

HANDBOOK OF EMPLOYEE SELECTION

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30 Perspectives From Twenty-Two Countries on the Legal Environment for Selection

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In the United States, the legal context plays a major role in how psychologists approach selection system development. Psychologists know well the set of protected groups, the approaches to making an a priori case of discrimination (e.g., differential treatment vs. adverse impact), the key court cases influencing selection, and the prohibitions against preferential treatment (e.g., the 1991 ban on score adjustment or within-group norming). Selection texts (e.g., Guion, 1998) and human resource management texts (e.g., Cascio & Aguinis, 2008) give prominent treatment to the legal context. In recent years, there has been a growing internationalization of industrial-organizational (I-O) psychology such that psychologists from all over the world work with clients in other countries and contribute to our journals and to our conferences. Test publishers and consulting firms establish offices all over the world. As this internationalization continues to increase, it becomes increasingly useful to take a broader look at the legal environment for selection, examining similarities and differences in various countries. For example consider a U.S. firm with operations in several other countries. Although U. S. fair employment law applies only to those overseas employees who are U.S. citizens,

¹ All authors contributed equally to this chapter. Paul R. Sackett and Winny Shen integrated the text materials provided by each author. Portions of this chapter were drawn from an article by the same set of authors: Myers, B., Lievens, F., Schollaert, E., Van Hoye, G., Cronshaw, S. F., Mladinic, A., et al. (2008). International perspectives on the legal environment for selection. *Industrial and Organizational Psychology: Perspectives on Science and Practice, 1*, 200–256. Used by permission of the Society for Industrial and Organizational Psychology and Wiley Blackwell.

the employment by U.S. firms of host country nationals or third country nationals is subject to the legal environment of the host country.

DATA COLLECTION METHODOLOGY

To compare and contrast the legal environment for selection in various countries, the senior author prepared a set of questions about the legal environment for selection, prepared model answers describing the legal environment in the United States, and contacted psychologists in various countries, asking them to prepare a document responding to each question and describing the legal environment in their country. They were also invited to suggest additional project participants in other countries. Some invitees declined; some initially agreed, but subsequently did not participate. The goal was to obtain a range of perspectives by sampling about 20 countries, thus, this is by no means a complete catalog of the legal environment around the world. Researchers and practitioners who are experts on the topic of selection participated from the following 22 countries: Australia, Belgium, Canada, Chile, France, Germany, Greece, India, Israel, Italy, Japan, Kenya, Korea, The Netherlands, New Zealand, South Africa, Spain, Switzerland, Taiwan, Turkey, the United Kingdom, and the United States. As the list indicates, the countries covered do broadly sample the world. Because of space constraints, the write-up for each country was subsequently summarized and organized by issue (e.g., what groups are protected; is preferential treatment of minority group members permitted) rather than by country to create this chapter. For more context on the legal, social, and political environment of the countries surveyed, see Myors et al. (2008). Contributing authors from each of the 22 countries responded to several questions, nine of which are addressed in turn in this chapter.

Question 1: Are there racial/ethnic/religious subgroups such that some are viewed as “advantaged” and others as “disadvantaged”?

Table 30.1 identifies the major groups viewed as “disadvantaged” in each country (note that gender is treated separately in the next section, and specific legal protections for disadvantaged groups are treated under Question 4). As Table 30.1 indicates, the disadvantaged groups differ on several dimensions. First, the basis for disadvantaged status varies: (a) native/aboriginal people in a setting where colonizers became the majority group (e.g., Native Americans in the United States, Maori in New Zealand, First Nations Peoples in Canada), (b) recent immigrants (e.g., many European countries), (c) racial groups either native to or with long histories in the country (e.g., African Americans in the United States; Blacks, colored individuals, and Indians in South Africa), (d) religious groups (e.g., India), and (e) language groups (e.g., Francophones in Canada, Rhaeto-Romanic speakers in Switzerland). Second, the size of the minority population varies, from a very small percentage of the population in some countries to the South African extreme of a previously disadvantaged Black majority. These findings illustrate that there is considerable variability from country to country in what constitutes a disadvantaged group.

Question 2: What is the general picture regarding women in the workplace (e.g., historical trends regarding employment for women; current data on percentage of women in the workforce; and current status regarding occupational segregation, such as gender representation in various job classes and at various organizational levels)?

Among the countries surveyed, women make up a substantial portion of the workforce. In general, women make up from over one quarter to slightly less than one half of the working population (see Table 30.2). Great strides have been made such that women are being increasingly involved in the workforce across all countries surveyed, as evidenced by reports of the increased rate of women's participation in the workforce, with the exception of Turkey, who reports a slight decline in the recent years (34% in the early 1990s down to 25.4% in 2004; State Institute of Statistics, 2006). There is substantial variability among countries in terms of the percentage of women who

TABLE 30.1
Disadvantaged Groups Within Each Country

| Country | Group | Percentage of Population |
|-----------|----------------------------------|--------------------------|
| Australia | Indigenous Australians | 2.5 |
| Belgium | Non-Western immigrants | |
| | Moroccan | 0.8 |
| | Turkish | 0.4 |
| Canada | Immigrants | 18.4 |
| | Visible minorities | 13.4 |
| | First Nations peoples | 2.1 |
| | Francophones | 15.7 |
| | Recent immigrants | |
| Chile | Argentinean | |
| | Peruvian | 1.2 |
| | Bolivian | |
| | Ecuadorian | |
| France | Immigrant groups | 7.4 |
| | European | 3.33 |
| | North African | 2.22 |
| | Other African | 0.67 |
| | Asian | 0.96 |
| Germany | Migrant workers/immigrants | |
| | Turkish | 3.7 |
| | Southern European countries | |
| Greece | Reimmigrants (Volga-Germans) | 2.8 |
| | Immigrants | 7.0 |
| | Albanian | |
| | Bulgarian | |
| | Georgian | |
| India | Romanians | |
| | Within Hindu Castes ^a | |
| | Scheduled castes | 15.06 |
| | Scheduled tribes | 7.51 |
| | Other backward classes | 43.70 |
| Israel | Muslims | 13.0 |
| | Palestinian Arabs | 22.0 |
| Italy | Druze | 2.0 |
| | Sephardic Jews | 31.0 |
| | Iraq | |
| | Iran | |
| | Morocco | |
| | Ethiopia | |
| Japan | Albanian | 1.0 |
| | Rumanian | 0.9 |
| | Moroccan | 0.9 |
| | Ukrainian | 0.4 |
| | Chinese | |
| Japan | North and South Korean | 0.5 |
| | Chinese | 0.4 |
| | Brazilians | 0.2 |
| | Philippines | 0.1 |

