduct by the bride reflects on her family, in particular her mother, who usually watches her daughters very closely. Schools are perceived as interfering with a mother's surveillance. Consequently, families develop all sorts of strategies to avoid school registration and often marry their daughters at a very early age, which automatically releases them from having an obligation to attend school.¹⁶

45. Urban households generally have a more positive view of female education. Even in countries with a wide range of employment opportunities available to women, however, families continue to restrict their daughters' choice of education and future career. A recent study revealed that choice of education for Korean and Japanese girls is heavily influenced by their families, who continue to value the Confucian image of women and see female education primarily as a means of achieving an advantageous marriage and only secondarily as training for a career.¹⁷

4. Discrimination in entitlements within the household

46. Gender differences in entitlements persist in many patrilineal societies and bear much responsibility for intra-household welfare differentials and, hence, differences in opportunity sets. In contemporary societies the distribution of resources occurs through a complex system of claims, which are in turn embedded within social relations and practices that govern possession, distribution and use in those societies. The household represents a system within which individual claims to a social product are satisfied through endowments and exchange entitlements.¹⁸

47. In many societies, intra-household distributional processes are governed by informal rules and conventions that discriminate against women in family transfers and command over resources, including their own labour and

income.¹⁹ Customary law in some African countries and Hindu and Muslim Law in India, Bangladesh and some Arab and African countries governing family transfers (including land) restrict daughters' and widows' inheritance rights. In the United Republic of Tanzania, for instance, under local customary law the eldest son of a man's first marriage has the primary right to the family land.²⁰ Failure to give birth to a male child in the first marriage passes the right to sons in subsequent marriages. Neither a widow nor daughters have any proprietary rights.²¹ Such discriminatory practices reduce women's capacity to generate income and reinforce their economic dependence on the family and their husbands. Women's lack of assets, particularly of land (women own only 1 per cent of land worldwide) reveals that unequal access to the basic means of production exists in many countries.²²

48. Opportunities for women in some countries are further narrowed by discrimination in food allocation and access to health services. There is also scattered evidence that patrilineal societies which deprive girls of property inheritance also discriminate against them in distributing other entitlements.²³

5. Discrimination against women in access to credit

49. In many countries women's economic dependence on families and men is reinforced by informal and formal constraints on their access to outside sources of finance, especially in the rural areas of developing countries. According to recent studies, women face a number of obstacles in obtaining formal credit, including (a) cultural constraints (a woman may need her husband's approval and signature in order to obtain a formal loan), (b) lack of collateral (banks in most developing countries accept only livestock or land title, requirements that exclude most women), (c) lack of information (women are often unaware of formal credit options and procedure requirements), (d) transactions costs (it is much more difficult for rural women to spare money and time for travelling to and from banks), and (e) repayment schedules (many studies have found that it is much easier for women to repay loans in frequent and small instalments than in the large, less-frequent payments typically demanded by banks).²⁴ As a result of these constraints, female entrepreneurs and farmers have to rely on an informal credit network of relatives and friends or borrow

from local moneylenders and pawnbrokers at exorbitant rates.

50. Innovative programmes are needed to improve women's access to finance. Intermediary programmes run by non-financial institutions and government agencies and parallel credit schemes have been able to reach even the poorest women. Non-financial institutions provide referrals, assist borrowers and guarantee loans, thereby reducing the costs of formal borrowing and the risk of lending to poor women. Under a parallel credit scheme an organization lends directly to the poor. Examples include revolving loan funds established under pilot or local income-generating or micro-entrepreneurship development projects and large-scale programmes, such as Production Credit for Rural Women in Nepal, the Working Women's Forum in India and the Small Business Scheme of the National Christian Council of Kenya in Kenya. Alternative banking institutions, such as the Grameen Bank in Bangladesh, the SEWA Bank in India and the Zimbabwean Savings Clubs, also lend to women.

6. *Discrimination in the labour market*

51. Many economists view gender earning differentials as a market response to differences in human capabilities, voluntary choices and skills accumulated through working experience and perceive the market as gender neutral. Review of the dynamics and structure of gender earnings in industrial countries supports this assumption only in part, however.

52. Gender earning differentials have declined over the past four decades, although the gender gap in wages has not been closed. To some extent the decline is the result of attempts to equalize opportunities through public education and political and legislative measures, but it also reflects changes in industrial and occupational composition and the decline in trade union coverage. Gender differences in pay for workers with the same measured background and experience persist, however, implying the existence of mechanisms that discriminate against women in the labour market.

53. Attempts to analyse the impact of economic discrimination on women's earnings have been only partly successful because of the absence of an effective measure of discrimination. The methodology and techniques used for this purpose (such as the decomposition of wages and earnings) leave much room for speculation on possible values (unknown or non-measurable) that can negatively affect female wages. Nonetheless, application of the decomposition method to wage differentials in different countries has resulted in some interesting findings. First, in all regions and countries studied 20 to 60 per cent of gender wage differential stemmed from male/female differences in human capital endowments. Second, the unexplained component of the sex wage differential was relatively large, ranging from 40 per cent in some developed countries to 80 per cent in some developing countries, even when female employment preferences were taken into consideration. Third, the component of the wage differential attributed to male/female differences in human capital endowments shows a tendency to decline with a rise in female educational level. Fourth, male/female wage differentials are usually smaller in the public sector than in the private sector. Fifth, in multi-racial or multi-ethnic societies gender wage differentials may vary

across ethnic groups and races. Sixth, schooling and hours of work are generally lower for women than for men, although this varies from country to country.²⁵

54. Empirical studies reveal an inverse relationship between the "feminization" of employment and earnings of women, suggesting that women's earnings tend to be depressed by female overcrowding in a narrow range of jobs.²⁶ In Malaysia, for example, the average wage of a regular female worker in 1988 was inversely related to the female share in total employment. In industries with a female employment share of 75 per cent or more the mean wage was 35 percentage points lower than that in industries with a female share of 0.1 to 5 per cent.²⁷ In the Philippines in 1990 the average monthly wage of women in professional/technical occupations with a female employment share of 50 per cent or more was about 10 percentage points lower than the wage in occupations with a female employment share of 0.01 to 10 per cent.²⁸ This strong inverse relationship between feminization of employment and average female earnings holds for Malaysia and the Philippines even after controlling for other variables such as skill composition, industry, size of firm, ownership, extent of casual labour, past employment growth and unionization.²⁹

