Introduction

The laws in the United States against employment discrimination are distinctive in several different ways: in their emphasis on racial discrimination; in their place within the constitutional structure of government; in their reliance upon individual actions as the central means of enforcement; and in their ambivalent attitude towards free markets for labour. These distinctive features of federal law have deep roots in the history of the United States, as does the connection between discrimination against racial and ethnic minorities and discrimination against immigrants. When it has persisted, discrimination against immigrants has evolved into discrimination against citizens of the same racial or national origin. Consequently, any adequate treatment of laws protecting immigrants must begin with the general laws against discrimination on the basis of race and national origin. In the United States, the protection of immigrants is inextricably intertwined with the protection of minority groups.

This monograph examines these protections in six parts. Part I is a brief summary of the history and current trends in immigration to the United States. Although it necessarily abstracts from much of the detailed statistics in census studies of aliens, immigration, and employment, this section yields two important conclusions: first, immigrants are not a homogeneous group, but a diverse array of individuals with different opportunities in the labour market; and second, some immigrants, such as those from Mexico and Central America, are in special need of government protection and assistance.

Part II examines the general structure, constitutional background, and historical development of the laws against employment discrimination. These laws have been heavily influenced, both in content and in development, by the structure of federalism in the United States. Political authority in the United States is divided between the states and the federal government, and within the federal government between the judiciary, the legislature, and the executive. Prohibitions against discrimination can be found in both state and federal law, and within federal law, in several different sources: constitutional provisions interpreted by the judiciary, statutes enacted by Congress, and executive orders promulgated by the President. The most fundamental of these prohibitions, the constitutional prohibition against discrimination on the basis of race, has formed the model for all the others. Part II presents a broad overview of these different sources of law.

Part III examines each prohibition against discrimination in detail, and in particular, its doctrinal and institutional structure and its relationship to immigration law. These sources of law are Title VII of the Civil Rights Act of 1964; state statutes modeled on Title VII; the Civil Rights Act of 1866 (usually known as section 1981); Executive Order 11246; and the Immigration and Control Act of 1986 (usually known as IRCA). Each of these sources of law has its own coverage, its own prohibitions, and its own procedures for enforcement. Each also raises fundamental questions about the scope and nature of a prohibition against discrimination. This part summarizes the distinctive features of each source of law and discusses, even if it cannot resolve, the basic problems raised by each.

Part IV then proceeds to an examination of the effectiveness of general laws against employment discrimination. In the United States, discrimination against immigrants is just one aspect of the complex phenomena of discrimination on the basis of race and national

origin. The need for prohibitions against any form of employment discrimination has recently been called into question, as has the effectiveness of the remedies provided to victims of discrimination (Epstein, 1992, pp. 147-58, 242-66). These general questions must be addressed before the more specific question of how best to prevent discrimination against immigrants can be approached.

That question is taken up in Part V, which examines the special economic and cultural situation of immigrants and of the legal remedies that they need. Caught up in these issues is the political question of how to make benefits for minority groups acceptable to the voting majorities in a democracy. The history of discrimination against immigrants, who are often perceived to threaten the jobs or status of established residents, illustrates all too well the limited economic and political power of immigrants as an isolated group. Proposed laws against discrimination must do more than provide formal protection to aliens, immigrants, and minority groups. To be truly effective, these laws must appeal to the interests and ideals of the majority of citizens. Part VI summarizes the experience of the United States in devising remedies that meet these requirements.

As even this brief introduction suggests, the laws against employment discrimination in the United States form a complex body of constitutional provisions, statutes, administrative regulations, and judicial decisions. It is no easy task to comprehend the rules derived from these different sources of law, let alone the complex ways in which these rules are related to one another. This monograph attempts to present the legal rules as clearly and simply as possible, but without sacrificing accuracy or detail. A description of the legal rules alone, however, would give a distorted picture of the law in the United States. In particular, it would neglect the decisive role of the courts in developing the law of employment discrimination. This role takes two forms.

First, the courts in the United States exercise exceptionally broad lawmaking powers. In the law of employment discrimination, the courts have defined what constitutes prohibited discrimination; they have interpreted and reconciled different statutes, regulations, and constitutional provisions; and their decisions have stimulated Congress to enact new legislation. Even when Congress has enacted detailed statutes that go far beyond what the courts could accomplish alone, the courts have resolved difficult and important questions of interpretation and application. From developing the definition of prohibited discrimination to implementing it in concrete cases, the courts have played a crucial role in the law of employment discrimination.

Second, because of the active role taken by the courts, judicial proceedings have provided the model for enforcement of claims of employment discrimination. Legal actions by private individuals have been the dominant means of enforcing the law. Private actions have been an effective guarantee of individual rights, but only when an attorney has been available to represent a victim of discrimination in court. To protect a broader range of victims, it is necessary both to preserve and to go beyond private litigation as a means of enforcement.

This paper gives an account of how the laws against employment discrimination have developed in the United States, of what they have accomplished, and of how judicial decisions - for better and for worse - have exercised a fundamental influence over this ongoing process.

I. Immigration to the United States

For a country that has prided itself on being a nation of immigrants, the United States has also been remarkably indifferent - if not hostile - to succeeding waves of immigrants (Aleinikoff and Martin, 1991, pp. 39-56). Each group that has arrived and established itself in society has felt privileged to look down on other groups, not necessarily those who have arrived more recently. The long history of racial discrimination against African Americans and Native Americans illustrates this point all too clearly. The first African slaves were brought to America in the seventeenth century and Native Americans, of course, came to the United States thousands of years earlier.

There is nevertheless a systematic connection between discrimination and immigration. Until the early nineteenth century, African Americans were imported as forced immigrant labour, and later in the same century, many Chinese came as contract labour to pay off the costs of passage to the United States. Immigrants from Germany, Ireland, Italy, Great Britain, Austria, Hungary and other European countries also arrived in waves throughout the nineteenth century, culminating in the great immigrations in the decades preceding World War I (Cafferty, Chiswick, Greeley and Sullivan, 1983, pp. 65-68). Most immigrants sought better economic opportunities than they could find at home; some also fled political persecution. More recently, Hispanics from Mexico, the Caribbean, and other Latin American countries have immigrated for the same reasons. And other groups, as diverse as European Jews, Filipinos, Koreans, Iranians, and Vietnamese, have come to the United States over the last several decades (pp. 75-76, 95-97).

Immigrants from all of these groups, when they have been identified as members of a distinctive racial or ethnic minority, have also been victims of discrimination. It is less their status as immigrants than their identity as a member of a minority group that has determined the extent and nature of the discrimination that they have suffered. There is, for instance, little evidence in the historical record of discrimination against immigrants from England or Scotland.

As this example makes clear, immigrants are not a single, homogeneous group. The idea of immigrants may bring to mind the words on the Statue of Liberty - "Give me your tired, your poor, your huddled masses yearning to breathe free" - or more recently, poor immigrants from Mexico and Central America. Nevertheless, many prosperous individuals have also come to the United States. Immigrants do not invariably come to a new country because they face desperate circumstances in their country of origin. They often seek greater economic opportunities in a new country and they need not be desperately poor to perceive these opportunities. On the contrary, in most cases, immigrants must have the resources to learn about a new country, to travel there, and to establish a home. They must also have the predisposition to accept the risks of coming to an unfamiliar region and community (Jasso and Rosenzweig, 1990, pp. 295-96). Many of those who lack these personal characteristics, or who encounter unanticipated hardships, end up returning to their old home. Despite the image of immigrants to the United States as poor and unskilled, they have nearly the same occupational distribution as native-born citizens and, among those who remain in the United States, they move within a decade to near parity with native-born citizens of the same racial or ethnic group (ibid., pp.239-57).

These statistics do not, however, reflect the experience of all immigrant groups. The truth behind the stereotype that immigrants are almost always poor is that immigration from

Mexico and Central America has increased in recent years. As Table 1 illustrates, immigration from these two areas increased significantly in the 1980's, from just over 17% of total immigrants to almost 29 per cent.[3] Immigrants from these areas tend to have lower occupational status, lower levels of education, and lower earnings than other immigrants (Meisenheimer, 1992, pp. 12-18; Jasso and Rosenzweig, 1990, pp. 295-303; Schuck, 1989, p. 8). It follows that discrimination bears harder upon them than upon other immigrants who have greater economic opportunities. Not only will immigrants from Mexico and Central America have fewer means of compensating for discrimination, either by taking other jobs, by spending their savings, or by depending upon their families, they also are less likely to pursue claims of discrimination for the same reason: they have fewer resources available to them. And, of course, these immigrants are within ethnic groups whose members historically have been victims of discrimination (National Council of La Raza, 1991, pp. 3-6, 8-11). They need more than a simple prohibition against discrimination enforced by legal actions by private individuals; they also need active government enforcement through administrative proceedings or public litigation on their behalf.

Recent decades have also seen a large increase in immigrants from Asia, from just under 13% in the 1960's to over 37% in the 1980's. By contrast to immigrants from Mexico and Central American, Asian immigrants are in occupations with higher average earnings than non-Asian, non-Hispanic immigrants (Jasso and Rosenzweig, 1990, p. 292). Asian immigrants illustrate the diversity of immigrants from different countries, not to mention the diversity among immigrants from the same country. Any approach to protecting immigrants from discrimination must take such differences into account. For immigrants who are better off, individual actions for discrimination might be the most effective means of protecting their opportunities for employment. Although it should not be the exclusive remedy for discrimination, individual actions should remain available to all immigrants who have the means and desire to pursue this form of relief.

These examples of the differences among immigrants can be generalized. Discrimination against immigrants tends to follow longstanding patterns of discrimination among residents on the basis of race and national origin. After a decade of life in the United States, immigrants gain approximately the same economic status as members of the same racial or ethnic group (Jasso and Rosenzweig, 1990, pp. 249-57). By itself, this result is hardly surprising. As immigrants become assimilated to social life in the United States, often becoming naturalized citizens, they gradually receive the same treatment as longtime citizens of the same race or national origin. The overall economic status of different groups, moreover, does not correlate directly with the degree of discrimination that they have suffered.

As Table 2 reveals, Asians have higher economic status on average than blacks. It does not follow that they face less discrimination. For long periods, they have been simply excluded from the United States (Aleinikoff and Martin, 1991, pp. 46, 50, 52, 56). It may be, however, that Asians are simply better at adjusting to discrimination or compensating for

---

[3] These figures are based on aliens granted permanent resident status, but even so, they may understate the proportion of immigrants from Mexico and Central America who choose to remain in this country. Legal immigrants from these areas have lower rates of return migration than immigrants from Europe, but higher rates than immigrants from Asia (Jasso & Rosenzweig, 1990, pp. 135-38). Ideally these figures would also be adjusted to account for illegal immigration, mainly from Mexico and Central America, but firm evidence on the number of illegal immigrants and their patterns of return immigration is very difficult to collect (pp. 8-10).

it than other ethnic minorities (Muller, 1989, pp. 114-15, 118-19). What does follow is that, over time, the effects of discrimination on the basis of race and national origin predominate over those from discrimination on the basis of immigrant status. Table 3 illustrates this tendency for whites and blacks. It also reveals, quite strikingly, that white immigrants, on average, do better than black native-born citizens or black immigrants. Status as an immigrant is correlated less strongly with earnings than racial status. Status as an immigrant initially depresses earnings, but only compared to members of the same ethnic group. Over time, the fate of immigrants merges with the fate of citizens of the same race or national origin.

II. Legal Models and Constitutional Structures

Despite the long history of discrimination in the United States, effective legal remedies have developed only in the decades since World War II. The laws against discrimination focussed initially upon discrimination against African Americans, and even as these laws have been expanded to cover other groups and other grounds for discrimination, such as sex or age, they have followed the model of race. Its focus upon race has given the law of employment discrimination many of its peculiar features. These, in turn, are heightened by the intersection of this body of law with immigration law at several levels: in the Constitution, especially as it allocates power between the states and the federal government (art. I, § 8); in statutory law, primarily in the prohibitions against discrimination in the Immigration Reform and Control Act of 1986; and in the means of enforcement through public and private legal actions.

A. The Model of Race

Civil rights laws in the United States take a variety of different forms. Broadly speaking, they differ in two respects: in the subjects that they cover; and in the grounds of discrimination that they prohibit. Civil rights laws cover such different subjects as discrimination in employment, in public accommodations (such as restaurants, hotels, and common carriers), in voting, in housing, and in federally funded programmes (Titles II, VI, VII of the Civil Rights Act of 1964; the Voting Rights Act of 1965; Title VIII of the Civil Rights Act of 1968). The civil rights laws also prohibit discrimination on several different grounds. In employment, the most important of these grounds are discrimination on the basis of race, national origin, religion, sex, age, and disability (The Civil Rights Act of 1964 § 703(a)-(d), 42 U.S.C. § 2000e-2(a)-(d); The Age Discrimination in Employment Act § 4(a); The Americans with Disabilities Act of 1990 §102(a)).

Despite the variety of civil rights laws, they are all modeled on laws addressed to racial discrimination. The laws against employment discrimination, in particular, take race to be the paradigm of a personal characteristic that must be excluded from employment decisions. In most of these laws, the choice is apparent from the very language of the statute, which simply incorporates verbatim the language originally used to prohibit racial discrimination. In other respects, the effect is more subtle, but no less pervasive. Legal doctrines that were initially applied to race, from presumptions and burdens of proof to remedies and affirmative action, were extended to other forms of discrimination, such as discrimination on the basis of sex. The choice of race resulted, of course, from the history of oppression of African Americans, first in slavery, then through legal segregation and private discrimination, and finally, through the continued effects of past discrimination (Hacker, 1992, pp. 31-64). The

need for a prohibition against racial discrimination gave it priority and allowed it to serve as a precedent for addressing other forms of discrimination.

Race required, first of all, an absolute prohibition as the legal remedy for a pervasive evil. Race could not be used at all, or only in the most extreme emergencies, to impose burdens upon a racial minority (The Civil Rights Act of 1964 § 703, 42 U.S.C. § 2000e-2; Loving v. Virginia, 388 U.S. 1, 11 (1967)). In the words of the Supreme Court, racial segregation had to be "eliminated root and branch." (Green v. County School Board, 391 U.S. 430, 438 (1968)). Confronted by a history in which discrimination had taken many and varied forms, the law could allow no excuses for considering race in public life.

The absolute nature of this prohibition, however, also required that its force be restricted. In employment, the prohibition was only against considering race as a factor in personnel decisions (Furnco Construction Co. v. Waters, 438 U.S. 567, 575-89 (1978)). Other reasons for hiring or firing, so long as they were distinct from race, would be left to the sole judgment of the employer and the discipline only of the market. In this way, the demands of justice could be reconciled with the freedom of the marketplace.

A general prohibition also served the demands of the political system for majority support. If race could not be considered in employment decisions, it worked to the benefit of the white majority as well as the black minority (Fiss, 1971, pp. 296-313). Race could not be used to deny any individual a job, white or black. In theory, the law protected all racial groups, not just blacks. Anyone could sue if he was rejected for a job because of his race. A general prohibition served the ideal of individual equality in a democracy, not the needs of a narrowly defined interest group.

These three characteristics of a general prohibition - absolute, limited, and equal - could not long remain without qualification. Any legal prohibition must be adjusted through interpretation to take account of unanticipated situations and competing principles of law. To take only the most obvious example, the need to eliminate discrimination "root and branch," which justified an absolute prohibition against racial discrimination, led the courts to depart from a simple prohibition against taking race into account. The need to uncover and remedy hidden forms of discrimination led to increasing emphasis on the effects of employers' personnel decisions (Griggs v. Duke Power Co., 401 U.S. 424, 432-33 (1971)) and eventually to affirmative action plans that explicitly took account of race (Local 28, Sheet Metal Workers' Int'l Ass'n v. EEOC, 478 U.S. 421, 442-79, 483-89 (1986)).

The term "affirmative action" has itself been the source of much confusion. Strictly speaking, it refers to any kind of programme that confers advantages upon individuals by explicitly taking into account an otherwise prohibited characteristic, such as race or national origin. For instance, under an affirmative action plan for blacks, an employer would take account of race in order to give preferential treatment to blacks. Affirmative action plans have been controversial because they allow employers to take account of characteristics, such as race, that they are normally forbidden from considering. Opponents of affirmative action have therefore denounced it as a form of "reverse discrimination."

Not all forms of affirmative action are the same, however. The term embraces a wide range of different programmes: from attempts to recruit members of a minority group, to special programmes of training, to explicit preferences in hiring or promotions (Schnapper, 1987, pp. 874-912). Moreover, affirmative action plans have been established in many

different ways: they have been voluntarily adopted by employers, negotiated between unions and employers, encouraged by administrative action, or required by law or court order (Rutherglen and Ortiz, 1988, pp. 510-14). The single term "affirmative action" embraces a wide range of more or less controversial programmes to benefit members of minority groups. It illustrates how the law of employment discrimination has become more controversial and more complex as it has departed from a simple formal prohibition against considering race in employment (Edsall and Edsall, 1991, pp. 3-16).

Even as the complexity of this field has increased, however, the model of race has remained dominant. As competing principles have been reconciled and complicated interpretations added to the law of racial discrimination, these developments have become the model for resolving the same issues for other forms of discrimination. Thus, again, we find that affirmative action in favour of women is judged according to the same standards as affirmative action in favour of blacks (Johnson v. Transportation Agency, 480 U.S. 616, 628-32 (1987)). And, to take the form of discrimination of greatest importance in immigration law, national origin has been treated as virtually identical to race, both in framing prohibitions against discrimination and in allowing exceptions, such as affirmative action (International Brotherhood of Teamsters v. United States, 431 U.S. 324, 331 (1977); Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 281-87, 328-55 (1978)).

B. Constitutional Developments

The model of race assumed its dominant role in constitutional law. Since the celebrated decision in Brown v. Board of Education (347 U.S. 483 (1954), the states have been strictly prohibited from making any classification on the basis of race unless it could be justified by the most compelling state interest. The development of the constitutional prohibition against racial discrimination, however, has been intertwined with fundamental changes in the constitutional structure of government in the United States. These changes have raised basic questions of federalism and judicial power.

The United States has always had a federal system of government, in which the states have some of the attributes of independent sovereigns, subject only to the powers delegated to the federal government. Under the Constitution as originally ratified, the federal government exercised considerably less power, and the states correspondingly more power, than they do now. Over the two centuries since the ratification of the Constitution, the federal government has gradually gained dominance over the states. This shift in political authority resulted in part from broad interpretation of the powers delegated to the Federal Government. It also resulted from amendments to the Constitution that explicitly limited the power of the states and increased the power of the federal government.

The most significant of these amendments are also the amendments that figure most prominently in the constitutional law of discrimination: the Thirteenth Amendment, which prohibited slavery; the Fourteenth Amendment, which required the states to give "equal protection of the laws" to all persons within their jurisdiction; and the Fifteenth Amendment, which gave African Americans the right to vote. All of these amendments were enacted in the aftermath of the Civil War, in which the federal government defeated the attempt of the southern slaveholding states to secede from the union. The victory of the federal government necessarily increased federal power and the Thirteenth, Fourteenth, and Fifteenth Amendments confirmed this redistribution of power as a matter of constitutional law.

The most important expression of increased federal power is the Fourteenth Amendment. Of its own force, in a provision called the Equal Protection Clause, this amendment requires every state to provide "equal protection of the laws" to all persons within its jurisdiction. This clause has formed the foundation for almost all of the subsequent yprohibitions against discrimination. It did not do so immediately, however. In a series of now discredited decisions (The Civil Rights Cases, 109 U.S. 3 (1883); Plessy v. Ferguson, 163 U.S. 537 (1896)), the Supreme Court narrowly interpreted this provision and others in the Thirteenth, Fourteenth, and Fifteenth Amendments. These decisions allowed the states to engage in explicit segregation and other forms of discrimination on the basis of race.

It was not until Brown v. Board of Education (347 U.S. 483 (1954)), that the Equal Protection Clause was given a broad interpretation that prohibited almost all forms of racial discrimination by the states. Brown itself prohibited segregation on the basis of race in public schools, but the decision was soon applied to other forms of segregation and discrimination by the states. And in a companion case to Brown, racial discrimination by the federal government was also prohibited by the Fifth Amendment (Bolling v. Sharpe, 347 U.S. 497 (1954)). It was plain that the principle of Brown applied to all forms of public employment (Washington v. Davis, 426 U.S. 229 (1976)).

The decision in Brown resulted solely from judicial interpretation of the Equal Protection Clause. Because it invalidated a multitude of discriminatory laws in the southern states, whose constitutionality had been assumed for decades, Brown was a very controversial decision when it was handed down. Although it was soon accepted as a legitimate exercise of judicial power, Brown could not extend beyond the terms of the Equal Protection Clause itself, which applied only to public forms of discrimination by government. Without further legislation, under the broad powers that Congress had gradually obtained from the states, private individuals and corporations remained free to engage in racial discrimination.

C. Statutory Developments

Congress exercised its power to prohibit private discrimination in the Civil Rights Act of 1964. This act was the first, and most important, extension of the constitutional prohibition against discrimination. In different titles, the act extended the constitutional prohibition to public accommodations (such as hotels and restaurants), to recipients of federal funds (such as participants in federally funded programmes), and in Title VII, to private employers. This legislation was as broad in scope and significance as Brown itself. It applied the principle against discrimination to many forms of economic life and to private employers with 15 or more employees.[4] It was bitterly resisted by opponents of integration, particularly from the southern states, and its enactment was a major legislative victory for President Johnson (Graham, 1990, pp. 125-52). Again like Brown, the Civil Rights Act of 1964 was controversial when it was enacted, but it has since become a cornerstone of federal civil rights law. Title VII, in particular, has been repeatedly amended to expand its prohibitions and to improve its procedures for enforcement. The most recent of these amendments, in the Civil Rights Act of 1991, was a comprehensive legislative response to judicial decisions that were thought to have interpreted the statute too narrowly.

---

[4] The statute also covers most unions, employment agencies, and joint labor-management committees that operate training programs (§§ 701, 703(b)-(d), 42 U.S.C. §§ 2000e, -2(b)-(d)). It was later extended by amendment to most employees of state and local government and of the Federal Government (§§ 701(a), (b), 717(a), 42 U.S.C. §§ 2000e(a), (b), -16(a)).

The constitutional prohibition was extended in another direction, but this extension was accomplished initially by judicial decisions. In a series of cases, the Supreme Court interpreted Title VII to prohibit neutral employment practices with discriminatory effects (Griggs v. Duke Power Co., 401 U.S. 424 (1971); Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975); The Civil Rights Act of 1991). In doing so, the Court moved beyond the constitutional prohibition against intentional discrimination - against taking race into account in employment decisions - and added an independent prohibition against employment practices that had a disparate impact on the basis of race. This prohibition applied to neutral practices, such as tests or qualifications for the job, that do not take race into account, but that have a disparate impact upon minority groups. Unless an employer can justify these practices by relating them to the jobs for which they are used, they violate Title VII.

The prohibition against employment practices with disparate impact has a potentially wide range of application. In the immigration setting, it could prohibit verbal ability tests and "English only" rules that require employees to speak English at work. These practices usually have a disparate impact upon Spanish-speaking employees (Gutierrez v. Municipal Court, 838 F.2d 1031 (9th Cir. 1988), vacated, 109 S.Ct. 1736 (1989); Mealey, 1989, pp. 387-436). Whether the courts will extend the prohibition this far, or whether employers can justify these practices, remains to be seen.

More generally, the theory of disparate impact has provoked criticism because it encourages employers to engage in affirmative action in order to avoid a finding that their employment practices have a disparate impact. For instance, an employer might use affirmative action in hiring blacks in order to compensate for a test that fails blacks at a disproportionate rate. Although not a technical defense to a claim of disparate impact, affirmative action is often a way of discouraging lawsuits raising such claims (Connecticut v. Teal, 457 U.S. 440 (1982)). Title VII, however, disclaims any intent to require affirmative action in any form (§ 703(j), 42 U.S.C. § 2000e-2(j)). The theory of disparate impact was also criticized because it had no explicit basis in the language of Title VII as originally enacted. This criticism was met, after much debate, by the Civil Rights Act of 1991, which amended Title VII to enact the theory into law (Title VII § 703(k), 42 U.S.C. § 2000e-2(k)).

Although Title VII directly affected only federal law, it served as the model for state and local laws that prohibit employment discrimination. Partly due to provisions for cooperative enforcement of federal, state and local laws against employment discrimination, these laws have been enacted in almost all of the states and in some large cities (§§ 706, 709, 8 U.S.C. §§ 2000e-5, -8; Bureau of National Affairs, 1993, vol. 8A, p. 451-1 to -116). Under Title VII, states and cities can enact their own laws against employment discrimination and enforce them through separate agencies. Victims of discrimination are required to file charges with these agencies under state law before they proceed to use their remedies under Title VII (§ 706(c), 42 U.S.C. § 2000e-5(c)). The Equal Employment Opportunities Commission (EEOC) has also entered into "worksharing agreements: with state and local agencies in which they divide cases between them for initial investigation and enforcement. Although the proliferation of laws against employment discrimination has complicated the procedures in these cases, it has made a wide range of remedies available to victims of discrimination.

In addition to fostering the growth of state law, Title VII also formed the background for extending another federal law, again initially by judicial interpretation. The Civil Rights

Act of 1866 was originally enacted in the aftermath of the Civil War and has subsequently been reenacted in several forms. It is now known in its codified form as section 1981 of Title 42 of the United States Code. As with Title VII, it was significantly amended by the Civil Rights Act of 1991.

Congress originally enacted section 1981 at the same time as it considered the constitutional amendments that prohibited slavery and that guaranteed all persons the equal protection of the laws. Like these amendments, section 1981 was narrowly interpreted for a century after its enactment, but after the enactment of Title VII, was suddenly given a broad interpretation. Section 1981 gives all persons the same right "to make and enforce contracts . . . as is enjoyed by white citizens." This language was initially applied only to a narrow range of state laws denying capacity to contract to the newly freed slaves.

In a series of decisions, from 1968 to 1976, the Supreme Court broadly interpreted section 1981 to prohibit all forms of racial discrimination in private contracting (Casper, 1968, pp. 96-98, 110-23; Jones v. Alfred H. Mayer & Co., 392 U.S. 409, 417-37 (1968); Johnson v. Railway Express Agency Inc., 421 U.S. 454, 457-60 (1975); Runyon v. McCrary, 427 U.S. 160, 168-72 (1976)). On this interpretation, the statute reached almost all forms of private racial discrimination, for instance, by employers with fewer than 15 employees who had been exempted from Title VII. The judicial decisions that gave this novel interpretation to the statute raised serious questions about the scope of judicial power in statutory interpretation, much as Brown had raised questions a decade earlier about constitutional interpretation. Despite these persistent questions, this broad interpretation of the statute was enacted into law in the Civil Rights Act of 1991.

D. Executive Order 11246

The same political forces that led to the enactment of Title VII also led to the expansion of the executive orders that prohibit discrimination by federal contractors. In 1965, President Johnson, the same president who had secured enactment of the Civil Rights Act of 1964, promulgated Executive Order 11246. This order both prohibits discrimination and requires affirmative action by federal contractors (E.O. 11246, § 2021).

Executive Order 11246 is one in a series of executive orders concerned with the employment practices of federal contractors. The earliest of these orders was issued during World War II, but none of the orders was vigorously enforced or broadly implemented through administrative regulations until the 1960's (Graham, 1990, pp. 153-59). The promulgation of Executive Order 11246 in 1965, and its amendment and expansion by subsequently issued orders, dramatically increased the regulation of federal contractors.

As the name implies, executive orders are orders issued on the authority of the President alone. They may be, and often are, authorized by federal statutes, but the decision to issue the order, to amend it, or to revoke it is made by the President alone. The authority for Executive Order 11246 rests mainly on statutes authorizing the President to manage the purchase of goods and services for the federal government. The order itself then delegates further authority to the Department of Labor to issue detailed implementing regulations (E.O. 11246, § 201).

To this day, the power of the President to impose a detailed set of regulations upon private employers who enter into contracts with the federal government remains uncertain

(Chrysler Corp. v. Brown, 441 U.S. 281, 303-08 (1979)). The regulations under Executive Order 11246 prohibit discrimination, require affirmative action, and establish a system of administrative enforcement. Regulations of this scope usually require explicit statutory authorization on the subject of the regulations themselves, not just on a tangentially related topic such as management of federal contracts. Executive Order 11246 therefore raises questions whether the President has engaged in legislation in violation of the constitutional separation of powers.

These questions have clustered around the forms of affirmative action, often explicit numerical goals, that employers must meet in order to preserve their status as federal contractors. It is precisely in requiring affirmative action that Executive Order 11246 goes beyond Title VII, which explicitly disclaims any such requirement (§ 703(j)). The fact that the executive order has persisted despite these doubts, and despite conservative administrations opposed to affirmative action, testifies to the power of the political forces that led to its promulgation in the 1960's.

E. Immigration and Discrimination

As applied to immigration law, the Constitution does more than serve as the source of principles that define the prohibition against discrimination. It also directly prohibits some forms of discrimination against aliens. Because the Constitution allocates control over immigration to the federal government, the states are allowed to discriminate against aliens only in a narrow range of occupations (U.S. Const. art. I, § 8). State laws can exclude aliens only from occupations that involve the exercise of government powers, such as police or school teachers (Ambach v. Norwick, 411 U.S. 68, 75-80 (1979); Foley v. Connelie, 435 U.S. 291, 297-300 (1978)). All private occupations, outside of government, must remain open to aliens under state law. Private employers may be able to discriminate against aliens, but state laws cannot exclude aliens from employment.

No corresponding restriction applies to the federal government because it has plenary power to regulate immigration and naturalization (Hampton v. Mow Sun Wong, 426 U.S. 88, 99-105 (1976); Mathews v. Diaz, 426 U.S. 67, 77-82 (1976)). Thus, federal immigration laws contain broad and complex provisions that determine whether aliens in the United States are allowed to seek employment. And more generally, of course, any regulation of immigration and naturalization necessarily requires classifications that impose burdens on aliens, from outright exclusions to restrictions on activities in the United States.

Like the federal government, private employers are under no constitutional obligation to avoid discrimination against aliens. The general constitutional prohibitions against discrimination are to be found in the Fifth and Fourteenth Amendments, which apply respectively, only to the federal government and the states. The Thirteenth Amendment, which prohibits slavery, applies directly to private individuals but, of its own force, does not prohibit any form of discrimination. To the extent that private employers are bound to give equal opportunities to aliens, it is because federal statutes prohibit discrimination on this basis. The most important of these statutes is the Immigration Reform and Control Act of 1986 (or IRCA as it is commonly known).

Title VII, unlike IRCA, does not prohibit discrimination on the basis of status as an alien. As an initial matter, the broad coverage of Title VII, which includes aliens, must be distinguished from the forms of discrimination that it prohibits. Although Title VII protects

all "individuals" from discrimination, citizens and aliens alike, it only protects them from discrimination on the basis of race, national origin, sex, and religion (§ 703(a)-(d), 42 U.S.C. § 2000e-2(a)-(d)). Title VII protects aliens from discrimination on these grounds, but not from discrimination on the basis of alienage.

The crucial distinction, drawn by the Supreme Court, is between alienage and national origin as a basis for discrimination. National origin, under Title VII, encompasses only ethnic origin: the group to which an individual and his family belong, but not the country he is from or his status as an alien (Espinoza v. Farah Manufacturing Co., 414 U.S. 86, 95 (1973)). For example, an alien of Mexican descent who immigrates to the United States from Canada, for instance, has a claim under Title VII for discrimination against him because he is of Mexican or Hispanic origin, but not because he is from Canada or because he is an alien. An employer violates Title VII by refusing to hire applicants of Mexican origin, whether they are aliens or citizens, but an employer complies completely with Title VII by hiring only citizens, without regard to their national origin. Among federal statutes, only IRCA covers aliens and clearly prohibits discrimination against them on the basis of alienage (Immigration and Nationality Act (INA) § 274B(a)(2)(C), codified as 8 U.S.C. § 1324b(a)(2)(C)).

III. Statutory Prohibitions and Procedures

A. Title VII of the Civil Rights Act of 1964

1. Prohibitions

Just as Brown v. Board of Education is fundamental to the law of civil rights, Title VII is fundamental to the law of employment discrimination. It provides the model for statutory prohibitions against discrimination; it makes lawsuits by private individuals the principal means of enforcement; and it raises all of the major issues in this field, from burdens of proof to affirmative action.

Title VII generally prohibits discrimination in employment on the basis of race, national origin, colour, religion, and sex (§ 703(a)-(d), 42 U.S.C. § 2000e-2(a)-(d)). It also prohibits retaliation for opposing discriminatory practices or for participating in enforcement proceedings (§ 704(a), 42 U.S.C. § 2000e-3(a)). Of these prohibitions, those against discrimination on the basis of race and national origin are the most significant for immigration law. Colour largely overlaps with race and national origin, as does religion to some extent. Religious affiliation is sometimes closely related to ethnic identity, as in the case, for instance, of Jews. The prohibition against discrimination on the basis of colour exemplifies a concern that pervades Title VII: to prevent hidden forms of discrimination. An employer cannot engage in the pretense of avoiding racial discrimination by taking into account the colour of an employee's skin. For the same reason, discrimination on the basis of race is forbidden in nearly absolute terms, just as it is in constitutional law.

Title VII treats national origin slightly differently than race. The prohibition against national origin discrimination (but not racial discrimination) is subject to an exception for bona fide occupational qualifications (§ 703(e)(1),, 42 U.S.C. § 2000e-2(e)(1)). This exception allows employers to consider national origin when it "is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or

enterprise." Despite statements in the legislative history that support national origin requirements for chefs in French or Italian restaurants, the exception has been interpreted quite narrowly and has seldom been applied to uphold discrimination on the basis of national origin (Rosner, 1983, pp. 879-83; Kobdish, 1987, pp. 671-73; see United Automobile Workers v. Johnson Controls, Inc., 111 S.Ct. 1196, 1204-07 (1991)).

A more significant exception, and one more closely related to immigration, arises from treaties of friendship, commerce, and navigation (Sumitomo Shoji America, Inc. v. Avagliana, 457 U.S. 176, 180-85 (1982)). These treaties allow foreign companies to hire employees of their choice for high-level or specialized positions in the United States including, apparently, employees of their own national origin (Fortino v. Quasar Co., 950 F.2d 389, 392-94 (7th Cir. 1991)). Whatever the scope and effect of these treaties, they do not raise any problem of discrimination against immigrants, but the reverse: discrimination in their favour (Paparelli, Holland, and Augustyn, 1992, p. 1037). And even as a form of affirmative action, such treaties do not provide benefits to immigrants who need assistance in finding employment. They instead protect employees who already hold good jobs, and who, in many cases, do not plan to stay permanently in the United States.

Despite these differences in the formally stated legal rules, national origin is treated just like race for almost all practical purposes. Under Title VII, discrimination on the basis of national origin is nearly always prohibited. This is as it should be. The distinction between a race and a national origin group is mainly a matter of degree, dependent both on biological and cultural facts. If there are any clear distinctions that can be drawn between these two kinds of groups - genetics is the notorious basis for attempting to do so - such distinctions have little to do with the need to prohibit discrimination in employment. Discrimination against a Vietnamese immigrant because she is Vietnamese is little different from discrimination against her because she is Asian.

2. Reporting and Recordkeeping

Title VII requires recordkeeping and reporting by employers within its scope (§ 709(c), (d), 42 U.S.C. § 2000e-8(c), (d)). The statute itself does not contain these requirements, but it authorizes the agency charged with enforcing the statute, the Equal Employment Opportunity Commission to issue regulations. The EEOC regulations generally require any employer with 100 or more employees to file annual reports on the composition its work force according to race, national origin, and sex (but not religion). The jobs in the employer's operations must also be broken down into nine different categories, from service workers to officers and managers (29 C.F.R. § 1602.7). These regulations do not apply to employers with fewer than 100 employees, on the rationale that reporting requirements are more burdensome for small employers than for large employers. Nevertheless, all covered employers must preserve records of personnel decisions for a period of one year (29 C.F.R. § 1602.14) Similar reporting and recordkeeping requirements also apply to unions, employment agencies, and joint labour-management committees covered by Title VII (29 C.F.R. §§ 1602.15-.28).

In addition, all covered employers must maintain records sufficient to determine whether their hiring and promotion practices have a disparate impact upon minority groups and women, although employers with fewer than 100 employees need not keep records as

complete as those for larger employers (29 C.F.R. §§ 1607.4(A), (B), 1607.15(A)).[5] These record-keeping requirements are enforced less strictly than the reporting requirements. As a practical matter an employer is penalized for inadequate recordkeeping only after a charge has been filed and the EEOC conducts an investigation. The EEOC does have, however, broad power to inspect and to subpoena records in the possession of an employer (§§ 709(a), 710, 42 U.S.C. § 2000e-8(a), -9). Likewise, private individuals who begin judicial proceedings against an employer can examine its records through pretrial discovery, mainly by subpoenas and requests for production of documents (Fed. R. Civ. P. 34, 45).

3. Administrative Procedures

As a result of fundamental compromises, the procedural provisions of Title VII divide the right to sue between public agencies and private individuals. These provisions also divide jurisdiction over claims between administrative agencies and courts. Under the statute, plaintiffs must first exhaust their state and federal administrative remedies before they go to court. State administrative remedies, often modeled on Title VII, can serve as a local substitute for federal litigation. The statute requires plaintiffs to give state agencies, if available, a period of 60 days in which to consider their charges.[6]

With respect to most charges, all except those brought by federal employees and certain high state officials, the EEOC has authority only to investigate the charge, determine whether it is supported by reasonable cause, attempt to mediate the dispute, and make a decision whether to sue (§§ 706, 717, 42 U.S.C. § 2000e-5, 16; The Civil Rights Act of 1991, § 321). The power actually to decide most Title VII claims remains wholly with the courts. After the EEOC issues a "right-to-sue letter," a private individual can sue regardless of the disposition of his charge by the EEOC (McDonnell Douglas Corp. v. Green, 411 U.S. 792, 798-800 (1973)).[7]

---

[5] For large employers, these regulations are quite elaborate. An employer must preserve records for (i) each job, (ii) each sex, (iii) each of the following groups that comprise at least 2% of its work force (blacks, American Indians, Asians, Hispanic, and whites other than Hispanics), (iv) each component of each selection procedure with adverse impact, and (v) each year (§ 1607.15(A)(2)(a)). When adverse impact has been found, records must be kept for at least two years after the adverse impact has been eliminated (§ 1607.15(A)(2)(a)) and the employer must conduct and preserve records of a validity study (§ 1607.15A(3)). For smaller employers (with 100 or fewer employees), the regulations require records for (i), (ii), (iii), and (v) above and records of the selection procedures used by the employer (§ 1607.15A(1)). Where a selection procedure is found to have adverse impact, smaller employers need only maintain "any available evidence of validity for that procedure" (§ 1607.15A(1)).

[6] Plaintiffs can then have their charges considered by the EEOC, which has administrative jurisdiction over Title VII claims. The plaintiff, however, must file with the EEOC no later than 300 days after the date of the alleged discrimination (and within 180 days if there is no state agency with which to file charges) (§ 706(e)(1), 42 U.S.C. § 2000e-5(e)(1)).

A private individual must file his claim in court within 90 days of receipt of a right-to-sue letter (§ 706(f), 42 U.S.C. § 2000e-5(f)).

[7] Special procedures apply to federal employees. They need not exhaust state remedies, but instead must utilize the procedures within the federal agency in which they are employed. After the agency gives notice of final action, they may file an appeal with the EEOC within 30 days (29 C.F.R. § 1614.402). On the appeal, the EEOC does not engage in conciliation, but adjudicates the claim (§ 717(b), 42 U.S.C. § 2000e-16(b)). Alternatively, federal employees may commence an action in federal court within 90 days of a final decision of the employing agency or the EEOC (§ 717(c), 8 U.S.C. § 2000e-16(c)).

Still other procedures apply to federal employees who are appointed by the President and to state employees who are appointed by high state officials (Civil Rights Act of 1991 §§ 320, 321). In these cases, too,

The intricate division of authority to enforce Title VII arose from three concerns: first, to limit the power of government; second, to maintain the separation of powers; and third, to preserve the power of the states. The first two concerns led opponents of Title VII to object to the powers conferred on the EEOC, which were originally to investigate and adjudicate Title VII claims. Employers, in particular, were fearful that a powerful EEOC would subject them to extensive regulation and potential liability. In the legislative debates over Title VII, they succeeded in dividing the power to investigate and to adjudicate claims between the EEOC and the courts. The role of the state agencies in enforcing the statute was added in order to preserve their power to resolve claims of discrimination, and ideally, to preempt the need for federal action. Although the complex procedures under Title VII might be justified in theory, in practice they have succeeded only in restricting enforcement of the statute, mainly by forcing private individuals through an array of requirements, particularly time limits, before a claim can be brought to court. It is plainly necessary to simplify these procedures so that victims of discrimination can more easily pursue their claims under the statute (Summers, 1992, pp. 532-34).

4. Individual Actions

Once a Title VII claim gets to court, the plaintiff can prove discrimination according to either individual or class-wide theories of liability. Individual claims necessarily focus on the situation of the individual victim of discrimination, while class claims concern the general personnel policies of the employer. Individual claims are also more likely to be brought by the individual victim simply for his or her own benefit. Class claims can be brought by government enforcement agencies, either the EEOC or the Department of Justice, or by private individuals (§§ 706, 707, 42 U.S.C. § 2000e-5, -6; General Telephone Co. v. EEOC, 446 U.S. 318 (1980); Fed. R. Civ. P. 23).

Individual claims can be proved by either direct or circumstantial evidence of discrimination. Direct evidence constitutes proof, typically statements of the employer's managers or supervisors, that race or national origin was "a motivating factor" in the decision to reject the plaintiff (§ 703(m), 42 U.S.C. § 2000e-2(m)). Circumstantial evidence is any other form of proof, usually evidence that the plaintiff possessed the minimum qualifications for the job and that the employer's offered reason for rejecting the plaintiff was a pretext for discrimination (McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-05 (1973)). The burden of proof in individual claims can become quite intricate,[8] as it can for class claims, but most cases turn on the legitimate reason offered by the employer for rejecting the plaintiff. So, for instance, if an employer submits evidence that the plaintiff was not hired because another applicant possessed better qualifications, the plaintiff will try to establish that this reason was false and that he was rejected because of his race (St. Mary's Honor Center v. Hicks, 113 S. Ct. 2742 (1993)).

Individual plaintiffs will decide to sue under Title VII based on two factors: the likelihood that they will prevail on the merits and the likely recovery that they will obtain if

---

the EEOC acts as an adjudicative agency.

[8] For instance, even if the plaintiff proves that discrimination is "a motivating factor" in the employer's decision, the employer can still limit its liability for compensatory relief (although not for injunctive relief or the award of attorney's fees), by proving that the plaintiff would have been rejected anyway for an entirely legitimate reason (§ 706(g)(2)(B), 42 U.S.C. § 2000e-5(g)(2)(B)).

they prevail. Among the remedies available to plaintiffs are injunctive relief, forbidding discrimination in the future; awards of back pay for the period that they were unemployed; and awards of seniority and other forms of fringe benefits, such as vacation pay and pension benefits (§ 706(g), 42 U.S.C. § 2000e-5(g); Albemarle Paper v. Moody, 422 U.S. 405, 413-22 (1975); Franks v. Bowman Transportation Co., 424 U.S. 747, 762-70 (1976)). Prevailing plaintiffs are also usually entitled to an award of attorney's fees (§ 706(k), 42 U.S.C. § 2000e-5(k); Christiansburg Garment Co. v. EEOC, 434 U.S. 412 (1978)).

In reality, however, the decision to sue is not made by the plaintiff but by an attorney. Although the decision whether or not to sue nominally belongs to the plaintiff (American Bar Association, Model Rules of Professional Conduct 1.2(a) (1983)), as a practical matter, attorneys control the plaintiff's access to court. Attorneys effectively screen the claims that are brought to court by deciding whether to represent the plaintiff and whether to take the plaintiff's claim to court. Few Title VII plaintiffs are represented by legal aid attorneys, who charge nominal fees or no fees at all for their services. Conversely, few Title VII plaintiffs can afford to pay their attorneys an hourly rate or a lump sum sufficient to pay for bringing a case to trial. Most Title VII plaintiffs instead must turn to private attorneys who are compensated mainly through awards of attorney's fees. Attorneys obtain these awards, however, only in cases in which the plaintiff prevails. If the plaintiff loses, they receive no award at all and they must be satisfied with, at most, a small initial payment received from the plaintiff.[9]

Awards of attorney's fees enhance the screening function of attorneys. This method of compensation gives them strong incentives to ascertain how likely the plaintiff's claim is to succeed and what the plaintiff is likely to recover. An attorney will take a case only if it is likely to result in an award of attorney's fees large-enough to cover the attorney's time and effort in bringing the case. Because awards of attorney's fees are correlated with the other relief awarded to the plaintiff, attorneys are most likely to take cases in which there is a high probability of a large award. This consequence is hardly surprising, but it illustrates the tendency of individual claims to be brought mainly by individuals who are already fairly well off. It is these individuals who are most likely to seek jobs that pay well enough to support large awards of back pay, to have sufficient qualifications for these jobs, and to give persuasive testimony that they have been victims of discrimination.

5. Class Actions

Class actions are necessary to enforce Title VII because the EEOC and the Department of Justice do not have the resources to bring a large number of public actions. Consequently, the burden of bringing claims on behalf an entire group of victims falls mainly on private parties. The class action is a procedural device that allows one individual to sue on behalf of an entire group. A class action may be brought, just as an individual action may be

[9] Although awards of attorney's fees are computed according to a formula based on hourly fees, the total amount awarded is correlated with the extent of the plaintiff's success on the merits (Hensley v. Eckerhart, 461 U.S. 424, 429-35 (1983)). Awards of attorney's fees may also be supplemented by contracts between the plaintiff and his attorney for contingent fees. Under these contracts, the attorney receives a share of the plaintiff's award if the plaintiff prevails on the merits (Blanchard v. Bergeron, 489 U.S. 87, 91-96 (1989)). Like an award of attorney's fees, a contingent fee is paid to the attorney only if the plaintiff prevails. If the plaintiff loses, then his attorney receives no fee at all.

brought, either against private employers or against public employers, including the federal government.

The theory of the class action is that an individual plaintiff can bring claims on behalf of the entire class that no individual class members would find worth pursuing alone, either because each individual claim is worth too little to justify a lawsuit or because other barriers, such as the fear of retaliation, deter individual plaintiffs from suing (Rutherglen, 1980, pp. 696-706). There need not be any prior relationship between the class representative and the class members, beyond the similarity in their claims against the employer.

The absence of any prior relationship, however, creates the risk that the class representative's interests may diverge from those of the class. In particular, there is the danger that the class representative and his attorney might use the class action to obtain a favourable settlement of their claims, both for individual relief and for attorney's fees, at the expense of the class. For this reason, class actions must be certified by the trial judge and are subject to continuing judicial supervision to assure adequate representation of the class (Fed. R. Civ. P. 23). As a practical matter, these complex procedures give great power to the trial judge and to the attorney for the class representative, who controls the presentation of the claims on behalf of the class. Because class actions are both more complex and more significant than individual actions, they are most often brought by attorneys who specialize in this form of litigation or by public interest organizations, like the Mexican-American Legal Defense and Education Fund, which regularly support litigation to advance the interests of their members.

The requirements for class actions under Title VII were originally relaxed on the ground that "[racial discrimination is by definition class discrimination" (Oatis v. Crown Zellerbach Corp., 398 F.2d 496, 499 (5th Cir. 1968)). These procedural decisions allowed plaintiffs, sponsored by public interest groups, to bring "across the board" class actions that attacked all of an employer's practices that excluded blacks and Hispanics from better paying jobs. Class claims of intentional discrimination or disparate impact made these actions doubly effective by allowing plaintiffs to claim that an employer discriminated against all of the members of the class. Starting in 1977, however, the Supreme Court imposed restrictions on class actions under Title VII so that they are now subject to the ordinary rules of civil procedure (East Texas Motor Freight System, Inc. v. Rodriguez, 431 U.S. 395 (1977); General Telephone Co. v. Falcon, 457 U.S. 157 (1982)). These decisions were accompanied by decisions restricting class claims of discrimination and disparate impact (Hazelwood School District v. United States, 433 U.S. 299 (1977); Wards Cove Packing Co. v. Atonio, 490 U.S. 642, 658-61 (1989)). Both of these developments limited the effectiveness of class actions as a remedy for broad patterns of discrimination.

Class claims almost always require statistical evidence of discrimination, either to prove class-wide intentional discrimination or class-wide disparate impact. Proof of intentional discrimination against an entire class of applicants or employees requires statistical evidence of a large disparity in the treatment of minority groups as compared to the majority. In one case, it was characterized as evidence of "the inexorable zero": evidence that the employer had hired almost no blacks or Hispanics for the positions in dispute (International Brotherhood of Teamsters v. United States, 431 U.S. 324, 342 n.23 (1977)). In other cases, less significant disparities have been held sufficient, but these still must be large enough to support an inference that the employer systematically took account of race or national origin in making personnel decisions (Hazelwood School District v. United States, 433 U.S. 299,

307-13 (1977)). Usually, statistical evidence must be augmented by evidence of individual instances of discrimination (Teamsters, 431 U.S. at 334-43). In response to these claims, employers have adjusted their personnel practices to comply with Title VII, or at least to limit their exposure to liability. They have abandoned practices that were plainly discriminatory - such as accepting referrals only of employees of one race - and they have engaged in affirmative action to reduce or eliminate the statistical disparities that support a claim of discrimination. Consequently, in recent years, plaintiffs have rarely produced the evidence necessary to prove class-wide intentional discrimination.