continued

TABLE 30.1 (continued)
Disadvantaged Groups Within Each Country

| Country | Group | Percentage of Population |
|----------------------------------|--|--------------------------|
| Kenya | Foreigners | 1.5 |
| | Asians | |
| | Europeans | |
| | Muslims | 7.0 |
| | Less populous Kenyan tribes (Swahili, Kalenjin, Kamba, Kisii, Ameru, Embu, Maasai, Somali, Turkana, Taita, and Samburu) | 51.5 |
| Korea | Foreigners | 0.8 |
| The Netherlands | Non-Western immigrants | 10.5 |
| | Turkish | 2.2 |
| | Moroccan | 2.0 |
| | Surinamese | 2.0 |
| | Antillean/Aruban | 0.8 |
| New Zealand | Pacific peoples | 6.4 |
| | Maori | 13.5 |
| South Africa | Black (disadvantaged majority) | |
| | African | 79.5 |
| | Colored (mixed race) | 8.9 |
| | Indian | 2.5 |
| Spain | Immigrant groups | 9.25 |
| | Moroccan | 1.16 |
| | Ecuadorian | 1.01 |
| | Rumanian | 0.89 |
| | Colombian | 0.59 |
| | Argentinean | 0.43 |
| | Bolivian | 0.31 |
| | Chinese | 0.22 |
| | Peruvian | 0.21 |
| | Switzerland | Immigrant groups |
| Ex-Yugoslavia | | 4.7 |
| Italians | | 4.1 |
| Portuguese | | 2.5 |
| Germans | | 2.4 |
| Rhaeto-Romanic-speaking Swiss | | 0.5 |
| Taiwan | Taiwanese aborigines | 2.0 |
| Turkey | Religious minorities | |
| | Alevi | 20.0 |
| | Christian and Jewish | 0.3 |
| | Kurdish | 11.0 |
| | Arabic | 1.5 |
| | Other | 1.8 |
| | Armenian | |
| Greek | | |
| Jewish | | |

TABLE 30.1 (continued)
Disadvantaged Groups Within Each Country

| Country | Group | Percentage of Population |
|----------------|------------------------------------|--------------------------|
| United Kingdom | Indian | 1.78 |
| | Pakistani | 1.26 |
| | Black Caribbean | 0.95 |
| | Black African | 0.82 |
| | Bangladeshi | 0.48 |
| | Chinese | 0.41 |
| | Other | 2.1 |
| United States | Black/African American | 12.3 |
| | Hispanic/Hispanic American | 12.5 |
| | Native American and Alaskan Native | 0.9 |

^a The Hindu caste system differentiates between "forward" (advantaged) and "backward" (disadvantaged) groups. A national "schedule" or classification of castes differentiates between scheduled castes (previously "untouchable" castes), scheduled tribal groups, and other backward castes.

participate in the workforce, ranging from approximately one quarter of women in Turkey (State Institute of Statistics, 2006) to between 60 and 70% in France (Attal-Toubert & Lavergne, 2006), Kenya (primarily due to the high involvement of women in small-scale farming and pastoralism), New Zealand, and the United Kingdom. These differences are undoubtedly at least partially due to the multitude of differences among countries including those in history, culture and values, economic conditions, and political conditions. It is interesting to note that in no instance is the female participation rate higher than the male participation rate; this may partially reflect the traditional division of labor between men and women, such that women are more likely to have household and childcare duties.

Although women are less likely to participate in the workforce than their male counterparts, it appears that there tend to be no or small differences in the unemployment rate for men and women (usually within 1 or 2 percentage points). In fact, in recent years in Taiwan, the unemployment rate for women has been lower than that for men. Exceptions to this trend include Greece (where the unemployment rate of women is often 2 to 3-fold that of men), Kenya, and Switzerland, where women are still substantially more likely to be unemployed than male workers. However, it must be noted that even small changes in the unemployment rate may have strong repercussions for the economic, political, and social situation of a country.

Among all nations surveyed, there is still gender disparity in pay, and this disparity continues to be substantial in magnitude. Among all countries where gender disparity information was available, women earned between 11 and 34% less than men. However, this figure may be lower or higher among countries where we currently do not have the information available. Although it is unclear as to whether these estimates take into account factors such as differences in occupations, differences in full- versus part-time work, differences in educational attainment, etc., other research has shown that even taking into account some of these extraneous factors, women still earn less than their male counterparts (although the magnitude does decrease slightly). The U.S. General Accounting Office (2003) reported that women still only earn 80% of what men earn (compared to 75% when not taking into account differences) in 2000 after taking into account occupation, industry, race, marital status, and job tenure. Currently, the most positive outlook for women's earning are in Belgium, France, Israel, New Zealand, Switzerland, and the United Kingdom, where women earn 80 cents or more for every dollar earned by men (Equal Opportunities Commission, 2004).

There continues to be occupational segregation to some extent in all 22 countries. Across the board, women are still more likely to be found in clerical or secretarial, retail or sales, healthcare

TABLE 30.2
Women's Status in the Workplace Within Each Country

| Country | Percentage of Workforce Population | Percentage of Men Participation in Workforce | Percentage of Women Participation in Workforce | Male Unemployment Rate | Female Unemployment Rate | Wage Differential ^a |
|-----------------|------------------------------------|--|--|------------------------|--------------------------|--------------------------------|
| Australia | | 72.0 | 57.0 | | | 66.0 |
| Belgium | | 73.6 | 58.3 | 7.6 | 9.6 | 85.0 |
| Canada | | | | | | 64.0 |
| Chile | | | 38.2 | | | |
| France | 46.4 | 74.5 | 63.8 | | | 81.0 |
| Germany | 47.0 | | | | | |
| Greece | | 64.1-65.0 | 38.9-42.7 | 5.1-8.2 | 13.0-18.6 | |
| India | 30.0 | | | | | |
| Israel | | | | | | 81.6 |
| Italy | | 69.7 | 45.3 | | | 67.1 |
| Japan | 30.0 ^b | 73.2-79.4 | 48.0-50.0 | | | |
| Kenya | 29.0 ^d | 74.7 | 72.6 | 25.0 ^c | 38.0 ^c | |
| Korea | 41.7 | 74.4 | 50.0 | 3.8 | 3.1 | 66.2 |
| The Netherlands | | 70.0-77.0 | 54.0 | 4.5 | 6.8 | |
| New Zealand | | | 61.2 | | | 81.0-87.0 |
| Spain | | | 42.2 | 3.5 | 4.8 | |
| South Africa | 45.7 | | | | | |
| Switzerland | | 72.8 | 56.9 | | | 79.0-89.0 |
| Taiwan | | 67.6 | 48.1 | 4.3 | 3.9 | 76.9 |
| Turkey | 36.3 | 72.3 | 25.4 | | | |
| United Kingdom | | 78.0 | 69.0 | | | 83.0 |
| United States | 46.4 | 74.0 | 59.0 | 4.7 | 4.5 | 77.0 |

The authors representing the various countries have undertaken to report the most recent data available from their country; there may be slight discrepancies between the years reported for each country.

^a Percent of women's salary compared to men's salary (men's salary = 100%).

^b Percent of full-time workforce.

^c In urban areas.

^d Within the modern wage sector.