55. Women's earnings are also affected by payment and promotion practices, which depend not only on labour productivity but also on the duration of employment and work tenure. These criteria evolved during a time when female employment was rare in many occupations, and interruption of work because of pregnancy, childbirth or care for sick family members was unacceptable. Women's mass entry into the labour market has modified these criteria only slightly. Labour codes now grant women the right to temporary leave for family reasons, but because women then lag behind men in employment duration and work tenure they suffer losses in wages and earnings. In a study of women's employment and pay in Latin America, the percentage of male pay advantage explained by differences in male/female potential experience is estimated to be 76 per cent on average, ranging from more than 400 per cent in Mexico to 19 per cent in Costa Rica.³⁰ A model of the promotion process for men and women in a large British financial company showed that raising women's work tenure to the level of men's would raise the female share in management grades by 17 per cent and reduce their share in clerical grades by 32 per cent. The study also indicated the presence of discrimination against women in all promotions above the bottom rungs of the job ladder, however.³¹

56. Discriminatory employment practices result in female under-representation in decision-making. Although they constitute approximately 40 per cent of the world's workforce, women hold less than 20 per cent of management and only 6 per cent of senior management positions.³² The position of women is much weaker in the private sector than in public organizations. In the early 1990s, for example, only 1 per cent of all corporate chief executive officers in France and the United States of America were women.³³

57. Women are compelled to make choices within an environment of inequality generated by systematic and all-embracing gender discrimination. Women and men enter into and participate in the labour market on an unequal basis because of pre-existing human capital differ-

entials. The gender divide in the labour market indicates that improvements for women in the workplace, although important, have had a limited effect in terms of eradicating gender discrimination.

C. DISCRIMINATION AGAINST MINORITIES AND OTHER GROUPS

58. Awareness of the problems encountered by minorities has grown in the 1990s and discrimination against minority groups has declined. In the transition economies the process of democratization has led to increased political and cultural rights for minorities. In Latin America, Asia and South Africa, minority groups have benefited from and made use of political opportunities provided by the emergence of newly democratic regimes. Discrimination has also declined in Africa, the Middle East and Asia.

59. The overall picture remains complex and varied, however, and despite positive trends, serious problems remain. Extreme nationalistic movements in Europe advocate and foster political and economic discrimination and social exclusion. Intense inter-country conflicts arising out of ethnic and tribal rivalries in Africa have been particularly devastating for minorities. Anti-minority sentiment expressed in the public arena strains internal relations within States and threatens international peace and security.

60. Successful social integration of minorities requires an analysis of different types and forms of discrimination and their consequences as well as the elaboration of diverse strategies for political, legal, socio-economic and cultural integration. Successful integration of minorities in the societies in which they live will reduce the potential for minority alienation and grievances to foster destabilizing behaviour that may lead to large-scale conflicts.

1. *Defining and identifying criteria for classifying minorities*

61. The definition of minority groups is elusive and controversial. Relevant United Nations intergovernmental bodies have been unable to define a "minority" population group. The Working Group on Minorities of the Subcommission on Prevention of Discrimination and Protection of Minorities, established by the Commission on Human Rights, could not arrive at a universally acceptable working definition of a minority group which could be used comprehensively to address protection of vulnerable groups in given societies. The Working Group concluded that, since the term minorities could not be defined, any attempt to arrive at a definition would prove not only extremely time-consuming but also counter-productive for the advancement of its activities (see E/CN.4/Sub.2/1996/2).

62. A related problem is identifying acceptable criteria for classifying minority groups. The most obvious way of defining a minority is in terms of numbers.³⁴

63. A minority could be defined as a numerically inferior group living within a larger population (or territorial State) which seeks to preserve the ethnic, linguistic, cultural (including religious) and, perhaps, political characteristics that distinguish it from the larger population. Minority groups may, of course, possess radically differ-

ent combinations of criteria. A minority group may be discriminated against on the basis of one characteristic, such as religion or language, or several characteristics (as in the case of indigenous peoples). Adding to the definitional dilemma is the notion that minorities include groups such as nomads and migrant workers. Some minorities seek political self-determination as a way of liberation from discrimination and oppression; others willingly or grudgingly accept a politically assimilated status within the territory or State controlled by an ethnically different majority.

64. The absence of basic rights for minorities may create social tensions and lead to political conflict. The first half of the 1990s has seen internecine wars break out over minority issues in the former Yugoslavia and in several African countries; the second half of the decade will no doubt witness conflict over the status, evolution and problems of minorities.

2. *Discriminatory practices against minorities and other social groups*

65. While recognizing the inherent difficulty of arriving at a universally agreed upon definition of minority status, it is nevertheless clear that numerous minorities suffer patterns of discrimination. Group discrimination may take the form of political, socio-economic or cultural restrictions which are invidiously imposed on members of ethnic, religious and linguistic minorities as a matter of public policy or social practice. Discrimination can also target other groups within a society, including women, older people, people with disabilities, certain categories of young people and immigrants. These groups may be discriminated against in terms of access to education, employment and social services. Attitudinal prejudices against certain groups may be manifested in either tacit or overt discriminatory behaviour. Each situation of actual or purported discriminatory practice requires an analysis of its context, degree of severity and effects, as well as proposed countermeasures and remedies.

66. Discrimination against minorities comprises several dimensions and may be political, socio-economic or cultural. The following rights have been identified as essential to the protection of the existence of persons belonging to minorities (see A/49/415 and Add.1):

- (a) The right to enjoy their own culture;
- (b) The right to profess and practise their own religion;
- (c) The right to use their own language;
- (d) The right to participate effectively in cultural, religious, social, economic and public life;
- (e) The right to participate effectively in decisions on the national level;
- (f) The right to establish and maintain their own associations;
- (g) The right to establish and maintain free and peaceful contacts with other members of their group, as well as contacts across frontiers;
- (h) The right to equality before the law.

67. Subsequently, the right to equal access to land was included as a fundamental minority right. The International Labour Organization (ILO) adopted the Discrimination (Employment and Occupation) Convention (No. 111) in 1958, which 127 countries have ratified. The Convention seeks to eliminate discrimination in employ-

ment and occupations on the grounds of race, colour, sex, religion, political opinion, social origin or national extraction. Other prohibited grounds for discrimination cited by ILO are civil and marital status, disability, state of health, age and trade union membership.³⁵

68. Discrimination against minorities and other social groups can be based on historical patterns (including the legacy of past neglect), specific economic and social practices, and/or explicit public policies fostering exclusion and restriction of certain rights enjoyed by the majority population. Some discriminatory practices may be seen as organized efforts of a dominant majority to preserve the inferior status of a minority or minorities. There may be historical roots and antecedents to this pattern, or it may emerge gradually or suddenly in the process of nation building. Recent events in Africa, Europe and the former Soviet Union are manifestations of the difficulties inherent in integrating different ethnic, racial and religious minorities into nation-States. The survival of contemporary nation-States requires a trade-off between interests and rights, establishment of new social contracts between majorities and minorities, and creation of flexible international mechanisms through which political bargaining and conflict resolution can be carried out. Aside from being an affront to human rights, violation of minority rights and discrimination against minorities fosters tensions and strains the stability of States.