The alternative theory of class-wide liability, based on the disparate impact of neutral practices, does not require equally compelling evidence of discrimination. This theory, as we have seen (in Part II.C.), allows the plaintiff to prove that a neutral practice has a disparate impact upon a racial or ethnic group. If the plaintiff makes this showing, then the burden of proof shifts to the defendant to prove that the disputed practice is "job related for the position in question and consistent with business necessity" (§ 703(k), 42 U.S.C. § 2000e-2(k)). Because the theory had its origins in judicial decisions, its soundness as an interpretation of Title VII remained in doubt until it was incorporated in the text of the statute by the Civil Rights Act of 1991.

Before these amendments, the force of the theory of disparate impact had eroded because the burden of proof upon employers had been reduced (Wards Cove Packing Co. v. Atonio, 490 U.S. 642, 658-61 (1989)). Even now, some doubt remains about exactly what employers must prove to justify a practice with adverse impact. Do they have to prove that the practice, for instance, a test for verbal ability in English, bears only some relationship to the job for which it is used? If so, the burden upon them remains light and the range of practices that can be challenged under the theory remains narrow. It is easy to prove that a test for verbal ability in English is useful in almost any job in the United States. On the other hand, do employers have to show that a disputed test is a business necessity, in the sense that no other method of screening employees for the job will do? If so, only the essential qualifications for the job will be defensible. In our example, employers would have to show that speaking and writing English were necessary to perform the job, which might not be true in many regions where Spanish is a second language. Employers would also have to show that the test accurately measured the exact level of proficiency in English required for the job. The ambiguous wording of the Civil Rights Act of 1991 - "related to the job in question and consistent with business necessity" - does not resolve this question. Nor does the legislative history, which only rejects the decisions that imposed the least possible burden of justification upon the employer, neither earlier decisions that were ambiguous on the subject.

Since 1977, when restrictions were first imposed on class actions under Title VII, litigation under the statute has concentrated ever more heavily on individual claims, and mainly on claims alleging discriminatory discharge from employment. In and of themselves, such claims serve a valuable function: they prevent discrimination against members of minority groups after they have obtained a job. What individual claims do not do is provide members of minority groups with the opportunity to obtain those jobs in the first place. For that, an enforcement device other than private actions for the benefit of individual plaintiffs is necessary. With the recent endorsement of the theory of disparate impact by Congress, class actions may be revived as one means of opening jobs to members of minority groups. Whether they do so depends upon how hard it is to prove claims of disparate impact and how attractive these claims are, either to attorneys motivated by the prospect of recovering an award of attorney's fees or to public interest groups. Even a sharp increase in class actions

under Title VII would not dispense with the need to consider other remedies for discrimination - such as public actions or administrative decisions - or, more broadly, other means of increasing the employment opportunities of members of minority groups - such as affirmative action.

6. Public Actions

In claims against private employers, and most claims against state and local government, the EEOC is limited to investigation and conciliation. It does not decide claims of discrimination, apart from those brought by federal employees and by high-level state employees. Although it does not have the power to decide claims against private employers, the EEOC does have the power to sue on behalf of private individuals.

Even the EEOC's power to sue, however, is limited. Its power does not extend to claims against state and local government. Public actions against these employers must be brought by the Department of Justice, which is thought to be more politically responsive than the EEOC (§ 706(f)(1), 42 U.S.C. § 2000e-5(f)(1)). The head of the Department of Justice, the Attorney General, serves at the will of the President and therefore is directly subordinate to his commands. The commissioners who head the EEOC, by contrast, serve for five-year terms. Although they are appointed by the President, as is the Attorney General, only three out of the five commissioners can be from the same political party and the practice is that they serve out their terms of office (§ 705(a), 42 U.S.C. § 2000e-4(a)).

The EEOC exercises its power to sue in only a small number of cases, as Table 4 reveals. In fiscal year 1989, the most recent period for which the EEOC has published reports, the EEOC brought 312 cases under Title VII, whereas it received over 100,000 charges of discrimination under the statute. In all other cases, the EEOC issued right-to-sue letters to private individuals who decided whether or not to sue on their own behalf. And even among the small number of lawsuits brought by the EEOC, less than 5%, or about 15 lawsuits each year, allege discrimination on the basis of national origin - the form of discrimination most likely to be related to immigration (National Council of La Raza, 1991, pp. 12-14). By contrast, about 10% of charges allege discrimination on the basis of national origin.

The influence of public actions cannot be judged solely by their numbers. Some of the most important precedents under Title VII were set in litigation by the EEOC. For instance, International Brotherhood of Teamsters v. United States (431 U.S. 324 (1977)) concerned desegregation of the trucking industry throughout the nation and resulted in important rulings on seniority systems, use of statistical evidence, and individual remedies under Title VII. More recently, EEOC v. Sears Roebuck & Co. (839 F.2d 302 (7th Cir. 1988)) concerned a claim of discrimination against women by a nationwide retailer. Likewise, Local 28, Sheet Metal Workers' International Association v. EEOC (478 U.S. 421 (1986)) involved a claim of pervasive racial discrimination in the construction industry in New York City and upheld the use of affirmative action as a remedy for past discrimination.

In theory, public actions can have exactly the same scope as private actions, from the smallest individual case to the largest class action. In practice, they raise issues of general significance, often on a regional or nationwide basis, and they develop precedent that can subsequently be used by private plaintiffs in pursuing their own individual claims. Whether public actions will be brought, what position the government will take in them, and the level

of funding that they receive depends on the judgment of politically appointed or elected officials. Even the EEOC, although nominally independent of the President, has its budget determined by the President and Congress acting together, and over a period of three years, a President can appoint three of the five EEOC Commissioners. The extent and effect of public actions is therefore quite sensitive to shifting political opinions and changing administrations.

B. State Fair Employment Practice Acts

Some states enacted statutes that prohibit discrimination in employment before Title VII. Other states and some cities enacted statutes or ordinances after Title VII, so that now almost all states have statutes that prohibit discrimination in employment (Bureau of National Affairs, 1993, vol. 8A, pp. 451-1 to -116). All of these state laws have been influenced by Title VII, either through amendments or through the process of enactment. When a state has an appropriate statute, as determined by the EEOC (29 C.F.R. § 1601.74), Title VII provides for cooperative enforcement of state and federal law. It does so in several ways: first, by requiring a charge to be filed with an appropriate state agency before it is filed with the EEOC (§ 706(c), (d), 42 U.S.C. § 2000e-5(c), (c)); second, by requiring the EEOC to give "substantial weight" to the findings of state agencies (§ 706(b), 42 U.S.C. § 2000e-5(b)); and third, by providing for coordinated research, investigation, and recordkeeping requirements with state agencies (§ 709(b), (d), 42 U.S.C. § 2000e-8(b),(d)).

1. Prohibitions

The statutes enacted by different states, of course, have varying provisions. The substantive prohibitions in these statutes differ from Title VII mainly in being broader. State laws tend to consolidate different grounds for discrimination that, under federal law, are treated in separate statutes. The California statute, the California Fair Employment and Housing Act, is typical. In addition to the grounds of discrimination covered by Title VII, it also covers discrimination on the basis of age, disability, medical condition, and marital status (Gelb and Frankfurt, 1983, pp. 1057-58). Like most state statutes, the California statute also covers all employers, not just those with 15 or more employees (pp. 1059-60). In other respects, the provisions in state law closely follow those in Title VII, although with some variation. The California statute, for instance, has been interpreted to impose slightly different burdens of proof than Title VII and to afford broader protection against discrimination on the basis of sex (pp. 1067-84).

2. Procedures

State laws differ more sharply from Title VII in their procedures for enforcement. Again, the California statute is typical. The California Department of Fair Employment and Housing, which enforces the statute, has the authority to issue cease-and-desist orders against continued discrimination and for compensatory relief. When these orders are enforced in court, they have the same effect as injunctions and awards of back pay. Unlike the EEOC, this state department has the authority to grant orders for hiring, promotion, reinstatement, and back pay (pp. 1064-65). If the department finds probable cause to believe that the statute has been violated, and the case is not settled, the department prosecutes the case on behalf of the complaining party (p. 1063). After an administrative hearing, the department issues a decision, which is subject to judicial review by either the complaining party or the defendant. If a cease-and-desist order is upheld in court, it is transformed into a judicially

issued injunction (pp. 1065-66). If the department decides not to order an administrative hearing, then the complaining party can bring a private action, seeking the same relief as under Title VII: an injunction, back pay, damages, and attorney's fees (p. 1066).

State law provides victims of discrimination with a valuable choice. The state remedy might be more convenient than the federal remedy because it is available through the local office of a state agency or a state court. The state administrative remedy is more valuable still if the state agency can effectively pursue the complaining party's claim. This alternative, in particular, relieves her of the burden of finding an attorney willing to take on her case. As we have seen (in Part III.A.4.), even the provisions for attorney's fees under Title VII do not guarantee that a victim of discrimination will always find an attorney.

C. Section 1981

Partly because of its development through judicial interpretation, section 1981 is a much simpler statute than Title VII. Section 1981 was first enacted as a part of the Civil Rights Act of 1866 and it has been amended several times since, most recently by the Civil Rights Act of 1991. The main provision in section 1981 is a simple requirement that "all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts" (§ 1981(a)). This provision is not enforced by any administrative agency, it does not authorize any reporting or recordkeeping requirements, and it can be enforced only through actions by private individuals. Consequently, most of the cases interpreting section 1981 have been concerned with the scope and nature of its prohibition.

1. Prohibitions

The revival and extension of section 1981 to cover private discrimination was one of the judicial innovations that followed enactment of Title VII. Whether this interpretation of the statute was originally justified is now a moot point. In the Civil Rights Act of 1991, Congress amended section 1981 to prohibit all forms of "nongovernmental discrimination and impairment under color of State law" (§ 1981(c)). The statute now prohibits all forms of racial discrimination in "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship" (§ 1981(b)).

Before the amendment to section 1981, the Supreme Court had earlier extended the statute from racial discrimination, which it explicitly prohibits, to discrimination on the basis of national origin (Saint Francis College v. Al-Khazraji, 481 U.S. 604, 609-13 (1987)). The courts are divided on whether it also applies to discrimination on the basis of alienage. It is clear that the statute covers aliens in the United States since it protects "all persons within the jurisdiction of the United States" (§ 1981(a)). It is less clear whether it protects them from discrimination on the basis of alienage. Some decades ago, the Supreme Court applied § 1981 to discrimination on the basis of alienage by the states, but the recent decisions are divided on whether § 1981 prohibits discrimination on this ground by private employers (Guttentag and Chodorow, 1992, p.22).

The only limitation on the scope of section 1981, as compared to Title VII, is that it does not cover neutral practices with disparate impact (General Building Contractors Ass'n

v. Pennsylvania, 458 U.S. 375, 382-91 (1982)). It is broader, however, than Title VII in covering all employers, and indeed, all parties who enter into any kind of contract.

2. Procedures

Section 1981 does confer certain advantages on plaintiffs that they cannot obtain under Title VII, principally in allowing them to sue without following the complex procedures and time limits under Title VII. Plaintiffs under section 1981 need not resort to administrative remedies of any kind, state or federal. Instead, they only need to file a claim in court within the time limit for personal injury claims, typically one or two years (Burnett v. Grattan, 468 U.S. 42 (1984)).

On the other hand, plaintiffs are not forced to choose between their remedies under section 1981 and under Title VII; they can sue under either statute or under both. So a plaintiff who exhausts his administrative remedies under Title VII, and who meets the time limits for filing a section 1981 claim, can file claims for relief under both statutes (Johnson v. Railway Express Agency Inc., 421 U.S. 454, 457-61 (1975)). The relief awarded is cumulative, so that remedies under section 1981 are added to those under Title VII, but of course, a plaintiff cannot obtain a double recovery for a single loss. For instance, only one award for lost wages will be made to a plaintiff who prevails under both statutes.

Injunctive relief in the form of promotion, hiring, or reinstatement is available under section 1981, just as it is under Title VII. Damages are also available under section 1981, whereas they are excluded from the remedies available to race and national origin plaintiffs under Title VII (42 U.S.C. § 1981A(a)(1)).

The award of damages under section 1981 has strengthened the trend toward individual litigation of claims of employment discrimination. It gives plaintiffs' attorneys stronger incentives to bring claims only on behalf of individuals who are likely to obtain a large recovery. Class claims of intentional discrimination (as discussed in greater detail in Part III.A.5.) require more and better evidence than claims of disparate impact. As employers have abandoned obvious forms of discrimination, class claims have become harder and harder to prove. By contrast, individual claims of intentional discrimination require a narrower range of evidence, concentrated on the qualifications, position, and performance of a single plaintiff. This evidence is easier for the plaintiff to obtain and to present than evidence of class-wide intentional discrimination or disparate impact.

Just as under Title VII (see Part III.A.4), private attorneys are most likely to bring claims on behalf of plaintiffs who are already fairly well off. These are claims for discriminatory discharge, on behalf of plaintiffs who held jobs but lost them. These plaintiffs are most likely to have the economic losses and emotional distress that support a large award of damages. Plaintiffs' attorneys are compensated under section 1981, as they are under Title VII, mainly by awards of attorney's fees (42 U.S.C. § 1988). They can also enter into contingent fee agreements by which they receive a fraction of the damages, if any, recovered by the plaintiff (Blanchard v. Bergeron, 489 U.S. 87 (1989)). Because attorneys recover court-awarded fees or contingent fees only in cases in which their clients prevail and because the size of the fee is correlated with the amount of damages recovered, they are most likely to take cases on behalf of well-paid plaintiffs who have been discharged from their jobs. Section 1981, by adding a remedy for damages, just provides more compensation to those plaintiffs whose claims are likely to have been brought under Title VII.

D. Executive Order 11246

Executive Order 11246 was not authorized by any of the civil rights acts. Instead, it was based on presidential authority to manage federal contracts. Partly for this reason, the substantive provisions and procedures for enforcement under the executive order stand in stark contrast to those under Title VII and section 1981. Neither of these statutes requires affirmative action; the executive order does. Neither of these statutes is enforced primarily through administrative proceedings; the executive order is. In some respects, the executive order follows Title VII, but for the most part, it is a separate source of law with its own distinct requirements.

1. Prohibitions and Requirements

Because it is based on the President's authority to manage contracts with the federal government, Executive Order 11246 only covers federal contractors. It covers all but the smallest federal contractors, those with contracts of $10,000 or less (41 C.F.R. § 60-1.5 (1992)).[10]

The executive order prohibits discrimination in the same terms as Title VII. It prohibits discrimination on the basis of race, national origin, sex, and religion, and it applies to employment practices both with discriminatory intent and with disparate impact (E.O. 11246, § 202(1), 29 C.F.R. §§ 60-1.4(a)(1), 60-1.3 et seq.).

The executive order departs from Title VII in its approach to affirmation action. It explicitly requires "affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, colour, religion, sex or national origin." (E.O. 11246, § 202(1)). Title VII takes exactly the opposite approach. It explicitly disclaims any intent to require affirmative action, in the sense of maintaining a racially or ethnically balanced work force (§ 703(j), 42 U.S.C. § 2000e-2(j)).

Although the executive order itself does not define what "affirmative action" means, the implementing regulations issued by the Department of Labor impose detailed requirements upon federal contractors to adopt "affirmative action compliance programmes." In particular, federal contractors with 50 or more employees and contracts worth $50,000 or more must adopt written affirmative action compliance programmes for each of their facilities (41 C.F.R. § 60-1.40(a)). These requirements are elaborated further in detailed regulations for construction and non-construction contractors (§§ 60-2.10 to -2.15, -4.1 to -4.9).

The separate regulations for construction contractors arose from several distinctive features of the construction industry: the visibility of large federal construction contracts; the absence of blacks in the skilled construction trades; and the practice of many construction contractors of hiring workers only for a single construction project (Graham, 1990, pp. 285-91). Construction contractors are subject to general goals and timetables (called "Hometown Plans") that apply to all contractors within a designated geographical area (§§ 60-4.4, -4.5).

---

[10] Broader provisions for coverage, reporting, and recordkeeping apply to financial institutions (29 C.F.R. §§ 60-1.5(a), -1.7(a), -1.40(a)).

Non-construction contractors must devise goals and timetables for their own work force by themselves. In particular, they must identify the rate at which members of minority groups should be "utilized" in the various positions in their work force, determine whether they are "underutilized" in these positions, and adopt timetables and goals to remedy any "underutilization" that is found. (§§ 60-2.11, -2.12, -4.4, -4.5). In short, they must determine how many minority workers they should employ in each position, determine whether they employ too few, and adopt affirmative action plans to remedy any deficiency.

2. Reports and Recordkeeping

Federal contractors with 50 or more employees and $50,000 or more in federal contracts must file annual reports identical to those required by the EEOC under Title VII (41 C.F.R. § 60-1.7). In addition, those contractors must prepare and maintain written affirmative action compliance programmes at each of their establishments (29 C.F.R. § 60-1.40(a)). These written programmes must include a table of job classifications, an analysis of the representation of minority groups in all job categories, a list of jobs in which minority groups are not proportionately represented, an analysis of hiring and promotion policies, and specific goals and timetables for achieving proportional employment of minority groups (§ 60-1.40(a), (b)). The written programmes must also conform to the further requirements for construction and non-construction contractors discussed in the previous section.

3. Procedures

Although the literal terms of the regulations under the executive order appear to be quite strict and burdensome, they are applied with considerable administrative discretion. The procedures for enforcing Executive Order 11246 are at the opposite extreme from those under Title VII and section 1981. These procedures consist almost entirely of administrative enforcement instead of private litigation. The Office of Federal Contract Compliance Programs (OFCCP) in the Department of Labor controls an elaborate system of enforcement, which begins with a compliance review: a comprehensive analysis of the contractor's employment practices and affirmative action compliance programmes (29 C.F.R. § 60-1.20(a)). Employers may be subject to a compliance review because they hold a contract for $1 million or more (29 C.F.R. § 60-1.20(d)), because complaints have been filed against them by private individuals, or because they are in an industry selected for systematic review. The compliance review begins with an examination of the employer's reports, written affirmative action compliance programmes, and other items in its file, and if this examination suggests problems, it is followed by an investigation at the employer's plants and offices.

If the compliance review results in a finding of deficiencies, the OFCCP notifies the employer and attempts to resolve the deficiencies through conciliation (29 C.F.R. § 60-1.20(b)). The process usually ends in some form of settlement, but in a rare case, it results in the imposition of sanctions, such as cancellation, termination, or suspension of contracts, and the award of compensatory relief to victims of discrimination, such as back pay (§§ 60-1.20, -1.24 to -1.34). In a still rarer case, the OFCCP refers a compliance action to the Department of Justice for judicial enforcement (§§ 60-1.26(e), (f)). The process of administrative enforcement can also begin with a complaint filed with the OFCCP by a private individual or union alleging discrimination by a covered contractor (§§ 60-1.21 to -1.24).

The precise details of these procedures are less important than their overall effect. It is to make the enforcement process depend almost entirely on the personnel and policies of the OFCCP. Formal enforcement proceedings are rarely brought under the executive order. Instead, extensive reporting, compliance reviews, and negotiations have led most contractors to maintain some commitment to affirmative action, although the content of that commitment may vary from strictly observed numerical goals to attempts at increased recruitment of members of minority groups. Most contractors have chosen to comply with the executive order by formulating their own affirmative action plans, rather than waiting for the OFCCP to force an affirmative action plan upon them. They usually can settle compliance reviews with agreements of this kind, which take the form of "conciliation agreements" for major violations and "letters of commitment" for minor violations. In doing so, employers have retained a degree of freedom in structuring their plans to minimize adverse effects on their own operations and on the expectations and rights of other employees. The largely informal process of enforcement has enabled employers to adjust their plans to regulatory requirements in an ongoing process of negotiation.

A further element of flexibility arises from political control over the OFCCP. Since this office is within the Department of Labor, which, like the Department of Justice, is subject to direct presidential control, political decisions largely determine how strictly the executive order is enforced. At one extreme, it can be interpreted narrowly, simply as another means of prohibiting discrimination in employment. At the other, it can be interpreted quite broadly to require vigorous forms of affirmative action. At any stage in the enforcement process, the OFCCP can choose to emphasize either extreme or any point in between. The choice of what violations to investigate, what conciliation agreements or letters of commitment to enter into, and what sanctions and remedies to seek, all allow a wide range of administrative discretion. For instance, during the Reagan Administration, the OFCCP was accused of neglecting the affirmative action obligations imposed upon federal contractors (duRivage, 1985, pp. 364-68; Ronfeldt and Galloway, 1982, pp. 107-35). Although the OFCCP collected significant amounts of back pay over those years, it was mainly in cases concerned with claims of discrimination, not failure of federal contractors to engage in affirmative action (Belz, 1991, pp. 191-96). As Table 5 reveals, most of the OFCCP's efforts are devoted to compliance reviews, not to investigations of complaints or to obtaining relief for specific victims of discrimination.

The degree of political control over enforcement of the executive order follows from its nature as an exercise of presidential power. Because it was brought into being on the authority of the President alone, its enforcement remains subject to his control. To the extent that the regulations under the executive order go beyond Title VII, particularly in requiring affirmative action, they give rise to doubts that undermine their effectiveness. Unlike the neutral prohibition against discrimination in Title VII, the forms of affirmative action required by the executive order lack explicit approval from Congress. Some have argued that the executive order is therefore invalid as an attempt at presidential legislation inconsistent with the separation of powers in the United States Constitution (Schuwerk, 1972, pp. 758-60).

Although this argument has not been accepted by the courts, it does illustrate the political weakness of the executive order and, more generally, of any strong programme of affirmative action (Contractors Ass'n v. Secretary of Labor, 442 F.2d 159 (3d Cir.), cert. denied, 404 U.S. 854 (1971)). Because any such programme confers benefits explicitly on the basis of race or national origin, but only upon groups that are a numerical minority, it is not likely to attract political support in a democratic society. In the absence of such support,

elected officials have strong reasons to dilute enforcement of required forms of affirmative action, either to diffuse or to exploit the political opposition that they generate. At least in the United States, affirmative action has never been free of controversy, and for that reason, it has never been enforced as consistently as prohibitions against discrimination.

E. The Immigration Reform and Control Act of 1986 (IRCA)

IRCA is the only federal statute that attempts systematically to connect immigration and employment discrimination law. To some extent, its provisions illustrate the inevitable tension between these two areas of law. To some extent also, these provisions illustrate distinctive concerns over civil rights and civil liberties in the United States.

Apart from political refugees, most immigrants come to a new country to take advantage of greater economic opportunities. For legal immigrants, of course, this common motive poses no problems. The law, if it is operating properly, simply facilitates their choice to move to a new country. But with respect to illegal immigrants, as Congress recognized in IRCA, the immigration laws must do more than simply prohibit illegal forms of immigration; these laws must also help to eliminate the economic opportunities that lead immigrants to seek illegal residence in the first place.

IRCA addressed these problems in a complicated compromise that had several different elements: first, prohibiting employers from hiring aliens not authorized to work; second, prohibiting employers also from discriminating on the basis of national origin or citizenship status; third, legalizing the status of aliens who had entered or remained illegally in the United States; fourth, legalizing the status of special agricultural workers who had previously entered illegally and providing for legal admission of temporary agricultural workers; and fifth, providing for greater enforcement of the laws against illegal immigration (Aleinikoff and Martin, 1991, p. 281). The first two of these elements are of principal concern to us, but the third and fourth also bear upon the prohibitions against discrimination in IRCA.

The provisions legalizing the status of long-term residents who had illegally remained in the United States since 1982 created a large pool of aliens protected by IRCA. About 1.7 million aliens obtained legal status under this provision (INA § 245A(a)(1), 8 U.S.C. § 1255a(a)(1); Schuck, 1989, p. 11). These aliens could then apply for naturalization five years after they obtained legal status (INA 316(a), 8 U.S.C. § 1427(a)). As we shall see (in Part III.E.1.), IRCA prohibits discrimination against aliens who are eligible for naturalization and promptly begin the process for achieving it. These prohibitions also extend to temporary agricultural workers granted temporary residence status or admitted under the other provisions in IRCA. About 1.2 million aliens applied for temporary residence status as "special agricultural workers" (Aleinikoff and Martin, 1991, p. 685). In addition to the aliens whose status was legalized by IRCA, IRCA also protects aliens who received permanent resident status in the ordinary course and who promptly began the process of naturalization. About 700,000 aliens receive permanent resident status in this way each year (Immigration and Naturalization Service, 1992, p. 21). Over the five years of residence necessary for citizenship, these immigrants create an additional pool of 3.5 million aliens protected from discrimination. At a minimum, then, IRCA protects at least 6.4 million aliens from discrimination: the 1.7 million aliens granted permanent residence status under IRCA, the 1.2 million aliens granted temporary residence status under IRCA, and the 3.5 million aliens granted permanent residence under other statutory provisions.

The principal problem under IRCA has been with its prohibitions, the first two elements in the elaborate compromise that led to its enactment. On the on hand, IRCA prohibits employers from hiring aliens who are not authorized to work, but on the other, it prohibits discrimination on the basis of national origin and citizenship status. Employers can comply with both prohibitions only if they can reliably determine which applicants for employment are aliens, and which among these aliens are authorized to work. The difficulty of classifying applicants in a non-discriminatory manner has been a major problem under IRCA.

Any immigration law addressed to the underlying economic reasons will encounter similar problems. Some nations have found that prohibitions against employment of illegal aliens, when they are effectively enforced, reduce the extent of illegal immigration (GAO, 1987, p. 9). Such prohibitions, however, also discourage employment of legal aliens, and even citizens who resemble illegal aliens. In particular, all applicants for employment of the same national origin may appear indistinguishable to an employer, if not physically, then in terms of speech, dress, and cultural characteristics. To avoid violating the immigration laws, the employer may believe it is necessary to violate the laws against discrimination on the basis of race and national origin. The attempt to discourage illegal immigration comes into conflict with the prohibitions against discrimination on the basis of race and national origin.

IRCA embodies and, to some extent, seeks to resolve this structural problem by imposing both prohibitions upon employers: both against hiring illegal aliens and against discriminating with respect to those who can be legally hired (INA §§ 274A, 274B, 8 U.S.C. §§ 1324a, 1324b). Whether or not IRCA has successfully combined these prohibitions, it could not have been enacted without the support of civil rights groups which demanded a prohibition against discrimination. These groups were not, of course, exclusively concerned with protecting immigrants. Even the Hispanic groups most concerned with issues of immigration derive their political power from the citizens who make up their constituency. It is the votes of these citizens which influence the actions of legislators, not the minimal political influence of aliens themselves. For this reason, protection of immigrants from discrimination depends heavily upon protection of citizens from similar forms of discrimination.

In IRCA, this alignment of interests, generally uniting ethnic groups, civil rights groups, and defenders of civil liberties, such as the American Civil Liberties Union, also foreclosed another approach to preventing discrimination. A common complaint under IRCA is that employers require better forms of identification and documentation from members of racial and ethnic minorities, particularly Hispanics, than they do from other applicants for employment (Cowen, 1992, pp. 285-96). A national identity card issued to all citizens and lawfully resident aliens might eliminate much discrimination of this kind. Yet, with some justification, civil liberties groups have advanced arguments based on privacy and the abuse of power by centralized government to block this means of alleviating discrimination related to immigration.

1. Prohibitions

The main prohibition in IRCA is against hiring aliens who are not legally in the United States or whose visas do not permit them to work in the United States (INA § 274A(a), 8 U.S.C. § 1324a(a)). IRCA also requires employers to maintain records, for each employee hired after its enactment, establishing that the employee is either a citizen or an alien authorized to work (INA § 274A(b), 8 U.S.C. § 1324a(b)). If employers hire unauthorized

aliens, they are subject to significant sanctions, in the form of civil penalties that range from $250 to $2,000 for each alien who is illegally employed and that increase with each repeated offense (INA § 274A(e)(4), 8 U.S.C. § 1324a(e)(4); Rice, 1987, pp. 344-48). Additional penalties apply to violations of the recordkeeping requirements under the act (INA § 274A(e)(5), 8 U.S.C. § 1324a(e)(5)).

The prohibition against discrimination is designed to offset the predictable effect of the prohibition against hiring unauthorized aliens: the incentive of employers to avoid sanctions by refusing to hire applicants who appear to be foreign. IRCA goes beyond Title VII in two respects: first, it prohibits discrimination on the basis of citizenship status; and second, it prohibits discrimination on the basis of national origin by small employers (with less than 15 employees) not covered by Title VII. IRCA also established a system of administrative enforcement and created a new office in the Department of Justice, the Special Counsel for Immigration-Related Unfair Employment Practices, to bring complaints on behalf of private individuals. Related to these provisions is a prohibition against retaliation for participating in enforcement proceedings (INA § 274B(a)(5), 8 U.S.C. § 1324b(a)(5)).

The prohibition against discrimination on the basis of citizenship status is an intricate combination of prohibited grounds for discrimination, coverage provisions, and exceptions. As we saw earlier (in Part II.E.), Title VII covers aliens, but does not prohibit discrimination on the basis of alienage. IRCA does; it generally prohibits discrimination on the basis of "citizenship status" (INA § 274B(a)(1)(B), 8 U.S.C. § 1324b(a)(1)(B)). This prohibition protects citizens from discrimination on the ground that they are citizens, but that is not a significant problem. Under IRCA, employers have every incentive only to hire citizens in order to avoid hiring illegal aliens. The prohibition is designed mainly to protect aliens.

This general prohibition, however, must be qualified so that it does not interfere with IRCA's competing prohibition against employment of illegal aliens. Accordingly, the coverage of this prohibition is limited to "protected individuals" (in contrast to the prohibition against national origin discrimination, which protects all individuals). The term "protected individuals" is defined mainly to include citizens and aliens admitted as permanent residents, but it also includes aliens admitted as temporary residents under IRCA, or as refugees or for asylum under specified statutes. To retain their protected status, aliens must apply for naturalization within six months of becoming eligible to do so, generally after five years of residence (INA §§ 274B(a)(1)(B), (a)(3), 316(a), 8 U.S.C. §§ 1324b(a)(1)(B), (a)(3), 1427(a)).

The definition of "protected individuals" excludes aliens who have unlawfully entered the United States and most aliens who are not allowed to work in the United States, such as those who enter the United States on a tourist visa. Conversely, the definition covers most, but not all, aliens who are authorized to work in the United States (Martin, 1987, p. 116). In any case, a defense explicitly provides that discrimination against aliens is allowed where it is required by law or by government contract (INA § 274B(a)(2)(C), 8 U.S.C. § 1324b(a)(2)(C)). Other exceptions apply to employers who have three or fewer employees or who hire a citizen who is as well qualified as an alien (INA § 274B(a)(2)(A), (a)(4), 8 U.S.C. § 1324b(a)(2)(A), (a)(4)). The general prohibition then applies to any other form of discrimination on the basis of citizenship status, either against citizens or against aliens who are "protected individuals."

The prohibition against discrimination on the basis of national origin, like the corresponding prohibition in Title VII, concerns national origin in the sense of ethnic origin. It does not refer to the country from which an employee has come or his status as a citizen or an alien. The prohibition against national origin discrimination in IRCA was designed to fill a gap in coverage of Title VII, which applies only to employers with 15 or more employees. IRCA extends coverage to employers with at least four employees. An accompanying exception excludes from IRCA all forms of discrimination prohibited by Title VII (INA § 274B(a)(2)(B), 8 U.S.C. § 1324b(a)(2)(B)). Thus, with respect to national origin discrimination, IRCA covers employers with more than three and fewer than 15 employees. Like Title VII, IRCA protects all individuals who deal with employers within this range. All aliens, whether or not they fall within the definition of "protected individuals" are protected from discrimination on the basis of national origin under IRCA.

Despite the dovetailing coverage of IRCA and Title VII, and the limits that each imposes on the coverage of small employers, IRCA neglects any attempt to adjust its provisions to section 1981. Consequently, small employers who fall below the coverage of IRCA can still be sued under section 1981, and employers who are subject to either IRCA or Title VII can also be sued under section 1981. The elaborate provisions that reconcile IRCA and Title VII do not disturb the protection available to an individual under section 1981. A victim of discrimination on the basis of national origin, and possibly alienage, retains her right to sue for the full array of remedies under section 1981.

There remains a dispute on the question whether IRCA prohibits only intentional discrimination - employment practices that take account of citizenship status and national origin - or whether it also prohibits neutral practices with a disparate impact, in the same manner as Title VII (Aleinikoff and Martin, 1991, p. 284). For instance, one court has found a violation of IRCA when an employer discharged protected aliens for giving false Social Security numbers on their applications for employment. Since aliens were more likely to have given false numbers than citizens, the employer's decisions had a disparate impact upon aliens (League of United Latin American Citizens v. Pasadena Independent School District, 662 F. Supp. 443 (S.D. Tex. 1987)).

2. Procedures

The provisions for enforcing IRCA begin with charges filed with the Special Counsel for Immigration-Related Unfair Employment Practices, typically by a private individual who alleges that he is the victim of discrimination. Charges may also be filed by an officer of the Immigration and Naturalization Service who has investigated an employer, usually for hiring illegal aliens (INA § 274B(b)(1), 8 U.S.C. § 1324b(b)(1)). The charge must be filed within 180 days of the alleged discrimination (INA § 274B(d)(3), 8 U.S.C. § 1324b(d)(3)). The Special Counsel then investigates the charge, or starts an investigation on his own initiative, and decides whether to file a complaint before an administrative law judge in the Department of Justice. If the Special Counsel does not file a complaint, the charging party may do so, but only for charges of "knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity." (INA § 274B(d), 8 U.S.C. § 1324b(d)). The charging party's complaint must be filed within 90 days of notice of the right to sue (INA § 274B(d)(2), 8 U.S.C. § 1324b(d)(2)).

If the administrative law judge finds a violation of IRCA, she can issue a cease-and-desist order, award back pay, and impose a civil penalty. The judge may also award

attorney's fees to a private party "if the losing party's argument is without reasonable foundation in law and fact" (INA § 274B(g), (h), 8 U.S.C. § 1324b(g), (h)). The civil penalties are identical to the sanctions for employing illegal aliens: they range from $250 to $2,000 for each victim and they increase with each repeated offense (INA § 274A(e)(4), (5), 8 U.S.C. § 1324a(e)(4), (5); Groban, 1991, p. 379). The decision of the administrative law judge is subject to the standard procedures for judicial review and enforcement (INA § 274B(i), 8 U.S.C. § 1324b(i), (j)). Despite the provision for privately filed complaints, almost all the complaints filed under the statute have been by the Special Counsel (Hearings Before the Senate Committee on the Judiciary, 1990, pp. 337-38).

For all its complexity, IRCA's principal effect has been to establish an administrative mechanism for enforcing claims of national origin discrimination. No similar means of administrative enforcement is available under Title VII or section 1981. Both of these statutes depend mainly upon individual litigation for enforcement. An individual who cannot retain an attorney is not likely to obtain any remedy for discrimination under these statutes. Under IRCA, an individual need only file a complaint with the Special Counsel for Immigration-Related Affairs. The Special Counsel determines whether the complaint has merit, and if it does, presents it before an administrative law judge. Private individuals are relieved of most of the burden of enforcing the statute.

The fundamental problem posed by IRCA nevertheless remains unresolved. It is the conflict between the prohibition against national origin discrimination and the prohibition against hiring illegal aliens. Given these two prohibitions, it is no surprise that employers are often confused by IRCA if they are innocent, or that they exploit its mixed signals to engage in discrimination if they are not. We will return to the contradictory effects of IRCA when we examine the empirical evidence of continued discrimination against immigrants despite - and partly because of - this statute.

F. Summary of Federal Statutory Provisions

For the convenience of the reader, Table 6 is a brief summary of the major federal statutes that protect aliens, immigrants, and ethnic minorities. The table necessarily is brief and therefore omits much of the detailed discussion in the text. For the same reason, it also omits any entry for state statutes which differ significantly from state to state. The table nevertheless provides a good overview of the scope and variety of the main federal prohibitions against discrimination.

IV. The Effects of Laws Against Discrimination in Employment

The Civil Rights Movement made general laws against discrimination an established feature of federal law. Even as the influence of this movement has waned, the scope of these laws has expanded. In recent years, the laws against employment discrimination have expanded to include new grounds for discrimination, most recently on the basis of disability (The Americans with Disabilities Act of 1990). Despite these gains, the effect of laws against employment discrimination has remained controversial. Partly, the controversy arises from the difficulty of gathering conclusive evidence of the effects of legal rules on complex patterns of employment. It also arises from the difficulty of agreeing on a standard for the effectiveness of laws against discrimination. But partly, too, disputes have arisen from frustration over the absence of dramatic progress after the most obvious forms of racial

segregation in employment were eliminated in the decade following the passage of the Civil Rights Act of 1964.

A. The Initial Effects of Enforcement

The most comprehensive study of the effect of laws against employment discrimination has concerned industries in the South before and after passage of Title VII. Heckman and Payner conducted a detailed study of the textile industry in South Carolina and found a sharp increase in the employment of blacks after the passage of Title VII and the promulgation of Executive Order 11246. In a thorough analysis of the data, they also eliminated most alternative explanations for the increase in black employment (Heckman and Payner, 1989). This study, however, is limited to a single industry, and more importantly, to a single region of the country. Although other studies have found that minority groups achieved better representation in high paying jobs after the enactment of Title VII (Donohue and Siegelman, 1991, pp. 1010, 1014), the earnings of black men increased relative to those of white men only from 1965 to 1975 and only in the South (Donohue and Heckman, 1991, pp. 1610-11). In subsequent writings, Heckman has found no evidence of any similar improvement in the economic status of blacks in regions outside the South (Heckman, 1991).

On the other hand, there was room for far more improvement in the South than in other regions. Legally authorized (or even required) segregation was pervasive in the South, but in no other region in the country, before the passage of the Civil Rights Act of 1964. The success of federal action in breaking down explicit racial segregation demonstrates how effective government action can be, even when it is opposed by local political forces. The economic gains of blacks in the South, however, cannot be attributed to a single federal programme, but to strong federal enforcement of a variety of laws against discrimination, in areas as different as employment, voting, and public schools (Donohue and Heckman, 1991, pp. 1604-05). Public and private enforcement of Title VII and the executive order was only one aspect of a general effort to eliminate all forms of racial discrimination in the South.

B. Studies of Executive Order 11246

Some studies have nevertheless attempted to isolate the effects of particular programmes. In a series of articles, Jonathan Leonard has tried to measure the effect of the executive order alone (Leonard, 1984a, 1984b, 1986). He has examined over 68,000 establishments operated by federal contractors between 1974 and 1980. He found that the rate of employment of blacks increased faster among contractors than among employers not covered by the executive order. Although the increase in annual rates of employment was not great, it resulted in significant gains over the entire period that he studied: from 5.8% black employment to 6.7% black employment among federal contractors (compared to an increase from 5.3% to 5.9% for noncontractors). He also found that the increase in rates almost doubled for contractors who were subject to compliance reviews (Leonard, 1986, pp. 326-31). Compliance reviews (described more fully in Part III.D.3.) are the first step in enforcement by the OFCCP. They consist of an investigation into the adequacy of a federal contractor's affirmative action plan and they often result in modification of the plan to increase the proportion of minority and ethnic groups hired or promoted. Leonard's study supports the conclusion that stronger enforcement by public agencies leads to stricter compliance by employers. Taken as a whole, his studies illustrate the importance of government enforcement in providing increased economic opportunities to minority groups.

C. *The Effects of Diminished Enforcement*

Other studies of later periods reveal the consequences of diminished enforcement, both by the government and by private individuals. These have found a loss of black economic status from 1975 to 1990 (Donohue and Heckman, 1991a, pp. 1610-12; Meisenheimer, 1990, p. 17). Some of the loss must be attributed to causes not connected to the law, such as lay-offs resulting from recessions and corporate restructuring to meet international competition (Kletzer, 1991, p. 17). Part of this loss, too, can be attributed to the Reagan and Bush Administrations, which opposed programmes of affirmative action and generally enforced the civil rights laws less vigorously than previous administrations (Bound and Freeman, 1991, pp. 33-34).

But part of the loss must be attributed to diminished private enforcement. Donohue and Siegelman have found that private class actions decreased rapidly after 1975 (Donohue and Siegelman, 1991, pp. 1019-21). They also found that claims alleging discrimination in firing started to outnumber claims concerned with hiring beginning at the same time, until there were six times as many such claims in 1985 (pp. 1015-16). This evidence supports the conclusion suggested earlier (in Part III.A.4. and Part III.C.2.) that attorneys are more likely to take individual claims of discrimination in firing. These claims are more likely to succeed, more likely to result in a large award of damages, and therefore more likely to support a large award of attorney's fees.

D. *Inferences from the Empirical Evidence*

The findings from these studies support both optimistic and pessimistic conclusions. The optimistic conclusions are that the laws against employment discrimination have succeeded in breaking down the most obvious forms of discrimination. Employees from minority groups have succeeded in obtaining better paying jobs, and once they have obtained these jobs, they have been protected from discriminatory discharges. The pessimistic conclusions are that stubborn differences in the occupational level and pay of whites and minority groups, particularly blacks and Hispanics, have persisted (Bound and Freeman, 1991, p. 32). Moreover, the increase in litigation over discharges might actually discourage employers from hiring members of minority groups in the first place (Donohue and Heckman, 1991b, p. 1730).

A still more pessimistic conclusion has been advanced by Richard Epstein (Epstein, 1992). He has argued that the Civil Rights Act of 1964 succeeded only in dismantling the effects of legally required segregation in the South. Any effect on private discrimination he finds to be both unsupported by the evidence and unjustified as a matter of policy (ibid., pp. 118-43). The empirical studies, as their authors have acknowledged, provide convincing evidence only that laws against discrimination succeeded in eliminating explicit segregation in the South. Explicit segregation provides the most obvious target for legal regulation, whether through public or private enforcement actions. It is no surprise that prohibitions against discrimination should have their most dramatic impact upon the most blatant forms of discrimination.

It does not follow, however, that these laws have had no beneficial effects in other parts of the United States. The evidence from Leonard's study of the executive order suggests that vigorous public enforcement of prohibitions against discrimination and required forms of affirmative action can improve the employment of minority groups among covered employers.

Whether the law can go further and improve the status of minority groups, despite economic recessions, corporate restructuring, and political opposition to affirmative action, does remain an open question. The available empirical evidence supports only the cautionary conclusion that vigorous enforcement of laws against discrimination are a necessary, but not a sufficient, condition for improving the status of minority groups. Individual claims for discriminatory discharge, the most common claims now brought under Title VII and section 1981, are not likely to achieve this goal alone. At most, such claims enable members of minority groups to preserve the gains that they have already achieved. The pressing question today is whether any systematic remedy can be devised to achieve broad improvement in the status of minority groups.

E. The Need for Affirmative Action

Conservative critics, such as Epstein, object to any such innovation on principle. Indeed, they advocate repeal of the laws against employment discrimination for the same reason: interference with private freedom of contract. This objection goes beyond the empirical evidence to controversial questions of political philosophy. Such questions have, in any event, been resolved for the present in the United States by the enactment of the Civil Rights Act of 1991. So far from repealing Title VII and section 1981, the new act extended the prohibitions and remedies under these statutes. In particular, it ratified and strengthened the theory of disparate impact developed by the courts under Title VII. If it is broadly interpreted to prohibit neutral practices with adverse impact, the theory may become an effective means of providing relief to members of minority groups who have been denied employment in better paying jobs. After the Civil Rights Act of 1991, the theory of disparate impact may now provide the systematic remedy necessary to eliminate the forms and effects of discrimination that have persisted despite the enactment of Title VII in 1964.

Even before the Civil Rights Act of 1991, the theory of disparate impact did much to encourage voluntary forms of affirmative action. Like Executive Order 11246, when it was vigorously enforced, the theory of disparate impact led employers to adopt affirmative action plans in order to reduce their exposure to liability. By devising their own affirmative action plans, employers could compensate for personnel practices that disproportionately excluded minority groups from their work force. In doing so, employers reduced their exposure to liability by making it more difficult to prove that their practices had a disparate impact upon minority groups. These forms of affirmative action, although not quite voluntary, also are not coerced by the government. They have been repeatedly approved by the Supreme Court (United Steelworkers v. Weber, 443 U.S. 193 (1979); Johnson v. Transportation Agency, 480 U.S. 616 (1987)).

Such privately adopted forms of affirmative action appear to be the most promising means of eliminating the effects of past discrimination and preventing future discrimination. Private affirmative action plans, encouraged but not required by the government, eliminate the onus of government coercion. Privately adopted plans also reduce the political controversy that has surrounded public forms of affirmative action. Employers remain free to adjust the plans to their own circumstances and needs. As with other aspects of affirmative action, the Civil Rights Act of 1991 has preserved this balance, by leaving in place affirmative action plans already found to be in compliance with the law (§ 116).

The most successful of affirmative action plans have emphasized education and training. Affirmative action in this form is most likely to confer lasting benefits upon minority groups

and to be accepted by other workers. The plan approved in United Steelworkers v. Weber is a good example of affirmative action in training: it reserved an equal number of places for unskilled black and white employees in a training programme to become skilled craft workers (443 U.S. at 208-09). Such programmes do not work directly to the disadvantage of other workers, whose job opportunities are reduced only if they cannot compete with qualified workers from minority groups. For this reason, these programmes are more acceptable to other workers than strict quotas in hiring and in promotions, which immediately leave them worse off regardless of their skills and abilities.

An empirical study has also found that education and training confer permanent benefits on members of minority groups. Smith and Welch found, in 1979, that young black men who had graduated from high school earned 85%, and young black men who had graduated from college had earned 91%, of what comparably educated white men earned. These figures were a marked improvement over the earnings of other black men (Smith and Welch, 1989, pp. 556-57). Of course, affirmative action in education is beyond the control of private employers. It is a matter for public schools and private universities. But affirmative action in education became widely accepted and broadly adopted after it gained the initial approval of the Supreme Court in Regents of the University of California v. Bakke (438 U.S. 265 (1978)). Similar programmes in apprenticeship and on-the-job training by private firms might prove to be equally effective and acceptable. This form of affirmative action provides members of minority groups with needed skills to become qualified for better jobs without, however, displacing any white employees who already hold such positions. If a revitalized theory of disparate impact, assisted by renewed enforcement of the executive order, can stimulate these forms of affirmative action, it may open a broad range of employment opportunities to members of minority groups.

V. The Effects of IRCA

IRCA does not have as simple an aim as the laws that generally prohibit discrimination in employment. The effects of IRCA are correspondingly more difficult to evaluate. Where Title VII and section 1981 simply prohibit employment discrimination, IRCA prohibits employers both from discriminating on the basis of national origin and citizenship status, and from hiring illegal aliens, which amounts to a form of discrimination on the basis of citizenship status. The technical provisions in IRCA attempt to reconcile these two prohibitions, but even if they succeed in rendering the statutory language formally consistent, the two prohibitions interfere with one another in practice. Without much exaggeration, one can conclude that most of the violations of IRCA are caused by IRCA itself.

A. Empirical Studies of IRCA

Because this problem was anticipated during the debates over the enactment of IRCA, Congress required three annual reports on discrimination related to IRCA (§ 101(a)). These reports, by the investigatory office of Congress, the General Accounting Office (GAO), all found discrimination, although of varying levels of significance.

In its first two reports, the GAO did not find sufficient evidence to conclude that there was a widespread pattern of discrimination resulting from the employer sanctions for hiring illegal aliens (GAO, 1987, pp. 31-38; GAO, 1988, pp. 39-61). Nevertheless, it did find that 16% of employers engaged in some form of discrimination, that almost 400 charges of

discrimination related to IRCA were filed with federal and state agencies in the second year of IRCA's operation, and that private organizations had reported still more such charges (GAO, 1988, pp. 39-46). Although few employers admitted to illegal practices, the GAO estimated that 332,000 employers were unsure of their authority to prefer a citizen over an equally qualified alien who was authorized to work. Moreover, an estimated 528,000 employers (or 16% of those aware of the law) had increased practices (such as requiring documentation only from foreign looking or sounding workers) that are illegal under IRCA (pp. 46-47). Other organizations, both public and private, disputed the GAO's conclusion that there was no widespread pattern of discrimination (Schuck, 1989, p. 15; Davis, Guttentag, and Wernick, 1989, pp. 711-23; Munoz, 1990, pp. 39-41).

In its final report, the GAO reversed its initial conclusion and found that IRCA had caused widespread discrimination. In a survey of employers conducted by the GAO, 10% of those responding reported practices that violated the prohibitions against national origin discrimination (GAO, 1990, pp. 4, 37-46). Some of these violations may have reflected misunderstanding of the statute's requirements, particularly about the need to ask all applicants for documentation of their status as citizens or as aliens authorized to work and about what forms of documentation were sufficient.

