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Equality at Work: Philippines

Gert A. Gust



International Labour Organization
Subregional Office for South-East Asia and the Pacific
Manila, Philippines

ILO Subregional Office for South-East Asia and the Pacific Working Papers

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For more information, please contact us at:

ILO Subregional Office for South-East Asia and the Pacific
19th Floor, Yuchengco Tower, RCBC Plaza
6819 Ayala Avenue, 1200 Makati City
P.O. Box 4959, Makati City, Philippines
Telephone number: (632) 580 9900
Fax number: (632) 580 9999
E-mail address: manila@ilomnl.org.ph
Website: www.ilo.org/manila

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Foreword

Achieving equality in the workplace is attracting attention in the Philippines and elsewhere in the drive to respect the fundamental rights of workers and boost productivity.

At the first *Subregional Tripartite Forum on Decent Work* held in Auckland in December 2003, delegates noted with concern the continuing inequalities in employment and occupation in the subregion; they also observed the discriminatory treatment of women in the labor force. Such inequalities should be addressed in the Decent Work Country Programme for the Philippines through a combination of mainstream and targeted policies and programs. This concern was reiterated in the second forum held in Melbourne in April 2005, calling upon member States “to give due regard to equality in the workplace.”

At a gathering in Manila on November 27, 2003, representatives of government, employers’ and workers’ organizations, NGOs, academics, media people and ILO specialists launched a series of activities ranging from a review of the concepts in the 2003 ILO Global Report, “Time for Equality at Work” to an assessment of their relevance to the Philippines.

This paper is produced to facilitate the formulation of plans and strategies to combat discrimination in the Philippines. It reflects the views and experiences aired in the November 2003 meeting and aims to stimulate action to eliminate discrimination in the workplace.

The paper is based on the premise that the workplace—whether factory, office, farm, plantation or household—can be a strategic entry point for fighting discrimination. Everyone gains from eliminating discrimination at work: individuals, enterprises and society at large. Fairness and justice in the workplace boost the self-esteem and morale of male and female workers and ultimately their productivity.

Commendable progress has been made in terms of anti-discriminatory legislation and efforts addressing the more glaring forms of discrimination, especially with regard to gender. However, other forms of discrimination are emerging, for example, with regard to disability, HIV/AIDS or migration.

For the ILO and its partners—particularly government, employers and workers—the current drive against discrimination is based on a deep commitment to a just cause, born of a strong conviction that greater strides can be made towards equality, non-discrimination and decent work through the joint efforts of all stakeholders.

Equal opportunity and treatment of employees have received a new meaning and urgency in the light of the current national priorities set by the Philippine government. At the top of the agenda is the goal to create six to ten million jobs and education for all. The ILO stands ready to cooperate in this noble endeavor.

LINDA WIRTH

Director

ILO Subregional Office for South-East Asia and the Pacific

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Executive Summary

This is a follow-up study of ILO's Global Report on "Time for Equality at Work" in the Philippine context. It is based on the assumption that Equality at Work is directly related to Decent Work for All, interpreted as providing "opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity." Equality at work is also seen here as an excellent entry point for attaining and protecting Decent Work for All. Against such a background, this study reviews Philippine laws and practices, highlights achievements as well as gaps, and puts in sharper focus the lessons learned that can be applied in both the private and public sectors.

This study broadly follows the framework used during the forum on the Global Report, which was organized by the ILO Subregional Office for South-East Asia and the Pacific. This was attended by the ILO's constituents—government, employers' and workers' organizations—together with other partners in civil society. These participants, representing most stakeholders in the public and private sectors, provided valuable up-to-date inputs. Additional information was drawn from a variety of sources, including statistical data, court decisions, research, media reports and personal interviews.

Chapter I discusses the concept of Equality at Work as a basic human right and a powerful basis for the promotion of Decent Work for All. The two concepts, are seen as mutually reinforcing. Any deficit in equality in the form of discriminatory attitudes, laws and practices, have an impact on both equality and decent work. The complexities of discrimination are traced to their economic and social origins, and linked to personal factors such as race, color and sex, as well as their manifestations in the form of unfair treatment or exclusion. The chapter concludes by tracing the effects of discrimination on individuals, groups and collectivities.

Chapter II deals with the visions and perceptions of equality at work by the ILO and its Philippine social partners and stakeholders. It notes the high degree of convergence in the understanding of the content and objectives of equality of work between the ILO and the Philippine constitutional and labor laws, as well as the perceptions of the different stakeholders. Moreover, the practical application of equality in the world of work is a demand underlying the current national debate on the social implications of globalization.

Much space is devoted to the perceptions and initiatives of different stakeholders, especially government, employers' and workers' organizations, the judiciary and media. Equality at work has received some attention in the courts, and landmark decisions of the Supreme Court have clarified complex equality issues.

Chapter III looks into the levels of equality enjoyed by individuals and groups that are vulnerable to discriminatory treatment, notably the youth, older workers, migrants, women, indigenous peoples, people living with HIV/AIDS, as well as people with disabilities. Of these groups, the elderly seems to be the only category of worker that does not enjoy any specific non-discriminatory protection under the law, except for general provisions in the Constitution. All other categories are covered, more or less extensively, by anti-discriminatory laws and by support programs ranging from advocacy and training to technical, medical or legal services. A majority of the groups are supported by numerous public and private organizations that cater to the specific needs of their clientele. However, the range and quality of services enjoyed by individuals and groups depend on whether they are employed in the formal or informal sectors, whether located in urban or rural areas, as well as the financial and administrative capability of their respective support units.

Chapter IV reviews equality at work in such critical areas as recruitment, conditions of employment, promotion and termination. These areas show different trends, achievements and deficits in terms of equality at work, depending on their varying social or company cultures.

Chapter V is concerned with the implementation of policies, laws and practices relating to equality at work. Here the study identifies five broad implementation categories, namely, legislative, administrative,

facilitative and adjudicative interventions, as well as voluntary self-compliance. Implementation appears to be limited for a variety of reasons, in particular the technical, administrative or financial capacity of government services such as labor inspection. There is also a deep divide in implementation between the formal and informal sectors. While the corporate sector and public administration have taken the lead in developing and applying their respective guidelines and practices on implementation, the informal sector remains virtually outside any systematic monitoring and support of equality at work. The recent creation by the Department of Labor and Employment of the Labor Standards Enforcement Framework is an attempt to combine administrative and facilitative interventions with self-assessment covering both the formal and informal sectors. The initiative raises expectations of a more comprehensive coverage of equality that would include even micro enterprises.

The **Conclusion and Outlook** of this study takes note of statements of intent by Philippine stakeholders in achieving greater Equality at Work as a stepping stone to Decent Work for All. Success will depend on the different stakeholders' ability to achieve an acceptable balance between legitimate workers' rights and necessary labor market flexibilities to meet the challenges of globalization. The ongoing debate can build on an existing framework for social dialogue and tripartite consultation among government, employer and worker organizations, cause-oriented groups and the community at large. In spite of divergent priorities and perceptions of equality at work and decent work for all, the stakeholders are well aware that no one can go it alone, for all are bound together by commitment or necessity to find a common ground for practical solutions.

A step in the right direction is the National Plan of Action for Decent Work (NPADW) for the Philippines, jointly formulated and agreed upon by the ILO's tripartite constituents in 2002. After taking stock of achievements and gaps, the NPADW identifies concrete steps that the social partners could take to achieve Equality at Work and Decent Work for All. The NPADW provides for regular monitoring and review of progress, committing the partners to action.

The final chapter on **Conclusions and Outlook** contains a number of suggestions for possible follow-ups—as do the individual chapters of this study. While the suggestions do not provide a blueprint for action, they are intended to contribute to further discussion among the stakeholders. Hopefully the ultimate outcome will be agreement among all stakeholders on an internally consistent framework of action for equality at work, to be implemented through sustained individual and collective efforts.

Chapter I: Equality, Discrimination & Decent Work

Equality at Work has been widely accepted by the international community as the guiding principle for the world of work. This is reflected, inter alia, in the high rate of ratifications of ILO Conventions No. 100, Equal Remuneration Convention, 1951 and ILO Conventions No. 111, Discrimination (Employment and Occupation) Convention, 1958 and the adoption of the Declaration of Fundamental Principles and Rights at Work during the International Labor Conference in 1998. It is generally understood that equality at work will benefit, not only workers, but also society and the economy at large; that progress in achieving equality at work depends on the cooperation of all concerned in overcoming existing barriers and equality deficits arising from discrimination.

But every society faces its own particular forms of discrimination, and therefore has to set its own priorities and define its specific responses in line with internationally accepted principles. Over the past two decades, the Philippines has undertaken a range of initiatives to make equality at work a greater reality. These moves were guided by ILO Convention No. 100 (Equal Remuneration for Men and Women Workers for Work of Equal Value) and Convention No. 111 (Discrimination in Respect of Employment and Occupation), which were ratified in 1953 and 1960 respectively. Initially, particular attention was given to non-discrimination of women, migrant workers and persons with disabilities. More recently, however, discrimination against people living with HIV/AIDS and against indigenous and tribal peoples has taken center stage in public debates and in related legislation and programs. Sexual harassment has also been recognized as a widespread manifestation of gender discrimination at work and has led to groundbreaking legislation, followed by as yet limited action through court decisions and proactive programs in the public and private sectors.

The presentation in November 2003 of ILO's Global Report, "Time for Equality at Work", in the Philippines has provided an opportunity for a comprehensive review of issues related to equality of work, discrimination and decent work, in close association with different stakeholders. The following paragraphs clarify some conceptual issues and highlight the linkages between equality, discrimination and Decent Work. Later chapters will deal with achievements and deficits with regard to equality at work in the Philippine setting.

According to ILO Convention 111, the elimination of discrimination in employment requires the promotion of equality of treatment and opportunities. This means treating men and women fairly and solely on the basis of their merit or the requirements of the job, irrespective of such personal characteristics as race, color, sex, religion, political opinion, national extraction or social origin. Equality at Work stands for rights at work, opportunity, dignity, fairness, justice and participation.

Equality at Work is a human right, to be enjoyed by every individual in the world of work. Embodied in numerous international instruments, especially those under UN and ILO auspices, this right is associated with non-discrimination in employment, equal employment opportunities, gender equality, rights of minorities and vulnerable population groups, and freedom from exploitation or the right to equal remuneration for work of equal value. The political, economic, social and cultural rights adopted under UN auspices by the international community¹ provide a broad framework for all human rights that are considered universal in nature and not in conflict with regional and cultural values and traditions. ILO's conventions on Equality at Work reflect a special category of human rights related to the world of work.

¹ Examples: the Universal Declaration of Human Rights, 1948; the International Covenant on Economic, Social and Cultural Rights, 1948 - Articles 6, 7, 8, 9, 11; and the International Covenant on Civil and Political Rights, 1966.

Table 1: ILO Conventions Related to Specific Provisions on Equality

No.	Convention	Specific Provisions on Equality
Equality of Opportunity and Treatment		
100	Equal Remuneration, 1951	
111	Discrimination (Employment and Occupation), 1958	
156	Workers with Family Responsibility, 1981	
Social Security		
118	Equality of Treatment (Social Security), 1962	
Social Policy		
117	Social Policy (Basic Aims and Standards), 1962	Articles 8(2), 14
Employment Policy and Promotion		
122	Employment Policy, 1964	Article 2(c)
159	Vocational Rehabilitation and Employment (Disabled Persons), 1983	Article 4
Employment Security		
158	Termination of Employment, 1982	Article 5
Vocational Guidance and Training		
142	Human Resources Development, 1975	Article 1(5)
Maternity Protection		
183	Maternity Protection, 2000	
Migrant Workers		
97	Migration for Employment (Revised), 1949	Article 6
143	Migrant Workers (Supplementary Provisions), 1975	Article 1(5)
Indigenous and Tribal Peoples		
169	Indigenous and Tribal Peoples, 1989	Article 20
Seafarers		
147	Merchant Shipping (Minimum Standards), 1976	Protocol
	Maritime Labour Convention, 2006	
Specific Categories of Workers		
110	Plantations, 1958	Article 2
171	Night Work Convention, 1990	Article 7
175	Part-Time Work Conventions, 1991	Article 4
177	Homework Conventions, 1996	Article 6

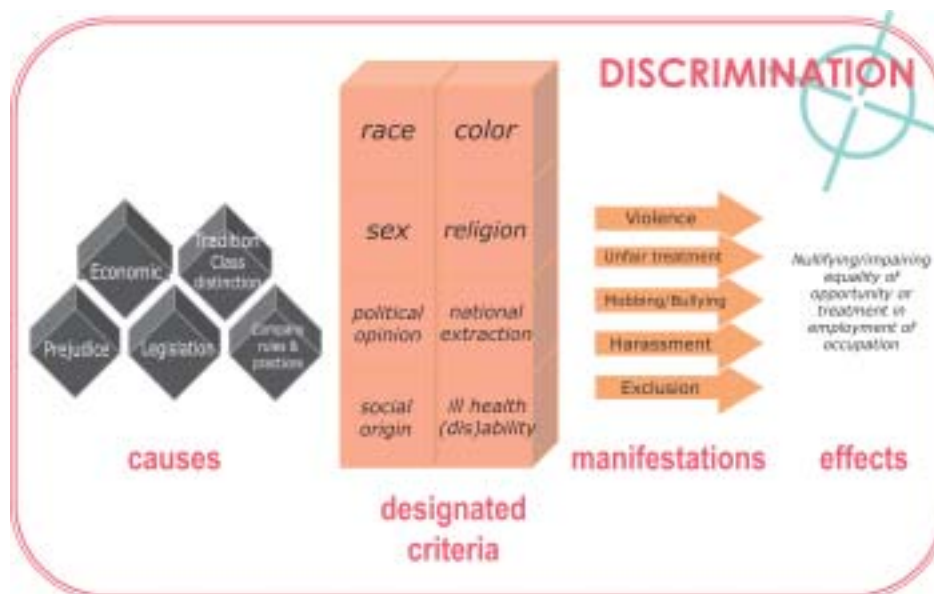
Table 1 above provides an overview of ILO Conventions that uphold the principle of non-discrimination and equality. Some of these Conventions are of a general nature and address this issue through specific provisions, while others focus on distinct categories of workers that are vulnerable to discrimination. Further details are given below and in the section on ILO and equality in Chapter II.

The present study concerns itself with the application in the Philippines of ILO Conventions Nos. 100 and 111 for several reasons. First, these two were among the earliest conventions ratified (in 1953 and 1960) by the Philippines. Second, numerous follow-up initiatives ranging from legislation, court decisions and advocacy to operational programs, provide a basis for analysis and review of progress over the past five decades. “Lessons learned” can therefore be highlighted and recommended for wider application. Gaps can be identified to ensure further action by national stakeholders and international partners like the ILO.

Under ILO Convention 111, Article 1(1)a, discrimination is defined as “any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity and treatment in employment or occupation.”² Discrimination is a complex phenomenon: one can distinguish direct, indirect and multiple forms of discrimination. There are even instances where “different treatment” or some other form of discrimination

² Further details on ILO Conventions with specific equality provisions are given in Annex 1.

Figure 1: Causes, Criteria, Manifestations and Effects of Discrimination



Source: G. A. Gust, 2004

such as “affirmative or positive action” is accepted. Figure 1 above highlights the multiple underlying causes, designated criteria, manifestations and effects of discrimination.

Direct discrimination occurs when laws, policies or regulations exclude individual workers or groups of workers on grounds of personal criteria like race, color, sex, religion, sexual orientation, etc. Recruitment offers a wide opportunity for direct discrimination, because of the preconceived ideas of certain employers regarding the personal characteristics that a potential candidate should or should not have. Typical examples are advertisements of vacancies with requirements that are unrelated to the content of the job, such as calling for candidates that meet personal criteria like minimum height, complexion, marital status or certain age limits. For example, while service in the Armed Forces of the Philippines is in principle open to men and women selected according to objective criteria, objections to the enlistment and service of gays and lesbians or “in-betweens” amount to direct discrimination.

Certain employers select their candidates on the basis of ethnic criteria or their own religious affiliation. Direct discrimination is not limited to recruitment; it also extends to promotion, general working conditions, including remuneration, or termination. For example, direct discrimination would occur in a case of transfer to another assignment or outright termination of a person living with HIV/AIDS or suspected of having contracted the disease.

Indirect discrimination occurs when apparently neutral rules and practices have a disproportionate effect on members of a particular group irrespective of whether or not they meet the requirements of the job. In other words, everyone is treated the same but there are conditions or requirements which put members of one sex, or with personal characteristics like disability or sexual preferences at a disadvantage compared with other people.

Less obvious than direct discrimination, there is ample evidence of indirect discrimination in everyday life. For example, for breastfeeding working mothers, the absence of facilities or creches at or near the workplace and suitable break periods would amount to indirect discrimination at work. Also, persons with disabilities, otherwise well qualified for a particular job, would be discriminated against in pursuing a normal working life if necessary facilities for easy access to the workplace, affordable transport or welfare facilities were inadequate or not at all available.

Multiple discrimination happens where several personal characteristics like sex, age, marital status or nationality combine to disadvantage individual workers or groups of workers. Thus, female migrant workers may face multiple discrimination on account of their sex and nationality when they are forced to undergo

regular pregnancy tests, are being prohibited from marrying nationals or are being prevented from changing jobs in the host country. In the Economic Zones of the Philippines, where young single women make up about 80 percent of the workforce, women are underrepresented in supervisory and especially managerial positions. Senior levels are more often than not held by Filipino men or male expatriates. Here, age, gender, marital status, family responsibilities and nationality tend to work against the progress of qualified women to senior positions.

What does not constitute discrimination. Different treatment is not discriminatory when it is based on individual merit, such as talent, knowledge and skills: for example, the search and eventual hiring of a highly talented female Asian singer would be acceptable if the opening is for the position of a lead role for a musical in an Asian setting. Also, different treatment and rewards on the basis of different levels of experience, productivity, responsibilities, etc., is non-discriminatory. This is on the understanding that some workers and occupations are more productive than others, reflecting different skills, qualifications and abilities. This is assumed to lead to different compensations or remuneration. In some instances, different treatment is meant to meet the special needs of individuals to ensure equal opportunity in employment. This is the case where special facilities like access ramps are installed to facilitate access of disabled workers to their workplaces.

“Affirmative” or “positive action” is a special measure not considered as discrimination that encompasses a range of measures and programmes targeting members of disadvantaged groups, such as members of an indigenous people’s community, to overcome persistent and severe disadvantages due to past or current discrimination in education or employment. Such measures range from proactive and systematic efforts to locate qualified individuals from disadvantaged groups to the adoption of numerical targets for increasing representation of members of disadvantaged groups or quotas. Positive or affirmative action is typically temporary in nature, with the intention of eventually phasing it out once the conditions that led to its adoption ceases to exist.

Causes of discrimination. According to Figure 1, discrimination can be traced to a variety of causes, ranging from prejudice, economic conditions, tradition and class distinction to legislation and company rules. These causes may vary in intensity and impact according to particular situations, individuals or groups of workers. Also, preference for graduates of a select group of schools and universities regardless of their qualifications or abilities may be caused by and linked to social or academic prejudice.

Effects of discrimination. Discrimination has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. Primarily related to personal disadvantages and deprivation for the worker, discrimination can have wider ramifications at the level of the firm, community or economy:

- *Personal:* The disadvantages or deprivation that workers experience because of sex, age, social origin, etc., can relate to all aspects and stages of the work relationship, from recruitment to general working conditions, promotion or termination. Details on their features and possible corrective measures will be given in Chapters III (Equality Focus) and IV (Critical Areas of Equality).
- *Firm:* There is growing recognition among practitioners and academics of the relationship between the commitment of firms to prevent and address, if not eliminate, various forms of discrimination at work and their competitiveness, productivity and profitability. Corporate Governance and Corporate Social Responsibility concepts and programs are gaining ground among individual employers and employer organizations. The talents of workers are being mobilized, irrespective of gender, social or ethnic background, in expectation of substantial returns in terms of firm-level excellence and increased competitiveness in national and international markets.
- *Community:* Companies depend on the goodwill of the communities where they operate or where they want to provide their products or services. Enlightened employers understand that this goodwill can rely only to some extent on the quality of products, services and good relations with community leaders; it must also be based on the support of its workers, their families and the community at large. Therefore, the elimination of different forms of discrimination at work would

have ramifications not only for the reputation of the firm but also for the community where the firm is located or from where the workers originate.

- *Economy:* Economic development is a function of the effective mobilization of human and natural resources. Discrimination, in whatever form, leads to inefficiencies at the level of the individual, the firm, the community and ultimately the economy. Therefore, interventions through development plans, legislation or specific support programs are being designed and implemented to remove discriminatory barriers. At the same time, these interventions are expected to create a level playing field, where all disadvantaged groups like women, youth, indigenous peoples or workers in the informal sector can mobilize their potential for their own benefit and that of the firms, community and economy.

Manifestations of discrimination. In day-to-day working life, discrimination may be experienced by an individual or by groups of workers in various forms. While the discriminatory nature of violence has long been recognized and addressed in both law and practice, other subtle forms like unfair treatment, mobbing, bullying, harassment or exclusion are getting increased attention from practitioners, unions and academics. This development may be attributed to a better understanding of labor rights, legislation, court decisions or media reporting, as well as advocacy by social partners, NGOs and cause-oriented groups.

Linkages between Equality at Work and Decent Work. Since the adoption in the 1950s of the fundamental principles embodied in ILO Conventions Nos. 100 and 111, they have served as key guideposts for the promotion of equal opportunity and equal remuneration for men and women for work of equal value at national and international levels.

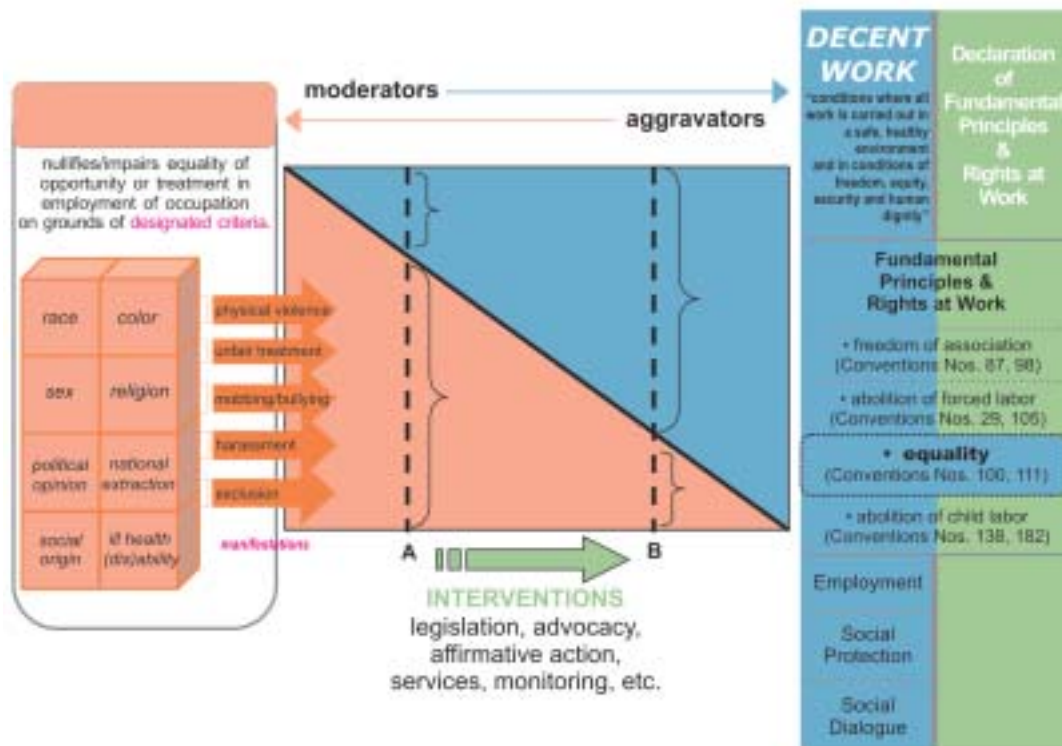
A further boost came in 1995 when the Copenhagen Social Summit included equality at work among the guiding principles and rights in an effort to mitigate the adverse social consequences of globalization. This reflected a growing worldwide concern that questions of fairness and equality must be energetically addressed by the international community while capitalizing on the potential benefits of globalization. These perceptions were formalized in the ILO's Declaration on Fundamental Principles and Rights at Work of 1998. The Declaration urges wider application of ILO fundamental standards embodied in the Conventions on Freedom of Association and Collective Bargaining (Nos. 87 and 98), Non-Discrimination and Equality in Employment (Nos. 100 and 111), the Abolition of Forced Labor (Nos. 29 and 105) and the Elimination of Child Labor (Nos. 138 and 182).

On the basis of empirical evidence that countries eliminating forced labor, overcoming the various forms of discrimination in employment and occupation or eliminating the worst forms of child labor, are doing better economically and socially than those where rights at work are violated, the ILO launched its Global Program on Decent Work in the New Millennium.

The conceptual and operational linkages between discrimination, equality at work and decent work are highlighted in Figure 2.

Equality at work is an integral part of the fundamental principles and rights at work under both the ILO Declaration of 1998 and the Decent Work agenda. To operationalize these principles and rights, the Decent Work agenda places equal emphasis on employment, social protection and social dialogue. *Decent Work* is the goal: a state of economic and social well-being and conditions under which all work is carried out in a safe, healthy environment and in conditions of freedom, equality, security and human dignity. At the same time, Decent Work is a process that includes the promotion of rights, creation of employment, elimination of discrimination and exploitation, social protection and social dialogue.

Figure 2: Linkages between Discrimination, Equality & Decent Work



Source: Gust. 2004

Figure 2 also highlights the linkages between *Discrimination*, *Equality at Work* and *Decent Work*. The main message is that discrimination directly affects the level of Decent Work. For example, at point A, a high level of discrimination is associated with a low level of decent work. At point B, a reduced level of discrimination goes hand in hand with a higher level of decent work. The level of discrimination and decent work can be influenced through:

- moderators (e.g., awareness raising) and aggravators (e.g., propaganda), and
- interventions (e.g., legislation, policies, advocacy, enforcement, implementation, services, monitoring, reporting, evaluation).

The political and economic environment, the commitment of stakeholders and available resources come into play in determining the process and the level of achievement of Decent Work.

Equality at Work and Decent Work are not mere abstract concepts enshrined in constitutional and labor law, but are practical guideposts for the real world of work. Both Equality at Work and Decent Work are mutually reinforced through rights at work, opportunity, dignity, fairness, justice and participation in decision-making in matters affecting the rights and welfare of workers.

In the world of work, varying deficits in equality or the denial of rights at work, opportunity, dignity, fairness, etc., add up to varying degrees of discrimination, which in turn affect Equality and Decent Work. For example, paying disabled persons lower than able-bodied persons for work of equal value reflects a discriminatory deficit of rights and dignity, and thus infringes on both equality and decent work. Legislation, enforcement, advocacy, education and technical services are part of the arsenal of action to overcome existing gaps and deficits for the promotion of Equality and Decent Work.³

³ Werner Konrad Blenk, "The ILO Program Thrust: Decent Work for Women and Men Everywhere" in *Philippine Journal of Labor and Industrial Relations* Vol. XIX-XX (UP SOLAIR, Quezon City, 1999-2000).

Chapter II: Visions & Perceptions of Equality

A. ILO & Equality

Equality of opportunity and treatment has been one of the fundamental objectives of the ILO since its founding in 1919. The promotion of equality at work has led all other activities and ranged from setting standards and doing research to extending technical assistance.

The ILO's Constitution, even in its original version, indicates this principle as among those that are of "special interest and urgent importance" and states that "standards set by law in each country with respect to economic conditions should have due regard to the equitable economic treatment of all workers lawfully resident therein." It also recognizes "the principle of equal pay for work of equal value".

The elimination of discrimination at work is central to social justice, which lies at the heart of the ILO's mandate. The Declaration of Philadelphia adopted by the ILO Conference in 1944, now a part of the ILO Constitution, affirms that "all human beings, irrespective of race, creed, or sex have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal security".

The elimination of discrimination was affirmed as a fundamental principle by the "ILO Declaration on Fundamental Principles and Rights at Work and Its Follow Up" adopted in 1998. The document also declared that membership in the ILO creates an obligation to promote and realize these principles, even in the absence of ratification of the concerned fundamental Conventions.

ILO's Conventions set internationally accepted standards at work or establish a minimum below which no worker should fall.⁴

ILO's Global Report of 2003 on "Time for Equality at Work" is the first comprehensive review of the principle of non-discrimination and equality of opportunity in the world of work. This report, which is an important instrument for taking stock of equality and discrimination issues under the monitoring mechanisms established as a follow-up to the ILO Declaration of 1998, also provides guidelines for designing plans of action, nationally and internationally. In effect, it serves as an entry point for promoting equality in society at large.⁵

Key messages of the Report include the following: (1) Equality is a universal human right. (2) Equality is a moral obligation to protect and encourage vulnerable groups. (3) Equality is a precondition for Decent Work. (4) Equality takes good business on the high road to Decent Work.

The Report represents a paradigm shift from the denial of discrimination to a clear recognition of the problem, followed by assertive action. This is evident in its emphasis on the promotion of equality and tolerance in such areas as race, gender and religion through the elimination of the most glaring forms of discrimination.

⁴ See Table 1 on page 2 for a list of ILO Conventions on Equality.

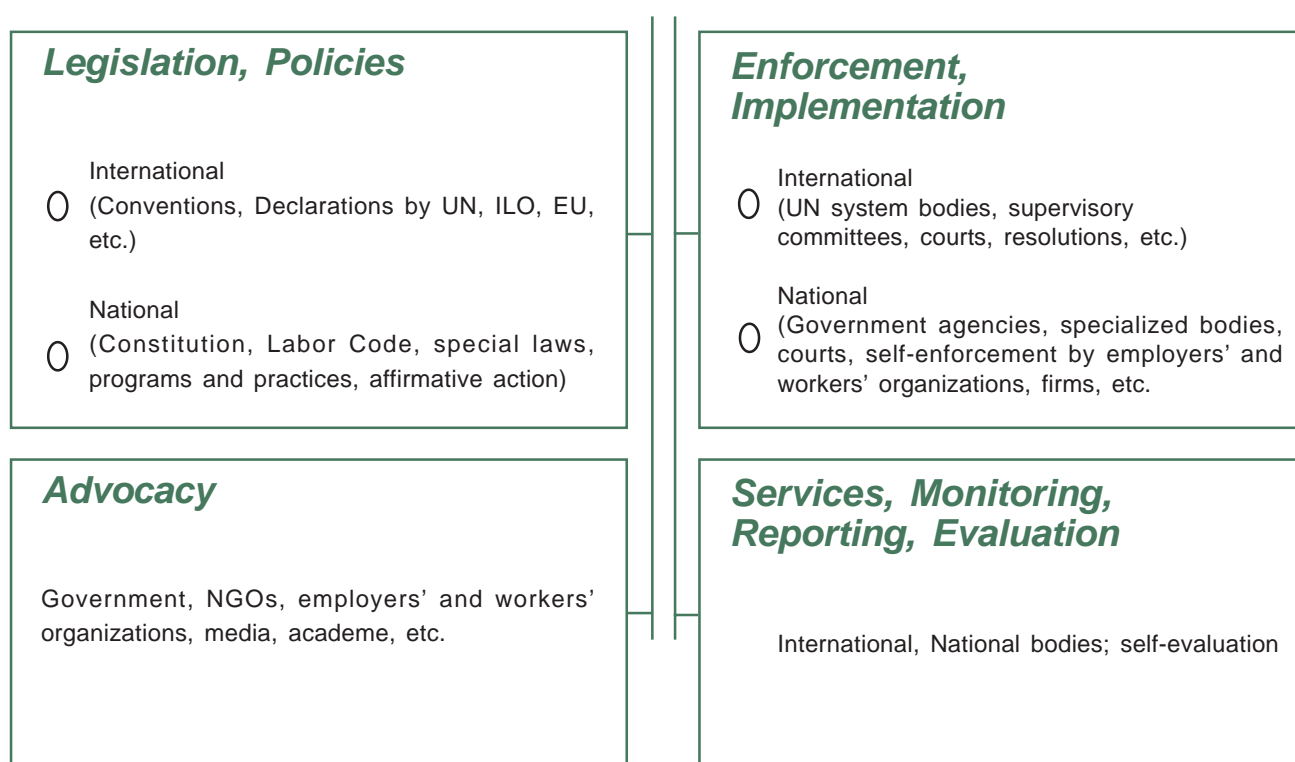
⁵ ILO, *Global Report on "Time for Equality at Work,"* Geneva, 2003.

