Comparative Study on the collection of data to measure the extent and impact of discrimination within the United States, Canada, Australia, Great-Britain and the Netherlands

Medis Project (Measurement of Discriminations)

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- ✓ The United States by Ann Morning and Daniel Sabbagh
- ✓ Canada by Maryse Potvin and Sophie Latraverse
- ✓ Australia by Martin Clément and Edward Santow
- ✓ Great Britain by Joan Stavo-Debauge and Sue Scott
- ✓ The Netherlands by Virginia Guiraudon, Karen Phalet and Jessica Ter Wal

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INTRODUCTION

A/ The background of the Study

Further to the enactment of Directives n°2000/43/EC related to "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin" and 2000/78/EC “establishing a general framework of equal treatment in employment and occupation”, the European Community initiated a vast action programme to fight discrimination. This programme[1] covers all of the grounds for discrimination set out in Article 13 of the Treaty of Amsterdam, with the exception of sex which is the subject of separate action programmes. This programme must follow the effective implementation and application of the above-mentioned directives, from which its general orientation flows as well as its scope of application and timetable. One of its objectives is the increased understanding of discrimination issues and the assessment of anti-discrimination policies. As part of its initiatives, the programme appendix (section 1) specifies that it will support “the development and dissemination of comparable statistical series data on the scale of discrimination", and "the development and dissemination of methodologies and indicators to assess the effectiveness of anti-discrimination policy and practice”. The directives thus point to the use of statistical data in the framework of legal procedures, without conferring a mandatory or binding nature on their production[2]. Nevertheless, by registering indirect discrimination in Community and Member State legislation, the directives make the production of statistical data essential in order to provide information on the extent and the characteristics of discrimination, assess the effectiveness of policies and support legal procedures.

The methodologies for the collection of statistical data and their characteristics (definitions and formats) are crucial in establishing an efficient anti-discrimination scheme at the European level. The programme committee’s first initiative was therefore to assess the current state of available data to measure the extent and impact of discrimination in the different Member States (meeting of December 11, 2000). The questionnaires collected (11 Member States out of 15 responded) show that the majority of Member States have relatively diverse statistical data to describe and analyse the grounds covered in Article 13 and the anti-discrimination directives. Analysis of the responses also confirms that the interpretation of what “statistics on discrimination” should be varies significantly according to each country. Certain responses mainly quote statistics published by anti-discrimination agencies (reporting on their activities) or legal actions and infringements recorded by the police. Others quote the different sources which can provide information directly or indirectly on the inequalities or disparities in position or

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[1] Community Action Programme to fight discrimination on the grounds of racial or ethnic origin, religion or beliefs, disability, age or sexual orientation. Council decision of 27/11/2000 (2000/750/EC).

[2] Preamble 15 of the "race" directive (2000/43/EC) states: "the appreciation of facts allowing direct or indirect discrimination to be presumed is the responsibility of national legal proceedings or other competent proceedings that can particularly anticipate that indirect discrimination can be established by all means, including on the basis of statistical data”.

access recorded by the population categories defined by grounds for discrimination. The disparities in responses demonstrate each country's interpretation and understanding of the discrimination concept, particularly in terms of its extension to the concept of indirect discrimination.

Few Member States have truly understood the changes in perspective involved in the consideration of indirect discrimination. More than just extending the conventional use of legal sanctions to discriminatory acts, indirect discrimination requires the examination of all of the apparently neutral procedures and practices, and, above all, the active promotion of equality. While actions fighting direct discrimination require the invisibilisation of personal characteristics in order to ensure the impartiality of procedures dealing with prohibited criteria, indirect discrimination, on the other hand, requires *making the invisible visible*. The definition in the "race" directive indicates that "indirect discrimination shall be taken to occur when an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons". A result of this definition is that indirect discrimination can only be assessed in terms of its negative consequences on persons who are assumed to belong to an "ethnic or racial" group. These consequences are measured by comparing the position of the "ethnic or racial" group to that of a benchmark group. The assessment proposes to 1) define groups according to prohibited characteristics, 2) record individual characteristics and assemble them into comparative tables thus leading to the illustration of groups, 3) establish statistical disparities or differentials, and 4) demonstrate their *substantial* or *significant* features through indicators set out in an appropriate order of magnitude. Through this operation, unfavourable treatment affecting certain "ethnic or racial" groups becomes apparent, with no need for demonstrating a specific intent, and without identifying the mechanisms causing discrimination. It is the differential in the result itself and its unjustified nature that defines indirect discrimination. It can therefore be said that indirect discrimination is only perceived through statistical reasoning, using data collected from selection and allowance trials.

The schemes in place to meet the requirements of active equal treatment policies incorporate the extensive use of statistical data. At each stage, they evaluate needs, monitor procedures or set quantitative objectives for the access and distribution of persons belonging to "designated groups". But even before developing all of the provisions required to fight indirect discrimination, the simple exposure of the extent and characteristics of the inequalities faced by discriminated groups requires statistics that most European countries are not able to provide. The main reason lies in the shortage or absence of statistical data on the categories corresponding explicitly to the grounds mentioned in Article 13 of the Treaty of Amsterdam or the above-mentioned directives. This is patent for data relating to ethnic or racial origin. No Member State, with the exception of Great Britain, produces statistical data using this terminology. Statistics on nationality, the country of birth of individuals or that of their parents are used to advise on ethnic and racial discrimination, but their usefulness is debateable in terms of the issues raised by the directives. The multicultural nature of most European societies significantly modifies the manner in which relevant social and demographic divisions are structured. This new environment is the subject of debate within the societies in question and highlights the discrimination issue. This debate does not apply in the same manner to statistics on sexual orientation; such statistics are never collected[3]. Religion is recorded in various ways, often depending on the public financing of religious groups. In terms of disability, statistics derive from the attribution of social benefits or medical care services.

B/ Study problematic and methodology

The European Commission[4] wished to gather knowledge on the schemes in place in certain countries where the experience in fighting discrimination is well established, in order to lend substance to the reflections initiated by the transposition of directives on equal treatment into the laws and policies of the Member States. This study will therefore look at the central role played by statistical monitoring within these schemes, as well as data collection methods aiming at the promotion of equality, and the solutions found for making data protection and privacy concerns compatible with the collection of sensitive data, which, for these reasons, is subject to strict controls. The countries selected are the United States, Canada, Australia, Great-Britain and the Netherlands.

The countries involved in this study have, to varying degrees, developed anti-discrimination schemes that are an example for the international community. The common denominator is that they have all introduced the indirect discrimination concept, whatever the terminology used, into their laws and policies. Secondly, they have adopted volontarist measures in order to ensure effective equality. The general design of the schemes' set-up to a great extent calls upon statistical data collected via a relatively complex monitoring system. In particular, the countries under study have developed ethnic and racial categories to meet the needs of their anti-discrimination scheme. This experience is vital for providing comparative elements to Member States when they are required to put the same type of policy in place. Needless to say, the countries under study are not models whose monitoring systems need to be copied in their integrity. As we will see, these systems result from particular historical processes that are not transposable. Despite their apparent similarities, the schemes have a number of singularities resulting from specific legal, political and social structures. No one system of statistical monitoring exists to promote equality, but there are diverse approaches with both advantages and limitations, which we will endeavour to identify. The analysis of these proven systems provides useful information for understanding the pivotal role played by statistics in implementing legal mechanisms and reducing obstacles caused by a lack of knowledge on the objectives and guarantees these systems offer.

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[3] Statistics on same-sex couples are not truly equivalent to those on sexual orientation.

[4] “Anti-discrimination, Fundamental Rights and Civil Society” unit of the Directorate-General for Employment and Social Affairs.

The case of Great-Britain and the Netherlands are particularly interesting inasmuch as these two countries have transposed the European directives on equal treatment, as well as the directive on data protection. Their standards' environment is similar to that of other Member States and their experience is more easily comparable in terms of their specificities.

The subject of this study is relatively broad and, although appearing to be well defined, it goes beyond the fight against discrimination itself. The statistical data collection system for providing information on discrimination covers a broad range of subjects and involves a large number of participants and institutions. The profusion of publications on the issue in the countries under study may give the impression that organising and summarising data is sufficient to achieve the desired analysis. However, the work on anti-discrimination schemes is often very superficial as regards the monitoring system and methodology used in producing statistics on discrimination. We therefore believe that beyond the consultation of official legal or administrative documents, scientific literature or grey literature, it is particularly important to refer to the technical documentation illustrating the various phases of data collection and the methodologies used. We also decided not to limit ourselves to the description of the monitoring system but rather to provide an assessment as thorough as possible of its operational functioning.

The collection of information involved two experts per country: one working in the country itself and the second centralising the data related to the scientific coordination. The support of a "national expert" has provided access to information that is difficult to retrieve through other channels, although a considerable amount of resources is now available over the internet. The consultation of documents was supplemented by interviews with key experts on the relevant monitoring system.

This report is the summary of 5 national reports on the United States, Canada, Australia, Great-Britain and the Netherlands. These are provided in the appendix (in French and in English). The bibliographic references quoted in these reports will not be repeated in this document and the reader is invited to refer to the appendix to find the sources for the data presented herein, as well as to obtain further details on the schemes and monitoring systems in each of the countries. However, wherever necessary, references will be indicated.

C/ The grounds

The grounds for discrimination within this study are those defined by Article 13 of the Treaty instituting the European community, with the exception of age and sex where statistical identification does not present any particular difficulties, and beliefs, which are not easily covered by quantitative indicators. The list of grounds is thus as follows: race and ethnic origin, religion, sexual orientation and disability.

The anti-discrimination schemes adopted for each ground are not easily compared. While discrimination occurs in comparable forms for any ground, it follows a logic specific to each ground and is part of a distinct historical process. Prejudice towards persons based on their ethnic or racial origin does not have the same historical foundations as prejudice based on sexual orientation. These contexts lead to significant differences in the strategies, schemes and methods of data collection for each of the various grounds:

- Sensitivity towards discrimination varies considerably depending on the ground: while ethnic and racial discrimination is unanimously condemned, sexual orientation does not benefit from the same level of acceptance and protection in the countries under study.
- Strategies employed to achieve equal treatment have specificities. The use of a quantified, objective representation is applicable to ethnic and racial groups, and is present in at least one scheme for disabled people. The promotion of equality irrespective of religion, as with disability, incorporates the concept of "reasonable adjustment or accommodation" which consists in adapting structures and regulations to a person's characteristics and practices. Finally, the sexual orientation strategy consists, on the one hand, in achieving the recognition of equal rights for same-sex partners, particularly in family law and social rights (marriage and adoption) and, on the other hand, of eliminating the legal or regulatory restrictions relating to homosexuals.
- The legal texts do not include all of the grounds within their protective measures. The positive action programmes (legislation concerning equal employment opportunity, for example) rarely apply to religious groups and never to groups based on sexual orientation.
- The statistical identification of the various grounds presents significant problems. As they refer to criteria on which discrimination is based, the registration of sensitive information is strictly limited and can be expressly prohibited by law. This is the case of religion in the United States, for example. Methodological difficulties are equally significant. Converting the grounds into statistical categories is not automatic and relies on definitions establishing equivalents which may be operational to varying degrees.

Finally, the countries involved in the study have only developed complete statistical monitoring systems for ethnic and racial discrimination. Statistics are also produced on disability and religion, but their use within anti-discrimination schemes is relatively low. Finally, sexual orientation only gives rise to statistical data limited to small sample surveys or is calculated on the basis of same-sex couples. These disparities explain the reason this summary report, as well as the national reports, is mainly dedicated to statistical monitoring of ethnic and racial discrimination.

D/ The study framework

Despite their apparent similarities, the schemes implemented in these countries demonstrate significant differences resulting from national history, the structure of the State and its judicial and political systems, and also its choice in terms of statistics. This report will begin by placing statistical monitoring in its legal and political context. The first section presents the structure of the anti-discrimination schemes, linking the emergence of a sophisticated monitoring system to the implementation of active equal treatment policies. These result from the adoption of the indirect discrimination concept and its breakdown into a series of statistically inspired concepts: disparate treatment or impact, proportional representation or substantial equality. We will present the main elements of the anti-discrimination schemes, along with their roles in the monitoring system (requests for statistical data, guides and standards on the collection and production of data, the use of statistics to achieve objectives, etc.). The second section describes the main characteristics of the monitoring system used by the anti-discrimination schemes and their articulation within the data protection legal environment. How does one reconcile respect for privacy and confidentiality in the production and use of sensitive data for action purposes? The experience of the countries under study shows that it is possible to maintain the imperative high levels of protection and an operational monitoring system aimed at observing discrimination. The third section provides further detail on the definitions, methods and nomenclatures used in the statistical classifications of the grounds. The part on ethnic and racial categories is more extensive, reflecting its importance and longer history. Experience is less developed in the case of religion and sexual orientation. The case of disability deserves greater space, but this should be studied subsequently to delve into the vast literature on this topic. The report ends with a series of conclusions and recommendations based on the salient elements resulting from the comparison of the 5 countries and the statistical monitoring systems they use to fight discrimination.

Details on the terminology used:

The "anti-discrimination scheme" is all of the laws, policies and other provisions aimed at establishing equality and fighting discrimination. The same term is applied for all of the countries, although the content of the schemes and their objectives may vary significantly.

We have used the generic term “equal treatment policy” to designate the policies which, in one form or another, contribute to the fight against discrimination.

The concept of indirect discrimination falls under the “race” directive definition and encompasses other terms used such as *disparate impact* or *adverse impact.*

This study is based on the following four grounds: ethnic and racial origin (most often referred to within legal texts as "race", colour, national ancestry, ethnic group, etc.), religion, sexual orientation and disability. To avoid listing them throughout the document, we use the expression “protected groups” to designate the persons who present one of the grounds of this study.

I - THE STRUCTURE OF ANTI-DISCRIMINATION SCHEMES AND STATISTICAL MONITORING

A/ The policies' historical and legal context

1) Responsibility of the State and historic debt

The emergence of the discrimination issue and the progressive adoption of schemes for reducing and promoting equality are the product of long historical processes. The international environment after the Second World War and the ratification of a series of treaties and international conventions committing the countries under study to promote human rights and anti-discrimination movements obviously contributed towards the issue being placed on the political agenda. The Universal Declaration of Human Rights on which are based the International Charter of Human Rights and international pacts relating to economic and cultural rights, as well as civil and political rights, is a reference source that has influenced the majority of national laws. These general texts have been broken down into thematic conventions aimed specifically at discrimination. The International Convention for the Elimination of all Forms of Racial Discrimination (ICERD) was thus ratified, in chronological order, by the United States (1966), Great Britain (1969), Canada (1970), the Netherlands (1972) and Australia (1975). These countries are also members of the ILO and have ratified Convention 111 relating to discrimination (employment and occupation). This convention was promulgated in 1958 and was not ratified by the United States.