The finding of discrimination nevertheless was confirmed by an audit of employer practices, a survey of charges filed with state and federal agencies, and reports from private organizations (GAO, pp. 46-59, 80-86). The strongest evidence was from the audit, in which matched pairs, consisting of a white person and a member of a minority group with similar qualifications, each applied for the same job with an employer. The audit analyzed rates at which these similarly qualified applicants were offered the job. It showed that Hispanic applicants were denied an offer in 31 per cent of the cases in which a matched white applicant was given an offer. By contrast, white applicants were denied an offer in only 11 per cent of the cases in which an offer was given to an Hispanic applicant. The audit also confirmed that foreign sounding applicants were almost twice as likely to be asked to show eligibility documents than other applicants (ibid., pp. 46-51). An independent investigation, by a committee of the Association of the Bar of the City of New York, also found substantial evidence of discrimination on the basis of national origin. Its report called for repeal of the sanctions against employers for hiring illegal aliens (Davis, Guttentag, Wernick, 1989, pp. 717-23)

B. The Immigration Act of 1990

Under the original provisions of IRCA, the GAO's findings of discrimination would have triggered a joint resolution of both houses of Congress to terminate the prohibitions upon employers against hiring illegal aliens (INA § 274A(l), 8 U.S.C. § 1324a(l)). No such resolution was passed. Instead, Congress revised IRCA in the Immigration Act of 1990. With respect to discrimination, Congress broadened the aliens covered by the statute from "intending citizens" under the original version of IRCA to all "protected individuals" under the amendment. Under the original version of the act, aliens had to file a declaration that they were "intending citizens" to gain protection against discrimination; under the amendment, they are automatically granted protection and must only apply for naturalization within six months of becoming eligible to do so, usually after five years of residence (INA §§ 274B(a)(1)(B), (a)(3), 316(a), 8 U.S.C. §§ 1324b(a)(1)(B), (a)(3), 1427(a)). The amendment also imposed civil penalties for discrimination that were the same as the sanctions for employing illegal aliens (Groban, 1991, pp. 378-79). These penalties were designed to

give employers equal incentives both to avoid hiring illegal aliens and to avoid discrimination. Other provisions increased funding for efforts to inform employers and employees about IRCA and required other federal agencies, among them the EEOC, to cooperate with the Department of Justice in this effort (INA § 274B(l), 8 U.S.C. § 1324b(l)).

Although the debate over the Immigration Act of 1990 resulted in a stalemate between the competing prohibitions against employing illegal aliens and against discrimination, it did pose the right questions. Advocates for minority groups, such as the Mexican American Legal Defense and Education Fund, argued that the prohibitions, or at least the sanctions, upon employing illegal aliens should be repealed (Hearings Before the Senate Committee on the Judiciary, 1990, pp. 161, 175, 191-92). Advocates for groups concerned about the magnitude of illegal immigration argued for preserving IRCA as originally enacted, but supported development of more reliable forms of identification for citizens and for aliens authorized to work (ibid., pp. 235-40). The Immigration and Naturalization Service also took this position (ibid., pp. 96-101), and the GAO endorsed it as an alternative to repeal of employer sanctions (ibid., pp. 63). But again, civil liberties groups, such as the American Civil Liberties Union, objected to a national system of identity cards, as they had when IRCA was originally enacted (ibid., pp. 302-03; Davis, Guttentag, Wernick, 1989, pp. 735-38). Caught between these opposing arguments, Congress accepted none of them and made only minor changes in the statute, mainly by expanding the definition of aliens protected from discrimination and by imposing civil penalties for discrimination.

C. Enforcement of IRCA

The burden of reconciling the prohibitions against hiring illegal aliens and against discrimination thus falls upon the public agencies charged with enforcing them: the Special Counsel for Immigration Related Unfair Employment Practices and the Immigration and Naturalization Service (INS). The INS enforces the prohibition against employment of illegal aliens, although its agents can refer instances of discrimination to the Special Counsel. The Special Counsel, in turn, shares enforcement authority with the EEOC over employers with at least 15 employees.

Nevertheless, the resources available to the Special Counsel stand in stark contrast to the magnitude of discrimination found by the GAO. Based on a survey of employers, the GAO estimated that 461,000 employers discriminated on the basis of national origin because of IRCA. A somewhat smaller number, 430,000, discriminated only on the basis of citizenship. These employers altogether hired at least 2.9 million employees in 1988 (GAO, 1990, p. 38). Yet from 1986 to 1989, the Special Counsel had received only 708 charges, of which about half, 435, resulted in a finding of no discrimination (ibid.,p. 54). Over the same period, 81 additional charges were filed with the EEOC (ibid., p. 59). From March 1988 to September 1989, the Special Counsel also opened 66 investigations, of which 12 resulted in a finding of no discrimination (ibid., p. 56). Although these figures are not for strictly comparable time periods, they plainly reveal that public enforcement of the discrimination provisions of IRCA, and related provisions of Title VII, reaches far less than 1%, or even .1%, of the estimated discrimination under the statute.

Of course, the absence of charges might undermine the conclusion that there is widespread discrimination. It is difficult to believe, however, that an employer survey, like that conducted by the GAO, would lead to greatly inflated reports of violations by the employers themselves. Employers would tend to underestimate their own violations of the

law, although their responses might also reveal their misunderstanding of what the law requires and how to comply with it. The conclusion that there is widespread discrimination against immigrants in the United States is broadly consistent with findings of pervasive discrimination against immigrants in Western Europe (Zegers de Beijl, 1990, pp. 44-46). So, too, the results of the audit of hiring practices suggest that many instances of discrimination go unreported because the victims do not know, or cannot take the trouble, to complain. This is typical of the experience under discrimination statutes generally and especially under a statute, such as IRCA, which is not likely to be known to victims of discrimination (Munoz, 1990, pp. 42-43). Immigrants are even less likely than other victims of discrimination to bring private actions which require them to know of their rights and to convince an attorney to take their case.

As a realistic matter, the small proportion of cases brought by the Office of the Special Counsel is all that can be expected of an office staffed by only 15 attorneys (Strojny and Chanoff, 1990, p. 6). Nor is it realistic to expect a larger office, proportional to the potential caseload, to be funded by Congress. The fact that a small number of charges are brought, even when the charging parties do not bear any of the initial expense of litigation, may indicate that the charges are not worth bringing. An analysis of the existing caseload reveals that half of the cases filed, and more than half of those closed, result in a finding of no discrimination (GAO, 1990, p. 54; Hearings Before the Senate Committee on the Judiciary, 1990, p. 338). Both the greatest advantage - and the greatest weakness - of a system of private enforcement is that claims that are not worth bringing are never brought. If the individual decides that a violation of the law is too difficult, too expensive, or too time consuming to pursue, the charge never reaches a public official. A public enforcement agency, like the Office of Special Counsel, cannot be expected to bring every charge or investigate every questionable practice, when the aggrieved individual would not pursue it independently. Public enforcement must necessarily be concentrated on the more obvious, the more general, or the more meritorious claims of discrimination.

Despite the special problems of discrimination under IRCA, many of them created by the statute itself, public enforcement of its provisions illustrate how difficult it is to protect immigrants from discrimination. The conflict between the two prohibitions in IRCA, against discrimination and against hiring illegal aliens, cannot simply be dismissed as an unworkable compromise between competing interest groups. It is the inevitable consequence of any serious attempt both to discourage illegal immigration and to preserve the opportunities of immigrants who have legally entered the country to obtain work. For reasons purely of cost, employers are more likely to refuse employment or to require better documentation from applicants or employees who appear to be aliens. They are correspondingly more likely to discriminate on the basis of national origin or citizenship. If the cost of checking for documentation is reduced, as the GAO and the INS recommended, then the incentive for employers to discriminate is also reduced. Both denying employment to illegal aliens and preserving employment of legal immigrants are goals essential to any fully developed immigration policy. Other countries, for better or worse, may find the tension between these goals easier to resolve through national identity cards than the United States.

VI. Lessons from the Experience in the United States

As a matter of both law and politics, immigrants are best protected by laws that also protect citizens from discrimination on the basis of race and national origin. Prohibitions

against discrimination on these grounds can be supplemented, but not supplanted, by prohibitions against discrimination on the basis of alienage. Existing racial and ethnic minorities have more political power and a stronger claim on the conscience of their fellow citizens than do immigrants. For instance, the support of Mexican-American and Asian-American interest groups was crucial to passage of the prohibitions against discrimination in IRCA. It is these groups as well which can support public enforcement of the law and subsidize private actions for the benefit of immigrants. General protection of citizens and immigrants is also more likely to attract broad political support than protection only of aliens.

A. Prohibitions Against Discrimination

If the protection of immigrants from discrimination depends upon the protection of citizens, the protection of citizens in turn depends upon the availability of systematic remedies for patterns of discrimination. A simple prohibition against discrimination is not likely to overcome the forces that lead employers to discriminate in the first place. These are not just overt prejudice, but other motivations that are more difficult to detect and confront: subtle discrimination against individuals from different racial and ethnic groups; expectations and requirements based on the culture of the dominant group; and the cost of departing from settled practices that historically have excluded minority groups. All by itself, a simple prohibition against discrimination is likely to become an empty formality that cannot be adequately enforced. A legal prohibition against discrimination is necessary, but not sufficient, to provide equal opportunities in the work place.

As the GAO found, much discrimination goes unnoticed, unreported, and unpunished. Other empirical studies have reached the same conclusion: that there is widespread discrimination on the basis of race and national origin in employment (Turner, Fix and Struyk, 1991, pp. 31-33; Burstein, 1992, p. 906). Such findings are consistent with the steady level of charges of discrimination on these grounds filed with the EEOC and reported in Table 4. As with charges filed with the Office of Special Counsel, these charges are not nearly in proportion to the amount of discrimination detected by other means and mainly concern discrimination in discharges, not in hiring.

B. Individual Litigation

Just like a general prohibition against discrimination, actions by private individuals are a necessary, but not sufficient, remedy for discrimination. Individual actions are most likely to benefit only employees who are already fairly well off, such as those who hold better jobs. Unsuccessful applicants for employment are more likely simply to look elsewhere for a job than to file a formal charge of discrimination. The experience under Title VII demonstrates that applicants for employment are not likely to pursue individual claims of discrimination. Because they are seeking only entry-level salaries, their monetary stake in an employment discrimination claim is smaller than that of a discharged employee. For them, the cost of making and prosecuting a claim is likely to exceed both the potential benefits of winning, which perhaps lie far in the future, and the need to find a job that is immediately available.

Many immigrants are in a worse position than unsuccessful applicants for a job. They are less familiar with the available legal remedies, and if they have had immigration problems of any kind, they may prefer to avoid any further contact with the legal system. Nevertheless, it is important to bear in mind that not all immigrants are alike. Many are managers, professionals, or entrepreneurs. They are no less likely to be victims of

discrimination than other immigrants, but they are better able to make an informed decision about whether to sue or to explore other opportunities for employment. They stand in less need of government assistance through public enforcement of the law. The usual remedy under Title VII and section 1981, individual actions for injunctive and compensatory relief, with the award of attorney's fees to prevailing plaintiffs, may be sufficient to protect them. The option of bringing a private action should always remain open to victims of discrimination. Public enforcement tends to vary with general political attitudes towards civil rights. Private actions guarantee victims of discrimination a forum in which they can present their claims.

Private actions have been the principal remedy for employment discrimination in the United States, but they cannot be the only remedy, especially for immigrants. Many immigrants lack the resources to retain a private attorney and they do not have the kind of claim that an attorney is likely to prosecute to obtain an award of attorney's fees. They must turn instead to civil rights organizations, such as the Mexican American Legal Defense and Education Fund, the American Civil Liberties Union, and the NAACP Legal Defense Fund. The principal limitation on these organizations is that they must confine their efforts to the most important cases. They lack the resources to bring the many routine individual cases that are necessary for effective enforcement, and even in important cases, they often take only a limited role. Instead of directly representing the plaintiff, they often appear as amicus curiae, "a friend of the court" who advances more general legal arguments that may have been neglected by the plaintiff (Burstein and Monaghan, 1986, pp. 365-66). Civil rights organizations must limit the cases in which they take an active role to class actions that affect a large number of individuals or to individual actions that raise questions of general significance.

C. Public Litigation

Public actions brought by government agencies remain necessary to fill the gap in private enforcement. They can do so in two ways: first, by expanding on the efforts of public interest groups to bring class actions and to bring individual actions of general significance; and second, by providing simplified procedures for individuals to pursue their claims of discrimination. Federal law has followed the first approach under Title VII, where the EEOC brings a limited number of public actions, and it has followed the second approach under IRCA, where the Office of Special Counsel routinely brings administrative claims on behalf of individuals. Administrative procedures of this kind are crucial to providing effective remedies to immigrants, especially those who may be ignorant or fearful of the law. More immigrants must be informed of their rights and of the procedures for filing a claim and they must be provided with vigorous representation and advocacy. Similar proposals have been made to augment enforcement of laws protecting immigrants in other countries (Zegers de Beijl, 1991, pp. 13-14, 23-24, 31-32).

Public enforcement through litigation, however, cannot be expected to compensate for all the inadequacies of private enforcement. Under IRCA (as discussed in Part V.C.), the ratio of public actions to probable acts of discrimination is less than one to a thousand. Under Title VII, the ratio of public actions to charges of discrimination, which have already been brought to the attention of the EEOC, is less than three in one thousand (see Table 4). The corresponding ratio for private actions under Title VII, again after charges have been filed with the EEOC, is less than six in a hundred (Donohue and Siegelman, 1991, pp. 1000 n.67, 1002). These figures under Title VII must be further discounted to take account of the

small proportion of charges filed with the EEOC as compared to all acts of discrimination. Even so, these figures reveal that it is necessary to go beyond litigation as a remedy for discrimination. Affirmative action is both a desirable and a necessary addition to litigation, although it is an open - and controversial - question exactly what form it should take. Employers need positive incentives to hire members of minority groups who have been the victims of historical discrimination. Penalties alone will not be sufficient. They will lead employers only to engage in minimal compliance at minimal cost.

D. Affirmative Action

The pressing question is how to make education and training accessible to members of minority groups without arousing the hostility of other workers. Voluntary affirmative action has proved to be less controversial than required preferences in favour of members of racial and ethnic minorities. Nevertheless doubts remain about how effective it has been and how widely it has been practiced. The revived theory of disparate impact under Title VII, coupled with the flexible enforcement of Executive Order 11246 for federal contractors, may strike the appropriate balance between prohibited discrimination and required affirmative action.

The most effective forms of affirmative action for immigrants are those which are least controversial: providing lessons in English, training and education for entry-level jobs, and information about how to protect their legal rights. Programmes that assist their assimilation to the labour market have been successful, for instance, in opening economic opportunities to immigrants from Cuba (Jasso and Rosenzweig, 1990, pp. 295-96). Affirmative action programmes, like those for Cuban immigrants, are less controversial than forms of affirmative action on the basis of citizenship status, or even race or national origin. No government would encourage or require employers to prefer immigrants over citizens.

Of course, even programmes that reserve positions for citizens on the basis of race or national origin have proved to be controversial. The most controversial have been those that displaced white workers with minority workers. These have been found invalid by the Supreme Court (Rutherglen and Ortiz, 1988, pp. 483-90). More limited forms of affirmative action that do not deny opportunities to members of the majority are the only programmes that are likely to be feasible (Gottesman, 1991, 1748-58). They are also the programmes that are most likely to confer lasting benefits on members of minority groups. Particularly promising are programmes of education and training which allow minority workers to compete effectively with white workers for better jobs. These plans are less likely to generate opposition if they allow minority workers to establish their qualifications in open competition with others, not simply by guaranteeing that they receive better jobs. The realities of democratic politics unite with principles of equal opportunity in supporting limited forms of affirmative action. Democracies will not support permanent preferences for members of minority groups. The goal of the laws against employment discrimination is not to favour one group over another, but to provide equal economic opportunity for all.

The enforcement of IRCA by the Office of Special Counsel, and of Executive Order 11246 by the OFCCP, illustrate how administrative investigation, review, and negotiation, and how educational efforts aimed at employers can induce them to comply with the law. These efforts outside of litigation, in the end, do as much to assure equality of opportunity as litigation over particular discriminatory practices. If the law in the United States has emphasized litigation, and particularly litigation by private individuals, as a remedy for

discrimination, it has also suggested alternatives to litigation as means of compensating for past discrimination and, more importantly, of preventing discrimination in the future.

E. Conclusions and Recommendations

The experience in the United States demonstrates both the need for and the limitations of general prohibitions against discrimination in employment. Many of these limitations derive from the unique history and development of the laws in the United States. Nevertheless, the experience in the United States can provide useful guidance to legislators, policy makers, and lawyers in other countries.

First, an effective prohibition must extend to members of established minority groups. It must protect citizens who are members of racial and ethnic minorities as well as aliens and immigrants. The latter groups, by themselves, do not have any voice in the political process and seldom have the economic resources to bring claims of discrimination on their own behalf. Only when they are allied with established minority groups do they have the economic and political power to assure effective enforcement of laws against employment discrimination.

Second, these laws must provide for enforcement by private individuals without the risk of political interference. Claims of discrimination often prove to be politically unpopular with the majority of citizens. Individual victims of discrimination must therefore be able to obtain relief entirely independently of the political process. In the United States, this lesson perhaps has been learned too well; different laws provide for multiple and complex claims of discrimination. These laws should be simplified for the benefit both of employers and victims of discrimination.

Third, some victims of discrimination need administrative assistance in presenting their claims. Aliens and immigrants are often ignorant of the law. They are also often victims of discrimination in hiring and, for that reason alone, cannot afford to retain an attorney to present their claims. They should not be forced to resort to complex judicial procedures on their own. Instead, they should have the option of pursuing administrative remedies in which they present their claims in simplified form and, if meritorious, receive the assistance of an administrative lawyer or official.

Fourth, claims of discrimination in the past are not the only - or even the most effective - means of preventing discrimination in the future. Forms of affirmative action that encourage employers to hire members of disfavoured groups are also necessary. These programmes must be tailored to the needs of their beneficiaries, mainly by providing education and training, either in formal programmes or on the job, that will be of continuing value. These programmes also must be tailored to the circumstances of different employers, mainly by allowing them to devise and administer the particular requirements of each programme. In the end, it is only by improving the qualifications of aliens, immigrants, and members of minority groups that they can be given the means to participate equally in the increasingly competitive market for jobs.

Table 1. Patterns of immigration in recent decades

Region of Origin	1961-70		1971-80		1981-90	
	Number	%	Number	%	Number	%
Europe	1,123,492	33.82	800,368	17.81	761,550	10.38
Asia	427,642	12.87	1,588,178	35.35	2,738,157	37.31
Canada/ Newfoundland	413,310	12.44	169,939	3.78	156,938	2.14
Mexico	453,937	13.67	640,294	14.25	1,655,843	22.57
Central America	101,330	3.05	134,640	3.00	468,088	6.38
South America	257,954	7.77	295,741	6.58	461,847	6.29
Caribbean	470,213	14.16	741,126	16.49	872,051	11.88
Africa	28,954	0.87	80,779	1.80	176,893	2.41
Oceania	25,122	0.76	41,242	0.92	45,205	0.62
Not specified	93	0.00	12	0.00	1,032	0.01
TOTAL	3,321,677	100.00	4,493,314	100.0	7,338,062	100.0

Source: U.S. Department of Justice, Immigration and Naturalization Service. *1991 Statistical Yearbook of the Immigration and Naturalization Service.* Washington, D.C., 1992, pp. 29-30

Table 2. Percentage of Population and Per Capita Earnings by Race and Hispanic Origin

Race or Ethnicity	% of Population, 1980	Earnings, Per Capita (1980 Dollars)
White	83.45	$7,550
Black	11.69	$4,695
Asian	1.64	$6,817
Hispanic (All Races)	6.45	$4,541

Source: U.S. Department of Commerce, Bureau of the Census. *1980 Census of Population, Characteristics of the Population, General Social and Economic Characteristics*, United States Summary. Washington, D.C., 1983, pp. 235-36, 241-44, 249-50, 259-60, 265-68, 273-74. The percentages in population do not add up to 100% because some Hispanics are also counted as Whites, Blacks or Asians.

Table 3. Real Earnings by Race and Nativity

Cohort, Males Aged 20-44	Real Earnings, 1970 (1970 dollars)	Real Earnings, 1980 (1980 dollars)
White Native-Born	$7,945	$20,797
White 1970 New Entrants	$6,165	$18,550
Black Native-Born	$4,994	$13,387
Black 1970 New Entrants	$4,965	$14,222

Source: Guillermina Jasso and Mark R. Rosenzweig. *The New Chosen People: Immigrants in the United States*. New York, Russell Sage Foundation, 1990, pp. 254-55.

Table 4. Enforcement activity under Title VII by the Equal Opportunity Commission (EEOC)

Title VII Activity	1985	1986	1987	1988	1989
Race-Based Charges	51,673	48,756	48,387	50,387	46,302
National Origin- Based Charges	11,031	8,967	9,653	10,621	10,413
Other Title VII Charges	50,933	50,684	53,922	55,653	50,370
Total Title VII Charges Received by EEOC	113,637	108,407	111,962	116,661	107,085
Total Title VII Charges Litigated by EEOC	172	289	320	299	312

Sources: U.S. Equal Employment Opportunity Commission. *20th Annual Report 1985*. Washington, D.C., 1986, pp. 13, 21; U.S. Equal Employment Opportunity Commission. *Annual Report 1986-88*. Washington, D.C., 1989, pp. 21-23, 25; U.S. Equal Employment Opportunity Commission. *Annual Report 1989*. Washington, D.C., 1990, pp. 11, 18.

Table 5. Enforcement activity by the Office of Federal Contract Compliance Programmes

OFCCP Activity	1986	1987	1988	1989	1990
Completed Compliance Reviews	5,152	5,169	5,474	6,232	6,033
Complaints Investigated	1,100	1,202	1,165	1,321	1,295
Conciliation Agreements	1,342	1,429	1,779	2,568	2,923
Letters of Commitment	1,999	1,907	1,908	1,998	1,761
Total Awards in Millions	$9.8	$19.3	$16.9	$36.8	$34.7
Back Pay Awards in Millions	$1.9	$5.5	$8.7	$21.6	$15.4

Source: U.S. Department of Labor, Employment Standards Administration. *Office of Federal Contracts Compliance Programs Director's Report 1990*. Washington, D.C., 1991, p.9. In addition to race, colour, and national origin, the above figures also include enforcement of Executive Order 11246 insofar as it prohibits discrimination based on religion and sex and enforcement of separate statutes protecting the disabled and veterans of the Viet Nam War.

Table 6. Overview of Federal Statutes that protect aliens, immigrants, and ethnic minorities from discrimination in employment

	Title VII	§ 1981	E.O. 11246	IRCA
Theories of Relief	Intentional discrimination and disparate impact	Intentional discrimination	Intentional discrimination, disparate impact, and affirmative action	Intentional discrimination, possibly disparate impact
Grounds of discrimination	Race, national origin, sex, and religion	Race, national origin, and perhaps alienage	Race, national origin, sex, and religion	Citizenship status (for citizens and certain aliens) and national origin
Employers Covered	All employers with 15 or more employees, unions, employment agencies, joint labour-management committees	All employers and other parties to any contract	All employers with federal contracts over $10,000	All employers (for citizenship status) and employers with 4-14 employees (for national origin)
Enforcement Agency	EEOC	None	OFCCP	Special Counsel in Department of Justice
Authority to sue	Individuals, EEOC, and Department of Justice	Individuals	OFCCP	Individuals and Special Counsel
Remedies	Back pay, damages, injunctions, attorney's fees	Same as Title VII	Termination of contracts, back pay, injunctions	Penalties, back pay, injunctions, attorney's fees
Reporting Requirements	Annual reports for employers with 100 or more employees	None	Same as Title VII for contractors with 50 or more employees and $50,000 or more in contracts	None

Bibliography

BOOKS AND ARTICLES

Aleinikoff, Thomas Alexander and David A. Martin. *Immigration: Process and Policy*. St. Paul, West Publishing Co., 2d ed. 1991.

Bound, John and Richard B. Freeman. 'Black Economic Progress: Erosion of the Post-1965 Gains in the 1980's?'. In: Shulman, Steven and William Darity, Jr. eds. *The Question of Discrimination: Racial Inequality in the U.S. Labour Market*. Middletown, Wesleyan University Press, 1991, pp. 33-49.

Belz, Herman. *Equality Transformed: A Quarter-Century of Affirmative Action*. New Brunswick, Transaction Publishers, 1991.

Bureau of National Affairs. Labour Relations Reporter: Fair Employment Practices Manual (Washington, D.C.), vol. 8A, 1993, pp. 451-1 to -116.

Burstein, Paul. 'Affirmative Action, Jobs and American Democracy: What Has Happened to the Quest for Equal Opportunity'. In: *Law and Society Review*, (Madison), Vol. 26, No. 4, 1992, pp. 901-27.

Burstein, Paul and Kathleen Monaghan. 'Equal Employment Opportunity and the Mobilization of the Law'. In: *Law and Society Review*, (Madison), Vol. 20, No. 3, 1986, pp. 355-88.

Cafferty, Pastora San Juan, Barry R. Chiswick, Andrew M. Greeley, and Teresa A. Sullivan. *The Dilemma of American Immigration*. New Brunswick and London, Transaction Books, 1983.

Casper, Gerhard. 'Jones v. Mayer: Clio, Bemused and Confused Muse'. In: *Supreme Court Review*, (Chicago), 1968, pp. 89-132.

Cowen, Nancy S. 'Commentary: The Employer's Dilemma Under IRCA: Is It Possible to Comply with I-9 Requirements Without Discriminating?'. In: *Georgetown Immigration Law Journal*, (Washington, D.C.), 1992, Vol. 6, No. 2, pp. 285-96.

Davis, Martha F., Lucas Guttentag, and Allan H. Herwick. 'Report of the Committee on Immigration and Nationality Law of the Association of the Bar of the City of New York: An Analysis of Discrimination Resulting From Employer Sanctions and a Call for Repeal'. In: *San Diego Law Review*, (San Diego), Vol. 26, No. 4, 1989, pp. 711-38.

Donohue, John J. III and Peter Siegelman. 'The Changing Nature of Employment Discrimination Litigation'. In: *Stanford Law Review*, (Stanford), Vol. 43, No. 5, 1991, pp. 983-1033.

Donohue, John J. III and James J. Heckman. 'Continuous Versus Episodic Change: The Impact of Civil Rights Policy on the Economic Status of Blacks'. In: *Journal of Economic Literature*, (Stanford), Vol. 29, No. 4, 1991a, pp. 1603-43.

- 'Re-Evaluating Federal Civil Rights Policy'. In: *Georgetown Law Journal*, (Washington, D.C.), Vol. 79, No. 6, 1991b, pp. 1713-35.

duRivage, Virginia. 'The OFCCP Under the Reagan Administration: Affirmative Action in Retreat'. In: *Labour Law Journal*, (Chicago), Vol. 36, No. 6, 1985, pp. 360-68.

Edsall, Thomas Byrne and Mary D. Edsall. *Chain Reaction*. New York and London, W. W. Norton & Co., 1991.

Epstein, Richard A. *Forbidden Grounds: The Case Against Employment Discrimination Laws*. Cambridge and London, Harvard University Press, 1992.

Fiss, Owen. 'A Theory of Fair Employment Laws'. In: *University of Chicago Law Review*, (Chicago), Vol. 38, No. 1, 1971, pp. 235-314.

Gelb, Marjorie and JoAnne Frankfurt, 'California's Fair Employment and Housing Act: A Viable State Remedy for Employment Discrimination'. In: *Hastings Law Journal*, (San Francisco), Vol. 34, No. 5/6, 1983, pp. 1055-1105.

Gottesman, Michael H. 'Twelve Topics to Consider Before Opting for Racial Quotas'. In: *Georgetown Law Journal*, (Washington, D.C.), Vol. 79, No. 6, 1991, pp. 1737-67.

Graham, Hugh Davis. *The Civil Rights Era*. New York and Oxford, Oxford University Press, 1990.

Groban, Robert S. 'The Immigration Act of 1990: An Employer's Primer of Its New Provisions'. In: *Employee Relations Law Journal*, Vol. 17, No. 3, 1991, pp. 357-87.

Guttantag, Lucas and Gary Chodorow. *Immigration-Related Discrimination: IRCA Protections and Remedies in Light of Recent Developments*, (New York, ACLU Immigrants' Rights Project, August 1992; mimeographed).

Hacker, Andrew. *Two Nations: Black and White, Separate, Hostile, Unequal*. New York, Charles Scribner's Sons, 1992.

Heckman, James J. 'The Impact of Government on the Economic Status of Black Americans'. In: Shulman, Steven and William Darity, Jr. eds. *The Question of Discrimination: Racial Inequality in the U.S. Labour Market*. Middletown, Wesleyan University Press, 1991, pp. 50-80.

Heckman, James J. and Brook S. Payner. 'Determining the Impact of Federal Antidiscrimination Policy on the Economic Status of Blacks: A Study of South Carolina'. In: *American Economic Review*, (Nashville), Vol. 79, No. 1, 1989, pp. 138-77.

Jasso, Guillermina and Mark R. Rosenzweig. *The New Chosen People: Immigrants in the United States*. New York, Russell Sage Foundation, 1990.

Kletzer, Lori G. 'Job Displacement, 1979-86: How Blacks Fared Relative to Whites'. In: *Monthly Labour Review*, (Washington, D.C.), Vol. 114, No. 7, 1991, pp. 17-25.

Kobdish, Richard M. 'The Frank Amendment to the Immigration Reform and Control Act -- A Labyrinth for Labour Law Litigators'. In: *Southwestern Law Journal*, (Dallas), Vol. 41, No. 2, 1987, pp. 667-93.

Leonard, Jonathan S. 'Antidiscrimination or Reverse Discrimination: The Impact of Changing Demographics, Title VII, and Affirmative Action on Productivity'. In: *Journal of Human Resources*, (Madison), Vol. 19, No. 2, 1984a, pp. 145-74.

Leonard, Jonathan S. 'Employment and Occupational Advance Under Affirmative Action'. In: *Review of Economics and Statistics*, (North-Holland), Vol. 66, No. 3, 1984b, pp. 377-85.

- 'The Effectiveness of Equal Employment Law and Affirmative Action Regulation'. In: *Research in Labour Economics*, Vol. 8, Pt. B, 1986, pp. 319-50.

Martin, David A. *Major Issues in Immigration Law*. Washington, D.C., Federal Judicial Center, 1987.

Mealey, Linda M. 'English-Only Rules and "Innocent" Employers: Clarifying National Origin Discrimination and Disparate Impact Theory Under Title VII'. In: *Minnesota Law Review*, (Minneapolis), Vol. 74, No. 2, 1989, pp. 387-436.

Meisenheimer, John R. II. 'How Do Immigrants Fare in the U.S. Labour Market'. In: *Monthly Labour Review*, (Washington, D.C.), Vol. 115, No. 12, 1992, pp. 3-19.

- 'Black College Graduates in the Labour Market, 1979 and 1989'. In: *Monthly Labour Review*, (Washington, D.C.), Vol. 113, No. 11, 1990, pp. 13-21.

Muller, Thomas. 'Immigration Policy and Economic Growth'. In: *Yale Law & Policy Review*, (New Haven) Vol. 7, No. 1, 1989, pp. 101-36.

Munoz, Cecilia. *Unfinished Business: The Immigration Reform and Control Act of 1986*. Washington, D.C., National Council of La Raza, 1990.

National Council of La Raza. *The Empty Promise: Civil Rights Enforcement and Hispanics*. Washington, D.C., 1991.

Paperelli, Angelo A., Suzanne J. Holland, and Francene M Augustyn. 'The *Quasar* Case: Hidden Problems of Employment, Immigration, and Tax Law'. In: *International Lawyer*, (Chicago), Vol 26, No. 4, 1992, pp. 1037-73.

Rice, Robert C., 'Alien Employment Control and Employer Compliance Under the Immigration Reform and Control Act of 1986'. In: *South Texas Law Review*, (Houston), Vol. 29, No.2, 1988, pp.313-54.

Ronfeldt, Stephen E. and Russell W. Galloway. 'Nullifying Affirmative Action Through Deregulation'. In: *U.C. Davis Law Review*, (Davis), Vol. 16, No. 1, 1982, pp. 107-35.

Rosner, Stacey M. 'Beyond the FCN Treaty: Japanese Multinationals under Title VII'. In: *Fordham Law Review*, (New York), Vol. 51, No. 5, 1983, pp. 871-95.

Rutherglen, George. 'Title VII Class Actions'. In: *University of Chicago Law Review*, (Chicago), Vol. 47, No. 4, 1980, pp. 688-741.

Rutherglen, George and Daniel R. Ortiz. 'Affirmative Action Under the Constitution and Title VII: From Confusion to Convergence'. In: *U.C.L.A. Law Review*, (Los Angeles), Vol. 35, No. 3, 1988, pp. 467-518.

Schnapper, Eric. 'The Varieties of Numerical Remedies'. In: *Stanford Law Review*, (Stanford), Vol. 39, No.4. 1987, pp. 851-915.

Schuck, Peter H. 'Introduction: Immigration Law and Policy in the 1990's'. In: *Yale Law & Policy Review*, (New Haven), Vol. 7, No. 1, 1991, pp. 1-19.

Schuwerk, Robert P. Comment. 'The Philadelphia Plan: A Study in the Dynamics of Executive Power'. In: *University of Chicago Law Review*, (Chicago), Vol. 39, No. 4, 1972, pp. 723-60.

Smith, James P. and Finis R. Welch. 'Black Economic Progress After Myrdal'. In: *Journal of Economic Literature*, (Stanford), Vol. 27, No. 2, 1989, pp. 519-64.

Strojny, Andrew M. and Lisa K. Chanoff. 'IRCA's Antidiscrimination Provisions: A Three Year Perspective'. In: *Immigration Journal*, (Washington, D.C.), Vol. 13, No. 1, 1990, pp. 5-17.

Summers, Clyde. 'Effective Remedies for Employment Rights: Preliminary Guidelines and Proposals'. In: *University of Pennsylvania Law Review*, (Philadelphia), Vol. 141, No. 2, 1992, pp. 457-546.

Turner, Margery Austin, Michael Fix, and Raymond J. Struyk. *Opportunities Denied, Opportunities Diminished: Discrimination in Hiring*. Urban Institute Report 91-9, Washington, D.C., Urban Institute Press, 1991.

Zegers de Beijl, Roger. *Discrimination of Migrant Workers in Western Europe*. Working Paper (Geneva: ILO, 1990).

- *Although Equal Before the Law ... The Scope of Anti-Discrimination Legislation and Its Effects on Labour Market Discrimination Against Migrant Workers in the United Kingdom, the Netherlands and Sweden*. Working Paper (Geneva: ILO, 1991).

GOVERNMENT PUBLICATIONS AND HEARINGS

Hearings Before the Senate Committee on the Judiciary. *The GAO Report on Employer Sanctions and Discrimination.* Washington, D.C., 1990.

U.S. Department of Justice, Immigration and Naturalization Service. *1991 Statistical Yearbook of the Immigration and Naturalization Service.* Washington, D.C., 1992.

U.S. Department of Commerce, Bureau of the Census. *1980 Census of Population, Characteristics of the Population, General Social and Economic Characteristics, United States Summary.* Washington, D.C., 1983.

- *1990 Census of Population, General Population Characteristics, Urbanized Areas.* Section 1 of 3, Washington, D.C., 1992.

- *Money Income of Households, Families, and Persons in the United States: 1990, Current Population Reports, Consumer Income.* Series P-60, No. 174, Washington, D.C., 1991.

U.S. Department of Labor, Employment Standards Administration. *Office of Federal Contracts Compliance Programs Director's Report 1990.* Washington, D.C., 1991.

U.S. Equal Employment Opportunity Commission. *20th Annual Report 1985.* Washington, D.C., 1986.

- *Annual Report 1986-1988.* Washington, D.C., 1989.

- *Annual Report 1989.* Washington, D.C., 1990.

U.S. General Accounting Office. *Immigration Reform: Employer Sanctions and the Question of Discrimination.* No. GAO/GGD-90-62, Washington, D.C., 1990.

- *Immigration Reform: Status of Implementing Employer Sanctions After Second Year.* No. GAO/GGD-89-16, Washington, D.C., 1988.

- *Immigration Reform: Status of Implementing Employer Sanctions After One Year.* No. GAO/GGD-88-14, Washington, D.C., 1987.

CONSTITUTIONS, STATUTES AND REGULATIONS

All federal statutes are cited to the Public Laws of the United States (Pub. L.) and to the United States Code (U.S.C.). All federal regulations and executive orders are cited to the Code of Federal Regulations (C.F.R.). These are the official compilations of federal statutes and regulations.

U.S. Constitution, art. I, § 8; Amends. V, XIII, XIV, XV.

The Age Discrimination in Employment Act, Pub. L. No. 90-202, 81 Stat. 602, 29 U.S.C. § 621 *et seq.* (1988 & Supp III 1991).

The Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327, codified as amended in 42 U.S.C. § 12101 *et seq.* (Supp. III 1991).

The California Fair Employment and Housing Act, Cal. Government Code Ann. § 12900 *et seq.* (1992 & 1993 Supp.).

The Civil Rights Act of 1866, Law of April 9, 1866, ch. 31, 14 Stat. 27, codified as amended as 42 U.S.C. § 1981 (1988 & Supp. III 1991).

The Civil Rights Act of 1964, Pub. L. No. 88-532, 78 Stat. 352, codified as amended in 42 U.S.C. § 2000a *et seq.* (1988 & Supp. III 1991).

The Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73, codified as amended in 42 U.S.C. and scattered sections of 18, 25 and 28 U.S.C. (1988 & Supp. III 1991).

The Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071, codified in Title VII of the Civil Rights Act of 1964 and in 42 U.S.C. and scattered sections of 5, 18, 20, and 28 U.S.C. (1988 & Supp. III 1991).

The Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359, codified as amended in the Immigration and Nationality (INA) and in 8 U.S.C. and scattered sections of 7, 18, 20, 29 and 42 U.S.C. (1988 & Supp. III 1991).

The Immigration Act of 1990, Pub. L. No. 101-649, 105 Stat. 322, codified in the Immigration and Nationality Act (INA) and in 8 U.S.C. (1988 & Supp. III 1991).

42 U.S.C. § 1988 (1988 & Supp. III 1991).

Executive Order No. 11246, 3 C.F.R. 339 (1965-1966).

29 C.F.R. §§ 1601.74, 1602.1 *et seq.*, 1607.1 *et seq.*, 1614.402

41 C.F.R. §§ 60-1.1 *et seq.*, 60-2.1 *et seq.*, 60-3.1 *et seq.*, 60-3.1 *et seq.* (1992).

Federal Rules of Civil Procedure 23, 34, 45.

American Bar Association. *Model Rules of Professional Conduct*. Chicago, 1983.

JUDICIAL DECISIONS

(These decisions are cited to the official reports: United States Reports (U.S.) for the Supreme Court of the United States; Federal Reporter, Second Series (F.2d) for the United States Courts of Appeals; Federal Supplement (F. Supp.) for the United States District Courts. Decisions of the Supreme Court that have not yet been officially reported are cited to the Supreme Court Reporter (S. Ct.).)

Albemarle Paper v. Moody, 422 U.S. 405 (1975).

Ambach v. Norwick, 441 U.S. 68 (1979).

United Automobile Workers v. Johnson Controls, Inc., 111 S.Ct. 1196 (1991).

Blanchard v. Bergeron, 489 U.S. 87 (1989).

Bolling v. Sharpe, 347 U.S. 497 (1954).

Brown v. Board of Education, 347 U.S. 483 (1954).

Burnett v. Grattan, 468 U.S. 42 (1984).

Christiansburg Garment Co. v. EEOC, 434 U.S. 412 (1978).

Chrysler Corp. v. Brown, 441 U.S. 281 (1979).

The Civil Rights Cases, 109 U.S. 3 (1883)

Connecticut v. Teal, 457 U.S. 440 (1982).

Contractors Ass'n v. Secretary of Labour, 442 F.2d 159 (3rd Cir. 1971), cert. denied, 404 U.S. 854 (1971).

Dothard v. Rawlinson, 433 U.S. 321 (1977).

East Texas Motor Freight System, Inc. v. Rodriguez, 431 U.S. 395 (1977).

EEOC v. Sears Roebuck & Co., 839 F.2d 302 (7th Cir. 1988).

Espinoza v. Farah Manufacturing Co., 414 U.S. 86 (1973).

Foley v. Connelie, 435 U.S. 291 (1978).

Fortino v. Quasar Co., 950 F.2d 389 (7th Cir. 1991).

Franks v. Bowman Transportation Co., 424 U.S. 747 (1976).

Furnco Construction Co. v. Waters, 438 U.S. 567 (1978).

General Building Contractors Ass'n v. Pennsylvania, 458 U.S. 375 (1982).

General Telephone Co. v. EEOC, 446 U.S. 318 (1980).

General Telephone Co. v. Falcon, 457 U.S. 157 (1982).

Green v. County School Board, 391 U.S. 430 (1968).

Griggs v. Duke Power Co., 401 U.S. 424 (1971).

Gutierrez v. Municipal Court, 838 F.2d 1031 (9th Cir.), *vacated*, 109 S.Ct. 1736 (1989).

Hampton v. Mow Sun Wong, 426 U.S. 88 (1976).

Hazelwood School District v. United States, 433 U.S. 299 (1977).

Hensley v. Eckerhart, 461 U.S. 424 (1983).

International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977).

Johnson v. Transportation Agency, 480 U.S. 616 (1987).

Johnson v. Railway Express Agency Inc., 421 U.S. 454 (1975).

Jones v. Alfred H. Mayer & Co., 392 U.S. 409 (1968).

League of United Latin American Citizens v. Pasadena Independent School District, 662 F. Supp. 443 (S.D. Tex. 1987).

Local 28, Sheet Metal Workers' Int'l Ass'n v. EEOC, 478 U.S. 421 (1986).

Loving v. Virginia, 388 U.S. 1 (1967).

Mathews v. Diaz, 426 U.S. 67 (1976).

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

Oatis v. Crown Zellerbach Corp., 398 F.2d 496 (5th Cir. 1968).

Plessy v. Ferguson, 163 U.S. 537 (1896).

Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978).

Runyon v. McCrary, 427 U.S. 160 (1976).

Saint Francis College v. Al-Khazraji, 481 U.S. 604 (1987).

St. Mary's Honor Center v. Hicks, 113 S. Ct. 2742 (1993).

Sumitomo Shoji America, Inc. v. Avagliana, 457 U.S. 176 (1982).

United Steelworkers v. Weber, 443 U.S. 193 (1979).

Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989).

Washington v. Davis, 426 U.S. 229 (1976)

MIGRATION FOR EMPLOYMENT WORKING PAPERS

(Out of stock papers are not listed.)

7. *Out of the shadows - A review of the 1980 regularisation of status programme in Australia*, by D. Storer with the assistance of A. Faulkner, June 1982.

9.E *The 1974 amnesty for migrants in Argentina*, by L. Mármora, February 1983.

10.F *La libre circulation à l'intérieur d'une Communauté entre pays en développement*, par W.R. Böhning, décembre 1983.

14. *International labour migration and skill scarcity in the Hashemite Kingdom of Jordan*, by I.J. Seccombe, July 1984.

15.S *Immigracion ilegal y matricula general de extranjeros en Venezuela*, par A. Michelena et al., agosto 1984.

15.E *Illegal immigration and the general register of foreigners in Venezuela*, by A. Michelena et al., August 1984.

18.E. *Scarce skills and international migration in Argentina*, by J. Gurrieri, S. Lépore and L. Marmora, November 1984.

18.S *Escasez de recursos humanos calificados y migraciones internacionales en la Argentina*, por J. Gurrieri, S. Lépore y L. Mármora, noviembre 1984.

19.S *La emigración de recursos humanos calificados y el ajuste en el mercado de empleo del Uruguay*, por C.A. Aguiar, diciembre 1984.

21.S *El trabajador migrante en situación irregular y su legalización en Venezuela*, por R. Torrealba, febrero 1985.

24. *Migrations clandestines, régularisations et marché du travail en France: contraintes nationales et internationales*, par J.-P. Garson, décembre 1985.

25. *Working conditions of Pakistani migrant workers in the Middle East*, by Farooq-i-Azam, January 1986.

27. *Migrant Workers in West Africa: with special reference to Nigeria and Ghana*, by Yaa Frempoomaa Yeboah, October 1986.

28. *The pattern and consequences of declining mine labour recruitment in Botswana*, by John Taylor, November 1986.

32. *Las politicas de retorno de recursos humanos calificados en Colombia: evaluación y orientaciones para su mejoramiento*, por Carlos A. Patiño G. y Jorge Diaz Ramirez, diciembre 1986.

34. *Future developments in the demand for labour by the South African mining industry*, by Pundy Pillay, July 1987.

36. *Perceptions and attitudes of Botswana migrant workers toward the South African gold mines, with special reference to living and working conditions, legal issues and trade unions*, by Louis Molamu, Athaliah Molokomme and Gloria Somolekae, September 1987.

37. *Mozambican migrant workers in South Africa: the impact of the expulsion order*, by Centro de Estudos Africanos, Universidade Eduardo Mondlane, October 1987.

39. *Migration de retour en Europe du Sud*, par Solon Ardittis, février 1988.

42. *Manpower and population evolution in the GCC and the Libyan Arab Jamahiriya*, by J.S. Birks and C.A. Sinclair, October 1989.

43. *Arab return migration from the Gulf Co-operation Council States: Patterns, trends and prospects*, by Allan Findlay, October 1989.

46.E *Some economic, social and human rights considerations concerning the future status of third-country nationals in the Single European Market*, by W. R. Böhning and J. Werquin, April 1990.

46.F *Réflexions d'ordre économique, social et sur les droits de l'homme concernant le futur statut des nationaux des pays tiers dans le marché intérieur européen*, par W. R. Böhning et J. Werquin, avril 1990.

47.E *Cohabitation of Germans and Foreigners in Districts of Düsseldorf*, by Peter König, June 1990.

49. *Discrimination of Migrant Workers in Western Europe*, by Roger Zegers de Beijl, December 1990.

50. *Foreign Female Domestic Workers: HELP WANTED!* by Patricia Weinert, March 1991.

51.S *Trabajadoras Extranjeras de Servicio Doméstico en Madrid*, España, por Colectivo Ioé, avril 1991.

52. *Ethnic Turks from Bulgaria: An Assessment of their Employment and Living Conditions in Turkey*, by Wolf Scott, May 1991.

56.E *Although equal before the law ... The scope of anti-discrimination legislation and its effects on labour market discrimination against migrant workers in the United Kingdom, the Netherlands and Sweden*, by Roger Zegers de Beijl, October 1991.

56.F *Bien qu'égaux devant la loi ... La portée de la lègislation antidiscriminatoire et ses répercussions sur la discrimination, dans le marché du travail, à l'encontre des travailleurs migrants au Royaume-Uni, aux Pays-Bas et en Suède*, par Roger Zegers de Beijl, janvier 1992.

56.D *Wenn auch gleich vor dem Gesetz ... Der Geltungsbereich des gesetzlichen Diskriminierungsverbots und seine Wirkung auf die Diskriminierung der Wanderarbeitnehmer auf dem Arbeitsmarkt des Vereinigten Königreichs, der Niederlande und Schwedens*, von Roger Zegers de Beijl, Februar 1992.

57.S *Discriminación del Trabajador Migrante en Venezuela*, por Ricardo Torrealba, enero 1992.

57.E *Discrimination against migrant workers in Venezuela*, by Ricardo Torrealba, July 1993.

58. *Two essays on migration*, by M. Bruni/A. Venturini and O. Stark, January 1992.

59. *The costs of discriminating against migrant workers: An international review*, by Shirley Dex, February 1992.

61.F *Les aides publiques internationales face aux perspectives de l'arrêt de l'émigration vers l'Europe: le cas marocain*, par Fathallah Oualalou, mars 1992.

64. *Foreign Aid as a Means to Reduce Emigration: The Case of Turkey*, by E. Uygur, Apr.92.

65. *Two essays on using ODA to reduce emigration*, by Christiane Kuptsch and Bohuslav Herman, April 1992.

66.E *International aid to reduce the need for emigration: The Tunisian case*, by Moncef Bel Hadj Amor, April 1992.

68.F *La migration internationale: deux approches*, par C. B. Keely et G. Tapinos, mai 1992.

69.F *Aide au développement et migrations - Le modèle canadien: Lier politique, programmes et activités*, par M. Brem et Ph. Rawkins, mai 1992.

71.S *Trabajadores migrantes en el servicio domestico en Venezuela*, por Ricardo Torrealba, noviembre 1992.

72. *De facto discrimination, immigrant workers and ethnic minorities: a Canadian overview*, by Carl Raskin, February 1993.

74.D *Integration ausländischer Arbeitnehmer in den Arbeitsmarkt - Deutschland, Frankreich, Niederlande, Schweden*, von Heinz Werner, Juni 1993.

74.E *Integration of foreign workers into the labour market - France, Germany, the Netherlands and Sweden*, by Heinz Werner, December 1993.

75. *International labour migration statistics: Use of censuses and sample surveys*, by A. S. Oberai, July 1993.

76. *Protecting aliens, immigrants, and ethnic minorities from discrimination in employment: The experience in the United States*, by George Rutherglen, December 1993.