However, more subtle forms of discrimination are coming into prominence. These include HIV/AIDS, age, trafficking and migration, which are becoming the focus of the international agenda. “Lessons learned” should help in focusing on these moving targets of discrimination.

The ILO Global Report makes a strong case that the “vicious cycle” can and must be broken through interventions that strike at any or all of its key elements such as prejudice, discriminatory practices and socio-economic inequalities. This can be achieved through sustained action and a well-balanced package of interventions, including legislation, advocacy, enforcement and services. The outcome should be a “virtuous cycle” of equality and non-discrimination at work, which will serve as the starting point for progressing towards Decent Work for All.

Every country is of course free to set its own goals on equality at work in accordance with its socio-economic conditions and requirements and to attune its mix of interventions accordingly. As seen in Figure 3, a wide range of interventions by national and international bodies are available to facilitate in designing and implementing effective policies and programs for equality at work.

Figure 3: Interventions to Promote Equality & Non-Discrimination at Work



ILO and its social partners cannot do it alone. Equality at work should be everybody's concern, including workers and their families, unions, management, government, the community and ILO. All stakeholders should be called upon to play their roles in a challenging but ultimately rewarding journey towards Equality and Decent Work for all.

In the Philippines, two initiatives stand out as national initiatives towards the pursuit of a virtuous cycle of equality and decent work:

1. Government, employer and worker organizations have worked closely together in the formulation of the National Plan of Action for Decent Work. In line with the two Philippine Medium-Term National Development Plan for 2001-2010, the NPADW responds to such national priorities as the reduction of mass poverty, especially in rural areas, the promotion of small and medium enterprises (SMEs) and self-employment in urban areas, as well as the enhancement of international competitiveness.⁶

⁶ Werner Konrad Blenk, “The ILO Program Thrust: Decent Work for Women and Men Everywhere” in *Journal of Labor and Industrial Relations* Vol. XIX-XX (UP SOLAIR, Quezon City, 1999-2000). See also ILO, *Action Program for Decent Work: Philippines* (Manila, 2002).

Formally adopted in May 2002, the NPADW undergoes regular monitoring and consultation by and among the social partners under the auspices of a High-Level Decent Work Tripartite Advisory Committee. The first initiative of its kind in Asia, the NPADW is expected to receive all the attention and support it deserves from the international community.

2. In November 2003, a public presentation by the ILO Subregional Office for South-East Asia and the Pacific brought the contents of the ILO Global Report on “Time for Equality at Work” to the attention of a wide public. At the same time, the occasion served as a forum for discussion of issues related to equality at work among ILO constituents, the media and representatives of civil society. While taking stock of the state of the art on equality at national and international levels, it also highlighted opportunities for action in the areas of legislation, enforcement, advocacy and networking. The event is expected to pave the way for concrete, concerted follow-up action on a national scale by all stakeholders.⁷

B. The Philippine Constitution and Labor Legislation

In the Philippines, the concept of civil equality and equality at work for all citizens are firmly established under constitutional and labor law. Whether women, children, migrant workers, persons with disabilities, people living with HIV/AIDS or indigenous and tribal peoples, all can claim protection against discrimination and validate their right to equal treatment, generally and in the world of work.

The provisions of the Philippine Constitution are reflected in the Philippine Labor Code (PLC), as well as in various anti-discriminatory laws and directives, as shown in Annex 2.

Over the past decades, the Philippines has adopted in its Constitution and key labor laws many of the labor rights embodied in ILO Key Conventions relating to non-discrimination and equality in employment, including Convention No. 100 on Equal Remuneration for Work of Equal Value and Convention No. 111 on Discrimination in respect of Employment and Occupation. Table 2 shows a close convergence between these ILO Conventions and the Philippine Constitution and labor law, with particular reference to the responsibility of the State in the following matters:

- to build a just and humane society, and secure independence and democracy under the rule of law and a regime of truth, justice, freedom, equality and peace;
- to provide full protection to labor—local and overseas, organized and unorganized—and promote full employment and equality of employment opportunities for all, regardless of sex, race or creed, and to regulate the relations between workers and employers; to assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work;
- to protect working women against discrimination with respect to terms and conditions of employment solely on account of their sex and to provide safe and healthful working conditions, taking into account their maternal functions, and to provide facilities and opportunities that will enhance their welfare and enable them to realize their potential in the service of the nation; and
- to protect vulnerable groups such as youth, older workers, indigenous peoples, the differently-abled and people living with HIV/AIDS against discrimination in employment, where necessary through special legislation and programs.

While convergence exists at the highest conceptual level, later chapters (III, IV and V) in this study will deal with divergences and gaps with reference to ILO principles and in their implementation at the sectoral and operational levels.

⁷ ILO, *Global Report on “Time for Equality at Work” - Proceedings of Consultations* (Manila, 2003).

**Table 2: Convergence between ILO Conventions No. 100 and 111
& Philippine Constitutional and Labor Law***

ILO "Core" Convention No. 100 Equal Remuneration for Men and Women Workers for Work of Equal Value	Philippine Constitution of 1987, Philippine Labor Code of 1974 and other relevant laws and regulations
<p>THE CONVENTION defines equal remuneration for work of equal value as remuneration established without discrimination based on sex.</p> <p>This principle may be applied by means of national laws or regulations, legal machinery for wage determination, collective agreements or a combination of these various means. On of the means specified for assisting in giving effect to the Convention is the objective appraisal of jobs on the basis of the work performed.</p> <p>The Convention provides that governments shall cooperate with employers' and workers' organizations for the purpose of giving effect to its provisions.</p>	<ul style="list-style-type: none"> • The ILO instrument was ratified by the Philippines in December 1953. • The Convention is applied in the Philippines, inter alia, by way of: <ol style="list-style-type: none"> (1) The Philippine Constitution of 1987 article III - Bill of rights, Section 1 Article XIII - Social Justice and Human Rights, Section 14 (2) The Philippine Labor Code Book III - Conditions of Employment, Title III - Working Conditions for Special Groups of Employees, Chapter I - Employment of Women, Art. 135 Book III - Conditions of Employment, Title II - Wages (3) The Magna Carta for Disabled Persons, RA No. 7277 Section 4 - Compensation and Other Benefits (4) Indigenous Peoples Rights Act (IPRA) of 1997, RA No. 8371
ILO "Core" Convention No. 111 Discrimination in Respect of Employment and Occupation	Philippine Constitution of 1987, Philippine Labor Code of 1974 and other relevant laws and regulations
<p>THE CONVENTION assigns to each State which ratified it the fundamental role of promoting equality of opportunity and treatment by declaring and pursuing a national policy aimed at eliminating all forms of discrimination in respect of employment and occupation.</p> <p>Discrimination is defined as any distinction, exclusion or preference based on race, color, sex, religion, political opinion, national extraction or social origin (or any other motive determined by the State concerned which has the effect of nullifying or impairing equality and opportunity or treatment in employment or occupation.</p> <p>This policy shall be pursued and observed in respect of employment under direct control of a national authority, and of vocational guidance and training, and placement services under the directive of an authority.</p>	<ul style="list-style-type: none"> • The ILO instrument was ratified by the Philippines in November 1960. • The Convention is applied in the Philippines, inter alia, by way of: <ol style="list-style-type: none"> (1) The Philippine Constitution of 1987 Article III - Declaration of the Principles and State Policies, Section 14 Article III - Bill of Rights, Section 1 Article XIII - Social Justice and Human Rights, Section 3 (2) The Philippine Labor Code Preliminary Title, Chapter I - General Provisions, Art. 3 & 6 Book III - Conditions of Employment, Title III - Working Conditions for Special Groups of Employees, Chapter I - Employment of Women, Art 135-138 (3) An Act Promoting the Integration of Women as Full and Equal Partners of Men in Development and Nation Building, and for Other Purposes, RA No. 7192 (4) The Magna Carta for Disabled Persons, RA No. 7277 (5) The Anti-Sexual Harassment Act of 1995, RA No. 7877 (6) The Paternity Leave Act of 1997, RA No. 8187 (7) Indigenous Peoples Rights Act (IPRA) of 1997, RA No 8371

* For details on convergence, see DOLE, *International Labor Standards in the Philippines*, 1998 and DOLE, *ILO Conventions and Philippine Laws*, 1999.

The Republic of the Philippines moved towards convergence in the 1950s and 1960s after becoming an ILO member in 1948. In 1953, following the promulgation of the Magna Carta of Philippine Labor of 1953 (RA No. 875), the Philippines ratified ten ILO Conventions, including Convention No. 100. The next major move came in the 1960's with six ratifications, including Convention No. 111. A major landmark event was the promulgation in 1974 of the Philippine Labor Code. The first of its kind in Asia, it went a long way towards translating ILO principles into national law and practice.

The Constitution of 1987 strongly advocated human and labor rights, becoming known as a “labor-friendly” Constitution. It went a long way towards translating UN and ILO equality principles into law and practice. In fact, equality and non-discrimination at work were made an integral part of political, economic and cultural human rights under the Constitution.⁸ Also, the Philippine Labor Code advocates equal opportunity for both women and men, as well as equal pay for work of equal value (PLC Art. 135).

The past decades have witnessed sweeping anti-discriminatory initiatives including, to name a few, the promulgation of the Equal Opportunity Act (1984), the Magna Carta for the Disabled (1992), the Magna Carta for Migrant Workers, the Anti-Sexual Harassment Law (1995), the Paternity Leave Act or RA No. 8187 (1996), the Magna Carta for the Protection of Tribal Peoples or RA 8371 (1997), the HIV/AIDS Prevention Act (1998) and the Solo Parents Welfare Act or RA No. 8972 (2000).

To correct present legal inconsistencies, House Bill 02622 or the “Equal Employment Opportunity Act of 2004” was submitted for adoption by the Philippine Congress. Covering discrimination against women, the elderly, homosexuals and the disabled, this bill further seeks to extend legal protection against all forms of discrimination at work very comprehensively, from pre-employment to promotion and termination of employment. It also provides for mechanisms for implementation and enforcement. However, this initiative of individual members of Congress has yet to be translated into legislative action.

The ILO-convergent constitutional and labor laws are at the top of the pyramid of legal and socio-economic concepts and guidelines on equality and non-discrimination at work. The following figure shows the relationship between International Conventions on the one hand and, on the other hand, the Constitution, the labor laws and the potential or actual arrangements in the formal sector on equality at the workplace.

Figure 4. Equality under Constitutional and Labor Law



⁸ Preamble of the Philippine Constitution of 1987: “We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure for ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equity and peace, do ordain and promulgate this Constitution.”

Bill of Rights, Article III Section 1: “No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the law.”

Social Justice and Human Rights, Article XIII Section 3 (Labor): “The State shall afford full protection of labor, local and overseas, organized and unorganized, and promote full employment and equality of employment for all.”

The pyramid of constitutional and labor law conveys several important messages with regard to equality:

- The longstanding membership of the Philippines in international organizations concerned with equality, like the UN and ILO, provides for broader cooperation in promoting wider application of internationally accepted equality standards;
- Well-established mechanisms exist for the ratification of international conventions and covenants through the Senate of the Republic of the Philippines, based on broad consultations with the social partners (government, employer and worker organizations and civil society at large) under the auspices of the Tripartite Industrial Peace Council (TIPC).⁹ Important recent ratifications include ILO Convention No. 144, Tripartite Consultation (International Labour Standards) Convention, 1976; Convention No. 159, Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 and Convention No. 182, Worst Forms of Child Labour Convention, 1999. The wide application of ratified conventions is promoted through government channels and close consultations among the social partners and cause-oriented groups.
- The equality rights of disadvantaged groups like differently-abled persons, women, migrant workers, indigenous and tribal peoples, people living with HIV/AIDS, etc., are generally promoted through more or less vocal advocacy for their rights by NGOs and cause-oriented groups, as well as the national commissions on human rights, indigenous and tribal peoples and the role of women or international groupings or agencies.

But broad coverage of equality at work in constitutional and labor law is not necessarily matched by effective compliance in the workplace. The NPADW observes a weak culture of compliance, as evidenced in the observance of constitutional law, guiding regulations and labor law.¹⁰ The coverage of the various forms of protection against discrimination is largely limited to the formal sector, comprising 25 per cent of the total labor force or about 6 million workers. The remainder of the labor force, in particular the informal sector may be formally protected by constitutional and labor rights, but actual protection appears fairly limited. A later section on workers in the informal sector (Chapter III) suggests that large sections of the labor force are indeed subjected to substandard working conditions and discrimination on account of sex and age.

C. Perceptions of Philippine Social Partners on Equality & Decent Work

The Philippines is pursuing policies of economic growth with social justice, equality and equity, as well as quality of work and life for its citizens within the wider framework of a mixed economy system. Ideally, Philippine social partners, notwithstanding their respective preoccupations, should be bound together in a National Framework for Equality and Decent Work (Figure 5).

Respect for rights is well reflected in Philippine constitutional and labor law, despite certain gaps (e.g., with respect to older workers), inconsistencies (e.g., disabled persons) or shortfalls in enforcement. As shown in the previous section on Philippine Constitution and Labor Law, a substantive body of specific anti-discriminatory legislation has been enacted over the past decade. To this should be added legislation that is indirectly related to equality rights such as freedom of association and collective bargaining. The judiciary and quasi-judiciary institutions like the National Labor Relations Commission (NLRC) and the administration in general play important roles in interpreting the law and righting wrongs in cases of discriminatory acts.

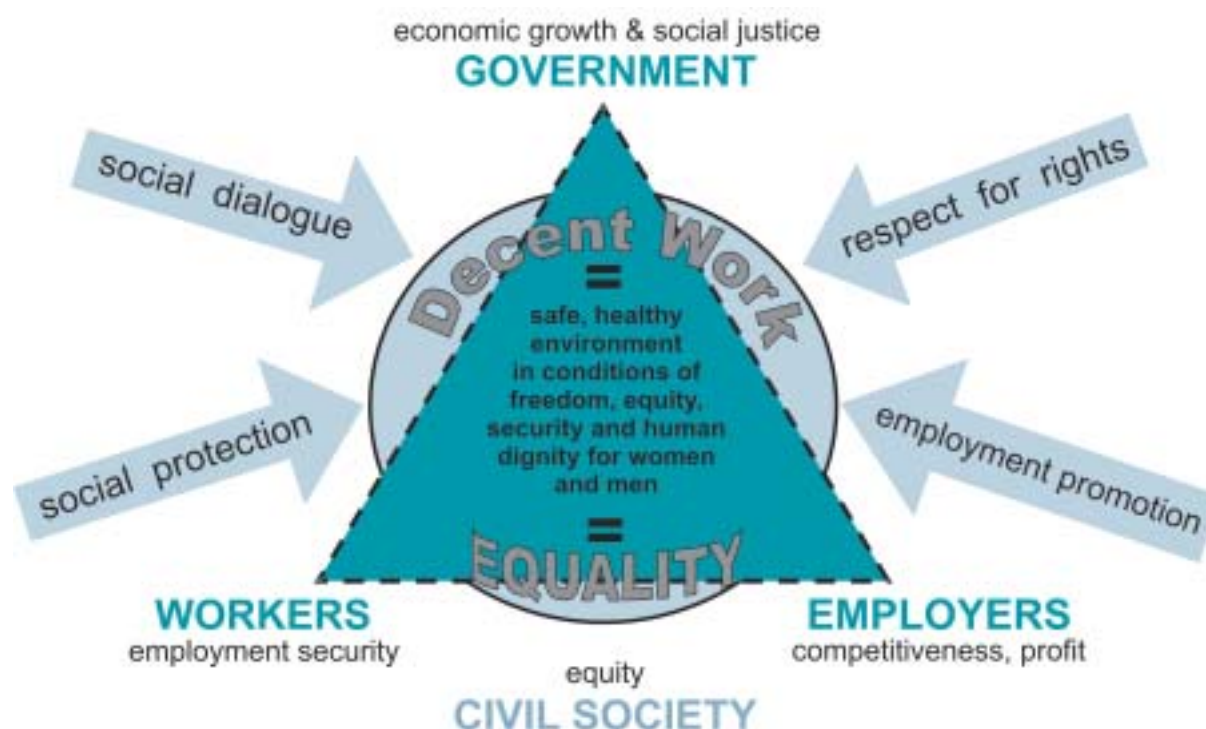
Employment, economic opportunity and status are closely linked to equality. Employment creation, preservation, protection and facilitation are major preoccupations of the social partners. In a labor surplus

⁹ See Annex 2 for the list of ILO Conventions ratified by the Philippines.

¹⁰ ILO, *Action Program for Decent Work: Philippines* (Manila, 2002), para. 23-26.

Figure 5: National Framework for Equality & Decent Work

Source: Gust. 2004



economy, with high levels of unemployment (approx. 11 per cent) and underemployment (approx. 17 per cent), some vulnerable groups are experiencing discrimination at work, namely, women, older workers, youth and disabled persons. Philippine youth unemployment is double the national average. The current poverty level of 34 per cent speaks for itself, reflecting a lack of opportunities for a large section of the population located mainly in the informal sector.¹¹

Social protection in case of ill health, disability or retirement is intended to make for greater equality. In practice, however, social protection is limited to a minority of the labor force, mostly in the formal sector. Unemployment benefits are non-existent. Vulnerable groups like the youth, the elderly, migrant workers, and persons living with HIV/AIDS or workers in the informal sector depend in case of need on the extended family network and other traditional means of support.

Social dialogue has great potential for promoting equality at work through sound relations and a continuous review and adjustment of respective views and positions.¹² Tripartite consultation between government, labor and management on labor matters is embodied in ILO Convention No. 144, which the Philippines ratified in 1991. Enshrined in the Philippine Constitution and labor law and practice, tripartism if widely used can contribute to creating a level playing field for greater equality at national, sectoral and company levels.

The Tripartite Industrial Peace Council (TIPC), established in 1991, functions as the national forum for labor policies.¹³ Similar arrangements are being practiced in key areas related to labor and employment, especially in minimum wage fixing through the Regional Tripartite Productivity and Wages Commissions. The National Plan of Action for Decent Work (NPA DW) is the outcome of tripartite consultations. Tripartism

¹¹ See Annex 3: Labor and Employment Trends, 1995-2005.

¹² Tayo Fashohin, "Social Dialogue and Labor Market Performance in the Philippines" (working paper, Geneva, 2003).

¹³ Tripartism is institutionalized in such organizations as the National Labor Relations Commission (NLRC), the National Wages and Productivity Commission (NWPC), the National Conciliation and Mediation Board (NCMB), the Social Security System (SSS), the Technical Education and Development Authority (TESDA), the Employees' Compensation Commission (ECC), and the Occupational Safety and Health Center (OSHC).

can also be effective in specific areas of social welfare and practice, such as in HIV/AIDS cases. Following a National Tripartite Workshop in 1997, the Philippine AIDS Prevention and Control Act (RA No. 8504), which contains a prohibition against discriminatory policies in the workplace, was signed into law in 1998. National awareness-raising campaigns are being conducted through tripartite channels.¹⁴ Such tripartite consultations at the level of industries could be revitalized and could focus on equality and non-discrimination issues in the respective industries.

1. Government

As the custodian of equality at work, the Philippine government operates within the framework of the Philippine Constitution and in the wider context of commitments arising from international agreements such as the ILO Conventions. More specifically, the Department of Labor and Employment (DOLE) is developing and implementing relevant policies and programs that make for greater equality at work, in cooperation with employer and worker organizations, other government units, Congress, the judiciary and civil society. DOLE also initiates and takes necessary corrective measures individually or jointly with other agencies.

The government takes credit for the following tangible achievements in the area of equality over the past decades:

- legislation enacted and programs launched in favor of disadvantaged and discriminated groups such as indigenous peoples, people living with HIV/AIDS and the differently-abled. To this should be added groundbreaking legislation on mainstreaming gender issues and against sexual harassment, laws assisting single parents, as well as directives against trafficking;¹⁵
- revision of procedures perceived by trade unions to be rigid or restrictive on workers' freedom of association, such as the processing time for registration of unions with the Bureau of Labor Relations (BLR) and the DOLE regional offices; helping achieve equality and labor justice through more expeditious settlement of labor cases, shorter time limits for decisions on pending cases on appeal and speedier resolution of voluntary arbitration cases;¹⁶
- launching of a national Labor Standards Enforcement Framework for self-assessment, targeted inspections and preventive advisory technical support¹⁷;
- implementation of the National Plan of Action for Decent Work (NPADW) designed to enhance equality at work through a package of legislative and developmental measures;¹⁸
- implementation of a time-bound program for the elimination of the worst forms of child labor in the country.

As globalization progresses through trade liberalization, Philippine society is concerned about the possible threats of rising unemployment, underemployment, discrimination or inequality. To contain these negative social implications of globalization, the government is stepping up its efforts to strengthen existing institutions and to put in place relevant policies and procedures that can establish checks against exploitative situations, as well as promote fair labor standards and equality principles. Acting in cooperation with Congress and the judiciary, the government is focused on

- giving access to decent work for all in order to reverse the discriminatory state of exclusion from mainstream society of the unemployed, underemployed, the youth, women and other disadvantaged groups like the Indigenous and Tribal Peoples;¹⁹

¹⁴ At a National Tripartite Workshop in 2002, where ILO's International Code of Practice on HIV/AIDS in the World of Work was presented.

¹⁵ Labor Usec. Danilo Cruz, in ILO, *Global Report on "Time for Equality at Work". Proceedings of Consultations* (Manila, 2003).

¹⁶ DOLE DO No. 40-03.

¹⁷ DOLE DO No. 57-04.

¹⁸ ILO, *Action Program for Decent Work: Philippines* (Manila, 2002).

¹⁹ Gert Gust, *Youth Employment: Philippines* (for publication, Manila, 2004) and *Equality and Non-Discrimination in Employment and Livelihood of Indigenous People* (for publication, Manila 2006).

- equal opportunity in employment by eliminating discriminatory laws and practices through advocacy, technical advisory services and enforcement; and
- removing existing barriers to education and training in order to mobilize the talent and capabilities of the poor and disadvantaged.

To achieve meaningful progress, however, government cannot do everything by itself. Therefore, it is making possible the concerted action of all concerned, particularly the social partners and cause-oriented groups. The ultimate goal is the creation of a level playing field in the world of work, where the majority of people are working together within the boundaries of justice, decency and morality.

2. Trade Unions

The origins of the Philippine trade union and labor movements are deeply rooted in a fight for the improvement of wages and working conditions, for labor rights and for equality and non-discrimination at work. But discrimination against trade union members continue to exist, either at the recruitment stage, during employment or on termination. Unionists lament the harassment of their leaders in the pursuit of their legitimate activities (for example, unionization in the Economic Zones). Trade unions also occasionally take a strong stand against sexual harassment and discrimination against persons living with HIV/AIDS. As recognized social partners, unions continue to strive for the protection of the constitutional rights of both organized and unorganized labor and for full employment or equality of opportunity. The leaders of major trade unions are on record as making strong commitments to equality at work principles.²⁰

As representative social partners, trade unions could exercise considerable influence on equality matters at national, industry and firm levels. Unions are represented in such bodies as the National and Industry Tripartite Peace Councils (TIPC), in National and Regional Tripartite Wages and Productivity Boards, as well as

Table 3: Philippine Labor Organizations in 2002 and 2003

Labor Organizations	2002	2003
	Totals	
Employed (in thousands)	30,251	31,524
Existing Unions (as of)	11,365	11,796
- federations/labor centers	179	181
- private sector unions	10,036	10,362
- public sector union	1,150	1,253
Existing Membership of Active Unions (in thousands)	3,917	3,960
- private sector unions* (as of)	3,680	3,712
- public sector unions (as of)	237	249

Note: For indicators with rounded figures, details may not add up to totals.
Data on existing unions and union membership include those registered with the BLR.

*-Includes membership of affiliated unions. It however excludes federation members of 2.8 million farm workers.

²⁰ Democrito Mendoza, TUCP President and former alternate member of the ILO governing Body: "The mandate of the ILO is to formulate and set international standards of basic labor rights for humanitarian, political and economic reasons; it is geared towards the attainment of social justice and equity. The ILO remains the world's forum for labor standards and discussion on the social impact of trade liberalization. The ILO should take an active role in the design and implementation of social programs to cushion the impact of international trade." See also ILO, *Global Report on "Time for Equality at Work". Proceedings of Consultations* (Manila, 2003).

institutes like the Social Security System (SSS), Technical and Skills Development Authority (TESDA), Employers Compensation Commission (ECC) and Occupational Safety and Health Center (OSHC). At the firm level, collective bargaining, grievance procedures and Labor-Management Councils/Committees (LMCs) provide unions with wider scope for handling labor and employment issues, including equality at work.

However, at the start of the 21st century, trade unions provide a complex picture of a still struggling movement. First, the Philippine labor force is characterized by a low level of unionization. In 2003, when total employment stood at 31.5 million, only 10 to 15 per cent of the workforce were considered members of active unions. Second, as shown in Table 3, the unions are very diverse, spread over 181 federations/centers, consisting of about 10,400 labor organizations in the private sector and about 1,200 unions in the public sector. Third, not more than 500,000 workers are covered by Collective Bargaining Agreements (CBAs).²¹

More often than not, the labor movement is divided along ideological and/or political lines, and consists of multiple labor groupings of different sizes and interests. Occasionally, the Philippine labor movement has united in joint action for economic reasons, especially minimum wage increases; however, initiatives on equality at work tend to be more limited and less spectacular.

Individual unions have to overcome their own equality gap, for example, by achieving gender balance in union leadership positions. At present, 34 per cent of union members are women, but only 26 per cent of leadership positions are held by women. Top union leadership circles are largely male-dominated. The cases in Box 1. 'Glass Ceiling' in Labor Leadership may not be representative of the situation in all unions, but they give a glimpse of the obstacles women are facing in aspiring for top leadership positions.

Box 1: 'Glass Ceiling' in Labor Leadership

When Anna (not her real name), a leading woman activist, ran for the national board of a labor federation in the mid-1990s, her candidacy caused a major furor in the organization. The male leadership contended that a leader should be loyal to the federation, not a "leftists" which they accused her of being. They also reasoned that there should be geographical distribution of leadership positions. The objections also alluded to gender and age (i.e. they wanted younger leaders to come in).

When she lobbied for affirmative action to get women into the top leadership, the male leadership objected and declared it "unfair." Although she lost, another woman was elected to the national board as treasurer. Moreover, the incident precipitated debates about top leadership. As a result, the general assembly set a two-term limit to the top two positions in order to stop "the perpetuation of the labor union leadership."

Source: Illo, Jeanne Frances I., "Gender Discrimination and Labor Standards: Philippine Country Report", ADB-ILO report, June 2002.

Many successful female labor organizers are either single or separated; one of them commented on her work schedule and family life:

"I knew that it's coming. Okay, I was married when I started this job. Now I am a single mother of a son for the last 14 years. Here in the Philippines, it is also some sort of a trend that successful women leaders are either single, separated or with marital problems. I think this is not only in the Philippines."

A male union organizer attributed the low number of women in leadership positions to women's multiple burden; union work, in the company and domestic responsibilities.

"... they are not at all prepared to take on some of the positions because at the back of their mind, there are these responsibilities at work, and for my family. They would rather have responsibilities not at the top level but at the middle level where they think they would be more effective. But there are some women who have proven themselves as effective leaders and they have managed to overcome these challenges...maybe not at the industrial federation level, but at the local union level women are taking on these leadership positions."

Source: Markkanen, Pia Katariina, "Shoes, Glues and Families: Working Conditions in Informal Sector Footwear Manufacturing", University of Massachusetts Lowell, doctoral theses, 2004

At a time of globalization, the Philippine labor movement faces the dual challenge of surviving as relevant social partners while maintaining its role as advocate of labor rights. Individually and collectively,

²¹ Figures are taken from DOLE's *Factbook on Labor and Employment*, December 2003; the difficulties of arriving at union statistics are discussed by Benedicto Ernesto R. Bitonio, Jr., "Unions on the Brink: Issues, Challenges and Choices Facing the Philippine Labor Movement in the 21st Century" in *Philippine Industrial Relations for the 21st Century...* (UP SOLAIR and PIRS, 2000).

unions are preoccupied with a host of issues, in particular:

- rising unemployment and the spread of atypical work;
- firm closures and shortfall of new investments;
- increase in illegal dismissals;
- erosion of union bargaining power;
- declining union membership;
- marginalization of unions at enterprise and national levels; or
- difficulties in unionizing.

On the part of unions, the high expectations and promises of globalization have not materialized, nor have hopes for non-discrimination at work. Union leaders argue that in the name of greater competitiveness, globalization has paved the way for a race to the bottom and to wider exclusion of women and young workers.

The labor movement has responded to all this in various ways, ranging from protests and mass action to negotiating better packages in case of retrenchment. Other initiatives outside traditional trade union areas include promoting training and livelihood activities for redundant workers or organizing cooperatives. Larger union centers or federations have established gender units and programs; as well as legal services for members on employment issues, including discrimination cases.

Unions are trying to enlarge their constituency beyond the traditional membership in the formal sector by reaching out to the informal sector. Unions can contribute much to non-discrimination of vulnerable groups like women, youth and marginal farmers, who account for a large share of this sector and have largely remained outside the protection of labor rights.²²

The Federation of Free Workers (FFW), a WCL affiliate, has for some time been operating as a labor center and has brought into its fold, members from such diverse groups as women, youths, marginal farmers and other informal sector workers. The Trade Union Congress of the Philippines (TUCP), an ICFTU affiliate, has modified its constitution in order to organize women, youths, home-based workers and marginal farmers through its affiliated Informal Sector Coalition of the Philippines. The TUCP maintains that some 30 per cent of its membership now comes from the informal economy. To promote women empowerment and equal opportunity in employment, both FFW and TUCP have institutionalized substantive women's programs. TUCP, in its "anti-sweatshop" program, has assumed the role of "social whistle-blower" by discovering problems and finding solutions to discriminatory practices. Advocacy for equality at work is also receiving wider publicity through cooperation with the media.

Aware that globalization is here to stay, the Philippine labor movement seems prepared to join forces with government and management in socio-economic reforms that hold promise for economic progress and social returns, including equality and non-discrimination at work.

3. Employer Organizations

Employer organizations in the Philippines are key players and partners in a mixed economy and an industrial relations system that follows the principles of tripartite cooperation. They have an important say on labor rights, including equality of work.²³ The major representative organizations include the Philippine

²² Tayo Fashohin, "Social Dialogue and Labor Market Performance in the Philippines" (working paper, Geneva, 2002).

²³ Miguel B. Varela, consistently Head Employer delegate to the International Labor Conferences in Geneva; former president and currently chairman of ECOP and PCCI.

"The Long journey to a regime of Decent Work for All is the shared vision of the ILO and the Philippines; it must be sustained if the ideal of social justice in a globalized environment should be attained. Laudable policy initiatives should be translated into measurable indicators of greater productivity through lasting industrial harmony. The history of a fruitful partnership between the ILO and the Philippines in pursuit of a number of universal aspirations affecting workers is the foundation of a continued successful collaboration."

Raoul Innocentes, former ECOP president.

"The ILO represents the enlightened conscience of mankind. Its mission is to raise the living and working standards of working men and women everywhere. It seeks to translate the concept of social justice into positive and creative action. It seeks to improve the human condition and impart to the human factor in development the essential elements of self-respect and human dignity."

Ancheta Tan, former ECOP president and Titular Employer Member of the ILO Governing Body.