69. Discrimination often reflects historically rooted conflicts and resulting inequalities. Discrimination affects both the attainment of the minority's collective goals and the well-being of individual members. Systematic discrimination against a minority leads to political, socio-economic and cultural inequalities and lack of social integration. Discrimination against ethnic, religious and linguistic minorities varies widely in type, severity and consequences. Efforts have been made to categorize minorities and codify the level, type and magnitude of discriminatory practice against them.³⁶

3. *International instruments addressing discrimination against minorities*

70. Fundamental international legal instruments that define human rights, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, provide a sound basis for contravening discrimination against political, ethnic, religious and linguistic minorities. In addition to these human rights instruments the international community has adopted specific legal instruments—such as the International Convention on the Elimination of All Forms of Racial Discrimination, the ILO Convention concerning Discrimination in Respect of Employment and Occupation,³⁷ the UNESCO Convention against Discrimination in Education,³⁸ and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly resolution 36/55)—which affirm the political, socio-economic, legal, cultural, religious and educational rights of minorities.

71. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (General Assembly resolution 47/135, annex) underscores the right of minorities to participate in

the political, socio-economic and cultural lives of their respective societies. Article 4, paragraph 1, declares that States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law. In paragraph 2 of the same article, it also encourages States to create favourable conditions for minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law or contrary to international standards. In paragraph 5 it says that States should consider appropriate measures to enable persons belonging to minorities to participate fully in the economic progress and development in their country.

72. In the Programme of Action of the World Summit for Social Development,³⁹ the concept of social integration was affirmed as one of the pillars of social progress. Social integration requires the formulation and implementation of policies aimed at eliminating exclusionary discrimination in all its forms. It implies the recognition of ethnic, religious and cultural diversity, as well as the protection and promotion of the rights of persons belonging to minority groups. It advocates the adoption of measures designed to promote an "inclusive society" in order to facilitate the full participation of minorities in all aspects of the political, economic, social, religious and cultural life of their societies. The Social Summit encouraged the implementation of international legal instruments and of agreed norms concerning the prevention of discrimination against minorities, particularly racism, social discrimination, religious intolerance in all its various forms, xenophobia and all forms of discrimination in all walks of life in societies. Two other germane concepts emerging at the Social Summit are the notions of popular participation and an enabling environment. The participation of social groups in the decision-making process implies and leads to empowerment, that is, greater control over the socio-economic, political and cultural issues that affect one's destiny. A socially accommodating, or enabling, environment is a precondition for the protection and advancement of basic human rights. It implies majority acceptance of the fundamental rights of minorities to develop and preserve their culture, traditions, religion and language.

73. The mandate of the Working Group on Minorities of the Subcommission on Prevention of Discrimination and Protection of Minorities includes the examination of proposals designed to resolve problems involving minorities and the recommendation of measures to promote and protect the rights of persons belonging to national, ethnic, religious and linguistic minorities. At its first session, held in late August 1995, the Working Group gave priority to the constitutional and legal provisions protecting the existence and identity of minorities, the right to use their own language, profess and practise their religion and enjoy their own culture, the effective participation of minorities, educational issues, national recourse and conciliation machineries, regional mechanisms for the protection of minorities, the contribution of advisory services and technical assistance, and cooperation and coordination with the international community (see E/CN.4/Sub.2/1996/2).

74. Through the Subcommittee the United Nations is developing a monitoring system to provide information on the status of specific minority groups to assess the different forms and levels of discrimination. This assessment will include an analysis of specific cases, the development of mechanisms for meaningful exchanges of information, the creation of programmes to prevent or remedy cases of discrimination of minorities and investigation of ways to resolve conflicts involving minorities. This activity at the international level will assist and supplement efforts undertaken at the national level. It will raise the awareness of minority issues at the international level and have a positive effect on national laws and regulations concerning the promotion, protection and integration of minorities.

4. *Positive trends in reducing discrimination against minorities*

75. The discussion and articulation of specific problems related to discrimination against minorities led to an enhancement of rights for a number of minorities in the 1990s. In paragraph 67 of the Programme of Action, the World Summit for Social Development noted progress in several broad areas: "the ongoing process of decolonization; the elimination of apartheid; the spread of democracy; wider recognition of the need to respect human dignity, all human rights and fundamental freedoms and cultural diversity; the unacceptability of discrimination; increasing recognition of the unique concerns of indigenous people in the world; an expanded notion of collective responsibility for all members of a society; expanded economic and educational opportunities and the globalization of communication; and greater possibilities for social mobility, choice and autonomy of action".⁴⁰

76. There is evidence of progress in addressing problems of discrimination against minorities. General awareness of the issues at stake has grown, and there is greater pressure upon recalcitrant States or majority groups to undertake measures to alleviate discrimination and protect minority groups. Specific examples of progress include the following:⁴¹

(a) The constitutional and main legal provisions protecting the identity of minorities were modified in Belarus, Colombia, India, Norway, Poland and Ukraine, and new laws on ethnic and national minorities were drafted on the basis of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (General Assembly resolution 47/135, annex). Ukraine adopted several legislative acts protecting the rights of minorities. Norway passed laws to protect the existence and identity of the Sami minority. The Sri Lankan Constitution recognizes the right of citizens to profess and practise religions other than Buddhism and recognizes both Tamil and Sinhalese as official languages. These legal norms contribute to the reduction of discrimination against minorities; results depend on the strict implementation of these provisions;

(b) Steps were taken to protect the right of minorities to enhanced education, including the right to receive instruction in their own language. Poland has adopted measures to ensure that admission to minority schools is free and education in the languages of the minorities is available. Finland and Norway guarantee the right of the

Sami minority to receive instruction in their own language;

(c) Australia, Austria, Denmark, Mexico and Portugal introduced educational policies which favour cultural integration as opposed to cultural assimilation and respect the separate identity of minorities;

(d) Specific conciliation mechanisms were introduced in a number of countries to address minority problems. Protracted civil conflicts in Angola, Bosnia and Herzegovina, and Liberia were alleviated as a result of concrete conciliation mechanisms developed for introducing nation-building measures and ensuring protection of the rights of minorities;

(e) The Russian Federation signed bilateral treaties within the Commonwealth of Independent States and the Baltic States with the aim of protecting the rights of Russian minorities. Hungary and Slovakia signed a bilateral treaty to regulate the treatment of minorities;

(f) Regional mechanisms for dealing with minority issues were put in place in Europe. Examples include the European Convention on Human Rights and the Council of Europe's Framework Convention on National Minorities, which went into force at the end of 1996. These frameworks stress the legitimate rights of minorities (protection of identity, protection from forced assimilation and so forth), but also take into account the legitimate interests of States with respect to their territorial integrity.