However this context does not fully explain the reasons for implementing anti-discrimination schemes in these 5 countries, while the fight against discrimination remained undeveloped in many other Western democracies equally mindful of Human Rights and promoting equality. A possible explanation for this particular situation unites historical, contextual, political and social elements, as well as a legal and administrative structure favourable to the development of anti-discrimination schemes which use the concept of "indirect discrimination".

The common denominator of the countries under study lies in the belief that the stereotypes and the prejudice at the root of discrimination are released and conveyed by society as a whole, and that this systemic feature requires a review of the way in which society operates. This implies that discrimination is not only seen as an expression of prejudiced or individual behaviour, even if it is widespread, but more particularly as the product of a system. While the concept of indirect discrimination considers the undue consequences of apparently neutral measures, the concept of systemic discrimination engages the collective responsibility of the societies under study. Unfavourable treatment is not an error that needs to be monitored and sanctioned. It is inherent in the design of a system and its operation.

In some cases, this responsibility is also supported by the concept of indebtedness towards minorities who have suffered official discrimination through legislation or unfavourable treatment exercised or protected by the State. This historic practice has produced a situation where society and the State feel accountable. These societies committed to a reparation or compensation policy for errors made, by extending the benefit of this policy groups who have not necessarily suffered the same prejudice, or at least not within the same historical conditions. The reparation policy will often be a trigger to adding a more operational focus to the equality of rights philosophy. However it is the concept of "indirect discrimination" (with the different terminology used in each country) and its transposition into the legal system and equality policies that will really set in motion the establishment of a volontarist intervention system.

The reference to historical debt is particularly explicit in the adoption of the *Affirmative Action* policy in the United States. The memory of the pro-slavery era, covering nearly a century of segregationist laws and practices, fed the conviction that eliminating discriminatory provisions against Blacks only was not sufficient to dismantle the long-term unequal impact of previous practices. The list of *Affirmative Action* beneficiaries includes groups who have been subjected to official discriminatory practices of a less systematised and enduring nature than that of Blacks and, with the exception of women, are considered "races". This terminology was previously given a biological definition before it was abandoned, but then returned via a social and constructivist definition: race as a category resulting from a racist relationship. This is the case for Blacks, Hispanics[5] (Mexicans were listed in the racial categories up until 1930), Asians and descendants of native populations (*American Indians*). It is worth remembering that this historical context determines the limits to anti-discrimination schemes, in terms of their more operational aspects, regarding particular groups. Other ethnic and racial groups, or groups covered by other grounds, are subject to general rules prohibiting discrimination, which are much less powerful and effective than *Affirmative Action*. Without doubt, the United States seem to have the most developed and advanced system for the fight against discrimination, but it is limited to certain groups (recently disabled people) and is mainly restricted to areas of federal responsibility. In terms of the other grounds of this study, the coverage is much less extensive and remains relatively conventional.

The concept of indebtedness is less prominent in Canada, although the memory of a selective immigration policy based on racial criteria up to the beginning of the Fifties continues to shape political considerations. Canada combines the historical impact of colonisation and the denial of rights of the "First Nations" (or natives) with the original conflict between the two "founding peoples". Questioning the validity of the English-speaking domination over the French-speaking minority served as an opportunity to raise awareness on discrimination. The idea of an "affirmative action programme" was initially conceived within the framework of *The Royal Commission on Bilingualism and Bicultural Tradition* in 1963 to respect equality between the two founding peoples, while

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[5] Further on we will see that in the case of Hispanics, the classification is not qualified as racial, therefore a special question is incorporated into the census.

extending the issue to include a “third group” which became the “ethnic minorities”. The statistical analysis on socio-economic inequalities between the French, the English and the minorities of other origins indicated that Canada is an ethnically stratified society, a true “vertical mosaic”. This observation led the federal government to deal with both the linguistic challenges between national groups and the challenges inherent in polyethnicity by first adopting the *Official Languages Act* in 1969 in order to give a bilingual nature to all of Canada and to favour the access of Francophones to all federal civil service jobs. This legislation was followed by the *Multicultural Policy* in 1971, aimed at helping groups to preserve their language and traditions within the framework of official bilingualism, then the *Canadian Multiculturalism Act* in 1988, which recognises the pluralism of the national identity and makes the fight against racism a political priority.

Like Canada, Australia’s natives have suffered a dramatic history (Aboriginals and Torres Strait Islanders). They were oppressed for many years and suffered both from an extremely harsh assimilation as well as exclusion from society. Legal discrimination against Aboriginals was abolished in 1967 when they were granted citizenship. Following a progressive recognition of the specificities of the Aboriginal status within Australian society and the inequalities that they continue to face, a process of “reconciliation” was initiated at the beginning of the Nineties. This group is the only group for whom systemic and historic discrimination has been recognised, which is the reason Australian equality policy is somewhat split between multiculturalism, which essentially pursues the recognition of cultures, and a more active equality policy for the Aboriginals. Moreover, Australia had pursued an openly selective immigration policy based on racial criteria, the *White Australia Policy*, which was only abandoned in 1973. This re-orientation will shift Australia towards a policy recognising diversity and the adoption of an equality policy related to "ethnic minorities" and persons who do not use English as mother tongue (a category that will be covered further on).

In the Dutch text on which the “minority policy” is based, beneficiary groups are identified by the responsibility the government feels towards their presence “in light of its colonial past or because they were recruited by the authorities” and because they find themselves in a minority situation (*Minderhedennota*, 1983, p.12). This historic responsibility is less overwhelming than in the other countries under study, but it is used to both justify the need for a policy and identify public beneficiaries. The same minority concept was relinquished in 1990 to the advantage of the "allochtone" groups, that is by all persons originating from developing countries, in other words non-westerners (*niet-westers allochtonen*). Moreover, the Dutch tradition of religious tolerance and respect for the diversity of practices and beliefs has strongly contributed to the development of progressive laws relating to the expression of various religions and the recognition of sexual orientation.

The reasons for the enactment of the 1976 *Race Relations Act* in Great Britain stem from many factors. The legislation governing immigration in Great Britain was gradually tightened, in accordance with population flows between the old British empire, which became the New Commonwealth, and the metropolis. The rise in racist speeches and behaviour against "coloured immigrants" reached its peak during particularly violent race riots (in

Camden Town in 1954 or Notting Hill in 1958, for example). The 1968 *Commonwealth Immigration Act* created an effective barrier for the entry of migrants originating from the New Commonwealth by restricting free circulation within Great Britain to persons born in Great Britain or whose parents or grandparents were born in Great Britain. Through this clause, entry onto British territory was still possible for descendants of old colonists, while those descending from old colonized peoples, still Crown subjects, were subject to controls. The 1971 *Immigration Act* and the 1981 *British Nationality Act* reinforced the scheme. The 1976 *Race Relations Act* can be considered a response to this restrictive racial policy. Furthermore, the *RRA* was enacted after the *Sex Discrimination Act* of 1975 and incorporated parts of its structure. However the concept of British society's responsibility with regard to continuing discrimination and racism reached a peak following the murder of Stephen Lawrence in 1993, a young Black killed by the police. The inquiry conducted on the conditions of this murder and the report that ensued - the Mac Pherson report published in 1999 - led to great fury, not only from the media and the general public, but mostly within government The report popularised the "institutional racism" concept and prompted a new law: the *RRA Amendment 2000*. In addition to directly accusing the police departments, the Mac Pherson report was a turning point in the fight against discrimination in Great Britain, and its impact extends beyond the scope of the *Race Relations Act* and has implications for all of the grounds covered by the anti-discrimination laws.

2) The "framing": phasing of initiatives and circulation of models

The anti-discrimination schemes were constructed in phases, increasing in complexity but also in coherence and efficiency. The structural design of the schemes is achieved via continuous phasing in each of the countries, with some variations. It can be schematically described as follows:

- *The construction of a public issue.* The issue of discrimination is placed on the political agenda following mobilisation campaigns, instigated either by militant groups in civil society, such as organisations representing victims of discrimination, or by public authorities. Public awareness of the severity and extent of discrimination is supported by the evidence and experience of victims conveyed by the media, and also by studies on the inequalities affecting discriminated groups. These studies mostly use statistical data as a basis for their results.

- *Judicialisation.* Initially, the mobilisation against discrimination occurs via the treatment of complaints and legal prosecutions. In parallel, an examination is conducted on the laws, regulations and circulars to eliminate restrictions and discriminatory exclusions. Case law is gradually built up, and contributes towards clarifying interpretations of the discrimination concept. Supreme Court "cases" (Canada) or judgments (United States) set out the main directions of the law relating to non-discrimination. They also involve public policies by assigning objectives and defining the types of intervention that comply with the equality principle. However, this strategy does not succeed in substantially improving the situation of discriminated groups. Discrimination is now clearly prohibited, but continues to have consequences.

- *The examination of discriminatory effects.* The consideration of the intentional aspect of discrimination is supplemented by the introduction of the indirect discrimination concept. The focus is turned to all of the provisions which, although apparently neutral, have a significantly negative impact on persons belonging to a protected group. A revision process of practices and procedures is undertaken to check their impartiality. This verification occurs essentially via a statistical assessment of the bias that has occurred affecting the representation of protected groups in selection or allowance trials. The objective of this strategy consists in re-establishing the neutrality of procedures irrespective of a person's characteristics, other than those relevant in a selection process.

- *The universal standard issue: diversity management and multiculturalism.* However, questions arise as to the possible discriminatory implications of a uniform treatment covering different people and the need to adopt different treatments and equal access to persons with different, but legitimate, profiles and practices. The adapting of structures, procedures and rules to specific members of the public paves the way for a new political orientation. Faced with the diversity of resources and practices, it is a question of differentiating treatment in order to establish equivalence in the access and use of goods and services.

- *Positive action.* Because inequalities are entrenched, even after review, the procedures' neutrality does not manage to guarantee the equality of protected groups. Therefore, recourse to an active policy for achieving equality is necessary. This active policy can consist of establishing access quotas and preferential treatment as in the United States. In other countries, this mostly consists of undertaking voluntarist programmes involving quantified objectives for the fair representation of protected groups. Unlike quotas, failure to achieve objectives does not lead to sanctions in this case. The only requirement that can lead to sanctions is the commitment to a programme. The theory governing positive action is that the spontaneous dynamics inherent in the relevant systems (labour market, education system, housing infrastructure, services and administrations, etc.) lead to the unfavourable treatment of persons with one or several stigmatized characteristics.

  Despite the awareness of participants and their commitment to the fight against discrimination, the logic of the systems continues to give rise to mechanisms creating differentiations which are difficult to identify, but where the negative implications are enough to prevent the achievement of equality. It is therefore a matter of countering this "spontaneous" process through "active vigilance" and an outreach for the skills of people vulnerable to discrimination. This vigilance towards protected groups is exercised however within the ordinary framework of selection criteria (skills, revenue, socio-demographic characteristics). This is therefore not an American form of *Affirmative Action*. We will see that this final stage of an anti-discrimination scheme is intrinsically linked to statistical monitoring.

- *The reparation policy.* Reparation is a variation of positive action, with which it is often identified. It involves assigning preferential treatment to members of protected groups in the allocation of resources or access to goods and services. It is called *Affirmative Action* and applies only to a few specific groups. In fact, it is only implemented in the United States (women, Blacks, natives, Hispanics, Asians) and Australia (women, Aboriginals). In these two countries, the other components of the equality schemes respect the principles of merit or competence and do not deviate from the usual selection or allocation rules. Canada, Great Britain and the Netherlands do not pursue an *Affirmative Action* type of reparation policy.

When they established these initial measures, each country studied and took inspiration from the experience of precursory countries. We can therefore often see the influence of one country's system on another. None of the countries under study imported a complete scheme in its integrity from a reference country. It is more a question of taking inspiration from and adapting proven measures and approaches, rather than submitting to the initial model.

The influence of the United States is noticeable in the implementation of the British system, although there are significant distinctions between the schemes. Researchers in the United States qualify the British approach as "soft anti-discrimination", which has a critical undertone, highlighting the tentative nature, according to them, of an approach that fails to use preferential treatment. It is true that the quota concept as it used within the American *Affirmative Action* approach is explictly rejected both in Canada and Great Britain. Canada also studied the American strategy at length and adopted some of its features while developing a completely original and much more integrated approach. Although the general philosophy of "*human rights*" driving Canadian policy is not as present in Great Britain, the structure of their respective schemes is very similar. Of the 5 countries under study, these are without doubt the most comparable.

The Canadian example inspired the Australian multiculturalism policy and was particularly influential in the Netherlands when the minority policy was reviewed in 1990. Considering that too much attention had been granted to cultural issues, while socio-economic integration was inadequately managed, WRR experts (the scientific committee advising on governmental policy) recommended a series of reforms inspired by the Canadian Employment Equity Act. Members of Dutch Ministries also made study trips to Canada in 1994 prior to adopting the "Wet BEAA" law aimed at equal access for "allochtones" to the labour market.

Influence is not always a one way process. The debate currently taking place in the United States regarding the future of *Affirmative Action*, which has been abandoned by a number of states, refers to European examples of equality policies. It is worth noting however that the criticism of *Affirmative Action* in the United States does not challenge the legitimacy of racial classifications, but the use of these classifications in equality policies.

Models circulate not only between countries but also between different grounds for discrimination. With the exception of Canada who immediately conceived a scheme encompassing a large range of grounds, the other countries initially established action systems for specific grounds, usually relating to sex or ethnic or racial origin, and later applied it to other grounds. The chronology of laws and policies and the creation of agencies or committees responsible for fighting discrimination for one or more grounds clearly demonstrates the succession of schemes over time. The schemes thus have a tendency to pile up, the latest imitating its predecessors. The Canadian example is clearly of interest from a conceptual and operational point of view, as it is an integrated approach that avoids the multiple structures based on specific grounds and allows a better coordination of tools and resources. The achievements gained in fighting discrimination on one ground in turn benefits others as they are added to the political agenda. The structure of the action scheme varies however according to each ground's strategy. The use of statistics is necessary to highlight indirect discrimination or equal treatment policies. It is not as crucial in the fight against direct discrimination or in adapting structures to the characteristics of the persons for whom the anti-discrimination legislation is provided. Monitoring is not a key tool in the schemes dealing with religion or sexual orientation, and it is useful but not widely used in the case of disability.