"It is in the field of human resources development that the ILO will continue to be a vital importance to us and the world. Bringing to bear ILO's core values will serve as a foundation for the competitiveness and progress of all nations."

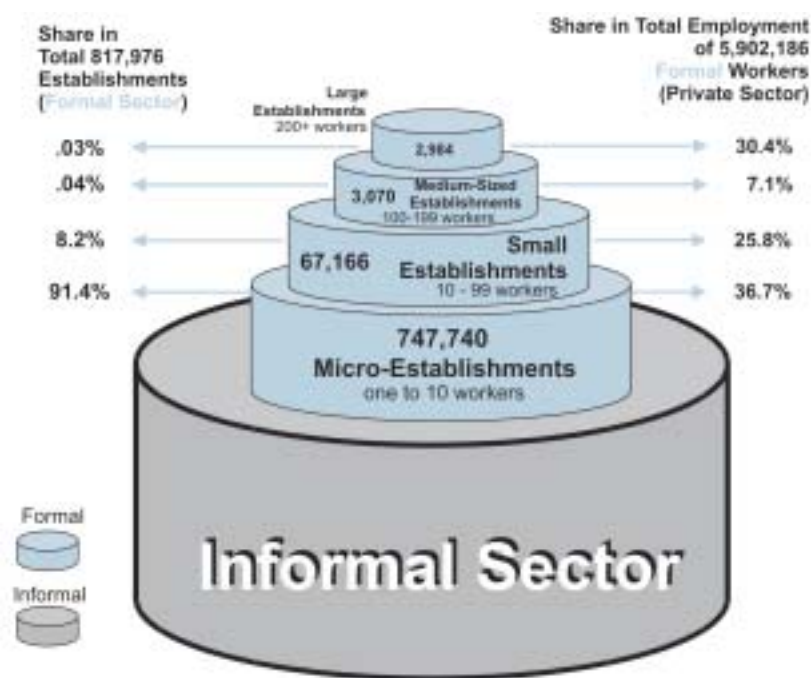
Chamber of Commerce and Industry (PCCI) and the Employers' Confederation of the Philippines (ECOP), focusing respectively on business and economic issues, and on labor and social policies. ECOP acts as the principal spokesperson of employers on labor and social policy and as the main partner of the ILO. Since its founding in 1974, ECOP has consistently taken a stand on labor rights, including equality of work and implemented related programs.

According to ECOP, "Decent Work for All" is the shared vision of the ILO and the Philippines in a globalized world. Policy initiatives should be translated into measurable indicators of greater productivity through lasting industrial harmony. The partnership between the ILO and the Philippines in pursuit of universal aspirations affecting workers is the foundation for continued successful collaboration. Internationally, ECOP has played a prominent role as a member of ILO's Governing Body, particularly in ILO's Anti-Apartheid campaign.²⁴

In the drive for equality at work, Philippine employers and their partners in government and labor have to contend with structural characteristics of the economy and socio-economic realities. Thus, 25 per cent of total employment (6 million) is located in the formal sector and 75 per cent (or 20 million) in the informal sector (Figure 6). Only about 9 per cent (or 80,000) of all establishments have more than 10 workers. A mere 0.7 per cent (about 6,000) of all establishments have more than 100 workers.

While ECOP draws its membership primarily from the large- and medium-sized companies, its programs extend well beyond its membership in the formal sector to the SMEs and informal sector.

Figure 6: Employment by Sector (Formal & Informal) and by Size of Establishment (2000)*



*Adapted from Amante and Ofrenco, "Decent Work and Core Labor Standards in SMEs and Selected Public Sector Agencies."

Many initiatives of ECOP have a direct or indirect bearing on equality of work. Representing all employers in the National Tripartite Industrial Peace Council (TIPC), ECOP has been closely associated with the debate on the ratification and practical application of ILO Conventions. ECOP is not only advocating equality and non-discrimination at work, but also matching advocacy with action. With occasional technical

²⁴ Galman, Mario, "The Challenge of Labor and Social Development: The Philippine Experience" (Manila, 1993). The late Atty. B. Hernandez was for several years the Employer Vice Chairman of ILO's Anti-Apartheid Committee.

support from ILO, ECOP is creating an enabling environment by raising employers' awareness of the importance and added value of equality at work and gender equality to a successful business. ECOP also helps employers to assess their current EEO policies and practices by identifying their strengths and weaknesses. For example, in connection with the ratification of ILO Convention No. 182 on the Worst Forms of Child Labor, ECOP launched a program on "Recognizing the Child-Friendly Firms," including non-discriminatory employment practices among the selection criteria.²⁵

Also, ECOP has undertaken a number of efforts to promote awareness of the costs of discrimination among its members. It has very actively moved forward the Global Compact, which includes the promotion of equality and non-discrimination at work. It has undertaken research on discrimination in the workplace and is developing materials and tools that organizations can use to assess and improve their own efforts to ensure equal opportunities in recruitment, hiring, promotion, pay and other workplace practices.

Aware that compliance with labor rights makes for good business here and abroad, major Philippine employers are establishing codes of conduct for themselves and their suppliers. A case in point is the Memorandum of Cooperation of 2000 between the Confederation of Garment Exporters of the Philippines (CONGEP) and the American Apparel Manufacturing Association. With a view to expanding Philippine exports to the US, and thus preserving local jobs, the Memorandum commits Philippine apparel manufacturers and their subcontractors to such non-discriminatory practices as employing, paying, promoting and terminating workers "on the basis of their ability to do the job, rather than on the basis of personal characteristics or beliefs". The Memorandum also provides for voluntary monitoring by independent inspectors.

At a time of globalization and a highly competitive environment, employer organizations are facing particular challenges and responsibilities to contain and possibly reverse inequalities arising from tight labor market conditions.

Unemployment in the Philippines (about 11 per cent) and underemployment (about 17 per cent) make for waste of human resources and involve social exclusion and discrimination of the poor, who make up 34 per cent of the population.²⁶ With an unemployment rate of 24 per cent, young workers between 19 and 24 are particularly affected.²⁷ As a practical response to the employment challenge, ECOP became party to tripartite accords since 1998 that committed employers to exhausting all possible cost-saving measures before resorting to lay-offs, while unions were to embark on strikes only as the last resort. Moreover, ECOP and other employers' organizations have been party since 2001 to a series of national events for the creation of jobs, such as employment summits and job fairs.

ECOP acknowledges that, under the tight labor market conditions, inequality of work continues to be widespread. Hence, it calls upon all stakeholders to contribute towards building an environment where equality theories work in practice and "where everyone stands tall as a respected individual while accepting the difference and dignity of others."

Still, much remains to be done. According to ECOP, most common forms of discrimination in the Philippine labor market exist with regard to employment, occupation and remuneration, especially against women. Discrimination covers various aspects of female employment, ranging from lower pay for women than for men for work of equal value and lower chances of promotion because of marriage status.

Notwithstanding the decade-long existence of a groundbreaking Magna Carta for the Disabled, the chances of disabled workers finding employment in the formal sector are diminishing under tight labor market

²⁵ ECOP, "Guidance Document for Recognizing the Child-Friendly Firms."

²⁶ DOLE, *Factbook on Labor and Employment* (Manila, December 2003).

²⁷ Gert Gust, "Youth Employment: Philippines," (for publication, Manila, 2003).

conditions. Referring to the Philippine AIDS Prevention Act of 1998, ECOP draws attention to a possible conflict between the managerial prerogatives of hiring and firing versus the strong protection of workers living with actual, perceived or suspected HIV/AIDS. This matter still needs to be resolved with finality in a proper judicial forum.²⁸

4. Judiciary

The judiciary is playing a key role in the promotion of equality at work through the interpretation of existing laws and practices, and through court decisions on actual discrimination cases.

This was acknowledged at the First Asia-Pacific Regional Seminar on International Labor Standards and Equality Issues for Judges, organized with ILO support in Manila in September 2003. This gathering reviewed the potential role of the judiciary in a broader campaign to promote international labor standards, including equality.

Commenting on the role of the judiciary in time of globalization, former Philippine Chief Justice Hilario G. Davide Jr. stated that “market forces are very much a part of our political reality; there is no way to evade them. But the desire to be competitive must never sacrifice the human aspect of industry. This is an issue that is irretrievably linked to the value of equality. Labor standards and equality must be inseparable. Thus, in every case involving labor standards and equality, judges become instruments to assist government in a balanced fulfillment of the objective of both.”

The Supreme Court (SC) as the final arbiter has ruled in a number of landmark cases on discrimination at work:

- Regarding discrimination based on religion, the SC established that there should be no distinction between Muslim and non-Muslim as regards payment of benefits for Muslim holidays. Wages and other emoluments granted by law are determined by the criteria laid down by laws and not in relation to the workers’ faith or religion.²⁹
- On the unfair classification of employees, the SC upheld the claim of the International School Alliance of Educators to equal pay for work of equal value of locally-based educators versus foreign ones. The SC stated that in the workplace, where the relations between capital and labor are often skewed in favor of capital, inequality and discrimination by the employer are all the more reprehensible. It further ruled that “persons who work with substantially equal qualifications, skills, effort and responsibility, under similar conditions, should be paid similar salaries”.³⁰
- On termination of employment, the SC considered as illegal the dismissal of a female employee due to charges of gross and habitual neglect of duties, serious misconduct and fraud. The court noted that the orders given by the employer to the employee were not germane to her job and that the employer had resorted to blackmail and sexual harassment. Consequently, the SC ordered the employer to pay her full back wages and separation pay in lieu of reinstatement, because of the strained relations.
- On the criminal aspects of sexual harassment, the SC, ruled on the behavior and action of a former provincial health officer in a landmark case in 2002. The case had been in the courts since 1996 and had involved a “legal odyssey” for the complainant. The SC upheld a sentence of

²⁸ ECOP chairman Miguel Varela and president Donald Dee, in ILO, *Global Report on “Time for Equality at Work”-Proceedings of Consultations, Manila 2003*.

²⁹ *San Miguel Corporation versus Court of Appeals*, 375 SCRA 311, 30 January 2002.

³⁰ *ISAE vs. Hon. Leonardo Quisumbing* 333 SCRA, 13 June 2000.

imprisonment for the accused. Regarding payment of compensation, the SC felt that moral damages are not intended to enrich the complainant but are awarded only to enable an injured party to obtain some means to compensate for the sufferings sustained from the culpable action of an offender.

- On discrimination of differently-abled persons, the SC ruled in favor of 43 deaf-mute complainants who were hired for various periods between 1988 and 1993 by a bank as money sorters and counters under a common contract called “Employment Contract for Handicapped Workers”.³¹ Their contracts were renewed every six months. But the petitioners alleged that they became regular workers because their task as sorters and counters was necessary and desirable and, as such, must be covered by the provisions on the terms and conditions for regular workers under Article 280 of the PLC. Beginning 1993, however, the bank had terminated the services of the disabled workers.
- The Supreme Court found merit in the petitioners’ claim that only the employees who had worked for more than six months and whose contracts had been renewed were considered regular. The dismissal from employment was deemed illegal. The Supreme Court thus enunciated that the noble objectives of the Magna Carta for Disabled Persons were not based merely on charity or accommodation, but on justice and the equal treatment of qualified persons, disabled or not. The petitioners’ handicap was not a hindrance to their work. In fact, the petitioners had proven their fitness to work. Therefore, they should be treated and granted the same rights as any other regular employees.

It must be noted that court cases and decisions on equality of work represent a minute fraction of the thousands of cases reaching and decided upon by the judiciary every year. Nevertheless, they may represent only the visible tip of a pyramid of potential cases of discrimination at work. There are a variety of reasons why victims of discrimination rarely turn for justice to the judiciary. Some are unaware of existing laws and procedures, other victims fear further retribution or discrimination, ridicule and the social cost involved. Moreover, the costs and efforts of pursuing a court case may act as a deterrent: the drawn-out procedures involve time and money that the majority of the victims can ill afford.

In a worst-case scenario, the offender will use his/her power and contacts to intimidate the victim. In a positive scenario, the victim might be able to defend his/her rights by drawing on the support of family, community, union, NGO or church. In many instances, the support of cause-oriented groups has been instrumental in bringing cases before the judiciary and obtaining justice for the victims.

5. Media

In the Philippines, the media enjoys a wide margin of freedom of expression. In many instances, it has played a role in promoting equality at work. Key organizations—television, radio, newspapers and journals—provide a broad spectrum of specialized reporting services on labor law, gender, children’s rights, etc. Moreover, investigative journalism has a distinguished tradition in the Philippines.

- Media also actively contributes to the debate on new labor legislation that affect workers’ rights such as the laws on sexual harassment or trafficking. Extensive media reporting on abuses of Philippine overseas workers has led to new legislation for migrant workers;
- Media may research cases of abuse, and mobilize legal or administrative follow-up action. Examples are cases of sweatshop working conditions, discrimination in employment of women workers, child trafficking and prostitution or the plight of children made to work as “*muro-ami*” or deep sea divers; and

³¹ 43 deaf-mute complainants led by one Marites Bernardo filed a case against Far East Bank & Trust Company.

- Media sometimes investigates in detail court decisions on equality or discrimination issues, thus creating interest in a wider public, as well as organizations and courts involved in preventing or handling cases of abuse.

The presentation in the Philippines in November 2003 of the ILO Global Report on Time for Equality at Work is clear testimony of the interest of the media in issues related to equality at work. Media coverage of the occasion included press, radio and TV interviews and the attendance of some 20 media persons at the consultations on the ILO Report by ILO specialists, senior government officials, representatives of employer and worker organizations and cause-oriented groups.

The newspaper excerpts reproduced in Boxes 2, 3 and 4 are good examples of media's actual and potential advocacy of non-discrimination at work. They are a welcome corollary to media's traditional role of informing the general public objectively and accurately.

Media's powerful role as communicators and opinion-makers carries great responsibilities: they have to strike a balance between commercial pressures to land a "scoop" and the right of the general public to accurate and objective information, as well as the rights of alleged perpetrators and victims. At the same time, the media has to be alert to the risks of discriminatory practices in their own ranks.³²

Despite its generally constructive role, media coverage of discrimination at work has remained sporadic and largely confined to the more spectacular cases. Media's potential as opinion-maker, whistle-blower, interpreter or promoter of equality at work could be further mobilized, considering its investigative capabilities, access to various social networks and its right to confidentiality about sources of information.

Such potential could well be harnessed through the commitment of individual media personalities, codes of ethics of media associations and their nationwide recognition of achievements; e.g., the annual awards for journalistic achievements in various media categories by the Rotary Club of Manila, which could include an award for reporting on equality at work.

Box 2: Supreme Court upholds sexual harassment case

The Supreme Court has upheld the conviction of a former health officer of Cagayan de Oro City for sexual harassment, ending a landmark case that began in 1996. The complainant, now 29, sued the health officer for sexual harassment in 1996 and thereafter endured what her lawyers earlier called a "legal odyssey." The health officer had been charged with a number of similar offenses. Lawyers of the complainant said the ruling was final, making it the Philippine's landmark decision on the criminal aspect of sexual harassment. A lawyer from Gabriela, a women's alliance, said that the decision was "the triumph of thousands of women victimized by sexual harassment."

Source: Extract from Philippine Daily Inquirer, 2002.

³² For example, in a recent broadcast by a major TV network on a world title bout of a popular Filipino boxer, the moderators publicly called into question the sound judgment of a foreign ring judge on grounds on his age (70); this was after the aged ring judge allegedly had vastly underrated the performance of the Filipino boxing star. Also, recently in the UK, a sports moderator was dismissed by the British TV media for making derogatory racial remarks about a black football player, when the moderator thought he was off the air.

Chapter III: Equality Focus

A. Equality Between Women and Men

The present review highlights certain key equality issues related to gender, especially as far as women are concerned. Equality issues relating to critical areas such as recruitment, disadvantaged groups such as indigenous persons and issues specific to employers, worker organizations and other stakeholders, are addressed in the respective chapters of this study.

“Gender” refers to the social differences between men and women, whereas “sex” refers to biologically determined differences between men and women.³³ There is gender equality when neither women nor men face discrimination on the basis of their gender roles or sex. Gender discrimination disadvantages women disproportionately, though some men also face discrimination on the basis of their gender.

In the Philippines, women represent about 50 per cent of the population,³⁴ with a labor force participation rate of 52.8 per cent.³⁵

Under the law, all employers, whether private or public, are held to ensure non-discriminatory treatment of all their employees of either sex, regardless of their marital and employment status.

Gender equality has been for some time a primary concern in Philippine legislation, laws and practice. The Constitution of 1987 set the tone and framework for a broad range of initiatives in support of gender equality (Annex 2). The Philippine Labor Code is very specific in defining prohibited forms of discrimination against women: payment of lower compensation to women against men for work of equal value, favoring male employees as regards promotion, training or scholarship, discharge in case of pregnancy, etc.³⁶

Women workers constitute a strong economic and social force that dominates numerically such areas as education, health services, the civil service and overseas employment. There is also a growing number of female entrepreneurs and managers, but a majority of self-employed women are small-scale operators in sales, household work and agriculture. Women make up a large share of indigenous and tribal peoples and persons with disability; they are also found among those living with HIV/AIDS. Their numerical presence throughout the economy is not matched by equal opportunities in employment and/or equal remuneration for work of equal value. Sometimes, they are even exposed to outright discrimination and exploitation.

The complexity of real working life often makes it difficult to pinpoint discriminatory practices. There is reason to believe that most cases of direct, indirect or multiple discrimination go unrecorded or even unnoticed. For one, women may not be aware of their rights, for example, with regard to equal pay for work of equal value. More often than not, they do not speak up because of economic necessity, cost, coercion, lack of access to labor justice or fear of retaliation or exclusion. For instance, only a very small number of sexual harassment cases have reached the courts, most of them involving female victims of the upper and middle classes, whereas TUCP-initiated investigations have turned up some 400 cases.

³³ From ILO, 1997:

Gender: social differences between men and women that are learned, changeable over time and have wide variations both within and between cultures. Within any given social context, they may be flexible or rigid, similar or different and complementary or conflicting.

Gender roles: learned or expected behavior in a society that conditions which activities, tasks and responsibilities are seen as either “male” or “female”. Gender roles and needs are affected by age, race, ethnicity, class, religion and other ideologies.

Sex: biologically determined differences between men and women that are universal. This term should be used whenever reference is made to women and men belonging to different physical categories (e.g. statistical data analyzed by sex).

³⁴ NSO, Census of Population and Housing, 2000.

³⁵ NSO, Labor Force Survey 2002.

³⁶ Philippine Labor Code, Book III, Title III, Chapter I: Employment of Women

Discriminatory practice in the formal sector may have a greater likelihood of being detected, investigated and settled because of generally accepted standards and mechanism of enforcement. The situation is different in the informal sector, where most women are found, which is governed by its own social norms and attitudes that may differ from the idealistic standards of the Constitution and the Philippine Labour Code (PLC). In the absence of official arrangements for addressing discriminatory practices, advocacy work is often undertaken by NGOs, unions, churches, media or through individual initiative.

Wage differentials between women and men are a major area where visible equality deficits arise. The practice of paying women less than men for work of equal value is widespread in the private and public sectors. The differentials vary according to activities, occupations, hierarchical levels and other aspects of work.

According to Table 4 below on wage differentials in the formal private sector, women receive lower pay than men for work in the same industry. Some of these wage differentials may be due to the fact that men and women are working in different jobs, although part may be due to discrimination—lower pay for women for work that is equal in value to work performed by men. Only an analysis and comparison of the job contents in individual cases could give a more precise picture of the actual wage differential due directly to discrimination. In the informal sector, most workers are paid well below minimum wage levels; with women receiving even less than male workers and, as family workers, not receive any remuneration at all.

Table 4: Wage Differentials in the Average Monthly Earnings of Women & Men in Establishments Employing 10 or More Workers

Type of Paid Employees	Monthly Earnings (in pesos)		Variance	
	Men	Women	actual	percent of men's earnings
Managers & Executives	18,848	15,778	3,070	16.3
Agriculture, Fishery & Forestry Workers	3,089	2,145	674	21.8
Production & Construction Workers	5,414	4,454	960	17.7
Other Paid Employees	6,142	6,013	129	2.1

Source: National Commission on the Role of Filipino Women, 2004

In the public sector, standardized pay scales suggest that women and men receive equal remuneration for work of equal value, for example, when working side by side as doctors or teachers in public hospitals or schools. However, this apparent equality may not always meet the test of closer scrutiny. Such is the case where female dominated jobs (e.g. nursing) are undervalued in comparison to jobs traditionally held by men (e.g. car pool supervision). It is highly questionable that a stressful, high-risk and high-responsibility nursing job should be graded lower, at lower pay, than a comparatively low-risk job of scheduling drivers, vehicles and deliveries. And yet, that is what happens. This and other similar cases point to flaws in the job classification system for government positions, a responsibility that should be addressed by the Department of Budget and Management (DBM).³⁷

³⁷ TUCP-PSLINK, "Pay Equity in the Philippine Public Sector" (Manila, 2001).

Employment statistics from 1990 to 2000 (Table 5) show that the unemployment rate of women has been consistently higher than that of men. This may imply that women find it more difficult than men to be hired. Women also seem to be more readily retrenched than men. The opposite picture applies to underemployment: men's share of the underemployed is double that of women, and the underemployment rate of women is consistently lower than that of men. This may suggest that women who are out of jobs tend to drop out of the labor force and revert to family work, and are no longer actively searching for employment.

Table 5: Employment, Unemployment & Underemployment by Gender

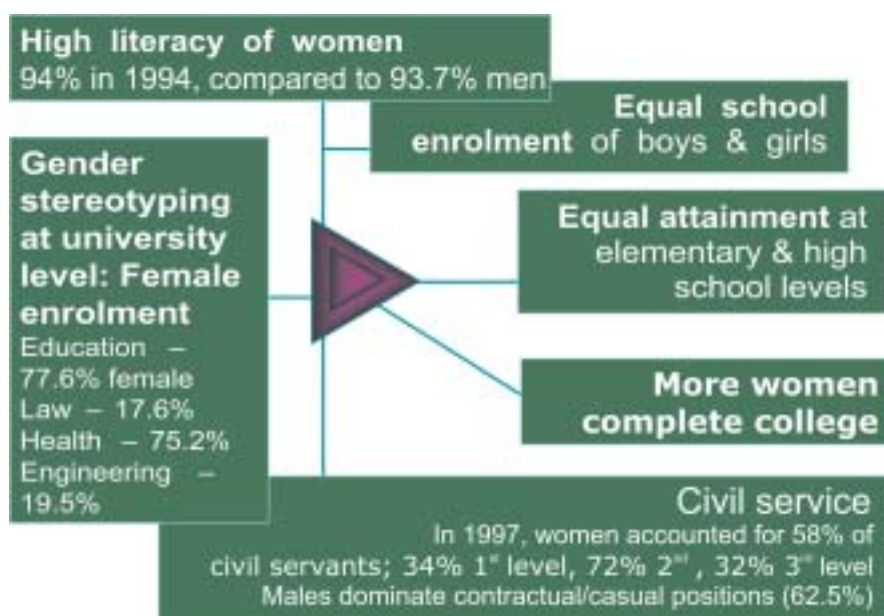
Employment Population (in millions)				Unemployment Rate (%)			Underemployment Rate (%)		
Year	2000	2001	2002	Year	Male	Female	Year	Male	Female
Male	17,193	17,923	18,306	1990	7.4	10.1	1990	24.5	18.41
Female	10,259	11,232	11,756	1991	9.3	12.8	1991	24.8	18.63
				1992	8.9	11.5	1992	22.6	17.02
				1993	8.4	10.7	1993	23.5	18.42
				1994	8.8	10.6	1994	23.4	17.97
				1995	8.9	10.7	1995	21.8	16.91
				1996	7.9	9.7	1996	23	17.74
				1997	8.1	9.8	1997	24	18.75
				1998	9.7	10.9	1998	24	17.97
				1999	9.5	9.9	1999	25.1	17.64
				2000	10.9	11.6	2000	24	17.8

Employment Rate (%)			
Year	2000	2001	2002
Male	89.1	89.2	88.9
Female	88.4	88.4	88.2

Source: BLES-DOLE Survey 2000, 2003 and BLES Publications CD 2004

The statistics in Figure 7 suggest considerable progress for women in some areas, such as, literacy and educational attainment, where women do better than men. Still, there seems to be much stereotyping in female university enrolments, where women account for the vast majority of students in education (77.6 per cent) and health (75.2 per cent), but take a very low share in law (17.6 per cent) and engineering (19.5 per cent). However, in the civil service, women hold 58 per cent of all positions. Women seem to face an equality gap—a “glass ceiling”—in the upper rungs of the bureaucracy. Only some 30 per cent of posts on the third (executive) level are held by women, while they dominate the second level with 72 per cent.

Figure 7: Progress in Gender Equality



Sources: CSC Government Personnel Inventory, 1999, NSO, 2000

In their drive to rise to the top, women achievers³⁸ are up against discriminatory practices in their work environment such as office politics. They may pay a high price in terms of physical or emotional stress (job burnout) due to the multiple exigencies of work, their family responsibilities and lack of time for themselves.

Globalization has brought about the feminization of employment in Economic Zones. In 1998, young women occupied an estimated 73 per cent of jobs in the manufacturing of electrical machinery, basic metal products, transport and car parts, precision and optical products, garments, textiles and leather products.

By and large, the working conditions of young women workers in the Economic Zones conform to the minimum provisions set by Philippine labor law. But there is still much room for improvement in the areas of wages and benefits, employment security, training and career prospects, occupational safety and health, and freedom of association. Unions are very rare in the Economic Zones, and union protection of women workers is virtually non-existent. Box 3 contains information on observed discriminatory policies against women in the Economic Zones.

Box 3: Sex Discrimination in Economic Zones

The Philippine Constitution and labor law prohibit all forms of discrimination against women workers; despite these strong provisions, various forms of discrimination against women workers have been observed in Economic Zones of the country.

Men are often employed as regular workers with job security whereas women are mostly casuals in the production line. While some firms are putting women in supervisory positions, managerial and technical jobs are largely the preserve of men.

Wage inequality is another issue. Men are usually paid higher wages for work of equal value in the belief that men are the breadwinners. Mostly young female workers are being recruited for assembly work because they are believed to be able to accept low-paying jobs. There are also reports of cases of dismissals of pregnant women or lay-off of married women, to be replaced by single women.

Source: Abigail dela Cruz, and Cheryl Rose Orata, "The Issues of Filipino Women Workers in Philippine Export Processing Zones", UP SOLAIR, 2001. (unpublished term paper)

Over the past decades, there has been a dramatic increase in the share of women migrant workers in the total deployment of Overseas Filipino Workers (OFWs).³⁹ By occupation, a majority of women is in the service sector as entertainers, domestic helpers or caregivers, among others. Women are also employed as workers in electronics, textile and garment industries and to a certain extent in professional nursing and laboratory or clerical jobs. Often, due to economic necessity rather than personal choice, women migrant workers find themselves in low-status jobs, such as household help, caregiver or "entertainers", where they may face various forms of exploitation and abuse as women and as foreigners. In point of fact, some female domestic helpers are often high school and even college graduates.

The psychosocial costs for women working abroad has been a subject of heated public debate and research. Examples are the execution of domestic helper Flor Contemplacion in Singapore and the outbreak of Stevens Johnson Syndrome in Taiwan, which caused sickness, injuries and death among female workers working in electronics plants.

The vast majority of Filipino migrant women workers are adapting to their foreign environment with remarkable ease. They are able to cope with new and sometimes very strange working and living conditions. Still, a significant number of female migrant workers have to put up with gender-based stereotypes and/or prejudice against foreigners.

³⁸ See Figure 12: Profile of a Filipina Achiever.

³⁹ Details on female Overseas Filipino Workers (OFWs) will be given in the section on migrants. See also Asian Migrant Center and Coalition for Migrants Rights, "Baseline Research on Racial and Gender Discrimination Towards Foreign Domestic Helpers in Hong Kong" (Hong Kong, February 2001) and Illo, Jeanne Frances I., "Gender Discrimination and Labor Standards: Philippine Country Report" (ADB-ILO report, June 2002).

The benefits of gender equality and non-discrimination at work are considerable for individuals, firms and society:

- For women themselves: non-discrimination amounts to opportunities for growth, self-development and full enjoyment of the rewards of their work and efforts;
- For companies: the use of meritocratic and objective criteria for recruitment, hiring, promotion, pay, etc., would pay dividends in productivity, worker morale, lower turnover, etc.;
- For trade unions: their fight for gender equality would be reflected in a high sociopolitical profile, greater strength, larger membership and strong leadership;
- For government: greater equality would involve a reduction in cost of discrimination in terms of poverty, inspection, protection or provision of social services; and
- For the country: greater equality would increase the potential for economic growth, social justice and a better use of the nation's human resources and talents.

A broad range of actions by the social partners has been launched since the 1980s to promote gender equality in training and employment. An example is the Women in Non-Traditional Trades (WINT) project. Implemented from 1988 to 1992 by the National Manpower and Youth Council (now TESDA) with ILO and Dutch technical assistance, the WINT project helped to overcome gender role stereotypes by training young women in traditionally male trades such as welding, automotive, electrical, carpentry, woodcraft and metalcraft. In response to a rise among women of interest in non-traditional trades, the TESDA Women's Center, established in 1999 with Japanese aid, now offers technology-based vocational training for women in 27 subjects and 9 trade areas, including trades that are traditionally associated with women and some that are not. These initiatives have been followed more recently by:

- The Philippine Plan for Gender-Responsive Development, 1995-2025, which gives broader perspectives on legislation and jurisprudence, as well as plans and programs for implementation by the public and private sectors.
- Trade unions establishing committees or focal points on gender or women's issues, stepping up training, promoting inclusion of gender issues in CBA or encouraging access of women to leadership positions; TUCP-PSLINK also initiated investigations into sexual harassment.
- ECOP established its own equal employment opportunity policy. In this context, it has undertaken a number of efforts to promote awareness about the costs of discrimination among its members. It has very actively moved forward the Global Compact, promoting social and economic goals, including equality and non-discrimination at work.

To achieve tangible progress in gender equality in the foreseeable future, current efforts must be stepped up significantly. What may serve as a stark reminder is the fact that female outnumber male graduates, but only one-third of executive service positions in the government service are being held by women. Also, female leaders in employer and worker organizations are a rarity. In the private sector, women are increasingly being represented in managerial positions, but the "glass ceiling" often prevents them from rising to the top.

As shown in Table 6, women held only 15 per cent of all elected positions in government in 1998. This very low share in public policy making is a far cry from the actual and political socio-economic role of women in society. The outcome of the May 2004 elections shows that modest progress has been made in the intervening period with regard to female participation in public policy and decision-making. According to Table 6(b), women's share rose to 16.6 per cent of all elected positions, with significant gains at the level of representatives and governors.