(e.g., nursing, childcare services), education (e.g., elementary school teachers), public services, or small-scale agricultural farming occupations (e.g., Kenya and Turkey) than their male counterparts. Furthermore, the occupations that women are most heavily concentrated in tend to be in the lower income segment. Women remain underrepresented in business and management positions, particularly higher levels of management. In most countries, women continue to lag behind in representation for technical and scientific positions, professional jobs, higher-level governmental positions (e.g., judges, cabinet members, etc.), and most higher-level jobs across sectors.

Authors for several countries note that women are more likely to join the workforce as part-time workers (e.g., Belgium, France, Germany, Japan, Switzerland, and the United Kingdom) to better balance work and family demands or leave the workforce because of childcare demands (e.g., Japan, Korea, and the United States). The latter trend is particularly pronounced in Japan, where the participation ratio by age groups shows an M-shaped curve, because labor force participation rate declines in women's early 30s because of childcare responsibilities. During the period of 1970–2004, the valley section of this M-curve has shifted northeastward due in part to the trend of late marriage and late childbirth. In addition, both peaks of this M-curve have become higher, indicating that women's workforce participation has substantially increased in their 20s and late-30s or older (Japan Institute of Labor Policy and Training, 2007). However, some countries also indicated that the wage gap between men and women may be even more pronounced among part-time workers. For example, in the United Kingdom, women are paid 17% less than men in full-time work and 38% less in part-time work (Equal Opportunities Commission, 2004).

Question 3: Is there research documenting mean differences between groups identified above on individual difference measures relevant to job performance?

Mean differences on ability and personality measures are commonly examined in the United States, with enough data for large-scale meta-analytic summaries. Mean differences on tests of developed abilities of roughly 1.00 standard deviation (SD) between Whites and African Americans and roughly 0.67 SD between Whites and Hispanics have been consistently reported. The largest-scale summary of this literature is a meta-analysis by Roth, Bevier, Bobko, Switzer, and Tyler (2001). This abundance of data proves to be in marked contrast to the pattern of findings in the countries examined here. In fact, for most countries, the authors reported finding either no research or research with samples so small that they refrained from drawing conclusions (i.e., Chile, France, Greece, Italy, Japan, Korea, Spain, Switzerland, Turkey, and the United Kingdom). Although limited, there are some data on group differences in some countries.

Two countries (Australia and Taiwan) report research on cognitive ability differences between aborigines and the advantaged group. The lower cognitive ability scores for Australian aborigines may reflect differences in language and culture. Aborigines in Taiwan, who typically have lower educational attainment (Council of Indigenous Peoples, 2002), also score lower than non-aborigines on several cognitive ability tests. Data from the United Arrangement Commission for college entrance examinations in Taiwan in 2006 showed d values between 0.44 and 0.68 in favor of nonaborigines, depending on the particular test subject (A. Chuang, personal communication, May 1, 2007).

Cognitive ability mean score differences have been reported of $d = 1.39$ between Turkish/Moroccan immigrants and Dutch test-takers and $d = 1.08$ between Surinamese/Antillean and Dutch test-takers, in both cases favoring the majority group (te Nijenhuis, de Jong, Evers, & van der Flier, 2004). Language differences appear to contribute to these findings because higher scores are found for second-generation than first-generation immigrants. Studies in Belgium also report mean differences of about 1.00 SD on cognitive tests between Belgians and Turkish and Moroccan immigrants in samples of children (Fontaine, Schittekatte, Groenvynck, & De Clercq, 2006).

In South Africa, mean score differences on cognitive tests between Black and White groups are normally larger than U.S. studies and have d values of approximately 1.00–1.50, with Whites obtaining the higher mean scores. In a study performed in a South African financial services organization,

d values of 0.99 for averbal ability, 1.03 for a numerical ability, and 1.14 for a diagrammatic ability test were found (SHL, 2006). In South Africa, these differences are largely ascribed to the differences in the educational level of the racial groups. In the 2001 census, it was determined that 22.3% of Africans, 8.3% of Colored (mixed race), 5.3% of Indians, and 1.4% of Whites had no schooling (Statistics South Africa, 2001).

Limited data report lower scores for Arabs than Jews in Israel (Zeidner, 1986), for Canadian First Nations people than for Whites, for New Zealand Maori than for Whites (Chernyshenko, 2005; Guenole, Englert, & Taylor, 2003), and differences between individuals in various provinces in Kenya (Kinyungu, 2006). Data on personality measures are even more limited than for cognitive ability, with authors reporting personality data from only two countries: a large-scale study of Black-White differences in South Africa (Kriek, 2006) showing small differences and several studies of Dutch-immigrant differences in the Netherlands showing much larger differences (van Leest, 1997; te Nijenhuis, van der Flier, & van Leeuwen, 1997, 2003).

Overall, several findings of interest emerge. First, it is clear that gathering data and reporting mean differences by group is generally far more common in the United States than in virtually all of the countries contributing to this report. This is likely the result of the legal scrutiny to which tests are held in the United States. The *Uniform Guidelines on Employee Selection Procedures* (U.S. Equal Employment Opportunity Commission, 1978) use adverse impact computations as the basis for a prima facie case of discrimination, and thus, adverse impact resulting from test use is routinely examined, with mean differences between groups and the method of test use (e.g., a high or a low cutoff) functioning as key determinants of adverse impact. Second, although data tend to be more sparse than in the United States, group differences are studied and observed in various settings involving different types of disadvantaged groups (e.g., immigrant groups in Belgium and The Netherlands; native peoples in Australia, New Zealand, and Canada; tribal and provincial differences in Kenya; the native Black population in South Africa; and Arab groups in Israel). Third, as in the United States, there is interest not only in whether there are group differences, but also in understanding the basis for these differences. Language, culture, and differences in educational access and attainment are seen as key concerns in understanding differences in test scores across groups.

In the United States, disparate impact is the basis for a prima facie case of discrimination. The implicit assumption is that various groups are expected to obtain similar mean scores absent bias in the measure. Our data suggest that many European countries target certain groups as immigrants to meet specific labor shortages. Thus, immigrants might have higher or lower abilities, depending whether a country tried to attract highly skilled people (e.g., recent immigrants into Switzerland from northern and western Europe) or tried to attract people with low skills (e.g., Turkish immigrants to Germany). In other words, even if one has a general expectation of no group differences at the population level, a finding of differences between locals and immigrants would be expected given this targeted immigration.

Question 4: Are there laws prohibiting discrimination against specific groups and/or mandating fair treatment of such groups? Which groups are protected? Which employers are covered? Which employment practices are covered (e.g., selection, promotion, dismissal)?