WORLD EMPLOYMENT PROGRAMME

WORKING PAPER

INTERNATIONAL MIGRATION FOR EMPLOYMENT

Discrimination of Migrant Workers in Western Europe

by

Roger Zegers de Beijl

International Labour Office Geneva

MIG WP.49

WORLD EMPLOYMENT PROGRAMME RESEARCH

Working Paper

INTERNATIONAL MIGRATION FOR EMPLOYMENT

Discrimination of Migrant Workers in Western Europe

by

Roger Zegers de Beijl

December 1990

ISBN 92-2-107827-2

First published 1991

Printed by the International Labour Office, Geneva, Switzerland

TABLE OF CONTENTS

A. FOREWORD

This is a paper of the ILO's International Migration for Employment Branch. The objectives of the Branch are to contribute to (1) the evaluation, formulation and application of international migration policies suited to the economic and social aims of governments, employers' and workers' organisations, and (2) the increase of equality of opportunity and treatment of migrants and the protection of their rights and dignity. Its means of action are (a) research and reports, (b) technical advisory services, (c) technical co-operation, (d) meetings and (e) work concerned with international labour standards. The Branch also collects, analyses and disseminates relevant information and acts as the information source for ILO constituents, ILO units and other interested parties.

The ILO has a constitutional obligation to protect the "interests of workers when employed in countries other than their own". This has traditionally been effected through the elaboration, adoption and supervision of international labour standards, in particular the Migration for Employment Convention (Revised), 1949 (No. 97); the Discrimination (Employment and Occupation Convention), 1958 (No. 111); the Equality of Treatment (Social Security) Convention, 1962 (No. 118); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); the Maintenance of Social Security Rights Convention, 1982 (No. 157); and the non-binding Recommendations supplementing them.[1] International legal instruments of this kind mainly aim to influence national laws and regulations in such countries as ratify the binding Conventions; and in this way they change not only legislation but the actual practices as well.

The key concern of ILO standards for migrant workers is non-discrimination or equality of opportunity and treatment. Many countries broadly adhere to this objective in the economic and social spheres. Some countries ratify ILO Conventions[2] and do their level best to fulfill the obligations deriving from them. One might expect, therefore, that discrimination would no longer be part of the legislation or practices of these countries. Unfortunately, there is a great deal of circumstantial evidence that this assumption does not hold in certain respects and especially not at the workplace in private or public enterprises; and such evidence also exists for countries not having ratified ILO Conventions. There may be several reasons for this, such as the scope of national and international laws and regulations or their generality or, indeed, their inapplicability to, for example, the question of work allocation in private enterprises.

---

1 See also W.R. Böhning: "The protection of migrant workers and international labour standards", International Migration, Vol. 26, No. 2 (1988), pp. 133-145.

2 Thirty-eight in the case of Convention No. 97, fifteen in the case of Convention No. 143, thirty-seven in the case of Convention No. 118 and two in the case of Convention No. 157.

Whatever the reason, the indications of discriminatory treatment where it should not exist according to established general principles were sufficiently strong to initiate a review of available information. My colleague, Roger Zegers de Beijl, undertook this review in fields of key ILO concern, i.e. where first and second generation migrant workers search for work, obtain employment, where they are assigned to jobs, as regards the wages they receive, where they look for training and promotion, where enterprises shed personnel, where the migrants want to pick up self-employment, and so on. His review had to be limited, because of time constraints, to the major European countries employing non-nationals. It was not confined to countries having ratified relevant ILO Conventions because it was not, as such, the purpose to look into the effect of ILO Conventions in this field. Work on non-European countries - Australia and Venezuela - has just been commissioned.

The information presented in this Working Paper regrettably confirms the indications that existed. Some but by no means all of the material is "soft" information in the sense that it is based on small and perhaps unrepresentative surveys. But on the whole the evidence is so widespread, systematic and irrefutable that national and international policy-makers are called upon to reflect on ways and means of combating this discrimination. The ILO intends, in the coming years, to develop, for example, teaching and seminar materials designed to contribute to efforts by governments, personnel managers, trade unions and migrant workers' associations to tackle the discrimination migrant workers and members of their families are subjected to.

December 1990

W.R. Böhning

DISCRIMINATION OF MIGRANT WORKERS IN WESTERN EUROPE

by

Roger Zegers de Beijl

(Associate Expert,
International Labour Office,
Geneva)

"... Whenever they start calling me names I put on my headphones".
(Turkish migrant worker, quoted in Brassé and Sikking, 1986)

1. Introduction

This report contains the results of a survey of literature on employment discrimination of migrant workers in western Europe. It is the first report in a series aimed at documenting the major forms, extent and severity of discrimination faced by migrants, both men and women, in fields of ILO competence.

During the post-war period large numbers of non-nationals came to work in the western European countries. The majority have settled down for good and form a permanent part of the population of their respective host countries. The countries covered in this report, i.e. Belgium, the Federal Republic of Germany, France, the Netherlands, Switzerland and the United Kingdom, host over four-fifths of Europe's migrants.

It is an undisputed fact that migrants face many problems on the labour market and are in many ways at a disadvantage compared with members of the host country's population. Some of these problems are connected with objective handicaps such as inadequate education and training, non-recognition of qualifications acquired abroad or inadequate command of the host country's language. But, in addition, migrants experience discrimination on grounds of their nationality, colour, race and/or ethnic origin.

In most countries discrimination is prohibited in a general way by the constitution. It is also outlawed by a number of international agreements to which many countries have subscribed. A number of countries have legislated directly against discrimination, notably the United Kingdom, the Netherlands and France, which forbid discrimination in the field of employment.

The principle of non-discrimination has been one of the founding principles of the ILO. The Treaty of Versailles (1919), which gave rise to the ILO, provided that "the standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein". Moreover, the protection of the interests of migrant workers was included among the priority aims of the Organisation. The four main standards designed to protect migrant workers are the Migration for Employment Convention (Revised), 1949 (No. 97); the Equality of Treatment (Social Security) Convention, 1962 (No. 118); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and the Maintenance of Social Security Rights Convention, 1982 (No. 157). The key provisions of these Conventions and their related Recommendations aim at ensuring non-discrimination or equality of opportunity and treatment between national and migrant workers. Whereas Convention 97 essentially imposes constraints on countries in terms of statutory discrimination, Convention 143 (part II) encourages them to pursue national policies to promote equality of opportunity and treatment (Böhning, 1988, pp. 136-138).

However, not all immigrants are invariably of foreign nationality. There are naturalised former non-nationals, others are nationals from former colonies. These "national immigrants" are covered by the ILO's Discrimination (Employment and Occupation) Convention, 1958, (No. 111), whose principal aim is to combat discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin.

All of the countries covered in this report have ratified Convention 97, with the exception of Switzerland. The United Kingdom is the only country which has not ratified Convention 111. Convention 143, however, has not been ratified by any of the traditional immigration countries in western Europe. Nevertheless, discrimination or unequal treatment, is outlawed in all of these countries.

Unfortunately, discrimination cannot be removed by laws only, since it finds its origin in prejudice, ignorance, fear and intolerance. It is widely acknowledged that actual discrimination of migrant workers continues in practice and that it is pervasive. And yet, it is often difficult to demonstrate. An employer, for instance, will not easily admit that (s)he is discriminating against people on nationality, racial or ethnic grounds. Most acts of direct discrimination are performed without being openly admitted; sometimes the persons concerned are not even aware of their discriminatory attitudes. Furthermore, discrimination can also be of an indirect nature. This is the case when employment practices, which are in themselves not discriminatory, have discriminatory effects. A common example is the requirement of language proficiency in excess of what is really needed for a particular job. Whether intentionally or not, it results in discrimination against migrant applicants, whose command of the host country's language tends to be imperfect (Council of Europe, 1988, pp. 2-4).

To bridge the gap between anecdotal and systematic evidence, the ILO's International Migration for Employment Branch decided to launch a series of investigations into the actual discrimination faced by migrant workers in the field of employment.

In this report the following questions are addressed: What is the actual labour market position of migrants? What specific problems do migrants face when trying to find or to change jobs? What is the educational attainment of migrant youngsters (the so-called "second generation", some of whom may in fact already belong to the third generation) and how does this affect their transition from school to work? What forms of discrimination occur in daily working life at enterprise level? What institutional and non-institutional hindrances obstruct migrants' change in status from salaried worker to self-employed worker?

By investigating migrants' labour market position more than 15 years after recruitment was halted, light will be shed on the question to what extent migrant workers experienced upward mobility, i.e. whether migrants are confined to the secondary labour market or whether they compete with national workers on an equal footing. Subsequently, factors that could explain migrants' labour market position, as well as their experiences in daily working life, are looked at with a view to assessing the influence of discrimination as a determinant relative to factors such as lack of education, language proficiency, etc.

A few terminological clarifications need to be made. The term "migrant" refers to the group of persons popularly associated with the massive recruitment of workers from poor to industrialised countries and to the members of their families who accompanied or joined them. This includes persons who have arrived from former colonies of these industrialised countries. "Migrant" is used interchangeably with "immigrant" throughout this report. In British and Dutch politics, as well as in the literature on these countries, the term "ethnic minorities" is used, which includes refugees and - in the Dutch case - gypsies, but it is otherwise equivalent to both migrant and immigrant. Migrants in an irregular situation are excluded from the scope of this report by the very fact that no reliable data are available. Since there are many foreigners in European countries who are highly qualified and who originate not from poor but from other industrialised countries, such as Sweden or the United States, and who are not viewed as migrants posing particular problems or requiring special support, we have to reflect this distinction and they have, therefore, been dropped from the presentation of statistical and other data wherever this was possible. Where such parcelling out was impossible, the terms "foreigners" and "non-nationals" are synonymous and denominate the whole group of migrants with a foreign nationality.

The term "discrimination" is used, in line with definitions used in ILO Conventions, to describe unequal treatment and opportunity between comparable groups of national and migrant workers.* Wherever data permit, comparisons between these two groups are made so as to substantiate the extent and effects of discriminatory practices. These practices can be of a direct or indirect nature, and be either formally or informally applied. "Direct discrimination" occurs when a migrant is disadvantaged because he or she is assumed to be a non-national or of foreign origin. "Indirect discrimination" occurs when the policies of an institution do not use formal distinctions but in practice discriminate against a particular group by the uses of selection criteria, test requirements etc. that disadvantage it. Throughout this report the term "formal discrimination" is used to denominate unequal treatment resulting from discriminatory laws and regulations, while "informal discrimination" refers to unequal treatment not legitimised by laws, rules, instructions, etc. As such, it is based on feelings of prejudice, fear and intolerance of - segments of - the population of the host country.

This report is based on a survey of the existing literature on the above listed questions. Apart from this survey, researchers and organisations known to be active in the field of discrimination of migrant workers, were requested to supply additional information on the subject.

2. Belgium

2.1 Migrants and their position in the labour market

Organised labour migration to Belgium started immediately after the Second World War. Most of the migrants were needed for the coal mines and the iron and steel industry. The government concluded a recruitment agreement with

---

* In article 1 of Convention No. 111 discrimination is defined as "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation".

the Italian government, which was later followed by agreements with Spain and Greece. During the rapid economic growth of the 1960s, additional agreements were signed with Turkey and Morocco. In an effort to remedy the shortage of manpower - especially of unskilled labour - strict application of immigration regulations was suspended. Many migrants entered the country as tourists but were granted work and residence permits once they had found employment. Since the halt in recruitment in 1974, migration to Belgium has largely been confined to - highly skilled - EEC citizens and family reunification of unskilled non-EEC migrants. Contrary to the situation of other former colonial powers, there has been no appreciable immigration from Belgium's former colonies (Debbaut and Declerck, 1982, pp. 13-15; Castles, 1984, pp. 47-50).

During the 1980s the number of foreigners stabilised. In 1989, nearly 869,000 resided in Belgium. They made up 8.8 per cent of the total population. As can be seen from Table 1 the majority are nationals of fellow EEC-countries; some 40 per cent originate from the south European member countries. The total number of migrants from the traditional Mediterranean recruitment countries is slightly over 564,000, or two thirds of the non-national population. Migrants from Morocco and Turkey make up more than one third of the Mediterranean people and one quarter of the total number of foreigners.

Italians form the largest single group. They make up 28 per cent of the total non-national population. Moroccans come second with 16 per cent, followed by French and Turks with 10 and 9 per cent, respectively. More than two thirds of all foreigners live in Brussels and the old industrial centre of Wallonia. In Flanders they represent only 4 per cent of the total population (Commissariat Royal à la Politique des Immigrés, 1989, pp. 26-30).

According to 1987 data, the foreign workforce numbered 411,500 persons, not including entrepreneurs, whose number was estimated to be 49,000. In total, the foreign economically active population stood at 460,500, or 11 per cent of the total active population. Almost two thirds were migrants from Mediterranean countries, with Italians being the largest group (22 per cent), followed by Moroccans (12 per cent), Spaniards (9 per cent) and Turks (9 per cent). The migrants' overall activity rate was 53 per cent compared with 43 per cent of the national population (Commissariat Royal à la Politique des Immigrés, 1989, p. 276; OECD, 1989, p. 29).

No recent data on the sectoral distribution of the foreign workforce were found. According to the results of a nationwide socio-economic survey held in 1977, the majority of foreigners were concentrated in industry (38 per cent), retailing (19 per cent) and construction (10 per cent). Two thirds of all foreigners were employed in these sectors, compared with only half of the national workforce. In the services sector in general, 17 per cent of the foreign active population was employed; however, the foreigners' share in the total employment in this sector was only 4 per cent. Since these figures were compiled thirteen years ago, one can safely assume that the proportion in services has gone up (CERI, 1987, p. 43).

Table 1: Non-national population of Belgium as at 1 January 1989

Nationality	Number	%	% of total population
EEC countries of which	536,665	61.8	5.4
- Italian	241,006	27.7	
- French	91,444	10.5	
- Dutch	60,533	7.0	
- Spanish	52,549	6.0	
- German	26,405	3.0	
- British	21,805	2.5	
- Greek	20,613	2.4	
- Portuguese	13,498	1.6	
Moroccan	135,464	15.6	1.4
Turkish	79,460	9.1	0.8
American	11,624	1.3	0.1
Zaïrean	10,871	1.3	0.1
Algerian	10,647	1.2	0.1
Tunisian	6,244	0.7	0.05
Yugoslav	5,350	0.6	0.05
Others (including refugees)	72,432	8.4	0.8
Total	868,757	100.0	8.8

Source: INS, Commissariat Royal à la Politique des Immigrés, 1989

In 1988, 55 per cent of the foreigners were working as labourers, compared with one in three of the national workforce. Twenty-nine per cent were working as salaried employees (out of whom only 5.5 per cent in the public sector) compared with 53 per cent (nearly half of them in the public sector) of the Belgian economically active population. Migrants thus are clearly overrepresented in manual work in the private sector (Commissariat Royal à la Politique des Immigrés, 1989, p. 277).

As far as job levels are concerned, no recent data were identified. In the socio-economic survey of 1977, it was found that four out of ten migrants employed in industry performed jobs at an unskilled level. For national workers this proportion was 25 per cent only. It is interesting to note that, according to the survey's findings, half of all the foreigners in industry took part in some form of on the job training. This could indicate that possibilities for occupational advancement exist. However, neither any clarification on the type of training involved (language or skills training), nor data on the actual promotion of migrants are given (Debbaut and Declerck, 1982, p. 33).

In a survey of 66 industries in the region of Brussels, it was determined that migrants were overrepresented in un- and semi-skilled work. Working conditions were characterised by physical constraints, monotony and shift work. Within their respective jobs, migrants performed the least qualified

tasks. This resulted in an average hourly wage which was ten per cent lower than that of nationals in the same jobs. Chances for job mobility were found to be low (Haex and others, 1976, pp. 91-140).

Whereas unemployment rates of the national workforce decreased during the second half of the 1980s, they increased for migrants. In 1988 the overall unemployment rate stood at 10.9 per cent; it was 15.3 per cent for migrants. Moroccans, Turks, Algerians and Spaniards were most affected by unemployment. Nearly two thirds of all unemployed migrants were registered as long-term unemployed with little schooling and few qualifications, compared with half of all unemployed nationals (Commissariat Royal à la Politique des Immigrés, 1989, pp. 277-283; OECD, 1989, p. 29).

Thus, the majority of Belgium's foreign workforce are migrants from Mediterranean countries. Most of them are manual labourers working in the same kinds of job for which they were recruited originally. They run a higher-than-average risk of becoming unemployed and, once they are, they have little chance of finding another job.

2.2 Accessibility of the labour market

No specific information regarding migrants' access to the labour market was found. However, given their labour market profile as described in the previous section, it is obvious that migrants face problems when trying to find a job. High unemployment rates can be explained in part by migrants' limited schooling and qualifications, which do not match with the changes on the demand side of the labour market.

However, migrants are not only overrepresented in unemployment. They are also underrepresented in government-subsidised employment promotion programmes, which suggests that employers favour national candidates above non-nationals. According to a report by the Commissariat Royal à la Politique des Immigrés (1989, p. 283), women migrants are hardly represented in these programmes. Furthermore it was found that youngsters with a complete secondary education face more than average difficulties when trying to find a job. Since systematic research is lacking, no explanations are put forward for migrants' limited access to the labour market.

Concerning employers' recruitment policies, Haex and others (1977, pp. 191-195) found that applicants for vacancies at skilled level were generally recruited through advertisements, whereas candidates for unskilled jobs were recruited through co-option and the Labour Exchange. These different recruitment policies for different kinds of jobs put migrants at a disadvantage, since it is known from research in other countries that advertisements are not widely read by non-nationals.

2.3 Second generation migrants: transition from school to work

The immigrant population is a young population. Half of them are younger than 25, compared with one third of the national population. Foreigners make up 13 per cent of the population under 25 years of age, whereas their share in the total population is 8.8 per cent (Bastenier and others, 1986, pp. 9-10).

The fact that the majority of immigrants live in the French-speaking area of the country is reflected in the proportion of non-national pupils in francophone education, where one in five pupils is of foreign origin. In the Flemish language education, this is only one in 20 pupils. As shown in Table 2, the overall proportion of foreign youngsters in education was 11.4 per cent

in 1985. As in the other countries discussed in this report, the demographic characteristics of the foreign population result in an overrepresentation at primary school level. However, the overrepresentation at special schools, notably in francophone education, both at primary and secondary levels, is striking. According to a report by the Centre for Educational Research and Innovation, Turkish and Moroccan children especially are found in this type of education (CERI, 1987, pp. 40-56). This finding is a clear indication of the educational arrears of migrant children.

Within the traditional secondary education system, the majority of the foreign pupils follow the short vocational education stream. In 1981 the proportion of foreign youth in this stream was 24 per cent, compared with 14 per cent in the technical and 8 per cent in the general education stream. More recent data concerning the proportion of foreign pupils in the different streams of the reformed secondary education system were not found. It is estimated that half of the foreign pupils leave school after compulsory education without having obtained a diploma or certificate (Bastenier and others, 1986, pp. 36-75).

Table 2: Non-national* pupils in Belgian education, 1985

	Education in French language (%)	Education in Flemish language (%)	National average (%)
Pre-school education	19.5	6.2	11.7
Primary education	20.4	5.8	12.0
- normal	20.1	5.8	10.7
- special	26.3	6.5	11.5
Secondary education[1]	19.1	4.2	10.7
- traditional	25.9	n.a.	n.a.
- reformed	18.3	n.a.	n.a.
- special	27.4	n.a.	n.a.
Total	19.7	5.2	11.4

* All nationalities.

1 Since 1968 the "traditional" secondary education system is being gradually replaced by a "reformed" system. The traditional system is divided into three streams - general, technical and vocational education - from the outset, whereas the reformed system comprises two years of general education, after which a choice between the three streams is made.

Sources: Duchene, 1988; OECD, 1988.

Another road to vocational training is apprenticeship training contracts, which offer on-the-job training to youngsters over 16 years of age. In 1982, 11 per cent of all contracts were awarded to foreigners, the majority of whom were boys. Mechanic, electrician and construction worker were the preferred professions (Bertzeletou, 1989, pp. 142-146).

Most migrant youngsters are thus confined to vocational streams oriented directly towards manual work. They enter the labour market at an early age, with few or no qualifications. In the age bracket 15-24 years, the majority of the economically active migrant population are employed as labourers, as are their parents. Although the proportion performing unskilled tasks is lower than among the first generation, it is still markedly higher than among nationals in the same age bracket.

One third of all young foreigners is unemployed, compared with 23 per cent of the national youth. When broken down by nationality, it appears that especially migrants of the second generation are without a job. Young Turks and Moroccans face an unemployment rate of 50 per cent, while this is 40 per cent for Italians. Only the unemployment rate of Spanish youth is comparable with that of their national counterparts (ibid.).

Migrants' transition from school to work is thus severely constrained by their arrears in educational attainment. When they enter the labour market they face competition for scarce jobs with better qualified national youth. If they succeed in finding a job, their positions will not be very different from those of their parents: Migrant youngsters, too, are confined to the lower end of the labour market (Bastenier and others, 1986, pp. 36-38).

The material presented in this section is biased in the sense that it focusses exclusively on the educational arrears and lack of qualifications of migrant youth, i.e. the supply side of the labour market. No material was found on the role of teachers, vocational counsellors, the Labour Exchange and employers. Research is needed to assess the occurrence of discriminatory prejudices and preferences and their effects on migrants' transition from school to work.

2.4 Discrimination at enterprise level

No documentation was found on this subject.

2.5 Entrepreneurship

In 1988, 12 per cent of the non-national economically active population had set up an independent business, compared with 14 per cent of the national population (Commissariat Royal à la Politique des Immigrés, 1989, p. 277). No information on the estimated 49,000 foreign entrepreneurs was found. Additional research is needed to determine the proportion of the respective nationalities, the characteristics of entrepreneurs and enterprises, as well as the specific difficulties migrants have to overcome when they want to set up their own business.

3. France

3.1 Migrants and their position in the labour market

France has been recruiting migrants to fill labour shortages since the second half of the nineteenth century. They were employed not only in industry but in agriculture as well. Immediately after the Second World War an agreement for the recruitment of migrant labour was concluded with the Republic of Italy, later followed by agreements with Spain and Portugal.

Another source of migrant labour was France's colonies and protectorates. Citizens of France's colonies and former colonies and protectorates were able to enter freely until the 1960s. Under this rule large numbers of Algerian migrants - considered to be French nationals before Algerian independence in 1962 - entered the country, as well as Moroccans, Tunisians and South Asians. In the 1960s migration from the former colonies in west Africa and the Overseas' Departments gained momentum (Power and Hardman, 1984, pp. 6-7).

Contrary to many other European countries, the French administration pursued for a long time a "laissez-faire" policy on post-war immigration. An official body (ONI) was set up to deal with the recruitment of migrants, but the majority entered on their own. Since industry needed large numbers of unskilled manpower, these migrants were absorbed easily. It is estimated that at the end of the 1960s some 80 per cent of all migrants entered the country either as tourists or illegally, to have their situation legalised after they had taken up employment (Granotier, 1979, pp. 31-76; Verbunt, 1985, pp. 127-139).

In 1974 the recruitment of migrants was halted. Since that time migration has largely taken the form of family reunification, although the inflow of "illegals" continued, notably from Africa, and is reportedly on the rise. In the years 1977-1981 policies to promote the return of migrants to their home countries were implemented, under which some 100,000 migrants, most of them Spanish and Portuguese, returned. In 1981, in a one-time attempt to improve their working and living conditions, the government legalised the situation of 140,000 illegal migrants (Lattes, 1989, pp. 414-426; Lebon, 1985, pp. 135-138; Verbunt, 1985, 141-144; Verhaeren, 1982, pp. 121-125).

According to the results of the 1982 Census, the total number of foreigners residing in France was 3.6 million, which amounted to 6.8 per cent of the total population. These figures should be interpreted with care, since they do not include the estimated 300,000 (1972 figure) migrants from the Overseas' Departments, nor migrants from the former colonies - mainly Algerians - who arrived before their respective countries gained independence. All of these are French nationals, just as the children born on French soil of Algerian parents are considered to be. Naturally, illegals are excluded from the official figures as well (Costa-Lascoux, 1989, pp. 31-35).

Table 3 shows the number of foreigners residing in France according to the 1982 census and the 1985 estimates of the Institut National d'Etudes Démographiques (INED). The last figures are the most recent, however they are less detailed than the census data. Moreover, the census data offer possibilities for comparison with data on the national population. Therefore, the census data will be used as a reference point in this section.

Compared with the results of the previous census, which was held in 1975, the registered number of non-nationals increased by 7 per cent. Algerians are the largest single group, followed by Portuguese and Moroccans. Since 1975 the number of Italians and Spaniards fell by one third, whereas the number of Portuguese remained stable. The number of North Africans increased by one third; they make up 38 per cent of the migrant population, which amounts to 2.6 per cent of the total population.

Due to the halt in official recruitment and the growing importance of family reunification, the proportion of economically active migrants in the total migrant population decreased from 46 per cent in 1975 to 42 per cent in 1982. This is slightly lower than the proportion of the national population (43 per cent). In the age bracket 20-54 years, the differences are more

Table 3: Non-national population of France 1982-1985

Nationality	1982 Number ('000s)	1982 %	1982 % of Total Population	1985 Number ('000s)	1985 %
Algerian	795.9	21.6	1.5	820.9	21.8
Portuguese	764.8	20.8	1.4	751.3	20.0
Moroccan	431.1	11.7	0.8	516.4	13.7
Italian	333.7	9.1	0.6	277.1	7.3
Spanish	321.4	8.7	0.6	267.9	7.1
Tunisian	189.4	5.1	0.3	202.6	5.3
Africans (sub-Saharan countries)	138.0	3.7	0.2	-	-
Turkish	123.5	3.4	0.2	146.1	3.8
South Asian	105.5	2.9	0.2	-	-
Other	582.3	13.0	1.0	769.9	21.0
Total	3,680.1	100.0	6.8	3,752.2	100.0

Sources: - 1982 Census, Ministère des Affaires Sociales et de la Solidarité Nationale, 1986;
- 1985 INED Projections, OECD, 1989

pronounced. Migrants' activity rate is 70 per cent (men 88 and women 42 per cent), compared with 78 per cent for the national population (men 91 per cent, women 65 per cent) (Costa-Lascoux, 1989, p. 43; Thomas, 1982, pp. 68-69).

The total number of economically active migrants stabilised at 1.5 million, or 6.6 per cent of the total active population. The majority work in the industry and construction sectors (56 per cent), while the commerce and services sector employs 40 per cent, especially women. For the national workforce these figures are 33 and 59 per cent, respectively. Migrant workers are concentrated in a few areas of economic activity. In construction and public works they make up 17 per cent of the workforce; of these one third are Portuguese. In car production the proportion of migrant workers is 14.5 per cent. This industry employs a quarter of all Moroccans and a fifth of all Algerians. In industry in general, migrants make up some 10 per cent of the workforce (Costa-Lascoux, 1989, pp. 45-50; Ministère des Affaires Sociales et de la Solidarité Nationale, 1986, p. 25, pp. 67-69; Singer-Kerel, 1982, pp. 87-90).

Migrants are overrepresented in those areas of economic activity where working conditions are bad. They are characteristed by long hours and shift work, repetition of tasks, physical constraints and high accident risks. This applies especially to the construction sector (Adams, 1979, pp. 307-330; Granotier, 1979, pp. 100-108; Minces, 1973, pp. 202-303; N'Dongo, 1972, pp. 64-74; Thomas, 1982, pp. 69-70). Migrants' average salary is lower than that of national workers, which can only be explained in part by the fact that

migrants are overrepresented in low paid jobs. According to Lattes (1989, p. 433), the average salary of migrant men was 25 per cent below that of their national counterparts in 1978. Verhaeren (1982, p. 126) found that the average hourly wage of skilled migrant workers in the construction sector was 7.5 per cent lower than that of skilled national workers. At the level of un- and semi-skilled workers, the wage difference was found to be 1 per cent. Other research results comparing wage levels for the same kind of jobs in specific sectors were not found.

In 1982 nearly 7 out of 10 migrants (69 per cent) were working as labourers, the majority of whom (38 per cent) performed jobs at un- or semi-skilled levels. The proportion of the national workforce which was employed as labourers was only 30 per cent. It was found that 16 per cent of the employed migrants were working as employees, compared with one in four of the national workers (Ministère des Affaires Sociales et de la Solidarité Nationale, 1986, p. 25). According to data presented by Mottin (1986, p. 101) the proportion of skilled workers rose from 21 to 29 per cent over the period 1975-1985, which means that job mobility is relatively rare. Migrants have limited access to qualifying in-plant training. Thomas (1982, p. 72) found that less than 1 per cent of all migrant workers engaged in firms employing ten or more wage earners took part in this kind of training, compared with more than 10 per cent of the national workers (see also: Abou Sada and Zeroulou, 1989; Granotier, 1979).

In the period 1975-1982 the number of migrants in employment decreased by 11.5 per cent, whereas the number of employed national workers increased by 3.5 per cent. Migrants were involved in 74 per cent of the lay-offs in the construction sector and in 23 per cent of the dismissals in industry (31 per cent in metallurgical industries and 21 per cent in car production). The loss of jobs due to the economic crises and industrial restructuring hit migrants disproportionately; the number of unemployed migrants tripled, whereas it went up two and a half times for the national population. In 1982 migrants' unemployment rate stood at 14 per cent, compared with 8.4 per cent for the French. The unemployment rate differed considerably according to nationality: 22 per cent for Algerians (men 17 and women 45 per cent) and only 8 per cent for the Portuguese (men 6 per cent, women 11 per cent). North African men made up more than 50 per cent of all unemployed migrant men, 25 per cent of all unemployed migrant women were Algerian (Costa-Lascoux, 1989, pp. 45-50; Tripier, 1988, pp. 32-35).

After 1982 unemployment among migrant workers increased further but at a slower pace than unemployment among national workers, reducing migrants' share in <u>total</u> unemployment from 12.4 per cent in 1983 to 11.4 per cent in 1987. This last figure increased once more to 12.4 per cent at the end of 1989, when the immigrants' share in the economically active population was estimated to have decreased to 6.5 per cent. The average duration of unemployment is the same for national and migrant workers. However, marked regional differences exist. In the region Ile de France nearly one third of all unemployed are migrants; North and Sub-Saharan Africans make up more than two thirds of all long-term unemployed (Commission Nationale Consultative des Droits de l'Homme, 1990, pp. 61-63).

To summarise, migrants are concentrated in the lower end of the labour market, where unfavourable working conditions prevail. Their job mobility is low and they are disproportionately hit by unemployment.

3.2 Accessibility of the labour market

Little research has been conducted into immigrants' chances of finding a job and the question which factors influence these chances. Lochak (1990, pp. 79-82) estimates that the exclusion of immigrants from jobs in the public sector and from a host of liberal professions amounts to some 5 million jobs being inaccessible to them (see also: Plein Droit, April 1989).

Apart from this "legal" exclusion from certain sectors and jobs, migrants face discriminatory attitudes by employers and personnel selectors when applying for a job. The National Consultative Commission on Human Rights reports that the majority of discriminatory acts by employers are of an indirect nature, such as the frequent practice of demanding a fluent command of the French language when this is not relevant for performing the job concerned. Employers are reported to be reluctant to recruit non-nationals, especially migrants from the Sub-Saharan and north African countries; people with these backgrounds also fall victim to employers' prejudices concerning their qualifications and work performance. Discriminatory exclusion of migrant applicants is common practice in areas of activity that involve direct contact with clients, i.e. the services and the retail trade sector (Commission Nationale Consultative des Droits de l'Homme, 1990, pp. 37-40; see also: Lebon, 1985, p. 147).

Employers' preference for national applicants is relatively well documented. A survey, conducted in 1985, found that of a total of 2,000 vacancies presented to Labour Exchange offices, some 7 per cent contained discriminatory specifications with regard to the kind of applicants that would be considered for the jobs (Commission Nationale Consultative des Droits de l'Homme, 1990, p. 39). Although illegal since 1972, discriminatory exclusion of migrant job seekers from certain vacancies by commercial employment agencies as well as by Labour Exchange officials, and registration of "non-migrant" status of job seekers to facilitate employers' preference for national candidates, appears to be common practice (Costa-Lascoux, 1989, p. 108; Verbunt, 1985, p. 152).

Mottin (1986, p. 106) notes that immigrants face increased competition with national workers when applying for jobs at un- and semi-skilled levels. The proportion of national workers who hold these kinds of jobs, which were previously considered to be typical "migrant jobs", is on the increase. This is reflected in the migrants' unemployment rate which rose considerably over the past decade.

Employers' preference for national workers does not mean that all migrants are considered equally. Employers reportedly prefer Portuguese workers above north Africans. They are thought to be less demanding and more willing to assimilate than north African workers. This finding could explain the low unemployment rates of the Portuguese (Verbunt, 1985, p. 146).

The information presented in this section is "soft" and incomplete in the sense that little is based on controllable research. No data were found with respect to migrants' job search behaviour. Nevertheless, the image that occurs points clearly to discriminatory treatment of migrant job seekers by employers. Increased competition with national applicants for scarce jobs results in migrants being pushed out of their traditional niche in the labour market, while prejudice on the part of the employers severely limits their possibilities of entering other sectors and jobs.

3.3 Second generation migrants: transition from school to work

According to the 1982 census, 7.5 per cent of the population under 25 years of age is of migrant origin, whereas the migrants' proportion in the total population is 6.8 per cent. The migrant population is, thus, relatively young; nearly 1.5 million, or 40 per cent, is under 25 years of age. In reality this number will be higher, since the relatively high proportion of children of migrant parents, notably Algerians, who obtained French nationality are not included in these figures (Lebon, 1985, pp. 135-138).

In 1986 the overall proportion of migrant youngsters in French education was 8.8 per cent. As can be seen from Table 4 they are overrepresented at pre- and primary school level, due to the demographical characteristics of the population. But both within primary and secondary education, the overrepresentation in special education is striking, as is the underrepresentation in the type of secondary education which leads up to higher education.

Table 4: Non-national* pupils in French education, 1986 (in per cent)

Pre-school education	9.7
Primary education	10.9
- normal	10.7
- special	20.2
Secondary education[1]	6.8
- 1st cycle	7.1
- short 2nd cycle	9.0
- long 2nd cycle	3.9
- special	16.7
Total	8.8

* all nationalities

1 After the first cycle, students enter either the short or the long second cycle. The short cycle provides various forms of vocational training; the long cycle prepares students for admission to higher education.

Source: OECD, 1988

North African, Portuguese and Turkish children are overrepresented in special education, containing children with intellectual deficiencies or being so behind in their schooling that they cannot follow an ordinary course of instruction. The same groups are overrepresented in the short secondary cycle, providing basic vocational training and preparation for entry into the labour market, whereas Yugoslav children attend the long secondary cycle more often than other migrants. Of all migrants within the second cycle of secondary education, over 60 per cent follow the short cycle, whereas this proportion is 38 per cent for French children (CERI, 1987, pp. 60-63; Morokvasic, 1985, pp. 30-34, OECD, 1988, pp. 133-134, see also: Boulot and Boyzon-Fradet, 1988).

As far as vocational training is concerned, it should be noted that young migrants often leave school at the end of their compulsory education, at the age of 16, having followed only the shortest educational programmes. Frequently they leave without having received a diploma. For migrant youth there is a marked discrepancy between aspirations to enroll in courses leading

to a trade judged to be "nobler" (e.g. car mechanic, electrician, nurse) and the programmes these youngsters actually follow as a consequence of their generally mediocre training and insufficient language ability (Lebon, 1985, pp. 146-147).

Migrants' participation in special post-school training programmes in the field of vocational training is limited. Migrants face more difficulties than national participants in securing an apprenticeship under these programmes. Moreover, the proportion of migrants who find a job after finishing their training is lower than that of nationals (Commission Nationale Consultative des Droits de l'Homme, 1990, p. 74; Cordeiro, 1989, pp. 197-202).

The educational achievements of immigrants have not improved over the past decade (CERI, 1987, pp. 64-65). Migrant children are found in larger proportions than national children in those areas of education which seriously constrain their occupational future. Both migrants' children and their parents are reported to lack adequate information on the French school system (Commission Nationale Consultative des Droits de l'Homme, 1990, p. 73).

Fourteen per cent of the economically active migrants are younger than 25. Sixty per cent are men, 40 per cent are women. Although the number of economically active young women is still lower than that of men, there is a growing propensity among young migrant women to enter the labour market.

Like their parents, migrant youngsters are concentrated in a few sectors of economic activity. They encounter longer delays than their national counterparts in obtaining a first job. When they find a job it is mostly at un- or semi-skilled levels, even if they have completed vocational training, where they experience less mobility than national job starters. Young migrants are working especially in construction and public works and the steel and metallurgical industries. Young women are overrepresented in the clothing industry (Lebon, 1985, pp. 144-145).

In 1982 one in three young migrants was unemployed, whereas this was one in five for the total population under 25 years of age. Young immigrant women had a registered unemployment rate of 37 per cent, compared with 27 per cent for the men. In following years unemployment among migrant youth increased at a sharper pace than it did among national youth. Even when they have the same qualifications as nationals, migrant youth still suffers from more unemployment (Commission Nationale Consultative des Droits de l'Homme, 1990, p. 74; Costa-Lascoux, 1989, p. 50).

Migrants' mediocre educational attainment, resulting in part from a poor knowledge of the French language, and their inappropriate vocational training based on a lack of information when choosing a trade, result in a poor starting position when entering the labour market. These drawbacks are then reinforced by discriminatory attitudes of employers, who favour national job starters. All these factors severely hinder a smooth transition from school to work and result in the reproduction of the underclass status of the migrant labour force from one generation to the next.

3.4 Discrimination at enterprise level

The actual situation and treatment of migrants at the level of the workfloor has not been the object of specific research in France. Therefore, this section is based on a few scattered observations that were found in the literature. Obviously, further research into this subject is needed.

Raymond (1977, pp. 24-47) reports on the working conditions of construction workers in the Fos industrial area in the south of France. He found that migrants generally perform the most strenuous jobs. Security provisions are reportedly sub-standard. Most work is carried out by sub-contractors who employ mostly migrants who are in an irregular situation. Those who are in a regular situation generally receive the same basic wages as national workers performing the same - unskilled - jobs. However, discriminatory practices exist regarding the payment of premiums with respect to overtime, dangerous work, etc. (see also Giudice, 1989, pp. 193-217). Within the same jobs the division of tasks is clearly discriminatory: migrants perform the more unpleasant and dangerous tasks. They are working at the lower end of the hierarchy and are considered to be "inferior" by both national colleagues and foremen. The segregation existing at the level of task division is also present at the social level: national workers do not mix with "Arabs"; migrants frequently are the object of derogatory remarks and discriminatory jokes. Skilled migrants would be promoted to the position of foremen only when they are reponsible for a group of fellow migrants. Promotion to a position of leadership over national workers was found to be non-existent.

Concerning industry workers, Minces (1973, pp. 222-224) ascertains (based on interviews with an unspecified number of migrant workers) that migrants receive equal pay for equal work, but that differences in the payment of additional premiums result in less take home pay for migrants. This finding was confirmed more recently by Granges (1981, p. 156). Furthermore, it was found that the task division made within jobs frequently results in migrants working with old, defective and dangerous machinery and materials.

Migrants' access to in-plant training improved during the 1970s. These training activities, however, consisted, for the greater part, of language training. Their possibilities to take part in training to improve job qualifications, and thus to gain access to skilled jobs, remained fewer than those of national workers. This is reflected in the low number of migrants working at skilled level (Lattes, 1989, p. 455; Thomas, 1982, p. 72; Verbunt, 1985, pp. 150-152).

Migrants' reaction to unequal treatment and discrimination is generally characterised by resignation. Not fully aware of their rights, they are afraid of being ridiculed, harassed or even of being laid off. This attitude is strengthened by language deficiencies, which occur especially among members of the first generation.

3.5 Entrepreneurship

According to the 1982 census some 30,000 migrants had set up a business of their own. Migrants made up 4 per cent of the total number of entrepreneurs. In the following years the number of non-national entrepreneurs increased. In the period 1982-1986 nine per cent of the licences to open a new business were accorded to migrants. Still, they are underrepresented in this type of economic activity. In 1986 migrants made up 4.2 per cent of the entrepreneurs, whereas their overall proportion in the economically active population decreased to 6.5 per cent (Auvolat and Bennatig, 1988, pp. 39-40).

Contrary to the situation found in other European countries, in France migrants' businesses are concentrated in industry. In the garment industry and the construction sector they make up approximately 7 per cent of all

enterprises. In the services sector, notably in repair, transport and cleaning activities, they represent 3 per cent and in food/retail trade only 1 per cent of all enterprises. Portuguese entrepreneurs are particulary active in the construction sector, whereas North Africans are notably engaged in the garment industry, construction and retail trade (Auvolat and Bennatig, 1988, pp. 44-48).

Most of migrants' entrepreneurial activities in industry are characterised by small production units and the practice of sub-contracting. Construction companies and clothing manufacturers tend to sub-contract most of the labour-intensive part of their production processes to small firms that are run by, and that are employing, migrants. Migrants employed in these firms tend to be undocumented fellow country men of the entrepreneurs. Because of their illegal situation they accept sub-standard wages and working conditions. This cheap and flexible labour force, recruited through ethnic networks, constitutes the main competitive strength of these enterprises. They operate in a highly segmented market: competition with national enterprises practically does not exist, whereas the competition between these migrant enterprises is ferocious (Morokvasic, 1988, pp. 84-92; see also Giudice, 1989).

Whatever the activity they are engaged in, migrants' businesses can be characterised as requiring relatively little investment and skills. As such, entrepreneurship is an alternative to a narrow range of low status jobs or unemployment. However, many businesses lead a precarious existence.

Migrants who are in the possession of a residence card automatically have the right to become self-employed. However, setting up one's own business is prohibited in certain sectors for some nationalities and having the right to become self-employed does not solve all problems. According to Najib (1990, p. 10) regulations tend to discriminate against migrants; non-nationals face particular difficulties when trying to fulfill the conditions to practice certain professions. French diplomas or degrees are often the only accepted proof of qualification.

Mobilisation of resources, such as capital and personnel, through the migrant community appears to be of crucial importance for the setting up of an independent business. No documentation was found on access to or the use of commercial credit. Migrants' businesses are male dominated, entrepreneurs are mostly men. Women's access to entrepreneurship is limited. Unlike men, they cannot mobilise the same kind of ethnic resources (Morokvasic, 1988, pp. 92-95).

Although the number of migrant businesses is on the increase, they are not evenly spread over the economy. Further research into the specific constraints faced by migrant entrepreneurs and would-be entrepreneurs is necessary to assess the incidence and effects of discriminatory hindrances in this field.

4. Federal Republic of Germany

4.1 Migrants and their position in the labour market

Ever since the late nineteenth century migrants have been recruited on a temporary basis to fill acute labour shortages in the quickly expanding industry of the Federal Republic of Germany. Following the economic reconstruction after the Second World War, the booming economy was faced with

labour shortages, which in 1955 led the Federal Government to conclude an agreement with the Republic of Italy on the recruitment of Italian labour. Throughout the 1960s bilateral recruitment agreements were concluded with other Mediterranean countries (Budzinski, 1979, pp. 19-37).

Over the years the number of migrant workers increased to reach an all-time high of 2.6 million in 1973. In that year the total migrant population numbered 4 million, i.e. approximately two-thirds of the migrants were economically active. Since the halt in recruitment of November 1973, the total foreign population increased to over 4.6 million in 1987, but the composition changed drastically: 1.9 million are economically active, whereas 2.7 million are dependent family members. As can be seen from table 5, migrants from the former "recruitment" countries form by far the largest group of the non-national population. Following the German literature, this section will focus on these migrants.

After the 1973 recruitment stop of workers from non-EC countries the number of migrant workers began to decline. Termination of contracts and subsequent loss of residence rights, as well as government policies favouring return migration and the rise of xenophobia in general, resulted in a temporary rise in return migration. However, this return movement did not lead to a decline of the migrant population as a whole, because of increased family reunification and a rise of migrant births within the country. Turks, in particular, engaged in family reunification: their total number went up by nearly half a million, whereas the number of Greeks and Spaniards dropped considerably. At the year end of 1987 over 3.2 million migrants from former recruitment countries resided in the Federal Republic. Turks are the largest single group with nearly 1.5 million residents. Migrants from the former recruitment countries make up 5.3 per cent of the total population. Of all foreigners, nearly 1.4 million are in the labour force; they make up 7.5 per cent of the economically active population (Just, 1989, pp. 47-50; Sen, 1989, pp. 2-11; Ziegler-Schultes, 1988, pp. 17-19).

Table 5 - Non-national population of the Federal Republic of Germany in 1987 as at 31 December 1987

COUNTRIES	Number ('000s)	% of total population
Greece	279.9	0.5
Italy	544.4	0.9
Morocco	55.8	0.1
Portugal	79.2	0.1
Spain	147.1	0.2
Turkey	1,481.4	2.4
Yugoslavia	597.6	1.0
Tunisia	24.3	0.04
Others (including refugees from Third World countries)	1,420.5	2.3
Total	4,630.2	7.54

Source: OECD, 1989.

Migrants are mostly working in the same kinds of jobs as those for which they were recruited originally. Their main sectors of employment are industry (55 per cent), services (20 per cent) and construction (9 per cent). Eighty-five per cent of the economically active migrants work as labourers, of whom 60 per cent perform jobs at unskilled or semi-skilled levels. For Germans these figures are 51 per cent and 22 per cent respectively (Dietz, 1987, pp. 101-117; IG Metal, 1989, p. 75).

Working conditions tend to be poor. A representative survey of 1,696 firms, conducted in the mid-seventies, found that migrant workers are overrepresented in large industrial plants with mass-production; the work performed is characterised by repetition and physical constraints; the accident risks are high. Compared with their German counterparts, migrants perform more shift work and are paid piece rates more often (Gaugler et al., 1978). In 1988, Gillmeister surveyed the working conditions in 79 Berlin (West) firms and concluded that the inequality in labour market and working conditions of migrants, when compared with national workers, persists and has hardly changed since the time of their recruitment (Gillmeister et al., 1989, p. 305). Migrants not only work at the lower end of the labour market; they also receive less pay than national workers. Their average hourly wage is about 10 per cent lower than that of their German colleagues, who perform the same kind of jobs (Mehrländer, 1986, pp. 150-154).

Job mobility is rare. According to the results of the "Representative Study" of 1985, approximately 60 per cent of the migrant workers have not experienced any kind of occupational advancement. If the relatively easy change in position from unskilled to semi-skilled worker is excluded, a real occupational advancement was found for only 12 per cent of the workers. Differentiated by sex, the figures are 16 per cent for men and 6 per cent for women workers. Turks experienced the least upward mobility; a mere 6 per cent (men 8 per cent and women 2 per cent respectively) moved into a skilled job. Chances for job mobility are determined by possibilities to participate in in-plant training. Migrants have limited access to this kind of training. The "Representative Study" found that only 10 per cent of the migrant workforce took part in some kind of training activity. Moreover, most of these participants were already employed in the skilled category (Dietz, 1987, pp. 118-128; Dohse, 1984, pp. 498-499; Mehrländer, 1986, pp. 93-94; pp. 108-121).

Because of the kind of jobs they perform, migrants are particularly vulnerable to the effects of economic restructuring. During the economic crisis of the 1970s, the migrants' share in the total reduction of employment was nearly 50 per cent, whereas their share in the total labour force at that time was around 10 per cent. Migrants were - and still are - overrepresented in sectors and jobs which are the first to be affected by personnel reductions in the event of declining production or changes in production technologies. During the 1980s, the overall unemployment rate decreased to 8.1 per cent, whereas officially registered unemployment among migrants had risen to nearly twice that rate: 15.9 per cent. In reality, this figure will be even higher, since not all jobless migrants register themselves as unemployed, for fear of losing their residence rights. Once unemployed, migrants face on average a longer duration of unemployment than their German counterparts. In 1989 unemployment among migrant men stood at 14.7 per cent, compared with 9.4 per cent for all men, while it was 11 per cent for migrant women, compared with 6.9 per cent for all economically active women (Dohse, 1982, pp. 35-39; IG Metal, 1989, pp. 64-70; Korte, 1985, pp. 48-49).

Recent unemployment figures for the different groups of migrants are not available. According to calculations by Schäfer (1985, p. 79), Turks faced the highest unemployment rate, 18 per cent, in 1983, when unemployment for all migrants stood at 14.9 per cent. Given their labour market profile, it is only reasonable to assume that Turks are still hardest hit by unemployment.

To sum up, Germany's labour market is highly segmented. Migrants, and migrant women especially, occupy disproportionately low skilled jobs with unfavourable working conditions. The wages they receive tend to be lower than those received by nationals, their chances for job mobility are low, and they face high risks of being dismissed.

4.2 Accessibility of the labour market

Structural changes in the economy and the introduction of new technologies resulted in a growing importance of on-the-job training and a general increase of qualification requirements for new jobs. Demand for unskilled labour decreased. Important segments of the migrant population got pushed out of the labour market because of their lack of qualifications, which in turn is the result of the fact that migrants tend to be excluded from qualifying training possibilities. However, apart from changes in demand which are not compensated by a change in supply, migrants are also subject to different forms of discrimination when they apply for a job.

Kremer and Spangenberg (1980) found that migrants have fewer chances than similarly qualified Germans of being selected for a job at the level of skilled workers. They also discovered that full proficiency of the German language did not result in equal job chances. These findings were confirmed by Gillmeister's survey of 79 firms in Berlin (West). He concludes that migrant status negatively influences the job chances of applicants in the majority of the firms surveyed. Migrant applicants face prejudice by personnel managers and other personnel selectors with respect to their trainability, flexibility and motivation. Also, the migrants' adaptability to "informal company norms" was judged to be insufficient. These highly subjective criteria result in discriminatory exclusion of migrant applicants. Turks especially fall victim to this exclusion, whereas Yugoslavs have relatively the best chances of being engaged (Gillmeister et al., 1989, pp. 108-130; pp. 307-311).