Gender equality cannot be limited to the promotion of career prospects of a select few women. Gender equality is a legitimate right of all women, whatever their background and wherever they work. Women coming from an impoverished socio-economic background will need particular support to overcome disadvantages in

Table 6: Women's Participation in Elected Positions

Position (1998)	Total No. of Seats	Total Seats Won by Women	Percentage of the Seats
Senator	24	2	8.3
Representative	208	20	9.62
Governor	78	13	16.67
Vice-Governor	78	9	11.54
Provincial Board	722	93	12.88
Mayor	1,607	233	14.5
Vice-Mayor	1,607	174	10.83
Councilor	13,146	2,139	16.27
TOTAL	17,470	2,683	15.36

Position (2004)	Total No. of Seats	Total Seats Won by Women	Percentage of the Seats
Senator	24	3	12.5
Representative	210	32	15.2
Governor	77	15	19.5
Vice-Governor	77	7	9.0
Provincial Board	740	124	16.8
Mayor	1,598	244	15.3
Vice-Mayor	1,599	222	13.9
Councilor	13,148	2,253	17.1
TOTAL	17,473	2,900	16.6

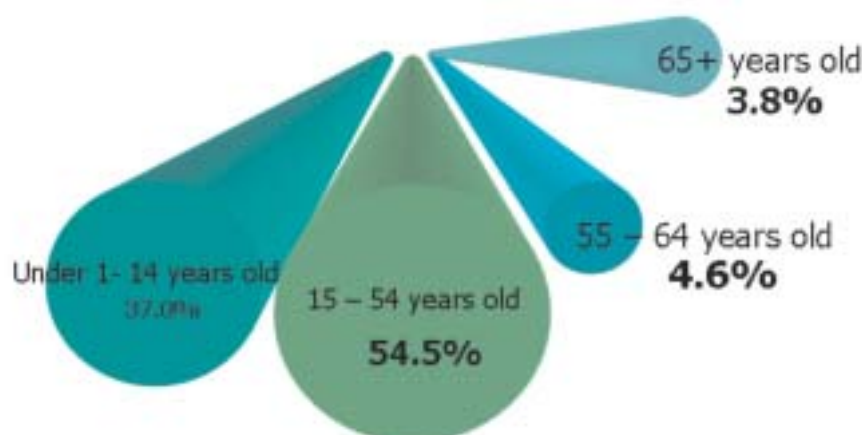
Source: National Commission on the Rate of Filipino Women and NSCB, 2004.

education. This is reflected in the commitment of government under IPRA, for affirmative section in favour of female indigenous and tribal peoples. They will benefit from vocational guidance, placement or working conditions, as well as access to capital and credit.

The social partners must set an example by achieving a better gender balance in their respective organizations, taking the lead by increasing the share of women in positions of leadership and stepping up their advocacy drives with their respective membership, constituents, suppliers and clients.

B. Older Workers

Elderly people account for a small share of the Philippine population:

Figure 8: Age Group Distribution in the Philippines, 2000

Source: NSO, 2000 Census of Population and Housing

Older people of 55 years and above account for only 8.4 per cent of the total population, while persons above 65 make up a mere 3.8 per cent. This is very low by international standards. However, Filipino workers retire later than their counterparts elsewhere. For example, at 65 years and above, 43 per cent of Filipino workers are still working, most likely because of economic necessity. The percentage is much lower in Thailand

(27 per cent) and Singapore (10.8 per cent).⁴⁰ The relatively small share of older workers in the Philippine labor force, according to Table 7, is reflected in low rates of unemployment for persons aged 55 years and above (8.8 per cent of total unemployment) compared to 47.2 per cent of the 15-24 years age group.

Table 7: Unemployed Persons by Sex and Age Group, 2002*

Age Group & Sex	Percent	Totals (in thousands)	Age Group & Sex	Percent	Totals (in thousands)	Age Group & Sex	Percent	Totals (in thousands)
Both Sexes	100.00	3,423	Male	100.00	2,076	Female	100.00	1,346
15 - 24	47.2	1,616	15 - 24	45.5	945	15 - 24	49.8	671
15 - 54	91.2	3,121	15 - 54	90.9	1,888	15 - 54	91.6	1,233
55 - 64	5.1	176	55 - 64	5.7	119	55 - 64	4.2	56
65 and over	3.7	126	65 and over	3.4	69	65 and over	4.2	57

*Note: per cent may not add up because of rounding.
Source: BLES - DOLE, 2001

Do older workers experience discrimination in Philippine society, which generally holds older citizens in high respect? In the absence of substantive analytical evidence, reflections on the existence or degree of discrimination of older workers largely depend on anecdotal evidence. There is the middle-age musician who was dropped from his band or the older seaman who was not rehired by foreign vessels. Older women find it difficult to land a job in the Economic Zones. Among older taxi drivers, one can find many individuals who had to drop out of their former professions as engineers or architects because of their age.

Typically, older workers face a range of challenges that may amount to a form of direct or indirect discrimination:

- *Age prejudice:* Discriminatory perceptions of older workers as slow, non-creative or less productive are widespread. This was regularly expressed in sample tests, albeit very limited, by post-graduate HRD students of UP SOLAIR. Such age prejudices may underlie arguments and regulations in the private and public sectors for non-recruitment and mandatory or voluntary retirement of older workers. In many instances, one of the ulterior motives may be the higher cost of employing older workers, who have seniority, experience and personal expectations in terms of responsibilities or status.⁴¹
- *Recruitment:* Generally, older workers find it difficult to find a job that suits their capabilities and expectations. Often, direct discrimination comes into play when advertisements stipulate specific age limits or salary levels.
- *Working conditions:* ECOP observes that due to tight labor market conditions, skilled older workers are often forced to accept much lower pay and less acceptable working conditions than persons with the same qualifications would normally warrant. Some employers prefer hiring younger workers, because of lower cost and allegedly greater flexibility, mobility and open-mindedness than older workers.

⁴⁰ Congress of the Philippines, *Human Capital in the Emerging Economy*, page 23.

⁴¹ According to researchers at the psychology department of Edinburgh University (Edinburgh, Scotland), one's mental capacity does not diminish with age. Researchers had certain individuals retake an intellectual capacity test which they had undergone seventy years previously. These individuals obtained about the same scores as before. By retaining only those participants exempt of any nerve-deteriorating illness, the researchers noted the amazing stability of the participants' mental capacity. (As reported in *Science et Vie*, Paris, December 2003).

- *Retirement:* Older workers are often the target for separation before the normal retirement age of 65. Where more mature workers enjoy security of tenure, subtle forms of age-based discrimination involve supposedly “lucrative packages” offered specifically to older workers. Often, such retirement “options” are presented to older workers as “voluntary”, while some pressure is exerted on them to accept the deal.
- *Training and Development:* Limited budgets may prevent firms and organizations from investing in the retraining of older workers. Obsolescence of skills and decline in motivation may feed stereotypes of older workers’ low productivity.
- *Legal protection:* Unlike other members of the labor force such as women, persons with disabilities and living with HIV/AIDS, older workers enjoy no special protection beyond the general constitutional and labor law provisions applicable to all workers. This puts them at a disadvantage similar to that of other vulnerable segments of the population.
- *Representation:* Older workers have no substantive representation to plead for their interests in legislation, within employer or worker organizations or even at the firm level. Thus, older workers do not figure in public debates on socio-economic issues such as the revision of the Philippine Labor Code; neither is there a strong lobby for older workers through cause-oriented groups or the media.

Attention to older workers on the part of the social partners of equality is long overdue. In line with the Constitution, older workers are supposed to enjoy the same rights and obligations as younger ones. But the erosion of the extended family system and inadequate social protection have put such guarantees in doubt.

Meanwhile, the economy needs experienced skilled workers in the face of the competitive demands of a globalizing economy. The mandatory retirement age of 65 in the public and private sectors could be raised to capitalize on older workforce, at the same time eliminating discrimination arising from inadequate old age protection and securing the financial stability of pension funds. However, such a move could aggravate an already serious youth unemployment problem. Therefore, the Philippine social partners will have to address the issue of older workers while finding a balance between the legitimate rights of older workers to non-discrimination and the requirements of the economy on the one hand, and the problem of gainful employment for young workers on the other.

According to ECOP, several options are open to redundant older workers. Those who are highly skilled and experienced could find jobs as consultants, depending on their employment records, professional qualifications and experience. They could also become entrepreneurs and provide livelihood, not only for themselves but also for others. ECOP has urged DOLE to compile and disseminate relevant statistics and “best practices” regarding such employment possibilities for older workers

C. Youth

The Philippines is a very young country, with 57 per cent of the entire population below 24 years of age. Those between the ages of 15 and 24 account for 20 per cent. Such a vast human resource base holds great potential as a growth engine for the country’s development.

The Philippine Constitution makes a strong case for equal opportunity for the youth by stipulating that the State shall recognize the vital role of youth in nation-building, and shall promote and protect their physical, moral, spiritual and social well-being.⁴² However, the youth are widely discriminated against in the labor market.

⁴² Philippine Constitution of 1987, Article II Section 13.

DOLE and UN/ESCAP report that young workers face the following problems, which have discriminatory overtones:⁴³

- Extremely low wages compared to those of older workers doing similar work, and often below minimum wage levels;
- Very limited social protection and security;
- Less security of tenure because of the job's casual or contractual nature;
- Lack of vocational guidance, skills development and career opportunities; and
- Exposure to substandard OSH conditions in both rural and urban employment.

Unemployment and underemployment in the Philippines has for some time been primarily a problem of its young people. According to Table 8, unemployment of the youth in the 15-19 and 20-24 age groups has remained at a high 22 per cent between 1998-2005; it is substantially higher than the average unemployment rate ranging between 10.1 and 11.3 per cent. Youth unemployment accounts for about 45 per cent of total unemployment. On average, only a third of employed youth works 40 hours or more a week. This suggests that there exists a considerable number of underemployed youth in the labor market, notwithstanding the fact that some young people are combining part-time work with studies.

According to the National Youth Commission (NYC),⁴⁴ the main cause of youth discrimination is the a lack of job opportunities and the low income levels of young people. This needs further explanation in the light of the high rate of youth unemployment, which is more than double the national average.

Table 8: Youth Unemployment : 1998-2005*

Age Group	1998	2001	2004	2005
15-19 (%)	22.8	21.7	22.1	22.2
20-24 (%)	19.9	28.1	22.1	22.1
Average total Unemployment rate	10.1	11.7	13.7	11.3
Actual Youth Unemployment Rate		1.02M	1.79M	1.78M
Youth Unemployment Per cent in Total Unemployment			45.9	44.1

Source: various DOLE/BLES Factbooks

*-For reasons of consistency, the 2005 unemployment figures follow the old NSCB definition of 'unemployment', applicable before a change in 2005, above. According to NSCB (<http://www.nscb.gov.ph/resolutions/2004/15.asp>), the new definition of 'unemployment rate under the new definition would be 8.3 per cent.

Youth unemployment per se does not necessarily reflect discrimination. The inability of young people to find a job can be attributed to a variety of factors like slack economic periods, imbalances in the labor market or a mismatch between the requirements of employers and the competencies offered by young workers. While young workers are victims of the socio-economic environment, they may not face direct discrimination because of their age.

Still, under conditions of a vast labor surplus, young workers may be up against some form of indirect discrimination. Formally, young workers may have equal access to the labor market as any other age group, but they may be at a disadvantage on the grounds of their age. For example, a vacancy that is open to all candidates may have explicit or implicit selection criteria that include, without good reason, excessive requirements that most young persons cannot fulfill, e.g., several years of post-graduate experience in the Philippines and/or abroad. Such requirements would have discriminatory effects on most young people under 24 years of age and would bar them from successfully competing for the job.

⁴⁴ ILO, *Global Report on "Time for Equality at Work"-Proceedings of Consultations* (Manila, 2003).

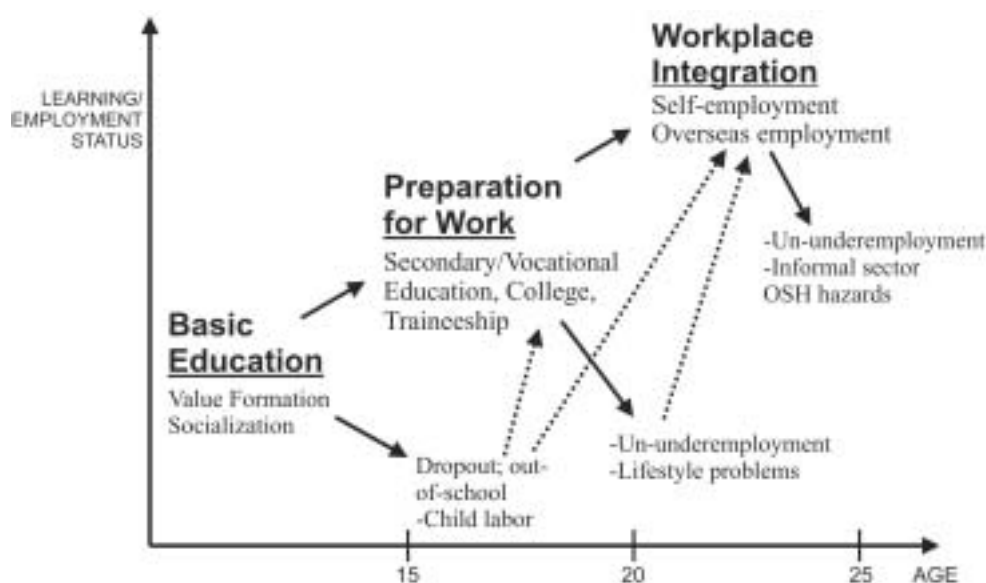
⁴³ UN-ESCAP-ECOSOC, *Youth Employment in the Philippines: A Review of the Youth Situation and National Policies and Programmes* (New York, 2000) and DOLE, *National Convention on Youth Employment: Philippine Youth Employment Situationer*.

Because of their limited age-related occupational experience, young workers tend to lose out in a highly competitive labor market where preference is given to workers above 26 years old with ready skills and both lower on-the-job training cost. This could explain the very significant drop in male and female unemployment in urban and rural areas between the age groups of 15-25 and 26-30 years.

Thus, it appears that unemployment and underemployment is due in part to indirect discrimination, which deprives young people (15 to 25 years) of their basic right to a job, to training and personal development, and ultimately, a better quality of life, compared to their peers and other age groups enjoying regular employment. Lack of gainful employment and livelihood may in turn cause further discrimination in terms of status and recognition.

The normal progression of youth from basic education and preparation for work to workplace integration or self-employment is paved with great opportunities as well as risks.

Figure 9: Youth — Stages of Transition



Source: Gert A. Gust, "Youth Employment: Philippines", 2003

On the upside, there are the personal and professional development and the prospects of a career in the Philippines or abroad. On the downside, there are the risks of dropping out of school, hazardous work, unemployment, underemployment, lifestyle problems and discrimination.

Youth discrimination may have various causes and show different manifestations:

- Because of lower skills and limited job experience, they are very vulnerable in a struggling economy. They have difficulty landing a job in the first place, and often, they are the first to be laid off in the event of reorganization, downsizing or closure.
- Disadvantaged rural youth and young persons in poor urban centers find it difficult to acquire the competencies, values, skills and work attitudes required in the labor market of metropolitan and economic growth areas.
- More than two-thirds of out-of-school youth—those not enrolled in school or not employed—do not intend to return to school. They are in a particularly weak position in the labor market, which places a greater premium on a formal education and "on-the-job" experience.
- Traditional cultural biases against women contribute to the relatively high incidence of female out-of-school youth, specifically in predominantly Muslim areas. The majority are females for whom

housekeeping is the most common type of activity. Searching for work is a distant second, suggesting that the obligations associated with home duties present a major barrier to female youth in continuing their education or seeking employment.⁴⁵

- There is an apparent gap between male and female labor force participation rates, with female youth at a disadvantaged position in the labor market. Young women workers, even those with a higher education, tend to earn less than their male counterparts.
- A wide variation in the delivery standards of skills and competencies among competing vocational and technical institutions puts poor rural youth at a disadvantage.
- The socio-economic status of the family acts as a highly discriminating factor, because it predetermines educational choices, as well as opportunities and access to careers and employment.⁴⁶
- Children from the upper and middle classes have broad access to opportunities, including high quality education, here and abroad, as well as the support of well-established networks in finding jobs in the formal sector.
- The lower middle class and the vast lower class have limited access to quality education and jobs in the formal sector.

Access to quality education and training then, during the formative years, is most important in developing in young people the necessary skills, self-confidence, values and work attitudes—qualities that hold promise for later access to quality employment, as well as equal opportunity and treatment at work. Limited access to quality education and training due to poverty, poor schooling in remote and rural areas, sex or ethnic origin are all too often at the root of discrimination at work

Against this background, public policy has focused on:

- equity of access to education and training;
- upgrading of technical skills;
- matching skills development with labor market requirements and
- guidance and counseling.

The Free Public Secondary Education Act of 1988 (RA No. 6655) was meant to enable children from poor and low income families to enter secondary school; RA No. 7731 of 1994 abolished the National College Entrance Examination (NCEE), thereby removing barriers that denied tertiary education access to poor students from remote barangay schools. The need for career counseling of graduating high school students is being met by the annual National Secondary Aptitude Test (NSAT). The Public Employment Service Office (PESO, established in 1992, is intended to ensure speedy, equitable and efficient employment service delivery to all job seekers, including the young, through labor market information, counseling and testing. In 1994, the Commission on Higher Education (CHED) was created under RA No. 7722 to oversee tertiary education, while the Department of Education was to focus on basic education. RA No. 7796 of 1994 led to the creation of the Technical Education and Skills Authority (TESDA, formerly NMYC) to provide policy guidance on virtually all technical and vocational education programs in the country, as well as to oversee their implementation. RA No. 8371 of 1997 (or IPRA), calls for effective action for indigenous and tribal people's youth.

Table 9 gives a broad overview of interventions and initiatives by the public and private sectors to prepare young people more effectively for a changing world of work and to eliminate discriminatory practices.

However, it is beyond the scope of the present study to evaluate the outcome of these public and private initiatives with regard to youth employment.

⁴⁵ UN-ESCAP-ECOSOC, *Youth Employment in the Philippines...* (New York, 2000).

⁴⁶ NFO Trends, "Youth Standing."

Table 9: Youth Employment Promotion in the Public and Private Sectors

Public	Private
Decentralization and transfer of responsibilities and resources to Local Government Units, 1998	ERDA Tech Vocational Secondary Schools
Public Employment Service Office (PESO), 1992	Ayala Foundation, Inc. - Center for Social Development
Youth Program, "Kabataan 2000", 1993	Don Bosco Training Centers
Technical Education Skills Development Authority (TESDA), 1994	Philippine Enterprise Development Foundation's Balikatan sa Kaunlaran (Grameen Bank Replication Program)
The Special Economic Zone Act, 1995	Philippine Business for Social Progress (PBSP)
Medium-Term Youth Development Plan, 1999-2004	Philippine Youth Business Foundation (PYBF), 2001
Youth Entrepreneurship Program (YEP)	Job Corps, 2001
Youth Entrepreneurship Financing Facility Program (YEFFP)	Corporate Social Responsibility: Apprenticeship and entrepreneurship programs
Youth Entrepreneurship Philippine Training Project of the NYC	
Young Filipino Entrepreneurs Program (YFEP) of the National Industrial Manpower Training Council	

Source: Gert A. Gust, "Youth Employment: Philippines", 2004

Records showing the staggering youth unemployment and underemployment, together with the annual addition of about one million young people to the labor market, speak for themselves. In the light of such statistics, both employment creation and equality at work for the youth must become primary, immediate and medium-term goals that should be vigorously pursued. Seen within the Decent Work framework, the following elements should receive particular attention:

- Observance of the "core" labor standards to ensure fundamental labor rights for the youth in terms of equality and non-discrimination, training, education, recruitment, promotion and termination;
- Opportunities for education and training as well as gainful employment must be made more equally accessible to all young men and women from different socio-economic and/or ethnic backgrounds in both urban and rural communities. Consequently, youth employment policies must embrace more equal and non-discriminatory access to education, as well as on-the-job training, industrial relations, skills development, apprenticeship, traineeship and other forms of vocational opportunities, taking into account various cultural factors (as in the case of indigenous peoples and the disabled);
- Social protection should go beyond effective OSH and cater as well to the psychosocial needs of the young, including prevention of lifestyle risks; and
- The youth need a voice in decisions affecting their rights at work on the level of the firm and the country at large. The recent establishment of a national youth network can serve as a suitable forum, where young people can discuss and help find solutions to their own problems and pursue their own visions.

To ensure success, the Decent Work framework must have the broadest possible support. Ideally, it should be defined, promoted, implemented and evaluated through close consultation with all social partners—government, management and labor, as well as youth representatives.

D. Migrants

Internal and external migration in search of work is a phenomenon of global dimensions. As a result, the human rights of migrants, including non-discrimination at work, have been extensively debated at international, regional and national levels. Non-discrimination has become a subject of international and national legislation, setting and guiding principles such as:⁴⁷

- Guarantees of basic human and labor rights;
- The right to form associations and trade unions;
- The right to equality of treatment with other workers (nationals or foreigners) in respect of protection against dismissal, denial of unemployment benefits and access to alternative employment;
- In case of work contract violations by the employer, the right to address the case to competent authorities;
- Treatment equal to that of nationals or foreigners in respect to remuneration and other conditions of work such as overtime, holidays, etc; and
- Treatment equal to that of nationals or foreigners regarding social protection and social security.

The Philippines has a highly mobile population, internally and internationally. Migration is taking place primarily for economic reasons. Economic growth centers such as the National Capital Region (NCR), the Calabarzon and Central Visayas areas attract migrants from the poorer regions in Luzon, the Visayas and Mindanao. Internationally, the Philippines leads in migration, with large numbers of individuals searching for work abroad as documented and undocumented laborers and/or as permanent residents. According to available statistics,⁴⁸ about 10 per cent of an estimated Philippine population of 80 million people is working or residing abroad, legally or illegally. In the deployment of documented Overseas Filipino Workers (OFWs), the Middle East ranks first, followed by Asia and, by a wide margin, Europe.

Since the rapid expansion in the 1970s of Philippine international migration, especially to the Middle East, discrimination on grounds of sex and nationality has figured prominently in the debate and has been the subject of extensive media reporting, legislation and some research, as well as anecdotal evidence. The arguments for and against migration depend on the political and economic position of the parties concerned (Table 10). Whatever the positions taken, migration is here to stay, considering the poor local labor conditions and the prospects of economic globalization.⁴⁹

The general public in the Philippines has been very sensitive to actual and perceived forms of discrimination against the OFWs. This applies in particular to Filipino women, who account for more than half of the OFWs.

Women workers are especially vulnerable to discrimination and abuse, including maltreatment, delay or non-payment of salaries, poor working conditions, sexual harassment and mental illness, among others. World Health Organization (WHO) studies have also shown that female migrant workers experience disproportionately higher rates of occupational accidents and disability than men.

⁴⁷ On migration: UN Convention on the Protection of the Rights of All Migrant Workers, 2003; ILO Migrant Workers (Supplementary Provisions) Convention, 1975; ILO Migration for Employment, 1949; RA No. 8042 or the Magna Carta for Migrant Workers.

⁴⁸ See Annex 5: Statistics on OFWs.

⁴⁹ Brigitte Granville, "Migration inescapable in globalization," *Business World*, 5 February 2003.

Table 10: Advantages & Disadvantages of International Migration

	Sending Country		Receiving Country	
	Potential Advantages	Potential Disadvantages	Potential Advantages	Potential Disadvantages
for migrants	employment of surplus labor income training/education cultural experiences	exposure to discrimination on grounds of sex/nationality poor working conditions long hours lower status work separation from family	auditing services cheap labor cheaper goods & services upgrading of total labor market cultural exchange	competition for jobs cost of integration immigrant ghettos cultural conflicts
for enterprises	skills of returning migrants extra business (communications, travel)	loss of skilled workers labor shortages drives up wages cost of training replacements	meeting labor shortages cheaper, flexible labor larger markets and economies of scale	cost of integration (housing, other training) dependence on foreign labor
for society	lower unemployment knowledge and skills of returnees building transnational communities foreign currency remittances reduced population & labor market pressures	brain drain coping with reintegration of returnees culture of emigration increasing inequality cost of protection of migrant workers	saving cost for training/educating locals technology transfer diverse and energetic migrant workers capital inflow of immigrant investors tax income from migrant workers	dependence on foreign labor slowing technological innovation costs of housing, language, training schools social friction remittances cost of social services

Source: G. A. Gust, 2004

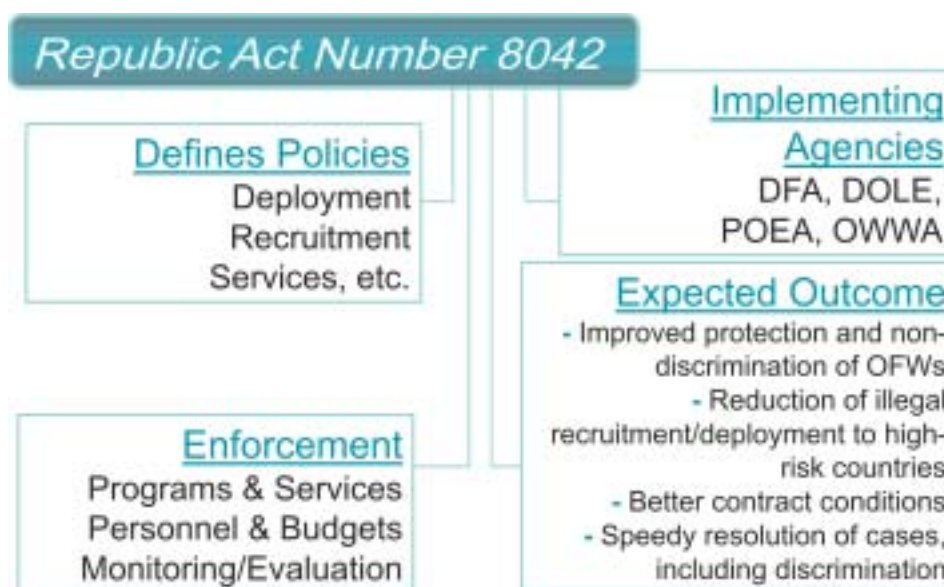
A few years back, two London-based NGOs, together with Kalayaan and the Commission for Filipino Migrant Workers, interviewed some 4,000 maltreated Filipino domestic workers who escaped from their employers. The survey gave convincing proof that such abuses were frequent and prevalent, and that basic human and workers' rights were discarded in many ways. The list of abuses includes threats, insults, shouting (88 per cent); physical abuse, beating (38.13 per cent); sexual assault or rape (10.93 per cent); 16- to 20-hour work days (17 per cent); withholding of wages (55 per cent); denial of time off and holidays (90 per cent); withholding of passport (62 per cent); house detention (35 per cent). Domestic workers received an average monthly wage below the salary domestic helpers were usually entitled to in their countries of employment.

Less visible and hardly quantifiable social costs to migrant workers arise from discrimination experienced abroad.⁵⁰ An unidentified proportion of migrant workers, both male and female, suffer from such psychological states as depression, psychosis or neurosis. A fairly substantial number return for mental health reasons, if one counts not only those suffering from chronic or severe psychotic symptoms but also from anxieties and phobias.

Widely perceived as a discriminatory act against a helpless domestic worker was the execution in Singapore in 1995 of a Filipino domestic worker, Flor Contemplacion, which led to a public outcry in the Philippines and the formulation of the Magna Carta for Migrant Workers (RA No. 8042). The framework of RA No. 8042's implementation is described in the following Figure:

⁵⁰ Dulce Estrella-Gust, "Vulnerable and Underserved Groups in Globalization" (Manila, 2001).

Figure 10: Magna Carta for Migrant Workers - Framework for Implementation



According to recent reports of the Philippine Overseas Employment Administration (POEA) and cause-oriented groups, the problem of discrimination of migrant workers has not gone away.⁵¹ Migrant workers are often denied regular work entitlements and privileges, and also subjected to reduced job mobility.

Common experiences in this regard include the confiscation of passports, non-payment or withholding of wages, denial of access to friends and medical services, unreasonable deductions from salaries, involuntary servitude and deprivation of rest days. Moreover, migrant workers may be prohibited from marrying nationals of the host country. They may also be prohibited from getting a new job in the host country, especially if they are domestic helpers.

Baseline research by the Asian Migrant Center and the Coalition on Migrants Rights on equality at work for Filipino, Thai and Indonesian foreign domestic helpers (FDHs) has established a significant linkage between the race and gender of the FDHs and the contract violations, physical abuses and unfair/discriminatory treatment of FDHs in public life.⁵² Discriminatory acts were not rare or isolated, and affected a significant portion of the FDH population. The violations and abuses were rampant or severe against certain nationalities and women in particular. This result was taken as an indication that FDHs were subjected to unequal treatment because they were foreigners, women and domestic helpers.

With reference to specific discriminatory practices against OFWs in an ASEAN country, the Scalabrini Migration Center has cited compulsory pregnancy tests of OFWs administered every six months and prohibition to marry nationals as examples.⁵³ Citing barriers facing migrants, the Center observes that the concept of 'national interest' had often been used to discriminate between nationals and foreign workers. Thus, in migration, there is an additional "migrant/national divide."

Some of the discriminatory practices included the policy of keeping labor migrants on temporary or visitors' status in the host country, declaring workers as runaways if they seek employment with another employer and disallowing family reunions for less skilled migrants. Also, migrants were being blamed for the rise in crime rates and illnesses. There is often a lack of labor law protection as well, especially for female domestic helpers, and offenses committed against migrant workers by local employers may escape prosecution.

⁵¹ ILO, *Global Report on "Time for Equality at Work" - Proceedings of Consultations* (Manila, 2003).

⁵² Asian Migrant Center and Coalition for Migrants Rights, "Baseline Research on Racial and Gender Discrimination Towards Foreign Domestic Helpers in Hong Kong" (Hongkong, China, February 2001). <<http://www.asian-migrants.org/cgi-bin/countdown.cgi?habdiscr2000-report-circulated-final.zip>>

⁵³ ILO, *Global Report on "Time for Equality at Work"-Proceedings of Consultations* (Manila, 2003).

Participants at the consultations of the ILO Global Report on Time for Equality at Work shared one specific case of discriminatory practice against migrant workers. In some Asian countries, it points out, thousands of OFWs have been sent back to the Philippines to get documents legalizing their status. This was pursuant to a new work permit system designed to “cleanse” all illegal workers. According to POEA, many OFWs unfortunately were staying in these countries illegally and only a very small number of them had complied with documentation requirements.

E. Indigenous and Tribal Peoples

Indigenous and tribal peoples (ITPs) are descended from populations that inhabited the country at the time of conquest or colonization, and continue to live as homogenous societies in communally-bounded ancestral territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits.⁵⁴

In the Philippines, there are 11-14 million indigenous and tribal peoples or about 20 per cent of the total population.⁵⁵ According to the National Commission on Indigenous Peoples (NCIP), the majority of them (61 per cent) are in Mindanao, while 33 per cent are in Luzon, with the remaining 6 per cent in the Visayas. Fifty per cent of the regional population in Regions X, XI, XII and XIII are indigenous (See Annex 6).

ITPs in the Philippines have experienced a long history of discrimination. Rejecting foreign domination and acculturation, ITPs were left out from mainstream development and largely excluded from socio-economic and political participation in mainstream society and institutions.

The most destructive form of discrimination against them was the systematic dispossession of their ancestral domains and territories, including forests, fishing grounds and mineral resources. Historically, ancestral territories have been classified by law and policy, particularly the Regalian Doctrine, as part of the public domain or else have been titled to non-ITPs. Tribal areas were redistributed to immigrants and colonizers through paper titles, permits and licenses. As a result of these discriminatory policies and practices, ITPs were driven out of the plains of Luzon, Visayas and Mindanao to the marginal hinterlands, where ITP families eke out a poor existence and suffer high rates of unemployment. Because basic social services are limited, disease persists in IP communities. In addition, ITPs have limited access to adequate training and education.

Over time, and owing to the continuing advocacy of organized indigenous groups and NGOs, there has been a gradual improvement in the legal and policy frameworks designed to rectify discriminatory laws and policies. A breakthrough came with the 1987 Constitution, which enshrined specific provisions mandating the State to promote ITP rights within the framework of national unity and development. More specifically, it recognized the rights of ITPs to ancestral lands and domains, and encouraged the promotion of indigenous culture. This constitutional mandate was echoed and substantiated by the enactment of IPRA of 1997 or the Magna Carta of Indigenous and Tribal Peoples (RA No. 8371).

For ITPs making a living off the land, the issue of ancestral lands was and still is primarily related to equality and non-discrimination at work. The majority of ITPs are not wage earners but self-employed workers dependent on traditional agriculture and fishing. Access to and control of their ancestral domain is vital for their incomes, livelihood and socio-economic status. The limitations of self-employment amount to discrimination, not only from the ITP perspective, but also under international and Philippine law. In practice, the lack of security of tenure over land and natural resources amounts to limited opportunities for employment, particularly self-employment and income, and impairs individual and collective self-reliance. At present, ITPs count among the poorest of the poor in the country.