Table 30.3 presents summary information addressing the above questions for each country. Several findings emerge. First, there is some basis for legal protections for members of specified groups in all countries. The bases for these protections vary widely. In many cases the national constitution provides general, or at times specific, protections. This may be seen as analogous to the 5th and 14th Amendments to the U.S. Constitution, which respectively state that "no person shall ... be deprived of life, liberty, or property without due process of law," and that "no state shall ... deny to any person within its protection the equal protection of the laws." However, in virtually all cases there are also specific laws defining specified protected classes, specifying which employment practices are covered and which employers are required to comply. The intent here is to identify the

TABLE 30.3
International Laws and Practices

| Country | Law | Employers Covered | Employment Practices Covered |
|-----------|---|--|---|
| Australia | The Crimes Act 1914 Racial Discrimination Act 1975 Sex Discrimination 1984 Human Rights and Equal Opportunity Commission Act 1986 Disability Discrimination Act 1992 Workplace Relations Act 1996 Equal Opportunity for Women in the Workplace Act 1999 | All employers; EOWW of 1999 refers to organizations of 100+ | All stages of the employment relationship including but not limited to recruitment, selection, termination, training, and promotion. |
| Belgium | Age Discrimination Act 2004 Belgian Constitution of 1994 Article 10, 11, 191 Law Equality of Men-Women of 1978 Antidiscrimination law of 2003 | All employers | Most employment practices including selection and appointment, promotions, employment opportunities, labor conditions, dismissal, and wages. |
| Canada | Canadian Human Rights Code of 1985 Section 15 of the Charter of Rights and Freedoms (1982) Federal Employment Equity Act (2004) Federal Contractors Program Pay equity legislation (federal and some provinces) | Federal government departments, crown corporations, and other federally regulated agencies and organizations | Most employment practices including selection, performance appraisal, termination, and compensation. |
| Chile | Constitution, Chapter 3 (Rights and Duties), article 19 N° 16 (Freedom of Work and its protection) and Work Code, Article 2° (2002) | All employers | The Constitution establishes the general nondiscrimination principle on the basis of race, color, sex, age, marital status, union membership status, religion, political opinions, nationality, and national or social origin. In March 2008, a new law went into take effect (law # 20,087). This new law defines discrimination as any action that is against the equal opportunity for all workers. A new regulation will specify the practices that are covered by the law. |

continued

TABLE 30.3 (continued)
International Laws and Practices

| Country | Law | Employers Covered | Employment Practices Covered |
|---------|---|---|---|
| France | <p>French Constitution of 1958</p> <p>International convention of the United Nations (1965) ratified in 1971</p> <p>International convention of the International Labor Organization (1958) ratified in 1981</p> <p>"The law concerning the fight against racism" of 1972</p> <p>"The law concerning worker's liberties in organizations" of 1982</p> <p>Treaty of Amsterdam of 1997</p> <p>L. 122-45 from Labor Law</p> <p>225-1 and 225-2 from the Penal Code</p> | All employers | Many employment practices including selection, access to training, pay, layoffs, transfers, and job classification. |
| Germany | <p>Allgemeines Gleichbehandlungsgesetz: General Equal Opportunity Law</p> | All employers, except tendency organizations (e.g. religious organizations) | All stages of the employment relationship including placing a job ad, hiring and selection, definition of payment, performance appraisal and promotion, job-related training and job counseling, corporate health services, design of working conditions, social services, and dismissal. |
| Greece | <p>Greek Law 3304 of 2005, equal treatment</p> <p>Greek Law 3488 of 2006, on equal treatment between people in the labor market</p> | All employers | Conditions for access to employment, to self-employment, or to occupation, including selection criteria and recruitment conditions; promotion; access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience, employment and working conditions; dismissals, pay, membership, and involvement in an organization of workers or employers, or any organization whose members carry on a particular profession, including the benefits provided for by such organizations; social protection, including social insurance and sanitary relief; social provisions; education; and access to disposal and to provision of benefits, which are provided to the public, including housing. |

| | | | |
|--------|---|--|--|
| India | Indian Constitution Article 15. Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth Article 16. Equality of opportunity in matters of public employment Article 39 Article 46 Article 335 Basic Law on Human Dignity and Liberty Basic Law on the Freedom of Occupation Women's Equal Rights Law of 1951 Equal Pay Law of 1996 Equal Employment Opportunity of 1988 Italian Constitution of 1948 Article 3 Legislative decree 216 of 2003 Labour Standards Law of 1947 Law on Securing Equal Opportunity and Treatment between Men and Women in Employment of 1972 | Government entities, public sector organizations, and organizations receiving government funding | Selection; previously promotion. |
| Israel | | All employers All employers 6+ | Compensation, staffing, conditions of employment, promotion, training and development, dismissal, severance pay, retirement benefits. |
| Italy | | All employers | Recruitment, selection, promotion, employment agencies, outplacement procedures, training, working conditions. |
| Japan | | All employers All employers | Wages, working hours, other working conditions. Recruitment and hiring, assignment, promotion, demotion, training, fringe benefits, change in job type and employment status, encouragement of retirement, mandatory retirement age, dismissal and renewal of employment contract. Recruitment and hiring. |
| Kenya | Law for Employment Promotion, etc. of the Disabled of 1960 Law Concerning Stabilization of Employment of Older Persons of 1971 Kenyan Constitution Chapter 5, Section 82 HIV and AIDS Prevention and Control Act 14 The Persons with Disabilities Act 14 of 2003 | All employers All employers | Mandatory retirement. All employment practices. |

continued

TABLE 30.3 (continued)
International Laws and Practices

| Country | Law | Employers Covered | Employment Practices Covered |
|-----------------|--|---|---|
| Korea | National Human Rights Commission Act of 2001 | Not specified | Recruitment, hiring, training, placement, promotion, compensation, loans, mandatory retirement age, retirement, and dismissal. |
| | Equal Employment Act of 1987 | All employers | Recruitment, selection, compensation, education, training, job placement, promotions, setting a mandatory retirement age, retirement, and dismissal. |
| | The Act of Employment Promotion and Vocational Rehabilitation for the Disabled of 1990 | Employers with 50+ workers | Hiring, promotion, transfer, education, and training. |
| | The Aged Employment Promotion Act of 1991 | Government employees | |
| | The Basic Employment Policy Act of 1993 | Employers with 300+ employees | |
| | Constitution, Article 1 of 2003 | Not specified | Recruitment, hiring, and dismissal. |
| The Netherlands | General Law Equal Treatment of 1994 | All employers (except religious, philosophical, or political organizations) | Recruitment and hiring. |
| | Human Rights Act of 1993 | All employers | Recruitment, selection, employment agencies, dismissal, labor agreements, education before and during employment, promotion, and working conditions. |
| New Zealand | | | Refusal of employment, less favorable employment, conditions of work, superannuation, fringe benefits, training, promotion, transfer, termination, retirement, and resignation. |
| South Africa | Constitution of the Republic of South Africa of 1996 | All employers except the National Defense Force, National Intelligence Agency, and South African Secret Service | Includes, but is not limited to, recruitment procedures, advertising, selection criteria, appointment and appointment process, job classification and grading, remuneration, employment benefits, terms and conditions of employment, job assignments, working environment and facilities, training and development, performance evaluation systems, promotion, transfer, demotion, disciplinary measure other than dismissal, and dismissal. |
| | Labour Relations Act, Act 66, of 1995 | | |
| | Employment Equity Act, No. 55, of 1998 | | |