5. *Persistence of discriminatory patterns*

77. Despite some progress, discrimination against minority and other social groups persists. In the past several years a number of negative developments have occurred, including social polarization and fragmentation; widening disparities and inequalities of income and wealth within and among countries; problems arising from uncontrolled urban development and the degradation of the environment; marginalization of people, families, social groups, communities and even entire countries; and strains on individuals, families, communities and institutions as a result of the rapid pace of social change, economic transformation, migration and major dislocations of population, particularly in the areas of armed conflict.

78. Restrictive public policies invariably restrict the rights of minority groups and are tantamount to discrimination. Political discrimination takes the form of restrictions on political organizing, freedom of movement and freedom of expression; denial of voting rights; judicial proceedings as well as discrimination in recruitment to all sectors of public activity, the military or police, the civil service and political office. Political discrimination is often coupled with socio-economic and cultural discrimination. In developing countries the public sector, which is usually relatively large, represents the main source of professional employment. Discriminatory barriers to minority recruitment thus restrict economic opportunities for individual members of the minority group and help to perpetuate material inequalities.⁴² Politically restricted minorities also suffer impediments to their cultural and/or linguistic expression. Restrictions on the use of a minority's language often prompt protracted ethno-national conflicts and demands for sub-state autonomy or complete independence. Language policy is also related

in complex ways to the perpetuation of economic and political disadvantages; it can, for instance, form a formidable barrier to access to education for minorities.

79. Discrimination is commonly associated with high levels of social and health difficulties among the most severely disadvantaged minorities. Members of such minority groups are more likely to have high infant mortality rates, be more susceptible to diseases, engage in substance abuse and crime, and have high rates of arrest and incarceration, which often reinforces political and socio-economic discrimination. These indicators reflect the cumulative consequences of poverty, powerlessness and the erosion of group culture.

80. Minorities that are subject to discrimination commonly respond by devising strategies of resistance. Minorities seeking independence or sub-state autonomy at the outset usually try conventional politics to protect and solicit support. If those strategies fail to achieve tangible gains, however, minority groups may shift tactics to local rebellion, guerrilla warfare or terrorism, threatening the cohesion of sovereign States and undermining political stability.

D. POLICIES AND MEASURES TO COMBAT DISCRIMINATION

81. Governments combat discrimination based on race, gender or ethnic origin by (a) promoting equality of opportunity by outlawing discrimination and making health care and education available to all and (b) seeking equality of results by granting preferences to members of disadvantaged groups. The second approach has been given a variety of labels, including benign quotas, reverse discrimination, reservation policy, employment equity, positive discrimination, positive action and affirmative action. In contrast with equal opportunity, which focuses on procedures and individuals, this approach is results oriented and group oriented. The two approaches are not mutually exclusive. In the United States, for example, courts frequently impose hiring quotas on organizations found guilty of discrimination against women or disadvantaged minorities.

82. The Universal Declaration of Human Rights (General Assembly resolution 217 A (III)) declares that "all human beings are born free and equal in dignity and rights" (article 1). It emphasizes that "all are equal before the law and are entitled without any discrimination to equal protection of the law" (article 7) and that "higher education shall be equally accessible to all on the basis of merit" (article 26). Signatories to the International Covenant on Economic, Social and Cultural Rights (Assembly resolution 2200 A (XXI), annex) recognize further the "equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence" (article 7 (c)).⁴³ The language is clear: individuals are to be judged solely on competence and experience, without preferences granted on the basis of race, gender or ethnic origin.

83. The International Convention on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 2106 A (XX), annex) permits temporary discrimination in favour of disadvantaged groups: "States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special

and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved" (article 2, para. 2). Similar language is adopted in article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women (Assembly resolution 34/180, annex): "Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved." These conventions allow Governments to abandon the principle of *de jure* equality in order to raise the economic, social or cultural level of members of a disadvantaged group, but the ultimate goal remains equality of opportunity, not *de facto* equality. By 30 July 1996, 146 countries had ratified the International Convention on the Elimination of All Forms of Racial Discrimination and 153 had ratified the Convention on the Elimination of All Forms of Discrimination against Women.

1. Policies to promote equality of opportunity

84. Many Governments have created specialized bodies to promote equality of opportunity across races and between men and women. Typically these organizations report to a government department or ministry and have only promotional or consultative powers, although some have been given independence and the authority to investigate and act on complaints. Examples of the latter include the Equal Opportunities Commission and the Commission for Racial Equality in the United Kingdom, the Human Rights and Equal Opportunities Commission in Australia, the Human Rights Commission in Canada, the Human Rights Commission and Race Relations Conciliator in New Zealand and the Equal Opportunity Commission in the United States.

85. There is an increasing tendency for legislatures to impose substantial penalties, including imprisonment, for discrimination by race or gender in recruitment, training and conditions of employment. A few countries, such as France, the Netherlands and Sweden, incorporate these provisions in the Penal or Criminal Code, but most countries enumerate them in specific acts of legislation.⁴⁴

86. Regardless of the severity of penal sanctions, legislation will not deter discrimination unless cases are prosecuted, something that is rare in many countries. Victims of discrimination may be reluctant to file formal accusations for three reasons. First, discrimination is difficult to prove, and the burden of proof lies with the accuser; the person accused of discrimination, who often holds all of the records that might constitute evidence, frequently wins simply by remaining silent. Some countries, notably France, Germany, Italy and Switzerland, have responded to this problem by shifting the burden of proof on to the accused once the complainant makes a plausible case for the existence of an illegal discriminatory practice. Second, the prospect of significant financial costs deters many potential claimants, who may not

have recourse to legal aid or the backing of a trade union. Some countries deal with this problem by providing free legal assistance. In Spain the Constitution guarantees every person the right to legal assistance; in Australia financial assistance is provided in sex discrimination cases to the side judged better founded. Third, potential claimants may fear reprisal. In employment discrimination this typically takes the form of dismissal of the worker and those who helped him or her. Effective promotion of equal opportunity in employment requires protection against such dismissal.