The same study also surveyed the use of various recruitment channnels. Most companies tend to fill their vacancies, especially those at skilled and higher level, through internal recruitment. External recruitment, mostly through advertisements, is only used in the last resort. The qualification requirements, and migrants' marginal position in informal company networks, result in an internal labour market which is virtually closed to them. It is only when - mostly temporary - vacancies exist at the unskilled level that firms tend to hire personnel through co-option of their migrant personnel. In other words, possibilities of being engaged are limited to those jobs for which competition with nationals hardly exists. Only three out of 79 firms indicated that they had recruited migrant workers through the Labour Exchange, whereas 24 firms said they had recruited national workers through this medium. Migrants thus have little chance to find a job through both the formal and informal recruitment channels used by firms to fill vacancies (Gillmeister et al., 1989, pp. 111-121).

Migrants are caught in a vicious circle. Because of a lack of initial qualifications and prejudice by personnel selectors, they are excluded from possibilities of gaining job qualifications. This in turn puts them in an

underprivileged position when they apply for a job for which they have to compete with nationals. The majority of migrants are thus confined to the ever-decreasing number of jobs at unskilled level.

4.3 Second-generation migrants: transition from school to work

The overall proportion of non-nationals in German education was 7.9 per cent in 1985. This is slightly above the proportion of non-nationals in the total population, due to demographic factors. Foreigners tend to have more children than Germans. This is reflected in the number of foreign children at primary and secondary school levels, where they make up 8.5 per cent of all pupils. They are overrepresented in pre-school, primary and special education.

Table 6 - Non-National* Pupils in Education in the Federal Republic of Germany, 1985

	Total	Non-national	Percentage
Pre-school education	601 000	113 000	18.8
Primary education	3 827 900	483 300	12.6
Special education	271 400	39 600	14.6
General secondary education	3 016 800	132 200	4.4
Vocational second. education	2 776 300	123 000	4,4
Total	10 493 400	891 100	8.5

* All nationalities
Source: OECD, 1988.

However, as can be seen from table 6, they are underrepresented in general secondary and vocational education. Although on the increase, they make up only 4,4 per cent of all pupils at secondary level, which points to serious shortfalls in educational attainment.

As far as migrant youngsters are concerned, Mehrländer (1986, pp. 46-55) found that over 80 per cent in the age bracket 15-24 years had attended school in the Federal Republic of Germany. Of these youngsters, 60 per cent finished merely primary school and 25 per cent went on to a higher-level school. The attendency rates of boys and girls were roughly the same. Drop-out rates are high and are highest for Turkish boys. According to the most recent figures, the number of migrant children leaving school with a certificate tends to go up slightly.

In the age bracket 15-18 years, less than one-third of the young migrants obtain a proper apprenticeship in the system of vocational training or continue learning within the general education system. Therefore, two-thirds of all young migrants enter the labour market without a proper qualification (Berufsbildungsbericht, 1990, p. 122; see also Reichow, 1990). This can only partially be explained by language and curriculum problems that these youngsters face, especially those who were brought to Germany while already of school age. Their wishes, plans and expectations for education and future employment do not differ much from German pupils (Beer and Collingro, 1989, p. 26, p. 53; Boos-Nünning et al. 1989, pp. 221-237).

Young migrants and their parents tend to be ill-informed about the requirements of the vocational training system, which combines theoretical training in school and enterprise-level training by means of apprenticeships. Furthermore, migrant pupils have fewer chances than national pupils to find such a training place. Employers favour national candidates who, on the whole, have better educational qualifications. Since migrant youths have less access to informal channels to secure an apprenticeship, they are heavily dependent on placement through the Labour Exchange offices. But, while in 1984-1985 job counsellors of the Labour Exchanges found training places for nearly half of all registered apprenticeship seekers, they mediated only 19 per cent of the registered migrant apprenticeship seekers (Beer and Collingro, 1989, pp. 34-53). Although the overall proportion of unplaced migrant apprenticeship seekers went down to 9 per cent (girls 11 per cent) in 1987, it was still double the proportion of unplaced German candidates (Sen, 1989, p. 34). While in 1989 young migrants made up 10.6 per cent of all apprenticeship seekers, they were greatly overrepresented (16 per cent) in the group of unplaced candidates (Berufsbildungsbericht, 1990, p. 31; Zentrum für Türkeistudien, 1990, pp. 10-12).

Although migrants are heavily overrepresented in pre-vocational training courses, this has not helped them much to pick up full vocational training or to move directly into jobs. The content of these courses and unsatisfactory elementary school results put migrant youth at a disadvantage when competing with national youth for scarce training places or jobs. In order to open up additional training places for migrant youth, the ILO initiated a pilot project to train migrant entrepreneurs as job training instructors (Sen, 1989, p. 34; see also: Zentrum für Türkeistudien, 1990). While the first results of this project are positive, the number of pupils involved thus far is too little to have any real impact. But it shows that migrant youth, when given the possibilities, can complete their vocational training successfully.

The poor performance of migrant youth in general, and in vocational training in particular, is reflected in their labour market position. It is estimated that one in four migrants in the age bracket 15-20 years is jobless, which is more than double the quota of the total population in this age bracket (Schober and Stegman, 1987, p. 215). To the extent that migrant starters on the labour market can find a job, over three-quarters of them work in un- or semi-qualified jobs. According to the "Representative Survey" of 1985, 73 per cent of the boys and 85 per cent of the girls who have a job work at un- or semi-skilled levels (Mehrländer, 1986, p. 90).

In other words, the majority of migrant youth ends up in the same kind of jobs as were held by their parents. Because of competition from better qualified nationals and discriminatory selection practices, they, too, are unlikely to be selected for further qualifying training while in employment. Therefore, their prospects for occupational advancement, and thus job-security, remain bleak.

4.4 Discrimination at enterprise level

What is the actual situation and treatment of migrants at the workplace? A case study Dombois (1980; discussed in Dohse, 1982, pp. 50-53) carried out in a car production factory found that migrants are excluded from access to many jobs, for example time-wage jobs and qualified positions such as machine setter, which are allocated through the organisation of on-the-job training processes. Migrants stay longer than national workers at entry level jobs; they are concentrated in production areas with the more unpleasant, strenuous

and lower-paid jobs. Migrants thus remain concentrated among piece-rate workers, and are to a great extent excluded from steadier time-wage jobs. When comparing the career prospects of migrant workers with those of unskilled national workers, Dombois concluded that job allocation processes are clearly discriminatory.

A case study carried out in the tyre manufacturing industry (Kern and Weinberg, 1980; discussed in Dohse, 1982, pp. 54-56) also found that migrants have less chances than their German colleagues of being transferred from the stressful areas of tyre production to higher qualified or less stressful jobs. Migrants reported that they are transferred involuntarily more often than their German colleagues and that they are assigned to machines in which material faults and other mechanical trouble occur more frequently. Obviously, this results in lower production and thus less pay. Moreover, since migrants get blamed for being less productive than national workers, the existing prejudices of foremen and colleagues are reinforced.

Biller (1990, pp. 20-29) compared the occupational categories of migrants with those of national workers in another car production factory. He concluded that Turks and Greeks are in the least favourable position and that they are denied possibilities for internal promotion, whereas Italians and Yugoslavs occupy an intermediate position.

How do migrants experience and react to the discriminatory attitudes they are subjected to? Two studies, based on in-depth interviews with migrant workers, are particularly illustrative of the hostile environment in which migrants work. Hoffman and Even (1985) report on interviews they held with 27 Turkish workers in industries located in the city of Bielefeld, and Just (1989) conducted interviews with 40 migrant workers of different nationalities in industry and services in various German cities. A large majority of the interviewees complain of being treated differently by their German colleagues. Social isolation, such as not being greeted, or being ignored, is common practice. Contacts during work breaks between migrant and national workers are practically non-existent. Migrants are the object of jokes and nagging; whether articulated in public or through graffiti on the walls of factory lavatories, the message put across is the same - foreigners out!

As far as unequal treatment by superiors is concerned, migrants report that their work performance is more vigorously controlled than the performance of their German colleagues. Failures to meet production targets or mistakes made during work tend to be reported immediately to the management by the foremen. Within the same jobs, it is a matter of course that migrants perform the most dirty and unrewarding tasks. When migrant workers report themselves to be ill, they face disbelief and mistrust more often than national workers. Concerning the possibilities of attending qualifying on-the-job training courses, migrants complain that they are not nominated by foremen, irrespective of their work performance, language ability or time served with the company. According to Just (1989, p. 21) migrants generally believe that they receive the same salary as their national colleagues. However, they do mention the fact that overtime work, which they are pressed to do, is not always paid as such. But Hoffman and Even (1985, pp. 80-88) report that Turks are under the impression that they receive less pay than their German colleagues for equal work.

Migrants thus clearly feel discriminated against. They put forward that both formal discrimination in job allocation as well as the more informal variants that occur on the workfloor, have been on the rise ever since the

halt in recruitment in 1973 was followed in the early 1980s by government policies favouring the return of "superfluous" migrant workers. Migrants' general reaction is characterised by resignation. They are afraid to create problems, to be ridiculed or to lose their jobs. Institutionalised means of promotion of workers' interests, i.e. work councils and trade unions, are not thought to be of much help. According to the "Representative Survey" of 1985, only a minority of migrant workers felt their interests were adequately represented by work councils or trade unions (Mehrländer, 1986, pp. 127-147). Migrants' isolation and resignation make them an easy victim of discriminatory practices and daily humiliations at the workplace.

4.5 Entrepreneurship

Relatively little research has been done into the position of migrant entrepreneurs in the Federal Republic of Germany. It is known, however, that in 1987 some 149,000 non-nationals, i.e. nearly 6 per cent of the foreign workforce, had set up a business of their own. Most of them are migrants from the former recruitment countries, with Turks being the largest single group. Sen (1989, p. 20) reports that there are at present over 30,000 Turks who have set up independently.

In the last decade there has been a marked trend among migrants to set up independently, brought about by poor labour market prospects and a change in perspective from return to the country of origin to a prolonged stay in the Federal Republic of Germany. Migrant entrepreneurs tend to be engaged in wholesale and retail food trade and catering, followed by import-export business and travel agencies. Apart from undertakings in the catering sector, most enterprises serve fellow migrant clients.

Migrants face specific difficulties when they want to establish their own business. Because of a lack of educational requirements and/or residence permits many would-be entrepreneurs fail to qualify for an official licence. The complex formalities for obtaining such a licence pose another problem, which is reinforced by the lack of a special advisory service for migrant entrepreneurs. In fact, these administrative obstacles have impeded many migrants, especially those from non-EEC countries from establishing a business of their own (Najib, 1990, p. 13). Lack of entrepreneurial qualities and unfamiliarity with the conditions of the business world in the Federal Republic of Germany, result in the failure of many undertakings. Because most firms only serve a small, ethnically defined market, competition is fierce while growth prospects are limited.

Research on Turkish enterprises in the Federal Republic of Germany (Erichsen and Sen, 1987, pp. 40-43) found that the large majority of these enterprises are traditional family undertakings. Led by male family heads, they employ on average 3.5 people, most of whom are family members. Creating employment opportunities for their children was found to be an important motive for entrepreneurs to start out for themselves. In the catering sector exists a clear correlation between the size of the undertaking and the personnel employed. The bigger the enterprise, the bigger the chance that migrants from other countries, as well as Germans, are among the personnel employed. Entreprises that succeed in attracting mixed clientele, i.e.nationals and migrants, have better prospects than the ones catering only to clients who have the same nationality as the owner. Furthermore, it was found that problems to qualify for licence requirements resulted quite often in the use of German straw men. This would imply that the actual number of migrant entrepreneurs is higher than the number recorded officially.

The scant material presented in this section provides no proof of actual discrimination of migrant entrepreneurs. Further research, for instance into the accessibility of commercial credit, is needed. However, it is clear that migrant entrepreneurs have to overcome specific difficulties when they want to set up their own business. It is also clear that these difficulties are very closely related to the fact that they are migrants. In other words, migrants' low socio-economic position, in which discriminatory elements play a part, is also reflected in the scope for entrepreneurial activities.

5. The Netherlands

5.1 Migrants and their position in the labour market

Since the Second World War different groups of immigrants have settled more or less permanently in the Netherlands. Most of these migrants came from colonies or former colonies and the European periphery. The independence of Indonesia gave rise to an inflow of ethnically Dutch, Eurasian and Moluccan immigrants, all of whom had Dutch nationality. Following the post-war economic boom and subsequent labour shortages, migrant workers from Mediterranean countries were recruited. Bilateral recruitment agreements were concluded with Italy (1960), Spain (1961), Portugal (1963), Turkey (1964), Greece (1966), Morocco (1969), Yugoslavia (1970) and Tunisia (1970). When recruitment was halted in 1974, migration from these countries took the form of family reunification.

Migration from the Dutch Caribbean territory of Suriname and the Netherlands Antilles gained momentum in the years leading up to Surinamese independence in 1975. After independence, Surinamese living in the Netherlands maintained Dutch citizenship, while those living in Suriname lost it. Since then, migration from Suriname to the Netherlands has consisted almost entirely of family reunification. In recent years the number of highly skilled immigrants from developed countries, e.g., Japan and the United States, increased, as well as immigration from other EEC member States. Smaller groups of refugees and asylum seekers also came to the Netherlands.

All migrant groups, except the ethnic Dutch and Eurasians from Indonesia and migrants from developed countries - including the five other original EEC member States - are the object of the official Dutch ethnic minorities policy. The inclusion of Chinese immigrants, who number around 40,000, is presently being debated.

Formulated in 1980, the central objective of the ethnic minorities policy is to increase the integration and participation in Dutch society of those migrants who are considered to have settled permanently in the Netherlands. According to official data and estimates, they number a little over 750,000, or five per cent of the total population. As can be seen from table 7, migrants of Surinamese ethnic origin make up the largest single group, followed by Turks and Moroccans. Migrants from the Mediterranean recruitment countries constitute a little over half of the total (Penninx, 1988, pp. 5-10; Muus 1989, pp. 1-18; idem 1990, pp. 1-22).

The labour market position of migrants has deteriorated over the last decade. While unemployment has decreased in general, the number of unemployed migrants has risen sharply. Unemployment figures for different groups of migrants go up to 40-50 per cent of the economically active population, which

is over three times the figure for the national active population (13 per cent). Furthermore, the duration of unemployment among migrants is longer than it is for Dutch unemployed. Apart from the Antilleans, unemployed migrants have educational levels which are lower than those of their Dutch counterparts. According to a report by the Netherlands Scientific Council for Government Policy (WRR, 1989, pp. 105-109), women migrants appear to be hardest hit by unemployment.

The increase in unemployment corresponds to a decrease in employment opportunities. But when migrants do have work, it is almost invariably in the unskilled or semi-skilled jobs, where relatively few Dutch workers are to be found and little chance for job mobility exists.

Mediterranean workers are still largely to be found in the type of jobs for which they were recruited originally. About 85 per cent are working as unskilled or semi-skilled workers in industry and related activities. As a consequence of economic restructuring, employment in the services sector, notably in cleaning services, has become more important over the years (Penninx, 1988, pp. 23-28).

Surinamese mostly work in the industry and service sectors. Their job levels are generally lower than those of the Dutch, but relatively higher than those held by Mediterranean workers. Many perform clerical jobs in administration and finance. Almost half of all the economically active Surinamese women are engaged in some form of manual labour and one in five is in unskilled manual work. When actual job levels of the Surinamese are compared with those they held in Suriname prior to migration, it becomes evident that migration resulted in a marked downward social mobility for most of them (Reubsaet, 1988, pp. 108-114).

Antilleans tend to be employed in more or less the same jobs as the Dutch working population as a whole, although they are not evenly represented in all occupational sectors. Antillean women are overrepresented in low-qualified medical and welfare activities, whereas both sexes are underrepresented in trade and transport. Their comparatively high job levels can be explained by the high educational level of Antillean migrants. Their educational profile approximates that of the Dutch population. However, educational attainment as such is no guarantee for equitable labour market participation: Antilleans face the same unemployment rates as other migrants (Ruebsaet, 1988, p. 109).

5.2 Accessibility of the labour market

Which factors are responsible for the disadvantaged labour market position of migrants? Supply side characteristics, i.e. lack of training and language proficiency, offer a partial explanation only. The same holds true for explanations which highlight developments on the demand side, i.e. a decline in demand for low-skilled labour and a rise in qualification requirements in general. Extensive research has shown that migrants, when applying for jobs, are also judged by the very fact that they are migrants. Their access to the labour market is severely hindered by a pervasive set up of prejudices and discrimination, both direct and at the institutional level.

Based on several hundred test applications, Bovenkerk and Breuning-Van Leeuwen (1978, pp. 31-57) demonstrated that employers discriminate when they engage personnel. They also found that discrimination occurs more frequently when the secondary labour market is slack. These findings gave way to much research on personnel selection policies by employers.

Table 7. Data and estimates of ethnic minority groups in the Netherlands in 1989, as at 1 January 1989

	CBS and ministries' data and estimates	Total of minorities	% of total population
Mediterranean/recruitment countries			
Turks	176 547[1]		
Moroccans	139 212[1]		
Spaniards	17 381[1]		
Italians	15 988[1]		
Yugoslavs	12 135[1]		
Portuguese	8 037[1]		
Greeks	4 303[1]		
Tunisians	2 677[1]		
Cape Verdeans	2 367[1]		
Total	378 647[1]	378 647	2.5
Persons of Surinamese ethnic origin	210 000[2]	210 000	1.4
Surinamese citizens	15 898[1]		
Persons of Antillean ethnic origin	66 000[2]	66 000	0.4
Persons of Moluccan ethnic origin	40 000[5]	40 000	0.3
Refugees	26 608[4]	26 608	0.2
Vietnamese	6 429[3]		
Sri Lankan	2 675[3]		
Polish	3 168[3]		
Chilean	1 834[3]		
Ethiopian	2 692[3]		
Ghanaian	4 308[3]		
Argentinian	618[3]		
Gypsies	3 700[5]	3 700	-
Caravan dwellers	30 000[5]	30 000	0.2
General total of persons/members of minority groups, as defined by official policy, estimate		754 955	5.0

[1] Official data CBS, nationality criterion.
[2] CBS estimate.
[3] These figures represent the total number of persons living in the Netherlands and having the relevant citizenship; not all of them are refugees.
[4] NIDI: Netherlands Interdisciplinary Demographic Institute.
[5] Ministries' estimates of the previous year.

Source: Muus, 1990(a).

Veenman and Vijverberg (1982) asked 330 employers in the region of the city of Rotterdam whether they were willing to employ migrants. More than one-third (36.1 per cent) responded negatively (p. 126). Brassé and Sikking (1986, pp. 110-111) posed the same question to 20 personnel managers. They found that especially in industries with much unskilled labour, managers had a marked preference for "white, non-migrant" applicants. A representative survey of 300 employers (Lagendijk, 1986) found that, when given the choice between equally qualified migrant and Dutch applicants, a majority of the employers (53 per cent) would prefer the national applicant. Since nearly half of the respondents, especially from trade and industry, declined to give an answer, it seems reasonable to assume that the actual percentage would be much higher in reality.

The fact that ethnic origin is a criterion for selection does not mean that all migrant groups are considered to be equal. Ruebsaet (1988, p. 117) reports on research he conducted on image formation among personnel selectors with respect to recruitment and selection from various groups of migrants. Personnel selectors differentiate by labour qualifications. They believe Moluccans to be best qualified and Antilleans next best. Surinamese occupy an intermediate position. The qualifications of Turks and Moroccans are judged to be bad to mediocre. When asked to compare the suitability of candidates from the different groups with indigenous candidates for specific jobs within their organisations, the Dutch candidates were unambiguously judged to be the most suitable for all jobs concerned. The perceived order of suitability of the various migrant groups was the same as for their perceived labour qualifications. This confirms earlier findings by Veenman (1984), who found that managers' perception of work performance by Turks and Moroccans is definitely unfavourable. Oosterhuis and Glebbeek (1988, p. 250) conclude that discriminatory selection practices occur especially in sectors with a high market dependency, such as commerce and retail.

According to various researchers, the ways in which employers recruit applicants for jobs do not match with the job-searching methods of migrants. Migrants tend to rely on informal searching channels, in particular relatives and acquaintances. They seldom respond to advertisements. Employers, on the other hand, prefer to fill vacancies through internal competition, or through informal recruitment through co-option of those who already work in the organisation, or through employment agencies for temporary labour. External vacancies tend to be advertised in newspapers which are not widely read by migrants. Moreover, the selection criteria and methods used by employers, such as psychological tests, put migrants at a disadvantage. Apart from education and technical skills, the perceived trainability of applicants and social-normative criteria, i.e. motivation, reliability and flexibility, are important criteria for judging applicants. Since these criteria are highly subjective, existing prejudices result in discriminatory exclusion of migrant applicants. The same processes apply to selection and mediation procedures of private employment agencies and the labour exchange offices (Choenie and Van der Zwan, 1987, pp. 1-3; Den Uyl, et al., 1986, passim; Muus, 1990(b), pp. 169-174; Penninx, 1988, p. 30; WRR, 1989, pp. 112-116).

All these factors adversely affect migrants' chances of finding a job. And when they do have a job, they face more risks of being dismissed. Although research is scarce, it seems that considerations of seniority are not applied in the same way as they are to Dutch workers. On the other hand, because most of the migrants are relative newcomers, the "last hired, first fired" principle will apply to them more often. This, in turn, negatively influences their chances of finding a new job (WRR, 1989, p. 114).

One can conclude that migrants' chances of entering the labour market are fewer than those of nationals. Migrants are overrepresented in low-skilled jobs in the weaker sectors of the economy. Since unemployment is about three times higher than it is for Dutch workers, the supply of migrant labour is abundant. Because discrimination was found to occur more frequently in a slack labour market, discrimination of migrant workers has been on the rise during long periods of the 1970s and 1980s.

5.3 Second-generation migrants: Transition from school to work

Due to demographic factors, the number of migrant children in primary education is relatively high, when compared with migrants' share in the total population. As shown in table 8, migrant children are overrepresented in primary and special education, as well as in junior vocational training, whose job-orientation programmes hold little job prospect. The opposite is true in secondary and higher education.

Table 8. Migrant* pupils in Dutch education, 1985-86

	Total	Migrants	Percentage
Primary education	1 468 720	82 775	5.6
Special education	99 545	5 042	5.1
General secondary	804 826	20 434	2.5
Junior vocational	359 252	19 139	5.3
Senior vocational	276 241	3 181	1.2
Higher vocational	148 863	2 223	1.5
Universities	168 858	3 482	2.1
Grand total	3 326 305	136 276	4.1

* Surinamese, Antillean and Moluccan pupils not included.

Source: Fase, 1989.

Although second-generation migrants on the whole are better educated than their parents, the benefits of initial schooling tend to be rather poor when compared with those of the national youth. Migrants' educational performance is characterised by high drop-out rates and minimal attendance in general secondary education. In junior and senior vocational training, migrant children face difficulties in obtaining paid and even unpaid apprenticeships. Thus, their possibilities of becoming experienced and qualified for future jobs are limited. Unemployment rates of migrant youth are higher than those of their Dutch counterparts and approximate the rate of the total migrant population. As educational achievement is a necessary precondition, though by no means a guarantee of access to the labour market, the prospects for future labour market participation of migrant children remain bleak (Fase, 1989, pp. 84-106; Roelandt and Veenman, 1990, passim).

The mechanisms described in the previous section which result in fewer possibilities for migrants in general to enter the labour market, apply to migrant youth as well. Brassé and others (1983, passim) found striking parallels in the labour market position of Turkish and Moroccan youth with

that of their parents. Young Turkish and Moroccan men, too, are mainly working in unskilled jobs in industry, and the girls perform the same kind of jobs as their mothers in industry and services. This is hardly surprising since research into the selection criteria applied to personnel in administrative functions under 25 years of age showed that, in order to be selected for a vacancy, migrants had to be better qualified than nationals. As far as retail trade jobs that involve direct contacts with clients are concerned, it was found that migrant descent is a negative selection criterion which outweighs by far education and experience (Oosterhuis, et al., 1986, pp. 14-15).

Despite the fact that Antillean youngsters are relatively well educated, as are their parents, their unemployment rates are not different from those of other migrant youth. Research indicates that all migrant youngsters, irrespective of their training, face discriminatory obstacles which impede a smooth and successful transition from school to work. And when they do find a job, their position can be characterised at best as a reproduction of their parents' position (Veenman, 1990, pp. 103-112).

5.4 Discrimination at enterprise level

Compared with research which has been done on personnel selection policies and migrants' access to the labour market in general, little research has been conducted into the actual treatment of migrants at the level of individual enterprises.

Brassé and Sikking (1986, passim) systematically compared the formal position of migrants in 14 firms and organisations to those of Dutch workers. Mediterranean workers held the lowest position compared with Antilleans, Surinamese as well as Dutch. To search for reasons which would explain these differences in formal positions, the researchers formed pairs of Dutch and migrant workers with more or less comparable qualities. Statistical analysis showed that the differences can be explained by age, sex, the number of years in service and especially by differences in the level of education. At first sight, no discrimination was involved. However, within the matched pairs the take-home pay of the Dutch was slightly higher. Chances of being admitted to training courses, which could subsequently lead to promotion, were found to be practically non-existent for migrants. The selection of candidates for these courses is carried out by foremen and personnel officers, who are Dutch. They hold the same prejudices concerning migrants' trainability, motivation and reliability as personnel selectors.

Migrants' situation gets worse at the informal level, i.e. relations on the workfloor. Work allocation within the same functions results in migrants doing the dirty, dangerous or dull jobs no one else wants to do. It is to them that the unreliable machinery and equipment are assigned. The distribution of tasks is decided upon by foremen and other personnel responsible for production, all of whom are Dutch. In other words, at the level of informal task allocation, where practical task divisions are made, unequal treatment and unfair attitudes are an everyday practice.

During working hours, migrants often face discriminatory jokes and remarks by their Dutch colleagues. This results in tensions and a marked segregation between national and non-national workers. Contacts during breaks are limited: social contacts across migrant group boundaries are virtually non-existent (Sikking, et al., 1987, pp. 17-25).

According to Brassé and Sikking (1986, pp. 66-78), especially Turks and Moroccans fall victim to formal and informal discrimination at the workplace. Italian, Portuguese, Spanish and Yugoslav workers, as well as Surinamese and Antilleans face less discrimination. This is in perfect accordance with their group characteristics, as perceived by their Dutch superiors. Participation in workers' councils within the firms and in personnel unions differs along the same lines: Turks and Moroccans are hardly involved, whereas Surinamese and Antilleans participate at levels not too different from those of the Dutch. In effect, the socio-economic position of migrants in the society at large is reproduced at the enterprise level.

5.5 Entrepreneurship

Since migrants face enormous difficulties when trying to enter the labour market, it is no wonder that the number of small entrepreneurs among migrants has risen considerably in recent years. However, when compared with the Dutch population, where approximately 10 per cent of the economically active run a private business, the number of migrants who establish their own business is still low. Apart from Greeks and Italians (23 and 12 per cent, respectively), the share of entrepreneurs in the active population of the different migrant groups is lower than it is for the Dutch. For example, Turkish and Moroccan entrepreneurs respresent only 3 and 2 per cent, respectively, of their economically active populations (Lindo, 1987, discussed in Najib, 1990, p. 15). Generally speaking, independent activities in the catering sector, such as restaurants, tend to attract different groups of clients, whereas tropical groceries, Islamic butcheries and coffee houses mainly cater for members of their own group (WRR, 1989, pp. 116-120).

According to Cross and Entzinger (1988, p. 27), racism and declining job prospects have forced many who otherwise lack the experience and aptitude for private business into working for themselves. If this is true, how can the absolute and relative low numbers of migrant entrepreneurs in the Netherlands be explained?

Boissevain and Grotenbreg (1988, p. 238) found that discrimination and unemployment are relatively minor factors in the decision to become self-employed for Surinamesse in Amsterdam. According to them, socio-cultural factors, such as a preference for independent work and an ability to make optimal use of the capital and labour resources of the extended family, are far more important in Surinamese's decision and possibilities to set up their own business.

Whatever the reasons for setting up independently, migrants face specific problems when trying to establish their own business. Because of a lack of sufficient capital it is often difficult to start a business. Access to commercial credit is limited since banks perceive migrant entrepreneurs as high-risk borrowers. Language problems and lack of familiarity with the necessary procedures impede access to governmental support facilities for small- and medium-sized entrepreneurs. Migrants' entrepreneurial activities are concentrated in fields for which no official permits are needed and which require relatively modest capital investments: coffee and tea houses, shops, services, small confectionery workshops and the like. Competition is fierce and profits are low. The financial position of many enterprises, especially those owned by Turks and Moroccans, is reported to be bad (Penninx, 1988, p. 31; Najib, 1990, p.15).

In conclusion, within the ranks of entrepreneurs in the Netherlands, migrants, again, hold a low position. They are underrepresented in the total group of entrepreneurs, and access to capital and governmental support facilities is limited. Business results tend to be poor at best. Although migrant entrepreneurship may have positive aspects from a qualitative point of view, in quantitative terms it has very little impact on the migrants' position in the labour market.

6. Switzerland

6.1 Migrants and their position in the labour market

Switzerland has a long tradition of immigration. Already in 1914 foreigners comprised over 15 per cent of the population. Most of them had come from neighbouring countries to work in the construction and public works sector. As a consequence of the world wars and the interwar crisis, their proportion declined to 5 per cent of the total population in 1941. Immediately after the Second World War a new wave of immigration began. In 1950 there were 285,000 foreigners living in the country (6.1 per cent of the total population). Their number reached a peak of 1,065,000 (16.8 per cent) in 1974. However, the composition of the group of immigrants changed. Most post-war migrants were Italians, complemented by other Mediterraneans, who took up mostly unskilled jobs in the quickly expanding industrial sector (Hoffmann-Nowotny, 1985a, pp. 109-110).

Migrant workers were recruited by employers rather than by the government, but admission and residence was always closely controlled by the authorities. Swiss immigration policy was clearly determined by the needs of the economy. Because post-war economic expansion was expected to last only temporarily, immigration policy at first aimed at rotation as a means of preventing immigrants from staying permanently. Admission of family members was kept to a minimum. This policy was eased at the end of the 1950s, as a consequence of increasing competition for foreign labour between the west European countries. However, the longer the need for migrant labour lasted and the larger the proportion of foreigners grew, the more dominant the aim of immigration regulation and control became. A national quota on migrants to be admitted was introduced in 1970 as a result of grassroots pressure deriving from the xenophobic issue of the threat of "over-foreignisation". Contrary to other European countries, Switzerland's immigration halt was thus not dictated by economic but by political considerations (Hoffmann-Nowotny, 1985b, pp. 206-222; Evrensel, 1987, pp. 260-262).

Foreigners in Switzerland are divided into three main categories. Those with an annual permit are granted the right to work and to reside on a yearly basis. Under this permit, job and residential mobility are limited during the first year but family reunification is possible. After five continuous years of stay, most foreigners qualify for a permit of permanent residence. However, for Austrians, Germans, Greeks, Turks and Yugoslavs and nationals of the former socialist countries of Europe this period is ten years. The third category are holders of a seasonal permit which entitles them to work and to stay in the country for a maximum of 9 months. After having worked for 36 months during four consecutive years, they can apply for an annual permit with an immediate right to family reunification. Other categories are frontier workers, who are granted a work - but not a residence - permit, workers on special short-term permits and students.

The annual permit is the main instrument of Swiss immigration policy. The quota of annual admissions to the country is revised each year; it varies in line with the state of the labour market and the number of foreigners who drop out of the statistics due to naturalisation, death or return to their home country. In recent years, annual permits have been accorded only to foreigners possessing some skill or qualification.

It is difficult to compare the foreign population with the foreign labour force, since not all workers are regarded as belonging to the population. For frontier workers this is evident, but seasonal workers, who spend most of their time in Switzerland, are excluded from population data as well. Therefore, it should be taken into consideration that data on the foreign population refer only to foreigners who are in possession of an annual permit or a permit of permanent residence. For reasons of comparison the data on the foreign workforce presented in this section refer only to these two groups, unless it is specifically stated that seasonal and frontier workers are included.

At the end of 1989 a little over 1 million foreigners were residing in Switzerland. They made up 15.8 per cent of the total population. As can be seen from Table 9, Italians are the largest single group, followed by Yugoslavs and Spaniards. Migrants from Mediterranean countries make up 71 per cent of all foreigners. The total number of foreigners decreased during the second half of the 1970s by almost 15 per cent, as a consequence of the restrictive immigration policies and the economic crisis of 1974. In the early 1980s it increased once more, to stabilise later at approximately 1 million. Official policy aims to keep this figure stable. Restrictive policies resulted in a marked decrease in the number of foreigners with an annual permit, since many permits were not extended. Consequently the proportion of holders of a permanent residence permit went up. Although in 1989, 74 per cent of all foreigners had resided more than ten years in the country, and thus had obtained a permanent residence permit, Switzerland has still not defined itself as an immigration country (Hoffmann-Nowotny, 1985a, p. 111).

At the end of 1989, nearly 632,000 foreigners were in the labour force. In 1986 they made up 17.4 per cent of the total economically active population. When seasonal and frontier workers are also taken into account, this proportion rises to approximately 25 per cent. Foreigners' activity rate of 60.7 per cent is well above the 1986 national average of 49.4 per cent. The Portuguese and Spaniards have the highest rates, 65.5 and 64.5 per cent, respectively, whereas the Turks' activity rate, 51.6 per cent, is close to the national average (ILO, 1988; Office Fédéral des Etrangers, 1990).

45 per cent of the foreign workforce work in the services sector, mostly in commerce and hotel and catering. 40 per cent work in industry, notably in metallurgy and machinery production and 19 per cent are in the construction sector. Many of the foreign women, who constitute one third of the foreign workforce, work in the services sector whereas the majority of the men are employed in the industrial sector. When the foreign workforce is broken down by sector and by nationality, it becomes obvious that Italians, Yugoslavs and Turks are overrepresented in industry. They make up 42 per cent, 12 per cent and 8 per cent, respectively, of the total foreign workforce in this sector; these proportions are well above their respective shares in the non-national workforce. In the construction sector, Italians (46 per cent), Spaniards (16 per cent), Yugoslavs (16 per cent) and Portuguese (11 per cent) are overrepresented whereas all Mediterranean migrants - with the exception of the Portuguese - are underrepresented in the services sector (Office Fédéral des Etrangers, 1990).

Table 9: Non-national population* of Switzerland in 1989 as at 31 December 1989

Nationality	Number	Percentage	Percentage of total population[1]
Italian	379,424	36.5	5.8
Yugoslav	116,833	11.2	1.8
Spanish	114,688	11.0	1.7
German	80,931	7.8	1.2
Portuguese	68,969	6.6	1.0
Turkish	59,450	5.7	0.9
French	48,718	4.7	0.8
Other	171,312	16.5	2.6
Total	1,040,325	100.0	15.8

* Excluding refugees, seasonal and frontier workers and international organisations' staff

1 1986 Official Estimate

Sources: - ILO, 1988
- Office Fédéral des Etrangers, 1990.

For a comparison of foreigners' sectoral distribution with that of the national economically active population the most recent data available are those of the 1985 Census of Industries. According to these data 35 per cent of the foreigners worked in industry, compared with 24 per cent of the economically active nationals. For the construction sector these proportions were 19 and 8 per cent, respectively. As can be expected, the proportions in the services sector were the other way around: 45 per cent of the foreigners compared with 67 per cent of the Swiss worked in this sector. Foreigners, notably Mediterranean migrants, are thus concentrated in the sectors of industry and construction. When compared with the 1989 figures, it becomes clear that the overall distribution of the foreign workforce over industry and construction, on the one hand, and the services sector, on the other, remained stable. Whereas in the other countries discussed in this report, the employment of foreigners in the services sector has been increasing continuously, this is not the case in Switzerland (Office Fédéral de la Statistique, 1988).

No recent data were found on the type of jobs held by foreigners. According to the 1980 Census, 48 per cent of the foreigners worked as manual labourers, compared with only 23 per cent of the national workforce. Unfortunately, these data are not broken down into job levels (CERI, 1987), pp. 136-138.

Hoffmann-Nowotny (1985a, p. 129) refers to a study by Schöneberg (1980), who estimated the proportion of skilled workers to be 40 per cent of the total foreign workforce. According to Hoffmann-Nowotny this percentage, which is high compared with other European countries, indicates that a considerable number of migrants received occupational training and thus have been able to move from the position of unskilled worker to that of skilled worker. Unfortunately no documentation on migrants' access to and participation in on-the-job training or on their working conditions in general could be traced.

The unemployment rate of foreigners stood at 1.4 per cent at the end of 1987. Although low compared with other European countries, it was still twice as high as the overall unemployment rate in 1988 (OECD, 1989; ILO, 1989). Furthermore, it should be remembered that unemployment rates of foreigners tend to be artificially low. Once unemployment benefits have been exhausted for annual permit holders, their permits may no longer be renewed and they are expected to leave, which would result in the export of unemployment. In actual fact, the prevailing shortage of labour in Switzerland in recent years has led to a situation where the non-renewal of annual permits is quite exceptional.

Due to a lack of documentation, it is not possible to assess the relative weight of factors such as differences in job qualifications, experience and seniority, that could explain migrants' unfavourable position, as well as the way in which these factors might be influenced by discriminatory practices.

6.2 Accessibility of the labour market

No documentation was found on migrants' chances of finding a job. Given the fact that foreigners' unemployment rate is double the total population's, their chances would appear to be relatively poor. Moreover, even when migrants do have access to the labour market, the question remains to which sections they have access. Since migrants are less qualified than nationals, the majority are employed at a lower status. What chances do they have of entering better qualified jobs? Given the xenophobic manifestations that gave rise to the adoption of restrictive immigration policies in 1970, it seems not unlikely that migrants are the object of prejudice and discrimination, especially when they try to get a job outside the traditional realm of migrant occupations (see Bory-Lugon, 1977, passim).

An indication for the occurrence of discrimination is given by Evrensel (1987, pp. 270-274). Based on interviews with 65 Turkish migrants in the city of Zürich, she found that the majority consider themselves to be alien and discriminated against by the national population. Unfortunately, no questions were asked with respect to work and job application experiences. Obviously, this is a subject which needs to be surveyed further, along with the situation on the demand side of the labour market.

6.3 Second generation migrants: transition from school to work

The demographic structure of the foreign population approximates that of the national population. In 1983, 16 per cent of the foreigners were under 15 years of age, compared with 14.5 per cent of the total population. This is reflected in the enrolment rate of foreign children in Swiss education, which stabilised at a little under 16 per cent during the 1980s.

As can be seen from Table 10, foreigners made up 15.9 per cent of all pupils in Swiss education in 1986. Although relatively high, the proportion of non-national pupils in pre-school and normal primary school has been declining over the past decade to 17.5 and 16.9 per cent, respectively. The number of foreigners in special education, however, has increased to 29.5 per cent; i.e. three in every ten pupils in this type of education are non-nationals. The proportion of foreigners in secondary education increased steadily to 16 per cent in the compulsory first cycle and to 12.5 per cent in the second cycle. Within this last cycle, relatively more foreigners attend the general education stream than the vocational training stream (OECD, 1988, pp. 138-139).

Table 10: Non-national* pupils in Swiss education, 1986 (in per cent)

Pre-school education	17.5
Primary education	17.9
- normal	16.9
- special	29.5
Secondary education	14.2
- 1st cycle	16.0
- 2nd cycle[1]	12.5
- general education	13.1
- vocational training	12.3
Total	15.9

* All nationalities.
1 Compulsory education ends after the first secondary cycle. Pupils who continue into the second cycle have to choose between general education or vocational training.
Source: OECD, 1988.

The fact that foreign children are still underrepresented in the second cycle of secondary education means that many of them leave school after completion of compulsory education. They enter the labour market at an early age to take up jobs at unskilled level. The relatively high enrolment rate of foreigners in the general education stream can be explained by the high proportion of foreign children at private boarding schools, i.e. foreign children that do not belong to the social stratum of migrants. When enrolment in the second cycle is broken down by nationality it becomes clear that migrant children (Italians and other Mediterranean nationalities) are mainly found in vocational education, whereas foreigners in the general education stream are mostly western Europeans (CERI, 1987, pp. 139-150).

Within the vocational training system, which comprises both practical training in firms and theoretical training at school, migrant youth is chiefly entering trades requiring the shortest training periods, i.e. technical and personal care crafts (Keller and others, 1989, p. 231).

Thus, the overall educational attainment of migrant youth is poor. But when compared with the attainment of national youth from the same - lower - social strata, no difference in achievement was detected. This leads Hoffman-Nowotny (1985a, pp. 120-133) to conclude that, within the Swiss educational system, no discrimination based on national descent exists. However, this does not apply to the labour market. Migrant youths face more difficulties in finding positions as apprentices than Swiss youths. In general, poorly qualified migrant youngsters have less occupational opportunities than equally qualified nationals. But for higher qualified labour market entrants, no differences in opportunities were discernible.

No data on migrant youths' unemployment were identified. But given the fact that on average they are less qualified than national youth and discrimination of migrants occurs especially at the lower end of the labour market, it seems only reasonable to assume that migrants' transition from school to work is more problematic than that of their national counterparts.

6.4 Discrimination at enterprise level

No documentation on this subject was found.

6.5 Entrepreneurship

Foreigners' access to entrepreneurship is limited. Those with an annual permit need permission from the Foreigners' Police before they can engage in an independent activity. The holders of a permit of permanent residence are allowed to take up independent activities with the exception of certain occupations, reserved for Swiss nationals or requiring a special Swiss diploma (Hoffman-Nowotny, 1985b, p. 219). No further documentation was found on these legal restrictions and their effects on foreign entrepreneurship. The same applies to the number of entrepreneurs, their nationalities and the type of business they engage in. Research is needed to assess the setting up of businesses, as well as to assess the extent of discriminatory hindrances that non-nationals face, both within and outside the legal system.

7. United Kingdom

7.1 Migrants and their position in the labour market

Like other west European countries, the United Kingdom long considered itself not to be an immigration country, notwithstanding the fact that already during the industrial revolution there were nearly 1 million non-nationals, mostly Irish, working in British industries. Their number fell sharply during and after the First World War. Labour shortages after the Second World War were met by recruitment of migrant labour from the Empire's colonies and ex-colonies. From 1948 onwards, a growing stream of migrants came from the West Indies. In the 1950s others came from newly independent India and Pakistan, followed in the 1960s by migrants from former colonies in Africa. In the early stages of post-war immigration all these New Commonwealth migrants were accorded rights to British citizenship and free entry. This flow continued until it was interrupted by declining economic demand and the introduction of immigration controls in the early 1960s. Thereafter, immigration regulations became ever more restrictive, denying right of entry to large groups of United Kingdom passport holders. Since the Immigration Act of 1971 came into force, migration to the United Kingdom largely took the form of family reunification (Smith, 1977, pp. 23-30).

Unlike many other countries in western Europe, the United Kingdom does not maintain a system of population registration. The only source of data which covers the entire population is the population census, which is taken every ten years. According to results of the 1981 census, there were over 3.3 million foreign-born residents in Great Britain. Nearly half of them were born in New Commonwealth countries. The actual migrant population, including both foreign and British-born, as well as United Kingdom and non-United Kingdom passport holders, is larger. Following British practice, in which they are commonly referred to as "Britain's black population", this section will focus on the labour market position of New Commonwealth migrants and their descendants in British society. The best source of information on the actual size of this population is the biennial labour force survey, which identifies migrants by self-classification of ethnic origin.

As can be seen from table 11, nearly 2.5 million of the United Kingdom's inhabitants are migrants or are descendants of migrants, which amounts to 4.6 per cent of the total population. Migrants from India are the largest single group (745,000), followed by West Indians and Pakistanis. Together they make up two-thirds of the total migrant population. More than half of all West Indians are born in the United Kingdom; for Indians and Pakistanis these figures are 37 and 43 per cent respectively. The relatively high number of UK-born West Indians can be attributed to the fact that they were the first group of post-war immigrants; their children and grandchildren have become more numerous than the group of initial migrants.

Migrants make up 4.8 per cent of the total population of working age. Their overall economic activity rate (67 per cent) is lower than that of the national population (79 per cent). The overall activity rate of West Indians is the same as that of the national population, whereas Pakistanis and Bangladeshis have the lowest rate, 49 per cent. The activity rate of West Indian men approaches the rate of nationals, while the activity rate of West Indian women is higher than that of national women. In the 16-24 age group the differences in activity rate are the most pronounced; the immigrants' rate is 57 per cent against 79 per cent for the national population. Young immigrant women have an activity rate of 52 per cent, compared with 73 per cent for young women of national origin. These lower activity rates can partially be explained by the fact that young immigrants tend to stay longer in education than their national counterparts. Also, young immigrant women, especially Muslims of Pakistani and Bangladeshi origin tend to stay at home and thus to be unavailable for employment because of cultural and religious reasons. All in all, the activity rates of West Indian migrants in different age brackets come close to, or surpass the rates of the national population, whereas the activity rates of Pakistani and Bangladeshi migrants tend to lag far behind, with Indian migrants taking the middle ground (Employment Gazette, March 1990, pp. 126-130).

Although migrants account for only 4 per cent of the economically active population, they form a sizeable element in the labour force of certain firms and industries. Thirty-one per cent of all migrant men in employment are working in industry and manufacture (notably in shipbuilding, vehicle production and textiles), compared with 29 per cent of all working men of national origin. The distribution, hotel and catering sector employs 29 per cent of all migrant men, compared with only 16 per cent of the national working population of male sex. Migrant women are more likely to be working in health services and in the manufacturing sector than national women (ibid., p. 130).

The industries and services in which migrants are concentrated share the following characteristics: shortage of labour, shift working, unsocial hours, low pay and an unpleasant working environment. Cohen and Jenner (1981, pp. 122-124) argue that, because migrants have been willing to perform shift work for low wages, the contraction of the textile industry slowed down; the same will apply to other industries as well. In other words, much of migrant labour tends to be replacement labour, employed in socially undesirable jobs which were vacated by the national workforce (Phizacklea and Miles, 1980, pp. 17-20).

In the second half of the 1980s, more than half of all migrant men engaged in employment worked in a manual occupation, most of them in un- or semi-skilled jobs. Considerable differences between the various groups of migrants exist in the type of jobs they hold. Two-thirds of all Pakistani/Bangladeshi men work as manual labourers; for West Indian and

Table 11 - Population of the United Kingdom by Ethnic Groups and Country of Birth, 1985-1987

Ethnic group	Country of birth			Total (all countries)		
	UK %	NCWP[1] %	Others %	%*	Number ('000)	% of total population
White	96	1	3	100	51,333	94.4
All ethnic minority groups	43	48	8	100	2 473	4.6
- West Indian[2]	53	45	1	100	521	1.0
- African	37	50	10	100	105	0.2
- Indian	37	60	2	100	745	1.4
- Pakistani	43	55	1	100	404	0.7
- Bangladeshi	31	67	1	100	111	0.2
- Chinese	26	47	26	100	120	0.2
- Arab	13	2	84	100	71	0.1
- Mixed	76	14	9	100	255	0.5
- Other	31	36	31	100	141	0.3
Not stated	70	3	5	100	570	1.0
All ethnic groups	93	3	3	100	54 376	100

Source: Labour Force Survey 1985-1987

[1] New Commonwealth and Pakistan.
[2] Including Guyanese.
* Figures do not add up to 100 per cent due to non-response and rounding.

Indian men these proportions are around three-quarters and one half, respectively. The share of skilled labour is approximately 25 per cent for Pakistani/Bangladeshi men and 40 per cent for Indian and West Indian men. In non-manual occupations all migrant groups, with the exception of Indians, are underrepresented. More than half of all migrant women who are engaged in employment work in a non-manual occupation, most of them in clerical or related work. Most of the women who work in manual occupations perform jobs at un- or semi-skilled level, while Indian women are more likely to work at skilled level (Employment Gazette, March 1990, pp. 128-129; Newnham, 1986, pp. 1-9).

Surveys conducted by Smith (1977, pp. 72-88; 182-190; 1981a pp. 148-149) found that there was a strong tendency among migrants, especially men, to occupy jobs at lower levels than nationals, to an extent that cannot be explained by a difference in educational or job qualifications. It was found that migrants earn less than nationals at comparable job levels, or have to work shifts to achieve similar earnings. Chances for job promotion are markedly lower than those for nationals; employers are reluctant to promote migrants to supervisory positions in which they would be responsible for national workers (see also Blackburn and Mann, 1981).

Official unemployment rates have been decreasing over the last years, but the rates for migrants remain higher than those of the national population. In 1988 the migrants' overall unemployment rate was 13.5 per cent, compared with 8.5 per cent for nationals. Pakistanis and Bangladeshis were hardest hit: one in four was out of work compared with one in seven for West Indians and one in eight for Indians. For migrant men the registered unemployment rate was 14.2 per cent, compared with 8.6 per cent for nationals. Migrant women's registered unemployment rate was 12.5 per cent, compared with 8.4 per cent for national women (Employment Gazette, March 1990, p. 133). The actual unemployment rate of women, both migrants and nationals, should have been higher, since Cross (1986, p. 35) found that women are far more likely than men to be unregistered. Not only do migrants face a higher risk than nationals of losing their job, once they are unemployed they face longer periods of unemployment.