| | | | |
|-------------|---|---|---|
| Spain | <p>Spanish Constitution, Article 14 of 1978 Law of Worker's Statute of 1980, 2005, Article 4.2 y 17 Organic Law for Effective Equality between Women and Men of 2007, Article 1, 3, 4, 5, 6 Law of Basic Statute of Public Employee of 2005, Article 14.i</p> | All employers | <p>Recruitment, selection, promotion, compensation, training, temporal employment companies, employment agencies, dismissal, labor agreements, collective bargaining, education before and during employment, health programs, and working conditions.</p> |
| Switzerland | <p>Bundesverfassung of 1999 (Swiss Federal Constitution) Bundesgesetz über die Beseitigung von Benachteiligungen von Menschen mit Behinderungen of 2002 (Federal Law for the Equal Treatment of People with Disabilities) Bundesgesetz über die Gleichstellung von Mann und Frau of 1995 (Federal Law for the Equal Treatment of Men and Women) Schweizerisches Zivilgesetzbuch of 1907 (Swiss Civil Code) Bundesgesetz betreffend die Ergänzung des Schweizerischen Zivilgesetzbuches — Obligationenrecht of 1912 (Swiss Code of Obligations) Article 5 of the Employment Services Act of 1992 Gender Equality in Employment Law of 2002</p> | <p>Public employers All employers All employers All employers All employers All employers All employers</p> | <p>Includes pre- (particularly), during, and postemployment practices. Includes pre-, during, and postemployment practices (i.e., recruitment, sexual harassment, earnings, promotions, etc.). Protection of employee personality and personal data throughout all stages of the employment process. Staffing. Recruitment, selection, promotion, job allocation, performance evaluation, promotion, training, compensation, benefits, retirement, dismissal, and quit. Staffing.</p> |
| Taiwan | <p>Equal Employment Opportunity for Aborigines Act of 2001</p> | <p>Public employers and private employers who are government contractors with domestic employee of 100+</p> | <p>Staffing. Recruitment, selection, promotion, job allocation, performance evaluation, promotion, training, compensation, benefits, retirement, dismissal, and quit. Staffing.</p> |

continued

TABLE 30.3 (continued)
International Laws and Practices

| Country | Law | Employers Covered | Employment Practices Covered |
|----------------|---|---|--|
| Turkey | Republic of Turkey Constitution of 1982 Article 10 Article 49 Article 50 Article 70 Labor Law, Article 5 of 2003 | All employers | Article 70 specifically covers selection for public institutions; other practices are implicitly covered including pay, promotion, and dismissal in other articles. |
| | UN's Convention on the Elimination of All Sorts of Discrimination Against Women Article 11 | All employers (except sea transportation, air transport, agricultural and forestry with less than 50 employees, home services, internships, professional athletes, rehabilitation workers, businesses with 3 workers, handmade art jobs done at home, journalists) All employers | Performance appraisal, pay, promotion, and termination practices are implicitly covered; selection is not covered because the law only covers private sector employees who are already employed. |
| United Kingdom | Prime Minister's office circular of 2004 Race Relations Act of 1976 Sex Discrimination Act of 1975 Employment Equality (Age) Regulations 2006 Equal Pay Act of 1970 Disability Discrimination Act 1995 European Community Directives Civil Rights Act of 1964, Title VII (amended 1972, 1991) Age Discrimination Act 1967 Americans with Disabilities Act 1990 and Rehabilitation Act 1973 Equal Pay Act 1963 | Public employers All employers, trade unions, professional bodies, and employment agencies All employers, trade unions, professional bodies, and employment agencies All ages, young and old All public employers and private employers with 15+ employees Private employers with 20+ employees, state and local governments ADA covers private employers, state and local governments; Rehabilitation Act covers federal government; Virtually all employers | Generally all employment practices, including selection, promotion, termination, pay, performance appraisal, access to training, and treatment. Selection. Generally all employment practices: selection, promotion, termination, pay, performance appraisal, access to training, and treatment. |
| United States | | | Range of employment decisions including hiring, compensation, terms, conditions, and privileges of employment. Prohibits discrimination against individuals age 40 or older. Prohibits discrimination against individuals with disabilities in the full range of employment decisions. Prohibits discrimination against women in pay decisions. |

major contemporary federal laws and government decrees, and as such it is not a complete record of all historical employment regulations. For example, in the United States a specialist can rightly note that the Civil Rights Acts of 1866 and 1871 are still relied upon on occasion, although these are not listed in the table. Also, several states and cities have additional statutes, offering protection to groups beyond those covered by federal law.

Second, the protections offered are generally quite sweeping in terms of the types of employers covered. In most cases all employers are covered. Some laws are restricted to government employees, and in some cases, coverage is restricted to larger employers, with the coverage threshold varying quite widely for some statutes (e.g., more than 6 employees in Israel, 15 in the U.S., 100 in Taiwan, and 300 in Korea).

Third, it is typical for a broad range of employment practices to be included. Employee selection is specifically included in all countries except Chile, which has the least developed set of employment rights regulations of the countries examined here, and which has yet to specify a set of covered employment practices. However, Chile does prohibit discrimination based on race, color, sex, age, marital status, union membership, status, religion, political opinions, nationality, and national or social origin in its Constitution but does not specify which specific employment practices are covered.

Fourth, there is considerable commonality and variation in the classes that receive protection in each country. Table 30.4 identifies the most common protected classes and indicates whether those classes are covered in each of the contributing countries. The classes covered in U.S. Civil Rights law emerge as widely commonly covered across countries: race, color, religion, gender, national origin, age, and disability status. Three categories not protected by federal statute in the United States are protected in most countries: political opinion, sexual orientation, and marital/family status. Several protected classes are covered in only a few countries or are unique to a few countries; Table 30.5 identifies these less common protected classes. Examples include language, physical appearance, union membership, socioeconomic status, and HIV status.

Question 5: What is required as prima facie evidence of discrimination? What is required to refute a claim of discrimination?

In most countries, direct (e.g., differential treatment) and indirect (e.g., disparate impact) prima facie evidence of discrimination are acknowledged. In India, disparate impact is necessary but not sufficient to prove a case of discrimination; underrepresentation must be shown to be due to historical social or religious discrimination toward a particular group. Only two countries require evidence of the intent to discriminate, Taiwan and Turkey, thus ruling out a disparate impact theory of discrimination.

However, although disparate impact evidence can be used as evidence in most countries, highly specific evidentiary rules used in the United States (e.g., the four-fifths rule and tests of the statistical significance of the difference between passing rates for various groups) are generally not in use (Canada, is an exception, because cases using the four-fifths rule in the United States have been used to make a case for a similar standard). Commentators note that in most cases there are few or no cases involving disparate treatment challenges to predictors commonly used by psychologists, and thus, there is not the extensive case law that has developed in the United States. Recall that the four-fifths rule in the United States derives from guidelines issued by enforcement agencies, and the use of significance testing derives from case law; neither the concept of disparate impact nor the mechanisms for identifying its presence are contained in statute. Absent a history of challenges resulting in case law, it is not surprising to see the lack of specificity as to evidentiary standards.