87. Discrimination is most difficult to deal with when it is indirect, the result of apparently neutral rules that adversely affect a particular race, gender or ethnic group. Rules based on pregnancy, for example, affect only women; those based on child care affect women disproportionately. Uniform height and weight requirements discriminate against women and some ethnic groups. The requirement that employees work on a given day of the week discriminates against groups whose religion proscribes doing so. In each case a court, tribunal or commission—in extreme cases, a legislature—must determine whether a particular requirement is necessary or is merely a covert way to discriminate.⁴⁵

88. Language requirements imposed by Governments and private employers are perhaps the most common form of indirect discrimination against ethnic groups. Often there is good reason to require fluency in a particular language. Taxi drivers, for example, provide better service if they speak the language of the country in which they work, even if this discriminates against recent immigrants. But language requirements are also used for the sole purpose of discriminating against ethnic groups. In South Africa, employers are known to demand fluency in English and Afrikaans even though the work may not require fluency in both languages.⁴⁶ For many years English was the language of Government and the judiciary in Sri Lanka, although no more than 10 per cent of the population understood and spoke the language. Requiring civil servants to speak English was elitist but not discriminatory, since English is the second language of both Sinhalese and Tamils, Sri Lanka's two main ethnic groups. In 1956 the Government proclaimed Sinhala the official language of the country, making it nearly impossible for minority Tamils to obtain government jobs.⁴⁷ This precipitated a conflict between Tamils and Sinhalese that continues to this day. In 1988, in an effort to resolve the conflict, the Government of Sri Lanka made Tamil a second official national language.

89. When effectively enforced, laws against unjustified discrimination by schools and employers can generate equality of opportunity for members of all races and all ethnic groups. When some members of society are severely disadvantaged, however, laws against discrimination are insufficient and meaningful equality of opportunity requires measures to ensure that every child, regardless of race or ethnic origin, receives adequate nutrition and health care, including prenatal care, and a minimum quality and quantity of basic education, including pre-school education. In addition, low-income individuals may require financial aid to enable them to pursue higher education, purchase homes or establish their own businesses. The intent of such programmes is to combat poverty rather than end discrimination, but disad-

vantaged groups benefit disproportionately because they contain a disproportionate number of families living in poverty.

90. With rare exceptions ethnic minorities are not prevented from attending public schools, but their performance suffers when instruction is in a language other than their own. Although minorities typically receive permission to set up their own schools, they seldom have access to taxation or public funds. Some countries, notably Canada, Italy, New Zealand, the Nordic countries, the Russian Federation and the United States, attempt to overcome language barriers by providing bilingual educational programmes for linguistic minorities. In Peru the Government is training 60 bilingual teachers who will train an additional 2,400 teachers to teach in indigenous communities. Nicaragua has also launched a bilingual programme for indigenous communities, which reaches more than 13,000 children in the North Atlantic coast region.

91. Equal opportunity laws may be necessary to achieve gender equality in the workplace, but they are never sufficient. Women, on average, enter universities and the labour market with a considerable handicap compared with their male counterparts for two reasons. First, discrimination exists within the family. Parents typically expect less—or at least expect different things—of female children and often remove them from school at an earlier age than their male siblings. Parental goals for children can be expected to change only slowly, if at all. In the meantime Governments can help change behaviour by enforcing school attendance laws, making secondary education compulsory for both boys and girls, and increasing the minimum age for marriage so that girls remain in school longer. Second, much legislation exists that discriminates against women and makes it impossible for them to participate in the labour market on equal terms with men. Many countries have laws, for example, that restrict the type of work that pregnant women may perform; others prohibit night work, restrict overtime or forbid the use of heavy machinery by women. However well intentioned such protective laws may be, their repeal should be considered if the goal of full equality of opportunity is to be reached. Similarly, compulsory maternity leave and child-care benefits can raise the cost to an employer of female labour. Governments can solve this problem by funding benefits out of general revenue or by allowing either parent to qualify for leave and child-care benefits. Laws barring women from holding legal title to land or restrict their rights to inheritance represent yet another obstacle to gender equality.⁴⁸

2. Preferential policies

92. Adhering to a strict interpretation of equality before the law, many Governments and legal systems refuse to allow any discrimination, even benign discrimination, based on race, gender or ethnic origin. Others sacrifice the principle of non-discrimination (*de jure* equality) to varying degrees in order to promote *de facto* equality. The conflict between these two approaches is real. Preferential policies have supporters as well as opponents, and debate between the two sides at times becomes heated, as evidenced by the rash of suicides in India by young Brahmins protesting the reservation for lower castes of coveted university places and civil service jobs⁴⁹ or by wide-

spread public opposition to affirmative action in the United States.⁵⁰

93. Preferential policies can be justified as a means of promoting equality of opportunity. Members of disadvantaged groups may be unfairly perceived as unable to function in a particular trade or profession; breaking down barriers of prejudice with preferences can demonstrate, for example, that a female electrician is as competent as a male, or that a minority student can succeed in medical school. Such reasoning lies behind the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women; it provides a rationale for preferential quotas as long as all (or nearly all) members of the disadvantaged group are blocked from entry into the targeted trade or profession. When the goal is equality of opportunity, preferences must be temporary; there is no justification for retaining preferences until full de facto equality is reached. In practice, however, Governments find it difficult to remove preferences once they are in place. Early in this century British colonial rulers, for example, introduced preferential quotas known as "reservations" to favour disadvantaged groups in the Indian subcontinent, Fiji and Malaysia; the countries retain these quotas to this day.

94. Preferential policies attack the manifestations of discrimination, but not discrimination itself. Because the principle of merit is retained for applicants within each group, beneficiaries of preferences tend to be the wealthiest and least-deprived group members. (Indians refer to this phenomenon as "creaming".) Such programmes do not therefore substitute for anti-poverty programmes. Nor do they substitute for laws against discrimination, for they provide no benefits for groups such as Chinese or Jewish minorities, which suffer discrimination in many countries but are not, on average, disadvantaged.

95. A wide range of preferential policies based on race, gender or ethnic origin are in place in countries throughout the world today. In some countries preferences are voluntary; elsewhere they are compulsory. In some countries preferences are limited to the public sector; elsewhere they apply to both private and public organizations. Preferences take many forms, including targets and quotas, bonuses on competitive examinations and subsidization of competitive bids.