B/ Legal foundations: constitutional principles and applicable laws

In many countries, the main foundations of anti-discrimination schemes lie in the constitutional principle of equality before the law. The majority of laws and policies refer to this principle and find their legitimacy therein. This is not, however, essential to the development of an anti-discrimination scheme. In the absence of a constitution, the scheme is shaped by *ad hoc* laws which are specifically aimed at discrimination and state the measures and tools required for achieving the objectives. The counterpart is the breakdown of the scheme into grounds, as illustrated in Great Britain and Australia by the *Sex Discrimination Act*, the *Race Relation* or the *Racial Discrimination Act* or the *Disability Discrimination Acts*. The Netherlands recently enshrined equal treatment and a discrimination prohibition in the Constitution (1983). This commitment to equality was reinforced in 1994 through generally applicable legislation on equal treatment, which was briefly supported by a sector-based employment law: the SAMEN law.

Constitutional recognition on its own is not sufficient to equip countries with an action tool to fight discrimination - much more is required. The general nature of the prohibition of discrimination renders the legislation and actions against discriminatory mechanisms somewhat inoperable. To be operational, the prohibition requires the enactment of specific laws that truly lead to action and the development of case law. This case law specifies the meaning and the breadth of the antidiscrimination legislation. Without these laws and policies, equality remains an abstract concept and inequalities remain. Indeed constitutional principles can occasionally be interpreted in such a way that they uphold openly discriminatory legislation. Constitutional principles establishing equal protection before the law (14th Amendment, 1868), the right of all citizens to vote irrespective of race or colour (15th Amendment, 1870) and the free exercise of religion (1st Amendment, 1791) have provided the United States with a solid foundation for the prohibition of discrimination since the end of the Nineteenth century. Nevertheless, these principles allowed for a racial segregation regime following the abolition of slavery which lasted until the *Brown vs Board of Education* judgment which, in 1954, abolished school segregation. In 1964, the *Civil Rights Act* put an end to this distorted interpretation of the principle of equality. It is supplemented by the *Voting Rights Act*, the *Fair Housing Act*, the *Equal Employment Opportunity Act*, and the *Equal Educational Opportunities Act*. The system in the United States replaces a breakdown of actions by ground with a transversal treatment including a breakdown by sector or field.

From the equality policy perspective, we know that officially confirming equality does not necessarily lead to effective equality. To achieve effective equality, the countries under study defined laws and policies that intervene in a practical manner on the concrete conditions in which discrimination occurs. The decisive turning point is when legislation and policies reach beyond the direct discrimination concept and the prosecution of intentional acts. Gradually, legislation takes indirect discrimination into account, thus requiring active equality policies, and no longer simply responds to alleged breaches. While the *Race Relations Act* referred to indirect discrimination from its conception in 1976, the broadening of the *Civil Rights Act* to include disparate treatments is secured by the renowned 1971 Supreme Court case, *Griggs vs Duke.* In its judgment, the Court established that the *Civil Rights Act* not only prohibits intentional discrimination, but also the practices which, although "impartial in their intent are discriminatory in their operation". Immediately following the validation of this interpretation of the scope of antidiscriminatory law, the *Equal Employment Opportunity Act* was enacted. Using the same interpretation of equity defined as effective equality, evaluated not prior to the selection trials (neutrality of access) but *following* the trials (effective equality), Canada launched its ambitious employment equity programme.

Equal Opportunity policies or programmes relate to a variety of fields from voting rights to education, as well as housing and access to services, particularly public services. However, this broad range of fields is seldom fully covered and the more complete and developed schemes relate essentially to employment. The *Equal Opportunity* programmes more fully cover public prerogative sectors, particularly through contracts with public authorities; enforcement constraints are more a result of mutually agreed dispositions than legal prosecutions.

1) Special anti-discrimination agencies

Each law on equal treatment has provided for the creation of an agency responsible for monitoring its application and conducting action programmes. The agencies cover several grounds, or specialise in just one. They are transversal to all areas of action, with the exception of the United States where the two anti-discrimination bodies focus exclusively on employment. The *Equal Employment Opportunity Commission* and the *Office of Federal Contract Compliance Program* together supervise and administrate the various equality programmes. As they have legal jurisdiction (in 2003, the EEOC received over 80,000 complaints under various laws) and are responsible for setting up *Affirmative Action* programmes, these agencies play a key role within the American scheme.

In the Netherlands, there is a dual network of agencies. The main agency established by the equal treatment legislation, the *Commissie Gelijke Behandeling* (CGB), pursues investigations on its own initiative or upon complaints by individuals or organisations. It publishes an annual report on the files that it has managed (206 cases in 2002). Some of these files are provided by the local anti-discrimination offices, the ADBs, (present in 35 towns), which also provide a report on their activities. These reports are then centralised at the national level and then published.

The Canadian Human Rights Commission is established at the federal level and each Province has its own human rights commission. The Canadian Commission covers all of the grounds and areas. It is able to make enquiries on its own initiative or as a result of a discrimination complaint to encourage a settlement between the parties. It also has the power to propose arbitration for a dispute or to refer a case to the federal Human Rights Court, established by law, if deemed appropriate, and to act on behalf of a complainant before this Court. In its annual report submitted to the Canadian House of Commons, the Commission sets out statistical data on the complaints received, the files managed, the inquiries conducted and the judgments rendered for each of the grounds (Art. 2 of the Canadian Act) and activity sectors (employment, housing, etc). Furthermore, the Canadian Commission administrates, the schemes listed above relating to the *Employment Equity Act* in conjunction with Human Resource Development Canada (HRDC).

This extremely integrated system is not implemented in Great Britain where the main grounds have their own agencies that monitor and coordinate the application of the relevant laws. The three agencies (the *The Equal Opportunities Commission* dedicated only to sexual discrimination despite its general title, the *Commission for Racial Equality* and the *Disabilty Rights Commission*) will be combined into one single *Commission for Equality and Human Rights* by 2006. The prerogatives and activities of the three current commissions are quite similar, although they have distinct features because of the laws and policies that differ according to the ground in question. For a number of years, the agencies have turned their attention to the overlapping of grounds and to multiple discrimination faced by ethnic minorities, women and disabled people. However, the action schemes remain distinct and the monitoring of *race equality schemes* does not include information on disabled people (although it identifies the sex of members of ethnic minority groups).

The Australian *Human Rights and Equal Opportunities Commission* (HREOC) can be considered as a single agency grouping the activities of 5 commissioners, each one responsible for a specific ground: human rights, sex, disability, race and Aboriginals and Torres Strait Islanders. This organisation is based on autonomous units and illustrates the limitations of a single agency which cannot rely on one transversal legislation for all grounds.The Australian system therefore combines strategies that are common to all of the grounds, with independent recourse and action methods. The current government has considerably reduced the HREOC budget and is considering an organisational re-structuring. A government bill discussed in April 2003 proposed replacing the specialised commissioners with generalist commissioners. This provoked a great deal of hostility, particulary from the racial discrimination commissioner who took a public stand. At present, the HREOC structure has not changed.

The prerogatives of these agencies can be far-reaching, ranging from raising the awareness of public authorities and civil society to the coordination of equality policies. These agencies are responsible for all complaint handling activities, and may conduct legal actions and investigations. However, no agency has a specific mission to *produce* statistical data. This is the responsibility of statistical bodies, administrations or operators. The only original statistical data that the agencies produce comes from their activity reports. They keep the records of the legal files they have followed and the investigations they have conducted.

Certain agencies are responsible for receiving and compiling the data collected in order to monitor the operators' compliance with their legal obligations or to evaluate the achievement of quantified objectives (*Commission for Human Rights*, Canada; EEOC, United States). The agencies also participate in the process of data development by taking part in consultations on their design or, prior to this, by requesting the adaptation of statistical tools to improve the action scheme. The CRE thus played a significant role in the introduction of an *ethnic question* in the British census. The EEOC and the OFCCP created a standard defining the categories which would benefit from *Affirmative Action*; these agencies are regularly consulted during the OMB nomenclature revisions, as are numerous other federal agencies.

2) Employment equality programmes

Equality policies in the countries under study are more developed for employment, a strategic action area in the fight against discrimination. Policies dedicated to employment equality or equity rapidly shifted towards voluntarist action, which is not strictly limited to just simple sanctions punishing discriminatory acts. Based on the fact that monitoring the apparent neutrality of company hiring procedures and practices does not guarantee access to equal employment, promotion and remuneration for the protected group members, policies shifted towards a logic of equitable (or equivalent) representation of the protected groups in companies, as compared to the weight of these groups in the working population. The objective is to eventually balance the distribution in companies and their recruitment zones, so that the protected groups access positions in line with their skills and qualifications. These policies thus combine a voluntary objective to increase the representation of the protected groups with meritocratic criteria, since the level of qualifications and skills is still a determining factor in the appraisal of protected group representation. This criteria is only partially dismissed by certain *Affirmative Action* provisions, which attribute a bonus to protected group members so that when their skills are equal to those of members of other groups, their probability of obtaining a position will be greater .

The *Employment Equity Act* in Canada (1986 and 1996), the *Equal Opportunities Policies* developed in Great Britain (1984), the *Equal Employment Opportunity Act* as an extension of the *Civil Rights Act* in the United States, the Dutch *SAMEN* law (1998-2003) on equal participation in the labour market and the *Equal Employment Opportunities* programmes established in Australia proceed in a relatively similar manner. Their objective is to ensure equal opportunities for groups on an often restricted list.

List of the specific groups supported by employment equality programmes

United States	Canada	Australia	Great Britain	The Netherlands
Women	Women	Women	Women	Women
Racial and ethnic Groups Blacks Asians Hispanics Natives	Visible minorities (10 groups) Natives	Aboriginals Disadvantaged groups (minorities and non-English mother tongue speakers)	Ethnic groups Blacks (West Indians and Africans) Asians* Chinese Others	Allochtones: Turks Moroccans Surinamese West Indians Others non-western
Disabled persons	Disabled persons	Disabled persons	Disabled persons	Disabled persons

* (Indians, Pakistanis, Bangladeshis)

The programmes involve companies with a minimum of 35 employees (for SAMEN) and up to 100 employees (for the other programmes). The companies involved can be in the private sector, but most programmes mainly affect public sector companies or those under State contracts. The ability to put pressure or apply sanctions against companies that do not fulfil the programme requirements is conditioned by the attribution of finances or use of controls by the State. In Canada, the programme only involves federal civil service bodies or services fulfilling a federal mission, private companies who have an activity in a sector under federal responsibility (banks, businesses, transportation) and companies under federal contract. In Australia, the most complete anti-discrimination policy concerns two groups: women (with the *Equal Opportunity for Women in the Workplace Act*) and Aboriginals and Torres Strait Islanders. Despite a commitment towards multicultural policies and the promotion of diversity, the scheme remains mainly incentive as far as the private employment sector is concerned. It is in the public sector that it becomes truly proactive, armed with sanctions, controls and assessments under the *National Charter on Public Service in a Culturally Diverse Society.*

The programmes consist of developing a series of initiatives aimed at raising staff awareness, organising the company to facilitate the application of equality plans, ensuring employment access by protected groups, examining procedures and practices when obstacles are identified and setting objectives for improving the representation of protected groups within the company. The majority of actions require the use of statistical data both on company personnel and the comparable workforce located within the company environment.

- To identify barriers and the disparate treatment affecting the members of protected groups, it is important to **establish an initial profile of the workforce** broken down by protected group categories (see above table) and by job groups within the company (certain plans also break down groups by salary range). The careers and salary increases of protected group employees are compared to those of other employees, or all employees.

- The **overall representation** of the protected groups is compared with the “available” (to use a Canadian term) workforce of the same level of skills in the benchmark region. These comparisons allow for an evaluation of the extent of the protected groups’ under-representation and their potential **concentration** in lower occupations (or at the bottom of the company hierarchy).

- Then, an **action plan** is established, including quantified objectives (*targets and goals)* aimed at rectifying the representation and distribution of protected groups. The plans are generally conducted over a 3 to 5 year period. Fulfilling the objectives is not mandatory except in the case of quotas (United States), but commitment to the plan is monitored and companies that do not comply with this commitment are sanctioned (fines and penalties, or loss of State contracts).

- An assessment of the plans is carried out each year, through workforce monitoring, the results of which are logged in the **reports** required of companies. These reports contain trend charts that compile the information defined by the plans. They are sent to the agencies in charge of plan enforcement and responsible for defining the objectives with the companies. The statistical tables are analysed by the agencies who then transmit instructions to the companies. In Canada, precise quantified ratings and indicators are established on the basis of reports and are used by companies to evaluate their progress as regards the achievement of their plan.

- These assessments also allow for plans to be revised, objectives to be reviewed and, for companies to identify the procedures which cause identified barriers. For example, the significant under-representation of members of a protected group in recruitment over several consecutive years can lead to the assumption that the hiring trials may be biased. With this information, the company can undertake an appraisal of its hiring trials, based on, for example, the selection of candidates through resumes, job advertisement strategies, etc.

Statistical data provided by monitoring, the census or population registries are used at all stages of the programmes whether to support quantified actions or to serve as diagnostic tools to implement qualitative initiatives. It is crucial that this statistical data portray the protected groups using the same categories as those in the census. The monitoring system therefore significantly integrates the data produced by the operators and that available for benchmarking. This is why the programmes provide precise guidelines to operators explaining the reasons for monitoring and methods of implementation.

An example of an equality plan presented by the CRE (Great Britain):

1.Develop an equal opportunities policy, covering recruitment, promotion and training.

2.Set an action plan, with targets, so that you and your staff have a clear idea of what can be achieved and by when.

3.Provide training for all people, including managers, throughout your organisation, to ensure they understand the importance of equal opportunities. Provide additional training for staff who recruit, select and train your employees.

4.Assess the present position to establish your starting point, and monitor progress in achieving your objectives.

5.Review recruitment, selection, promotion and training procedures regularly, to ensure that you are delivering on your policy.

6.Draw up clear and justifiable job criteria, which are demonstrably objective and job-related.

7.Offer pre-employment training, where appropriate, to prepare potential job applicants for selection tests and interviews; you should also consider positive action training to help ethnic minority employees to apply for jobs in areas where they are underrepresented.

8.Consider your organisation's image: do you encourage applications from underrepresented groups and ethnic minority staff and people with disabilities in recruitment literature, or could you be seen as an employer who is indifferent to these groups?