Migrants' high unemployment rates can only partially be attributed to their industrial distribution or to lacking qualifications. Smith discovered that, whereas national workers run a risk of becoming unemployed especially when they are unqualified, migrant workers' risk of losing their job is higher, regardless of their qualifications (Smith, 1981a pp. 150-152). The kind of jobs that migrants hold offer only a partial explanation. Migrants are concentrated in un- or semi-skilled jobs, i.e. the jobs that are prone to elimination during the introduction of new production technologies. Within these jobs, migrant workers run more risks of being laid off than national workers, because they are seen as being unsuitable to work with new technologies (Newnham, 1986, p. 22). Brown caclulated what the unemployment rate for national workers would have been if they had been employed in lower job levels in the same proportion as migrant workers are. He found that their unemployment rate would have been higher than it is at present, but still not as high as present unemployment levels for migrants (Brown, 1984a, discussed in Newnham, 1986, p. 22). The conclusion is inevitable: discrimination has kept migrant workers in jobs with low skill requirements, and further discrimination results in migrants being more likely to lose their jobs than their national counterparts. How discrimination affects migrants' chances of finding a job will be looked at in the next section.

7.2 Accessibility of the labour market

Various reasons have been put forward to explain why unemployment among migrants and their descendants is higher than it is among nationals. One explanation states that migrants are concentrated in manual occupations in industries which are declining and that therefore they are especially vulnerable to unemployment. This may have been true for the first generation of migrants who came to the United Kingdom, but the fact that migrants are still overrepresented in these jobs strongly points to the existence of discriminatory factors which impede job mobility.

Migrants' relative lack of educational qualifications is another argument put forward to explain their labour market situation. Since the children and grandchildren of immigrants attained higher educational qualifications than most of their parents had, one should expect their labour market position to have improved considerably, which is not the case (Brown, 1984b, p. 307). Research indicates that educational background is of little relevance in recruitment for many jobs; formal educational qualifications were found to be an ad-hoc and arbitrary basis of employers' decisions (Campbell and Jones, 1982, discussed in Newnham, 1986, p. 23). Therefore, the lack-of-qualifications argument does not explain migrants' labour market position either. On the contrary, research indicates that the more highly

trained a migrant is, the greater the chances are he/she will be discriminated against (Allen, 1978, p. 14). A study on employment perspectives among graduates of universities found that nationals have the advantage over migrant graduates in obtaining jobs, although their qualifications were equivalent (Ballard and Holden, 1981, pp. 172-175).

Migrants' lack of knowledge of English is another commonly used explanation. While this may be true for Asian migrants, it does not apply to the majority of West Indians and certainly not to second- and third-generation West Indians. Moreover, language testing is frequently used to discriminate against migrants who apply for unskilled jobs, where language ability is not very relevant for the tasks to be performed (Newnham, 1986, p. 24).

This brings us to discrimination as an explanatory factor. Direct discrimination, which occurs when an applicant is not employed because of the fact that he or she is of migrant origin, has been unlawful since the 1968 Race Relations Act came into force. Indirect discrimination, which occurs when the policies and practices of an institution appear to be fair while in practice they do discriminate against a particular group, has been outlawed by the 1976 Race Relations Act. Despite the existence of these anti-discrimination laws, discrimination against migrants has been shown to continue on a widespread basis.

A study covering nearly 300 plants showed that migrant applicants for un- and semi-skilled jobs faced discrimination in 46 per cent of the occasions. When a pair of applicants, composed of a migrant and a national with similar qualifications, age and experience, presented themselves for the same job, the migrant applicant was rejected in nearly half of the cases and most of the time when this was not the case the migrant was offered an inferior job. Discrimination was stronger against applicants for unskilled than for semi-skilled jobs. It was found to be based on colour prejudice: levels of discrimination against Indians, Pakistanis and West Indians were roughly the same, whereas a Greek applicant - who was included in the test group specifically to test this thesis - was discriminated against in only 10 per cent of the cases (Smith, 1977, pp. 104-117).

The same study included a test of discrimination when applying in writing for white-collar jobs. Asian and West Indian applicants failed to get an interview in 30 per cent of the cases, compared with only 10 per cent for Italian applicants. Since this test only identified discrimination at the screening stage, it can safely be assumed that a still higher proportion of these applicants would have been rejected by the time the selection was finally made (ibid., pp. 117-126).

A more recent survey, designed to measure achievements since the first Race Relations Act came into force, found that there had not been much progress. More than a third of employers still discriminate against migrant job applicants; in other words, the phenomenon remains widespread in the United Kingdom (Brown and Gay, 1985, discussed in Newnham, 1986, p. 25).

Discrimination is not confined to employers. Dex (1982, pp. 26-27) found that labour exchange personnel consider migrants to be less desirable workers than equally qualified nationals. This presents real problems for migrants when one takes into account that they rely more on labour exchange services than nationals, who make more use of advertisements when looking for a job. Smith (1981a pp. 156-157) found that dependence on the Labour Exchange holds true for West Indians in particular, whereas Indians and Asians are more likely to use informal job search channels. Especially in the case of Asians,

who face language difficulties as well, informal job search methods tend to lead to low levels of occupation, since family contacts are less able to provide access to skilled employment (Dex, 1978, pp. 35-38).

As far as young people are concerned, a study conducted by the Commission for Racial Equality found that migrants tried just as hard as nationals to find employment, but with substantially less result. Although migrant applicants had fewer qualifications, their lack of success to secure employment could not entirely be attributed to these differences (CRE, 1978, discussed in Cross, 1986, p. 51). Dex (1982, p. 26) reports that especially West Indian youths use the Careers Service of the Labour Exchange as a major part of their job search, whereas national youth rely more on advertisements and informal contacts. A recent study on employment prospects of migrant graduates found that they face greater difficulties in obtaining suitable employment than graduates of national origin. When they do find a job, its status is likely to be inferior to that obtained by a similarly qualified national graduate, and promotion is more difficult to obtain (Brennan and McGeevor, 1990, pp. 47-78).

The conclusion is clear. Discrimination in the labour market is widespread. It seriously impedes migrants' possibilities of securing a job, whatever their level of qualification. When they have a job, men tend to be concentrated in the least skilled manual jobs or in the less desirable skilled areas, while women are concentrated in the least attractive sectors of non-manual employment. Moreover, prejudice and unequal treatment result in less chances for promotion and more risks of being fired than faced by national workers.

7.3 Young immigrants: transition from school to work

The immigrant population of the United Kingdom is a young population. More than half of all immigrants are under 25 years of age, whereas only one third of the national population is under 25 years of age. Because the compilation of statistics on the number of immigrant pupils in national education was discontinued in 1972, there are no recent figures available on immigrants' participation in education. In 1980 it was estimated that about 7 per cent of all pupils in primary and secondary education were of migrant origin. They were overrepresented in special schools for the educationally subnormal, which was found to be a consequence of cultural bias of tests used in the educational system, low teacher expectations and poor self-esteem and self-concept (The Runnymede Trust, 1980, pp. 92-103).

Migrant children are disadvantaged in the educational system. The 1985 Swann report and more recent research provide ample evidence of constant and widespread prejudice, racial harassment, violence and discrimination in British schools. Children, parents, teachers and school administrators are involved in a wide range of discriminatory acts, ranging from refusal of admission to name-calling, fighting and even worse (The Runnymede Trust, 1985, passim; idem 1989, passim).

Nevertheless, the 1988 labour force survey found that migrant youngsters were more likely to continue in education than their national counterparts. In the 16-24 age bracket, 27 per cent of the migrant youth was engaged in full-time education, compared with 11 per cent of the national youth. As far as the working population in this age bracket is concerned, 29 per cent of the migrants possessed no formal qualifications, compared with 24 per cent of the nationals. Pakistani/Bangladeshi youth were least qualified: 55 per cent possessed no qualifications. The qualification profile of West Indian youth

resembled that of the national youth, while Indians were on the average better qualified (Employment Gazette, March 1990, pp. 128; 132).

These findings correspond with earlier findings by Cross (1987, p. 124), who determined that school performances of Bangladeshi and West Indian pupils were lagging behind those of national pupils, while Indian pupils tended to do better. The conclusion drawn earlier, that educational qualifications as such bear little relevance to employment perspectives, is confirmed by the unemployment rates of Indian youths. These are far higher (22 per cent) than the unemployment rates of national youths (15 per cent).

The educational under-achievements of immigrant youth cannot be related to their occupational aspirations. They are reported to be keen to pursue skilled work; men usually prefer jobs in the skilled manual category, while women mostly opt for clerical positions. However, it was found that Career Officers and others concerned with advice and placement of young people in schools or further education tend to hold the view that the children of immigrants have unrealistic aspirations. In their view, immigrants' wishes are unlikely to be achieved because of a shortage of skilled jobs or because of their low levels of achievement in general (Cross, 1986, pp. 49-50; Dex, 1982, p. 30; Eggleston et al., 1985, passim).

According to Cross (1986, pp. 94-95), migrant youths are overrepresented in general job orientation courses which do not offer specific skill training. Moreover, within the vocational training system a set of informal barriers operate that exclude migrant youth from full participation. Access to apprenticeships is limited. Lee and Wrench (1983, discussed in Newnham, 1986, p. 25) found that 44 per cent of the pupils of national origin manage to find an apprenticeship, compared with only 15 per cent of the West Indian and 13 per cent of the Asian pupils. This is explained by the fact that employers tend to recruit apprentices through informal rather than formal channels. Migrant youth generally lack the informal contacts which often alert national youths to the possibilities of obtaining a training place, for example, through fathers speaking in favour of their children. Migrant youths rely on the Careers Service for placements, whereas employers tend not to use this service to fill their training places. In addition, the selection for training places operates on a strict age criterion. The fact that migrant youngsters tend to stay in school longer than their national counterparts, puts them at a further disadvantage. And when they do find a training place migrant apprentices are likely to meet racial harrassment from their colleagues (Brennan and McGeevor, 1990, pp. 87-91).

Although statistical data are scarce, abundant qualitative evidence points to migrant youths' serious arrears in educational attainment and, subsequently, a difficult transition from school to work. Direct and indirect discrimination, in both the educational system and the labour market, keep the majority of immigrant youth in a socio-economic position which is not very different from the position of their parents.

7.4 Discrimination at enterprise level

Little material has been found on the actual treatment of migrants at the level of the workfloor.

Brooks (1981, pp. 126-134) reports on the resentment voiced by national employees when London Transport started to employ migrants in the mid-50s. Colour, which was associated with low status, and fears that wages would be threatened, were found to be important reasons for nationals to oppose migrant colleagues, giving rise to hostility towards migrants. Reported manifestations

of hostility included name-calling, racist graffiti on lavatory walls and conflicts over the allocation of work. It was found that the number of migrant workers was an important factor in the incidence of discriminatory hostility. Acceptance of a single migrant colleague posed relatively little problems. But as soon as more migrants were working in the same crew, tensions increased, leading to group formation and segregation along racial lines. In general it was found that individual migrants were more or less accepted by their national colleagues, whereas migrants as a group were discriminated against.

Smith (1981b, pp. 285-293) conducted a survey in 14 industrial plants, eight of which were found to practise some form of discrimination. The issuing of temporary contracts to migrants who were in fact permanent workers (permanent workers of national origin were, of course, given permanent contracts) was found to be a common practice, which resulted in migrants being the victims of redundancy dismissals, because of the type of contracts they had. Management and personnel selectors commonly held prejudices about the job performances of migrant workers. They voiced complaints about employment agencies which kept sending unwanted migrants to fill vacancies. Discrimination in recruitment policies was found to be the result of prejudice on the part of personnel selectors and management's fear of opposition from the national workforce.

Collins (1981, pp. 150-154) reports on the outright hostility, frequently leading to fights, which he experienced as a West Indian manual worker. He describes migrants' overall reaction to discriminatory treatment as a passive one. They draw back into their own group and try to avoid contact with their national counterparts as much as possible. Collins draws attention to the important role foremen might play in combating or containing discrimination. However, since most foremen are nationals, they can be expected to side with national workers and disregard discrimination and its humiliating effects on the workfloor.

These effects are described by Nichols and Beynon (1981, pp. 155-162). West Indian workers are the object of discrimination, "nigger jokes" and taunting by their colleagues. Social contacts between migrants and nationals, for instance during lunch-breaks, were found to be practically non-existent. As far as training and job mobility are concerned, the case of a West Indian assembly line worker is illustrative. Although this worker had to perform skilled tasks frequently, he was denied the opportunity to follow a training course that would officially qualify him for the work he had to perform. Therefore, he was denied the higher status and income of the work he actually performed.

Although the research material presented in this section is limited in scope and not very recent - further research to document the mechanisms and effects of discrimination at workfloor-level is needed - it nevertheless points to the occurrence of both formal discrimination (with respect to recruitment) and informal discrimination (with respect to taunting by national colleagues and exclusion from training opportunities).

7.5 Entrepreneurship

Of all migrants engaged in gainful employment, 16 per cent are self-employed, compared with 12 per cent of the national population. Entrepreneurship is markedly higher among men of Pakistani, Bangladeshi and Indian origin, whereas West Indians rarely set up their own businesses. Migrant business is dominated by men; one in five of all economically active men run their own business, compared with one in ten of the economically

active migrant women. Nevertheless, the incidence of entrepreneurship among migrant women is higher than it is among national women (Employment Gazette, March 1990, p. 129).

The number of migrant entrepreneurs has increased sharply over the last decade. Asians especially are reported to turn to self-employment in response to lack of employment opportunities and discrimination in the job market. Their activities are heavily concentrated in the services, catering and retail sector, whereas West Indians are mainly involved in the construction sector (Brown, 1984b, p. 307; Najib, 1990, pp. 11-12; Newnham, 1986, p. 8).

Cross and Entzinger (1988, pp. 26-27) state that Asians' choice of activity springs from their desire to run a family business, whereas West Indian businesses appear to be mainly motivated by the ambition to run a skilled business without having to endure the discrimination they would face as an employee. The overrepresentation of Asians and the underrepresentation of West Indians in the group of self-employed might thus be explained by socio-cultural factors. Asian migrants stem from communities with a tradition of entrepreneurship - mostly practised at family level - whereas West Indians lack such a tradition. For Asians, this tradition results in access to necessary capital resources inside their respective communities, an opportunity which West Indians do not seem to have (Allen, et al., 1981, p. 209).

A survey carried out in London among Asian and West Indian entrepreneurs demonstrated that there are clearly defined areas in which immigrant entrepreneurs are disadvantaged, and that many businessmen attribute these disadvantages to discrimination. The main areas where problems occur are in obtaining commercial credit, satisfactory premises and business advice (Brooks, 1983, pp. 52-54; see also: Sawyerr, 1983). Wilson (1983, p. 72) reports on West Indians' impaired ability to command bank support, a finding in which discriminatory practices by banks and their personnel might play a role (see also: Church and Race, January 1990).

8. Conclusions

The information presented in this report clearly leads to the conclusion that the discrimination in employment of migrant workers in western Europe is pervasive and widespread. Although forbidden by law, discrimination occurs both in direct and indirect forms. Most of it is of an indirect and informal nature; it is neither openly admitted nor easy to detect. It seriously impedes migrants' socio-economic integration in the host societies in that it confines the majority to the secondary labour market with little possibility to leave it and to compete on an equal footing with the national workforce.

The majority of migrants still hold the kind of jobs for which they were originally recruited. Although there has been a considerable flow from industry to the services sector, migrants are still concentrated at the lower status end of the labour market, be it in industry or in the services sector. Access to on-the-job training is limited and, consequently, job mobility has been low. Promotion to a position of responsibility is only feasible if this entails responsibility over fellow migrants. According to the literature, promotion to a position of responsibility over national workers is practically non-existent. Migrants' poor labour market position is easily illustrated by their unemployment rates. In all countries surveyed these are higher than the unemployment rates of national workers. In some countries the migrants' overall unemployment rate is double that of the national population, while for specific groups such as youngsters and women, the proportion of the unemployed is as high as 50 per cent.

In sharp contrast with the wealth of material on migrants' labour market position, little documentation was found on the accessibility of the labour market. It is evident, however, that migrants have less chances when applying for a job than equally qualified nationals. Employers' preference for national applicants is reasonably well documented, as are the related practices of private employment agencies and public Labour Exchanges.

It is particularly interesting to note that the responsibility for discriminatory exclusion of migrants is always put elsewhere. Personnel from employment agencies and Labour Exchange officials blame the employers, personnel selectors put the blame on their superiors or the firm's personnel in general, employers put the blame on their clients, etc. People responsible for discriminatory exclusion of migrant applicants thus tend to hide behind other people's prejudices or the economic interests of the firm. If they discriminate, they do so because they are "forced" to do so by "others". Since everyone blames somebody else, discrimination is not only pervasive, but also extremely hard to tackle. In the United Kingdom, for instance, the Race Relations Act encourages employers to counteract effects of past discrimination by taking positive action. But experience shows that it is only by using contract compliance procedures that public authorities can persuade employers in the private sector actually to be committed to these kinds of measures. Stated differently, employers are, for a variety of reasons, reluctant to take up their responsibility for the migrants' integration into the society to which they belong.

Overall educational attainment of the second generation is poor. Migrant children are largely overrepresented in special education programmes. In secondary education the majority follow the short vocational training streams. Drop out rates are high, and discrimination by employers results in more-than-average difficulties in securing an apprenticeship. This means that migrant youth enters the labour market at an early age, unprepared to face competition with the generally better qualified national youth.

Unemployment among migrant youngsters is endemic. Should they manage to secure employment, it is mostly in the same kind of jobs as their parents held: un- or semi-skilled work in the unattractive sections of industry and services. Discrimination thus affects educational attainment by migrant pupils, which in turn predisposes their labour market position to be a mere reproduction of that of their parents. All in all, their successful transition from school to work is still seriously impaired by the same set of factors that were disclosed almost a decade ago by ILO's European regional project for second-generation migrants (see: Le Boterf and Castro-Almeida, 1987; Widgren, 1982).

The material concerning discrimination at enterprise level provides the most concrete information on the scope of day-to-day discrimination. Discrimination at workfloor level is mostly informal, in the sense that no distinction between migrants and national workers is made formally. Nevertheless, migrants are treated as "inferior" by both their national colleagues and their superiors. Job allocation procedures result in migrants performing - where they hold the same jobs as nationals - the most unrewarding tasks. They end up working with the oldest machinery and materials. The resulting problems, such as falling short of production targets and being more often involved in industrial injuries and thus taking up more sick leave, all serve to reinforce existing prejudices concerning migrants' work performance. Working in a hostile environment also means being excluded from social contacts, being the object of derogatory jokes and having to face - anonymous - discriminatory graffiti on lavatory walls. Thus, in order to keep their jobs, migrants have to perform better than average under working conditions that are worse than average.

The increase in the number of migrant entrepreneurs seems to have been brought about by discrimination in its various forms. Starting one's own business enables migrants to escape the daily humiliations of the work place. However, this also means that the decision to become an entrepreneur merely springs from avoidance behaviour and not from entrepreneurial vocation as such. This, in turn, is reflected in the higher than average number of failures of migrant businesses and the precarious existence of most of these undertakings. The fact that the majority of businesses cater to fellow migrants implies a retreat from contacts with the host society. If the rise in migrant businesses were judged favourably from the point of view of economic participation, it would have to be jugded less favourable from the point of view of integration.

The literature surveyed does not evenly cover all questions addressed in this report. Documentation was especially scarce with regard to the accessibility of the labour market, notably with respect to discriminatory practices in application procedures, i.e. the incidence of indirect discrimination. Remarkably little research has been conducted regarding discrimination at enterprise level, with the exception of the Netherlands and the Federal Republic of Germany. Documentation on migrant entrepreneurs was scarce for all countries surveyed; no documentation on this subject was found for Belgium and Switzerland. Obviously, much more research has to be undertaken on the subject of discrimination of migrant workers in the labour market.

Nevertheless, the material compiled substantiates very clearly the claim that migrants are in a disadvantaged position in the labour market. Similarly evident is the fact that discrimination, in its various forms, is largely responsible for this situation. Unfortunately, little qualitative research has been carried out to explain the incidence of discrimination by accounting for the various motivations and interests of the respective actors in working life. As long as the reasons why, and the ways in which, people discriminate are not clearly defined, it will prove to be difficult to design effective means to tackle the underlying feelings of fear, prejudice and intolerance.

Migrants invariably work in low status jobs. They experience little socio-economic mobility. Economic recession, industrial restructuring and subsequent economic recovery have resulted in a loss of unskilled jobs and increased competition with better qualified national workers. The literature surveyed suggests that discrimination increases in a slack labour market. Given the recent inflow of relatively well-qualified labour from eastern Europe, the migrants' already unfavourable labour market position is further jeopardised. Will the old principle of "last hired, first fired" protect migrants in relation to eastern Europeans who have been hired more recently, or will other considerations have the effect of pushing migrants into an even more unfavourable position? Whatever the outcome, vigorous action to combat discrimination is badly needed. This will be not only in the interest of migrants themselves, it will also be in the interest of society at large. The continuing existence of an underclass of migrants, who are excluded from equitable participation in working life and thus from integration in the host societies, will pose a serious menace to the societies of western Europe.

Bibliography

Abou Sada, Georges and Zaiha Zeroulou. "La formation des immigrés". In: Revue Française des Affaires Sociales, (Paris), vol. 43, no. 3, 1989, pp. 29-52.

Adams, Adrian "Prisoners in exile: Senegalese workers in France". In: Robin Cohen, Peter Gutkind and Phyllis Brazier (eds.): Peasants and proletarians, the struggles of third world workers. London, Hutchinson, 1979, pp. 307-330.

Allen, Sheila, Start Bentley and Joanna Bornat. "Business activity and the self-employed". (1977). Reprinted in: Peter Braham, Ed Rhodes and Michael Pearn (eds.): Discrimination and disadvantage in employment: the experience of black workers. London, Harper and Row, 1981, pp. 208-219.

Allen, Sheila "White migrants; black workers". In: New Community, (London), vol. VII, no. 1, winter 1978/79, pp. 11-18.

Auvolat, Michel and Rachid Benattig. "Les artisans étrangers en France". In: Revue Européenne des Migrations Internationales, (Poitiers), vol. 4, no. 3, 1988, pp. 37-55.

Ballard, Roger and Bronwen Holden. "The employment of coloured graduates" (1975). Reprinted in: Peter Braham, Ed Rhodes and Michael Pearn (eds.): Discrimination and disadvantage in employment: the experience of black workers. London, Harper and Row, 1981, pp. 163-176.

Bastenier, A., F. Dasetto and H. Fonck. La situation professionnelle des jeunes étrangers en Belgique. CEDEFOP document. Luxembourg, Office for Official Publications of the European Communities, 1986.

Beer, Dagmar and Peter Collingro. "Zur Situation der beruflichen Bildung von ausländischen Jugendlichen in der Bundesrepublik Deutschland". In: F. Schmidt and G. Chomé (eds.): Initial and continuing vocational training and work migration in Europe. CEDEFOP document, Luxemburg, Office for Official Publications of the European Communities, 1989, pp. 25-67.

Bertzeletou, Tina. "Survey of a number of vocational training structures for young migrants in Belgium, Denmark, France and the United Kingdom". In: F. Schmidt and G. Chomé (eds.): Initial and continuing vocational training and work migration in Europe. CEDEFOP document. Luxembourg, Office for Official Publications of the European Communities, 1989.

Bildungsbericht 1990. Grundlagen, Perspektiven, Bildung und Wissenschaft. Bonn, 1990.

Biller, Martin "Employment patterns among German and foreign workes at shop floor level". In: Jürgen Fijalkowski (ed.): Transnationale Migranten in der Arbeitswelt. Berlin, Ed. Sigma Bohn, 1990, pp. 15-33.

Blackburn, Robin and Michael Mann. "Ethnic stratification in an industrial city". In: Peter Braham, Ed Rhodes and Michael Pearn (eds.): Discrimination and disadvantage in employment: the experience of black workers. London, Harper and Row, 1981, pp. 138-150.

Böhning, W.R. "The protection of migrant workers and international labour standards". In: International Migration, (Geneva), Vol. XXVI, No. 2, June 1988, pp. 133-145.

Boissevain, Jeremy and Hanneke Grotenbreg. "Culture, structure and ethnic enterprise: the Surinamese of Amsterdam". In: Malcolm Cross and Han Entzinger (eds.): Lost Illusions: Caribbean minorities in Britain and the Netherlands. London, Routledge, 1988, pp. 221-249.

Boos-Nünning, Ursula, Alice Jäger, Renate Henscheid, Wolfgang Sieber and Heike Becker. Berufswahlsituation und Berufswahlprozesse Griechischer, Italienischer und Portugiesischer Jugendlicher. Essen, Universität Essen, 1989.

Bory-Lugon, Valerie Immigration et xénophobie dans la société Suisse. Lausanne, Université de Lausanne, Institut de Science Politique, 1977.

Boulot, Serge and Danièlle Boyzon-Fradet. Les immigrés et l'école: une course d'obstacles. Paris, Ed. L'Harmattan, 1988.

Bovenkerk, F. and E. Breuning-Van Leeuwen. "Rasdiscriminatie en rasvooroordeel op de Amsterdamse arbeidsmarkt". In: F. Bovenkerk (ed.): Omdat zij anders zijn, patronen van rasdiscriminatie in Nederland. Meppel, Boom, 1978.

Brassé, P. and E. Sikking. Positie en kansen van etnische minderheden in Nederlandse ondernemingen. Rijswijk, Ministerie van Sociale Zaken en Werkgelegenheid, 1986.

Brassé, P., W. van Schelven, L. Van der Valk and M. de Vries. Jonge Turken en Marokkanen op de Nederlandse arbeidsmarkt. Amsterdam, University of Amsterdam, Institute for Social Geography, 1983.

Brennan, John and Philip McGeevor. Ethnic minorities and the graduate labour market. London, Commission for Racial Equality, 1990.

Brooks, Alan "Black business in Lambeth: Obstacles to expansion". In New Community, (London), Vol. XI, nos. 1/2, autumn/winter, 1983, pp. 42-54.

Brooks, Dennis "Race and labour in London Transport: some conclusions". (1975). Reprinted in: Peter Braham, Ed Rhodes and Michael Pearn (eds.): Discrimination and disadvantage in employment: the experience of black workers. London, Harper and Row, 1981, pp. 126-137.

Brown, Colin and Pat Gay. Racial discrimination: 17 years after the Act. London, Policy Studies Institute, 1985.

Brown, Colin Black and white Britain. London, Heinemann Educational Books, 1984(a).

Brown, Colin "Patterns of employment among black and white people in Britain". In: Employment Gazette (London), vol. 92, no. 7, July 1984(b), pp. 304-307.

Budzinski, Manfred Gewerkschaftliche und betriebliche Erfahrungen ausländischer Arbeiter. Frankfurt am Main, Campus Verlag, 1979.

Campbell, Mile and Doug Jones. Asian Youths in the labour market. Bradford, Bradford College, 1982.

Castles, Stephen Here for good. Western Europe's new ethnic minorities. London, Pluto Press, 1984.

Centre for Educational Research and Innovation CERI. Immigrant's children at school. Paris, OECD, 1987.

Charbit, Yves "L'Intégration des jeunes d'origine immigrée en Europe: bilan et perspectives". In: Revue Européenne des Migrations Internationales, (Poitiers), vol. 4, no. 3, 1988, pp. 147-151.

Choenni, C. and T. Van der Zwan. "Meer arbeidsplaatsen voor allochtonen". In: LBR-Bulletin, (Utrecht), Vol. 3, no. 2, April 1987.

Church and Race (London), vol. 5, no. 1, January 1990.

Cohen, B.G. and P.J. Jenner. "The employment of immigrants: a case study within the wool industry" (1968). Reprinted in: Peter Braham, Ed Rhodes and Michael Pearn (eds.): Discrimination and disadvantage in employment: the experience of black workers. London, Harper and Row, 1981, pp. 109-125.

Collins, Wallace. "Jamaican migrant". (1965). Reprinted in: Peter Braham, Ed Rhodes and Michael Pearn (eds.): Discrimination and disadvantage in employment: the experience of black workers. London, Harper and Row, 1981, pp. 150-154.

Commissariat Royal à la Politique des Immigrés. L'Intégration: une politique de longue haleine. Brussels, 1989

Commission Nationale Consultative des Droits de l'Homme. Rapport au Premier Ministre sur la lutte contre le racisme et la xénophobie, 1989, Paris, 1990.

Commission for Racial Equality CRE. Looking for work: Black and white school-leavers in Lewisham. London, CRE, 1978.

Cordeiro, Albano. "Specific measures on vocational training for youth population in France". In: Folker Schmidt and Gesa Chomé (eds.): Initial and continuing vocational training and work migration in Europe. CEDEFOP Document, Luxembourg, Office for Official Publications of the European Communities, 1989, pp. 193-206.

Costa-Lascoux, Jacqueline. De l'immigré au citoyen. Notes et études documentaires, no. 4886. Paris, La Documentation Française, 1989.

Council of Europe Conclusions of meeting of experts on discrimination on nationality, ethnic or racial grounds in the field of employment. Strasbourg, 1988.

Cross, Malcolm. Vocational training of young migrants in the United Kingdom. CEDEFOP document, Luxembourg, Office for Official Publications of the European Communities, 1986.

Cross, Malcolm. "Generation jobless: the need for a new agenda in ethnic relations policy". In: New Community, (London), vol. XIV, no. 1/2, autumn 1987, pp. 123-127.

Cross, Malcolm and Han Entzinger. "Caribbean minorities in Britain and the Netherlands; comparative questions". In: Malcolm Cross and Han Entzinger (eds.): Lost Illusions: Caribbean minorities in Britain and the Netherlands. London, Routledge, 1988, pp. 1-33.

Debbaut, Herman and Johan Declerck. "The status of immigrant workers in Belgium". In: Eric-Jean Thomas (ed.): Immigrant workers in Europe: their legal status. Paris, UNESCO Press, 1982, pp. 13-40.

Den Uyl, R., C. Choenni and F. Bovernkerk. Mag het ook een buitenlander wezen? Discriminatie bij uitzendbureau's. Utrecht, Landelijk Buro Racismebestrijding LBR, 1986.

Dex, Shirley. "Job search methods and ethnic discrimination". In: New Community, (London), vol. VII, no. 1, winter 1978, pp. 31-39.

Dex, Shirley. Black and white school-leavers: the first five years of work. London, Department of Employment, 1982.

Dietz, Frido. "Entwicklung und Struktur der beschäftigten ausländischen Arbeitnehmer in der Bundesrepublik Deutschland. In: Elmar Hönekopp (ed.): Aspekte der Ausländerbeschäftigung in der Bundesrepublik Deutschland. Nürnberg, Institut für Arbeitsmarktforschung der Bundesanstalt für Arbeit, 1987, pp. 67-144.

Dohse, Knut. "Foreign Workforce and Workforce Management in West Germany". In: Economic and Industrial Democracy, (London), Vol. 5, 1984, pp. 495-509.

Dohse, Knut. Foreign Workers in the Federal Republic of Germany: Governmental Policy and Discrimination in Employment. Berlin, Wissenschaftszentrum, 1982.

Dombois, Rainer. Arbeitsplatz Volkswagenwerk. Bremen, unpublished manuscript, 1980.

Duchène, Catherine. "Le public scolaire étranger en Europe". In: Revue Européenne des Migrations Internationales, (Poitiers), vol. 4, no. 3, 1988, pp. 153-168.

Eggleston, John, David Nunn and Madhu Anjali. Education for Some. Stoke-on-Trent, Trentham Books Ltd., 1985.

Employment Gazette "Ethnic Origins and the labour market". In: Employment Gazette (London), Vol. 98, no. 3, March 1990, pp. 125-137.

Erichsen, Regine and Faruk Sen. Hinwendung zur Selbständigkeit bei Gastarbeitern mit besonderer Berücksichtigung von Türken. International Migration for Employment Working Paper No. 33, Geneva, ILO, 1987.

Evrensel, Ayse "Foreign workers in Switzerland and in the canton of Zürich". In: Günther Glebe and John O'Loughlin (eds.): Foreign minorities in continental European cities. Stuttgart, Franz Steiner Verlag, 1987, pp. 258-275.

Fase, W. "Young migrants between school and work - recent trends in Holland". In: F. Schmidt and G. Chomé (eds.): Initial and continuing vocational training and work migration in Europe. CEDEFOP Document, Luxemburg, Office for Official Publications of the European Communities, 1989, pp. 83-117.

Gaugler, Eduard, Wolfgang Weber and others. Ausländer in deutschen Industriebetrieben. Königstein, Hanstein, 1978.

Gillmeister, Helmut, Herman Kurthen and Jürgen Fijalkowski. Ausländerbeschäftigung in der Krise? Berlin, Edition Sigma, 1989.

Giudice, Fausto Têtes de Turcs en France. Paris, Ed. la Découverte, 1989.

Granges, C. "Travailleurs Marocains chez Renault". In: Annuaire de l'Afrique du Nord, (vol. XX, 1981), Paris, Ed. du Centre National de la Recherche Scientifique, 1982, pp. 143-168.

Granotier, Bernard. Les travailleurs immigrés en France. Paris, Maspero, 1979..

Haex, J., A. Martens and S. Wolf. Arbeidsmarkt, discriminatie, gastarbeid. Leuven, Katholieke Universiteit, 1976.

Hoffman, Lutz und Herbert Even. "Sie beschäftigen uns wie Sklaven", Erfahrungen von Türken an deutschen Arbeitsplätzen. Bielefeld, Universität Bielefeld, 1985.

Hoffmann-Nowotny, Hans-Joachim. "The second generation of immigrants: A sociological analysis with special emphasis on Switzerland". In: Rosemarie Rogers (ed.): Guests come to stay: the effects of European labour migration on sending and receiving countries. Boulder (Colorado), Westview Press, 1985(a), pp. 109-134.

Hoffmann-Nowotny, Hans-Joachim. "Switzerland". In: Tomas Hamar (ed.): European immigration policy. Cambridge, Cambridge University Press, 1985(b), pp. 206-238.

IG Metall. Geschäftsbericht 2. Ausländerkonferenz der IG Metall, 9 bis 11. Mai 1989. Frankfurt, 1989.

International Labour Organisation. Yearbook of Labour Statistics 1988. Geneva, 1988.

International Labour Organisation. Bulletin of Labour Statistics, 1989, no. 3. Geneva, 1989.

Just, Wolf-Dieter. Na, immer noch da? Frankfurt am Main, Verlag Otto Lembeck, 1989.

Keller, Judith, Andreas Leuschner and Marianne Sigg Persico. "Der Weg zur Schweizerischen Berufslehre - Ein Weg gelebter Zugehörigkeiten". In: Gesa Chomé and Folker Schmidt (eds.): Berufliche Aus- und Weiterbildung und Arbeitsmigration in Europa. CEDEFOP Dokument. Luxembourg, Amt für amtliche Veröffentlighungen der Europäischen Gemeinschaften, 1989, pp. 221-242.

Kern, Horst and Gerd Weinberg. Alteradäquate Arbeitsanforderungen für PKW- und LKW-Reifenkonfektionsplätze. Hannover, Universität Hannover, 1980.

Korte, Hermann. "Labour Migration and the Employment of Foreigners in the Federal Republic of Germany since 1950". In: Rosemarie Rogers (ed.): Guests come to stay: The effects of European labour migration on sending and receiving countries. Boulder (Colorado), Westview Press, 1985.

Kremer, Manfred and Helga Spangenberg. Die Assimilation ausländischer Arbeitnehmer in der Bundesrepublik Deutschland. Königstein, Hanstein, 1980.

Lagendijk. Opinie onderzoek, het FEM Lagendijk ondernemerspanel, Raadpleging over het tweede kwartaal. Apeldoorn, Lagendijk's Opinie Onderzoek, 1986.

Lattes, Jean-Michel. Le principe de non-discrimination en droit de travail. Toulouse, Université de Sciences Sociales de Toulouse, 1989.

Lebon, André. "Second-Generation foreigners in France". In: Rosemarie Rogers (ed.): Guests come to stay: the effects of European labour migration on sending and receiving countries. Boulder (Colorado), Westview Press, 1985, pp. 135-158.

Le Boterf, Guy and Carlos Castro-Almeida. Towards the training of animators-trainers drawn from second-generation migrants. Analysis of an experiment and a guide to action. Luxembourg, Office for Official Publications of the European Communities, 1987.

Lee, Gloria and John Wrench. Skill seekers: Black youth, apprenticeships and disadvantage. London, National Youth Bureau, 1983.

Lindo, Flip — Zuideuropeanen in Nederland. Amsterdam, Universiteit van Amsterdam, Antropologisch-Sociologisch Centrum, 1987.

Lochak, Danièle — "Les discriminations frappant les étrangers sont-elles licites?". In: Droit Social, (Paris), no. 1, January 1990, pp. 76-82.

Mehrländer, Ursula and others. Situation der ausländischen Arbeitnehmer und ihrer Familienangehörigen in der Bundesrepublik Deutschland, Repräsentativuntersuchung '85. Bonn, Bundesministerium für Arbeit und Sozialordnung, 1986.

Minces, Juliette — Les travailleurs étrangers en France. Paris, Ed. du Seuil, 1973.

Ministère des Affaires Sociales et de la Solidarité Nationale. 1981-1986, une nouvelle politique de l'immigration. Paris, La Documentation Française, 1986.

Morokvasic, M. — Aspiration au changement des femmes migrantes et vecu des jeunes filles de la "seconde génération": le cas des jeunes yougoslaves. Working paper of the UNDP/ILO European regional project for second-generation migrants. Geneva, ILO, 1985.

Morokvasic, M. — "Small enterprise and immigrant entrepreneurs". In: Economic and Industrial Democracy, (London), vol. 9, no. 1, February 1988, pp. 83-97.

Mottin, Jean — Les immigrés et l'emploi. Paris, Ed. Litec, 1986.

Muus, Philip J. — Migration, minorities and policy in the Netherlands. Sopemi 1989 report for the Netherlands, Amsterdam, University of Amsterdam, Institute for Social Geography, 1990(a).

Muus, Philip J. — Migration, minorities and policy in the Netherlands. Sopemi 1988 report for the Netherlands. Amsterdam, University of Amsterdam, Institute for Social Geography, 1989.

Muus, Philip J. — "The position of ethnic minorities on the Dutch labour market, with special reference to employees in the private and public sector". In: Jürgen Fijalkowski (ed.): Transnationale Migranten in der Arbeitswelt. Berlin, Ed. Sigma Bohn, 1990(b), pp. 159-177.

Najib, Ali — The contribution of migrant/ethnic groups to the economic viability of urban areas through the setting up of small and medium-sized businesses in western Europe. Report to the Committee of Experts on Community Relations. Strasbourg, Council of Europe, 1990.

N'Dongo, Sally — La "coopération" franco-africaine, Paris, Maspero, 1972.

Newnham, Anne. — Employment, unemployment and black people. London, Runnymede Trust, 1986.

Nichols, Theo and Huw Beynon. "Black worker, white foreman". (1977). Reprinted in: Peter Braham, Ed Rhodes and Michael Pearn (eds.): Discrimination and disadvantage in employment: the experience of black workers. London, Harper and Row, 1981, pp. 155-162.

OECD. — SOPEMI, Continuous reporting system on migration, 1988 report. Paris, 1989.

OECD. — "Trends in Education for Foreigners". In: SOPEMI, Continuous reporting system on migration, 1987 report. Paris, 1988, pp. 105-148.

Office Fédéral de la Statistique. Recensement fédéral des entreprises 1985: Personnes occupées selon la nationalité, le sexe et la durée de travail, vol. 6. Bern, 1988.

Office Fédéral des Etrangers. Les étrangers en Suisse. Bern, 1990.

Oosterhuis, G. and A. Glebbeek. "Ras en geslacht bij de personeelsselektie". In: Mens en Maatschappij, (Deventer), Vol. 63, no. 3, August 1988, pp. 237-259.

Oosterhuis, G., G.P. Westert and A.C. Glebbeek. Selectiecriteria op een rij. Groningen, Rijks Universiteit Groningen, 1986.

Penninx, R. — The housing and labour market position of immigrants and ethnic minorities in the Netherlands. Amsterdam, Vrije Universiteit, Faculteit der Sociaal-Culturele Wetenschappen, 1988.

Phizacklea, Annie and Robert Miles. Labour and racism. London, Routledge and Kegan Paul, 1980.

Plein Droit — (Paris), no. 7, April 1989.

Power, Jonathan and Anna Hardman. Western Europe's migrant workers. MRG report no. 28. London, Minority Rights Group, 1984.

Raymond, Pierre — L'Immigration dans la zone de Fos (1973-1974). Privately published manuscript, 1977.

Reichow, Hartmut — "Partizipation und Chancen ausländischer Jugendlicher im Bildungssystem". In: Bericht '99. Zur Situation der ausländischen Arbeitnehmer und ihrer Familien - Bestandaufnahme und Perspektiven für die 90-er Jahre. Bonn, Büro des Beauftragten der Bundesregierung für die Integration der ausländischen Arbeitnehmer und ihrer Familienangehörigen, 1990, pp. 185-188.

Roelandt, Th. and J. Veenman. Allochtonen van school naar werk. 's Gravenhage, SDU Uitgeverij, 1990.

Ruebsaet, Theo. "On the way up? Surinamese and Antilleans in the Dutch labour market". In: Malcolm Cross and Han Entzinger (eds.): Lost Illusions: Caribbean minorities in Britain and the Netherlands. London, Routledge, 1988, pp. 106-125.

Sawyerr, Ade "Black controlled business in Britain: Particular problems and suggested solutions". In: New Community, (London), Vol. XI, nos. 1/2, autumn/winter 1983, pp. 55-62.

Schäfer, Hermann. Betrieblicher Ausländerdiskriminierung und Gewerkschaftliche Antidiskriminierungspolitik. Berlin, Express Edition, 1985.

Schöneberg, Ulrike Bestimmungsgründe der Integration und Assimilation ausländischer Arbeitnehmer in der Bundesrepublik Deutschland und der Schweiz. Frankfurt am Main, Wolfgang Goethe Universität, 1980.

Schrober, Karen and Heinz Stegmann. "Ausländische Jugendliche - Demographische Entwicklung sowie Ausbildungs- und Beschäftigungssituation". In: Elmar Hönekopp (ed.): Aspekte der Ausländerbeschäftigung in der Bundesrepublik Deutschland. Nürnberg, Institut für Arbeitsmarktforschung der Bundesanstalt für Arbeit, 1987, pp. 195-243.

Sen, Faruk. Problems and Integration Constraints of Turkish Migrants in the Federal Republic of Germany. International Migration for Employment Working Paper, no. 44, Geneva, ILO, 1989.

Sikking, E. and P. Brassé. Waar liggen de grenzen? Een case-study naar rassendiscriminatie op de werkvloer. LBR-reeks, no. 4, Utrecht, Landelijk Buro Racismebestrijding, 1987.

Singer-Kerel, J. "Les actifs maghrébins dans les recensements français". In: Annuaire de l'Afrique du Nord, (vol. XX, 1981), Paris, Ed. du Centre National de la Recherche Scientifique, 1982, pp. 81-100.

Smith, David J. Racial Disadvantage in Britain, the PEP report. Harmondsworth, Penguin Books, 1977.

Smith, David J. Unemployment and Racial Minorities. London, Policy Studies Institute, 1981(a).

Smith, David J. "Racial discrimination - policy and practice". (1974). Reprinted in: Peter Braham, Ed Rhodes and Michael Pearn (eds.): Discrimination and disadvantage in employment: the experience of black workers. London, Harper and Row, 1981(b), pp. 285-294.

The Runnymede Trust and the Radical Statistics Group. Britain's black population. London, Heinemann Educational Books, 1980.

The Runnymede Trust. Education for All. A summary of the Swann report. London, The Runnymede Trust, 1985.

The Runnymede Trust. Racism, anti-racism and schools: a summary of the Burnage report. London, The Runnymede Trust, 1989.

Thomas, Eric-Jean "The status of immigrant workers in France". In: E.J. Thomas (ed.): Immigrant workers in Europe: their legal status. Paris, UNESCO, 1982, pp. 41-82.

Tripier, Maryse "La population étrangère en France". In: Analyse et Documents Economiques, (Paris), no. 30, April 1988, pp. 28-36.

Veenman, J. De Werkloosheid van Molukkers. Rotterdam, Erasmus Universiteit, 1984.

Veenman, J. and C.H.T. Vijverberg. De arbeidsmarktproblematiek van Molukkers: een verkennend onderzoek. Rotterdam, Erasmus University, 1982.

Veenman, J. Ver van huis. Achterstand en achterstelling bij allochtonen. Rotterdam, Erasmus University, 1990.

Verbunt, Gilles. "France". In: Thomas Hammar (ed.): European immigration policy. Cambridge, Cambridge University Press, 1985, pp. 127-164.

Verhaeren, R.E. "L'Immigration algérienne et la crise économique en France". In: Annuaire de l'Afrique du Nord, (vol. XX, 1981), Paris, Ed. du Centre National de la Recherche Scientifique, 1982, pp. 121-142.

Wetenschappelijke Raad voor het Regeringsbeleid WRR. Allochtonenbeleid. 's Gravenhage, SDU Uitgeverij, 1989.

Widgren, Jonas The position of "second-generation migrants" in Europe. Policy failures and policy prospects. Working paper of the UNDP/ILO European regional project for second-generation migrants, Geneva, ILO, 1982.

Wilson, Peter "Ethnic minority business and bank finance". In: New Community, Vol. XI, nos. 1/2 autumn/winter 1983, pp. 63-73.

Zentrum für Türkeistudien. Integrierter Endbericht Modellprojekt Ausländische Selbständige bilden aus. Bonn-Bad Godesberg, 1990.

Ziegler-Schultes, Hildegard. "Eine Stunde Null hat es nie gegeben". In: Peter Kühne, Nihat Oztürk, Hildegard Ziegler-Schultes (eds.): Wir sind nicht nur zum arbeiten hier. Hamburg, VSA-Verlag, 1988, pp. 17-19.

C. INTERNATIONAL MIGRATION FOR EMPLOYMENT
Working Papers

1. International labour migration and international development, by C.W. Stahl, Jan. 1982 (out of print).

2. Towards a system of recompense for international labour migration, by W.R. Böhning, Feb. 1982 (out of print).

3. Contract migration policies in the Philippines, by L.S. Lazo, V.A. Teodosio and P.A. Sto. Tomas, Mar. 1982 (out of print).

4. Contract migration in the Republic of Korea, by S. Kim, Apr. 1982 (out of print).

5. Emigration of scarce skills in Pakistan, by M. Ahmad, May 1982 (out of print).

6.F Les clandestins et la régularisation de 1981-1982 en France, par J.-P. Garson et Y. Moulier, 10 mai 1982 (out of print).

6.E Clandestine immigrants and their regularisation in France, 1981-1982, by J.-P. Garson and Y. Moulier, 10 May 1982 (out of print).

7. Out of the shadows - A review of the 1980 regularisation of status programme in Australia, by D. Storer with the assistance of A. Faulkner, June 1982.

8. International contract migration in the light of ILO instruments, with special reference to Asian migrant-sending countries, by W.R. Böhning, July 1982 (out of print).

9.S La amnistia migratoria de 1974 en Argentina, por L. Mármora, Feb. 1983 (out of print).

9.E The 1974 amnesty for migrants in Argentina, by L. Mármora, Feb. 1983.

10.F La libre circulation à l'intérieur d'une Communauté entre pays en développement, par W.R. Böhning, decembre 1983 .

10.E Freedom of movement within a community of developing countries, by W.R. Böhning, Dec. 1983 (out of print).

11.F L'administration du travail de l'immigré en situation irregulière en Espagne, en Grèce et en Italie, par S. Ricca, janvier 1984 (out of print).

11.E Administering migrant workers in an irregular situation in Greece, Italy and Spain, by S. Ricca, Jan. 1984 (out of print).

12. Recruitment practices and working and living conditions of Asian migrant workers in the Middle East: Problems and possible solutions, by Z. Zar, May 1984 (out of print).

13. International labour migration and the ASEAN economies, by C.W. Stahl, June 1984 (out of print).

14. International labour migration and skill scarcity in the Hashemite Kingdom of Jordan, by I.J. Seccombe, July 1984.

15.S Immigracion ilegal y matricula general de extranjeros en Venezuela, par A. Michelena et al., agosto 1984.

15.E Illegal immigration and the general register of foreigners in Venezuela, by A. Michelena et al., August 1984.

16.rev Bibliography on international return migration (2nd revised edition), September 1986.

17.F Le retour assisté des migrants qualifiés dans leur pays d'origine: Les programmes multilateraux de l'ONU (TOKTEN) et du CIM, par S. Ardittis, October 1984 (out of print).

17.E The assisted return of qualified migrants to their countries of origin: The UNDP and ICM multilateral programmes, by S. Ardittis, October 1984 (out of print).

18.S Escasez de recursos humanos calificados y migraciones internacionales en la Argentina, por J. Gurrieri, S. Lépore y L. Mármora, noviembre 1984.

18.E Scarce skills and international migration in Argentina, by J. Gurrieri, S. Lépore and L. Mármora, November 1984.

19.S La emigración de recursos humanos calificados y el ajuste en el mercado de empleo del Uruguay, por C.A. Aguiar, diciembre 1984.

19.E Outflow of skilled labour and the employment market adjustment in Uruguay, by C.A. Aguiar, December, 1984 (out of print).