96. A priori, it is impossible to predict whether quotas will be more effective or less effective than other forms of preferences. In a university entrance examination, for example, for any quota for members of a designated group there is a percentage point preference which will produce the same result. Without more information, it is impossible to determine whether a minority is better served by a quota or by a preference, since a bonus of, say, 10 percentage points may be insufficient to lift even a single member of the disadvantaged group to a passing mark, or it may lift the scores of many group members far above those of other candidates.

97. For the most part States members of the European Union limit preferential programmes to vocational training for women and minorities; like many Governments in the world today, in general they do not allow the use of race, gender or ethnic origin as criteria for admission of students to universities or for recruitment and promotion of employees. In northern Germany local governments in

recent years have given preference in some instances to female applicants for government jobs over equally qualified males, but this practice was struck down by the European Court of Justice and will likely be suspended.⁵¹

98. Some Governments, such as those of Australia, Canada, Namibia and South Africa, encourage the use of preferences to favour disadvantaged groups but do not impose them on universities or employers. In some cases employers are required to establish goals and to file reports on progress in recruiting and promoting members of designated groups. Employers face penalties for failure to file a report, although no penalties are imposed for failure to reach a target. Such programmes serve an educational function: they make employers and universities aware that Governments support ethnic and gender diversity in the workplace and the classroom. They also allow employers and educational institutions to engage in "benign" discrimination without fear of challenge from applicants passed over in favour of less qualified candidates who benefit from preferences.

99. In most countries with preferential policies that favour disadvantaged groups, participation in the programme is compulsory rather than voluntary. Often, as in India, Israel, Pakistan and Switzerland, preferences are restricted to employment in the civil service and public enterprises. Sometimes, as in India and Pakistan, admission to public universities is also subject to preferences. Private employers in those countries are expected to hire and promote solely on the basis of merit; by law they are not allowed to discriminate by race, gender or ethnic origin. Privatization of public enterprises in these instances can create problems for those who benefit from preferences, since the privatized firm is no longer required to hire and promote a quota of members of designated groups. In countries such as Fiji, Malaysia and the United States, which have strong programmes, preferential policies are imposed on private and public organizations alike, and the ethnicity or gender of the owner of a firm is noted in order to grant preferences in awarding government contracts.

100. Preferential policies do not extend beyond employment, education and government procurement; most surprisingly, no country has imposed quotas or preferences in housing. *De jure* equality in access to housing is strictly enforced in most countries; it is generally illegal to refuse to rent or sell housing because of race, gender or ethnic origin. In contrast, it is legal to refuse to rent or sell to a person with insufficient income, so de facto equality is nowhere to be found. Governments could conceivably compel builders to supply a minimum proportion of new housing units to members of a disadvantaged group. To reach the assigned target a builder of luxury homes would have to advertise widely and would probably have to reduce the selling or rental price for members of the designated group.

3. *Equality of opportunity versus equality of results*

101. The International Bill of Human Rights, which consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, guarantees freedom from discrimination to all members of the human family. According to article 26 of the International Covenant on Civil and

Political Rights (General Assembly resolution 2200 A (XXI), annex):

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

102. Individuals are endowed with unequal amounts of wealth, talent, intelligence, physical strength and beauty. The International Bill of Human Rights does not address these inequalities or the income inequalities that result from them; it promises only *de jure* equality, not *de facto* equality. No person has a right to a high paying job or to a university place; everyone has a right to compete, on the basis of merit, for jobs and university admission. Equal opportunity is a human right; equality of results is not.

103. The International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women allow Governments to implement temporary programmes that deny members of advantaged groups their right to equal opportunity in order to give preferences to members of disadvantaged groups. Such policies are discriminatory and violate the International Bill of Human Rights. Derogation of human rights, even temporarily, ought not to be done lightly. Article 4, paragraph 1, of the International Covenant on Civil and Political Rights allows similar derogation of human rights "in time of public emergency which threatens the life of the nation", but only "to the extent strictly required by the exigencies of the situation". The language that permits preferential policies is less restrictive, but it does suggest that preferences are acceptable only as an instrument to achieve equality of opportunity and are never justified as permanent policy.

104. Effective enforcement of laws against racial, ethnic and gender discrimination can generate equality of opportunity for all members of society. But enforcement of anti-discrimination laws will not produce equality of results. To move towards this type of equality Governments routinely use taxation, along with expenditure on health, education and welfare, to redistribute income from affluent members of society to the poor. Such income redistribution does not constitute a preferential policy, nor is it a violation of human rights, as long as an individual's tax bill and his or her access to public health, education and welfare does not depend on race, gender or ethnic origin.

105. When equality of opportunity produces large disparities in average results between groups, Governments do not attempt to intervene with taxation or expenditure policy; Governments rarely adjust their tax rates or welfare payments according to race, gender or ethnic origin. Instead, some Governments ask citizens to give up their right to equal opportunity in order to guarantee all groups that the economic and social status of their members will be closer, on average, to that of the rest of the country. There may exist a consensus that the good of the whole requires such a sacrifice of individual rights. The goal is then the equitable distribution of jobs across groups, not equality of opportunity, and preferences thus become permanent rather than temporary. Examples of

such "consensus quotas" include Switzerland, which allocates a fixed proportion of jobs in the public sector to each of the country's main language groups,⁵² and international organizations, which recruit staff from nationals of all member States in an agreed-upon proportion. With consensus, quotas can build support for a federal or international bureaucracy. Without consensus, ethnic, gender and racial quotas can be extremely divisive.

106. Too often Governments impose quotas or other preferences without first building consensus, thus alienating citizens who lose their right to compete for jobs on equal terms with individuals who belong to a disadvantaged group. Nonetheless, Governments find preferences attractive because they do not require increased taxation or expenditure. It is much easier to impose quotas than to attack the underlying causes of *de facto* inequality between groups, including discrimination, poverty, poor education, malnutrition and geographical isolation.

NOTES

¹This section is based on Gerry Rodgers, Charles Gore and José B. Figuéiredo, eds., *Social Exclusion: Rhetoric Reality Responses* (Geneva, International Labour Office, 1995).

²See E. Bonacich, "A theory of ethnic antagonism: the split labour market", *American Sociological Review*, vol. 37 (October 1972), pp. 547-559.

³*Report of the World Summit for Social Development, Copenhagen, 6-12 March 1995* (United Nations publication, Sales No. E.96.IV.8), chap. I, resolution 1, annex II, para. 2.