In line with the constitutional provisions, IPRA of 1997 and the Medium-Term Development Plan for Indigenous and Tribal Peoples 2004-2008 give priority to the rights of ITPs to their ancestral domain, to the development and management of their land and natural resources, to the right to stay and not be displaced

⁵⁴ Indigenous Peoples Rights Act of 1997 (IPRA) or RA No. 8371.

⁵⁵ Census 2000, NSO; also see Gust, Gert: “Equality and Non-Discrimination in Employment and Livelihood of Indigenous Peoples; Philippines, 2006

from their lands in case of development projects implemented without their consent. An estimated 2.5 million hectares of ancestral domain is being considered for titling over the next one or two decades.

Equality at work figures prominently in the IPRA as a right of indigenous peoples. Echoing ILO Convention No. 169 on Indigenous and Tribal Peoples, IPRA provides that:

- the state shall ensure the effective protection with regard to the recruitment and conditions of employment of persons belonging to these communities, to the extent that they are not effectively protected by laws applicable to workers in general.
- ICCs/ITPs shall have the right to association and freedom for all trade union activities;
- the right to conclude collective bargaining agreements with employers' organizations;
- have the right not to be subject to working conditions hazardous to their health;
- particularly through exposure to pesticides and other toxic substances.”⁵⁶

But these progressive provisions appear as hollow promises to ITPs. A majority are farmers and do not seek formal employment, for which they often lack the necessary qualifications. There have been undocumented instances where ITPs were denied employment because of their perceived cultural background and educational limitations. Paid employment is virtually beyond the reach of most ITPs in rural and urban settings. For ITPs who are mostly indigenous farmers, the loss of or limited access to their traditional land and livelihood resources often drives them to migrate to urban areas where they are unable to find paid jobs; even low-paying jobs are out of their reach for lack of education and because of perceived notions about ITP qualifications and capabilities as regular workers. In Baguio City, for example, more than half of the population are indigenous and tribal peoples from the Cordillera villages, 65 per cent of whom suffer from extreme poverty due to unemployment and underemployment.⁵⁷

Recognition of ITP rights has gone hand in hand with the implementation of development programs through national and international initiatives. The Medium-Term Philippine Development Plan for Indigenous and Tribal Peoples 2004-2008 provides a roadmap for development interventions and a coordinating mechanism to improve the quality of life for about 110 ethnolinguistic groups in the country. The plan also serves as the collaborative effort of the National Commission for Indigenous and Tribal Peoples (NCIP) and its partner organizations towards the achievement of the objectives of the IPRA of 1997. Poverty remains the major consequence of the exclusion, deprivation and discrimination of ITPs. Therefore, poverty reduction is the overriding theme of such concerted interventions, along with support in education, training, health and cultural affairs.

ILO is promoting its Convention No. 169 on Indigenous and Tribal Peoples through technical assistance under INDISCO and PRO 169, its development program on community-driven participatory approaches and its support to the development of policy on indigenous and tribal peoples. Operating in various indigenous and tribal communities in the Philippines, INDISCO's projects include the preservation and promotion of indigenous and tribal cultures, promotion of decent employment and income opportunities, promotion of gender equality and environment, and natural resources protection and rehabilitation.

Overall, results have been mixed as far as the livelihood, incomes and employment opportunities of ITP are concerned. According to ADB: “On the whole, in the indigenous and tribal peoples' regions, the incidence of poor families and poor populations did not improve substantially between 1988 and 1997 despite the rise in average income, except for Region II. In some cases, the incidence has worsened and, ironically, in the indigenous and tribal peoples' regions that registered the more respectable growth rates in average income. This implies that the fruits of regional development have not trickled down to the poorest of the poor. Moreover,

⁵⁶ IPRA, Section 23.

⁵⁷ Christine Beato, “The Effectiveness of Government Programs in Addressing Human Rights Issues Among the Filipino IP,” 2004, UP SOLAIR term paper (unpublished).

in the indigenous and tribal peoples' regions that registered a high incidence of poverty, the poverty gap ratio, especially in the rural areas, is also stubbornly high."⁵⁸ Recent statistics confirm that regions with a high share of ITP populations count among the poorest regions of the country.

The stage has been set for righting the wrongs of the past through concerted measures to combat discrimination of ITPs through the following measures:

- Ratification of ILO Convention No. 169 on Indigenous and Tribal Peoples;
- Full implementation of RA No. 8371 or IPRA and its implementing rules under the Medium Term Philippine Development Plan for Indigenous and tribal Peoples 2004-2008;
- Immediate repeal or amendment of discriminatory laws, policies and development approaches;
- Educational programs for IPs on their rights and development of capabilities to pursue the application of their rights in practice, including workplaces; and
- General awareness raising about IPs in the mainstream population through the inclusion of topics on indigenous culture in the curriculum of the educational system.
- Proactive measures to increase the number of IPs in private and public sector employment at all levels.

While progress is being made in the areas of legislation and policies, better implementation depends not only on political will but also on the institutional effectiveness of government agencies concerned, especially the National Commission of Indigenous and Tribal Peoples. ITPs can, individually or collectively, promote equality at work by bringing their grievances before local and national authorities such as the Commissions on ITPs or Human Rights.

F. People Living with HIV/AIDS

According to official sources, the Philippines has experienced a "low and slow transmission" of HIV/AIDS. Unofficial estimates put cases of HIV/AIDS positives in the country at about 10,000. Official figures speak of 1,979 HIV/AIDS-positive cases for the period 1984-2004. Of the 1,979 officially reported HIV/AIDS-positive cases, 640 (32 per cent) were OFWs, of which 240 (38 per cent) were seafarers and 114 domestic helpers; 473 (74 per cent) were men and 167 (26 per cent) women. Sexual intercourse (93 per cent) was the predominant mode of transmission. Overall figures are low compared to those of other countries. However, there is no room for complacency at a time when South-East Asia, including the Philippines, is regarded as ripe for a potentially accelerated spread of the disease in the years to come.⁵⁹

Structural discrimination puts women at a high risk because of their domestic, economic and political subordination to men. Also, very poor communities are particularly exposed because of their very limited access to preventive health care services and anti-retroviral treatment. Moreover, discrimination could be traced back to a negative perception by members of society of persons living with HIV/AIDS infected persons, taking the form of avoidance and ostracism (Box 4).

⁵⁸ Asian Development Bank, *Indigenous Peoples/Ethnic Minorities and Poverty Reduction* (Manila 2002), page 19. Gust: "Equality and Non-Discrimination in Employment and Livelihood of Indigenous Peoples; Philippines, 2006.

⁵⁹ According to the World Health Organization, HIV/AIDS is one of the leading causes of death for both sexes, ranking No. 7 for 0-4 years old, No. 1 for 15-44 years old and No. 6 for 45-59 years old. (WHO World Health Report 1999 Database).

Box 4 : Tony's Calvary & Crusade

His headaches become severe each day, and he knows it is only a matter of time before he finally dies of complications from a modern-day scourge - AIDS. But finding solace and strength in his newfound faith, "Tony" continues to defy the pain, making Christian decors not only for his daily medicines but also for his family's rice and fish.

Tony, who became a member of the United Church of Christ in the Philippines (UCCP), is confirmed to be in the advanced stage of AIDS. His doctors proclaimed some months back that he only had a few months, perhaps a year, to live. The diagnosis, he said, has added more pain to his already painful experience of being gang-raped by men while working in Jeddah, Saudi Arabia. That incident forced him to leave a high-paying job as a designer-decorator. Forced to return to the Philippines, Tony took on odd jobs to help pay for medications for on-and-off infections such as skin rashes, mouth sores, fever and pneumonia. At first, he thought that they were just ordinary ailments but after getting bedridden and a confirmed AIDS diagnosis, Tony said he almost gave up. "I thought that was the end of my life," he recalls. "But I didn't surrender."

Through his public testimonies, Tony does not only give a face to the dreaded disease, whose survivors many people still avoid like the plague. "While they are still able, people with AIDS should not face discrimination," a UCCP colleague said in support of Tony's cause. "In fact, AIDS sufferers should have the same right to be employed as anyone else, so society could benefit from their talents, skills and expertise."

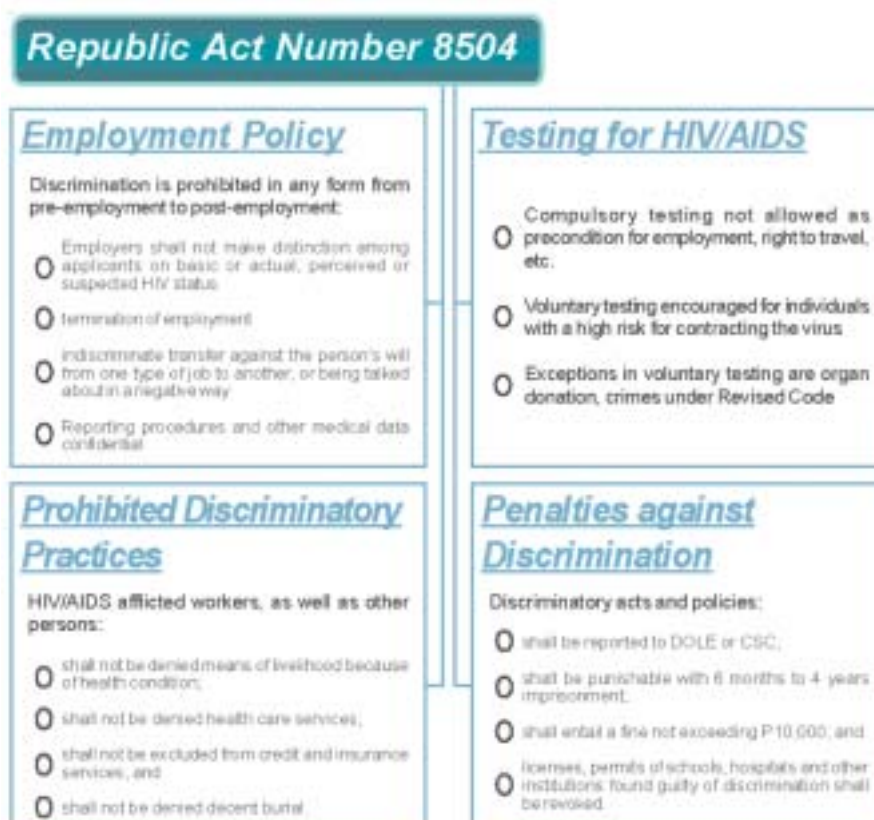
The first in the country to institutionalize HIV surveillance systems, the Baguio City Health Department (BHD) continues to regularly monitor "high-risk" sectors, such as commercial sex workers and waiters of night establishments. The Baguio health officials admit, however, that the stigma attached to HIV/AIDS and the fear of discrimination still bar some people from seeking treatment for AIDS or from acknowledging their HIV status publicly. BHD thus stressed on public awareness on HIV/AIDS as they reechoed the United Nations' two-year World AIDS campaign that seeks to encourage leaders at all levels, and all walks of life, to challenge and act upon all forms of HIV-related discrimination.

The World Health Organization noted that people with HIV or those suspected of being HIV-positive are often turned away from health care services, denied housing and employment, shunned by their friends and colleagues, divorced by their spouses, assaulted and abused, denied insurance coverage or refused entry into foreign countries.

Source: Maurice Melanes, "Person with AIDS defies pain, death", Philippine Daily Inquirer, 2002.

Action against HIV/AIDS dates back to 1986, when a National AIDS Program was established under the Department of Health. In 1997, the National Workplace Policy and Strategy on HIV/AIDS was approved, and Republic Act No. 8504 (Philippine AIDS Prevention and Control Act), signed in 1998, included provisions against discriminatory practices in the workplace (Figure 11).

Figure 11: Philippine AIDS Prevention & Control Act



The Department of Labor and Employment, with its tripartite partners and NGOs, has initiated the development of a national database on STD/HIV/AIDS among top corporations in the Philippines. With the Occupation Safety and Health Center (OSHC) taking the lead, this initiative is intended to generate information on current programs and activities on HIV/AIDS prevention in the workplace.

Advocacy campaigns and research have raised awareness about the plight of and discrimination against HIV/AIDS positives. Earlier OSHC studies in 1998-2001, sponsored by the European Union, on HIV/AIDS among Filipino transportation workers (taxi, truck drivers) and seamen, had revealed high-risk sexual practices (e.g., limited use of condoms). The studies also observed a strong tendency towards discrimination against HIV/AIDS positives.

Recent studies have generated useful information on the level of knowledge about HIV/AIDS and possible discriminatory attitudes and practices.⁶⁰ A survey in 2003 among post-graduate industrial relations students and human resources practitioners revealed that the respondents were well aware of the affliction and the modes of transmission, but only 15 per cent knew of anyone living with HIV/AIDS. Seventy-two per cent did not fear contracting HIV/AIDS by using public toilets; half of the respondents were unsure whether the infection could be transmitted through mosquito or insect bites; and thirty-eight per cent were hesitant to get a haircut by somebody afflicted by HIV/AIDS.⁶¹

In their work environment as HR/IR practitioner, all respondents claimed they would be protective of anyone who was afflicted with or suspected of having the disease. Half of the respondents agreed that an organization should maintain strict confidentiality when learning of an employee's affliction. All respondents welcomed any encouragement by their respective organizations or firms of voluntary and confidential testing as well as counseling. Generally, respondents felt that HIV/AIDS positives should be treated as fairly as all other employees.

In 2003, a Rapid Assessment Survey carried out by OSHC, Positive Action and Pinoy Plus (NGOs representing people living with HIV/AIDS) looked into the types of discrimination experienced by HIV/AIDS positive persons and the effect of such illnesses on the individual's family, among other things. It was found that discrimination at work may be manifested in stereotyped attitudes and prejudice by co-workers: expressions of "they deserve their illness"; avoidance, ostracism or stigmatization; or support for mandatory testing and public disclosure of HIV/AIDS. Persons living with HIV/AIDS for their part tended to react to discrimination by dropping out of work, avoiding health care, losing self-esteem or feeling socially isolated.

Preliminary data and research suggest that agreement is gaining ground on a number of issues related to non-discrimination at work of persons living with HIV/AIDS. Prevalent views included the following:

- Persons living with HIV/AIDS are entitled to the same rights, opportunities and protection as all other workers.
- Persons applying for employment should not be subjected to mandatory testing for STD/HIV/AIDS.
- Testing should be on a voluntary basis (except when public safety demands otherwise) and should go with pre- and post-test counseling; results of the testing should be treated with utmost confidentiality by the physician and employer. Confidentiality should be strictly applied in all reporting procedures, as well as treatment and rehabilitation under any work relationship in the public and private sectors.
- Workers infected by or perceived to be infected by HIV/AIDS should be protected from stigmatization and discrimination by co-workers, unions, employers, clients, suppliers, etc.

⁶⁰ Pinoy Plus Association, *HIV/AIDS-Related Stigma and Discrimination* (2004).

⁶¹ Dulce Estrella-Gust and Gert Gust, "Management of Psychosocial Problems at Work" (paper, Manila, 2004).

- HIV/AIDS infection should not be deemed a limitation on fitness to work; employees known to have HIV/AIDS may continue to work as long as they are medically cleared to do so. They should be entitled to reasonable alternative working assignments.
- All workers should have access to information and education programs on STD/HIV/AIDS, as well as to support services and referrals.
- Employees living with HIV/AIDS should be entitled to the same benefits, such as social security programs, as other employees. Persons living with HIV/AIDS should not be denied health care services and should have access to socially priced medicines.
- The Employees Compensation Commission (ECC) should cover treatment costs in certain cases if the affliction is work-related, as in the case of health workers exposed to biological hazards.
- DOH, OSHC/DOLE and the media, as well as cause-oriented groups, should continue awareness raising programs for the masses, such as regular TV and radio campaigns in English and local dialects. The effectiveness of such programs needs to be evaluated.

There is need to step up implementation of the comprehensive policy for the prevention of HIV/AIDS in the formal and informal sectors. Non-discrimination drives involving all stakeholders must be made an integral part of the campaign. To fill the gaps in preparing comprehensive information on discrimination at work, it would be most desirable to carry out a survey to establish facts related to discriminatory practices as observed by HIV/AIDS positives, and to collect “best practices” of individual enterprises and offices as regards HIV/AIDS prevention in the workplace. The study could also serve as a basis for the elimination of discrimination at work and the provision of equitable working and employment conditions for HIV/AIDS positives. All these activities should go hand in hand with capacity-building efforts through the publication of training manuals and primers on HIV/AIDS, together with various forms of training and advocacy.

G. Differently-Abled Persons

According to ILO estimates,⁶² 10 per cent of the world’s population is affected by disabilities. Therefore, disability in the Philippines would affect about 8 million people in a population of about 80 million. However, latest available estimates put the total number of disabled Filipinos at only 744,000.⁶³

Following the ratification in 1991 of ILO Convention No. 159, Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983, the Philippine Magna Carta for Disabled Persons of 1992 (RA No. 7277) set the policy framework for overcoming a range of barriers facing differently-abled persons (DAPs), by:

- removing physical barriers that restrict the mobility and access of DAPs around their homes, workplaces, recreational places, transport stations, etc.;
- eliminating social barriers that impede the development of the full potential of DAPs as citizens and workers through legal, economic, cultural restrictions;
- encouraging economic empowerment of DAPs through training, education, employment and sustainable livelihood; and
- eliminating various forms of discrimination in the workplace ranging from the denial of regular careers to recognition as full team members.

⁶² ILO, “Promoting Social Justice through International Labor Standards (Extract from the Report of the Director-General on the Activities of the ILO, 1998-1999)” (Geneva, 2000).

⁶³ NSO survey of 1992.

In compliance with the progressive framework of the Magna Carta, numerous programs have been put in place by various government agencies, specifically:

- the Tulay 2000 or Tulong Alalay sa Taong May Kapansanan of the Bureau of Local Employment of the DOLE, a program designed to assist in the integration of DAPs into mainstream society through training, education and job placement;
- the Tuloy Aral Walang Sagabal (TAWAG) of the Department of Social Welfare and Development (DSWD), providing counseling, training and placement of young DAPs through its vocational and rehabilitation centers;
- the Special Education Division (SPED) of the Department of Education (DepEd) providing SPED classes in both private and public schools;
- the Technical Education and Skills Development Authority (TESDA) by granting scholarship in technical/vocational courses, as well as entrepreneurship and livelihood programs;
- the Department of Public Works and Highways (DPWH), which serves as the lead agency for installing accessibility facilities on streets, highways, public parks, public elementary/secondary schools and government buildings;
- the Department of Health's programs for the prevention, detection, treatment and rehabilitation of disabilities;
- the Department of Transportation and Communication (DOTC), which provides ramps and reserved seats for DAPs at airports, offers airline assistance and facilitates getting driver's licenses for DAPs.

In August 2002, the National Council for the Welfare of Disabled Persons (NCWDP) organized a review and assessment of the performance of the various stakeholders at the end of the UN Decade of Disabled Persons. Attended by 150 leaders of various organizations, the review provided a rating of government programs, which is self-explanatory:

Table 11: Disabled Sector Rating on Government Programs

Programs & Services	Regions V, VIII, CAR & ARMM	Regions III, VII, X & XII	Regions IV, VI, XI & NCR	Regions I, II, IX & Caraga	Average Rating
Prevention of the Causes of Disability	50	33	75	55	53%
Legislation	50	35	50	50	46%
Training and Employment	25	48	75	25	44%
Education	25	3	25	50	37%
Self-help Organization	25	12	50	50	32%
Information and Public Awareness	25	3	50	25	28%
Rehabilitation	25	3	25	50	26%
Assistive Devices	0	3	50	50	26%
Accessibility	0	5	25	25	11%
General Average					33%

Source: National Council for the Welfare of Disabled Persons review of government programs, 2002.

Accessibility obtained the lowest rank with an 11 per cent rating, followed by rehabilitation and assistive devices with a 26 per cent rating and 28 per cent for accessibility of infrastructures, roads and buildings. The only program that the NCWDP review gave a passing mark to was the government program to prevent disability. The sector obviously feels that, although legislation and policies are rated at 46 per cent, proper implementation of the laws leaves much to be desired.

Government efforts appear to have been mixed at best in the implementation of policies and programs that adequately address the needs of the disabled sector. Recent research among DAPs⁶⁴ who lived in Metro Manila and had undergone skills training revealed that:

- 22.2 per cent of respondents were still unaware of provisions under the law that guaranteed the rights and privileges of DAPs;
- of the 60.5 per cent of respondents with knowledge of the Magna Carta, only 18.1 per cent were holders of identification cards issued by the NCWDP, among other things for purposes of getting discounts and special privileges in transportation, delivery of mail and other government incentives; and
- only 39.7 per cent of respondents had knowledge of the Tulay 2000 program of DOLE.

A primary concern of the NCWDP is the existence of discriminatory provisions in the Philippine Labor Code. According to Article 80(b), "The rate of remuneration to be paid the handicapped worker shall be no less than 75 per cent of the applicable legal minimum wage." This provision has been the basis for pay of DAPs for work of equal value to that of "able-bodied persons". In a decision in 1999⁶⁵, the Supreme Court affirmed Section 5 of the Magna Carta on Equal Opportunity for Employment stipulating that "no disabled person shall be denied access to opportunities for suitable employment. A qualified disabled employee shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as a qualified able-bodied person." (Box 5)

Box 5 : Discrimination of Differently-Abled Persons

Forty-three deaf-mute complainants led by one Marites Bernardo filed a case against Far East Bank & Trust Company for illegal dismissal based on their physical disability, which is contrary to the law proscribing discrimination of disabled persons at work.

The complainants numbering 43 had been hired on various periods from 1988 to 1993 by respondent-bank as money sorters and counters through a common contract called "Employment Contract for Handicapped Workers". Their contracts were renewed every six months. The petitioners alleged that they became regular workers because their task as sorters and counters was necessary and desirable and as such must be covered by the provisions on the terms and conditions for regular workers under Article 280 of the Labor Code.

In its defense, the respondent-bank alleged among others, that these employees were not regular employees; that they were hired temporarily under a special employment arrangement to accommodate requests from political and civic personalities; that there are no positions as sorters or counters in the bank; that counting and sorting of money are teller's works which were part of the tellers' normal functions.

The National Labor Relations Commission, ruling in favor of the respondent-bank, gave credence to the conclusion that complainants were hired merely as an accommodation.

The Supreme Court found merit in the petitioners' claim. However, only the employees who worked for more than six months and whose contracts were renewed were deemed regular. Hence, their dismissal from employment was illegal. It went on to state that the contract/agreement between the parties regarding the period of employment cannot prevail over the provisions of the Magna Carta for Disabled Persons, which mandate that petitioners must be treated as qualified able-bodied employees upon a showing of their fitness for the task assigned. Since the Magna Carta accords them the rights of qualified able-bodied persons, they are thus covered by Article 280 of the Labor Code. Moreover, "the noble objectives of the Magna Carta for Disabled Persons are not based merely on charity or accommodation, but on justice and the equal treatment of qualified persons, disabled or not."

The high court likewise observed that the petitioners' handicap is not a hindrance to their work. In fact, the petitioners have only proven their fitness to work. Hence, they should be treated and granted the same rights like any other regular employees.

Source: *Bernardo et al vs. NLRC*, 310 SCRA 187

⁶⁴ Soriano, Ma. Julia A., "Equal Employment Opportunities for Physically Challenged Workers," UP SOLAIR draft masteral thesis, 2004.

⁶⁵ Bernardo, et.al vs. NLRC: Far East Bank and Trust Company.

The fact that the employees were qualified disabled persons necessarily removed their employment contracts from the ambit of Article 80. Since the Magna Carta accords them the same rights as qualified able-bodied persons, they are covered by Article 280 of the Labor Code. The Supreme Court has ruled that if they are able to perform the required task for the job, they should receive the same full compensation as an able-bodied individual.

This landmark SC ruling would call for the amendment of the Labor Code to avoid confusion and misinterpretations by actual and potential employers. Subsequently, deliberations on the NCWDP was completed in the Philippine Congress, and the repeal of the discriminatory provisions are being urgently awaited.⁶⁶

H. Workers in the Informal Sector

The “informal sector” (IS) was first described in ILO’s Comprehensive Employment Strategy Mission to Kenya in 1972 as an important source of employment and a potential “engine of growth”. Distinguished from the mainstream formal economy by its myriad of marginal, low-technology and low-profit activities, the IS has, over time, gained importance in development economics and public policy, especially in developing and transition countries, which includes the Philippines.

Both the economic and equality aspects of the IS were raised to a global level in 2002 in a debate at the International Labor Conference on “Decent Work and the Informal Economy.”⁶⁷ There was general agreement that the promise of equality at work cannot be limited to workers in the formal sector but must be extended to all workers, including those in the IS. Every country must solve its equality problems in line with its own socio-economic priorities and resource possibilities. Similar ideas emerged from research and policy studies in the Philippines sponsored by ILO-UNDP in 2002.⁶⁸

Translation into practice of the dual economic and equality goals of the IS raises a host of conceptual, legal, policy and practical issues and problems. For example, how can the principles of equality at work and equal remuneration for work of equal value be applied to the IS? Unlike the formal sector, for which the principles of equal opportunity and equal pay for work of equal value were developed in the mid-20th century, the IS does not operate in large organized units that pursue the economies of scale and access to larger markets; moreover, the IS does not apply standard work methods and working conditions nor it established formal labor-management relationships, social protection or standard procedures on recruitment, promotion, remuneration or termination.

According to DOLE statistics,⁶⁹ about 75 per cent out of a total employment of 28.8 million in 2000 was in the informal sector, including own-account workers and unpaid family members. The importance for the economy of the informal sector in terms of source of employment and livelihood cannot be overestimated. Sixty-five to seventy per cent of informal sector workers are involved in agricultural activities, a large part of it being women and young people. The informal sector serves as the “safety net” or “catch basin” for many workers who cannot land a job in the formal sector. For many of them, the informal sector provides employment of last resort.

Regarding equality at work, the informal sector requires special attention for various reasons. Most importantly, it accounts for the vast majority of the Philippine labor force and large numbers of the disadvantaged. Moreover, the informal sector remains largely outside the effective coverage of anti-discriminatory laws and practice. Disadvantaged groups in the informal sector also experience multiple barriers to entry into the economic and social mainstream. The barriers include ineffective governance, lack of jobs in the formal economy, increasing poverty and absence of effective implementation of appropriate legislation and social protection.

⁶⁶ Dr. Mateo Lee, in ILO, *Global Report on “Time for Equality at Work” - Proceedings of Consultations* (Manila, 2003).

⁶⁷ ILO “Decent Work in the Informal Economy” (Geneva, 2002).

⁶⁸ Report of ILO-UNDP project for the Promotion and Protection of the Informal Sector in the Philippines, 2002.

⁶⁹ Calculation of informal & formal sectors in 2000 by the National Wages and Productivity Commission (NWPC): Formal = [5,902,186 (private workers) + 1.5 million (government workers) divided by 28,286,000 (total employed) = 25 per cent of total employed are in formal sector, 75 per cent of total employed are in informal sector. Also see Figure 6 on Employment by Sector (Formal & Informal) and by Size of Establishment (2000) in Chapter II: employer’s organizations.

There are three major initiatives in the Philippines in IS development and equality, namely:

- An agreement by all stakeholders on a definition of the IS in the Philippine context;
- Equal rights and opportunity and treatment; and
- Economic mainstreaming of the IS.

Definition. According to an official definition adopted in 2002 by the Philippine National Statistical Coordination, the IS consists of “Units engaged in the production of goods and services with the primary objective of generating employment and incomes to the persons concerned. It consists of household unincorporated enterprises that are market and non-market producers of goods as well as market producers of services. These enterprises are operated by own account workers, which may employ unpaid family workers as well as occasional/seasonally-hired workers. These enterprises may also be owned and operated by employers, which may employ less than 10 employees on a continuous basis.”⁷⁰

The twin goals of employment and income generation imply that economic and equality considerations should apply to all policies and programs for the development and mainstreaming of the IS. Also, the acceptance of a generally agreed definition would facilitate the collection and analysis of data to overcome current confusion on the size, characteristics and dynamics of the IS. Finally, the existence of goals will lend itself to better coordination of policies and programs in the public and private sectors, as well as more effective monitoring and evaluation.

Equality rights and opportunities. IS workers enjoy the same broad protection of the state as all other workers under the Constitution and the Philippine Labor Code. In practice, however, workers in the IS remain outside the bounds of constitutional and labor law provisions on equality at work and equal pay for work of equal value. Taking as a benchmark the minimum working conditions in the PLC (see Box 6 in Chapter IV: Critical Areas of Equality), it is evident that, for a majority of workers in the IS, there are equality deficits ranging from security of tenure and income at minimum wage levels to social protection, access to government services and labor justice, and representation of their interests.

Most workers in the informal sector are exposed to various forms of discriminatory treatment, including precarious work conditions, very low wages, OSH hazards and lack of social protection such as health insurance, maternity benefits, old age pensions, etc. Terms and conditions of work are highly flexible—and often substandard—not subject to enforcement and regulation. Many workers are exposed to hazardous and very poor working conditions. Denied regular credit, they are dependent on the exploitative rates of moneylenders (in a system known as the “5-6”). Access to legal protection is costly or unavailable, enforcement of labor rights is elusive, and lobbying and/or protection by cause-oriented groups or unions is limited.

Women are prominently represented in the urban informal sector. Some of them are successful as operators and entrepreneurs, but most are trapped in traditionally female occupations like sewing garments, laundry washing, sewing cloth products from garment industry remnants and selling food or small merchandise on the streets and in markets.⁷¹ For example, women may make up a majority of members in a cooperative of market vendors (e.g., the Quiapo Public Market in Manila), but they are vastly underrepresented in the cooperative leadership and thus excluded from decision-making. Female access to education, training or credit is very limited, as are their chances of empowerment and entering into mainstream society. To overcome these deficits, numerous support programs are being implemented through public and private initiatives. One example is the microfinancing scheme for women in the informal sector, modeled after the Grameen bank experience. Such NGO schemes, however, do not reach large numbers of women in the informal sector.

The equality deficit is particularly glaring in the area of IS worker incomes. Usually employed on a non-regular basis for temporary, seasonal or piece work, IS workers, both men and women, obtain wages largely determined unilaterally by the employer, and rarely are there any benefits. The concept of remuneration as a

⁷⁰ Particular cases that are excluded: Corporations, quasi-corporations, household helpers, units engaged in professional services, units with ten or more employees, units owned by a household member who is also employed in a corporation, quasi corporation, government or non-profit institution, corporate farms, farms managed by cooperatives, farms with an area of three hectares or more, commercial livestock raising and commercial fishing.”

⁷¹ ILO, *Action Program for Decent Work: Philippines* (Manila, 2002).

package of wages, entitlements and benefits is rare or unknown in the IS. According to the ILO/UNDP study, employed workers in the IS earn half the prevailing minimum wage, while the average salaries of women are lower than those of men.

Considering that the minimum wage is meant to enable workers to “maintain the minimum standard of living necessary for the health, efficiency and general well-being of the employee” (Art. 124 PLC), millions of IS workers and their families must eke out an existence under substandard working and living conditions. The ILO/UNDP study attributes these low wages to low productivity. But there is no doubt that many other factors come into play, such as the general economic environment, lack of representation or absence of labor inspection.

Discriminatory practices are not limited to lower pay for women workers. Because of tradition or kinship pressures, operators may give preference in recruitment and wages to members of their own extended family; outsiders tend to be the last to be hired and the first to be fired. According to RA 9178 on Barangay Micro-Business Enterprises (BMBE), micro-firms in production, agro-processing, manufacturing, trading and services are now exempt from the payment of minimum wages. This is on the assumption that micro-enterprises cannot pay even minimum wages but would thrive if they are exempted. But close monitoring by the local and national government units responsible for the implementation of the BMBE must ensure that these new regulations will eventually contribute to the economic upgrading of the IS, lead to higher wages and better working and living conditions for IS workers. Exemption from minimum wages should not merely legalize current practices of underpayment and exploitation of IS workers.