20. Recent trends and prospects of black migration to South Africa, by F. de Vletter, Jan. 1985 (out of print).

21.S El trabajador migrante en situación irregular y su legalización en Venezuela, por R. Torrealba, Feb. 1985.

21.E Migrant workers in an irregular situation and their regularisation in Venezuela, by R. Torrealba, Feb. 1985 (out of print).

22. Agreements concerning the employment of foreign black labour in South Africa, by A. Whiteside and C. Patel, July 1985 (out of print).

23. The rights and welfare of migrant workers: scope and limits of joint action by southern African migrant-sending countries, by F. de Vletter, Nov. 1985.

24. Migrations clandestines, régularisations et marché du travail en France: contraintes nationales et internationales, par J.-P. Garson, décembre 1985.

25. Working conditions of Pakistani migrant workers in the Middle East, by Farooq-i-Azam, January 1986.

26. Sri Lanka's experience with international contract migration and the reintegration of return migrants, by P. Athukorala, March 1986 (out of print).

27. Migrant Workers in West Africa: with special reference to Nigeria and Ghana, by Ms. Yaa Frempoomaa Yeboah, October 1986.

28. The pattern and consequences of declining mine labour recruitment in Botswana, by John Taylor, November 1986.

29. The South African mining industry and Mozambican migrant labour in the 1980s: an analysis of recent trends in employment policy, by Centro de Estudos Africanos, Universidade Eduardo Mondlane, Jan. 1987.

30. The Jordanian migration system in transition, by Allan M. Findlay, March 1987.

31. One hundred years of job reservation on the South African mines, by Jack and Ray Simons, May 1987 (out of print).

32. Las políticas de retorno de recursos humanos calificados en Colombia: evaluación y orientaciones para su mejoramiento, por Carlos A. Patiño G. y Jorge Díaz Ramírez, Diciembre 1986.

33.D Hinwendung zur Selbständigkeit bei Gastarbeitern mit besonderer Berücksichtigung von Türken, von Regine Erichsen und Faruk Sen, Juni 1987 (out of print).

33.T F. Almanya'daki Türklerde Işçilikten Isadamligina Yönelis ve Gelisme Perspektifleri, Regine Erichsen, Faruk Sen, June 1987 (out of print).

34. Future developments in the demand for labour by the South African mining industry, by Pundy Pillay, July 1987.

35. The role of international labour migration in the transformation of an economy: the case of the Yemen Arab Republic, by Allan M. Findlay, August 1987 (out of print).

36. Perceptions and attitudes of Batswana migrant workers toward the South African gold mines, with special reference to living and working conditions, legal issues and trade unions, by Louis Molamu, Athaliah Molokomme and Gloria Somolekae, September 1987.

37. Mozambican migrant workers in South Africa: the impact of the expulsion order, by Centro de Estudos Africanos, Universidade Eduardo Mondlane, October 1987.

38. The health of mine workers in Botswana: a study of the effects of mining and migration, by Dr. E.T. Maganu, January 1988.

39. Migration de retour en Europe du Sud, par Solon Ardittis, février 1988.

40. The prospects for absorbing migrant miners into the Botswana economy, by R. Majelantle and X. Mhozya, March 1988 (out of print).

41. Participation in South African mining safety: A postal survey of black migrant workers' organisations and management, by J.P. Leger and M. Mothibeli, June 1989.

42. Manpower and population evolution in the GCC and the Libyan Arab Jamahiriya, by J.S. Birks and C.A. Sinclair, October 1989.

43. Arab return migration from the Gulf Co-operation Council States: Patterns, trends and prospects, by Allan Findlay, October 1989.

44.D Probleme und Eingliederungsengpässe der türkischen Migranten in der Bundesrepublik Deutschland, von Faruk Sen, November 1989.

44.E Problems and Integration Constraints of Turkish Migrants in the Federal Republic of Germany, by Faruk Sen, November 1989.

44.T Federal Almanya'da Yasayan Türk Göçmenlerinin Uyum Sürecinde Karsilastiklari Sorunlar, Faruk Sen, Kasim 1989.

45. An assessment of Turkish Labor Migration to western Europe, by Philip L. Martin, January 1990 (out of print).

46.E Some economic, social and human rights considerations concerning the future status of third-country nationals in the single European Market, by W.R. Böhning and J. Werquin, April 1990.

46.F Réflexions d'ordre économique, social et sur les droits de l'homme concernant le futur statut des nationaux des pays tiers dans le marché intérieur européen, par W.R. Böhning et J. Werquin, avril 1990.

47.D Zusammenleben von Deutschen und Ausländern in Stadtteilen von Düsseldorf, von Peter König, Juni 1990.

47.E Cohabitation of Germans and Foreigners in Districts of Düsseldorf, by Peter König, June 1990.

48. Prospects for Foreign Migrant Workers in a Democratic South Africa, by Fion de Vletter, September 1990.

49. Discrimination of Migrant Workers in Western Europe, by Roger Zegers de Beijl, December 1990.

ISBN 92-2-107827-2

MEETING OF RESEARCHERS ON DISCRIMINATION AGAINST MIGRANT WORKERS IN THE WORLD OF WORK

Geneva, 12 July 1991

INFORMAL SUMMARY RECORD

International Labour Office, Geneva, 1991

ISBN 92-2-108181-8

First published 1991

Printed by the International Labour Office, Geneva, Switzerland

TABLE OF CONTENTS

A. INTRODUCTION

1. The International Labour Office will launch, in early 1992, a new activity with the aim of helping governmental and non-governmental organisations to combat discrimination faced by migrant workers in the world of work. This will focus on tackling informal or de-facto discrimination, i.e. discrimination that occurs despite legislative injunctions to the contrary. Research is to be undertaken to document the major forms, extent and severity of de-facto discrimination in fields of ILO competence. Conciliatory bodies and ethnic monitoring schemes, as well as manuals and teaching courses, are to be assessed as regards their effectiveness in contributing to less discrimination.

2. To assess the feasibility of this approach, ILO's International Migration for Employment Branch invited researchers active in the field of discrimination to discuss the methodological problems of discrimination research (for Agenda, see Annex 1). Along with the invitation, the ILO provided a literature survey which established that discrimination was a significant, widespread and persistent phenomenon in western Europe*.

3. Sixteen researchers participated in the Meeting of Researchers on Discrimination Against Migrant Workers in the World of Work, which was held in Geneva, 12 July 1991 (for List of participants, see Annex 2).

4. An Introductory Statement was delivered by Mr. W.R. Böhning, Chief of ILO's International Migration for Employment Branch (see Annex 3).

5. This Informal Summary Record represents a résumé of the discussions throughout the Meeting. It contains the salient points rather than the details of each contribution and was prepared by the ILO Secretariat after the meeting.

---

* See R. Zegers de Beijl: Discrimination of migrant workers in western Europe (Geneva, ILO, December 1990; mimeographed World Employment Programme Working Paper; restricted).

B. DISCUSSION

6. At the start, one of the European participants stressed that discrimination against migrant workers should be studied in its wider social context, i.e. the social images that are based on prejudice and which lead to discrimination. The aim of research should be to dismantle these images. Other participants underlined the key role of anti-discrimination measures in the world of work: work was fundamental to migrants' social status and determined their possibilities for integration in the host society. Employment related discrimination was an issue of chief importance.

7. It was felt that research should not only cover migrants' actual employment experience but that it should also take account of their experiences in the pre-employment phase, especially discrimination that occurs in recruitment and selection procedures, training etc. Emphasis should also be put on the position of the second generation, the self-employed and the role of discrimination in pushing migrants into employment in the informal sector, as well as the changing nature of the labour market resulting in a loss of unskilled jobs and more heterogeneous employment relationships.

8. Most participants were of the opinion that research should focus on processes of indirect and informal discrimination since direct discrimination had been outlawed in many countries. Such research should focus, in their view, on practices and procedures which put migrants in an unfavourable position and on the social relations at the workplace itself. Participants from the United Kingdom maintained that research carried out in their country had demonstrated that legislation alone can not eliminate discrimination. Direct discrimination still occurred and therefore research was needed into the workings of direct discrimination and the wider social context in which it operated.

9. Participants agreed that racism was a complex phenomenon and that the discrimination to which it gave rise needed to be studied further in order to be able to develop new, more effective strategies to counter it.

10. Many participants were of the opinion that future research needed to be actor-oriented in order to explore why discrimination was so persistent and resistant to legal and educational efforts to do away with it. Most of the research carried out thus far focussed on migrants' experiences with unequal treatment, i.e. it was victim-oriented. The emphasis of future research should be put on <u>how</u> and <u>why</u> employers and others discriminated instead of merely bringing to light yet another example of discrimination against migrant workers.

11. Participants from the United Kingdom stressed that there was no need for research to convince employers and public authorities that discrimination existed, since this kind of research had already been carried out in the 1970s and 1980s. Other participants said that such research had not yet been undertaken in their countries, or that it had been undertaken on too small a scale to yield convincing results. It would therefore be necessary to carry out this kind of research on a scale sufficient to prove incontrovertibly the existence of discrimination.

12. Several participants stressed the need for a differential and disaggregated approach to this research. Focussing on employers' recruitment and selection policies, it should include the experiences of different groups of migrants trying to gain access to employment in a variety of economic sectors, including services such as banks and insurance companies where they were greatly under-represented.

13. Other participants drew attention to the fact that even if it would be possible, based on the kind of research under discussion, to develop adequate strategies to counter discrimination, it would nevertheless take decades for migrants to arrive at an equitable labour market participation. In their view, research should focus on strategies to create the political will to implement measures such as compulsory ethnic monitoring of the workforce of individual employers or the use of quotas and positive discrimination. They urged the ILO to become active to that end.

14. Several participants acknowledged the importance of carrying out research at the workplace, but questioned the possibility of gaining access to enterprises. It was suggested that the research to be conducted should not be presented as research on discrimination but as research into selection and recruitment procedures, mechanisms of work division etc., pointing out that is was in employers' interests to make full use of labour's potential.

15. It was agreed that discrimination research to be sponsored by the ILO would gain from applying a standardised methodology, which would facilitate comparative, cross-country analysis.

16. The following research topics were given priority ranking: (i) recruitment and selection procedures; (ii) informal discrimination at the workplace; (iii) evaluation of anti-discrimination training material destined to public officials, enterprise personnel and workers' organisations; (iv) an assessment of the efficacy of anti-discrimination legislation and experiences with ethnic monitoring.

17. Research on discrimination in recruitment and selection procedures was needed in all countries except the United Kingdom. Its aim would be to identify the existence of discrimination against migrant workers, its various forms, the differential impact on a range of nationalities, variations - if any - by occupational group, etc. The methodology to be

used should draw on the practice tests used by researchers in the United Kingdom in 1966, 1974 and 1985, including case studies of recruitment and selection procedures in various key enterprises in key economic sectors. It should take into account not only procedures, but also the role of 'gatekeepers' (personnel managers, recruitment officers, workers' representatives in the Works Council, public labour exchange officials, personnel in private employment agencies, etc.) in the actual selection process.

18. Research on informal discrimination at the workplace should ideally be carried out in the enterprises where 'testing' had taken place. A few case-studies of United Kingdom enterprises should be foreseen.

19. Research on informal discrimination at the workplace should focus on migrants' access to training and promotion, the allocation of work and social relations, and discrimination with respect to lay-offs. The research methodology would have to be elaborated at a later stage, but several participants stressed the importance of a qualitative approach for obtaining reliable results.

20. The methodology to be used for evaluating experiences with ethnic monitoring and anti-discrimination training courses was not discussed, due to time constraints. However, it was agreed that research into these items was indispensable for the development of political measures whose aim it should be to make good migrants' arrears in the labour market, on the one hand, and to develop adequate training material aimed at the different 'gatekeepers', on the other.

21. A review and evaluation of existing anti-discrimination training and course material should be carried out in all countries were such material existed and was being used for work-related training purposes, including Australia, Canada, Germany, the Netherlands, Sweden and the United States.

22. Experiences with obligatory and non-obligatory ethnic monitoring should be compiled from Australia, Canada, the United Kingdom and the United States.

23. In his closing remarks, a representative of the ILO thanked all participants for the high quality, frank and constructive character of their contributions. In view of the fact that the Meeting had underlined the importance of combating labour market discrimination against migrant workers, the ILO had felt encouraged to pursue its activities in this field. The research agenda as agreed upon would be further elaborated and then research would be launched, provided sufficient external funds would become available, as a first step towards adequate educational and political programmes.

* * * *

ANNEX 1

Meeting of Researchers on Discrimination
Against Migrant Workers in the World of Work

Geneva, 12 July 1991
ILO, Room X

AGENDA

08.45-09.15	Registration for payment of per diem
09.15-09.30	Introductory statement by W.R. Böhning, Chief, International Migration for Employment Branch
09.30-10.45	Item 1: Is discrimination in private and public enterprises of such central importance to focus research resources on it? Or should one also cover institutions such as private employment agencies, public labour exchanges, training bodies etc.?
10.45-11.15	Break
11.15-12.30	Item 2: Does research on discrimination in enterprises have to be carried out on their premises for reasons of reliability and relevance of response on the part of workers, trade unionists and managers?
12.30-14.15	Lunch
14.15-16.15	Item 3: What are, in differing cultural settings, the key methodological problems of research and representativity regarding discrimination within enterprises or outside?
16.15-16.45	Break
16.45-17.15	Item 4: Where does one go from here?

****

ANNEX 2

MEETING OF RESEARCHERS ON DISCRIMINATION

LIST OF PARTICIPANTS

AMERICAS

Mr. Philip L. Martin Professor in Agricultural Economics	University of California Dept. of Agricultural Economics Davis, CA 95616 United States tel. (916) 752.15.30 fax (916) 752.56.14
Mr. Ricardo Torrealba Associate Professor in Demography, Advisor to the Ministry of Labour	Apartado 47-661 Caracas 1041 A Venezuela tel. (32) 31.09.89 fax (2) 541.77.17

ASIA AND THE PACIFIC

Mr. Manolo Abella Regional Advisor on Migrant Workers' Questions	ILO Regional Office for Asia and the Pacific P.O. Box 1759 Bangkok 10501 Thailand tel. (2)282.9161-170; 282.9365 fax (2)282.0173

AUSTRALIA

Mr. Jock Collins Associate Professor in Economics, Director of Research and Planning	University of Technology, Sydney P.O. Box 123 Broadway, NSW 2007 Australia tel. (2) 413.82.00 fax (2) 416.71.74
Mr. Alan Matheson Ethnic Liaison Officer	Australian Council of Trade Unions ACTU House 393-397 Swanston Street Melbourne 3000 Australia tel. (613) 663.52.66 fax (613) 663.40.51

EUROPE

Ms. Franca Alacevich Sociologist accompanied by: Ms. Paula Palchetti Research Assistant	University of Florence Dept. of Sociology and Political Science Via Sta. Caterina d'Alessandria 3 50129 Florence Italy tel. (55) 48.31.14; 48.09.66 fax (55) 49.08.94
Mr. Colin Brown former Senior Researcher at the Policy Studies Institute	Consumers' Association 2 Marylebone Road London NW1 4DX United Kingdom tel. (71) 486.55.44 fax (71) 935.16.06
Mr. Malcolm Cross Senior Researcher	University of Warwick Centre for Research in Ethnic Relations Coventry CV4 7AL United Kingdom tel. (203) 52.39.71 fax (203) 46.16.06
Mr. Han Entzinger Professor in Multi-Ethnic Studies	University of Utrecht Dept. of General Social Sciences P.O. Box 80.140 3508 TC Utrecht The Netherlands tel. (30) 53.29.28 fax (30) 53.16.19
Mr. Helmut Gillmeister Researcher	Freie Universität Berlin Forschungsstelle Arbeitsmigration Flüchtlingsbewegungen und Minderheitenpolitik Rüdesheimerstrasse 1 D - 1000 Berlin Germany tel. (30) 821.38.54
Ms. Erna Hooghiemstra Researcher	Sociaal en Cultureel Planbureau Postbus 37 2280 AA Rijswijk The Netherlands tel. (70) 319.87.59 fax (70) 396.30.00

Ms. Wuokko Knocke
Senior Researcher

Swedish Centre for Working Life
P.O. Box 5606
S 11486 Stockholm
Sweden
tel. (8) 790.60.00
fax (8) 10.68.51

Ms. Ursula Mehrländer
Head of Department on
Work and Social Affairs

Friedrich Ebert Stiftung
Research Institute
Godesberger Allee 149
D 5300 Bonn 2
Germany
tel. (228) 88.32.45
fax (228) 88.36.25

Ms. Mirjana Morokvasic
Researcher

Centre National de la Recherche
Scientifique
Institut de Recherches sur les
Sociétés Contemporaines IRESCO
59-61, rue Pouchet
75849 Paris Cedex 17
France
tel. (1) 40.25.10.25; 40.25.11.03

Ms. Catherine Wihtol de Wenden
Researcher

Centre National de la Recherche
Scientifique
Centre d'Etudes et de Recherches
Internationales
4, rue de Chevreuse
75006 Paris
France
tel. (1) 45.49.51.35
fax (1) 45.49.06.10

INTERNATIONAL LABOUR OFFICE

Mr. Roger Böhning
Chief
International Migration for
Employment Branch

International Labour Office
4, route des Morillons
1211 Geneva 22
Switzerland
tel. (22) 799.64.13
fax (22) 798.86.85

Mr. Carlos Castro-Almeida
International Migration for
Employment Branch

idem
tel. (22) 799.80.78

Ms. Constance Thomas
Equality of Rights Branch

idem
tel. (22) 799.71.27

Mr. Roger Zegers de Beijl
International Migration for
Employment Branch

idem
tel. (22) 799.80.91

ANNEX 3

INTRODUCTORY STATEMENT

by
W.R. Böhning,
Chief, International Migration for Employment Branch, ILO

I. Why discrimination of migrant workers?

It is a basic ILO tenet that there should be no discrimination. There should be equality of opportunity and treatment. Our societies profess in non-discrimination.
At the national level they pursue the issue of equality of opportunity and treatment in various ways (see the current bill in US Congress, there is a bill on equal treatment in the Netherlands, Swedish authorities re-examine their legislation, etc.).
Both in assimilation-orientated societies and in integration-orientated societies there is a common, fundamental threat of thinking that discrimination, where it persists, is not only unacceptable on general humanitarian grounds but also contrary to a major plank of their policies concerning foreigners or minorities and even counter-productive economically. I would like to mention here that the term "migrants" applies to non-nationals, foreign-born citizens and minorities alike as far as the work is concerned that we intend to launch.

II. Why discrimination in the world of work?

Discrimination happens daily in, for example, shops, restaurants, government offices, on the housing market, etc.
We decided to focus on one area, the world of work, which is closest to the ILO's mandate, rather than to spread ourselves thinly over several areas.
Much work has been undertaken, outside the ILO, on questions such as discrimination in education and text books, or discrimination in access to housing, or discrimination in the media, etc.
At the level of international organisations, the Council of Europe has been concerned with discrimination in the fields of education, housing as well as with questions of xenophobia and racism.
But it appears as though the world of work is not covered systematically or efficiently. Therefore, the ILO decided to focus on it. It is one of the key areas where non-nationals or foreign-born or ethnic minorities appear to encounter, day after day, discrimination on the part of public authorities, private employers and fellow workers.
In focusing on the world of work, we decided that we should go beyond the ILO's traditional concern with the question of whether national laws and regulations conform to internationally adopted standards, such as ILO conventions.
Legal discrimination is a much less important phenomenon today than it was one or two generations ago, at least in democratic societies.
Statutory discrimination persists, of course, but it seems to us that it is slowly being whittled down, as far as migrant workers are concerned, to a few more or less irreducible elements relating to electoral rights, politically sensitive jobs in the civil service, expulsion, etc.

Irrespective of whether or not discrimination is specifically outlawed in the world of work, we believe that it continues to be an important phenomenon and does not appear to be withering away on its own.

III. What discrimination is there in the world of work?

The discrimination the ILO felt merits special attention appears to happen, for instance, during the transition from school to work in the case of second and third-generation migrants as regards their access to public or private training institutions and facilities or as regards "streaming" within training institutions to certain jobs.

The discrimination the ILO felt merits special attention appears to happen generally where non-nationals (foreign-born/ethnic minorities) use professional counselling services, the services of public labour exchanges or private employment agencies, or where they address themselves directly to public or private enterprises.

Once inside a public or private enterprise, migrant workers appear to face discrimination in terms of non-recognition of their qualifications, work allocation, promotion opportunities, training and retraining, assignment to lower wage categories, failure to pay overtime bonuses on an equal basis, reduction of personnel and termination of the employment relationship.

Being crucial to a person's possibilities for improving his or her social and economic status, discrimination in the world of work generally and within enterprises particularly seriously affects migrants' chances of ameliorating their status.

Discrimination in the world of work is exercised by societies' gatekeepers on the basis of assumed societal preferences.

My colleague, Roger Zegers de Beijl, has called it "informal discrimination", meaning that it is non-formal in nature and difficult to demonstrate. His working paper, that you should have received, documented this "informal discrimination" for six major European countries of employment. Other papers are under preparation for Australia by the National Bureau for Immigration Research and for Venezuela by Ricardo Torrealba.

In short, discrimination within enterprises is the subject matter the ILO felt it should concentrate on because it is the least known phenomenon, the least documented, and yet it is one of the most humiliating and marginalising experiences migrant workers suffer.

IV. Is documentation and research our objective?

Documentation and research on discrimination of migrant workers in the world of work is not the ILO's final objective, but it is an indispensable means to another end.

This other end is to contribute to the reduction of discrimination through the improvement of manuals designed to promote non-discriminatory practices by public officials, personnel and production managers in enterprises, workers' representatives inside and outside enterprises as well as foremen and ordinary workers frequently in contact with migrant workers.

We should like to improve educational courses in different parts of the world for public officials, for managerial personnel and for workers' representatives.
These are activities for the medium term.
In the short term we want to tackle the question of what research may be necessary and what methodologies are the most promising to carry out the research.
This is the question we invited you to consider at today's researchers' meeting. Research and documentation, while it is not sufficient to combat discrimination, is the first and indispensable step to be taken.

V. How do we envisage today's proceedings?
What I suggest we do is to start with a general exchange of views on what the ILO sets out to do, i.e. on the subject of discrimination in the world of work generally and in enterprises particularly.
If you were to agree with our premise that discrimination of migrant workers in enterprises is a crucial but not rigorously documented subject, then we should try to answer the question under items 2 and 3 of the draft agenda.
If most of you were of the opinion that, as far as discrimination of migrants (foreign-born/ethnic minorities) is concerned, there are other subjects falling within the ILO's sphere of competence that are of greater importance, then we will have to examine this question before proceeding further.
We consider today's meeting to be an informal, brain-storm kind of meeting. We are among researchers, and you are not called upon to represent a country or government but only your own expertise. We will draft an Informal Summary Record of proceedings. Its draft will be submitted to you within a month to make sure that we have not summarised your views incorrectly; and then it will be printed.

VI. Where do we go from here?
I shall not pre-empt discussion of agenda item 4. Instead, I should like to indicate where we plan to go from here so as to give you some food for thought for this last session.
First of all, we plan to call together here in Geneva, probably at the end of this year, a meeting of donors who might be interested in funding the research to be launched, the evaluation of manuals and educational courses. We know that the ILO cannot finance all the activities we envisage. Therefore, we have to ask for outside support, probably of the order of several million US dollars.
To this meeting of donors we want to submit, among other documents, the Informal Summary Record of today's meeting of researchers.
We also have in mind to invite a few researchers to the donors' meeting in order to enable donors to question researchers on the feasibility and reliability of the research we will ask them to fund.

723

Seminario nacional en España
(Madrid, 27 de noviembre de 1997)

'La lucha contra la discriminación de que son objeto los trabajadores migrantes y las minorías étnicas en el mundo laboral'

Organización internacional del Trabajo
Ginebra, 1998

1. Introducción

Organizado por el Ministerio de Trabajo y Asuntos Sociales (MTyAS), a través de la Secretaría General de Empleo y la Secretaría General de Asuntos Sociales, y la Oficina Internacional del Trabajo (OIT), tuvo lugar en Madrid, el día 27 de noviembre de 1997, el Seminario 'Lucha contra la discriminación de los trabajadores migrantes y las minorías étnicas en el mundo laboral'. El Seminario estuvo enmarcado en los actos realizados por el gobierno español dentro del 'Año Europeo contra el Racismo'.

Abrió el acto el **Sr. D. Ulpiano San Martín**, en representación de la Oficina de Correspondencia de la OIT en Madrid. En sus palabras agradeció al MTyAS las aportaciones realizadas para llevar a cabo las cuatro actividades del Proyecto de la OIT en España y, en particular, la celebración del presente Seminario Nacional en el que se exponen los resultados de las mismas. Así mismo hizo extensivo el agradecimiento a las demás entidades patrocinadoras del Proyecto: la Junta de Andalucía y las Fundaciones catalanas Jaume Bofill y Paulino Torres Domenech. La coincidencia temporal de la celebración del 'Año Europeo contra el Racismo' y la presentación de los resultados del Proyecto de la OIT sobre 'Lucha contra la discriminación de que son objeto los trabajadores migrantes y las minorías étnicas en el mundo laboral' subraya, en opinión del Sr. Ulpiano San Martín, la convergencia en preocupaciones e intereses sobre la temática del cumplimiento de los derechos humanos en las sociedades democráticas como valor a reivindicar, y su traslación al ámbito laboral en cuanto elemento de cohesión social y progreso de los pueblos. Terminó agradeciendo la aportación del Instituto de Migraciones y Servicios Sociales (IMSERSO), en cuya sede se desarrolló el Seminario.

A continuación tomó la palabra el **Sr. D. Manuel Pimentel,** Secretario General de Empleo, del Ministerio de Trabajo y Asuntos Sociales, quien recordó la reciente experiencia de la emigración de españoles por motivo de trabajo y la doble discriminación sufrida en cuanto trabajadores y extranjeros. Subrayó la importancia de cada una de las actividades del Proyecto de la OIT para conformar una sociedad abierta, plural y activa ante los desafíos de la explotación laboral y el racismo. Así mismo recordó el compromiso acordado entre los agentes sociales en la Cumbre de Diálogo Social que dio lugar a la Declaración conjunta de la Confederación Europea de Sindicatos y las patronales europeas UNICE y CEEP en Florencia (1995) relativa a la *Prevención de la discriminación racial y la xenofobia y fomento de la igualdad de trato en el lugar de trabajo*. El Sr. Pimentel abogó por impregnar de dichas preocupaciones el impulso que se realiza desde el gobierno de cara al diálogo social y la negociación colectiva. Las líneas particulares de preocupación por la salud laboral, la formación y capacitación profesional y el fomento de empleo indefinido deben alcanzar, también, a los inmigrantes en España como ejercicio de reparto de bienes laborales y siempre desde el respeto a la diferencia y luchando contra la discriminación.

Por su parte, **Doña Amalia Gómez**, Secretaria General de Asuntos Sociales, del Ministerio de Trabajo y Asuntos sociales, insistió en su intervención en que las situaciones discriminatorias constituyen un tema crucial para la integración de los inmigrantes en nuestros país. Felicitó a la OIT por la iniciativa del Proyecto internacional contra la discriminación laboral. Además subrayó que hay que estar vigilantes para que la discriminación no se haga presente en las condiciones generales de vida de los inmigrantes (la vivienda, la salud o las condiciones familiares) e, incluso tener cuidado para que las iniciativas públicas no generen en la práctica discriminaciones no queridas. Para evitar todo ello, Dª Amalia Gómez terminó su intervención haciendo un llamamiento a la sociedad en general para que no cese en sus reivindicaciones al tiempo que aporte propuestas para mejorar las condiciones de vida de los colectivos migrantes.

2. Presentación del Proyecto de la OIT 'Lucha contra la discriminación de que son objeto los trabajadores migrantes y las minorías étnicas en el mundo laboral'

El **Sr. D. Roger Zegers de Beijl**, experto de la OIT y coordinador internacional del proyecto sobre *Lucha contra la discriminación de que son objeto los trabajadores migrantes y las minorías étnicas en el mundo laboral,* enmarcó en su exposición los resultados de las actividades realizadas en España del Proyecto internacional impulsado por la OIT[1] a principios de los años noventa. Agradeció, en nombre de la OIT, al Ministerio de Trabajo y Asuntos Sociales la colaboración para la realización de este Seminario y al mismo ministerio, junto con las demás entidades patrocinadoras de las otras tres actividades, la financiación necesaria para desarrollar el proyecto en España.

El Sr. Roger Zegers de Beijl destacó que el motivo principal de la OIT al iniciar el presente Proyecto fue proporcionar a todos los países participantes ayuda práctica para luchar con mayor eficacia contra la discriminación laboral de que son objeto los trabajadores migrantes y las minorías étnicas. A largo plazo, el objetivo es contribuir a eliminar la discriminación informando a los responsables políticos, a las organizaciones de empleadores y de trabajadores, a los agentes sociales dedicados a la formación laboral sobre cómo hacer más eficaces las medidas legislativas y las actividades de formación. En opinión de la OIT, las políticas de integración se tornarán vacías, si los migrantes no acceden a puestos de trabajo dignos o si no promocionan en los mismos; la marginación del mercado laboral terminará generando exclusión social. El supuesto principal en que se basa el proyecto es que la igualdad de oportunidades y la igualdad de trato tienen una importancia primordial en la integración de los migrantes en las sociedades de los países de acogida. Por otro lado, la discriminación o trato menos favorable (en el momento del acceso al mercado laboral, en las condiciones de trabajo, en las posibilidades de promoción y formación, etc.) supone tanto una pérdida de recursos disponibles como levantar un impedimento a la integración de los inmigrantes.

[1] En el momento actual son diez países los que están implicados en el proyecto de la OIT: Alemania, Bélgica, Canadá, Dinamarca, España, Estados Unidos de América, Finlandia, Holanda, Reino Unido y Suecia.

A continuación, el Sr. Roger Zegers de Beijl expuso algunas de las conclusiones extraídas de las investigaciones realizadas en el conjunto de los países implicados, destacando que el fenómeno de la discriminación laboral se había confirmado en todos los estudios de la *primera actividad* y que, por lo tanto, no era un hecho exclusivo de la situación de España. Sin embargo, lo que sí distingue a la situación de España es que es uno de los pocos países industrializados que acogen migrantes y que todavía no ha promulgado una legislación específica antidiscriminatoria para proteger a los trabajadores no nacionales, tal como se desprende del estudio de la normativa (objeto de la *segunda actividad* del proyecto). Si el gobierno español se ha esforzado mucho por mejorar la situación jurídica y los derechos de residencia de los extranjeros, todavía el camino que queda por andar en el ámbito jurídico antidiscriminatorio es mucho y se hace necesario iniciar un debate entre los agentes sociales sobre cómo mejorar la eficacia de las medidas destinadas a lograr una mayor integración de los inmigrantes en el mundo laboral. Así mismo, los resultados de la *tercera actividad* realizada en España, en comparación con los de otros países, muestran el estado inicial de la formación antidiscriminatoria pero, también, que existe la necesaria sensibilidad social en muchos de los agentes socio laborales para ponerse a la altura de las exigencias. En esta puesta a punto se pueden retomar experiencias de otros países tanto para orientar mejor las políticas y las prácticas como para no incurrir en errores pasados. En particular, la formación antidiscriminatoria se ha mostrado poco eficaz para la formación de actitudes y comportamientos antidiscriminatorios, tanto si se restringe a proporcionar 'información' como si se plantea únicamente 'sensibilizar' a los formando. Sin embargo, cuando a la información rigurosa sobre la situación, se añade la presentación de la normativa legal y , además, se realiza la actividad de formación en la 'práctica', vinculada a situaciones cotidianas en el mundo laboral, la eficacia se muestra mayor.

Como conclusión del Proyecto, se desprende que la labor que queda por hacer es grande, en España y en el resto de los países. La difusión de los resultados nacionales y el debate de los mismos entre los agentes sociales hará avanzar en el camino de una legislación antidiscriminatoria por causas de origen étnico o nacional. Los Seminarios nacionales, el presente en Madrid así como los de Londres, Helsinki y Bruselas, están contribuyendo a examinar los cambios que harían falta introducir en la legislación nacional y en las políticas destinadas a luchar contra la discriminación dentro de las empresas. Las conclusiones y recomendaciones de estos seminarios nacionales se presentarán y analizarán en conjunto en un Seminario Internacional previsto para el otoño de 1998 con el fin de hacer un intercambio fecundo de información entre todos los países que participan en el proyecto de la OIT. Además en dicho Seminario, la OIT presentará las conclusiones que formule acerca de todo el proyecto y ofrecerá como objeto de debate los elementos que se han de incluir en un *Manual de la OIT* para luchar contra la discriminación de que son objeto los trabajadores migrantes. Este Manual será el producto final del proyecto sobre *'Lucha contra la discriminación de que son objeto los trabajadores migrantes y las minorías étnicas en el mundo laboral'* y servirá, en un primer momento, como instrumento de sensibilización ante la problemática y, en un segundo momento, como cauce para el debate entre los agentes sociales. Además, el Manual contendrá medidas concretas que hayan demostrado su eficacia para remediar la discriminación. El Proyecto de la OIT en estos momentos no cae en el vacío, dado que el Declaración conjunta

de Florencia (1995) también ha planteado la prevención contra el racismo como punto crucial de la cohesión social y ha emplazado a los agentes sociales para implementarla. Éstos se han comprometido públicamente a niveles de sus organizaciones internacionales pero hace falta asentar dicho compromiso en cada uno de los países presentes en la cumbre de Diálogo social de Florencia. Sindicatos, empleadores y administración tienen en España un reto que cumplir y la OIT ofrece los resultados de su Proyecto como un material más para responder al mismo.

3. Presentación de resultados de la aplicación de las tres primeras actividades del Proyecto de la OIT en España

La presentación de los resultados de las actividades primera y tercera del Proyecto de la OIT '*Lucha contra la discriminación de que son objeto los trabajadores migrantes y las minorías étnicas en el mundo laboral*' la realizó el **Sr. D. Miguel Ángel de Prada**, sociólogo del Colectivo Ioé, equipo encargado de realizarlas. En la introducción destacó la importancia que representaba este Seminario nacional en España, esto es, la realización de la *cuarta y última actividad* del Proyecto de la OIT. Si en España, hasta el presente, no se había tomado conciencia de la presencia de trabajadores inmigrantes y del comportamiento de los guardianes del empleo ('gate keepers') hacia los mismos, la realización completa de este Proyecto muestra que nos encontramos ante una realidad clara y que plantea nuevos retos a todos los agentes sociales, sobre todo a aquellos que ya están comprometidos por la firma de la Declaración de Florencia (1995) para la prevención del racismo en el mundo laboral.

A continuación expuso los aspectos metodológicos del trabajo realizado en la *primera actividad* del Proyecto para medir empíricamente la existencia o no de discriminación contra inmigrantes en el momento del *acceso al empleo*; se trata de la aplicación rigurosa del diseño de investigación aplicado homogéneamente en todos los países implicados en el Proyecto y que, por lo tanto, permitirá la comparatividad internacional. En el caso de España, la muestra seleccionada como grupo testigo estuvo compuesta por jóvenes marroquíes varones con un nivel de calificación media y con experiencia de trabajo en los sectores de la construcción, la industria y los servicios. Las pruebas realizadas (denominadas 'pruebas de actores en medio real'), siguiendo el diseño de investigación propuesto por F. Bovenkerk y adoptado por la OIT, consistieron básicamente en formar parejas entre un joven marroquí y otro autóctono de la misma edad, apariencia, nivel formativo y experiencia laboral; ambos debían localizar ofertas de empleo adecuadas al perfil señalado y presentarse los dos a solicitarlas en las mismas condiciones. Se trataba, en definitiva, de poner al empleador (o persona encargada de seleccionar a los demandantes - 'gate keeper') en la tesitura real de tener que decidir por uno u otro, presentando ambos las mismas condiciones laborales excepto la marca del origen étnico o nacional. El diseño de investigación prevé que para la muestra total de pruebas realizadas en España, si resultara un 10% ('tasa crítica') de diferencia de trato (elección a favor de uno u otro demandante de empleo) se podría admitir la evidencia empírica de discriminación. Pues

bien, el resultado real fue el 35,6% de diferencia a favor del demandante autóctono y en contra del joven marroquí, esto es, 3,5 veces superior al mínimo exigido. La evidencia fuerte de este resultado es la comprobación empírica de que, al menos, en tres veces y medio del mínimo técnicamente exigido se ha constatado la postergación del joven marroquí en el momento del acceso al empleo frente al joven autóctono; es decir, al menos en una de cada tres solicitudes de empleo, el grupo de jóvenes marroquíes ha sido tratado desfavorablemente en comparación con el grupo de jóvenes autóctonos.

La discriminación o trato desigual se ha comprobado en las tres etapas del procedimiento establecido (llamada por teléfono solicitando una entrevista; resultado de la entrevista; y oferta o no de empleo) pero ha sido en la primera (llamada por teléfono) cuando se han acumulado los rechazos (el 70% del total), significando que el principal filtro desfavorable para el empleo se produce cuando el demandante no tiene ni siquiera la oportunidad de exponer sus capacidades al empleador. Por áreas geográficas seleccionadas, Barcelona y Madrid muestran una proporción de más del doble del mínimo requerido para verificar la discriminación contra el grupo inmigrante (2,6 y 2,2 veces respectivamente) siendo mínima la proporción comprobada en Málaga (1,3 veces). Por sectores económicos, los servicios muestran una alta tasa de discriminación (3,3 veces) mientras que en la construcción no se alcanza el mínimo exigido; la industria se sitúa en una posición intermedia (1,4 veces). Estos resultados muestran la diferente dinámica laboral de cada uno de los sectores y su repercusión sobre la contratación de inmigrantes, no pudiéndose establecer conclusiones generales homogéneas sobre el conjunto del mercado laboral, sino que se exige, tal como queda expuesto, una profundización en cada uno.

Después de exponer estos resultados[1], D. Miguel Ángel de Prada se centró en los resultados obtenidos en la *tercera actividad* del Proyecto de la OIT sobre 'Actividades de formación antidiscriminatoria' en España[2]. Destacó que entre los agentes sociales y laborales estaba asumido el principio de trato igual a nacionales y extranjeros aunque estaba muy poco explícito en la normativa laboral. Algo similar ocurre en el *ámbito de la formación* puesto que es importante el esfuerzo de implantación de la misma en el mundo laboral en los últimos años, sea como formación ocupacional para desempleados (plan de Formación e Inserción Profesional del Instituto Nacional de Empleo) o para ocupados, vinculada al Acuerdo Nacional para la Formación Continua y gestionada por organizaciones empresariales y sindicales. Pero, sin embargo, los contenidos de la formación son preferentemente técnicos, estando casi ausentes contenidos de trato igual a colectivos con características específicas. La coincidencia de diversos agentes socioeconómicos en el apoyo decidido a una política de no discriminación laboral por motivo de género y de discapacidad constituye el contexto próximo para la no discriminación laboral en el que pueden insertarse otros motivos como la 'raza' y el origen étnico o nacional. En el panorama actual del estado español se percibe tanto una ampliación de la oferta como de la demanda sobre actividades de formación antidiscriminatoria, aunque de modo inicial. Por parte de la demanda destacan la internacionalización de las empresas (que

[1] El informe completo puede consultarse en Colectivo Ioé: 'Discriminación contra trabajadores marroquíes en el acceso al empleo', en Colectivo Ioé y R. Pérez Molina: *La discriminación laboral a los trabajadores inmigrantes en España*, OIT, Ginebra, 1996.

[2] Los resultados de la tercera actividad han sido publicados en Colectivo Ioé, *Actividades de formación antidiscriminatoria en España*, OIT, Ginebra, 1996.

aportan su experiencia de otros lugares) y la entrada de las administraciones públicas, sindicatos y otras Organizaciones no gubernamentales. Y, por parte de la oferta la apertura en los contenidos de los programas formativos obedecería a la creación de centros de formación laboral de iniciativa pública y dependientes de la iniciativa civil y colectiva, como sindicatos u organizaciones privadas, más sensibilizados a la perspectiva antidiscriminatoria. Finalmente, la constatación de un inicio de coordinación entre agentes sociales en pro de la igualdad de trato en el mundo laboral y la introducción de dichos agentes en el ámbito internacional (como la participación en la elaboración de la Declaración de Florencia, 1995), han permitido que se acoja con sumo interés la actual iniciativa de la OIT en el marco del proyecto de lucha contra la discriminación laboral de los inmigrantes y minorías étnicas.

D. Rafael Pérez Molina, antropólogo, experto asociado de la OIT, presentó los resultados de la *segunda actividad* del Proyecto de la OIT en España sobre *análisis de la normativa antidiscriminatoria en la legislación española*[1]. Dividió su exposición en tres puntos: 'marco legal antidiscriminatorio en España', 'evaluación de la eficacia del marco legislativo' y 'sugerencias' para optimizar la eficacia de la lucha antidiscriminatoria. En el primer punto hizo un recorrido por la legislación internacional firmada por España, y por tanto de obligado cumplimiento, la que no deja lugar a dudas de la exigencia del trato igual a los inmigrantes en el mundo laboral. Recordó los Convenios de la OIT nº 97/1949 sobre trabajadores migrantes y el nº 111/1959 sobre no discriminación en el empleo; el Tratado Constitutivo de la Comunidad Europea (art. 48), los títulos I y II del Reglamento Nº 1621/68 y los artículos 28 y 29 del Acuerdo sobre el Espacio Económico Europeo. Así mismo se refirió a la Declaración Universal de Derechos del Hombre como fuente citada en el preámbulo de la Constitución española (1978) y al Convenio para la Eliminación de Todas las Formas de Discriminación Racial, también ratificado por España , aunque al no haber suscrito el artículo 14 España no reconoce la competencia del Comité de la Convención para recibir y examinar comunicaciones de persona que alegue ser víctima de discriminación. Otros pactos antidiscriminatorios hacia los trabajadores extranjeros firmados por España son: el Pacto Internacional de Derechos Civiles y Políticos, el Pacto Internacional de Derechos Económicos, Sociales y Culturales o, en el espacio del Consejo de Europa, la Carta Social Europea y el Convenio relativo al Estatuto Jurídico del Trabajador Migrante, que defiende un 'trato no menos favorable que el que disfrutan los trabajadores nacionales en el estado de acogida'.

Si la legislación internacional es clara al respecto, la legislación interna es bastante ambigua. Ni siquiera la Constitución española es receptiva a la equiparación entre nacionales y no nacionales; así el art. 14 que prohíbe la discriminación, se refiere sólo a los que posean la nacionalidad española, lo que ha motivado la necesidad de interpretación del Tribunal Constitucional, quien en sentencia 107/84 advirtió sobre la inexistencia de un principio constitucional de igualdad que equipare como regla general a los extranjeros con los españoles. En suma, el texto constitucional ampara el derecho a un trato igualitario ante la justicia pero no el derecho al trabajo, que sólo corresponde a los españoles (art. 35). Además de la Constitución, las dos leyes que más afectan a la igualdad en el empleo de los trabajadores extranjeros son la Ley 8/80 del Estatuto de los Trabajadores y la Ley 7/85 sobre Derechos y libertades de los extranjeros en España. El Estatuto de los Trabajadores (y su actualización por

[1] Pérez Molina, R., 'La protección contra la discriminación de los inmigrantes en España: del papel mojado a una legislación efectiva', en Colectivo Ioé y Pérez Molina, R.: *La discriminación laboral a los trabajadores inmigrantes en España*, OIT, Ginebra, 1996.

el Real Decreto Legislativo 1/1995) no diferencia ni discrimina entre trabajadores nacionales o extranjeros (en situación legal), sino que los equipara (art. 7. C y art. 69). La Ley 7/85, conocida como Ley de Extranjería, plantea en la introducción el dotar a los extranjeros de la 'máxima cuota de derechos y libertades, cuyo ejercicio queda prácticamente equiparado al de los propios españoles', aunque limita, entre las condiciones para la obtención del permiso de trabajo, al que no haya trabajadores españoles en desempleo en el mismo sector y oficio para el que se solicita el permiso (recogiendo el art. 35 de la Constitución). Diversos reglamentos han ido desarrollando su aplicación y situándola en posición más igualitaria. Por un lado adaptándola a la legislación europea (Real Decreto 1099/86, derogado por el Real Decreto 766/92, para los trabajadores con nacionalidad de países de la Comunidad Europea) y, por otra, al resto de los inmigrantes (Real Decreto 1119/86 y 155/96).

Otros textos normativos que inciden en el tema son la Ley 51/1980, Básica de Empleo, que establece que 'serán principios básicos de la política de colocación la igualdad de oportunidades y de trato en el empleo, sin que pueda establecerse cualquier distinción, exclusión o preferencia basada en motivos de raza... ascendencia nacional u origen social'. Pero, también, dentro de la normativa relacionada con las prestaciones laborales se producen contradicciones entre la legislación de extranjería y la legislación laboral; así, se discriminaba a los inmigrantes que habiendo cotizado por desempleo, ya que si durante el período de recibir la prestación por desempleo les caducaba el permiso de trabajo, aquella finalizaba (este tema ha sido resuelto por el Real Decreto 155/1996). Al margen de la legislación laboral, el Código Penal presenta artículos que afectan a la discriminación de los inmigrantes y castigan el racismo (art. 22, 170, 197, 312, 510, 512), especialmente el 314 que pena con prisión a quienes 'produzcan una grave discriminación en el empleo público o privado contra alguna persona por -entre otras causas- su pertenencia a una raza, etnia o nación'. Pero, de nuevo, la indefinición terminológica lo lleva a ser inoperante (qué es 'discriminación grave'). También la Ley 8/88 sobre Infracciones y Sanciones de Orden Social considera infracciones del empresario las relacionadas con la contratación ilegal sin que se mencione la desigualdad de trato. El resumen del panorama legislativo, en palabras de Rafael Pérez Molina, es que 'aunque con buenas intenciones, parece tibio y algo confuso terminológicamente'; aunque va cambiando poco a poco.

En el segundo punto D. Rafael Pérez Molina evaluó la eficacia del marco legislativo y de los mecanismos de tutela, señalando cuatro puntos problemáticos y proponiendo posibles salidas. El primer punto es la diferenciación de trato, no sólo entre nacionales y extranjeros -ya señalado-, sino dentro de la propia normativa de extranjería y que origina discriminaciones entre los propios inmigrantes a la hora de otorgar o renovar permisos de residencia y/o de trabajo. Por un lado, tienen diferente status los trabajadores de la Unión Europea y, por otro, ciertos nacionales de países con los que España posee lazos históricos y culturales pero no todos, como es el caso de Marruecos, cuyos nacionales no se han beneficiado del trato dado a los latinoamericanos; también hay diferencia a la hora de conseguir el permiso de trabajo, según se sea asalariado o por cuenta propia. Pero, sobre todo, la propia necesidad de permiso de trabajo genera diferencia de trato entre trabajador nacional y extranjero (tal como sentenció el Tribunal Central de Trabajo), dado que éste no puede acceder a contratos fijos o indefinidos.

El segundo punto son los problemas conceptuales o terminológicos pero con efectos discriminantes, así, según el Estatuto de los Trabajadores, un inmigrante puede plantear una queja por ser discriminado por razón de sexo, edad, etc. pero no por la distinta nacionalidad; o un empleador será sancionado por contratación fraudulenta pero no por discriminación en el empleo.

El tercer punto aludido por Rafael Pérez Molina es la 'descoordinación normativa', así no se plantea ningún supuesto que guarde relación con la caducidad/renovación de los permisos de trabajo cuando el inmigrante se encuentre en situación de desempleo, lo que afecta a las prestaciones por el mismo. Y, finalmente, el cuarto punto señalado es el del 'miedo a la denuncia' por discriminación laboral por parte de inmigrantes, dado que no se hará uso de un derecho legítimo si el precio a pagar puede ser más caro que la reparación que se espera conseguir. El precio puede llegar a ser no sólo la pérdida del empleo actual, sino, además, la posterior denegación de la renovación del permiso de trabajo y, por tanto, el paso de un status regular a otro irregular. Además, aparte de la dificultad de la prueba, está la ausencia de un órgano de la Administración que se encargue de la promoción, vigilancia y protección de los derechos de las minorías y de los inmigrantes. Ni el Defensor del Pueblo ni la Inspección de trabajo, ni la extinta Dirección General de Inmigración han cumplido dicho papel.

Como conclusiones, D. Rafael Pérez Molina sugirió tres: la necesidad de una normativa específicamente antidiscriminatoria donde aparezca como delito y agravante del mismo, la discriminación por diferente nacionalidad, o en todo caso, la inclusión de este término en la legislación social y especialmente en el Estatuto de los Trabajadores. Segunda conclusión: la necesidad de un órgano de la administración para velar, informar y potenciar el cumplimiento de las medidas antidiscriminatorias y de canalizar jurídicamente de oficio o a instancia de parte los hechos discriminatorios. Y tercera, favorecer la integración, profundizando en la línea del Real Decreto 155/96 (apoyo a la reagrupación familiar, ampliación de plazos de los permisos de trabajo y fomentar acciones positivas para contrarrestar el peso de la cultura mayoritaria).

4. Complemento de información: Resultados del estudio sobre Buenas Prácticas de contratación a inmigrantes

El **Sr. D. José Ramón Aparicio**, Subdirector General de Promoción Social de la Migración y de Programas para Refugiados, presentó la sesión informativa complementaria dedicada a las 'buenas prácticas' de contratación de inmigrantes. El trabajo de investigación sobre 'buenas prácticas' fue impulsado por la Declaración conjunta de Florencia (1995) y la Fundación Europea para la Mejora de las Condiciones de Vida y de Trabajo, de Dublín, recibió el encargo de ponerlo en marcha en cada uno de los países miembros de la Unión Europea como paso para implementar la eficacia de la propia Declaración.