9.Consider flexible working, career breaks, providing childcare facilities, and so on, to help women in particular meet domestic responsibilities and pursue their occupations; and consider providing special equipment and assistance to help people with disabilities.

10. Develop links with local community groups, organisations and schools, in order to reach a wider pool of potential applicants. *(*Commission for Racial Equality, *Equal Opportunities Policies*).

II - THE MONITORING SYSTEM

A/ The rationale of statistics in the anti discrimination schemes

The indirect discrimination concept requires statistical reasoning. Beyond intentional acts and explicit provisions, research into unfavourable treatment requires a comparison between the situation of a protected group and that of a benchmark group. If the protected group finds employment less often or occupies lesser positions although their qualifications were adequate, the hiring process will be considered suspicious. The discriminatory effect of apparently neutral procedures is only exposed through the impact they have on protected groups. These effects are only considered discriminatory when they are *significant,* i.e. they cannot be randomly attributed. The significance of negative consequences resulting from procedures is evaluated by means of indicators and indices, which have been subjected to unsophisticated statistical tests.

The relationship between the indirect discrimination concept[7] and its statistical translation is so narrow that the statistical concept is sometimes used as a legal definition, as in the United States with the terms of *disparate impact* and *adverse impact.* These two concepts are associated with the "under-utilisation" concept regarding persons evaluated by the difference between their potential and the positions obtained. Their under-representation in valued occupations which are normally accessible to them, or conversely, their over-representation in depreciated activities, are indicators of disparate treatment. Similarly, the concept of *disadvantage,* which the Australian legal texts prefer over the term "discrimination", intrinsically refers to a differential that can only be demonstrated by statistics.

Indeed, to be equitable is to ensure the proportional representation of protected groups when the relevant criteria to obtain the occupation, the goods or the services have been fulfilled. Equity, in the sense adopted by the Canadian and Australian policies, for example, is aimed at promoting equal access and success irrespective of origin, sex, disability, religion and sexual orientation. The theory adopted by the American legislation is that in absence of discrimination, and in relation to their skills, qualifications and merits, members of protected groups should be present in employment at the level their potential deserves. To ensure the equity of the systems, it is important to record personal characteristics through continuous monitoring in companies and recruitment zones.

The role of statistics is all the more central to the anti-discrimination scheme, as all trials and selections can be monitored by technical statistics. Recruitment, promotion, training access, salaries, terminations, the professional

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[6] In the majority of cases, these tests are limited to a comparison between the two proportions, but they can be subject to control procedures for the statistical validity of differentials (chi2, fisher coefficient, standard deviation, correlation testing, etc.).

[7] The American distinction between *disparate treatment* and *disparate impact* is a good illustration of a shift. While research into disparate treatment is aimed at highlighting an intent at the root of an unfounded negative decision as regards a member of protected group, disparate impact is only concerned with the undue negative consequences of an apparently neutral practice on the members of a protected group.

positions occupied, exposure to hard or dangerous tasks, etc. most of these parameters can be examined in employee files. The same can be effected in the case of education or access to housing by using relevant indicators for describing selection situations where differentials are expressed.

This role played by statistics occurs at all stages:

1) *To establish the existence of systemic or indirect discrimination*. Social science research and the analysis of legal cases on discrimination comprise a body of knowledge demonstrating the structural nature of discrimination. This is confirmed by the continuing differentials recorded in surveys or census data.

2) *From the individual to the group.* When the correlation between the prohibited criteria and the probability of facing an unfavourable treatment in employment, education, housing or access to services is statistically established, the status of victims of discrimination is fully recognised for all persons presenting the prohibited criteria (sex, ethnic or racial origin, religion, etc.). The development of a statistical argument validates and justifies the construction of “groups” instead of individualised treatment. The practical advantage of a policy aimed at groups is obvious: the presumption of discrimination is established once and for all, without having to prove it in each case. **It is the belonging to a group, that is, presenting the criterion (hetero-identification) or the declaration that one is a member of a group (self-identification), which justifies the application of an equal treatment policy.**

3) *Action categories.* The importance of this shift from the individual to the group also applies to the methods identifying beneficiaries. By covering all of the persons belonging to a protected group, equality policies are more easily operational. However, they reinforce the causal link between the criteria and the prejudice to the detriment of examining the internal heterogeneity of a group and more precise targeting (for example, Blacks with low income, rather than all Blacks). What the policies gain in efficiency, they partially lose in significance and justification. This tension is only bearable because the statistical correlation is sufficient to substantiate the relationship between membership to a group and the exposure to prejudice.

4) *A screening tool.* The verification of procedures and practices applied by the bodies concerned with the equality policies would require a considerable number of inspectors if they needed to be examined at the time of their operation. With monitoring, operations are analysed in terms of their consequences. The trend chart enables suspicious differentials to be identified and a more in-depth, targeted and appropriate inspection to be carried out.

5) *Set and review objectives.* Equality programmes establish quantitative objectives for protected group representation to be achieved over several years. Statistics allow the progress to be measured. Their degree of detail depends upon the programme in question.

The relevance of monitoring does not only consist in its technical support of data essential to conducting equality programmes. The operators' involvement in monitoring allows them to see the reality of discrimination (*awareness*) and makes them accountable and responsible for the progress achieved (*accountability*). Monitoring tasks themselves increase the awareness and the understanding of the mechanisms leading to discrimination. It sets in motion a virtuous cycle of inspection and revision of practices. As the CRE states: “Monitoring is not only a statistical exercise, it is not an end in itself. It is a starting point for developing initiatives” *(CRE, Guidance for Ethnic Monitoring).*

B/ Monitoring specifications

The programmes feature extremely precise guidelines for monitoring. The methods of data collection, their format, and the instructions for completing the statistical reports are published within voluminous guides for the use of administrations and operators. These instructions are mandatory in Canadian and American programmes, but they are partly optional in Great Britain.

The CRE offers *guidances* and *codes of practice* defining the methods of implementation of *equality schemes* which include very detailed volumes on ethnic monitoring. Until 2000, the scheme was voluntary. The revision of the *RRA* has made the programmes and all of their provisions mandatory for *public authorities*. They still remain voluntary for private employers, however.

Definition of objectives and content of *Affirmative Action* programmes
(*Codes of Federal Regulations*, United States)
An affirmative action program is a management tool designed to ensure equal employment opportunity. A central premise underlying affirmative action is that, absent discrimination, over time a contractor's workforce, generally, will reflect the gender, racial and ethnic profile of the labour pools from which the contractor recruits and selects. Affirmative action programs contain a diagnostic component which includes a number of quantitative analyses designed to evaluate the composition of the workforce of the contractor and compare it to the composition of the relevant labor pools. Affirmative action programs also include action-oriented programs. If women and minorities are not being employed at a rate to be expected given their availability in the relevant labour pool, the contractor's affirmative action program includes specific practical steps designed to address this underutilization. Effective affirmative action programs also include internal auditing and reporting systems as a means of measuring the contractor's progress toward achieving the workforce that would be expected in the absence of discrimination.

Pursuant to the Canadian *Equal Employment Opportunities Act,* monitoring is mandatory for federally regulated private sector employers of 100 employees and more, federal public sector companies and federal contractors (contracts of over $200,000 CAN). In 2002, nearly 1,420 organisations involving approximately 2 million employees developed and implemented employment equity programmes. For each designated group, the companies must provide information on recruitment, dismissals, promotions, salary ranges and professional occupations. The designated groups are defined by law (visible minorities, women and disabled people). Sanctions are provided in the event of a failure to implement monitoring (for example, contract termination).

1) Goals and targets

The distinction between targets and quotas is clearly specified in the CRE guides and codes. This distinction applies to all of the countries under study who are developing *equal opportunity* schemes. Firstly, the *target* is indicative while the *quota* is mandatory. In an *equity scheme*, the employer must endeavour to relate the composition of his workforce to an ideal representation, defined on the basis of the available labour force in the benchmark area. If this objective is not reached over the period of the scheme, sanctions will not be applied. Commitment to the scheme and membership in the programme constitute a *bona fide* pledge and are seen as proof of non-discrimination. However, when a quota has been set, the application of sanctions is possible in the event where the quota is not achieved, except where the employer can demonstrate that no satisfactory candidate could occupy the available positions. Discrimination is presumed if the quota is not attained.

Moreover, the *target* concept does not infer a preferential allowance system. The fact that a candidate belongs to one of the target groups whose representation must be increased does not confer any additional advantage on them compensating for lower qualifications or a resume of lesser quality than that of another candidate.[8] This advantage is precisely what the *Affirmative Action* programme defines and consists in allocating a bonus to a candidate of a minority group, whereby, despite “unequal merit”, he/she will be recruited because of his/her belonging to a protected group[9]. While *equal opportunity* is always based on a meritocratic element, *Affirmative Action* intentionally deviates from this. The introduction of the equity concept in Canadian law was a response to a strategy shifting from the American Affirmative action which drew opposition, to the implementation

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[8] See the clarifications provided by the CRE in the *Race Relations Code of Practice in Rented Housing*, 1991: “a target is a system of measurement and should not be confused with a predetermined quota, which is unlawful under the Race Relations Act. A quota is a fixed number or percentage which is imposed for a particular area, and there is an obligation to achieve it. A target on the other hand is not an absolute minimum or maximum, as it may be over or underachieved. (...) Achievement of a target does not lead to the exclusion of any particular applicant. A target is the criterion for measuring performance as reflected in the ethnic record keeping and monitoring system*"*.

[9] The advantage granted does not, however, lead to the promotion of very poorly qualified candidates to the detriment of better qualified applicants. The extent of the compensation is not indicated in the applicable texts and relies on the judgment of the relevant departments.

of a positive action programme. By emphasising the equitable participation of groups of victims of discriminated groups, the "quotas" threat was rejected.

From a statistical point of view, the difference between a *target* and a *quota* is not major. In both cases, it is important to describe the composition of the population in terms of the criteria defined in the action programme, to set the quantified objectives in a schedule and to monitor the progress of the programme achievement through the publication of regular reports, supported by continuous monitoring of the population. Assessing a programme's progress requires monitoring statistical indicators, which relate the observed situation to a theoretical potential. The discrepancy between the achievement, which incorporates the invisible consequences of negative selection as regards protected groups, and the *target* which takes into account clear potential, indicates the failure or difficulties encountered by the programme. Such a result can then trigger an inspection.

2) Standards and reports

The need to establish statistical standards results from the obligations placed on companies, schools, public services or other entities, to maintain files recording the protected characteristics of employees, students and users. When such a statistical registration is mandatory, or at least strongly recommended, it seems crucial that instructions and data entry forms be provided so that the entities are able to perform this task. It is difficult to blame companies who have not complied with their obligations to describe their workforce by "race" and ethnic origin if no methodology has been provided. Manuals or instructions thus establish nomenclatures to be used, replicating the same categories used in the census.

The overall coherence of a system is a condition to its operational capacity.

In theory, all of the data gathered on the protected grounds must observe the standard nomenclature. This standard is distributed to the bodies who have implemented an equality programme as well as the numerous administrations or institutions which only participate indirectly in the system. Designed for strictly operational purposes, the standard has become a coding norm for the major socio-demographic characteristics associated with discrimination.

In 1996, the EEOC and the OFCCP promulgated a reference standard for the employers under their jurisdiction, the *Standard Form 100* or *Employer Information Report EEO-1*[10]*,* defining the different elements to be represented in the annual reports submitted by the employers. The list of categories that employers must use for distributing their workforce is officially set therein. It was adopted and extended to federal agencies by Federal

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[10] Similar instructions were then sent to unions, federal agencies, public schools and to institutions for higher education (forms EEO2 to EEO6).

Directive n°15 promulgated by the OMB (revised in 1997). In the standard and various guides for managing the implementation of *Affirmative Action* programmes, the EEOC and the OFCCP provide the legal definitions of the concepts used to designate discrimination. The manual published by the OFCCP (*Federal Contract Compliance Manual, FCCM)*[11] thus defines *adverse impact* and *disparate impact:* “The disparate impact analysis consists of two steps: 1) calculating the adverse impact of the criterion and verifying its statistical significance; and 2) determining whether the contractor can justify the relevance of the criterion in relation to the job or corporate needs. Adverse impact refers to the results of the statistical analysis and disparate impact refers to the adverse impact the contractor cannot justify as a company or job requirement".

The Australian Bureau of Statistics (ABS) has enacted an entire series of standards aimed at consolidating the coding of cultural, religious and linguistic groups, in accordance with the categories used in the Australian framework for promoting diversity. Combining the ASCCEG (Australian Standard Classification of Cultural and Ethnic Groups) and the ASCL (Australian Standard Classification of Languages), the *Standard for Statistics on Cultural and Language Diversity* was validated by the Council of Ministers for Immigration and Multicultural Affairs (COMIMA) in 1999. It applies to all of the diversity and multiculturalist policies. It replaces the former standard used to register cultural diversity, the NESB (Non-English Speaking Background), which was subjected to much criticism and proved to be inadequate. This standard is supplemented by the ASCRG (Australian Standard Classification of Religious Groups) which proposes a nomenclature for religions (a variable included in the census). However, these standards are not always completely in line with the categories proposed in the forms that are completed by candidates for admission or by employees of the various public services subject to the *Charter*.

The standardisation of the “indigenous" category, namely Aboriginals and Torres Strait Islanders, has proven to be problematic. The definition itself has evolved considerably and is not standardised between the different departments specialising in relations with the Aboriginals. The ABS provided a standard categorisation in the 2001 census based on self-identification. However, some departments prefer to refer to ancestry, while the departments responsible for driving forward Aboriginal policies use a community identification in order to certify indigenous origins.

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[11] The complete manual covers more than 700 pages. One can understand the obligation imposed on large companies to designate a manager responsible for the *Affirmative Action* programme: such complexity requires real specialisation! The investment required is of the same order as *equal opportunity* programmes in Great Britain and employment equity programmes in Canada.

EEO FORM distributed to employees of the University of Sydney, Australia:

EEO Data – while completion of this section of the form is voluntary, we ask for your co-operation

1. **Are you Aboriginal or Torres Strait Islander person ?** An Aboriginal or Torres Strait Islander is a person of Aboriginal or Torres Strait Islander descent, who identifies as such and is accepted as such by the community in which they live.

Yes, an Aboriginal person ☐ Yes, a Torres Strait Islander ☐ No ☐

2. **Are you from a racial, ethnic or ethno-religious group that is regarded as a minority group in Australian society, &/or is your first language non-English ?** You should indicate that you are from a minority group if you regard yourself, & are regarded by others in the community, as being part of a minority group in Australian society due to your background, country of birth or descent, ethnic or racial appearance, religion and culture, language or accent.