A similar lack of specificity applies to the question of what is required to refute a claim of discrimination. Table 30.6 summarizes information across countries. In general, there is some version of the shifting burden of proof model in countries where disparate impact evidence is permissible. After a prima facie showing, the burden to justify the use of the employment practice shifts to the employer in all countries except Switzerland, where the burden of showing that the practice is not

TABLE 30.5
Other Protected Classes by Country

| Country | Other Protected Classes |
|-----------------|---|
| Australia | Breastfeeding, family or career responsibilities, irrelevant criminal record, physical features, potential pregnancy, trade union or employer association activity, sexual harassment, pregnancy and transgender status |
| Belgium | Union membership, membership of other organizations, health, and any other personal characteristic |
| Chile | Union membership status |
| France | Moral principles, genetic characteristics, union activities or activities in a "mutuelle," physical appearance, family name, and health |
| Germany | Philosophy of life, sexual harassment |
| India | Scheduled castes, scheduled tribes, and other backward classes |
| Israel | Personal status and military service |
| Italy | Personal and social conditions and language |
| Japan | Social status |
| Kenya | Tribe, local connection, and HIV/AIDS status |
| Korea | Social status, region of birth, appearance, criminal record after punishment has been served, academic background, medical history, pregnancy, and physical conditions (e.g. appearance, height, weight) |
| The Netherlands | Philosophy of life, chronic disease, full-time/part-time work, and type of contract |
| New Zealand | Ethical belief, employment status, and sexual and racial harassment |
| South Africa | HIV status, conscience, belief, culture, birth, pregnancy, and language |
| Spain | Social condition and membership to a labor union |
| Switzerland | Socioeconomic status, way of life, and language |
| Taiwan | Thought, provincial origin, appearance, facial features, union membership, status, and language |
| Turkey | Philosophical belief, sect, and language |
| United Kingdom | Persons who have undergone gender reassignment or intend to |
| United States | Pregnancy |

job-related is only partially reduced or remains with the plaintiff. There is a general notion that the employer should present evidence to support the job relatedness of the employment practice in question, but rarely is the required form of such evidence specified. The identification of validity evidence as a mechanism for establishing job relatedness is rare.

Question 6: What are the consequences of violation of the laws?

Table 30.6 also summarizes possible consequences of violation in each participating country. There is considerable variation in the array of possible remedies. As a point of reference, note that in the United States the focus is on compensatory or "make-whole" remedies, with punitive damages reserved for instances of intentional discrimination. Similarly, make-whole remedies are part of the landscape in all countries for which information could be obtained. Several countries also provide fines and punitive damages (e.g., Switzerland and Turkey), and several include imprisonment as a possible consequence (e.g., Belgium, France, and Greece).

Question 7: Are particular selection methods limited or banned as a result of legislation or court rulings?

There are relatively few restrictions on specific selection methods. As a point of reference, U.S. law regulates the use of the polygraph, prohibiting its use for most private employers; several other countries restrict polygraph use as well (e.g., Germany, Israel, and Turkey). The only selection method specifically mentioned in U.S. law is the reference in the Tower amendment to Title VII of the Civil Rights Act of 1964 (U.S. Code, 1964) to the permissibility of professionally developed

TABLE 30.6

Evidence Needed to Refute a Discrimination Claim, Consequences of Violation, and Permissibility of Preferential Treatment by Country

| Country | Evidence Needed to Refute a Claim | Consequences of Violation | Permissibility of Preferential Treatment |
|-----------|--|--|--|
| Australia | Inherent requirements of the job, existence of special measures to eliminate discrimination, occupational requirements, actions required by law, employment within small organizations, consistent beliefs (e.g., religious organizations or educational institutes). The statutes make no reference to the psychological concept of validity nor has it arisen in case law. Statistical data or practical tests can be used as evidence. | Injunction to stop the act, award of damages, order to the organization to redress the situation, variation, or cancellation of a contract or agreement that violates the law. | Within-group norming is not banned and is used by some psychological testers as a means of complying with legislation (Myors, 2003). Targets may be used in some EEO plans, but explicit quotas are avoided. |
| Belgium | | Mediation or binding judgment from civil court. Imprisonment and/or fines. | Preferential treatment is permitted to remedy a historical discrimination against a group. Quotas are permitted, but seldom utilized. Some organizations also utilize target numbers. |
| Canada | The employer must demonstrate that the employment policy, practice, or procedure that is challenged is a bona fide occupational requirement. Tribunals and courts are quite liberal in the evidence that they will accept from employers in defense of their employment practices. Empirical and statistical evidence generated by I-O psychologists (e.g., local validation studies) may be useful in defending employment practices, but courts and tribunals often lack the sophistication to make full use of such detailed and complex technical information. | Fines, payment for lost wages, reinstatement, and ordering of special programs. | Preferential treatment permitted (mainly in the public sector). |
| Chile | Unclear, unless for sexual harassment or unionization suits. Empirical evidence not required. | Unknown. Currently, sexual harassment suits may result in monetary compensation and up to 3 years imprisonment. | Government has enacted an informal quota for women in minister positions; however, this has not crossed over into the private sector. |

| | | | |
|---------|--|---|--|
| France | Vague. Employer should present any information showing the decision is legitimate, nondiscriminatory, and based on objective information. | Three years imprisonment and/or a fine for conviction in a criminal court. Discriminatory act is annulled in a civil court and possibly financial compensation. | Considerable discussion about this; politically, preferential treatment is seen as undesirable. However, there are settings where it is used. |
| Germany | Needs to be based on job requirements. | Employee has right to refuse to work while on payroll and sue employers for damages. | When parties present lists of candidates for regional and senatorial elections they are required to have an equal number of men and women. Also, there are quotas in one setting: at least 6% of workforce needs to be handicapped for organizations with more than 20 employees. |
| Greece | Employer must show that there has been no breach of the principle of equal treatment. | The employer who infringes the laws about equal treatment on the grounds of racial or ethnic origin, religion or belief, disability, age or sex is punished by imprisonment of 6 months up to 3 years and together with a penalty of 1,000 up to 5,000 euros. At the discretion of the judge. | No formalization, but public authorities are to give preference to women and handicapped persons. Preferential treatment to prevent or compensate for disadvantages linked to any of the protected classes. |
| India | | | |
| Israel | Evidence of test reliability and validity, which can be based on validity generalization. In addition, the National Labor Court recently ruled that employers seeking to prove their innocence will be subject to less severe tests of selection validity to the extent that they are accused of discriminating against internal as opposed to external candidates; the logic being that employers typically have far greater information upon which to base a selection decision when choosing among internal candidates. | Small fines. Hiring, reinstatement, or career advancement of plaintiff, payment of back wages. | Preferential treatment in the form of a relaxation of qualifying scores for protected groups in external recruitment is permitted; however, a common standard is required for promotion. Not all members of protected groups are equally eligible, also dependent on social/economic status. Government positions also use quotas. Preferential treatment is required by public organizations and state-owned enterprises for women and minorities. Preferential treatment is permitted in the private sector. |
| Italy | Validity evidence not requested. Evidence to refute a claim is currently unclear. | Unknown. | Preferential treatment permitted for women. |