Economic mainstreaming of the IS. Research and public policy have focused on the economic relevance and potential of the IS. To some, limited regulation and flexibility are regarded as an inherent strength of the IS in terms of employment and wealth creation at the grass-roots level. Seen as a temporary phenomenon, the IS is expected to disappear as a result of rapid economic development and its members eventually be absorbed into the mainstream formal economy. Therefore, any observed inequalities, discrimination or exploitation is expected to fade away as and when working and employment conditions in the IS can be raised to the level of the formal sector. But these hopes have not been fulfilled. The stubborn persistence and steady expansion in recent decades of the IS sector has now led to a fresh look at the IS, both in the Philippines and elsewhere.

‘Kalakalan 20’ and Barangay Micro-Business Enterprises (BMBE) are major Philippine initiatives for the promotion of self-employment, entrepreneurship, micro- and SME promotion. Both programs are open to all age groups of women and men.

**Table 12: Modalities of R.A. 6810 (‘Kalakalan 20’)
R.A. 9178 (Barangay Micro-Business Enterprises - BMBE)**

	R.A.No. 6810 (Kalakalan 20) 1989	R.A. No. 9178 (BMBE) 2003
Location	Nationwide, but excluding firms in Manila, Quezon City, Pasay, Kalookan and Makati	Firms located anywhere in the country
Nature of Activity	Production, processing & manufacturing of goods	Production, agro-processing, manufacturing, trading & services
Number of Workers	Not more than 20 workers	No restriction
Assets	Not more than P500,000 before financing	Not more than P3 M excluding land; subject to review and revision by SMED Council
Effectivity of Certificate of Authority	5 years	2 years, subject to renewal(s)
Minimum Wage	Not exempted	Exempted
Implementing Rules	DTI Secretary in consultation with Secretaries of DILG, DOF, DOLE and DOH	DTI Secretary in consultation with Secretaries of DILG, DOF and BSP Governor

Source: National Wages and Productivity Commission, 2003.

So far, the performance of micro- and SMEs has been mixed as engines of growth and sources of greater equality at work in the IS. According to the National Wages and Productivity Commission (NWPC), Kalakalan 20 did not attain its full objectives in promoting employment and economic growth due to lack of support and incentives and the non-exemption of entrepreneurs from minimum wage legislation. Success under the new BMBE program will primarily depend on such factors as overall economic growth, access of micro-enterprises to credit and capital, access to new and promising markets, as well as support in raising productivity levels and quality of goods and services.

Closer linkages between the formal and informal sectors are being established as a means to mobilize the informal sector towards higher productivity and employment creation. Many of these initiatives involve skills training by TESDA, TLRC, OSHC, corporations, foundations and NGOs. ILO's own modular training programs like the Start Your Business (SYB), Improve Your Business (IYB) and Work and Productivity Improvements in Small Enterprises (WISE) and the training of trainees in low-cost techniques are readily available for nationwide use.

In an effort to come to grips with economic upgrading and equality at work in the informal sector, expectations are being placed on the larger corporations and their foundations through codes of conduct covering not only their "core" staff but also their subcontractors and suppliers in the informal sector. Trade unions and NGOs can help by removing barriers and discriminatory practices and ensuring that informal sector jobs become not only more productive but also better paying, as well as safe and healthy. Regarding the latter, government is committed to attuning national policies, legislation and programs to international standards in the context of the National Framework for Decent Work, which will include moves toward the ratification of ILO Conventions No. 155, Occupational Safety and Health Convention, 1981, and ILO Conventions No. 161, Occupational Health Services Convention, 1985, and close cooperation with ILO on OSH matters.⁷²

At this stage, the IS is still beset with serious equality and developmental deficits. Promising efforts and initiatives are being planned or implemented by the public and private sectors, based on the new definition of the IS, including:

- Government policies and programs in support of micro- and SME development, assistance in productivity improvement and market development, as well the provision of services for the improvement of working and living conditions in the IS under The Labor Standards Enforcement Framework;
- Promotional activities by private sector firms and employers organisations, for example, through the Philippine Business for Social Progress (PBSP) or the Bishops' Businessmen Conference;
- Coverage of IS workers by established trade unions like TUCP and FFW; and
- Self-organization of IS groupings and promotional support by NGOs and/or international organizations like ILO, UNDP or ADB.

Mechanisms for monitoring and evaluation must be strengthened. To this end, benchmarks should be established in connection with the new Medium-Term Philippine Development Plan, 2005-2009.

⁷² Patricia Sto. Tomas, Speech at the 8th National Occupational and Safety Health Congress on Globalization and OSH: 'A Call for Inclusion, Not Exclusion' (Manila, 2001).

Chapter IV: Critical Areas of Equality

Recruitment, employment conditions, promotion and termination are critical areas where real and perceived equality deficits tend to arise. These are the areas where determined and enlightened action can go a long way towards greater equality in the workplace.

In the past two or three decades, dramatic changes have taken place in the socio-economic environment, in the composition of the labor force and the roles of its members. These went hand in hand with changes in the perceptions of how work should be organized and how the benefits should be distributed.

Hiring and firing practices are at the center of an ongoing debate on employment conditions among the social partners and a wider public. Some employers tend to argue that greater flexibility in employment and work arrangements is a necessity in downsizing, reengineering, subcontracting, outsourcing, etc.; a wider margin of flexibility is also considered essential to adjust firms to rapidly changing market conditions and to strengthen their competitiveness in preparation for stiffer competition in local and international markets in the face of globalization.

For labor, security of tenure is the most desirable condition of all employment. But flexibilization is suspected of opening the door to discriminatory practices in hiring and firing, which amount to a denial of the acquired rights of the worker under the Constitution of 1987 and the Labor Code.⁷³ Downsizing, reengineering, subcontracting and outsourcing are often perceived as forms of discrimination on grounds of sex or age as, for example, when married women or older workers are terminated.

In its labor policies, government has tried to achieve a balance between the legitimate rights and expectations of labor to security of tenure and the requirements of management for necessary flexibility in a highly competitive environment. While the outcome of the debate is still uncertain, statistics show a clear trend towards wider contractualization and use of casual labor. Also, the labor justice system is now handling larger numbers of cases of real or alleged discriminatory practices, like illegal dismissal.⁷⁴

A. Recruitment

Ideally, individuals should be employed for work in the private and public sectors solely on the basis of objective criteria. This would ensure a perfect match between the requirements of the vacant post and the personal qualities and technical competencies of the candidate. While constitutional and labor law serve as broad guidelines for applying equality and objectivity in employment, special laws for the protection of disabled persons or indigenous peoples, for instance, contain specific clauses on fair recruitment practices for this particular clientele. Still, in the real world, recruitment is often guided by preferential treatment according to sex, age, religion, family connections or other criteria unrelated to the ability of the individual to perform the job.

In the private sector, recruitment objectivity and equal opportunity differ widely, depending on the type of ownership, management style, the notion of the opening, as well as political and social pressures.

⁷³ R. Daenekindt, "Workers' Rights in a Globalizing Economy: The Philippine Experience", Human Rights Forum.

⁷⁴ Claims before the NLRC (1999) of women and men were concerned with illegal dismissal (43 per cent), money claims (27 per cent), disability benefits (22 per cent) and death benefits (8 per cent).

Companies practicing corporate governance are committed to non-discriminatory and transparent recruitment by stipulating in their policies that “all persons are entitled to equal employment opportunities... no person subsequently employed will be discriminated against because of race, color, ethnic origin, religion, age, sex or presence of non-job related disability.”⁷⁵

Job advertisements in daily newspapers can serve as a barometer of discrimination in recruitment. Familiar discriminatory criteria include diplomas from exclusive private and public schools and universities and applicant's height, complexion, age, family status or sex.

A study on sex discrimination in job ads for 17 occupations between 1975 and 1995 noted an overall decline in explicit preferences for one sex or the other in filling positions. Nevertheless, preferences remained for employing women as cashiers, household workers, office secretaries, nurses, teachers, waiters and weavers and men as drivers, engineers, managers, mechanics, messengers or security guards.⁷⁶ However, a reversal in patterns of sex discrimination was observed for accountants, sales workers and cooks (see Table 13).

Table 13: Ranking of Occupations by Highest to Lowest Share of Discriminatory Ads

Rank	Year		
	1975	1985	1995
1	household helper	weaver	household helper
2	waiter	waiter	office secretary
3	security guard	household helper	driver
4	weaver	office secretary	messenger
5	driver	messenger	cashier
6	cook	driver	waiter
7	messenger	cook	weaver
8	office secretary	nurse	nurse
9	cashier	sales	security guard
10	accountant	teacher	accountant
11	nurse	accountant	cook
12	mechanic	security guard	sales
13	sales	cashier	mechanic
14	teacher	mechanic	supervisors
15	supervisor	manager	manager
16	manager	supervisor	engineer
17	engineer	engineer	teacher
	Per cent of Discriminatory Ads (%)		
	1975	1985	1995
	50.4	37.1	34.0

Source: Morada, H. and Santos, L.Q., “Sex Discrimination in Job Ads”, Philippine Journal of Labor and Industrial Relations, Vol. XIX-XX, 1999-2000.

⁷⁵ Moog Controls Corp. “Employees Handbook, 1999.

⁷⁶ Morada, H. and Santos, L.Q., “Sex Discrimination in Job Ads”.

The decline in recent decades of sex discrimination and segregation in recruitment ads can mean that more employers are applying objectivity in their actual hiring practices. Further research is needed to firmly establish the extent to which employers apply neutrality and fairness in their actual hiring procedures. A casual review of job ads in newspapers, though, shows that the practice of discrimination in recruitment is far from disappearing.

Employment statistics reveal gender segregation. For example, women are recruited in large numbers in the hotel and restaurant industries for lower paying jobs at the service levels, while it is rare to find women in the higher echelons of authority. A similar pattern appears to prevail in department stores. In semiconductor production (with an 80-90 per cent female labor force), mostly young and unmarried women are recruited for low-paid routine work under tough working conditions, and they are more often than not under the supervision of Filipino or expatriate men. (*See Box 3 under Chapter III: Equality Focus - Gender*).

Gays and lesbians also face discrimination in recruitment, as reflected in the national debate on the acceptability of homosexuals in the Philippine military.⁷⁷ In January 2004, the Lower House passed on third and final reading an anti-discrimination bill that prohibited masculinity tests in schools and workplaces. The bill seeks to penalize the discriminatory practice against gays and lesbians in such areas as employment, health services, education and public services.

The recruitment of differently-abled persons (DAPs) continues to be an area of discrimination, despite encouragement and incentives under the Magna Carta for Disabled Persons (RA 7277). This is documented by a landmark case of 43 deaf-mutes who were hired, according to their employing bank, “only temporarily and under special arrangements to accommodate requests from political and civic personalities.” Ruling in favor of the claimants, the Supreme Court ruled that the deaf-mutes were doing regular work and that the ability of doing a job was the only criterion for recruitment, terms and termination. Moreover it observed, that “the noble objectives of the Magna Carta for the Disabled were not based merely on charity and accommodation, but on justice and equal treatment of qualified persons, disabled or not.”⁷⁸

As for the civil service, the Civil Service Commission (CSC) has adopted various guidelines relating to equal employment opportunities.⁷⁹ Discrimination is seen as “any distinction, exclusion or preference made on the basis of gender, religious or political affiliation, minority or cultural extraction or social origin [and] has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.” This call for equality in civil service recruitment is backed by a set of guidelines to eliminate discrimination in government service and to promote, in particular, equal representation of women and men in third-level positions. Women are now holding 58 per cent of all positions in the civil service but only account for some 30 per cent of third level positions. The high profile position of chairperson of the CSC has been held by women currently and in two previous terms. Further progress in female representation in the higher echelons of the civil service would no doubt serve as a model for the private sector and society at large.

B. General Conditions of Employment

The Philippine Labor Code provides for basic workers’ rights and minimum conditions of employment for the private sector. Every employer is of course free and indeed encouraged to go beyond the minimum requirements (see Box 6) and grant better working conditions in the context of collective bargaining agreements (CBA) or individual contract agreements.

⁷⁷ Former senior officers have been quoted as saying, “There is no way we will accept gays in the armed forces. We cannot have in-betweens in the military. What we need are men or women.” Taking objection to the ban on recruitment of gays and lesbians into the military, legislators have called for tolerance and open-mindedness in military recruitment policies; according to their arguments, devotion to country and the ideas of courage and heroism are not a monopoly of heterosexuality and traditional gender. While acknowledging the absence of specific policy guidelines, the Chief of Staff recently explained to the author that disciplinary action would be taken in cases of criminal acts (sodomy). It was implied that persons with different sexual preferences would not be discriminated in the military.

⁷⁸ *Bernardo et al vs. NLRC*, 310 SCRA 187.

⁷⁹ Civil Service Commission (CSC) Resolution 89-463 of July 1989 on “Policy directions on Equality of Employment Opportunity”; CSC Memorandum Circular No. 8 of 1999 on “Equal Representation of Women in Third Level Positions in Government”.

Box 6 : Minimum Working Conditions

- security of tenure, subject to certain conditions
- freedom of association
- minimum wages as determined by the Regional Wage Boards
- 13th month pay (an annual bonus equivalent to one month's pay)
- overtime work (at a rate of 25 per cent on a normal day and 30 per cent on a holiday or rest day)
- night differential of 10 per cent
- holiday pay (at normal rate or plus 30 per cent if required to work)
- right to rest (i.e. 8-hour day and the right to refuse overtime)
- weekly rest of 24 hours after 5 continuous days of work
- right to meal periods
- right to organize into unions and bargain collectively
- annual "service incentive leave" of 5 days (after 1 year of service)
- women and minors should also receive special protection from discrimination and night work and should receive special facilities (e.g. separate toilet facilities)
- maternity leave of 6 weeks
- paternity leave of 7 days (as of July 5, 1996)
- emergency medical and dental services in firms with more than 50 people
- basic health and safety standards under the Occupational Health and Safety Code
- a basic Social Security System through:
 - the Employees Compensation Commission – a compulsory compensation fund based on employer contribution of 1% of employees' monthly salary. ECC covers all employees including contract workers with medical expenses and income at a rate of 90% of normal wage to a certain maximum in the event of a work-related accident, as well as funeral assistance
 - Social Security System (SSS) – provides up to 120 days of sick leave paid at slightly lower rates than regular monthly wages
 - protection from unjust termination of employment for "regular" employees (i.e. those employed past the probationary 6-month period)
 - retirement benefits of one-half a month's pay for every year of service

1. Security of Tenure

A key concept of the Philippine industrial relations system, security of tenure, is firmly rooted in Philippine constitutional and labor law. Article 281 of the Philippine Labor Code stipulates that, after six months, an employee who continues working should be considered a regular employee who is expected to perform work related to the "core" of the business. The status of regular employee carries with it all the benefits under the Philippine Labor Code and other possible advantages arising from provisions in the CBA and/or any special arrangements between the employee and the employer. For the employer's part, regular employment involves, not just the continuation of services by experienced staff, but also additional wages and benefits. Moreover, the security of tenure enjoyed by regular employees imposes restrictions in terminating the employer-employee relationship.

Complaints over violations of the constitutional right to security of tenure are a major cause for individual grievances, strained labor-management relations, administrative and court cases and media coverage. The widespread denial of deficits in security of tenure is now associated by labor and its representatives with the rapid rise in non-regular employment combined with discrimination on the basis of sex, age or disability. Available statistics on non-regular employment are scanty and do not differentiate according to sex, age, disability or ethnic origin, and concrete cases and trends on discriminatory denial of security of tenure are difficult to come by. However, the limited statistics, together with anecdotal evidence, suggest that young women and men, older workers, ITPs and disabled persons are suffering from discrimination on grounds of their personal characteristics.

Although non-regular employment in the form of part-time work, casual work or contractual work⁸⁰ is permitted under the law, it is said to be abused in order to avoid granting regular employment to workers “engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer.” Women tend to be affected by this more than men, at least in certain occupations. Typical cases of discriminatory contractual labor are the proverbial sales girls in department stores who are employed on consecutive five-month contracts, with breaks of one month in-between each contract—an arrangement that serves as a legal barrier to regular employment. Even though such sales girls do the same type of work as their regular female and male co-workers, they receive lower pay and work under substandard conditions. Similarly, women in the Economic Zones tend to work under less stable and favorable contractual arrangements than men, who are given preferential treatment as “breadwinners”. Older workers run the risk of being eased out or downgraded to contractual status in the event of a firm’s reengineering. In such cases, the chances of finding regular employment tend to be greatly reduced for older workers, unless they have occupational skills that are in high demand in the labor market.

**Table 14: Non-Regular Employment in the Philippines
as Percent of Total Employment⁸¹**

Year	Part-time	Casual	Contractual	Totals
1989	1.3	4.1	8.3	13.7
1990	1.6	3.7	8.2	13.5
1991	1.5	4.1	7.0	12.6
1992	1.5	4.1	10.0	15.6
1993	1.8	3.4	9.8	15.0
1994	1.5	4.3	7.9	13.7
1995	1.8	4.4	11.8	18.0
1996	2.0	4.1	12.3	18.4
1997	2.2	4.7	14.0	20.9

Source: DOLE-BLES Yearbook of Labor Statistics, 1997

Some employment agencies have come under harsh criticism for undermining security of tenure. While, in some cases, their legitimate business may be the provision of security and domestic services directly related to the core business of their client companies, some have been branching out by offering the services of mostly female sales personnel, office staff, nurses and medical aides, factory workers and promotional staff. Such manpower agencies allegedly maintain a pool of workers to meet demand for these types of services on a regular basis. While an agency may have a direct contractual relationship with its client, the workers in its pool are hired and fired by the agency under contractual/casual arrangements, without security of tenure or social benefits, and with limited chances for regular employment.

“Labor-only” contracting is also being blamed by labor as a vehicle for replacing regular workers with casuales and contractuales. It is alleged that labor-only contracting is a discriminatory device used to avoid a direct and regular employment relationship between worker and principal, and basically amounts to the supply

⁸⁰ A contractual worker works for a fixed-term contract, while a casual employee has an open-ended contract but is terminated before completing 6 months of service. The main forms of contractualization are contracts for less than 6 months (the notorious “555 system”), seasonal employment, apprenticeship and working less than 8 hours a day. Casual labor is common in farms, agri-business, manufacturing, services and work in export-oriented manufacturing.

⁸¹ Contractualization has emerged as an increasingly widespread practice, rising from 8.3 per cent in 1989 to about 14 per cent of employment in 1997. Non-regular employment numbered 11 million workers or 35 per cent of total employment as compared to 20.9 per cent in 1997. A variety of reasons may be responsible for this trend towards non-regular work arrangements: employers’ intentions to respond quickly to changing market demands, fluctuations and uncertainties, need for specialized skills for limited periods of time, cost-cutting and avoidance of workers’ demands. (DOLE, *Factbook on Labor and Employment*, December 2003)

or leasing of manpower. While a direct contractual relationship exists between the principal and the subcontractor, the workers have a direct work relationship only with the subcontractor. In this way, remuneration and benefits of contractuels can be kept well below those of regular workers who are doing the same job in the company. Trainees and apprentices are often even worse off, because they receive lower than minimum wages and are not eligible to join unions. To the employer, contractualization means cheap labor, because contractual workers do not enjoy social security, retirement benefits and other benefits under the Labor Code. But for the worker, it amounts to insecure employment and precarious living and working conditions.

Following very vocal representations made by the labor sector against what it considers discriminatory abuses of regulations on labor-only contracting and other forms of flexibilization, the DOLE has revoked the dubious regulations. On the other hand, government interventions and court rulings have tried to answer employers' concerns over productivity and competitiveness while protecting the legitimate rights of the workers.⁸² But formal prohibition does not necessarily mean that established discriminatory practices have disappeared altogether.

2. Wages

Wages are the compensation for services that workers render employers under various forms of contractual arrangements. Wages are a key element in the overall employment package described in Box 6. For a majority of workers, wages are the main, often the only, monetary income. Therefore, the role of wages as a source of livelihood cannot be overestimated.⁸³

To the state, wages are important instruments for promoting equality. For this reason, the state has taken a strong hand in upholding the principle of equal remuneration for work of equal value by women and men.⁸⁴ The state plays a major role in fixing, protecting—and, to some extent, monitoring—wages in the private and public sectors. In the private sector, wages are established through negotiation between labor and management, taking into account a bottom level of minimum wages established by law. In the public sector, wages are fixed by law through the Wages Standardization Act, with some exceptions applying to specialized agencies like the Social Security System (SSS) and the Government Service Insurance System (GSIS).

Wage discrimination is a common occurrence despite the fact that equal pay for work of equal value was firmly established in the Constitution of 1987.⁸⁵ The constitutional provisions on “fundamental equality before the law of men and women” are echoed in the Philippine Labor Code (PLC). The PLC considers as an act of discrimination “payment of a lesser compensation, including wage, salary or other forms of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value.”⁸⁶

Philippine female workers in the private sector receive between 16 to 21 per cent less pay than their male counterparts for work of equal value, with the lowest wage gap at the managerial and executive levels (16.3 per cent), as well as in production and construction (17.7 per cent). The differential is highest among male and female workers in agriculture, fisheries and forestry (See Table 4 in Chapter III: Gender). The relatively narrow wage gap at executive levels may be due to several factors. First, occupational segregation limits women's access to top-level jobs, and those that break through the glass ceiling are highly skilled and motivated, perhaps able to negotiate and secure wages equal to those of men. Second, at executive levels, remuneration often takes the form not only of wages but also of company perquisites such as bonuses, provision of transportation and drivers, cellular phones and so on. Finally, the amendment in 1989 of the Philippine Labor Code prohibiting female discrimination in employment (RA No. 6725) may be helping to protect educated women in the formal sector.

⁸² Examples are the directives to contain labor-only contracting: the Implementing Rules on TESDA Act of 1994 to eliminate abuses of the apprenticeship system and Supreme Court rulings on probationary and seasonal work. Also see Gert Gust, “A Note on Employment Security in the Philippines,” *Philippine Journal of Labor and Industrial Relations* Vol. XIX - XX (UP SOLAIR, 1999-2000).

⁸³ However, the actual minimum wage is way below the “living wage” provided for in the Philippine Constitution: in the National Capital Region, minimum wage (non-agricultural) is set at P280 per day. Living wage is actually P562 per day. (Source: DOLE Factbook 2003)

⁸⁴ PLC, Article 135.

⁸⁵ Philippine Constitution of 1987, Article II, Section 14 - Declaration of Principles and State Policies.

⁸⁶ PLC, Article 135a.

Below executive levels, many young people experience wage discrimination on account of their age. Surveys suggest that the income of a majority of young workers is below the national poverty threshold. For many young women, not even a college education can guarantee minimum wage payments.⁸⁷

Wage discrimination on account of nationality and gender has been reported for Filipino, Thai and Indonesian domestic helpers (FDHs) in Hong Kong. A survey of 2,500 FDHs has revealed a strong correlation between wage violation, nationality and gender.⁸⁸ But wage discrimination was less prevalent for Filipino men and women than for other nationalities. Male domestic helpers, a small minority in the sample, experienced less wage discrimination than women.

By providing for a minimum wage for disabled persons of 75 per cent of the standard rate for able-bodied persons, the Magna Carta for Disabled Persons may inadvertently have opened the door for discriminatory wage differentials for persons with a disability. Therefore, necessary amendments of the law count among the main priorities of the disabled and their representatives.

Generally, the reduction, if not elimination, of wage discrimination according to sex, age, migration and disability remains a major challenge for policy makers, and employers' and workers' organizations.

3. OSH

In the Philippines, Occupational Safety and Health (OSH) protection is an area with strict standards but widely varying compliance. The special OSH hazards and needs of women are reflected in Philippine labor law with regard to maternity, reproduction, ergonomics, rest facilities, etc.⁸⁹ These provisions echo relevant international guidelines by the ILO and the UN, which recognize the right of women to OSH protection at work in order to safeguard their reproductive roles and emphasize the prohibition of discrimination on grounds of pregnancy, maternity or marital status.

According to the Occupational Injuries Survey of the DOLE in 2000, 13.4 million out of 28.2 million workers were working in hazardous establishments. One out of 88 workers sustained an injury while at work, one work-related death was reported for every 12,500 workers, and one out of every 89 workers was temporarily incapacitated. These figures may reflect, not only inadequate prevention in the workplace, but also lack of compliance with OSH standards by the formal sector.

Available data on work-related injuries, illnesses and deaths do not differentiate according to sex. There is, however, reason to believe that women are more exposed to OSH hazards and/or discrimination in certain occupations where women are highly represented. This is the case in manufacturing (80-90 per cent), in the semiconductor industry, in teaching (90 per cent), in sales, entertainment, hotel and restaurants.

In manufacturing, sales or entertainment, where women are especially concentrated, there have been reports of discrimination against female workers on the basis of marital status, pregnancy, sexual harassment or the absence of child care facilities in the place of work to which they are entitled under the law. A widely publicized example of discriminatory gender-specific OSH hazard exposure occurred in 2000 with the outbreak of Stevens Johnson Syndrome (SJS) among Filipina workers in electronic plants employing large numbers of women in Taiwan and the Philippines. Multiple symptoms resembling third degree burns, hepatitis, fever and a general depression of the immune system of several dozen afflicted women resulted in the death of five victims, with others suffering from after-effects.

Concern for the vulnerability of women to OSH-related hazards and discrimination has led to research, policy review and improved access to services for women at work.

⁸⁷ UN-ESCAP-ECOSOC, *Youth in the Philippines* (New York, 2000).

⁸⁸ Asian Migrant Center and Coalition for Migrants Rights, "Baseline Research on Racial and Gender Discrimination Towards Foreign Domestic Helpers in Hong Kong" (Hongkong, China, February 2001). <<http://www.asian-migrants.org/cgi-bin/countdown.cgi?habdiscr2000-report-circulated-final.zip>>

⁸⁹ Philippine Labor Code, Article 132.

In 1998, a research agenda for Filipina women at work was launched, based on consultations between the OSHC, social partners and interested NGOs, as well as an analysis of data from the Employees' Compensation Commission (ECC). The focus was on the health and safety implications of exposure to toxic substances, on preventive measures against tuberculosis among Filipino teachers and generally on the prevention among women workers of life- and workstyle-related diseases like cardiovascular disease, HIV/AIDS and alcoholism.

At the first National Conference on Occupational Safety and Health Concerns of Women Workers organized in 1999 under OSHC auspices, the review of OSH-related problems and discrimination facing women workers ranged from an analysis of gender sensitivity of OSH standards and related laws to the physical, chemical and psychosocial hazards in workplaces where women abound.

Recognizing the enormity of gender-related OSH and equality issues, a Conference Resolution called for special attention to the OSH needs and requirements of women workers in the context of the on-going review of the Philippine Labor Code, and urged the effective enforcement of laws and policies on OSH and the sensitizing of policy makers, as well as employers' and workers' organization to the special needs of women. The Resolution also advocated special protection for female child workers and young women workers in line with the Convention on the Rights of the Child and ILO Convention 182 on the Worst Forms of Child Labour.

The DOLE, like all government agencies, is required to allocate 5 per cent of its budget resources for gender mainstreaming activities. These include activities such as updating OSH standards and enforcing them for the benefit of women.

While progress has been made in recent years in terms of OSH protection of women in the formal sector, more scope exists for improving the synergy among concerned governmental and nongovernmental agencies and organizations to adequately address gender inequalities in OSH protection and delivery.

Meanwhile, the situation remains precarious for vulnerable groups in the bulging informal sector. Workers in the informal sector—including large numbers of women, young workers and child laborers—are exposed to a wide range of hazards, to exploitation and discrimination. Discrimination against these groups of workers in terms of prevention and access to health services exists in the areas of legislation, social protection, occupational safety and health services.

Unlike the formal sector, the informal sector is not covered by inspection, preventive services or enforcement. In recent years, assistance from the ILO, UNDP and bilateral sources has enabled DOLE/OSHC to develop and test methods of intervention on which expanded services to the informal sector, in particular women and children, could be based.

4. Psychosocial Environment

Equality at work means a safe and healthy psychosocial environment. In the Philippines, as elsewhere, psychosocial problems have emerged as a major concern in workplaces in the private and public sectors. Many of them are rooted in discrimination.⁹⁰

Manifestations of psychosocial problems like harassment, exclusion or violence, unfair treatment, mobbing or bullying can be traced to prejudice, intolerance and other discriminatory causes. Left unchecked, these causes and manifestations tend to reinforce each other, leading to loss in motivation and productivity, as well as increased cost for counseling, treatment or rehabilitation.

⁹⁰ Psychosocial factors at work, according to ILO definition, refer to interaction between the work environment, job content, organizational conditions on the one hand and workers' capacities, needs, culture and personal extra-job considerations on the other; this interaction may influence, positively and negatively, individual workers' health, work performance and job satisfactions well as workplace cooperation and a firm's productivity and profitability. See Dulce Estrella-Gust, *Psychosocial Factors and Problems in the Workplace*, p. 4.

A survey of some 70 human resources practitioners and post-graduate students in Industrial Relations has thrown further light on psychosocial problems at work and related equality issues.⁹¹ Ninety per cent of respondents reported a very low, almost negligible, incidence of physical violence at work from co-workers or clients. In contrast, mental violence was believed to be fairly common in the form of bullying, gossip, being ignored or receiving unwanted sexual attention.⁹²

Republic Act No. 7877 of 1995 on Sexual Harassment stands out as a special law designed to address key psychosocial problems at work. Surveys and testimonies have confirmed that sexual harassment at work is perceived as a widespread problem. Although the law was passed almost a decade ago, there are as yet no systematic studies on the phenomenon, nor are there national data on the incidence or prevalence of sexual harassment.⁹³ Implementation of the law has remained weak, despite guidance and advocacy by public sector agencies like the CSC or DOLE-Bureau of Women and Young Workers (BWYW) and the promotion of company policies and implementing rules by employers' and workers' organizations such as ECOP and TUCP. Respondents to a survey covering 43 unionized and 291 non-unionized establishments from different regions of the country cited as reasons for poor implementation the following:

- lack of awareness or information;
- lack of guidelines;
- lack of interest on the part of management;
- refusal of victims to cooperate;
- a company culture condoning sharing of sexually explicit jokes about women; or
- the ineffective role played by government in implementing the law.

To develop RA 7877 into an effective instrument for containing sexual harassment at work, remedial action can and must be taken in various directions:

- Eliminating flaws in the law by extending the notion of sexual harassment beyond work, education and training in a formal work setting;
- Elaboration of judicial standards to guide lower courts and administrative agencies in deciding sexual harassment cases;
- Effective monitoring of compliance, data collection and analysis by public and private agencies; and
- Full commitment of employers' and workers' organizations to issue and monitor implementing guidelines.

The survey results, however limited, could broadly help the understanding of the psychosocial environment in larger firms and units in the private and public sector. While physical violence may not be tolerated and remains the exception, various forms of mental violence such as sexual harassment, mobbing, etc., are still far from being addressed.

The fight against sexual harassment and other forms of aggressive acts must be taken to the company level. It could be part of a policy on No-Tolerance to Harassment and other psychosocial problems at work. Ideally, progressive managers and workers' representatives should closely cooperate to create a company culture where harassment cannot thrive and the disruptive and demoralizing effects of unsolved psychosocial problems at work can be prevented. Many employers have taken pro-active initiatives or are planning to do so (Box 7).

⁹¹ Christine Samala, "A Survey of Psychosocial Problems at Work and the Implications of SOLVE's Integrated Approach" (October 2003).

⁹² *Violence at the workplace*: Physically or mentally aggressive behavior of a perpetrator towards a victim at the workplace *Bullying, Harassment*: Any action or behavior at the workplace that is considered offensive by the recipient *Sexual Harassment*: Unwanted sexually-oriented conduct at the workplace committed by a co-worker or a person in authority such as physical contact, lewd remarks, display of sexist or pornographic images, indecent proposals etc. *Mobbing*: Systematic hostile communication about a co-worker to erode his/her reputation, integrity or morale through slander, rumors, abuse, demeaning treatment, etc. *Discrimination at the workplace*: Any employment practice that disadvantages a worker or a category of workers on the basis of some attribute of the individual or group like race, gender, nationality, disability, religious belief, etc.) resulting in unfair treatment in connection with recruitment, promotion, termination, remuneration etc.