Minority group & First language non-English ☐ Minority group ☐ First language non-English ☐ No ☐

3. **Do you have a disability ?** You should answer 'yes' to this question if you have : a long term medical condition, aliment or disease; speech difficulties in your first language; a disfigurement or deformity; a psychiatric condition; a head injury, stroke or other brain damage; a complete or partial loss of your sight (excluding conditions which are corrected by wearing glasses or contact lenses) or hearing: a complete or partial loss of the use of any part of your body; a disorder or condition that causes you to learn differently from a person without that condition or disorder.

Yes ☐ No ☐
If 'Yes', do you require reasonable adjustment to be made at work ? You should answer 'yes' to this question if, as a result of your disability and to perform your job, you require a reasonable adjustment to be made to the task that you perform, your workplace or work area, how other behave towards you, the equipment you use, your working hours.

Yes ☐ No ☐
If 'yes', please detail adjustment required (attach additional pages if necessary)

In Australia, *affirmative action* only refers to the question of gender. It includes restrictive provisions in terms of monitoring which are not specified in the same way for *Equal Opportunities* programmes. These programmes are administered by the Office of the Director of Equal Opportunities in Public Employment and relate to equal employment opportunities for women, members of racial, ethnic and ethno-religious minority groups, Aboriginals and Torres Strait Islanders. Each employer is required to advise the director of palliative initiatives in the progress made in terms of equal employment opportunities. All of the palliative initiative programmes must set out objectives and prospective estimates at the core of their scheme, and must allow for a yearly verification and assessment of results. However, setting quotas is not essential and employers are not required to take measures that contradict the merit principle. This report may be produced every one to three years, depending upon a written request by the organisation. The Agency provides a standard report form which can be sent via e-mail. If the employer does not produce this report and/or does not follow-up on the data requests, the director of the agency may indicate this in a report to Parliament following formal notice of 28 days. Since the first of January 1993, an employer cited in Parliament is no longer eligible for any government contract or any form of industrial financing.

The standard used in Great Britain and distributed by the CRE fully integrates the nomenclature produced by the census. Unlike the United States where the agencies had defined a standard, which was then applied to the census, the process is the opposite in Great Britain. The *codes of practice* strongly recommend integrating the census categories, all the more since the various statistical surveys are in line with this nomenclature registered in the *National Statistics data source* (particularly the *Labour Force Survey*). The *Disability Rights Commission* attempted to develop a discrimination measurement based on disability and modified the question in the LFS on disabled people. However this quantitative measure did not lead to monitoring, which is not expressly required by the *Disability Discrimination Act*. The law places more emphasis on the prohibition of direct discrimination and defines methods for accomplishing reasonable adjustments. Also, there appears to be a broad variety of categories and methods of data collection on disability in the census, surveys or administrative records. There is no existing standard for religion.

In Canada, the standards relating to the “designated groups” of equality programmes are defined by law, in partnership with Statistics Canada. The categories are strictly identical in all of the data collection files, whatever their source. The Employment Equity Data Program (EEDP) ensures the collection of data from four designated groups. To this end, the programme coordinates the products of all equity employment reports and qualitative and quantitative data, and has various advisory roles. The EEDP is based on a consensus between the four ministries and federal organisations responsible for the equal employment opportunity policies and programmes on the interpretation and the application of the concepts, definitions, standards and the methodologies used, as well as the content of the questions issued to gather data. The government established the Interdepartmental Working Group on Employment Equity Data (IWGEED), along with an interdepartmental steering committee to facilitate the exchange of information between the participants and Statistics Canada. The IWGEED is charged with accomplishing the programme and is presided by Statistics Canada. It ensures that "the concepts, the definitions, the methodologies, the data and other elements required for the purposes of employment equity (...) are relevant and consistent and suitable for all” (Statistics Canada, 1994).

Every year, companies must provide a report including a quantitative section, describing recruitment, terminations, promotions, salary distribution and professional occupations for each designated group, and a qualitative section describing the measures taken to improve the situation of the designated groups within the company and the results of these initiatives. The reports are sent to the Ministry of Employment (HRDC), which supervises the programmes' achievement, and the Human Rights Commission, which has the authority to sanction companies.

Monitoring is not specified by law in the Netherlands, which by no means limits extensive data collection via administrative registers or social science surveys. The fields of employment and education are the most extensively covered. The 1983 ethnic minority legislation in the Netherlands established a list of relevant groups. The shift from minorities to "allochtones" triggered a change in terminology but not the groups or the manner in which they are identified. The list of allochtone groups can be seen as a standard insofar as it is listed identically in numerous statistical data sources. SAMEN is the only legislation providing for monitoring in relation to the objectives for promoting minorities in employment. Employer obligations included drafting an annual report collected by the Regional Centres (RBA) and submitted to Parliament.

3) Reporting systems

Data collection follows procedures that vary in their protocol. The choice responds to criteria concerning the feasibility of the collection and the strategy followed to respect privacy.

Self-reporting or self-identification

Self-reporting is the method used most often in the various collection methods. It involves providing a list of set answers to be selected by the respondents (*tick a box*). A final open category leaves space for responses that are not covered by the nomenclatures. This method is nevertheless designed to reduce "other" responses by offering the main categories for the protected groups. It is not a question of registering "identities", which would lead to the risk of seeing categories grow in numbers thus compromising distribution in base groups. Definitions are presented to help respondents interpret the question and identify themselves within a category.

This method is the most respectful of personal sensitivities, which is important in the framework of a registration carried out by administrations, institutions or companies with normative powers, thus able to strongly influence the persons being categorised. However, this method also has several limitations, whose consequences for the potential users of data collected in this way are not negligible. It is sensitive to variations in reporting over time and from one source to another. Studies show that the volume of persons reporting an origin has a tendency to fluctuate depending on media visibility, the origin's valorisation or stigmatisation, and the way in which the question is expressed (presence or not of this origin in the proposed responses or the examples provided, and its ranking within the examples). Moreover, it cannot be applied to all situations. An obvious example is that of death certificates, which are necessarily completed by a third party. Other situations lead to a preference for third party reporting, mainly through visual tests, in order to avoid the laborious task of a self-administered questionnaire procedure: registers held by employers, service visitation files, etc. Finally, self-reporting does not necessarily correspond to a third party classification. It is not because an individual considers himself Hispanic that he will be perceived as such by others.

This cleavage leads to two problems. When data sources constituted by two different methods (self-identification and visual testing) are compared, the disparities that occur in the reporting weakens the statistical reliability of the analysis (see below). Moreover, the third party classification is better adapted to the discrimination problematic based on identification and not on identity. If a significant proportion of respondents class themselves among minority groups but are not perceived as such in their daily lives, the statistical inference of a disadvantage linked to "race" is biased.

All of the censuses use self-identification[12], as do many administrative records. In Canada, Great Britain and Australia, reporting membership in a protected group is achieved via the distribution of a self-administrated questionnaire to all employees. As completion of this questionnaire is voluntary, the risk of non-response is significant and may compromise the monitoring system. Despite this, no assessment authorities produces statistics in the loss of information on the completion of the equality programme forms.

Identification by observation

This method is mainly used in the United States by companies, schools and police departments in the framework of *Equal Employment Opportunity* programmes. The classification is carried out by a third party, usually by a company manager or a school's administrative staff. The classification is conducted by using a simple visual test and perception indices are provided. Because of its structure, this method can only class categories based on visible criteria: skin colour, sex, visible disability. It is the preferred method as it avoids having to ask direct questions that may be considered too sensitive. This reservation regarding the intrusive aspect of reporting the race of employees and students is surprising in a context where racial categorisation is ever-present.

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[12] One limitation to self-identification is the census is completed by one household member only. In such a case, the other household members do not have the opportunity to "self-identify" themselves.

The first advantage of this method is that it ensures thorough coverage by avoiding non-responses. Its second advantage, which is also its main limitation, is that the classification replicates the application of stereotypes which are at the core of discrimination. Even if a third party classification is not in line with the individual's self-reported identity, it clearly corresponds to the way in which the individual is perceived. Indeed, this identification is more operational in terms of understanding the unfavourable treatment this individual may face.

However, this method only accounts for *visually perceptible* characteristics which significantly restricts the number of possible categories. For a third party to carry out the classification, the individual's characteristics must be obvious and more or less indisputable, i.e. perceived in the same way by a large number of observers. This constraint results in abandoning categories that may have been relevant in terms of monitoring and equality programme objectives. In the United States, the extension of *Affirmative Action* to include religious or other ethnic groups (Greeks, Irish, Polish, etc.) was applied between 1971 and 1973 and was abandoned only because it is impossible to report religion or ethnic classifications in any other way than through self-reporting. It would have been necessary to ask employees to class themselves in religious or ethnic groups, which the administration considered to be incompatible with privacy issues.

The other problem relating to this method is that it requires using data obtained in various ways during monitoring. The bridging of the data collected by *observer identification* with that obtained from a census (*benchmarking*) is, from a methodological point of view, rather debateable. Gaps can arise due to the differences between self and hetero-perception. These gaps have statistical implications that have neither been widely studied nor evaluated.

On the contrary, registration in an affirmative action programme (job application or university admission) is based on self-identification. "Race" is declarative. The latitude left to the respondents is required by the *colour blindness* principles of constitutional law. While this does not prevent the collection of racial categories, it implies that it must remain declarative and not appear as a civil identity. In other words, no race "certificate" is issued to potential beneficiaries of *Affirmative Action* programmes. The system relies on the assumption that the persons who class themselves as a racial minority are not cheating[13].

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[13] The "Malone" case illustrates the risks of abuse that this accepted method entails. In a 1989 judgment, the Court of Massachusetts cancelled the hiring of the two Malone brothers by the Boston Fire Brigade. Although they were white and of Italian descent, they declared themselves to be "Blacks" in the application form. They were therefore recruited despite an exam score that was unfavourable to them as Whites but not as Blacks. Once exposed, their case was decided as follows: since no objective definition exists on race, their declaration was subject to 1) a visual observation of their appearence, 2) documents indicating their origin, such as birth certificates, 3) their racial perception and that of their family within the social environment. (Malone v. Harley, No 88-339 (Sup. Jud. Ct Suffolk County), Massachussets, July 25, 1989).

Recognition by group

This specific method is used in the United States for classing *American Indians* in "federally recognised tribes". It is also used in Australia to establish an aboriginality "certification". In both cases, the objective is to confirm the status of individuals, a status which provides them with specific support or access to reserved schemes. Affiliation to a group is effected by the co-optation of members that are already registered and who testify to the *American Indian* quality or the aboriginal quality of the person being identified.

Classification by indirect variables

Compared with other methods that directly inform the categories used in classifications, this method consists in collecting indirect data which is used by the statistical operators to provide the classifications. The operator producing the statistics thus retains control over the definition of the category. The variables that are incorporated into the classification are "objective", in the sense that they provide information on places, practices or status: countries of birth, nationality, language spoken, and qualification levels, etc. The Dutch and Australian classification systems use this method. Its advantage lies in the coherence and stability of the categories, since they are taken from variables which, for the most part, do not change over time or have multiple interpretations. Their limitation, which is relatively redhibitory from the point of view of the anti-discrimination schemes, is that the categories only relate indirectly to the prohibited grounds. Their comparability is only approximative, and the population groups identified with the composite variables may prove to be very different from those obtained by the previous methods. In conclusion, the use of indirect variables is engaged by default and is difficult to justify from a strictly methodological point of view.

4) Benchmarking: censuses and population registries

The census is a statistical reference tool for counting and describing populations. Population registries provide more dynamic statistical information than the censuses, which are carried out every 5 or 10 years, but include less detail on characteristics other than demographic or residential ones. These two sources are the only ones to provide thorough coverage, or almost, of all of the residents of a country at extremely detailed geographic levels.

The purpose of a census is described in legal texts, and it fulfills numerous obligations providing it with an official status different than that of other statistical surveys. For this reason, the importance of defining the variables to be included in the census goes beyond statistical methodology or scientific analysis. In all of the countries under study except the Netherlands, who abandoned censuses in 1971, the content of a census is a subject of consultation and arbitration between the statistical bodies responsible for its design and achievement, as well as between the ministerial agencies using the data collected in the action policies and users.

The Dutch data collection system differs quite markedly from the systems used in other countries. Each municipality is equipped with a registry in which each of its inhabitants is recorded. The system, called the GBA (*Gemeentelijke Basis Administratie persoonsgegevens* or municipal registry of the demographic database), was introduced in 1994 and includes the municipal registry itself and various administrative files: social security, water and electricity contracts, police registry of foreigners and retiree files. The data originating from these various sources is then compiled by name (with an individual PIN) by the CBS (*Centraal Bureau voor de Statistiek*, the Dutch statistical institute), who then distributes it. The advantage of the system is that the data is updated each year, while census data tends to become obsolete quickly.

In the United States and Great Britain, the ten-year interval between censuses requires partial updating, although in effect, the data used as a benchmark is sometimes several years old and thus precedes the data obtained by the operators.

The censuses and population registry provide the benchmarking data for the monitoring systems, and are a crucial complement to the data collected by the operators. Suspicious or significant variances and differentials are measured by comparing the proportion of the protected group members in the company, distributed according to their level of qualifications, to the equivalent proportions in the general population of a given geographical area. The connection between the two proportions establishes an under-representation or, in the American scheme, an under-utilisation of the protected group's labour force. This *benchmarking* requires having the relevant statistical data available at appropriate geographic levels. This can only be provided by the census. The population registry cannot issue statistics concerning the qualification levels of protected group members.

In order to conduct the benchmarking, the census bureau in the USA publishes specific charts in accordance with the specifications requested by 4 agencies (the EEOC, the Ministry of Justice, the Ministry of Labour and the Labour Management Office). These charts include the distribution of 512 socio-professional categories by race, ethnicity, hispanicity and gender for each of the States, urban areas (metropolitan statistical areas: MSAs) and counties. These charts are available on the internet and are provided in detail without restrictions on staff sizes[14]. It is often the case that the chart cells only include one or two observations, which leads to individual identification. It is curious that the OFCCP does not officially recommend using the census for establishing the benchmark data. It indicates that employers must use the best data available, and that updates of the census may be necessary.

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[14] In accordance with a legal obligation of the Voting Rights Act, following each census, the census bureau is also responsible for producing the files required for redistributing constituencies in order to increase the influence of the minority vote.