⁴See *The United Nations and Human Rights 1945-1995* (United Nations publication, Sales No. E.95.I.21), which contains a set of United Nations documents on human rights and fundamental freedoms within the Organization. See also Abdulrahim P. Vijapur, "The principle of non-discrimination in international human rights law: the meaning and scope of the concept", *India Quarterly, A Journal of International Affairs*, vol. XLIX, No. 3 (1993), pp. 9-83.

⁵Catherine Brolman, *Peoples and Minorities in International Law* (Dordrecht, Netherlands, Martin Nijhof Publishers, 1993).

⁶*The World's Women 1995. Trends and Statistics* (United Nations publication, Sales No. E.95.XVII.2 and corrigendum), p. 132, table 8.

⁷See Irene Tinker, *Persistent Inequalities: Women and World Development* (New York and Oxford, Oxford University Press, 1990); Mehra Rekha, David Bruns, Paul Carlson, Geeta Rao Gupta and Margaret Lycette, *Engendering Development in Asia and the Near East: A Sourcebook* (Washington, D.C., International Center for Research on Women, 1992); Economic Commission for Latin America and the Caribbean, *Women in Latin America and the Caribbean in the 1990s*, Notas sobre la Economía y el Desarrollo, No. 562/563 (Santiago, Chile, September 1994).

⁸*OECD Employment Outlook* (Paris, OECD, July 1996), p. 8, table 1.6.

⁹*The World's Women 1995: Trends and Statistics* . . . , chart 5.20.

¹⁰Some scholars suggest that the gender wage ratio disparity reflects the cultural dimension of female deprivation in India. The lowest ratio corresponds to the states with strong Hindu tradition. See Partha Dasgupta, *An Enquiry into Well-Being and Destitution* (Oxford, Clarendon Press, 1993), p. 314, table 11.2, and p. 317.

¹¹Marilyn Rueschemeyer, ed., *Women in the Politics of Post-communist Eastern Europe* (Armonk, New York, 1994, M. E. Sharpe, Inc., 1994), pp. 7-8.

¹²V. Spike Peterson and Anne Sisson Runyan, *Global Gender Issues: Dilemmas in World Politics* (Boulder, Colorado, Westview Press, 1993), p. 54, figure 3.2.

¹³In Saudi Arabia and Kuwait, for example, women are barred from entering business and law schools.

¹⁴See Manneke Redclift and M. Thea Sinclair, eds., *Working*

Women. International Perspectives on Labour and Gender Ideology (London, Routledge, 1991); *Indigenous People and Poverty in Latin America* (Washington, D.C., World Bank, Technical Department, Latin America and the Caribbean Region, 1993); Jonathan R. Veum, "Training among young adults: who, what kind, and for how long?" *Monthly Labour Review*, vol. 116, No. 8 (August 1993), pp. 27-32; Jonathan R. Veum and Andrea B. Weiss, "Education and the work histories of young adults", *Monthly Labour Review*, vol. 116, No. 4 (April 1993), pp. 11-20; Cynthia B. Lloyd and Beth T. Niemi, *The Economics of Sex Differentials* (New York, Columbia University Press, 1979).

¹⁵Jonathan R. Veum, "Training among young adults: who, what kind, and for how long?" *Monthly Labour Review*, vol. 116, No. 8 (August 1993), pp. 27-32.

¹⁶Republic of Niger, Ministry of Social Development, Population and Women Advancement, Women Advancement Directorate, *Niger Women: Myth and Reality* (Niamey, September 1995), pp. 29-33.

¹⁷See Joyce Gelb and Marian Lief Palley, eds., *Women of Japan and Korea: Continuity and Change* (Philadelphia, Temple University Press, 1994), p. 215.

¹⁸There is no agreement among scholars on what constitutes an entitlement set. Sen, however, restricts entitlements to "bundles of commodities over any of which a person can establish command, by using the rules of acquirement that govern his circumstances". See Amartya Sen, *Resources, Values and Development*, (Oxford, Basil Blackwell, 1984), p. 30.

¹⁹In Sen's view, these rules, or "moral principles", have an exclusion aspect and affect the acquisition of capabilities by children. They are largely responsible for initial gender capability inequality. See *Resources, Values and Development . . .*, p. 26.

²⁰In many developing countries of Africa, Latin America and Asia, land is generally owned by men. In Peru and Bolivia, married women cannot hold property in their own names. Land reform in most developing countries (including Egypt, the Dominican Republic, Colombia and the United Republic of Tanzania) has bypassed women. In many pastoralist societies of Africa and Asia, women are not allowed to own cattle. See Helen Kreider Henderson, ed., *Gender and Agricultural Development. Surveying the Field* (Tucson, Arizona, University of Arizona Press, 1995).

²¹Rebecca G. Cook, ed., *Human Rights of Women: National and International Perspectives* (Philadelphia, Pennsylvania, University of Pennsylvania Press, 1994), p. 498.

²²V. Spike Peterson and Anne Sisson Ruyan, *Global Gender Issues. Dilemmas in World Politics* (Boulder, Colorado, Westview Press, 1993), p. 108.

²³Some studies have found that boys are more likely to be taken to clinics or hospitalized than girls, despite equal incidences of infection and the availability of free clinical care in the area under study. According to one study, 66 per cent more boys than girls were taken to health facilities for treatment of diarrhoea. See L. C. Chen, E. Huq and S. D'Souza, "Sex bias in the family allocation of food and health care in rural Bangladesh", *Population and Development*, vol. 7, No. 3 (1981), pp. 435-474; N. I. Sabir and G. J. Ebrahim, "Are daughters more at risk than sons in some societies?" *Journal of Tropical Paediatrics*, No. 30 (1984).

²⁴See Margaret Lycette, *Improving Women's Access to Credit in the Third World: Policy and Project Recommendations*, Occasional Paper No. 1 (Washington, D.C., International Center for Research on Women, 1984); Marilyn Carr, *Women and Food Security: The Experience of the SADCC Countries* (London, Intermediate Technology Publications, 1991); Kathleen Staudt, *Agricultural Policy Implementation: A Case Study from Western Kenya* (West Hartford, Connecticut, Kumarian Press, 1985); and Luz Maria Abreu, "The experience of MUDE Dominicana in operating a women-specific credit programme", in *Women's Ventures: Assistance to the Informal Sector in Latin America*, Marguerite Berger and Myra Buvinic, eds. (West Hartford, Connecticut, Kumarian Press, 1989).