continued

TABLE 30.6 (continued)
Evidence Needed to Refute a Discrimination Claim, Consequences of Violation, and Permissibility of Preferential Treatment by Country

| Country | Evidence Needed to Refute a Claim | Consequences of Violation | Permissibility of Preferential Treatment |
|-----------------|--|---|--|
| Japan | | Administrative advice. | Preferential treatment permitted and supported by the government. Quotas required for disabled. |
| Kenya | Must show that decisions were based on applicant aptitudes and abilities. Empirical validity evidence not required. | Remedy by following recommendations of Ministry of Health, Labour, & Welfare. Possible public announcement of violation. Civil fine of maximum 200,000 yen (\$2,400 U.S.). | Different cut-off scores are set for members from different ethnic groups to ensure that some members from each group will be selected. There are required quotas of 5% in the private and public sector for disabled individuals. |
| Korea | Show job relatedness, but specific method unclear. | National Humans Right Commission will make a binding conciliation resolution. Fines. | Quotas required for disabled. Preferential treatment for women, although firms with over 50% women in workforce are exempt. |
| The Netherlands | Generally no validity evidence is requested because the validity of common psychological tests, such as tests for cognitive abilities, personality inventories and assessment center exercises, is taken for granted. Most claims concern direct discrimination or treatment discrimination (Commissie Gelijke Behandeling, 2006). Exceptions are clear-cut cases of indirect discrimination in which inappropriate job requirements were set. | Nonbinding judgment by the Commission of Equal Treatment and possibly judgment referral to a civil court. | Preferential treatment is permitted for women and ethnic minorities (does not have to be equally qualified). |
| New Zealand | Unclear, because few cases make it to court. Genuine Occupational characteristics (GOQ). | Apology, payment or compensation, assurance that the discriminatory act will not be repeated, or referral to a Human Rights Tribunal for further judgment. Fines. Possible cancellation of government contracts. | This is currently being explored. Preferential treatment appears to be permitted (and may be soon applied to the Maori population). Preferential treatment is permitted and applied. Racial quotas are legal and practiced by many large employers. The practical implication for this is that it is legal in the South African context to use race norming, or within-group top-down selection strategies, to address affirmative action needs of organizations. |
| South Africa | Qualitative and empirical data can be brought to bear to support validity. | | |

| | | | |
|----------------|--|--|--|
| Spain | Recent laws may lead to greater focus on empirical evidence; up until now, validity of tests was taken for granted. | Compensation, rejection of the decision, and subsequent application of the court decision, repetition of the selection process with new procedures. | Preferential treatment for women in some cases. |
| Switzerland | Empirical evidence not generally presented or required. | Courts can award damages including payment of owed earnings and payment of compensation and satisfaction. Fines. | Preference is permitted but not required. |
| Taiwan | Provide evidence of job relatedness. | Reinstatement, back pay, and/or monetary damages. | Quotas required for aborigines (at least 1% of private organizations' workforce). Preferential treatment is not required or permitted and is actually forbidden. |
| Turkey | Show that requirement is justified. The employer can show that they took all "reasonable" steps to prevent discrimination. No impact cases involving tests have reached the stage of a court decision, so there is as yet no requirement of validity evidence. | Court has discretion. Compensation to the plaintiff. Formal investigation by governing bodies that can recommend changes in procedures. | Preferential treatment is not permitted, but "positive action" such as encouraging certain groups to apply or offering training to these groups. |
| United Kingdom | Evidence that the challenged practice is job-related for the position in question and consistent with business necessity (largely through validity studies). | Upon a finding of discrimination, a judge can specify "make whole" remedies, such as back pay, hiring, or reinstatement. There are no punitive damages absent a finding of intentional discrimination. | 1991 amendments to Title VII of Civil Rights Act prohibit preferential treatment, specifically in the form of adjusting scores or using separate norms for minority group members. Preferential treatment is permitted after a finding of discrimination as part of a judicially ordered remedy. |

ability tests, provided that such tests are not designed, intended, or used to discriminate. Additional instances reported of restrictions on specific selection methods in participating countries include a prohibition against comprehensive personality assessment in Switzerland and a restriction on the use of certain Minnesota Multiphasic Personality Inventory (MMPI) and California Psychological Inventory (CPI) items in Spain.

The most strikingly different approach to regulating selection practices is found in South Africa. Rather than the common approach of a presumptive right of an employer to use a particular method absent a successful challenge by a plaintiff, South African law puts the burden immediately on the employer. According to the Employment Equity Act of 1998 (*Government Gazette*, 1999), psychological testing and other similar assessments are prohibited unless the test is proven to be scientifically valid and reliable, can be applied fairly to all employees, and is not biased against any employee or group. The Society for Industrial and Organizational Psychology (SIOP) in South Africa published "Guidelines for the Validation and Use of Assessment Procedures for the Workplace" during 2005 to provide guidelines for practitioners in the field of I-O psychology to ensure that their assessment instruments and practices comply with the scientific requirements and international best practices. These guidelines were largely based on the American SIOP guidelines.

Question 8: What is the legal status of preferential treatment of members of minority groups (e.g., quotas or softer forms of preference)?

To set the stage, note that the term "affirmative action" is used in various contexts, only some of which involve preferential treatment for protected groups. Some forms of affirmative action involve outreach efforts to publicize openings and to encourage applications from members of protected groups. However, there is no preferential treatment given once an individual is in the applicant pool. Approaches involving preferential treatment fall into two main classes: (a) those that set differing standards for protected and nonprotected groups without setting aside a specified number or proportion of openings for members of protected groups (e.g., using different cut-off scores, using within-group norming) and (b) quota approaches that set aside a fixed number or proportion of openings for members of protected groups.

Table 30.6 summarizes the status of preferential treatment in the participating countries. Preferential treatment is a domain in which the United States emerges as a clear outlier. Preferential treatment in terms of differing score cutoffs or separate norming of tests within group is prohibited by the U.S. Civil Rights Act of 1991 (U.S. Code, 1991), and the use of quotas is restricted to very limited settings, such as a court-ordered remedy following a finding of discrimination. In contrast, in only two countries do commentators report a prohibition against minority preference (Turkey and the United Kingdom). The types of preference permitted and the settings in which it is used do vary widely. The status of quotas varies, from prohibited (Australia), to permitted but rarely used (Belgium), to permitted and widely used (South Africa), to used in government sectors (backward classes in India and women in Chile), to required for certain groups (e.g., aborigines in Taiwan, individuals with disabilities in France, Japan, Kenya, and Korea). Several commentators note that applying lower standards to protected groups (e.g., different cutoffs or within-group norming) is used (Australia, India, and South Africa). In India, lower qualifying scores for protected groups are permitted for external selection, but not for promotion.

Question 9: How have laws and the legal environment affected the practice of science-based employee selection in this country?