The “availability” concept is used to examine a gap between the representation of the protected groups in a company and a benchmark area. It is defined as follows: "an estimate of the number of qualified minorities or women available for employment in a given job group, expressed as a percentage of all qualified persons available for employment in the job group. (…) The purpose of the availability determination is to establish a benchmark against which the demographic composition of the contractor's incumbent workforce can be compared in order to determine whether barriers to equal employment opportunity may exist within particular job groups." (*OFCCP Compliance Manual)*.

Pursuant to the Employment Equity Data Program (EEDP), Statistics Canada is required to provide relevant data allowing enforcement agencies to establish guidelines and set objectives. This implies adding questions to the census questionnaire enabling an overall table to be drafted on the situation of designated groups in the labour market and carrying out longitudinal studies on a regular basis in order to measure the situation’s evolution. The requirements relating to data collection, and particularly to the definitions, are established by the enforcement agencies in association with Statistics Canada, and the analysis both in terms of the data collected by employers and that collected via a census or other surveys is the responsibility of Statistics Canada.

Data relating to labour force “availability” is taken from the census[15]. It describes the composition of the labour force in a given recruitment zone and is “data on the number or percentage of designated group members that have the skills required within the relevant labour market, for certain professions or specific groups of professions”. In order to determine whether a company’s labour force is representative of the four groups designated by law, the employers need benchmark data on the pool of potential workers. It is by comparing the representation of target groups within the company and their availability in the relevant labour market that a potential “under-utilisation” can be determined, thus allowing the establishment of quantitative representational objectives. This exercise must be based on precise, statistically reliable data which takes into account the qualifications required for the jobs in question. The data on availability, published upon each census and thereafter updated, is therefore the initial source from which "estimates on availability" can be established for each employer. They provide the numbers and percentages of workers belonging to the designated groups according to their skills, employment situation, occupation and region[16] for each census year.

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[15] In order to satisfy the equality programmes’s objectives, Statistics Canada modified its standardised classification systems, reference periods for the active population and terminology. For the availability analysis, Human Resource Development Canada (HRDC) and Statistics Canada established a new National Occupational Classification (NOC). The results of the 1996 and 2001 censuses were coded according to the NOC classifications, leading to the accuracy of availability analyses.

[16] Statistics Canada’s data on availability is distributed by geographic area to ensure that employers are judged in a fair and realistic way in terms of the workforce in the areas in which their organisations are located. Employers are required to produce a report on employment equity by geographic area illustrating the number of employees in each of these areas.

Other solutions have been sought from time to time to replace the census, particularly as the introduction of questions highlighting ethnic or racial origin in an official procedure is fraught with repercussions. Non-mandatory surveys covering smaller sample groups appeared to be more suited to dealing with controversial subjects. This was particularly the case in Great Britain where the government decided not to use the census for monitoring purposes in the fight against discrimination because of certain positions taken by academics or opinion leaders. However, this strategy did not prove to be satisfactory to meet the requirements of the anti-discrimination scheme and the growing need for statistics led to a turnaround ten years later with the introduction of an *ethnic question* in the census.

The strategic role of a census is defined by the general scheme of the operational system. Initiatives are conducted locally and each department, school or company must be aware of the situation of protected groups in the benchmark area in order to monitor it. Information obtained from the surveys or selective inspections (*sunshine screening*) cannot provide the operators with precise data. These surveys offer, however, data that is even more complete and detailed allowing the analysis of the mechanisms through which discrimination occurs. These surveys are crucial for collecting detailed knowledge on discrimination, proving its persistence and raising the awareness of participants, whether they are politicians, operators or society in general. However they cannot replace a source such as the census.

5) Indicators

The reports recording monitoring results are used to help employers or other organisations analyse the performance of their procedures relating to equality. They are also provided to supervisory authorities who can then identify "potential discrimination". To this end, the working data is converted into indicators expressing, in a synthetic and relatively more reliable manner, any significant disparities. Indeed, disparities are inevitably revealed by the comparison of the two proportions. Nevertheless, these *working* disparities are not necessarily useful information in assessing potential disadvantages. The departments responsible for the assessments develop indicators to balance the values obtained or locate them within probability ranges.

The assessment of adverse impact referred to in the American legislation is based on several statistical indexes. As regards hiring, the guide published in 1978 by the EEOC and the OFCCP to code all of the recruitment procedures (*Uniform Guidelines on Employee Selection Procedures*) sets out the “the four-fifths rule". According to this rule, a recruitment procedure is considered to have an adverse impact (and is therefore illegal) if the success rate of members of a protected group is lower than 80% of the rate obtained by the benchmark group. As a consequence, if, following a test, the proportion of Blacks recruited is lower than 20% when compared to Whites, the test will be declared biased and will have to be modified. (*Codes of Federal Regulations*, Section 1607.4, 1978).

The application of this 20% disparity also applies to the overall representation in the company (i.e. the "inventory" of employees distributed by racial groups). The OFCCP examines this distribution in contracted companies by applying the *Job Area Acceptance Range* (JAAR). The JAAR is based on the theory that a variation in the representation of a protected group higher than 20% indicates a *substantial* under or over-representation. The indicator is used for each employment sector by comparing the proportion of a protected group with that of a benchmark group, highlighting significant concentrations, or with the theoretical proportion obtained by using a *benchmark,* representing the potential distribution of the protected group in employment.

Other indicators are set out in the OFCCP manual: the IRA (*Impact Ratio Analysis*), which compares the selection success rates between protected groups and a benchmark group, compensation analyses, which compare salary levels according to job groups and employment sectors. Statistically significant disparities are not considered to be proof of discrimination, but may trigger a more in-depth examination.

This approach using indicators to describe a company's performance is also used in Canada for the Employment Equity Act Annual Report. Each company's quantitative report is analysed by the ministry departments, who establish a rating allowing the company to identify its progress within its Access to Equality Scheme and to undertake the required actions if the results are disappointing. The rating is based on 6 indicators (representation of the designated groups, professional concentration, salary differentials, recruitment, promotions and terminations), which cover a large spectrum of the employee's situation and provide information on procedures in a differentiated manner.

The basis for the construction of the indicators is the data collected during monitoring linked with that provided by the census on the "available labour force" in the company's geographic area. These indicators are the statistical indices used traditionally for describing distributions: segregation index, population type, etc. They assess differentials through a weighting process. They are calibrated from 0 to 2, 3 or 4 according to each case and their sum provides an overall score from 1 to 16, which is then converted into a letter (A, B, C, D). Each company therefore has an assessment for each designated group. Some companies demonstrate a high performance for women, but are not extremely fair towards visible minorities. Others have high scores for all of the groups. Finally, the qualitative report is also subject to a quantified rating, the *Good Practices Index*, calibrated from 0 to 5. This index assesses the conditions for issuing the qualitative report and the format to be observed. The content of the initiatives undertaken is examined by the Human Rights Commission.

This indicator system has been recently revised by the CRE in Great Britain for public authorities, where in Australia, the reports issued by companies do not use indicators and are compiled by the local EEO offices with no feedback to the companies.

6) Assessment of the efficiency of a monitoring system

The complex monitoring systems provided for by anti-discrimination schemes clearly run the risk of only being an attractive but purposeless tool if the operators do not fully commit to the programme. Supervising the achievement of programmes is therefore an inseparable element of their efficiency. The incentive nature of the various measures does not make the control very effective, nor possible sanctions. Threats are only credible in the form of legal prosecutions against discriminating companies. The ability to present monitoring charts within the procedure is proof of a commitment appreciated by the Courts. On the contrary, a company prosecuted for discrimination and which did not conduct monitoring exposes itself to unfavourable judgments. The publicity flowing from the guilty verdicts contributes to operators fulfilling these obligations.

In the Netherlands, the assessment of monitoring provided for by the 1994 “Wet BEAA” law and conducted in 1996, indicated that only 14% of employers fulfilled all of the legal provisions, including the submission of a report on the situation of minorities in the company. Less than 60% had applied the obligatory registration of their employees’ ethnic origin. The 1998 SAMEN law clearly improved the level of participation: in 2001, 70% of employers issued an annual report detailing the level of ethnic minority representation in their company and the measures taken to improve this over the following year. However, while the objectives set a representation level of 10%, the results only reached 8.5%.

In Great Britain, the assessment of equality policies is incorporated into the design of the programme itself. However this introduction occurred recently and the results on the level of operator participation in the monitoring system are not available as yet. A 1998 survey on the working conditions in companies (*Workplace Employee Relations Survey*, *WERS*), which was analysed in 2003, provided significant indications on the degree of employer participation in equality programmes. Equality programmes are applied in two thirds of the companies, of which 97% are public companies and 57% from the private sector. The programmes are more often implemented in companies that have a higher representation of “minorities” (women, ethnic minorities, disabled people). The report does not highlight the significance of this correlation: higher sensitivity for the fight against discrimination in companies that have employees belonging to minorities or positive results from equality programmes (with an increase in the representation of minorities). The main grounds covered by these programmes are gender, ethnic and racial origin and disability.

Among the various actions provided for by the equality programmes, the monitoring of employees’ ethnic and racial origin is only carried out by 30% of the companies. This disappointing monitoring level also applies to public sector companies, with a participation rate of only 48%. These results were established in 1998 and confirm the CRE’s position in that they appear to demonstrate that the collection of data by operators, and in particular by companies, is insufficient. This quite clearly compromises the operational functioning of a system reliant on the use of quantified objectives, which explains the introduction of mandatory monitoring in the 2000 *Race Relations Act*, an obligation limited to *public authorities*.

Beyond the assessment of a system's performance, which is an important condition in evaluating its results, a key question however still remains unanswered: do the schemes succeed in reducing the scope of discrimination, easing prejudice and *in fine* improving the position of the protected groups? Few programmes provide appraisals linking the implementation of initiatives with the improvement of the situation of the protected groups. The Employment Equity Act Annual Reports in Canada provide this type of appraisal. A representation index by group is calculated for each company and business sector. Its variations provide an indication of the impact of the programmes. In 2003, the representation of natives, women and visible minorities was improved, both quantitatively and qualitatively. However, the representation of disabled people remained poor. The representation index (the rate of availability relating to the size of the group within the labour force) was 95.9 for women, 80.7 for natives, 77.5 for visible minorities and 46.9 for disabled people.

In the United States, a great deal of economic research has been conducted to estimate the effect of Affirmative Action on employment and education for minorities and women. In a lengthy article, Holzer and Neumark[17] demonstrate that organisations that have implemented *Affirmative Action* programmes have seen a marked increase in the representation of minorities and women in comparison to other establishments. However these results are not in turn analysed to evaluate the specific effect of the scheme on the evolution of the situation of protected groups. In economic terms, the issue relates to consequences on the companies (in terms of performance) and on the market (in terms of the redistribution of skills).

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[17] H. Holzer and D. Neumark (2000) "Assessing Affirmative Action", *Journal of Economics Literature, 38-3,* p.483-568

C/ Data protection and the respect for individual freedoms

In the context of the new information technology, all of the countries under study have recently modified their data protection laws. These laws offer a high level of protection and all are rather similar. With the exception of the United States, the countries define "sensitive data", the collection of which is subject to conditions. However, the issue of a particular risk related to collecting information on the characteristics on which discrimination is based is not a central focus of these laws. These laws are more concerned with defining and monitoring the methods of data circulation and use. Protections are thus aimed at restricting access to data and protecting individual data. They do not prohibit data collection, except in Great Britain and the Netherlands who follow the European directive relating to the protection of personal data[18]. Numerous exemptions to the restrictions and controls are provided for, in particular for public interest objectives or to comply with legal obligations. One of the clauses often put forward to authorise the collection of sensitive data is that of “explicit consent from the respondents”. This clause leads to favouring the self-reporting registration which, from a legal perspective, implies free consent. The fact that the United States have not defined "sensitive data" in legal terms explains the use of *Observer Identification* for the EEO programme monitoring . This option is not compatible with the data protection provisions applied by other countries[19].

In the 1998 British Data Protection Act, all of the grounds covered by the anti-discrimination legislation are considered “*sensitive data*”. Their collection and circulation are subject to specific controls and prohibitions. However, these are subject to significant exemptions where data collection is necessary to exercise a right or is required by law. In this case, the employers’ obligation to produce data aimed at ensuring employment equality justifies lifting restrictions on all of the grounds the subject of anti-discrimination schemes. The same applies to all of the organisations, including public authorities, producing and circulating statistical data. The British scheme manages to simultaneously accommodate a protective framework for personal data that observes the principles of the European directive (transposed into the Data Protection Act in 1998), with an extremely developed monitoring system covering a wide range of organisations, administrations and operators involved in collecting sensitive data.

The Information Commissioner appointed by the DPA in 1998 authorises the collection of data on ethnic or racial origins, religious or other beliefs, physical or mental health, if the information “is necessary for identifying or verifying the existence or the absence of equal treatment or access” and if the collection “presents security guarantees for individual data[20]”.

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[18] Directive 95/46/EC “concerning the protection of physical persons with regard to processing personal data and the free circulation of such data”.

[19] It would require returning the form, upon completion, to the employee who would indicate his/her agreement to the classification made and its use. Apart from the complexity of the procedure, this could also lead to legal disputes in the event where there is a disagreement as to the classification.

[20] Information Commissioner, Codes of Practice. The Employment Practice Data Protection Code.

Precautionary procedures provided by the CRE on ethnic monitoring:

Information about any employee's ethnic group is protected by the Data Protection Act. It must be treated as confidential, and used only for the purposes declared at the time this information is gathered. Ethnic monitoring data that does not identify individuals may be published.

When collecting or monitoring information such as, race, sex, religion and age, it is good practice to use an application form with a tear-off section for applicants to fill in. HR staff should detach this information, so job selection panels can consider applications on merit, without knowledge of an applicant's ethnic group, at least until the time that shortlisted candidates are interviewed.

In September 2001, the Netherlands also transposed the 1995 directive (WBP: *Wet bescherming persoonsgegevens*) into a data protection law which only marginally modifies the former 1998 law, at least for the points concerned in this report. The protection of privacy as regards computerisation is also ensured by Article 10 of the 1983 constitution. In Article 16, WBP sets out strict conditions for "special" data collection. Personal data relating to religion or beliefs, race, political affiliation, health and sexual orientation, and union membership may not be recorded, except where this is justified and specified within several articles of the law. The use of this data is authorised if it complies with the obligations set out in the international legislation ratified by the Netherlands (for example, the ICERD convention) or if it falls within the scope of policies reducing inequality. Article 18 of the WBP expressly authorises the collection of "race" to confer a preferential status on individuals from an ethnic or cultural minority. However, notwithstanding the exemption, the article limits the categorisation field to "objective assessments" such as the individual's country of birth, and that of his/her parents or grandparents. This list of variables constructs a framework in which the fight against discrimination can progress, however the creation of any other category requires a legal amendment.