⁹³ Evalyn G. Ursua, "Addressing Sexual Harassment in the Workplace: The Philippine Experience" (Manila, 2001).

Following principles of good governance and corporate social responsibility, larger firms could do much towards propagating “no-discriminatory ideas and practices” among their subcontractors, suppliers and clients in the informal sector. Appropriate support mechanisms (e.g. grievance procedures, ombudsperson, counseling,

Box 7 : No-Tolerance to Harassment

All employees are entitled to work in a harassment-free environment. The harassment of one employee by another (e.g. unwelcome verbal, visual or physical taunts or pranks) is a serious violation of company policy. If harassment occurs on account of the victim's sex, age, race, religion or disability, the situation is more than serious. Sexual harassment is a criminal offence under Republic Act No 7877.

The company will not tolerate harassment of its employees by co-workers, supervisors, vendors or customers. If you feel victimized by harassment, you should firmly request that the offender ceases his/her action. If the harassment persists, you should report it immediately to your supervisor. (As an alternative, you may feel more comfortable reporting the situation to your Human Resources representative).

All charges of harassment will be investigated promptly and thoroughly, and the offending employee will be subject to corrective action, up to and including termination.

Employees filing a report of harassment should rest assured that there will be no reprisals for submitting such report, that all reports and allegations will be kept confidential to the fullest extent possible and that they will be appraised of the results of all investigations.

Source: Excerpt from Moog Controls Corp. Employee Handbook, 1999

legal advice) could be put in place to contain existing and latent psychosocial problems and to address effectively discriminatory causes and manifestations. Early diagnosis of existing problems and determined action by management, in consultation with representatives of labor, would significantly contribute to fair treatment and equality at work.

There is conclusive evidence that psychosocial problems at work are frequently interrelated and, if unchecked, tend to be mutually reinforcing. For example, harassment or exclusion at work may lead to stress, alcohol or drug abuse, unsafe sex, HIV/AIDS and discrimination.

Under the acronym, SOLVE (**S**tress, **T**obacco, **A**lcohol & **D**rugs, **H**IV/AIDS, **V**iolence), an appropriate training methodology has been developed under ILO's global SafeWork Program. Since 2003, SOLVE has been tested in the Philippines under OSHC and UP SOLAIR auspices and necessary adaptations have been made to meet local requirements. SOLVE has been found most suitable for developing the capabilities of managers, supervisors, HR practitioners, union leaders and other concerned individuals in the private and public sectors to address real or potential psychosocial problems at work in a comprehensive manner and to facilitate preventive or corrective action. A corps of qualified trainers is now available under OSHC auspices for wider application of SOLVE in the public and private sectors in the Philippines.

C. Promotion

Promotion is the assignment of an employee to a job with a higher level of responsibility, authority and accountability. It usually goes together with higher status and income. Promotion is also associated with personal challenges and the development of individual talents and capabilities.

While constitutional and labor law does not specify any such entitlement to promotion, it emphasizes in general the effective mobilization of all human resources on the basis of equal opportunity and non-discrimination.⁹⁴

⁹⁴ Philippine Constitution of 1987, Art. XIII, Sec. 3 (Labor) and PLC Article 135.

In the private sector, the promotion of individual employees remains first and foremost the prerogative of the employer, provided there is no discrimination on grounds of sex, disability or ethnic descent. Ideally, to enhance equality of opportunity and the selection of the persons best suited for particular senior positions, employers apply objective selection criteria and procedures, ranging from technical competencies to personal attitudes. Transparency in the establishment and application of these criteria and procedures, for example through labor-management consultations, would ensure objectivity in the selection process and preempt suspicion of bias or discrimination.

In reality, however, promotion is often surrounded by suspicion of unfair treatment fueled by allegations of discriminatory preference or prejudice related to sex, marital status, family and social background and networks, as well as school and fraternity connections.

Various reasons have been given to explain why women are often bypassed in promotion and are therefore under-represented at senior levels in the private and public sectors, in the judiciary, academe and even in elected positions (from town councilor to senator):

- during their formative years, women receive less investment that would qualify them for promotion (neo-classical view);
- because of occupational and industry segregation, women largely compete among themselves for relatively few jobs with lower pay, have less job security and limited opportunities for advancement (market segmentation);
- women are concentrated in occupations with limited career prospects like teaching, nursing, manufacturing, etc. (gender stereotyping);⁹⁵
- in their 30s and early 40s, when major strides are being made in individual careers, women have to divide their energies between work and domestic demands (multiple burden); and
- men receive preferential treatment, based on perceptions of them as actual or potential breadwinners, better leaders, workers, decision-makers or other qualities unfounded in evidence.

According to the Philippine Constitution, the state should provide facilities and opportunities for women “to realize their full potential in the service of the nation.”⁹⁶ In the private sector, the Philippine Labor Code prohibits discrimination in promotion on grounds of sex. This is echoed in many corporate policies and codes of conduct.

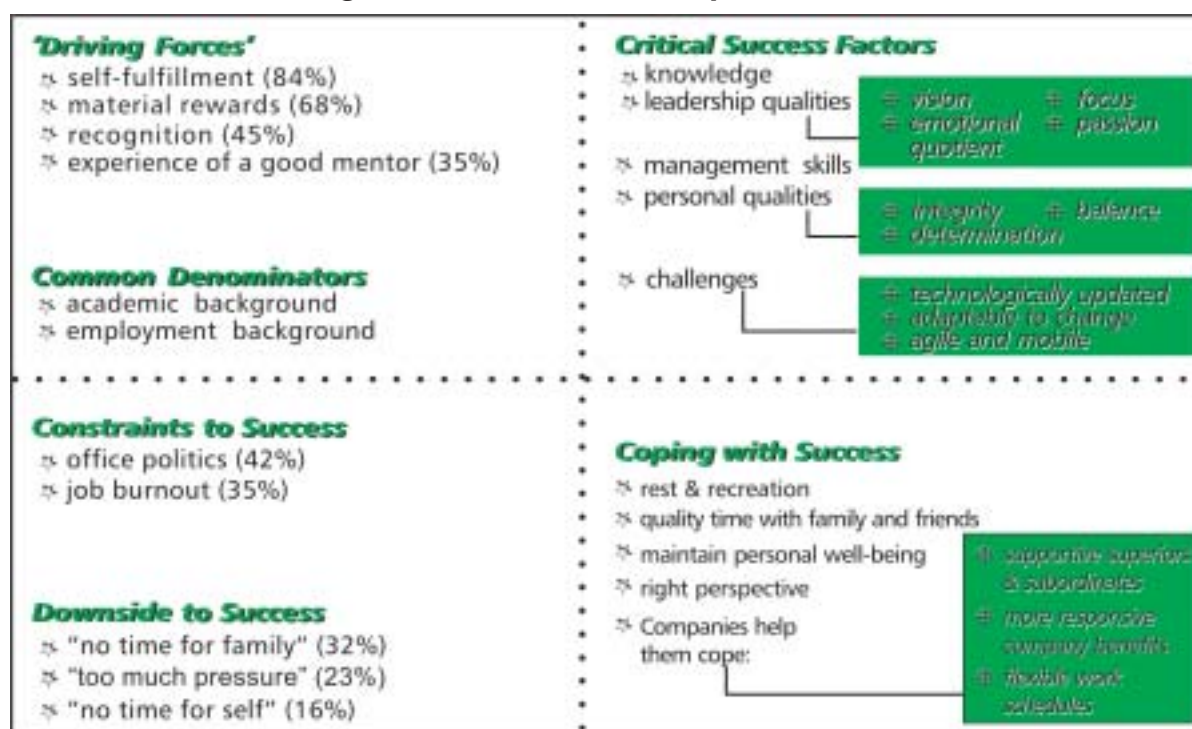
Increasing numbers of women have gone a long way towards improving their career prospects through education. Statistically, in terms of educational attainment, women are doing better than their male counterparts, especially at the college level. Better educated and highly motivated women appear increasingly well-equipped for rising to senior levels.

And yet, women continue to experience considerable difficulties in progressing to senior positions. This is reflected in the popular notion of a “glass ceiling”, where women reach a certain level of responsibility, but fail to progress to the top due to an invisible barrier: while they can see the top, they are denied access despite being qualified to higher rungs, usually for unexplained reasons such as sex prejudice, old-boys network, office policies, etc. Figure 12 gives a broad overview of the challenges, rewards and drawbacks that women achievers often experience in their careers.

⁹⁵ Armida Pobre, “Women Manager, Breaking the Barrier,” UP SOLAIR term paper (unpublished), 2000.

⁹⁶ Philippine Constitution of 1987, Art. XIII, Sec. 14.

Figure 12: Profile of a Filipina Achiever



Source: Guevara, Carmen T., President of HIRE

Under-representation of women in senior positions may not only reflect biases in corporate career policies and cultures, but may be attributed also to biased recruitment practices reflected, for instance, in gender-biased job advertisements. That many young women, even with college education, land jobs at minimum wage levels and usually below their male counterparts, suggests some form of discrimination already at the entry point to employment. Starting at a disadvantage upon entering employment, young women may experience great difficulties in entering a career path that puts them at par with their male counterparts; and initial disadvantages can accumulate and increase over the course of their careers.

Unfulfilled expectations of their career potential and of prospects in their chosen professional career may lead young educated women to opt for migration, even at the cost of foregoing their considerable investment in education. This is reflected in Figure 13, showing that Filipino domestic helpers surveyed in Hong Kong on the average are college graduates.

Figure 13: Profile of a Filipino Domestic Helper in Hong Kong

- Average Filipino foreign domestic helper (FDH) is a woman.
- 33 years old.
- Single (never married).
- University graduate.
- Worked for almost 5 years as FDH in Hong Kong.
- Worked with her current employer for 5 years.
- Compared to the overall FDH population, Filipino FDHs are on the average a bit older, have stayed longer and have reached higher formal education.

Source: Asian Migrant Center and Coalition for Migrants Rights, "Baseline Research on Racial and Gender Discrimination Towards Foreign Domestic Helpers in Hong Kong", Hongkong, China, February 2001

The denial, for whatever reason, of productive female employment and careers in the home country amounts not only to an enormous waste of talent and resources, but also to incalculable economic losses for the community as a whole. Employers' and workers' organizations need to set an example not only by opening up wider career prospects for women in the largely male-dominated senior echelons, but also by promoting female career development among their respective constituents and membership.

As the largest single employer in the Philippines, government has a large scope to ensure, through affirmative promotion policies, a wider representation of women in executive positions. Progressive concepts for female promotion in the civil service can also set standards for the rest of the world of work. Steps in the right direction are reflected in the policy on Equal Representation of Women and Men in Third Level Positions in Government issued by the Civil Service Commission (CSC) in 1999.⁹⁷ This policy seeks to promote gender equality at all position levels in the civil service and to ensure equal employment and development opportunities for government's human resources. More specifically, the CSC seeks to address inequities in gender representation at third level positions of the government, with a view to increasing the number of women executives. The policy encourages the nomination of both women and men whenever a vacancy occurs in third level positions. A Directory of "Women on the Move" was also created with the names and CVs of women in government and in the private sector who can be considered for Cabinet and sub-cabinet senior level positions.

So far, only 35 per cent of third-level positions are occupied by women; however, women are vastly overrepresented in the second level position. There appears to be no apparent direct discrimination in terms of pay when men and women work in the same job, as the Philippine civil service abides by the Salary Standardization Act, where salaries are fixed by law (but see earlier section regarding pay equity, p.24-25). However, any discriminatory denial of promotion would put a woman at a financial disadvantage compared to a male incumbent who is promoted to a senior level post on grounds of being male.

**Table 15: Distribution of Government Personnel in the Career Service
(by Sex & Level of Position), 1999**

Level of Position	Both Sexes	Male	Female
Total	1,250,510	45%	55%
First level	521,428	65%	35%
Second level	709,429	28%	72%
Third level	4,981	65%	35%
Non-executive career	14,672	90%	10%

Source: CSC Government Personnel Inventory, 1999
www.csc.gov.ph

⁹⁷ Civil Service Commission (CSC) Memorandum Circular No. 8, 1999.

Career prospects of certain disadvantaged groups, such as persons with disability, indigenous and tribal peoples, migrant workers or persons living with HIV/AIDS, have never been a concern of public or academic debate. Individually and as groups, they tend to be bypassed or ignored with regard to their aspirations and prospects for a meaningful career, here or abroad.

Although persons with disabilities and individuals of indigenous and tribal descent may experience tacit prejudice when it comes to promotion, there are also many examples where talented individuals may overcome existing prejudice and gain promotions in the private and public sectors.

For migrant workers, the issue of discrimination in promotion rarely arises, because a majority of migrants are young and enter fixed-term contracts for specific jobs with limited prospects for upward mobility. For example, the survey on discrimination in Hong Kong covers extensively various forms of discrimination but makes no reference to promotion. However, returning migrants or *'balikbayans'* tend to experience considerable barriers in reintegration, despite the broader professional experience they have acquired.

The situation is different and more promising with regard to Filipino seamen, who can aspire to careers in international shipping, apparently with little discrimination on grounds of nationality and age. According to a recent survey⁹⁸ (with senior officers accounting for 8.7 per cent of the sample, junior officers for 19 per cent and ratings for 72.2 per cent), the average age for senior, junior officers and ratings is between 36 and 44 years; the average job search is 7.3, 6.8 and 7.3 months, respectively. This may reflect labor market demands for different categories of seaman, but may also speak against an age bias in the promotion of older seamen.

D. Termination

Discriminatory termination of employment occurs when an employer discharges an employee before the end of contract or before the employee reaches the statutory retirement age (normally 65 years) on such grounds as sex, age, HIV/AIDS affliction, affiliation, belief or ethnic origin.

Discriminatory termination is proscribed by general constitutional rules calling for full protection to labor, local and overseas, and equality of employment opportunities for all. Special legislation attends to the specific needs of disadvantaged workers or groups of them. For example, the Labor Code makes a strong case for it by prohibiting discriminatory termination or suspension of female workers when getting married or pregnant.⁹⁹ In the case of termination of disabled persons, an employer has to prove that the disabled person in question impairs the satisfactory performance of the work involved to the prejudice of the business entity.¹⁰⁰ Indigenous and tribal peoples are protected against discriminatory discharge on account of their descent.¹⁰¹ In case of termination of overseas employment without just cause as defined by law or contract, the principal/employer and the recruitment/placement agency are liable for money claims.¹⁰²

In the following two cases, the Supreme Court ruled on incidences of discriminatory termination on grounds of sex and disability, respectively:

- In one particular case, the employer had fired a female employee (a nurse), allegedly because of gross and habitual neglect of duty, serious misconduct, fraud and willful breach of confidence. In its decision, the Supreme Court took into account the fact that the employee had only refused to carry out assignments not related to her regular work and that the employee had been sexually harassed by the employer.

⁹⁸ Maragtas Amante, S.V., "Philippine Global Seafarers in the Rough Seas" (Manila 2003).

⁹⁹ PLC, Article 136 and 137.

¹⁰⁰ Magna Carta of Disabled Persons, Sec. 32 (g).

¹⁰¹ Magna Carta of Indigenous Peoples, Sec. 23 and 24.

¹⁰² Magna Carta for Migrant Workers, Sec. 10.

- In another case, the employer had terminated a female employee for “dishonesty”, despite her good performance, when the company found out that during her employment she had married and borne a child without informing the firm. The Supreme Court ruled in favor of the claimant, taking the dishonesty charge as a pretext for dismissal and that the company had in fact a policy discriminating against the employment of married women.

The above cases suggest that employers sometimes claim legitimate termination for “just cause” such as serious misconduct, fraud, disobedience, etc., when in reality the reason given serves as a cover-up for discriminatory termination on grounds of sex and sexual harassment. An unknown number of the several thousand cases of termination handled annually by the labor justice system may contain elements of discriminatory termination. In the absence of any segregated statistics and specific guidelines, much discriminatory termination may go unnoticed.

In recent years, massive mergers, restructuring and reengineering of companies brought on lay-offs, termination and “creative” separation schemes. While the bulk of terminations was legal, there were more questionable schemes designed as “encouragement” for voluntary separation of usually older workers and/or those whose jobs were targets of reorganization, outsourcing and the like. To protect older workers, the Supreme Court has consistently ruled that dismissal on account of economic and related reasons must consider seniority and length of service as factors in determining the lay-off of workers.

A particularly objectionable and discriminatory practice of so-called “legal” termination is the “voluntary” resignation of an employee provoked by bullying, harassment or mobbing. Rarely reaching the courts, such a practice is popularly known as “constructive dismissal.” Other employers may proceed with illegal dismissals on the premise of “terminate now, pay later”—after a decision has been made by the arbitrators.¹⁰³ Long delays in arbitration and court cases, and large expenses on the part of the worker amount to a denial of equal treatment of workers.

Despite legal protection and pro-active court decisions, termination remains a major subject of controversy in labor-management relations. In the final analysis, equitable solutions depend on the willingness and commitment of the social partners to determine and apply the parameters of fairness and non-discrimination at work, whether this applies to recruitment, conditions of employment, promotion or termination.

Dismissal and retrenchment are traumatic experiences for the individual worker and the workforce as a whole. Organizations and enterprises that are unprepared to handle separation and post-employment concerns may face such undesirable consequences as allegations of discriminatory practices, worker hostility, anger or demotivation. There is evidence that firms with well-developed programs and mechanisms for work force reduction are able to minimize negative effects related to employee separation.¹⁰⁴

¹⁰³ Juan Amor Palafox, “Recent Developments in Termination of Employment and Anti-Discrimination in Law, Collective Agreements and Jurisprudence in Selected Countries in Asia and the Pacific” (Manila, 2003).

¹⁰⁴ Jorge V. Sibal and Rosalinda Mercado, “The Practices of Selected Companies in Managing Workforce Reduction, Employee Separation and Other Post-Employment Concerns” UP SOLAIR.

Chapter V: Implementation

Implementation means compliance, in letter and in spirit, by individuals and/or collectives with mandatory or voluntary standards related to equality at work.

Philippine social partners—government, employers’ and workers’ organizations and civil society—have gone a long way towards promoting various modalities of implementation, including legislative, administrative, facilitative and adjudicative measures, as well as voluntary compliance (see Table 14). Laws, plans, policies and similar arrangements are directly or indirectly related to equality at work, and range from general provisions in the Philippine Constitution and Labor Code to special legislation. Several provisions specifically describe and ban discriminatory practices and/or call for stiff sanctions, for example, RA No. 8504 on AIDS prevention and control.

Table 16 shows the implementation modalities and responsibilities for enforcement but cannot give more than a very broad overview for several reasons:

- Implementation modalities and responsibilities are shared among a large number of government agencies and commissions, private sector organizations and the labor justice system, each of which often operate independently of the others;
- In the absence of one focal point or coordinating entity for equality and non-discrimination at work, there is little systematic collection, analysis and dissemination of information;
- Human and financial resources fall short of minimal requirements for effective enforcement;
- The commitment and drive for effective implementation is very uneven, differing considerably among individual entities in the public and private sectors; and/or
- While a few spectacular cases on enforcement handled by the administration or the courts make the headlines, uncounted cases may go unnoticed or remain unattended to.

Table 16: Implementation, Modalities & Responsibilities

Intervention	Action by	Measures
Legislative	Congress	Ratification/denouncement of ILO Conventions Legislation on equality matters
Administrative	Government units: DOLE, CSC, NEDA, DSWD in cooperation with stakeholders	General/technical labor inspections Department Orders Medium-Term Development Plans for Gender, Youth, Migrants, etc. Appropriations for projects benefiting gender, disabled persons, etc. Incentives (disabled) Sanctions Statistics Labor Standards Enforcement Framework
Facilitative/Consultative	Tripartite Industrial Peace Council (TIPC) Public units and services: CSC, NCMB, Commissions on HIV/AIDS, Gender, Youth, etc. Employers' and workers' organizations, private units and services (NGOs and consultants)	Tripartite consultation Conciliation, mediation, voluntary arbitration, grievance procedure, Committees on Decorum and Investigation (CODI) Ombudsman Guidance, advocacy, technical services CBA, CNA, LMC
Adjudicative	Secretary of Labor and Employment National Labor Relations Commission Court of Appeals Supreme Court	Compulsory arbitration Court decisions Sanctions
Voluntary compliance	Individuals/cause-oriented groups (NGOs) Firms	Advocacy, guidance, lobbying Policy and programs Codes of conduct Self-assessment CBA, grievance procedure, LMC

The following paraFigures (in the original) deal with selective aspects of the five categories of intervention, namely, *legislative action*, *administrative intervention* (labor inspection, Labor Standards Enforcement Framework), *facilitative/consultative intervention* (conciliation, mediation), *adjudicative intervention* (arbitration) and *voluntary compliance* (joint labor-management enforcement through CBAs and LMCs).

These individual categories of intervention should not be seen in isolation. In practice, there exists a close and complementary relationship, for example, between legislative action and adjudicative measures or between administrative action (labor inspection) and voluntary compliance (self-assessment).

A. Legislative Intervention

As a member of the UN, the ILO and other international bodies concerned with human rights, the Philippines is committed to applying, in national law and practice, concepts of equality embodied in international declarations, conventions or covenants. For example, having ratified ILO Conventions No. 100, Equal Remuneration Convention, 1951 and ILO Convention 111, Discrimination (Employment and Occupation) Convention, 1958, the Philippine government is committed to establishing a national policy and mechanisms for applying the policy of equality at work in cooperation with stakeholders, especially worker and employer organizations. Naturally, however, such policy and related implementation mechanisms must be attuned to special conditions in the country.¹⁰⁵

Annex 2 gives an overview of the range of laws, plans, policies and guidelines directly or indirectly related to equality at work, ranging from the Philippine Labor Code on non-discrimination of women in employment to special legislation protecting vulnerable groups like indigenous and tribal peoples, people living with HIV/AIDS or migrant workers. Many of the laws establish procedures to be followed in enforcement and identify the bodies responsible for monitoring compliance and issuing sanctions. Having evolved over the past decades, sometimes in response to intense lobbying by cause-oriented groups (e.g., on sexual harassment, HIV/AIDS), legislation on equality at work nevertheless contains gaps (e.g., concerning older workers or gays) and may even be discriminatory (e.g., in the remuneration of disabled persons). A comprehensive review of legislation and implementation rules related to equality and non-discrimination at work may be overdue.

B. Administrative Intervention

Labor inspection stands out as a statutory administrative procedure where enforcement of general and technical labor standards in the formal sector is being monitored on a systematic basis. Labor inspection in the Philippines, however, is not currently specifically mandated for monitoring equality at work as, for example, the underpayment of women workers. Labor inspectors have been briefed on sexual harassment and are expected

Table 17: Implementation of Labor Standards

General Labor Standards	2002	2003
	Totals	
Establishments inspected	32,363	21,341
Establishments with violations	16,313	8,617
- compliance rate upon inspection (%)	49.6	59.6
- compliance rate on minimum wage upon inspection (%)	77.7	85.0
Establishments with violations corrected on field	3,926	2,425
- as % of establishments with violations	24.1	28.1
Workers benefited by plant corrections	67,747	49,100
Amount of field restitutions (P300)	42,854	25,489

Source: DOLE Factbook, December 2003

¹⁰⁵ ILO, *International Labor Standards: A Global Approach* (Geneva, 2002).

to report such cases. But since inspection is limited to companies with 10 or more workers, the informal sector with fewer employees effectively remains outside its enforcement mandate. Table 17 gives an indication of the focus of labor inspection with regard to general labor standards and the corresponding data.

DOLE's new Labor Standards Enforcement Framework¹⁰⁶ offers a window of opportunity for monitoring equality at work in the formal and informal sectors. Established by the DOLE in 2004, it is designed to strengthen and complement existing mechanisms of labor inspection and to ensure compliance with labor standards through a package of interventions, namely:

- self-assessment on the basis of standard checklists by establishments with at least 200 workers, as well as unionized establishments with certified collective bargaining agreements, regardless of the number of workers;
- inspection in workplaces with 10 to 199 workers; and
- advisory services for workplaces with less than 10 workers and those registered as Barangay Micro-Business Enterprises (BMBEs).

This framework promoting voluntary compliance is a welcome development and can supplement, but not necessarily replace labor inspection covering the formal sector, to ensure compliance with labor standards. The introduction of gender and age-related elements in guidelines, checklists, inspection requirements and advisory services would sensitize employers, workers and administrative staff to equality at work. At the same time, it would generate information that could be used in the introduction of corrective measures and policymaking. Combining elements of administrative intervention with voluntary compliance would likewise bring about closer cooperation between the public and private sectors in making equality at work a greater reality in practice.

C. Facilitative Intervention

As the following examples show, implementation, however limited, is possible through sustained facilitative efforts in the public and private sectors:

- Of the 38 complaints on sexual harassment received from 1994 to 2000 by the Civil Service Commission (CSC), 14 cases were dismissed for various reasons, 15 respondents were terminated from the service, seven respondents were temporarily suspended and two were acquitted.
- The TUCP has initiated Development Action for Women Coalition (DAWN), which promotes the enforcement of RA No. 7877 at company levels through advocacy and awareness raising. The union claims that, by 2002, some 250 unions/firms had created Committees on Decorum and Investigation (CODI) and formulated related policies. Some 430 sexual harassment cases were being investigated by the committees and 20 complaints were being finalized. Eventually, eight CBAs included anti-sexual harassment provisions.

Clear guidelines, appropriate methodology and machinery, combined with sustained efforts, hold promise for successful implementation. At the same time, however, both alleged victim and perpetrator must be protected from spurious allegations.

¹⁰⁶ DOLE DO No. 57-04: Labor Standards Enforcement Framework.

D. Adjudicative Intervention

Annually, a large volume of cases go through the labor justice system (for example, in 2003, 10,850 cases were newly filed, 13,977 handled and 11,304 cases were disposed of). However, the statistics do not specifically identify cases related to equality or discrimination at work. Also, no research is available on the subject.

A brief review of Supreme Court decisions over the past few years led to the identification of about half a dozen cases closely related to discrimination at work. Most of these SC landmark decisions referred to in this paper had originated from different entry points in the administrative departments and the judiciary, and had been previously handled by more than one of the main components of the labor justice system, including the DOLE, NCMB, NLRC and/or the Court of Appeals.

Since the National Conciliation and Mediation Board (NCMB) and the National Labor Relations Commission (NLRC) are the main entry points of the labor justice system, their present and potential role in handling and disposing of discrimination cases is most important.

The NCMB was set up in the late 1980s to promote non-confrontational labor relations through such facilitative measures as conciliation, mediation, and voluntary arbitration. NCMB handles cases essentially related to disputes over unfair labor practices. Indirectly, NCMB is concerned with equality issues in connection with voluntary modes of dispute settlement or interpretation and/or implementation of company rules or collective agreements.

The NLRC, set up under Article 213 of the Philippine Labor Code, is a tripartite quasi-judicial body whose purpose is to dispense labor justice to employers and workers speedily and fairly through the processes of mediation, conciliation and compulsory arbitration. Within its general mandate for dispensing labor justice, the NLRC will also handle cases of equality and non-discrimination at work such as the following:

- Termination of employment, non-payment, underpayment or late payment of wages and violation of conditions of service related to gender or age;
- Unfair labor practices such as harassment or intimidation of workers because of their affiliation with unions; or
- Disputes concerning overseas Filipino workers (OFWs).

The larger share of cases referred to NLRC involve termination, some of which clearly involve discrimination at work (Box 8). Some 70 per cent of termination cases are settled in favor of the worker, ostensibly because employers fail to prove “just cause” for dismissal. In such cases, the Commission normally orders reinstatement, payment of back wages and benefits.¹⁰⁷

¹⁰⁷ Tayo Fashohin, “Social Dialogue and Labor Market Performance in the Philippines” (working paper, Geneva, 2003).

Box 8 : Dismissal of HIV/AIDS Afflicted Seaman

Jose was employed by a local agent of a foreign ship owner in May 2001 for a third one-year term of service as Boatswain on a foreign vessel, MV FLAG LION. His salary was fixed at US\$450 per month plus other salary related benefits. In March 2002 he was terminated and repatriated after he had tested positive for HIV/AIDS and was declared unfit for work at sea. Since he had undergone pre-employment medical examination, the HIV/AIDS affliction was assumed of having been contracted during his current employment.

Failing amicable settlement, Jose submitted his claim to the NLRC for payment of US\$60,000 plus sickness allowance of four months pay as compensation for "permanent total disability". This claim was vehemently contested by the employer with the argument that the ailment was not work related and that the ailment could not have been contracted during the short time of service under the current contract. Jose had also failed to attend post-employment follow-up consultations with his company doctor to grade his disability.

The NLRC ruled, however, that Jose's ailment was compensable, because during the pre-employment medical examination he had been found fit for work; quoting from a precedent, NLRC took it that the employer was not an insurer of the health of the employees but "he takes them as he finds them and assumes the risk of liability."

NLRC discarded the respondent's argument about Jose's alleged failure to attend a follow-up consultations with the company doctor; this was done on the grounds that the claimant had received continuous therapy at the instance of the respondents who also shouldered the cost of medicines. Considering Jose's disability as permanent total, NLRC thus ordered the respondents to pay the complainant US\$60,000 or the peso equivalent plus the sum of 10 percent as attorney's fees.

Source: NLRC NCR case 03-01-00046-00

One main problem in the dispensing of labor justice is the long delay in settling labor disputes. The general public, including workers, are aware that several years may elapse between deposition and settlement of a complaint. Delay in the resolution of disputes amounts to a denial of fair and equitable justice, especially for vulnerable groups that lack the information and resources to pursue their rights through complex and drawn-out labor justice procedures.

The "Go for Zero Backlog Program" of the NLRC and the Regional Arbitration Branches is a first step towards mopping up the considerable backlog of pending cases and the incoming stream of new cases.

Against such a background, it would be desirable to make the labor justice system more responsive to equality issues at work. A step in the right direction was the Regional Workshop on Labor Standards for the judiciary, organized in September 2003 by ILO in Manila. Briefings on equality at work guidelines would be given to court judges of lower courts, where discrimination cases are being handled in the first instance.

The benefits of dispensing labor justice effectively and expeditiously in discrimination cases cannot be overestimated. Not only would it promote equitable settlement of disputes involving disadvantaged groups, but also contribute to the effective functioning of the labor market and the promotion of labor peace necessary to attract investments. This process has direct implications for employment growth, equality and overall national development.

Meanwhile, the Congressional Commission on Labor has come out with concrete proposals on labor justice reform.¹⁰⁸ Similarly, the ongoing debate on the revision of the Philippine Labor Code would provide an opportunity to address the issue of promoting equality at work more effectively through the labor justice system.

¹⁰⁸ Congress of the Philippines, *Human Capital in the Emerging Economy* (2001).

E. Voluntary Compliance

Voluntary compliance is an important aspect of non-confrontational labor relations and a preferred method of ensuring equality at work under the Philippine Constitution and labor law. Philippine employers, either individually or as a group, have adopted voluntary compliance as a means of ensuring adherence to equality standards. Various modalities have also been developed and are practiced by progressive corporations in the formal sector, including codes of conduct for individual firms, industry-wide agreements, collective bargaining agreements and Labor-Management Councils/Committees (LMCs). So far, no systematic analysis of their results has been undertaken.