In only a few countries (Canada, South Africa, and the United States) is the legal environment seen as having a large effect on science-based employee selection. In general, this can partially be attributed to the much more amorphous legal standards and consequences with regards to employment discrimination in most countries surveyed. The reciprocal relationship between science-based selection and the legal environment will need to be continually monitored because many countries

are still in the process of developing legal statutes and requirements or establishing guidelines for the prosecution and rulings on employment discrimination.

Overall, most employers in the countries surveyed have great latitude in choosing what selection procedures to utilize. However, most employers are aware of the social and political nature of selection procedures and seem to err on the side of mainstream, popular, and usually well-validated selection methods. The most common type of selection procedures do vary by country. It is common to see reports of increased use of the tools and techniques of science-based selection, but the driving forces are more commonly the presence of multinational firms and consulting firms that import these techniques into the country.

DISCUSSION

In this section we offer 35 broad summary statements about the patterns emerging from the narratives from the various countries.

DISADVANTAGED GROUPS

1. Disadvantaged groups could be divided into four main groups: immigrants or foreign residents, religious minorities, racial/ethnic minorities, and language group minorities (speak different primary language).
2. Many European (especially European Union) nations have disadvantaged groups who are immigrants or foreign workers. The groups that are disadvantaged are usually Eastern European or African.
3. Many Asian countries also have disadvantaged groups who are immigrants or foreign workers.
4. Many of the racial/ethnic minorities are indigenous people (e.g., Australia, Canada, New Zealand, Taiwan, and the United States).
5. Most disadvantaged groups are a relatively small proportion of the population, most below the 20% "breaking point" specified in research on tokenism (Kanter, 1977).
6. Disadvantaged groups can constitute the majority of the population (e.g., South Africa).

WOMEN IN THE WORKPLACE

7. Women are now well represented in the workforce, and between one quarter to approximately one half of the workforce are women in most countries.
8. Women have generally substantially increased their participation rate in the workforce in the last decade. However, men's rate of participation in the workforce continues to greatly outstrip that of women.
9. Women are still underrepresented in management and professional positions. However, European nations and the United States have a sizeable representation of women in lower and middle-management positions. However, all countries have very few women in top- and senior-management positions.
10. Wage differentials are still sizeable between men and women; women generally earn 60–80 cents to the dollar compared with men.
11. Considerable occupational segregation remains for women, such that women tend to be heavily concentrated in lower-income-segment occupations. These include clerical/secretarial jobs, service jobs, nursing and childcare services, and primary education.
12. Women tend to engage in more part-time work (partly because of childcare responsibilities).

SUBGROUP MEAN DIFFERENCES

13. Very few countries have research exploring potential mean differences in cognitive ability, personality, or job performance. In terms of cognitive ability, findings usually favor the advantaged group and/or men.
14. Mean differences between local and immigrant populations are affected by immigration policies. Targeting either high- or low-skill immigrants can affect the magnitude and direction of mean differences.

DISCRIMINATION LAWS

15. Every country has a law or directive that prevents discrimination on the basis of sex or race/ethnic origin and many other personal characteristics and beliefs.
16. Most discrimination cases seem to be settled by special commissions and/or courts rather than by juries (which do not exist in several countries).
17. In many countries, few actual cases are actually filed and/or brought to trial, not because discrimination does not occur, but because workers do not understand their rights, are not used to protecting these rights (e.g., collectivistic orientation, etc.), or do not see much benefit in going to court.
18. Punishment is generally usually rather light (e.g., minimal to moderate fine or reinstatement, payment of back wages).
19. Concerns about privacy are very prominent in Europe. Many European countries are so concerned that data on race or gender are not collected.

MAKING AND REFUTING A CLAIM OF DISCRIMINATION

20. For many countries, although there are laws in place, there is very little clarity about how to establish discrimination and/or what kind of evidence required.
21. Intent to discriminate is not required in most countries (exceptions are Taiwan and Turkey).
22. Most discrimination cases are handled on a case-by-case basis and are based on treating people differently on the basis of group membership (direct discrimination) rather than a procedure or test that systematically disadvantages a group (indirect discrimination). In most countries surveyed, both are illegal.
23. Few actual cases outside of the United States challenging the adverse impact or discriminatory nature of formal tests (cognitive ability or personality) exist, and therefore most countries do not really use validity evidence to refute discrimination.
24. Most countries do not require validity evidence. In many places the empirical validity of formal tests (e.g., cognitive ability, personality) is implicitly assumed.
25. Most countries do not use relevant workforce comparisons as a basis for discrimination although this information is sometimes taken under consideration in certain countries.
26. The evidence to refute a claim of discrimination is usually some qualitative evidence of job-relatedness or bona fide occupational requirement.

MINORITY PREFERENCE

27. Minority preference is permitted (and even recommended) in most countries. This is more likely to be true for women or those with disabilities than for racial groups.
28. It is more common for government entities than for private-sector firms to engage in practices involving preferential treatment.

29. Forms of affirmative action vary, ranging from active recruitment and training of women or racial groups that have been traditionally disadvantaged to lower standards for these groups.
30. Quotas are relatively rare but are present in several countries; for example, India (lower castes), Taiwan (aborigines), Korea and France (disabled), and South Africa (race and gender).
31. Explicitly forbidding preferential treatment is rare (e.g., Turkey).

SPECIFIC SCIENCE-BASED SELECTION TOOLS

32. Generally, science-based tools are not explicitly referenced in laws or in common legal practices (exceptions include South Africa, Switzerland, and the United Kingdom).
33. Generally, although firms are free to use whatever selection methods they desire, large firms tend to be aware of social and business pressures for effective selection.
34. The selection method that is most limited/banned is the polygraph.
35. Selection practice tends to be influenced more by the presence of multinational corporations and consulting firms than by legal pressures (with the exception of the United States, Canada, and South Africa).

We fully anticipate that some readers may question the value of knowing the legal environment of countries other than their own, because they are inevitably bound by the legal constraints of the country they operate in. We have several responses. First, in today's global world, more and more firms engage in business that extends across national boundaries. Second, there is value in extending one's framework beyond the national setting with which one is most familiar. Discovering that the same issue is treated differently elsewhere breaks the mold of viewing a certain set of circumstances as inevitable. Third, documenting these differences sets the stages for comparative research asking questions about why certain variations are found. For example, why is preferential treatment not generally permitted and held in such negative popular opinion in the United States and not in many other countries? Why are some groups protected in some countries but not others?

In conclusion, we hope this compilation of information about perspectives from a wide range of countries is useful to students, researchers, and practitioners around the globe. We encourage international collaborations on other workplace issues, and hope this project provides a useful model.

AUTHORS' NOTE

This research was conducted while Antonio Mladinic was on leave from the Pontificia Universidad Católica de Chile and holding a visiting appointment at the University of Texas at El Paso and while Herman Aguinis was on sabbatical leave from the University of Colorado Denver and holding a visiting appointment at the University of Salamanca (Spain). Oleksandr Chernyshenko is now at the Nanyang Business School, Nanyang Technological University (Singapore).

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