In Canada, data management and privacy protection is governed by three laws: the *Statistics Act* (1971), the *Personal Information Protection Act* (1985) and the *Access to Information Act* (1985).

The *Statistics Act* (1985) defines Statistics Canada's basic mandate. At the core of the legal provisions is an implicit social contract with the respondents by virtue of which Statistics Canada may bind respondents to answer its surveys when the information is clearly in the public interest. This contract, however, provides for absolute confidentiality of responses where individuals can be identified. The Canadian system grants broad access to personal and administrative data, in return for a wide circulation of personal data held by the State and Statistics Canada and a security and confidentiality system which serve as a guarantee. Each institution or administration is required to provide data to Statistics Canada and designate a manager responsible for overseeing their organisation's legal compliance and the confidentiality and security of the data. Moreover, a *Privacy Commissioner* is designated by Parliament and has the authority to make inquiries on complaints, submit complaints himself and examine the application of the two federal laws relating to this topic.

Data is not classified according to its degree of sensitivity; origin, in particular has been an integral part of the statistics system since 1871. However, the concept of "personal information" overlaps the list of data considered sensitive in other countries, by extending it to other information of a private nature. No exceptions are provided for in the framework of the fight against discrimination. The system is based on a legislative and contractual commitment by all sectors to citizens and to guarantee confidentiality, security and the proper use of the data.

In Australia, the *National Privacy Act* (1988) and the *Census and Statistics Act* (1905) govern the production of data. Data pertaining to the grounds of this study is considered sensitive and must only be collected on the express condition 1) that this information is necessary for the operational functioning of the organisation, 2) that it is collected in an open and proper manner, 3) that the data relating to an individual can be consulted by that individual and 4) that the circulation of data respects anonymity. The control system is not in fact very restrictive and the choices made in terms of the data design relate to imperatives other than the legal prohibition to collect data.

The situation in the United States is even more open. The *Privacy Act* of 1974 set outs no sensitive data to be subjected to a particular collection method. Privacy protection is ensured by controls over anonymity, confidentiality and the methods for disclosing the data. Particular attention is paid to the distribution of data relating to race and especially to "mixed race", which relates to very small numbers. The Disclosure Review Board was created by the census bureau in 1995 to review the specifications relating to the census data. Restrictions were imposed on the disclosure of race data classed in 12 categories and the socio-professional categories for the special EEO tables: these should not be provided for geographic areas with less than 50,000 inhabitants. The main fear of the statistical departments in terms of questions deemed to be overly "intrusive" is a deterioration in the responses' reliability and an increase in the *undercount* of the most stigmatised groups or those that are the most difficult to enumerate. Religion cannot be recorded by the census in light of the official prohibition imposed by the First Amendment of the Constitution, or at least its interpretation in terms of the "*religion-blindness*", to govern statistics, although there is no direct reference to the sensitive information concept.

In all of the countries under study, the latitude to monitor sensitive data despite legal constraints set out by data protection legislation relies *in fine* on the confidence that can be placed in statistical institutions. The role they play in data collection, in particular for censuses, makes them the guarantors of the security and confidentiality of operations. The majority of the laws on the secrecy of statistics confers special responsibilities on the state-run statistical bodies. In light of the number of places and situations in which sensitive data providing information on the protected groups is collected, supervision by representatives of these bodies is subjected to statistical secrecy, an essential condition to the legality of the monitoring system and a protection against potential abuse.

The use of individual data raises a specific difficulty in the application of the confidentially regulations and the respect of anonymity in cases of individualised actions. Indeed, the main strategy to fight discrimination based on religion and disability consists in adapting structures and organisations to meet specific needs. *Reasonable adjustment* requires processing individual data and thus breaches the anonymity rule. Furthermore, charts based on registries featuring employee characteristics by grade, position, and salary level, etc. quickly lead to individual identification, even in companies with over 100 employees. For the time being, these breaches do not call the action schemes into question. They lead to adapting the "confidentiality principles" in order to articulate the guarantees and the use of computerised data to rectify discrimination. It is appropriate to distinguish computerised data and statistics. Although based on the aggregation of individual data, statistical tables do not aim to inform on the individual's situation but to analyse groups.

III - STATISTICAL CLASSIFICATIONS

A/ Ethnic and racial categories

1) Inherited or new nomenclatures

The 5 countries under study have developed categories in various forms that can be qualified as "ethnic" and sometimes "racial". This situation does not necessarily result from a long tradition of collecting this type of data or an “ethnicisation” or “racialisation” of society. For certain countries, the development of these categories occured with no regard to historical precedent, but with the main objective of meeting the needs of the anti-discrimination schemes.

Since their first censuses, the United States (1790) and Canada (1871) record data on "race” or “ethnic origin”. The nomenclatures and definitions evolved in accordance with legal and political developments (the abolition of slavery in the United States, disqualification of racial categories in Canada), but their collection for the purposes of fighting discrimination did not break with statistical tradition. Conversely, the introduction of the ethnic question in the 1991 census was a true innovation in British statistics. Such a categorisation combining ethnic and racial origin was unprecedented and was only validated after several attempts and faced a great deal of contraversy as to its timeliness and consequences on the recording of ethnic and racial divisions in society.

The apparent continuity of ethnic and racial classifications in countries who have used them for some time is misleading. In the United States, the maintenance of racial categories following the 1964 Civil Rights Act was subject to much debate on the requirements imposed by the *colour blindness* policy which did not justify abandoning racial identification in statistics. The decision was finally taken to retain racial statistics in order to develop the current monitoring system. However this conceals a complete reversal in the use of these racial statistics. In the past, they were intended to strengthen the "*separate but equal*" segregationist model, but they are used today to rectify past prejudice and promote equality without discrimination. Thus, the American case teaches us that the same categories can provide the means for domination and exclusion, or can be just as essential for undoing what took place as a result of decades of institutional discrimination and for promoting equality.

The Canadian experience is somewhat similar, although the "racial" categories themselves were abandoned in the early Fifties. The relevance of a citizen’s ethnic origin is linked to the initial rivalry between the British and French "founding peoples”, while the “natives” will always be treated in the fringes of this duality, whether negatively or positively. The extension to include “ethnic minorities” occured via the bilingualism Charter (1971), introducing a “third group”. The classification of post-war immigrants in fact follows a format quite close to the initial model, with the list of origins extending gradually as immigrants arrived. In a context that is significantly distinguished by a sensitivity to “ethnic diversity”, as demonstrated by the official multiculturalism policy, the introduction of the “visible minorities” category in the 1996 census was a new addition, which also did not constitute a major change. Terminology is innovative so as to avoid references to “race”. But the model of the question on visible minority affiliation is very close to that used to record ethnic origin.

In Australia, the use of a categorisation referring to ethnicity is still rather unsettled. The “race” concept was used to identify the Aboriginals in two censuses (1971 and 1976) and was then abandoned. The approach adopted thereafter favoured an “objectivistic" construction based on criteria relating to country of birth, extended in 1971 to parents’ countries of birth and language spoken. Until 1999, the official category used to identify groups facing disadvantages (the preferred term for discrimination in Australian texts) referred to language: *Non English Speaking Background* (NESB). This category was highly criticised for its stigmatising and simplistic design and proved to be inadequate for providing sufficient data for equality departments and policies. It was replaced in 1999 by a series of variables and indicators referring to “culture”, origin, and language. In parallel to this re-development of the indicator used for describing and acting on disadvantages, thought was given to the production of sufficient statistics to represent the diversity of Australian origins within the multiculturalism framework. For the 1986 census, a committee recommended introducing a question on ancestry, using a model close to that used in Canada and the United States. This question was then dropped until the 2001 census when it was re-introduced. The two objectives – fighting disadvantages and promoting diversity – are today combined in the statistical standards’ definition.

Although the Netherlands adopted an "ethnic minority" policy, they have always used a categorisation based on the immigrant’s country of birth, followed by the immigrant’s parents’ countries of birth. The development of the “allochtone” category did not modify the methods of statistical identification for population groups. The use of “ethnic" terminology helps to identify categories for legal citizenship statutes: ethnic minorities are spread over the citizenship groups and combine both new immigrants and immigrant descendants (second generation) or natives of former colonies (Surinam, Indonesia, Maluccan Islands, etc.). These two latter groups have Dutch citizenship. However, racial terminology and reference to colour are not used in statistics and are not mentioned directly in equality programmes.

In Great Britain, the “racialisation of statistics” is recent, despite the well-established tradition of *Racial and Ethnic Studies*. The first question established to answer the needs of the fight against discrimination as defined by the *Race Relations Act* was introduced in the 1971 census: a question on the parents’ countries of birth, the same model as that featuring in the American census up until 1970. However, the information thus collected was not satisfactory and a study ensured into accounting for ethnicity and colour in the 1981 *census*. It is worth noting that the *Race Relations Act* prohibits discrimination based on *“ racial grounds”* defined as follows: “*colour,* *race, nationality (including citizenship) or ethnic or national origin*". The criteria mentioned did not appear in the census and no statistics were available to help the CRE perform its tasks. A vigorous debate confronted the advocates of identification on the basis of an individual's ethnic or racial origin and those for whom such an operation was not only seen as an intrusion into personal freedom, but as scientific trickery. It was not until the 1991 census that an *ethnic question* was finally introduced into the census. After a significant modification, it was included again in 2001. Over a period of 10 years, the use of ethnic categories in British statistics has become commonplace. To this end, the role played by the anti-discrimination policy has been a determining factor. The objective of promoting equality legitimised the use of ethnic classifications, which were previously considered as aggravating racism. The need for ethnic statistics which arises from a concrete commitment to equality policies demonstrated the obvious need for monitoring.

2) Codification of laws and policies

The category design used in the anti-discrimination schemes for the countries under study is often defined either directly by laws and policies which also describe the scope of application and the rules for implementing the scheme, or by the supplementary regulations or circulars providing category definitions and the conditions for data collection. The legislators felt there was a necessity to provide a more precise list of beneficiaries than the generic categories of "race" or "ethnic origin" to ensure a scheme's coherence, these being interpretable in different ways. The most effective strategy for obtaining comparable data which provides information on the same topics and can be compiled in spreadsheets is the development of a standardised classification for use by all participants.

The statistical recording of race in the American census is not explicitly mandatory for the anti-discrimination scheme, even though it appears essential for providing the necessary data for action programmes. However, data production on race is a legal requirement under the *Voting Rights Act.* After each census, the *Census Bureau* is responsible for preparing the mandatory files in order to allow for redistricting and thereby increase the influence of the minority vote. Simply, the theory is as follows: "racially" polarised voting is a fact in the United States, so that the dilution of minorities in constituencies where they are poorly represented deprives them of any political weight. In order to strengthen their power to choose a candidate, a simple statistical analysis is undertaken, comparing the distribution of the designated minorities to the electoral map. Adjustments are made (*redistricting)* following each census.

The list of "minorities" benefiting from Affirmative Action in the United States is statistically determined by Federal Directive n°15, promulgated in 1977 by the OMB. It was updated in 1997 to account for the changes in the terminology used, to create new divisions and to allow for the recording of "multiple races". Directive n°15 establishes the minimum standard nomenclature to be used by all of the agencies and operators responsible for establishing ethnic or racial statistics in federal programmes. The “minimum nomenclature” concept means that all of the classifications created must lead to the standard nomenclature. If they wish, operators can develop sub-categories for each of the categories. Finally, a special table was created to re-allocate “multiple races” into exclusive categories. This official schedule supports the Affirmative Action system which is founded on the principle that belonging to a group should lead to preferential access or specific protection.

In the Netherlands, the minority policy (*Minderhedennota*, 1983) established a list of groups, which was later adopted by the definition of “non-Western allochtones”, with some modifications. However, this list is not binding and the various policies are directed at a diverse range of beneficiaries. For the most part, the "allochtones" groups are the Turks, Moroccans, West Indians, Surinamese and Others. Despite their similarity with the national categories, the denominations do not refer to nationalities or countries of birth, as the persons featuring in the groups can be of Dutch nationality and born in the Netherlands. The data protection law does not refer to specific groups, but limits the collection authorisation to a specific method (combination of the country of birth with the parents' countries of birth), which has a tendency to restrict the possible number of categories to geographic-national denominations.

There are a number of variables used in Canadian statistics to describe ethnic or racial origin, but only the *visible minorities* category is legally defined. Within the *Employment Equity Act*, the exact official definition is “*persons other than aboriginal peoples, who are not Caucasian in race or non-white in colour ”.* 10 main groups are included: Blacks, Indo-Pakistanis, Chinese, Koreans, Japanese, South-East Asians, Filipinos, other persons from the Pacific Islands, inhabitants of Western Asia, Arabs and Latin Americans. These groups can be subdivided into approximately 50 ethnic groups.

In Great Britain and Australia, there is no reference to specific categories on ethnic or racial origin in the antidiscrimination laws. The standards developed by the national statistical bodies in both countries result from practical requirements, even though the Australian standard for statistics on linguistic and cultural diversity was formalised at a ministerial level. The lack of coding allow for adaptation and *ad hoc* definitions.

3) Logic of Categorisation

Several logics are combined and sometimes conflict with each other, in the development of ethnic and racial classifications. Policies seek to match statistical categories with the public targeted by action schemes. This practical requirement has an additional objective in the framework of diversity or multicultural polices, as is the case in Canada, Australia, and to a lesser extent in Great Britain. Endeavouring to *recognise the diversity* lead to reporting individual identities, and their subjectivity, and favours self-reporting with multiple choices to allow for free expression of mixed backgrounds arising from earlier generations. The resulting complexity, if it leads to a true reflection of the identity constructions, makes the use of monitoring more complicated and partially ineffective.

A statistical template (which sometimes coincides with the scientific template) seeks to construct relevant, sound, coherent and stable categories over time to feed the lengthy series of data required for comparisons and for analysing trends. Statistics only moderately appreciate subjective definitions and favour “objectivistic” estimations of origin (through genealogy). It also focuses on the acceptability of the questions asked and their ease of understanding. There is nothing more counter-productive than a question boycotted by respondents because they are opposed to it, or a question that is answered in a completely different manner than the statisticians had originally intended. Administrative and legal registries require categories that are well defined and exclusive, as do statistics. Each individual must identify himself/herself by one of the responses to establish his/her rights and benefits from legal protection or a specific service or access.