La exposición de los resultados del trabajo realizado en España fue realizada por D. **Lorenzo Cachón**, Profesor de la Universidad Complutense de Madrid. Este trabajo sobre España amplía un primer informe, realizado para la misma Fundación de Dublín y por el mismo equipo de investigación , titulado: 'Prevenir el racismo en el trabajo'[1]. Entre los aspectos positivos más sobresalientes recogidos en este primer informe, se encuentran: el avance registrado en materia normativa; los resultados de los procesos extraordinarios de regularización de 1985-86, 1991-92 y 1996; las diferentes reformas administrativas; la implicación creciente de ONGs. y sindicatos; la prolongación de la duración de los permisos de trabajo para inmigrantes; los cursos de lengua y de formación ocupacional para extranjeros; el rechazo social al racismo; la normalidad de la inmigración; y, finalmente, la influencia de la memoria histórica de la España migrante como elemento potenciador del debate social sobre la integración positiva de los inmigrantes. También en el lado del saldo negativo se señalan varios aspectos: los diferentes enfoques en la administración para el tratamiento de la inmigración; el desfase entre los planteamientos de las organizaciones sindicales y las prácticas de las bases de los mismos; la mala formación de la opinión pública sobre este tema; la excesiva proporción de permisos de trabajo de corta duración; la frecuencia de prácticas discriminatorias en los puestos de trabajo; los sectores de indocumentados que son objeto de explotación laboral; el miedo a denunciar estas situaciones por los inmigrantes; la imposibilidad legal de acceder a la función pública; los reiterados problemas para alquilar viviendas dignas; y, desgraciadamente, las agresiones y el asesinato de inmigrantes.

El encargo de la Cumbre de Diálogo Social de Florencia a la Fundación para la Mejora de las condiciones de Vida y de Trabajo ha dado por resultado un informe por cada país de la Unión Europea, que se han puesto en común en un encuentro de Lisboa en noviembre de 1997. Todos los informes nacionales siguen un esquema común para analizar los códigos de buena conducta y las políticas activas de no discriminación en las empresas a los inmigrantes. Una constatación básica del encuentro de Lisboa es que mientras que en los países del norte de Europa se han localizado fácilmente ejemplos de negociación laboral y de contratación, que pueden incluirse como casos de buenas prácticas para combatir el racismo en el lugar de trabajo, en los del sur ha sido una ardua búsqueda. En el caso de España, se centró la investigación en tres casos: la actuación de los sindicatos mayoritarios Comisiones Obreras y Unión General de Trabajadores; la situación de una empresa minera en la cuenca de León y de otra empresa agrícola en Aragón[2].

Entre las conclusiones de esta investigación, D. Lorenzo Cachón señaló: las limitaciones existentes en España en el marco legal para luchar con eficacia contra la discriminación racial y por la igualdad de trato de los inmigrantes; para solventarlas se sugiere la puesta en práctica de algunas de las recomendaciones del Parlamento Europeo contenidas en el denominado Informe Ford (aprobación de una ley contra la discriminación que condene los actos racistas; información de los medios para luchar contra las discriminaciones; etc.) así como la ratificación del Convenio 143 de la OIT, que asegura protección a los trabajadores migrantes

[1] Ver informe completo en Cachón, L. y otros, *Prevenir el racismo en el trabajo. Informe sobre España*, Fundación Europea para la Mejora de las Condiciones de Vida y Trabajo, Dublín, 1995.

[2] Ver, Cachón, L., Moldes, R., Navarro, C. y Sanz, F., *Buenas prácticas para la prevención de la discriminación racial y la xenofobia y la promoción de la igualdad de trato en el trabajo. Estudio de casos en España,* Fundación Europea para la Mejora de las Condiciones de Vida y Trabajo, Dublín, 1997.

clandestinos o no documentados, y la modificación de aspectos criticados por sindicatos y ONGs de la Ley de extranjería de 1985. La segunda conclusión es que, a pesar de las lagunas normativas, tanto el art. 14 de la Constitución de 1987 como el art. 17 de la Ley del Estatuto de los Trabajadores permiten desarrollar políticas antidiscriminatorias de amplio espectro. La tercera conclusión es que si se ha comprobado en España la existencia de discriminación en el momento del acceso al empleo (ver investigación de la OIT) también se ha detectado la existencia de casos de contratación de inmigrantes en situación de igualdad con los autóctonos. De este modo, la cuarta conclusión incide en los casos de 'buenas prácticas' analizados respecto a los inmigrantes puesto que hacen referencia a la eficacia de las políticas de no discriminación racial y las de promoción de la igualdad de trato. La quinta conclusión avanza que si se han observado algunos casos, éstos pueden extenderse mediante la formulación de políticas activas que se introduzcan en las empresas (entre otras, a través de clausulas antidiscriminatorias en los convenios colectivos y mediante el debate social frente a planteamientos discriminatorios). Las conclusiones sexta y séptima hacen referencia al desconocimiento de la Declaración de Florencia (1995) entre instancias sindicales y de los empresarios, y a la práctica ausencia de inclusión en convenios colectivos de clausulas antidiscriminatorias, lo que implica la necesidad de difusión de dicho texto entre los interlocutores sociales, trabajadores y población en general. La distinción entre 'igualdad de trato' (de carácter individual) y la 'igualdad de oportunidades' que implica a autóctonos e inmigrantes, hace proponer un avance que incluya ambos aspectos. Finalmente, se reclama una profundización o estudios más sistemáticos tanto en empresas como en los comportamientos sindicales; si es un reto sindical prioritario el combate contra los gérmenes discriminatorios al interior de los mismos, sólo el conocimiento detallado de los mecanismos de exclusión laboral en las empresas permitirá afrontar con realismo los problemas de discriminación laboral.

5. Cierre del Seminario. Discusión de resultados

D. Héctor Maravall, Director del IMSERSO y anfitrión del Seminario, presentó y moderó una Mesa Redonda con agentes sociales (empresariales, sindicales y de ONGs) con la concluyó el Seminario. Destacó la importancia del acto para conseguir animar el diálogo social sobre los aspectos de la política antidiscriminatoria. Y, en particular, para iniciar la tarea de proponer medidas que hagan avanzar en la dirección de prevenir el racismo y la discriminación en el mundo laboral y en la sociedad. Incitó a los invitados a la Mesa a que propusieran medidas concretas y, así mismo, a que se comprometieran a trasladar el debate de este Seminario a sus respectivas organizaciones.

Abrió la intervención de la Mesa, el representante de la Confederación Española de Organizaciones Empresariales, **Sr. D. Felipe Manzano**, encargado del tema migraciones. Felicitó a la OIT por la iniciativa del Proyecto internacional y sobre el Informe particular de España indicó que la presentación que hace la OIT es tímida y poco arriesgada; en su opinión no sólo hay que 'reducir' la discriminación hacia los no nacionales o 'rectificar' tales

comportamientos, sino suprimirlos. La CEOE con su apoyo a los Acuerdos sobre estabilidad en el Empleo pretende la creación de trabajo estable y, también, para los inmigrantes. En segundo lugar, declaró que la CEOE, al ser una organización de organizaciones empresariales, es decir, una organización cúpula no tiene competencia para incidir en cada una de las mismas y se encuentra con la dificultad de hacer llegar sus planteamientos a las bases; ahora, desde la CEOE nunca se amparará a empresarios xenófobos, si es que existieran, antes al contrario se promueve la promoción laboral en igualdad de condiciones. Sin embargo, la legislación laboral actual (art.17 del Estatuto de los Trabajadores) sólo ampara la igualdad de trato a partir de la contratación; el momento anterior no se contempla y, por lo tanto, no hay posible ilegalidad. Con todo, la CEOE consciente de la importancia de evitar la discriminación se ha incorporado a las iniciativas institucionales: ha firmado la Declaración del Año Europeo contra el Racismo y así mismo forma parte de grupos de trabajo mixtos como los de seguridad ciudadana, formación y prevención del racismo. Finalmente, hizo la observación de que a la CEOE no se le había consultado para la elaboración de la tercera actividad de la OIT sobre 'Actividades de formación antidiscriminatoria', que hubieran dado su opinión con mucho gusto pero, desgraciadamente, la CEOE no cuenta con ningún programa de formación.

Por parte del sindicato Comisiones Obreras, **D. Victor Gómez** expuso la labor de los CITE (Centros de Información a Trabajadores Extranjeros), creados en 1989; en su opinión los CITE significan la principal aportación de CC.OO. al tema de los inmigrantes. Así mismo recordó las implicación del sindicato en el Foro para la Integración Social de los Inmigrantes y su participación activa en la confección de los contingentes de trabajadores inmigrantes desde 1993, aunque desde una posición crítica a ciertos aspectos limitativos de los derechos laborales de la Ley de extranjería. En tercer lugar señaló la importancia de la acción sindical en los centros de trabajo a través de dos puntos concretos: la introducción de clausulas de no discriminación en los convenios colectivos y la difusión del texto de la Declaración de Florencia (1995). Finalmente señaló la campaña que CC.OO ha dirigido a la opinión pública, con motivo del año europeo contra el racismo y la xenofobia, por ser éste un ámbito esencial de trabajo para evitar la discriminación.

Doña Pilar Roc habló en nombre del sindicato Unión General de Trabajadores, destacando que existen rechazos no evidentes o de baja intensidad en aspectos cotidianos pero que constituyen prácticas discriminatorias importantes en el mundo laboral. Por ello abogó porque, además de la comprobación de la discriminación en el momento del empleo, tal como había realizado ya el Proyecto de la OIT, se avanzara también en el estudio de las buenas prácticas dentro de los centros de trabajo. La explotación laboral respecto al colectivo de inmigrantes irregulares es un tema de preocupación prioritaria para la UGT que trabaja para su erradicación tanto en el ámbito de la sensibilización social como en el del control de los abusos. En su opinión, la Declaración de Florencia (1995) es un buen instrumento de trabajo que los sindicatos españoles han suscrito, en tanto que la patronal no lo ha hecho por lo que duda de su interés en el tema. Como propuestas particulares subrayó: la necesidad de la sensibilización social ante dicha problemática; la denuncia de situaciones de discriminación por parte de inmigrantes; la adopción de medidas eficaces por parte de la administración; cambios en la política de extranjería y, finalmente, rechazo social contra el racismo. Como punto de partida señaló que podría ser de utilidad el ejemplo de otros países europeos que llevan años trabajando estos temas.

Por su parte, **Doña Estrella Moreno**, representante de Cruz Roja española, señaló que la discriminación se dirige hacia diversos colectivos nacionales, a los que en los últimos años se han incorporado algunos sectores de inmigrantes. En su opinión, la mejora de la legislación antidiscriminatoria deberá contemplar tanto a unos colectivos como a otros; caso de particular atención requiere la explotación laboral del sector de inmigrantes irregulares a los que no cubre la legislación. El papel de las ONGs en el momento actual español es el de constituir una red social de apoyo a estos colectivos que se encuentran desprovistos de ellas; por lo tanto, las ONGs se constituyen en intermediarias ante la administración y ante la sociedad. Las labores de las ONGs para con los migrantes son diversas; en particular, Cruz Roja tiene programas de acogida, alojamiento temporal, ayudas de emergencia, atención sanitaria, información jurídica y laboral, y actuaciones formativas (lengua, capacitación profesional para el empleo). Aunque se estima varios miles de personas las usuarias de los anteriores servicios de Cruz Roja, la pretensión de la misma es que los migrantes conozcan sus derechos y los reivindiquen por ellos mismos.

Terminadas las exposiciones de los integrantes de la Mesa, D. Hector Maravall cedió la palabra a **D. Carlos Prieto,** Profesor de la Universidad Complutense de Madrid, en calidad de relator. Este centró su intervención en tres puntos: primero, la discriminación negativa de los inmigrantes no se produce por la calificación o la falta de calificación laboral. Los estudios sobre segmentación laboral en diversos países indican que el mercado siempre realiza discriminación de categorías sociales. Por ello, a igual calificación y trabajo de mujeres que de hombres, de inmigrantes que de autóctonos, etc. a los primeros se les retribuye con salarios más bajos que a los segundos. El segundo punto marcó el hecho que los inmigrantes forman parte de las categorías discriminadas; las categorizaciones sociales, basadas en la discriminación institucional, abocan a situaciones permanentes e impiden la integración normalizada; en el caso de los inmigrantes, la discriminación institucional básica se produce por la ausencia de la nacionalidad. El efecto de la segmentación es que se crea un sector de trabajadores con poder negociador reducido; por tanto, en situación precaria. La salida que evite esta discriminación sólo puede ser la descategorización institucional en base a la adquisición por estos sectores de la ciudadanía de pleno derecho: o ciudadanos o discriminados. En el tercer punto insistió en que hay posibilidad de luchar contra la discriminación laboral: el primer paso implica mejorar la normativa para que reconozca la discriminación y la combata; así mismo, como se parte de situaciones de debilidad, en segundo lugar, harán falta apoyos positivos, al menos temporalmente. Pero el punto central del cambio es la coincidencia entre las diversas categorías discriminadas; todo cambio en una de ellas afecta a las otras. La convergencia de intereses requiere, para ser eficaz, mejorar las condiciones sociales y culturales de todos los sectores discriminados.

Después de la intervención del relator de la Mesa, se abrió un turno de intervenciones de los oyentes en el que se trataron varios temas de interés, que resumimos:

- Primero, la existencia de contingentes o cupos de permisos para inmigrantes anuales puede tener el efecto positivo de frenar la irregularidad del colectivo de inmigrantes (aunque sea de dudosa eficacia) pero, también, puede acentuar el efecto de discriminación institucional sobre determinados colectivos que se quedan fuera o sobre otros que entran en el contingente pero son destinados a nichos laborales precarios (como el caso de las empleadas domésticas); estas fragmentaciones terminan en situaciones de exclusión.

- Segundo, la diferencia radical entre nacionales y no nacionales afecta al ejercicio de derechos ciudadanos y laborales, por ejemplo, la imposibilidad de obtener un contrato indefinido cuando se depende de obtener o mantener el permiso de trabajo no indefinido;

- Tercero, hay muchos problemas de discriminación laboral que no se solucionan sólo con la aplicación de la normativa. Un caso claro es el de los inmigrantes. Por su situación de categoría laboral fragmentada pierden la capacidad de negociación ante la empresa y, por ello, la situación de debilidad en les coloca les impedirá denunciar hechos discriminatorios. La posible ventaja a obtener puede conllevarles males mayores como la no renovación del permiso de trabajo y, en definitiva, la pérdida de la condición de regular con la obligación de salir del país o permanecer como irregular.

- Cuarto, la normativa laboral es insuficiente para contrarrestar las tendencias del mercado laboral. Así, los avances del nuevo Reglamento no se podrán aplicar si la situación del mercado lo impide (tendencia a la precariedad, etc.). Pero, también, los avances en el área laboral se ven, muchas veces, impedidos por el límite de la normativa superior como es la Ley de extranjería y por la sumisión de la política española al marco del acuerdo de Schengen. Hace falta una iniciativa política decidida que, aun dentro de las limitaciones, se proponga la promoción de los inmigrantes dentro del estado español.

Después del rico e intenso debate entre la mesa y los asistentes al Seminario, D. Hector Maravall cerró el acto indicando la conveniencia de diseñar un órgano político en la administración española con capacidad suficiente para establecer decisiones y con poder político suficiente para implantarlas. El tema de la inmigración en España lo requiere. Dio las gracias a los asistentes al Seminario, ponentes y oyentes, así como a los organizadores. De modo especial se refirió a la OIT y a la iniciativa internacional que ha puesto en marcha con el Proyecto de *'Lucha contra la discriminación de que son objeto los trabajadores migrantes y las minorías étnicas en el mundo laboral'*. Las cuatro actividades del Proyecto realizadas en España suponen, en opinión de D. Hector Maravall, un impulso necesario y oportuno para combatir la discriminación por causa del origen étnico o nacional. Y ese impulso es debido a la iniciativa de la OIT, a quien felicitó de nuevo, deseando que su esfuerzo sea eficaz.

Preliminary version

The quest for anti-discrimination policies to protect migrants in Germany: An assessment of the political discussion and proposals for legislation

David Nii ADDY

January 1997

Table of contents

1. Introduction[1]

The ongoing debate about the socio-political impact of migration in the receiving countries of Western Europe has, once more, gained momentum during the past years. All along it has touched upon various issues such as the complex relationship between the right of citizenship and the changing notion of the nation state, the resurgence of right-wing movements on an anti-immigration platform and the role of discrimination in the forging of processes of social exclusion and labour market segmentation. However, while the issues at stake may be similar, marked national variations in their political reception do exist. Thus, current research on the dynamic interconnections between migration, racism and ethnic relations in Europe tends to highlight the importance of placing any comparative analysis in the proper national socio-political context.[2]

Given the dramatic increase in racist violence since the beginning of the 1990s there is no doubt that much remains to be done in creating effective anti-discrimination measures for the protection of migrants. Recent findings from migration research, however, have reinforced the assertion that European policies dealing with the integration of migrants have not gone very far. Rather, it seems clear that those migrant receiving states which persistently refuse to extend full civil rights to migrants and do not accept the pluralistic reality of a *de facto* country of immigration, tend to fare less well in their integration efforts than countries developing a forward-looking strategy which makes room, among other things, for the acquisition of citizenship and the protection of basic minority rights. In fact, countries that ignore the long-term character of migration and focus on exclusionary concepts of alleged homogeneity, risk clinging to a static notion of national identity. This, in turn, might leave the increasing marginalization of migrants untackled and turn the latter into a permanent (albeit unwanted) ethnic minority.[3]

While the initial concern over mounting xenophobic attitudes and racism in Europe was mainly voiced through non-governmental organisations and ethnic minority groups, activities soon spread to the multilateral level. This has in time led to increased institutional demands for tackling discrimination at both the international and the national level. Among the European institutions it was especially the Council of Europe, but also the European Parliament as well as the European Commission that have developed wide ranging initiatives whose policy

[1]This paper was written during a four month period in which the author was detached from the Freie Universität Berlin to the Migration Branch of the International Labour Office. The author thanks Roger Zegers de Beijl for extremely useful comments on this paper in draft.

[2]Cathie Lloyd: "International Comparisons in the Field of Ethnic Relations" in: Racism, Ethnicity and Politics in contemporary Europe, Alec G. Hargreaves and Jeremy Leaman (Eds.), Aldershot 1995, pp. 31-44; John Solomos and John Wrench: "Race and Racism in Contemporary Europe" in: Racism and Migration in Western Europe, John Solomos and John Wrench (Eds.), Oxford 1993, pp.3-16.

[3]W.R. Böhning and R. Zegers de Beijl: The integration of migrant workers in the labour market - Policies and their impact, ILO International Migration Papers No. 8, Geneva 1995; Stephen Castles and Mark J. Miller: The Age of Migration - International Population Movements in the Modern World, London 1993, p.14.

suggestions frequently went beyond the practices of individual member states.[4] Within the system of the United Nations both the Committee of Experts overseeing the implementation of the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD) and the research findings of the ILO Programme "Combatting Discrimination against Migrant workers and Ethnic Minorities in the World of Work" constantly drew the attention to the issue of discrimination.[5] However, the domestic political discussions over the importance of state legislative intervention and forward-looking public policies aimed at protecting migrants and ethnic minorities have not been inspired by the same basic assumptions in each of the countries concerned. It seems that the political consensus about the need for a comprehensive anti-discrimination policy as well as the official acknowledgement of the existence of discrimination has been particularly weak in the Federal Republic of Germany. This peculiarity, then, might also be due to its continuing refusal to accept its de facto position of being an immigration country and thus the need to develop additional, more targeted policies.

Against this background, it will be argued in the course of this paper that it is precisely this lack of clear anti-discrimination policies that has reflected Germany`s contradictory stand with regard to its migrant population. For in Germany, just as in many other traditional migrant receiving states, migrants are increasingly perceived as illegitimate competitors in an era of structural change and more often than not used as handy scapegoats in the globalized rivalry over scarce resources. Moreover, there seems to be sufficient empirical evidence that highlights both the growing marginalisation and the high degree of discrimination experienced by migrants in, for instance, the access to the labour market.[6] At the same time, it is notably the German political discourse that is largely devoid of any notion that makes clear reference to the role of discrimination in shaping the socio-economic position of migrants and their descendants.

It is the aim of this paper a) to shed some light on the ongoing political and academic debate in Germany with regard to the need for a comprehensive anti-discrimination policy, b) to compare the existing proposals for a German Anti-Discrimination Act launched by political parties and NGOs with another proposal developed by the International Labour Office and c) suggest necessary elements of a future anti-discrimination strategy by making reference to these and other propositions.

The first chapter will begin with a short summary of the existing evidence for racial discrimination against migrants in Germany. It will be followed by an overview over the main lines of discussion with regard to the shortcomings of German integration policies and the

[4]John King: "Ethnic Minorities and Multilateral European Institutions" in: Racism, Ethnicity and Politics in contemporary Europe, Alec G. Hargreaves and Jeremy Leaman (Eds.), Aldershot 1995, pp.179-191.

[5]Michael Banton: International Action against Racial Discrimination, Oxford 1996; ILO: Combatting Discrimination against (Im)Migrant Workers and Ethnic Minorities in the World of Work, Information Bulletin No.3, Geneva January 1996.

[6]Andreas Goldberg, Dora Mourinho and Ursula Kulke: Labour market discrimination against foreign workers in Germany, ILO International Migration Papers No. 7, Geneva 1996.

possible reasons for the absence of specific anti-discrimination measures. The third chapter will then compare the major components of existing proposals for a comprehensive German Anti-Discrimination Act.

In the eyes of the author, it is indeed first and foremost a comprehensive anti-discrimination law together with other specific policy measures that would constitute the crucial framework for effective integration policies aimed at equal opportunities. Therefore, in the last section of the paper some final issues will be raised that might form important elements for a successful anti-discrimination strategy.

2. The existing evidence for discrimination against migrants

The underrepresentation of migrants in many sections of society tends to indicate the existing inequality of opportunity, which can be interpreted - at least partly - as an outcome of discriminatory practices. Direct discrimination against migrants and their descendants can therefore be defined as a process of unequal treatment or disadvantage due to the fact that a person is assumed to be a non-national or of foreign origin. In addition, other discriminatory practices or institutional policies that might not be based directly on any such formal distinctions but do result in *de facto* unequal treatment, may be termed indirect discrimination.

Following similar definitions[7], numerous studies have, already in the past, pointed to the existing discrimination and subsequent labour market segmentation in many migrant receiving countries of Western Europe.[8] The original evidence of such discrimination related most often to the findings of situation tests, legal cases and qualitative surveys that were undertaken in the course of the 1980s. Yet, even in the mid 1990s there are clear indications that the level of both socio-economic disadvantage and occupational concentration of large sections of Europe`s migrant population has persisted, despite a vast array of integration policies. Instead of diminishing over the years, it seems that in many instances this trend towards some form of `ethnic segregation` has been reinforced due to the polarizing effects of structural change and continuing discrimination.[9]

Indications of discrimination exist in many sectors and the empirical evidence for it is quite unambiguous in the realm of housing, education and income. However, it seems to be particularly pervasive on the labour market, where it comprises both direct disadvantages in the allocation of employment as well as indirect discrimination through inaccessible informal

[7]A comprehensive definition of both direct and indirect discrimination on the grounds of race, colour, sex, religion, political opinion, national extraction and social origin is given in Article 1 of the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). However, nationality is not among the grounds cited. See Convention No.111 in ILO: International Labour Conventions and Recommendations 1919-1991 Volume I, Geneva 1992, pp.702-704.

[8]For a review of some of the literature see Roger Zegers de Beijl: Discrimination of Migrant Workers in Western Europe, ILO World Employment Programme, Working Paper, Geneva 1991.

[9]W.R. Böhning: "Labour market integration in Western and Northern Europe - Which way are we heading?" in: W.R. Böhning and Roger Zegers de Beijl, op. cit., pp.1-21.

recruitment channels or biased selection criteria. As a consequence, migrants tend to suffer much more from unemployment and are also much less likely to enjoy job promotion or other forms of upward mobility.[10]

While most critics of such discrimination have based their assumptions on both moral and social arguments, the effects of unequal treatment have increasingly also been characterised in economic terms as a "waste of valuable human resources" representing additional costs to the employer and the society at large.[11] However, as discrimination is mostly based on prejudiced assumptions with regard to skin colour, ethnic group or nationality and, thus, often takes the form of racial discrimination, it does not affect all migrants to the same extent.

2.1. Discrimination against migrants in Germany

For many years the political discussion about the situation of migrants in Germany was little, if at all, influenced by the notion of discrimination. Since migrants, in general, were only seen as temporary "guests" and not as permanent citizens, the danger of continuous social exclusion was not viewed as a structural challenge to society.[12] Nevertheless, there is no reason to believe that discrimination in Germany should occur considerably less frequently than in other comparable countries.

As a matter of fact, migrants in Germany may, of course, suffer from various forms of discrimination some of which have received increasing international attention in the aftermath of the unification.[13] This might include the experience of every-day prejudice, which can find expression in subtle discriminatory behaviour on the part of fellow citizens or take the form of violent assault and other ways of maltreatment. Such a form of discrimination is often fuelled by stereotypical media coverage or a biased political discourse, thus reinforcing and legitimizing existing individual prejudices. But the structural disadvantage of migrants is foremost expressed in their labour market position, the low participation rates in vocational training, the limited access to the housing market and alarmingly low levels of educational attainment,[14] which to some extent can be interpreted as the outcome of direct and indirect discrimination.

[10]Heinz Werner: Integration ausländischer Arbeitnehmer in den Arbeitsmarkt - Deutschland, Frankreich, Niederlande, Schweden, ILO World Employment Programme, Working Paper, Geneva 1993.

[11]Shirley Dex: The costs of discriminating against migrant workers - An international review, ILO World Employment Programme, Working Paper, Geneva 1992, p.1.

[12]David Nii Addy: "Internationale Migration - Herausforderung für eine Anti-Diskriminierungspolitik" in: Aus Politik und Zeitgeschichte B44-45/96, Oktober 1996, S.17-24.

[13]Ronald Bee: New Challenges to Germany - Foreigners and the German response, American Institute for Contemporary German Studies/The John Hopkins University, AICGS Seminar Papers No.7, March 1994.

[14]Martin Frey and Ulrich Mammey: Impact of Migration in the receiving countries - Germany, International Organisation for Migration, Geneva 1996, p.66.

Against this background, recent empirical `practice tests` aimed at measuring the extent of direct discrimination with regard to labour market access. They were undertaken in Germany for the first time in the context of the ILO Programme `Combatting Discrimination against Migrant Workers and Ethnic Minorities in the world of work`. On the basis of a carefully elaborated methodology, the tests made both German and Turkish applicants with comparable work experience and educational background apply for the same vacancy. The results clearly revealed the existence of direct discrimination, which seemed to be particularly strong in the realm of semi-skilled jobs in small private enterprises and those sections of the service industry that involve direct contact with clients.[15]

Interestingly enough, the general labour market position of migrants in Germany does reveal similar trends as in other European migrant receiving countries. Migrants and their descendants in Germany also occupy a distinct position in the labour market, with the majority of them being employed in blue-collar jobs of the processing trades. Having to face discrimination and social segregation on top, this makes them especially vulnerable to unemployment and inferior working conditions. Consequently, unemployment rates for workers of foreign nationality have been significantly above the German average ever since the early 1970s, and continuous wage differences might be seen as yet another expression of persistent inequality between these two groups.

Therefore, the overrepresentation of migrants in low-skilled employment underlies the notable trend towards enhanced social segregation, despite the (limited) occupational mobility of the second and third generation of migrants. While it could be argued that the access to the labour market also depends to a great degree on the legal status and the time of entry of individual migrants, less difficulties with regard to labour market integration and discrimination seem to exist for current entries of `ethnic` Germans.[16]

The socio-economic situation of migrants in Germany, thus, represents a serious loss of economic efficiency and a long-term threat to the political order. With the overall positive economic impact of migration largely being ignored, existing shortcomings in the area of employment and education actually produce an inefficient allocation of both labour and capital resources that may, according to a recent government-funded report, in the long run, even endanger the competitiveness of Germany`s economy.[17]

[15]Andreas Goldberg and Dora Mourinho: " Empirical proof of discrimination against foreign workers in labour market access" in: Andreas Goldberg, Dora Mourinho and Ursula Kulke: Labour market discrimination against foreign workers in Germany, ILO, International Migration Papers No.7, Geneva 1996, pp. 3-53.

[16]Wolfgang Seifert: "Occupational and social integration of immigrant groups in Germany" in: New Community, Vol. 22, No. 3, 1996, pp.417-436.

[17]Ministerium für Arbeit, Gesundheit und Soziales des Landes Nordrhein-Westfalen (Hrg.): Kosten der Nichtintegration ausländischer Zuwanderer, Gutachten von Hans Dieter von Loeffelholz und Dietrich Thränhardt, o.O.1996.

2.2. Migration and discrimination in the German political discourse

The state of the policy debate on migration and discrimination tends to be, in many cases, a function of both the overall societal attitude towards migrants` integration and the relative political influence of the visible minority population concerned. In cases where the official approach and its underlying political philosophy vis-à-vis the integration of migrants is guided by assimilationist strategies, special measures for improving integration and reducing discrimination are often considered unwarranted.[18] In addition, the specific political culture that shapes the social context of integration as well as the citizenship-status granted to migrants plays an equally important role in setting the scene for successful measures against discrimination. Thus, in the German case, where a restrictive nationality law made full participation of migrants in the host society almost impossible, existing integration measures had no room for anti-discrimination policies that stressed the `ethnic factor` in the reproduction of inequality.

The evolution of German migration research has since the early 1970s developed from the traditional focus of the `Ausländerforschung`, which was primarily concerned with the solving of social problems to the envisaged assimilation, to more complex problems centered around future immigration policies and the enhanced socio-political integration of settled migrants. Despite the unchanged official standpoints, calls for a belated recognition of Germany as a de facto country of immigration have increased over the years and frequently expressed itself in demands for a forward/looking strategy on immigration.[19]

While questions dealing with citizenship rights and ethnic pluralism had thus slowly emerged in the late 1980s, the subsequent preoccupation with the question of asylum in the course of German unification successfully put an erstwhile halt to this emerging debate. Nevertheless, with the beginning of the 1990s a number of observers agreed that "immigration has come to occupy center stage as a policy issue."[20]

Whereas proponents of the contradictory approach of German "Ausländerpolitik", based as it is on the simultaneous goals of proclaiming a halt to new immigration as well as implementing a specific set of integration policies aimed at increasing the participation of migrants in German socio-economic life, believe this to be the most efficient means of

[18]Roger Zegers de Beijl: "Labour Market Integration and legislative measures to combat discrimination against migrant workers" in: W.R. Böhning and R. Zegers de Beijl: The integration of migrant workers in the labour market - Policies and their impact, ILO International Migration Papers No. 8, Geneva 1995, pp. 22-46; Axel Schulte: "Antidiskriminierungspolitik in westeuropäischen Staaten" in: Hubert Heinelt (Hrg.) Zuwanderungspolitik in Europa - Nationale Politiken, Gemeinsamkeiten und Unterschiede, Opladen 1994, pp.123-161.

[19]Wissenschaftliche Dienste des Deutschen Bundestages: Zum Stand der Asyl-, Aussiedler- und Ausländerpolitik, Ausarbeitung 248/93, pp 14-15.

[20]Thomas Faist: "Immigration, integration and the ethnicization of politics - A review of German literature" in: European Journal of Political Research, 25 No.4 (June 1994), p.439.

preventing social exclusion and discrimination,[21] many questions remain. It seems that German integration policies have so far failed to develop a comprehensive approach to anti-discrimination measures, as its emphasis lies on language training, special vocational training schemes and social advice all of which is geared towards improving the transition from school to work. Whereas the focus of these measures is, thus, on the supply-side of qualifications, this current approach overlooks the extent of discrimination on the demand side of the labour market.

Generally speaking, German policies have not explicitly tackled the interconnected issues of discrimination, political participation and citizenship rights. As a matter of fact, certain existing provisions with regard to both constitutional and citizenship rights that form part of the (legitimate) institutional differentiation between nationals and non-nationals might then be seen as the ideological foundations for other existing forms of discrimination. As the acquisition of citizenship rights largely remains a function of the membership of the ethnic `Volk`, it becomes an exclusionary approach to both naturalisation and integration.

Consequently, it might be argued that the institutional framework of the state, which attributes status according to nationality or descent, actually has also impeded the development of necessary policy provisions for the anti-discriminatory management of a multiethnic society.[22] Moreover, given the overall thrust of the German migration regime, the outdated self-perception which stipulates that Germany is not a country of immigration remains unchallenged and integration policies largely ignore the insufficient protection for victims of discrimination. Therefore, the connection between the existing `blood principle` and the lack of social as well as political integration received insufficient recognition from the authorities.[23]

These aspects of the legal framework, however, only take on discriminatory connotations because they are based in great deal on the old-fashioned `Reichs- and Staatsangehörigkeitsgesetz`[24] which uses the descent-based notion of `ius sanguinis` as a main pillar in the ethnic concept of Germanness. This produces a fundamentally contradictory situation, whereby settled migrants constitute a permanent sub-group without easy access to

[21]Written statement by the delegation of Germany to the Sixth Conference of European Ministers responsible for migration affairs, Warsaw 16-18 June 1996, Council of Europe, MMG-6 (96)6 final, pp.71-74; Frank Hempel: "Integration und Toleranz" in Bundesarbeitsblatt 9/1996, S.13-15.

[22]Czarina Wilpert: "The ideological and institutional Foundations of Racism in Germany" in: Racism and Migration in Western Europe, John Solomos and John Wrench (Eds.), Oxford 1993, op. cit., pp.67-83.

[23]Lutz Hoffmann: "Einwanderungspolitik und Volksverständnis" in: Oestereichische Zeitschrift für Politikwissenschaft, 23 (1994)3, pp.253-266.

[24]"The Reichs- und Staatsbürgerschaftsgesetz of June 1913 stipulates that nationality is decided according to the principle of ius sanguinis, which interprets citizenship as being a right transmitted by blood. The German nationality law is based, therefore, on ethnicity, the idea of `Germanness` or belonging to the German Volk. Implicit in the principle of the ius sanguinis tradition is the notion that one cannot become German and the absence of a coherent immigration policy emanates directly from this conviction." See Penny Henson and Nisha Malhan: "Endeavours to Export a Migration Crisis - Policy Making and Europeanisation in the German Migration Dilemma" in: German Politics, Vol.4, No.3 (December 1995), p.131.

becoming a legally recognized member of German society with full socio-economic and political rights.

Apart from these shortcomings of existing policies, there seem to be additional reasons for the non-existence of comprehensive anti-discrimination measures that are rooted in the peculiar German political culture. Among these, the historical taboo which - during the greater part of the post-war era - rendered racial discrimination to a mere problem of the past, plays an important role. Since the specific German history related to the experience of the Nazi-dictatorship and the holocaust tragedy only acknowledged racial discrimination in the context of historical antisemitism, it tended (until recently) to ignore any indications of a beginning "racialisation" of structural disadvantages and social exclusion.

Furthermore, the relatively young debate on the different aspects of a multicultural society has so far not developed any coherent strategy specifying what it considers to be a necessary make-up of such a strategy.[25] Thus, the proposals emanating from the German debate on multiculturalism included almost everything from naive visions of conflict-free social relations to more radical notions that made a high degree of ethnic autonomy the main ingredient of such a strategy. In neither case had the distinct perception of multiculturalism clearly legitimized the need for minority rights that contain a strong anti-discrimination component.

Recent initiatives for a new German migration regime have therefore stressed the need for a combined strategy of carefully monitoring future migration, increasing integration measures and changing access to citizenship-rights.[26] This, however, might still necessitate a fresh approach to the traditional understanding of the concept of minority rights in Germany, which up to now has not included migrants and their descendants. Rather, it seems that the government holds the view that there is no reason to extend the constitutional rights of (non-national) *ethnic* minorities, as they do not form part of the traditional definition of *national* minorities. Moreover, in this view such a policy initiative would not result in enhanced integration, but rather in a further segmentation of society due to the artificial promotion of ethnic group creation.[27]

Eventually, the fractionalised nature of many pressure groups can also be blamed for the absence of comprehensive policies, as "...the antiracist opposition has so far failed to mobilise a massive political counter-movement coercing the political class into developing and institutionalising efficient anti-racist and anti-discrimination initiatives." This, in turn, is

[25]Thomas Faist, op. cit., p.447.

[26]Klaus J. Bade (Hrg.): Das Manifest der 60 - Deutschland und die Einwanderung, München 1994.

[27]Antwort der Bundesregierung auf die Grosse Anfrage der Fraktion Bündnis 90/Die Grünen zur Situation der Bundesrepublik als Einwanderungsland, Bundestags-Drucksache 13/5065 vom 26.06.96. For other views but similar opposition to a distinct anti-discrimination law or otherwise extended minority rights see: Klaus Sieveking: "Zur Frage eines Antidiskriminierungsgesetzes gegen ethnische Diskriminierung - Thesen" in: Zeitschrift für Sozialreform 1994, S.259-267; Dietrich Murswiek: "Minderheitenschutz - für welche Minderheiten? Zur Debatte um die Einfügung eines Minderheitenartikels ins Grundgesetz, Kulturstiftung der deutschen Vertriebenen, Forum für Kultur und Politik, Heft 8, Bonn 1994.

attributed to the "particularly discriminatory legal situation of the potential victims (...and) a general collapse of morale caused by an accelerated process of modernisation." [28] All of these factors combined may then constitute possible reasons for the absence of specific legislative measures aimed at tackling discrimination.

3. Proposals for Anti-Discrimination legislation

The evidence and arguments presented in the previous chapter were aimed at highlighting the existing link between growing marginalization and discrimination of migrants, which would make a comprehensive anti-discrimination policy necessary. Yet, despite numerous demands from both international and national organisations,[29] no specific legislation for the protection of migrants and (visible) ethnic minorities against discrimination has so far been enacted. Thus, while a variety of broad legal provisions that outlaw discrimination on racial grounds exist at the international and domestic level of the German policy framework, the effectiveness of the existing legal instruments have been frequently criticised for specific shortcomings.

The Federal Republic of Germany has adhered to a number of international provisions outlawing racial discrimination and, thus, in principle agreed to assuming full responsibility for effectively outlawing discrimination and enacting necessary legislation. The most important international obligations are those laid down in the International Convention on the Elimination of all forms of Racial Discrimination[30], the International Covenant on Civil and Political Rights[31], the ILO Convention on Discrimination (Employment and Occupation) and the

[28]Sigrid Baringhorst: "Symbolic Highlights or Political Enlightenment? Strategies for Fighting Racism in Germany" in: Racism, Ethnicity and Politics in contemporary Europe, Alec G. Hargreaves and Jeremy Leaman (eds.), Aldershot 1995, p.225 (-239).

[29]For demands deriving from the domestic political debate see for instance Bundeskonferenz der Ausländerbeauftragten: Materialien zu einem Antidiskriminierungskonzept, Arbeitskreis `Antidiskriminierungskonzept`, Bonn März 1993; Deutscher Gewerkschaftsbund (DGB): Anforderung an eine Gesetzgebung zum Schutz vor ethnischen Diskriminierungen, Beschluss des DGB-Bundesvorstandes vom 9.11.1993; Cornelia Schmalz-Jacobsen und Holger Hinte: "Migration und Integration - die doppelte Herausforderung. Ein liberaler Entwurf zur Bewältigung der Zuwanderungsfolgen in Deutschland und Europa" in: Liberal 36 (August 1994)3, pp.10-16; for international demands see United Nations: Report of the Committee on the Elimination of Racial Discrimination, General Assembly 48th Session, 1993, A/48/18, p.83; Starting Line: Vorschlag an das Europäische Parlament, den Rat, die Kommission und die Mitgliedsstaaten der Europäischen Gemeinschaft für eine Richtlinie des Rates zur Beseitigung der Rassendiskriminierung, Februar 1993, Europäisches Parlament PE 203.653; Human Rights Watch: Foreigners Out - Xenophobia and Right-Wing Violence in Germany, New York 1992.

[30]The German government has until now, however, abstained from agreeing to the provision of Article 14 ICERD that would enable individuals to issue complaints directly to the Committee of Experts. Moreover, the suggestions made by the Committee of Experts as to enact a special anti-discrimination legislation have also been ignored. See Michael Banton: "The Twelfth Report of Germany under the International Convention for the Elimination of Racial Discrimination" in: New Community, Vol.20, No.3, April 1994, pp.496-501.

[31]The latest country report of the German Government to the Human Rights Committee, unfortunately, makes no mention of migrants as a special minority-group requiring specific anti-discrimination legislation. See United Nations Human Rights Committee, Fourth periodic report of Germany, International Covenant on Civil and Political Rights, CCPR/C/84/Add.5, 22 February 1996.

European Convention on Human Rights and Fundamental Freedoms. Most of the international instruments in place have been extremely important in exercising pressure on signatory governments to both monitor progress on implementation and to enact additional national legislation. However, individual access to the provisions of the conventions is often limited and the effectiveness of established supervisory bodies does not always live up to its expectations.[32]

At the national level, both the German Constitution and the Works Constitution Act clearly outlaw discrimination, whereas the penal code embodies several provisions against the incitement of racial hatred, defamation and slander. Yet, a number of reservations exist with regard to the effectiveness of these statutory propositions.

First, the constitutional guarantees given by the state do not directly affect the private sphere nor discrimination on the grounds of nationality, so it seems virtually impossible to extend legal entitlements directly to third parties of migrant origin. Secondly, the civil code does not have any specific provisions for dealing with discrimination in access to employment, housing or other public spheres where discrimination frequently occurs. Thirdly, the provisions of the penal code are only of limited value, as they require extensive evidence and lay the burden of proof on the victim. This is a great stumbling bloc in trying to make the provisions work for alleged victims. Finally, both the Works Constitution Act and the other civil provisions lack a clear legal procedure for safeguarding effective redress mechanisms.[33]

3.1. Necessary elements of an anti-discriminatory strategy

The need for a distinct and comprehensive anti-discrimination law has been expressed on behalf of the ILO for many countries grappling to put in place more effective policies for the protection of migrants, since "provisions scattered throughout the statute books tend to render protection de facto inaccessible, both for individual victims and the judiciary who are supposed to enforce these anti-discrimination provisions."[34]

[32]Ian Forbes and Geoffrey Mead: Measure for Measure - A comparative analysis of measures to combat racial discrimination in the member countries of the European Community, Equal Opportunities Studies Group, University of Southampton 1992, p.10; Roger Zegers de Beijl: "Labour Market Integration and legislative measures to combat discrimination against migrant workers" in: W.R. Böhning and R. Zegers de Beijl, op. cit., p. 25.

[33]Martin MacEwen: Tackling Racism in Europe - An Examination of Anti-Discrimination Law in Practice, Oxford 1995, p.153; Ursula Kulke: "Employment protection of migrant workers: Legal facilities and their improvement" in: Andreas Goldberg, Dora Mourinho and Ursula Kulke: Labour market discrimination against foreign workers in Germany, ILO, International Migration Papers No. 7, Geneva 1996, pp. 57-88; Hans Hammelburg: German report on racial discrimination in employment, in: A Code of Practice to Combat Racial Discrimination and to Promote Equal Opportunities at Work, European Human Rights Foundation, Volume II, Section 7: National Reports on Racial Discrimination in Employment in the Member States, 1994, p.69.

[34]Roger Zegers de Beijl: "Labour Market Integration and legislative measures to combat discrimination against migrant workers" in: W.R. Böhning and R. Zegers de Beijl: The integration of migrant workers in the labour market - Policies and their impact, ILO International Migration Papers No. 8, Geneva 1995, p. 41.

A similar view is held by the Committee of Experts overseeing the implementation of the ILO-Convention No.111 on Discrimination (Employment and Occupation), who also point to the need for supplementary policies, as "anti-discrimination provisions alone, whether in Constitutions or other legislation, are not enough to implement effectively the principles of equality of opportunity and treatment. There must also be a genuine policy to promote equality of opportunity and treatment in employment...".[35]

In conjunction with this, any anti-discrimination law that wants to be effective has to start with a clear *definition* of both direct and indirect discrimination and encompass all the relevant grounds on which discrimination might be based, including nationality. For the purpose of protecting migrants and ethnic minorities, all acts of unequal treatment based directly (i.e. with their intention) or indirectly (i.e. with their results) on the grounds of ethnic origin, skin colour or nationality should be considered discrimination.[36] Including the notion of indirect discrimination is important as a way to ensure that institutional policies and, specifically, employment-related recruitment procedures are only based on objective criteria and not on discrimination.[37]

As far as the *scope* of the law would be concerned, all spheres of public life should be covered so that discrimination is effectively outlawed in the areas of political, economic, social and cultural participation of both individuals and specific groups of minorities. It might, however, be useful to have a special section on legal provisions regarding discrimination on the labour market, as done in section 2 of the ILO draft law for Germany.[38] Given this rather broad scope, any eventual anti-discrimination law would have to elaborate carefully on the eligibility criteria and cater for any necessary exceptions to the rule.[39]

Likewise, any anti-discrimination act would require detailed provisions for the legal *procedures* deriving from the act. Generally, preference should be given to civil code

[35]ILO: Equality in Employment and Occupation, Special Survey on Equality in Employment and Occupation in respect of Convention No.111, Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 83rd Session 1996, Geneva 1996, p. 60.

[36]While the famous British Race Relations Act explicitly outlaws discrimination on the grounds of race, ethnic background and nationality, other anti-discrimination laws - such as the recent Dutch Act on Equal Treatment that came into force in 1995 - have adopted a broader approach, extending the protection against discrimination to discrimination based on the grounds of sexual preference, political conviction and sex.

[37]This concern is clearly reflected in the definition (§2) adopted by the ILO proposal for a German anti-discrimination law. See "Gesetz zur Beseitigung jeder Form der gesellschaftlichen Diskriminierung von Migranten", in: Ursula Kulke: Antidiskriminierungsgesetzgebung zum Schutz der Migranten - Erforderlichkeit und ein Gesetzvorschlag für Deutschland, Migration Branch, International Labour Office (mimeo), Geneva 1996, pp.16-28.

[38]ibid., pp.17-19.

[39]Possible exceptions might be necessary whenever acts of unequal treatment may be deemed justified. Therefore, both the British Race Relations Act and the ILO Convention No.111 provide for specific cases of lawful differentiation on grounds otherwise considered discriminatory. These exemptions could, for instance, refer to provisions deriving from federal immigration legislation or to inherent requirements for certain jobs.

provisions that make room for an eventual shift in the burden of proof to the defendant, as existing penal code provisions tend to be less efficient because they do not allow for this principle. It, therefore, seems important to consider it sufficient evidence, if an alleged victim of discrimination makes his or her case credible enough to uphold the charges and, instead, require the accused to prove that his acts or decisions were only attributable to factual grounds.[40]

Moreover, the law procedures have to provide for efficient redress mechanisms as well as the prevention from possible reprisals (victimization) by the defendant. As to safeguard redress, the law should unequivocally provide for legal claims to compensation and suppression in any case of proven discrimination. Furthermore, in the case of employment-related discrimination, employers with a certain minimum number of employees should have to engage in some form of ethnic monitoring. In many countries with anti-discrimination policies in place, this is seen as a crucial device in order to determine the composition of the workforce and any eventual underrepresentation of minorities, which might already constitute a first indication of possible discrimination.[41]

An *enforcement agency* or commission with wide powers to both promote and monitor the implementation of these provisions, with sufficient funds and institutional strength to give legal advice to complainants and, if necessary, take cases to the court or even lodge its own complaint, if for instance group rights of minorities are at stake, seems to be a necessary precondition for the enforcement of otherwise meaningless legislation.[42] The agency`s right and competence to dissolve disputes by way of conciliation would be another possible component of such a comprehensive strategy aimed at reducing discrimination.[43]

The recent British, Belgian and Dutch examples and the respective experiences of their enforcement agencies indicate the importance of independent investigatory power for these bodies, especially with regard to organisations under suspicion of unlawful discrimination. Thus, preliminary findings from comparative research on the effectiveness of the Commission for Racial Equality in the United Kingdom, the Centre for Equal Opportunities and for Combating Racism in Belgium and the Commission on Equal Treatment in the Netherlands respectively, suggests that wide and clear competence laid down in the anti-discrimination act is crucial for the effective law enforcement.[44]

[40]Ursula Kulke: Employment Protection of Migrant Workers, op.cit., p.86.

[41]This, of course, would have to be in absolute accordance with existing and future guidelines concerning the protection of personal data.

[42]Concrete provisions aimed at safeguarding both the independence and effectiveness of such an agency are included in §29-32 of the ILO proposal. See "Gesetz zur Beseitigung jeder Form der gesellschaftlichen Diskriminierung von Migranten", in: Ursula Kulke: Antidiskriminierungsgesetzgebung zum Schutz der Migranten - Erforderlichkeit und ein Gesetzvorschlag für Deutschland, op. cit., pp.26-28.

[43]ILO: Equality in Employment and Occupation, op. cit., pp.88-91.

[44]Roger Zegers de Beijl: Labour market integration and legislative measures to combat discrimination against migrant workers, op cit. .