As an example, the Code of Conduct and Statement of General Business Principles of Shell Philippines includes specific provisions and references to equality issues, including a commitment “to respect human rights of their employees, to provide their employees with good and safe conditions of work, and good and competitive terms and conditions of service, to promote the development and best use of human talent and equal opportunity employment, and to encourage the involvement of employees in planning and direction of their work and in the application of these principles within their company. It is recognized that commercial success depends on the commitment of all employees.”¹⁰⁹

Recent UN studies¹¹⁰ on strategic risk management indicate a strong case for preemptive action by mitigating discrimination against HIV/AIDS in corporate policies and practices, such as prohibiting discrimination on the basis of real or perceived HIV/AIDS status when hiring, promoting, transferring or training staff, or when allocating pay or benefits. The high return on investment of prevention speaks for itself. According to Pilipinas Shell estimates, the annual cost of one employee with HIV/AIDS who subsequently leaves company service ranges from US\$16,000 (for a support staff member) to US\$57,000 (for a senior executive). In case of medical retirement, the one-time exit costs based on medical redundancy (or death) plus lost training and recruitment investments range from \$280,000 to \$390,000 for a senior executive and from \$17,000 to \$31,000 for a support staff member. This compares with the management's estimated total cost of running the company's critical illness program of about \$5 per employee per year, suggesting that the benefits of having a Company HIV/AIDS Program more than offsets the cost of investment, even in a low-prevalence country such as the Philippines. The extremely limited response of the corporate sector in the Philippines to the UN survey suggests that many companies are not as proficient at risk management as they could be.

An example of industry-wide implementation is the agreement signed between the Philippine Garment Exporters and their American importers. The parties concerned agreed to comply with basic labor standards, including equality at work, a commitment that goes along with voluntary monitoring and evaluation by the parties concerned.

Self-assessment is a new modality of implementation under the Labor Standards Enforcement Framework.¹¹¹ Applied to companies with 200 workers and more, self-assessment is undertaken by representatives of the employer and the workers at least once a year, utilizing a standard checklist. The company's Labor Management Committee, Health and Safety Committee or other similar committee undertakes the assessment within one month from receipt of the checklist from the DOLE Regional Office concerned. Within five days of the assessment, the completed checklist is submitted to the DOLE Regional Office and a spot check is undertaken by the Regional Evaluation Team.

Introducing self-assessment in the country's 3,000 largest companies could open new opportunities. It could ensure the regular joint involvement of management and labor in reviewing the firm's compliance with labor standards, as well as in taking corrective measures. Regular reporting on the outcome of self-assessment and sporadic spot checks by DOLE could also provide a solid basis for subsequent analysis and development of custom-made support services and follow-ups.

¹⁰⁹ Shell Philippines, Statement of Business Principles.

¹¹⁰ UNRISD – USAIDS, *Waking Up to Risk: Corporate Responses to HIV/AIDS in the Workplace* (Jem Bendell) (Geneva, 2003).

¹¹¹ DOLE DO No. 57-04.

However, the introduction of self-assessment also carries the risk of poor compliance with the new and unfamiliar procedures. Individual firms might wish to avoid the additional cost or resent the involvement of labor representatives in the compliance review of labor standards. There is also a real risk of abuse, misreporting and delays in submitting regular reports. To succeed, the new Labor Standards Enforcement Framework would need careful preparation as far as procedures, checklists, responsibilities, awareness raising and training are concerned. DOLE's ongoing internal staff training on the new approach should go hand in hand with similar efforts by employer and worker organizations. Here, ILO cooperation would be helpful in the introduction of the system, as well as in the monitoring and evaluation of results.

Under the PLC, collective bargaining agreements (CBAs) and Labor-Management Councils/Committees (LMCs) are two distinct forms of labor-management cooperation that have the potential for promoting equality at work. Similarly, the Collective Negotiation Agreements (CNAs) in the public sector offer much scope for the promotion of equality issues at work.

Formally negotiated and agreed upon by management and labor representatives, CBAs are primarily concerned with wages and working conditions, as well as workers' rights related to representation, recruitment, promotion or termination. The grievance procedure could serve as a mechanism for handling equality matters. In case of a failed settlement under the grievance procedure, the parties could turn to voluntary arbitration for the joint resolution of differences or disputes on equality. Third-party intervention through an arbitrator, jointly selected by the parties, could facilitate compromise and consensus. Voluntary arbitration could serve as a cost-effective alternative way of dispute resolution and might even foster greater labor-management cooperation instead of adversarial relations.

Much scope exists for wider use of LMCs for joint labor-management settlement of equality issues that are based on workers' rights to participate in policy and decision-making processes directly affecting their rights, benefits and welfare.¹¹² In fact, under the new Labor Standards Enforcement Framework, LMCs are being singled out as institutional arrangements for self-assessment by companies with 200 workers and more, as well as establishments with certified CBAs regardless of the number of workers employed. Moreover, the PLC provisions seem to offer further potential for LMCs to cover joint-management monitoring and evaluation of equality standards at the firm level, for example on gender issues, persons living with HIV/AIDS or differently-abled persons.

¹¹² Philippine Labor Code, Article 255.

Table 18: Characteristics of Collective Bargaining Agreements (CBA) & Labor Management Councils/Committees (LMCs)

	Mandate	Parties	Purpose	Outcome	Implementation	Topics Covered
CBA s	ILO Conventions 87, 98 Labor Law PLC	management recognized unions	CBA negotiation	binding Collective Bargaining Agreement	by law grievance procedure dispute settlement	CBA: salaries & wages, fringe benefits, trade union rights, hiring, termination management prerogatives grievance procedure, voluntary arbitration
LMC s	voluntary Labor Law Article 255 of PLC	management workers' representatives elected by at least the majority	joint problem-solving (OSH, productivity, quality, etc.)	non-binding agreement	non-enforceable; voluntary compliance of joint decisions	LMC: present coverage, health & safety welfare, productivity, etc. potential for monitoring of equality standards under the Labor Standards Enforcement Framework

So far, there has been no systematic collection and analysis of equality issues in CBA, CNAs or LMCs. It would be in the interest of both employers and workers in the public and private sectors to give more attention to equality issues in their CBA, CNA or LMC, not only to motivate the labor force but also to improve productivity and reduce grievances.

Chapter VI: Conclusions & Outlook

Since the promulgation of the “labor-friendly” Constitution of 1987, Equality at Work has been a focus of socio-economic concerns. This is manifested in the intense public debate on the rights of migrants, disabled persons, people living with HIV/AIDS, child labor, sweatshop working conditions and the like. Also, it has found expression in a wide range of specialized legislation in favor of individuals, groups or segments of the population that are particularly vulnerable to discriminatory or unfair treatment at work such as women, migrants or the disabled. However, the existing body of legislation is not always free from ambiguity, gaps or discriminatory provisions. In this respect, stakeholders would benefit from further guidance on rights and enforcement.

Aside from the established social partners—government, employers’ and workers’ organizations—specialized government institutions are now covering equality issues. These include the commissions on human rights, indigenous and tribal peoples, youth, disabled persons and women. Numerous cause-oriented groups and NGOs have emerged as vocal advocates and supporters of the rights at work of their respective constituents. The media has begun to play an important role in uncovering unfair labor practices and propagating sound ones. For example, cases of sexual harassment make for good copy. The Supreme Court and such quasi-judicial institutions as the National Labor Relations Commission (NLRC) have facilitated the application of progressive legislation through landmark decisions and interpretations. There remains much confusion, though, about policies and programs, modalities of coordination and enforcement with regard to equality and non-discrimination at work.

Despite much progressive legislation, intense advocacy and special support programs for disadvantaged groups, equality at work remains an elusive goal for large segments of the working population. Gender bias and work-related stereotypes regarding disabled persons and indigenous and tribal peoples remain widespread; people living with HIV/AIDS are still being stigmatized at work. Legislation contains gaps (e.g., concerning older workers) or is considered partially discriminatory or impractical. Disadvantaged people have limited access to the complex labor justice system, which may not be well attuned to the expeditious handling of discrimination cases. Enforcement of laws may suffer from lack of coordination, inadequate resources or inappropriate methods of intervention. Well-meaning statements by social partners in favor of equality at work may not be followed up with necessary vigor by concrete action.

But notwithstanding the above deficits, prospects for significant progress in the area of equality at work now appear to be more promising for the following reasons:

- The National Plan of Action for Decent Work for the Philippines that was formulated and approved by ILO and its social partners—government, employers’ and workers’ organizations—offers wider scope for the promotion of equality at work in line with national priorities and internationally agreed principles as embodied in relevant ILO Conventions and the ILO Declaration on Principles and Rights at Work. Promotion of equality can also be linked with the Decent Work Country Programme, whose specific priorities are based on the NPADW.
- The regional consultations in September 2003 on the role of the judiciary with regard to labor standards hold promise for concrete follow-ups by the labor law system.
- The consultations in November 2003 on ILO’s Global Report on “Time for Equality at Work” have brought together for the first time all stakeholders interested in Equality at Work to review the state of affairs and map out possible concerted action.

- A human rights-based and gender-responsive approach figures prominently in the United Nations Development Assistance Framework (UNDAF) for the Philippines for the years 2005-2009. Guided by the targets and goals of the Millennium Declaration of 2000, signed by the Government of the Philippines in consonance with its own national priorities, the UNDAF coordinates broad-based and equitable development through effective links between the state, civil society and the private sector, as well as the international community.

The above review of legislation, policies and programs related to Equality at Work suggests that further progress is possible for stakeholders in achieving common objectives of equality at work through the following concerted efforts at *policy levels*:

- Designating focal points in equality at work for the collection, analysis and coordination of information as a basis for policy and technical advice, as well as coordination of stakeholder programs;
- Considering the ratification of ILO Conventions related to equality, which have not yet been ratified by the Philippines, e.g., Convention No. 156, Workers with Family Responsibilities Convention, 1981; Convention No. 158 Termination of Employment Convention, 1982; Convention No. 183, Maternity Protection Convention, 2000; and Convention No. 169, Indigenous and Tribal Peoples Convention, 1989;
- In connection with the ongoing revision of the Philippine Labor Code, streamlining existing legislation related to equality at work; eliminating inconsistencies in such areas as the remuneration of the disabled and filling gaps that still exist (e.g., regarding older workers); reviving Congressional initiatives for an Omnibus Act on Equality at Work;
- Making the labor justice system more accessible to disadvantaged individuals and segments of the population and ensuring that cases of discrimination at work are being dealt with expeditiously at affordable cost;
- Establishing cause-oriented groups and representative organizations (disabled, HIV/AIDS, etc.) to follow up on the consultations of the ILO Global Report on “Time for Equality at Work” by developing and implementing respective Action Programmes on Equality at Work; and
- Compiling equality-related statistical data—ranging from policies and programs, formulations and implementation to knowledge, attitudes and perceptions in workplaces—needed to permit a systematic review by stakeholders and academe of progress in Equality at Work.

Based on the premise that concrete action must be achieved on the company level and that prevention is better than treatment, the following approach holds promise of progress in all workplaces, both private and public:

- A firm-level policy, taking into account the existing legal, economic and cultural environment, that will underline the commitment and responsibilities of management and labor in addressing equality issues, ranging from recruitment, working conditions, promotion and termination to psychosocial problems at the workplace;
- A related firm-level program that provides details and practical applications of the policy through awareness-raising, training, support and sanctions; and
- The inclusion of equality and non-discrimination at work as a regular item in CBA and CNA negotiations and establishing the appropriate machinery for enforcement (grievance procedure, LMC or Ombudsperson).

Policies and programs of individual firms must be attuned to DOLE’s recent initiative to establish a Labor Standards Enforcement Framework, which would take advantage of the opportunity to extend the benefits of Equality at Work to wider segments of the labor force in the formal and informal sectors.

Employer and worker organizations should be closely associated with the formulation of relevant procedures (e.g., checklists), implementation and regular reviews.

Equality at Work is everybody's concern, as the “equality wheel” illustrates in Figure 14. While Equality at Work remains the overall target at the center, all stakeholders—labor, management, family, country and government—are enjoined to find common solutions to the problems of rights, dignity, fairness, participation and justice. Such interaction and compromise on the basis of common interest is a sure road towards Decent Work for All—opening opportunities for both women and men to obtain decent productive work in conditions of freedom, equity, security and human dignity.

Figure 14: Equality Wheel



In promoting equality at work, the ILO will remain a committed partner of its constituents—governments, employer and worker organizations—as well as of civil society in general.

At the international level, equality will continue to be the transcendent consideration of all ILO activities, from research, information dissemination, meetings and conferences to the setting of standards and technical cooperation. In line with the schedule of reviews under the Declaration on Fundamental Principles and Rights at Work, the ILO will undertake periodic global reviews of equality at work, similar to the review based on the 2003 global report on “Time for Equality.” This activity will provide an opportunity for the international community to examine the state of affairs, to analyze achievements and deficiencies, to identify gaps, and to design and implement follow-up actions by ILO’s worldwide membership.

At the national level, ILO will support policies and programs on equality at work as defined and implemented by its social partners, within the context of national priorities and possibilities. The National Plan of Action for Decent Work in the Philippines provides a suitable framework for action and review. The experience and “lessons learned” in the Philippines will be fed back into regional and global reviews and thus contribute to progress in the area of equality at work, here and elsewhere.

Annex 1

ILO Conventions¹ with specific equality provisions.

- Convention No. 100, Equal Remuneration Convention, 1951 promotes equal remuneration for all workers, both men and women, for work of equal value. The term “remuneration” is broadly defined to include the ordinary, basic or minimum wage or salary and any additional emoluments payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment.
- Convention No. 111, Discrimination (Employment and Occupation) Convention, 1958, promotes equal opportunity and treatment in respect of employment and occupation, with a view of eliminating any discrimination. Two aspects in equality are important – opportunity and treatment. This means equal chance to apply for a particular job, to be employed, to attend educational and training courses, to be eligible to attain certain qualifications, to be considered as a worker or for a promotion in all positions and occupations, including those dominated by one sex or the other. Article 1 {1}a, on prohibition of discrimination in employment and work on the basis of race, color, 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;
- Convention No. 156, Workers with Family Responsibilities Convention, 1981 requires ratifying states to make it a goal of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities. The convention also requires governments to take account of the needs of workers with family responsibilities in community planning and to develop or promote community services, public or private, such as childcare and family services and facilities; and
- Convention No. 183, Maternity Protection Convention, 2000, provides for 14 weeks (or 3 months) of maternity benefit to women to whom the instrument applies including cash benefits and protection from discrimination based on maternity.
- Convention No. 169, Indigenous and Tribal Peoples Convention, 1989, aims to enable indigenous peoples to enjoy the fundamental human rights to the same degree as the rest of the population of the state in which they live. It calls on governments to do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers. It urges government to adopt special measures to ensure the effective protection of the ITPs with reference to recruitment and conditions of employment.

² As of January 2006, the ILO had a total 185 Conventions, 195 Recommendations and 4 Protocols.

¹ As of January 2006, the ILO had a total 185 Conventions, 195 Recommendations and 4 Protocols.

Annex 2

Selected Anti-Discriminatory Philippine Laws, Policies & Programs

1. YOUTH

TITLES	DISCRIMINATION ISSUES
<ul style="list-style-type: none"> General Constitutional Provisions on Rights of Workers and Citizens Guidelines in Hazardous Work and Activities for Persons Below 18 Years of Age Youth Program “Kabataan 2000”, 1993 Technical Education Skills Development Authority (TESDA), 1994 Dual-Tech Training Act (RA No. 7686), 1994 Medium-Term Youth Development Plan, 1999-2004 Time-Based Program for the Abolition of the Worst Forms of Child Labor, in cooperation with ILO-IPEC Magna Carta for the Elimination of Child Labor (RA No. 9231) Youth in the Philippines: A Review of the Youth Situation and National Policies and Programmes, UN-ECOSOC, New York, 2000 Youth Entrepreneurship Program (YEP) Youth Entrepreneurship Financing Facility Program (YEFFP) Youth Entrepreneurship Philippines Training Project of the NYC Young Filipino Entrepreneurs Program of the National Industrial Manpower Training Council Educational Research and Development Assistance (ERDA) Foundation, Inc. ERDA Tech Vocational Secondary School Ayala Foundation, Inc. – Center for Social Development Don Bosco Training Centers Philippine Enterprise Development Foundation Balikatan sa Kaunlaran – Grameen Bank Replication Program Philippine Business for Social Progress (PBSP) Philippine Youth Business Foundation (PYBF) Job Corps, 2001 Corporate Social Responsibility: Apprenticeship and Entrepreneurship Programs Philippine Youth Employment Network (PYEN) 	<ul style="list-style-type: none"> low income, limited access to social security and health protection; less pay for work of equal value compared to older workers young females receive lower pay than their young male counterparts workers' rights: poor bargaining power, limited protection by unions casualization: temporary employment, denials or delays in regular employment; lack of security of tenure; subcontracting OSH: work in hazardous occupations vulnerability: economic exploitation, abuse of young overseas Filipino workers (OFWs), especially women sexual harassment, bullying, mobbing

2. OLDER WORKERS

TITLES	DISCRIMINATION ISSUES
<ul style="list-style-type: none"> Preamble of the Constitution of 1987 Philippine Constitution, Art. II sec. 1; Art. III sec. 1; Art. XIII, sec.3 Labor Code of the Philippines, Chapter I – General Provisions Maximize Contribution of Senior Citizens to Nation-Building, 1982 (RA No. 7432) Act of Establishing Senior Citizens Centers in All Cities and Municipalities, 1995 (RA No. 7876) 	<ul style="list-style-type: none"> grounds of prejudice and discrimination: limited mobility and flexibility, diminished creativity and resistance to change termination, redundancy, non-recruitment on account of age early retirement mobbing gap: specific legal provisions protecting older workers

3. MIGRANT WORKERS

TITLES	DISCRIMINATION ISSUES
<ul style="list-style-type: none"> Magna Carta for Migrant Workers (Migrant Workers and Overseas Filipinos Act of 1995 – RA No. 8042) Labor Code of the Philippines 	<ul style="list-style-type: none"> enforcement of RA No. 8042 on host countries denial of advantages, work entitlements and privileges reduced job mobility confiscation of passports non-payment or reduction of wages substandard working conditions (working hours, rest period) compulsory pregnancy tests social discrimination on grounds of nationality and sex in host country

4. GENDER

TITLES	DISCRIMINATION ISSUES
<ul style="list-style-type: none"> Constitution of 1987 Women in Development & Nation Building Act, 1992 (RA No. 7192) 30-year Blueprint for Gender Mainstreaming The New Family Code of the Philippines (EO No. 209) Philippine Development Plan for Women (1989-1992) Strengthening the Prohibition on Discrimination Against Women with Respect to Terms and Conditions of Employment, 1987 (RA No. 6725) Labor Code of the Philippines Comprehensive Agrarian Reform Law, 1988 (RA No. 6657) Anti-Rape Law, 1997 (RA No. 8353) Paternity Leave Act, 1996 (RA No. 8187) Solo Parents Welfare Act, 2000 (RA No. 8972) An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment and For Other Purposes, 1995 (RA No. 7877) Rationalizing the Implementation of the Family Welfare Program (DOLE DO 53-03) 	<ul style="list-style-type: none"> Article 2, Section 11, 14, 18 Article 13, Section 3, 14 “glass ceiling” sexual harassment workers' and civil rights of female migrant workers no discrimination in terms of remuneration for work of equal value and promotion, training opportunities, study and scholarship on account of sex; non-compliance is criminal offense Article 3 Declaration of Basic Policy Book III Employment of Women Article 130 Nightwork Prohibition Article 131 Exceptions Article 132 Facilities for Women Article 133 Maternity Leave Benefits (SSS Law) Article 134 Family Planning Services, Incentives for Family Planning Article 135 Discrimination Prohibited Article 136 Stipulation Against Marriage Article 137 Prohibited Acts Article 138 Classification of Certain Women Workers gives women the right to own land, which previously reverted to sons and other male family members reclassified rape from a private crime against chastity into a public crime (rape also includes marital rape and men as rape victims) gender mainstreaming, etc.

5. INDIGENOUS PEOPLES

TITLES	DISCRIMINATION ISSUES
<ul style="list-style-type: none"> Indigenous Peoples Rights Act, 1997 (RA 8371) Medium Term Philippine Development Plan for Indigenous Peoples, 2004-2008 Coalition for IP Rights and Ancestral Domains, Guide to RA 8371 	<ul style="list-style-type: none"> dispossession of ancestral territories like forests, agricultural hinterlands exclusion from mainstream society; denigration of indigenous culture various economic and social aspects of discrimination: poverty, employment, education, health

6. PERSONS LIVING WITH HIV/AIDS

TITLES	DISCRIMINATION ISSUES
<ul style="list-style-type: none"> National Comprehensive Policy on STD/HIV/AIDS in the Workplace, 1998 Philippine AIDS Prevention and Control Act of 1998 (RA 8504) DO Task Force on HIV/AIDS 	<ul style="list-style-type: none"> discrimination in pre-employment to post-employment mandatory testing confidentiality in reporting procedures and medical data health care services for HIV/AIDS afflicted

7. DIFFERENTLY-ABLED PERSONS

TITLES	DISCRIMINATION ISSUES
<ul style="list-style-type: none"> Magna Carta for Disabled Persons, 1992 (RA 7277) Disability Discrimination Act, 1995 Proclamation No. 240 of August 21, 2002 declaring "Philippine Decade of Persons with Disabilities" (2002-2012) Labor Code of the Philippines 	<ul style="list-style-type: none"> access to training and employment employment of persons with disabilities lower pay for work of equal value of able-bodied persons work environment (ramps, facilities, transport) career prospects recognition as full citizens in society and at work

8. VIOLENCE: SEXUAL HARASSMENT

TITLES	DISCRIMINATION ISSUES
<ul style="list-style-type: none"> An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment and For Other Purposes, 1995 (RA No. 7877) 	<ul style="list-style-type: none"> "zero tolerance" to sexual harassment and discriminatory practices towards victims coverage of RA No. 7877(peer?)

9. ENFORCEMENT, MONITORING, EVALUATION

TITLES	DISCRIMINATION ISSUES
<ul style="list-style-type: none"> Establishment of Labor Standards Enforcement Framework (DOLE D.O. 57-04) 	<ul style="list-style-type: none"> constraints (resources and mandate) monitoring, evaluation

Annex 3

Labor and Employment Trends, 1995 - 2005

Indicators	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Labor Force (in thousands)	28,380	29,733	30,354	31,056	30,759	31,587	33,621	33,674	35,075	35,629	35,496
Employed (in thousands)	25,677	27,186	27,715	27,911	27,742	27,209	29,190	30,251	31,524	31,741	32,876
Underemployed (in thousands)	5,137	5,715	6,121	5,719	6,127	6,721	5,092	4,627	4,964	5,384	6,970
Unemployed (in thousands)	2,704	3,042	2,640	3,144	3,017	4,378	4,461	3,423	3,554	3,888	2,620
Labor Force Participation Rate (%)	65.8	66.7	66.3	66.1	66.4	66.5	69.0	66.2	67.1	66.5	64.8
Employment Rate (%)	90.5	91.4	91.3	89.9	90.2	86.1	86.7	89.8	89.9	89.1	92.6
Unemployment Rate (%)	9.5	9.5	8.6	8.7	9.8	13.3	13.3	10.2	10.1	10.9	8.3*
Underemployment Rate (%)	20.0	21.0	22.0	21.8	22.1	24.7	17.5	15.3	15.7	16.9	21.2

*Unemployment data in 2005 reflects the new definition of "unemployment" as prescribed in NSCB Resolution No. 15.

Annex 4 *List of ILO Conventions Ratified by the Philippines*

(Source: ILOLEX - 10. 2. 2006)

Convention	Ratification date	Notes
C17 Workmen's Compensation (Accidents) Convention, 1925	17:11:1960	
C19 Equality of Treatment (Accident Compensation) Convention, 1925	26:04:1994	
C23 Repatriation of Seamen Convention, 1926	17:11:1960	
C29 Forced Labour Convention, 1930	15:07:2005	
C53 Officers' Competency Certificates Convention, 1936	17:11:1960	
C59 Minimum Age (Industry) Convention (Revised), 1937	17:11:1960	denounced on 04:06:1998
C77 Medical Examination of Young Persons (Industry) Convention, 1946	17:11:1960	
C87 Freedom of Association and Protection of the Right to Organise Convention, 1948	29:12:1953	
C88 Employment Service Convention, 1948	29:12:1953	
C89 Night Work (Women) Convention (Revised), 1948	29:12:1953	
C90 Night Work of Young Persons (Industry) Convention (Revised), 1948	29:12:1953	
C93 Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949	29:12:1953	Convention not in force
C94 Labour Clauses (Public Contracts) Convention, 1949	29:12:1953	
C95 Protection of Wages Convention, 1949	29:12:1953	
C98 Right to Organise and Collective Bargaining Convention, 1949	29:12:1953	
C99 Minimum Wage Fixing Machinery (Agriculture) Convention, 1951	29:12:1953	
C100 Equal Remuneration Convention, 1951	29:12:1953	
C105 Abolition of Forced Labour Convention, 1957	17:11:1960	
C110 Plantations Convention, 1958	10:10:1968	
C111 Discrimination (Employment and Occupation) Convention, 1958	17:11:1960	
C118 Equality of Treatment (Social Security) Convention, 1962	26:04:1994	Has accepted Branches (a) to (e) and (g) to (i)
C122 Employment Policy Convention, 1964	13:01:1976	
C138 Minimum Age Convention, 1973	04:06:1998	Minimum age specified: 15 years
C141 Rural Workers' Organisations Convention, 1975	18:06:1979	
C144 Tripartite Consultation (International Labour Standards) Convention, 1976	10:06:1991	
C149 Nursing Personnel Convention, 1977	18:06:1979	
C157 Maintenance of Social Security Rights Convention, 1982	26:04:1994	
C159 Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983	23:08:1991	
C165 Social Security (Seafarers) Convention (Revised), 1987	09:11:2004	
C176 Safety and Health in Mines Convention, 1995	27:02:1998	
C179 Recruitment and Placement of Seafarers Convention, 1996	13:03:1998	
C182 Worst Forms of Child Labour Convention, 1999	28:11:2000	

Annex 5

Statistics on Overseas Filipino Workers (OFWs)

Land-based OFW Deployment - Rehires and New Hires (2004-2005)

WORLD GROUP	OFW Deployment - New hires January to December		
	2005 ^P	2004	% Change
Asia	104,944	132,729	-20.93%
Middle East	168,090	138,021	21.79%
Europe	4,477	4,973	-9.97%
Americas	3,637	5,445	-33.20%
Trust Territories	876	1,413	-38.00%
Africa	2,266	1,950	16.21%
Oceania	604	381	58.53%
TOTAL LANDBASED	284,894	284,912	-0.01%
TOTAL SEABASED	247,707	229,002	8.17%
TOTAL	532,601	513,914	3.64%

WORLD GROUP	OFW Deployment - New hires January to December		
	2005 ^P	2004	% Change
Asia	104,944	132,729	-20.93%
Middle East	168,090	138,021	21.79%
Europe	4,477	4,973	-9.97%
Americas	3,637	5,445	-33.20%
Trust Territories	876	1,413	-38.00%
Africa	2,266	1,950	16.21%
Oceania	604	381	58.53%
Total Landbased	284,894	284,912	-0.01%
Total Seabased	247,707	229,002	8.17%
Total	532,601	513,914	3.64%

P/ - partial report as of 27 Jan. 2005

1/ - includes LAC-Laoag deployment report

Source: Philippine Overseas Employment Administration website (<http://www.poea.gov.ph>)

Filipinos Overseas (as of December 2005)

Permanent	3,187,586
Temporary	3,599,257
Irregular	1,297,005
Total Number of Filipinos Overseas	8,083,848

Source: Department of Labor and Employment

Annex 6

Indigenous and Tribal Population

	Percent of the Regional Population
Cordillera Autonomous Region (CAR)	91.8
Region I	25.0
Region II	25.0
Region X	50.0
Region XI	50.0
Region XII	25.0
Region XIII	50.0

Source: National Statistics Office, Census 2000

Per cent of the National Population	19.7 (or 14,778,190 IPs)
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Source: National Statistics Office, Census 2000

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Acronyms

ADB	Asian Development Bank
BMBE	Barangay Micro-Business Enterprises
BWYW	Bureau of Women and Young Workers
CALABARZON	Cavite, Laguna, Batangas, Rizal and Quezon provinces
CAR	Cordillera Administrative Region
CARP	Comprehensive Agrarian Reform Program
CODI	Committee on Decorum and Investigation
CBA	Collective Bargaining Agreement
CAN	Collective Negotiation Agreement
CSC	Civil Service Commission
CHED	Commission on Higher Education
DAP	Differently-Abled Person
DAWN	Development Action for Women Coalition
DepEd	Department of Education
DOLE	Department of Labor and Employment
DOTC	Department of Transportation and Communication
DPWH	Department of Public Works and Highways
DSWD	Department of Social Welfare and Development
DTI	Department of Trade and Industry
ECC	Employees Compensation Commission
ECOP	Employers Confederation of the Philippines
EPZ	Export Processing Zone
ERDA	Educational Research and Development Assistance Foundation, Inc.
FDH	Foreign Domestic Helper
FFW	Federation of Free Workers
GSIS	Government Service Insurance System
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
IP	Indigenous Peoples
IT	Information Technology
ILO	International Labor Organization
ILO-IPEC	International Labor Organization - International Program on the Elimination of Child Labor
IYB	Improve Your Business
LGU	Local Government Unit
LMC	Labor-Management Committee/Council
MTPDP	Medium-Term Philippine Development Plan
NCMB	National Conciliation and Mediation Board
NCR	National Capital Region
NCWDP	National Council for the Welfare of Disabled Persons
NGO	Non-Government Organization
NHA	National Housing Authority
NLRC	National Labor Relations Commission
NSCB	National Statistical Coordination Board
NSO	National Statistics Office
NWPC	National Wages and Productivity Commission
NYC	National Youth Commission
NYDP	National Youth Development Plan 1999-2004
OFW	Overseas Filipino Worker
OJT	On-the-Job Training

OSH	Occupational Safety and Health
OSHC	Occupational Safety and Health Center
OSY	Out of School Youth
PESO	Public Employment Service Office
PCCI	Philippine Chamber of Commerce and Industry
PLC	Philippine Labor Code
POEA	Philippine Overseas Employment Administration
PSLINK	Public Services Labor Independent Confederation
RA	Republic Act
SC	Supreme Court
SME	Small and Medium Enterprise
SOLVE	Stress, Tobacco, Alcohol and Drugs, HIV/AIDS, Violence program
SPED - DepEd	Special Education Division – Department of Education
SSS	Social Security System
SYB	Start Your Business
TAWAG	Tuloy Aral Walang Sagabal (literally “Continue Studies, No Barriers”)
TESDA	Technical Education and Skills Development Authority
TUCP	Trade Union Congress of the Philippines
TULAY 2000	Tulong Alalay sa Taong May-Kapansanan 2000 (Aid for Disabled Persons)
TIPC	Tripartite Industrial Peace Council
TLRC	Technology and Livelihood Resource Center
UN	United Nations
UNDP	United Nations Development Program
UNESCO	United Nations Education, Scientific and Culture Organization
UN-ECOSOC	United Nations – Economic and Social Council
UN-ESCAP	United Nations – Economic and Social Commission for Asia and the Pacific
UP SOLAIR	University of the Philippines – School of Labor and Industrial Relations
WCL	World Confederation of Labor
WHO	World Health Organization
WINT	Women in Non-Traditional Trades
WISE	Work and Productivity Improvements in Small Enterprises

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For more information, please contact us at:

ILO Subregional Office for South-East Asia and the Pacific
 19th Floor, Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue, 1200 Makati City
 P.O. Box 4959 Makati City, Philippines
 Tel. No. (632) 580 9900 • Fax No. (632) 580 9999
 E-mail: manila@ilomnl.org.ph • Website: www.ilo.org/manila

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The Author*

- President of the ILO Association of the Philippines (ILAPI)
Former Professor of the School of Labor and Industrial Relations
of the University for the Philippines (UP SOLAIR)
Former Director, ILO Office Manila

For more information, please contact us at:

ILO Subregional Office for South-East Asia and the Pacific

19th Floor, Yuchengco Tower, RCBC Plaza

6819 Ayala Avenue, 1200 Makati City

P.O. Box 4959, Makati City, Philippines

Telephone number: (632) 580 9900

Fax number: (632) 580 9999

E-mail address: manila@ilomnl.org.ph

Website: www.ilo.org/manila

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