²⁵See George Psacharopoulos and Zafiris Tzannatos, *Women's Employment and Pay in Latin America: Overview and Methodology* (Washington, D.C., World Bank, 1992); George Psacharopoulos and Harry Anthony Patrinos, eds., *Indigenous People and Poverty in Latin America: An Empirical Analysis* (Washington, D.C., World Bank, 1994); R. E. Wright and J. F. Ermisch, "Gender discrimination in the British labour market: a reassessment", *Economic Journal*, vol. 101,

No. 406 (1991), pp. 508-522; N. Birdsall and R. Sabot, eds., *Unfair Advantage: Labour Market Discrimination in Developing Countries* (Washington, D.C., World Bank, 1991); Cynthia B. Lloyd and Beth T. Niemi, *The Economics of Sex Differentials* (New York, Columbia University Press, 1979); Manneke Redclift and M. Thea Sinclair, eds., *Working Women. International Perspectives on Labour and Gender Ideology* (London, Routledge, 1991); and Robert Masao Jobu, *Ethnicity and Inequality* (New York, New York, State University of New York Press, 1990).

²⁶See Guy Standing, "Cumulative disadvantage? Women industrial workers in Malaysia and the Philippines", World Employment Programme, Working Paper (Geneva, International Labour Office, July 1992); G. Johnson and G. Solon, "Estimates of the direct effects of comparable worth policy", *American Economic Review*, vol. 76, No. 5 (1986), pp. 1117-1125; and F. D. Blau and A. H. Beller, "Trends in earnings differentials by gender, 1971-81", *Industrial and Labour Relations Review*, vol. 41, No. 4 (1988).

²⁷Standing, "Cumulative disadvantage . . .", table 43.

²⁸*Ibid.*, table 47.

²⁹*Ibid.*, pp. 58 and 62.

³⁰Psacharopoulos and Tzannatos, *Women's Employment and Pay in Latin America: Overview and Methodology . . .*, table A6.4b.

³¹David R. Jones and Gerald H. Makepeace, "Equal worth, equal opportunities: pay and promotion in an internal labour market", *Economic Journal*, No. 106 (March 1996), pp. 406-407.

³²Lin Lean Lim, *More and Better Jobs for Women: An Action Guide* (Geneva, International Labour Office, 1996), p. 61.

³³*National Now Times*, April 1992, p. 12; and *The World's Women 1995: Trends and Statistics* (United Nations publication, Sales No. E.95.XVII.2 and corrigendum), p. 153.

³⁴Of course, in some countries, such as Burundi, Rwanda and South Africa, it has been the dominant minority that has discriminated against the majority.

³⁵See "Equality in employment and occupation", International Labour Conference, 83rd session (Geneva, International Labour Office, 1996), pp. 13-73.

³⁶Gurr, for example, has identified 268 minority groups for the purpose of monitoring and quantifying degrees of different types of discrimination over time. See J. Gurr, *Minority Rights at Risk: A Global Survey* (College Park, Maryland, Center for International Development and Conflict Management of the University of Maryland, 1996).

³⁷United Nations, *Treaty Series*, vol. 362, No. 5181.

³⁸*Ibid.*, vol. 429, No. 6193.

³⁹See *Report of the World Summit for Social Development . . .*, annex II, chap. IV.

⁴⁰*Ibid.*

⁴¹These examples were reported by the countries themselves in meetings and reports. See the reports of the Secretary-General on the effective promotion of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (A/49/415 and Add.1); possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities (E/CN.4/Sub.2/1995/33); and the elimination of racism and racial discrimination (A/50/476).

⁴²See World Bank, *Indigenous People and Poverty in Latin America* (Washington, D.C., 1994) for an analysis of the pervasive and severe effects of poverty among Latin America's indigenous population. The study shows the high correlation between low educational attainment and poverty levels among marginalized indigenous ethnic groups in the region.

⁴³Similar statements in support of the principle of equal opportunity can be found in the Discrimination (Employment and Occupation) Convention, adopted in 1958 by the General Conference of the International Labour Organization, and in the Convention against Discrimination in Education, adopted in 1960 by the General Conference of the United Nations Educational, Scientific and Cultural Organization.

⁴⁴See "Equality in employment and occupation", International Labour Conference, 83rd session (Geneva, International Labour Office, 1996), pp. 80-83, and "Equality in employment and occupation", (International Labour Conference, 75th session (Geneva, International Labour Office, 1988), pp. 232-235.

⁴⁵It is not always obvious whether a requirement is reasonable or

not. Sikhs who wear their hair in turbans, for example, are unable to wear safety helmets, which might appear to be a valid reason to exclude them from construction work. But the United Kingdom's Employment Act (1989) exempts Sikhs from wearing safety helmets.

⁴⁶See South Africa, Department of Labour Directorate: Equal Opportunities, *Employment and Occupational Equity*, Green Paper, 1 July 1996.

⁴⁷Tamils also faced administrative regulations that required children to be educated in the language of their parents, effectively blocking Tamil entry into Sinhalese schools. See S. J. Tambiah, *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy* (Chicago, University of Chicago Press, 1986), pp. 73-76; Chelvadurai Manogaran, *Ethnic Conflict and Reconciliation in Sri Lanka* (Honolulu, University of Hawaii Press, 1987) pp. 115-130; and Thomas Sowell, *Preferential Policies: An International Perspective* (New York, W. Morrow, 1990), pp. 76-87.

⁴⁸For a survey of these issues, see World Bank, *Toward Gender Equality: The Role of Public Policy* (Washington, D.C., 1995).

⁴⁹Dharma Kumar, "The affirmative action debate in India", *Asian*

Survey, vol. 33, No. 3 (March 1992), pp. 290-302. See also Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (Berkeley, California, University of California Press, 1984), which is summarized in J. Faundez, *Affirmative Action: International Perspectives* (Geneva, International Labour Office, 1994), pp. 22-25.

⁵⁰See Seymour Martin Lipset, "Affirmative action and the American creed", *Wilson Quarterly*, vol. 16 (Winter 1992), pp. 52-62; and Jack Citrin, "Affirmative action in the people's court", *The Public Interest*, No. 122 (Winter 1996), pp. 39-48.

⁵¹European Court of Justice, Case c-450/93, "Interpretation of Council Directive 76/207 regarding the implementation of the principle of equal treatment for men and women", 17 October 1995.

⁵²At the upper levels of the Swiss civil service, recruitment is proportional to the three main language groups, the Italian-speaking minority is deliberately overrepresented in the rest of the federal civil service and in public enterprises. See Carol L. Schmid, *Conflict and Consensus in Switzerland* (Berkeley, California, University of California Press, 1981), especially pp. 39-40 and pp. 150-157.

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