The triangulation of these three templates for developing the categories often leads to conflict and requires mediation or government intervention, a few examples of which follow. The inclusion of a “Hispanic” category in the United States 1970 census was achieved despite advice from statistical authorities. Following successful lobbying by influential circles in the hispanic community, it was imposed by the government. More recently, the *Asian and Pacific Islander* category was subdivided into two groups in response to *Pacific Islanders’* requests. They believed that their disadvantaged position was masked by their assimilation into the same category as *Asians*, who are clearly better placed in social terms (and more numerous). They were thus divided into two distinct groups. The second group was called *Native Hawaiian and Other Pacific Islander* to take into account a second separatist claim of Hawaiians who has wanted to join the *American Indians and Alaskan Natives*. A compromise was finally found, but this (long) digression illustrates the complexity of the categorisation process in American statistics.

In Great Britain, the decision not to introduce a question on ethnic origin in the 1981 census was taken at the last minute by the government to end the debate between the advocates for the introduction of this question (the Commission for Racial Equality) and its opponents, as well as the government’s own opposition to a reference to "race" or colour featuring in the census, which is a mandatory survey applied to the entire population. This reservation was finally lifted in 1991. Statistics Canada authorised the "Canadian" response to the question on ethnic origin, although this response does not really reflect the spirit of the category. This category aimed at registering an individual's origin, considered to be the origin of the "first ancestor" (a reference used until 1996) arriving in Canada, assuming that this had in fact been the case. The "Canadian" response detracts from the significance of the ethnic origin category, but relates to the respondent's appropriation of their identity reference. The solution was finally to attach a supplementary survey on ethnic diversity to the census in order to retrieve the content of the former question.

Extract from the OMB notice: Office of Management and Budget *1997 Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*, *Federal Register*, vol. 62, No. 210, 30 October 1997: 58781-58790.

1. The racial and ethnic categories set forth in the standards should not be interpreted as being primarily biological or genetic in reference. Race and ethnicity may be thought of in terms of social and cultural characteristics as well as ancestry.

2. Respect for individual dignity should guide the processes and methods for collecting data on race and ethnicity; ideally, respondent self-identification should be facilitated to the greatest extent possible, recognizing that in some data collection systems observer identification is more practical.

3. To the extent practicable, the concepts and terminology should reflect clear and generally understood definitions that can achieve broad public acceptance. To assure they are reliable, meaningful, and understood by respondents and observers, the racial and ethnic categories set forth in the standard should be developed using appropriate scientific methodologies, including the social sciences.

4. The racial and ethnic categories should be comprehensive in coverage and produce compatible, nonduplicative, exchangeable data across Federal agencies.

5. Foremost consideration should be given to data aggregations by race and ethnicity that are useful for statistical analysis and program administration and assessment, bearing in mind that the standards are not intended to be used to establish eligibility for participation in any federal program.

6. The standards should be developed to meet, at a minimum, Federal legislative and programmatic requirements. Consideration should also be given to needs at the State and local government levels, including American Indian tribal and Alaska Native village governments, as well as to general societal needs for these data.

7. The categories should set forth a minimum standard; additional categories should be permitted provided they can be aggregated to the standard categories. The number of standard categories should be kept to a manageable size, determined by statistical concerns and data needs.

8. A revised set of categories should be operationally feasible in terms of burden placed upon respondents; public and private costs to implement the revisions should be a factor in the decision.

9. Any changes in the categories should be based on sound methodological research and should include evaluations of the impact of any changes not only on the usefulness of the resulting data but also on the comparability of any new categories with the existing ones.

10. Any revision to the categories should provide for a crosswalk at the time of adoption between the old and the new categories so that historical data series can be statistically adjusted and comparisons can be made.

11. Because of the many and varied needs and strong interdependence of Federal agencies for racial and ethnic data, any changes to the existing categories should be the product of an interagency collaborative effort.

12. Time will be allowed to phase in any new categories. Agencies will not be required to update historical records.

13. The new directive should be applicable throughout the U.S. Federal statistical system. The standard or standards must be usable for the decennial census, current surveys, and administrative records, including those using observer identification.

4) Classification in the United States

The American classification is the only one to make explicit reference to “race”. It is part of a long history dating back to the initial periods of slavery and its design and specifications have evolved in accordance with political and social objectives. The collection of statistics on “race” in the census is imposed by the *Voting Rights Act* and *Public Law 94-171* for the purposes of electoral redistribution. Apart from the recording of “race”, other categories also describe ethnic origins. Since 1970, a special question has been dedicated to Hispanic origin, which is separate from the racial classification. Finally, a question based on ancestry was introduced in 1980 within the *long census form* sent to 1/6th of the population.

Question format on race in the 2000 census

7. Is this Person Spanish/Hispanic/Latino ? *Mark the “No” box if not Spanish/Hispanic/Latino*

No, not Spanish/Hispanic/Latino
Yes, Mexican, Mexican Am., Chicano
Yes, Puerto Rican
Yes, Cuban
Yes, other Spanish/Hispanic/Latino print group …

8. What is this Person’s race ? *Mark one or more races to indicate what this person considers himself/herself to be.*

White
Black, African Am., or Negro
American Indian or Alaska Native *print name of enrolled or principal tribe*

Asian Indian
Chinese
Filipino
Japanese
Korean
Vietnamese
Native Hawaiian
Guamanian or Chamorro
Samoan
Other Asian *Print race*

Some other race *print race*

Since the Sixties, “race” has been recorded in a self-administered questionnaire. The wording of the question has remained more or less the same over the last few decades. The wording “considers to be” emphasizes the subjective nature of the identification and specifically avoids a substantialist perception of race. In 2000, for the first time, it was possible to tick off multiple races. Completion is conducted through self-identification from a pre-set list which covers the main groups in the official nomenclatures.

The use of a list enables a restriction in the variation of responses due to the use of personal terminology. It is in line with the standard classification set out by the OMB, so that the variable requires hardly any re-allocation when completing the charts used for legal purposes. Nevertheless, the self-identification concept as used in this case should be qualified considering the limited scope of the definition that is provided to the respondent.

Hispanic origin is not assimilated to a "race" and is the subject of a separate question. The question was modified in 2000 in relation to the 1990 questionnaire. The order of the questions was the subject of numerous tests during the preparation phase of the 2000 census in order to achieve the best possible classification rate for Hispanics. This question is extremely sensitive and was the subject of conflicting interpretations. Until 1970, the census survey of the hispanic population, that is, the descendants of the former Spanish colonies and migrants from Central and South America, Cuba and Puerto Rico, relied on an indirect approach, combining place of birth, mother tongue language and forename. This method led to an under-estimation of the hispanic population due to the absence of maternal lineage and the potential anglicisation of forenames. With the *Affirmative Action* programmes, what was only a problem of census methodology became a political challenge. Confronted with what they considered to be unequal treatment in their enumeration, "hispanic" associations initiated intense lobbying with the census departments to obtain the introduction of a self-identification question. A series of tests conducted following the 1970 census confirmed the reliability of a hispanic origin declaration.

The position of the question however still remains an issue. Should "hispanic" origin be added to the "race question" items? Or should it be listed amongst the responses to the "ancestry question" like other ethnic groups? Although they participate in *affirmative action* programmes on the same basis as "Indians", "Blacks" and "Asians", "Hispanics" are not considered a "race". They have nevertheless obtained treatment different from that of other "ethnic origins". Since they benefit from federal programmes and are a minority by targeted by *redistricting*, their registration must feature in the short form completed by the entire population. In the 1990 census, over 40% of "Hispanics" spontaneously classed themselves in the "other race" category, which indicates that, in their opinion, *hispanicity* can be recorded both in a racial classification and as an ethnic group. Here, the confusion between race and ethnicity is particularly significant. Tests conducted after the 1990 census demonstrated that hispanic identification is higher when the question is asked separately than when hispanic origin is included among the "race question" items. For the 2000 census, the decision was thus taken to retain a specific question, but modify its positioning to improve declarations.

The spectrum of American ethnic and racial diversity is also illustrated through a question on the ancestry of inhabitants: *the ancestry question.* From 1980 onwards, the *ancestry* question replaced the former question on the parents' countries of birth in the long form in order to reconstitute the origins of the American population. It is not used directly by *Affirmative Action* programmes. It can be coupled with the spoken language question to provide a classification of ethnic origins. The initiative concerning this question dates back to the "ethnic renewal" movement in the Sixties. In response to the progressive disappearance of the collective memory concerning immigration at the end of the 19th century and the beginning of the 20th century, as well as a rising civil rights movement, the descendants of European immigrants claimed their heritage by calling themselves *Hyphenated Americans*. The identification of origins via the question on the parents' countries of birth was no longer sufficient, since descendents of European immigration were now in their 3rd and 4th generation. Recourse to an open question referring to ancestry proved to be the only method possible, although it also inferred a high degree of subjectivity. Indeed, because of the mixing in each generation, the declaration of an origin results from a reconstitution of ancestry and choosing between various origins. Judgment is left to respondents, but there is no guarantee of the declaration's reliability. Many social science studies have been conducted on the basis of data collected through the ancestry question, some of which deal with inequalities or discuss assimilation models of immigrants and their descendants in American society. However, studies on discrimination tend only to use categories recognised as minorities in the framework of *Affirmative Action*.

The collection methods for ethnic and racial origin have been modified several times over recent years. They are very sensitive to changes within the context of political actions and user demands. The modifications should attempt, however, not to compromise the comparability of data from one census to another but should attempt to maintain consistency between the various sources. Certain modifications occur marginally, with, for example, the addition of an example in the proposed *ancestry* list or a reversal in the order of questions. Even if only minor, any modification has an influence on declarations and affects the distribution of groups. This is the reason statistical departments are reluctant to modify well-established questions. Others involve more substantial shifts, such as the acceptability of multiple race declarations.

In 1997, the OMB revised the classification standards on "race" and ethnicity applied throughout federal departments. This revision modified Federal Directive n°15 (1977) which until then was the reference for establishing the standards used by the anti-discrimination monitoring system. The main changes consisted of, on the one hand, creating two categories for *Asians* and *Native Hawaïan or other Pacific Islander* instead of the previous category including both *Asian or Pacific Islander*, and on the other hand, adding *Latino* to the *Hispanic* category. Finally, the main innovation was the ability to declare "mixed races". The statistical authorities favoured a specific indication in the question of an option including multiple responses. This was preferred over the introduction of a "*mixed race"* model [21] which would have led to numerous problems as regards the nomenclatures used within the *Affirmative Action* programmes. The charts published on the basis of the new

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[21] This was the choice used in the British census in 2001

question proposed either distribution by multiple races or distribution based on a reallocation (*bridging*) of multiple choice questions into exclusive categories[22].

The results of this new option demonstrate that only 2.8% of the population declared that they are of multiple race origin. This should not be interpreted as an assessment of the reality of racial mixing, but more as a sign of the interiorisation of an exclusive membership. Thus, while estimates indicate that between 75% and 90% of persons declaring themselves Blacks have white ancestry, even to remote degrees, only 5% of these reported being of more than one race. This proportion rises to 40% for *American Indians*. Despite the relatively marginal nature of "mixed race" in the racial spectrum in the United States, the adoption of this new categorisation weakens the monitoring system used in *Affirmative Action* by officially recognising the heterogeneous nature of racial groups. Another weakness of this option is that the reallocation procedure uses a reasoning reminiscent of the *one drop rule*, which prevailed during the time of segregation and according to which any person with one drop of black blood was considered black. Here, the reclassification of "mixed race" into a single race replicates the same "minority preference" option by systematically assigning the non-white "race" to mixed white persons.

The allocation principles are also used in completing death and birth certificates. The "race" indicated on birth certificates corresponds to that of the mother of the newborn and to that of the father if the mother's race is not indicated. It is therefore a question of the transmission of parentage which does not take racial mixing into account: a child born of a white mother and black father will be classed as white. Until 1989, the system which prevailed in mixed race situations was to assign the race of the parent who was not white, except for children born of a Hawaiian parent. When the two parents were of a different race but neither was white, it was the father's race that was assigned. Death certificates are completed by doctors or morgue employees who class the deceased by racial groups. Comparative assessments of birth and death certificates demonstrate a high level of congruency when the two parents are of the same race, except for persons classed as "Chinese" and those of hispanic origin. However, children with parents of different "races" are more likely to be classed differently between the time of their birth and that of their death.

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[22] The OMB has published a reallocation guide for multiple responses.

5) Classification in Canada

Ethnic and racial origins are covered by several questions in the Canadian census. Besides the “visible minority” category collected to meet the needs of equality programmes, ethnic origin is recorded directly via a specific question. Additionally, there are questions on natives, mother tongue languages (known and practiced), country of birth, immigrant status and citizenship. Statistics Canada has also carried out in-depth (and longitudinal) surveys on these questions and recommends using the same ethnic origin (and “visible minorities”) definitions and categorisations in censuses, surveys and administrative documents. This has been adhered to to some degree, at least by the federal and local ministries.

The definition of ethnic origin has evolved significantly between 1951 and 1991. Origin is defined as the “*ethnic or cultural group [to which] the ancestor on the male side belonged upon his arrival on the continent*”. The *“Census Guide”* recommends referring to the language spoken by this ancestor. In 1981, the reference to paternal ancestry was abandoned in answer to “First Nations’” demands. The concept of *roots* replaced that of *descent* in the guide’s instructions. The use of a list of names, prioritised according to their frequency of reference in the former census, is proposed in several censuses. This method of organising origins in a “rank system” leads to competition between groups wishing to gain recognition in the enumeration and thus obtain a significant numerical representation for multiculturalism policy purposes. As a result, pressure exercised by ethnic lobbies to adjust the formulation of questions or to highlight a specific designation began to increase. After more than a century of evolution, the categorisation of ethnic groups has changed considerably. Origin is now clearly distinguished from language; it has lost its reference to paternal lineage (awareness regarding gender inequalities in Canadian society) and initial arrival on the continent (increased demands from natives). It is now based on a subjective definition, relating more to identification than ancestry, which is very hypothetical in any event. The consideration of multiple origins bypasses the potential reconstruction of ethnically homogenous bloodlines from the period of migration to the date of the census. Multiple answers were explicitly accepted in 1981, and initally represented 11% of answers, increasing to 28% in 1986 and 38% in 2001.

Through the relativisation of origin as an expression of ancestry, the emergence of a *Canadian* category disrupted the classification normally used. Although for a long time considered insufficient, a demand for a Canadian origin increased. The introduction of a Canadian category in the list of ethnic groups was tested in preparation for the 1991 census. Nearly a third of repondents selected it to describe the origin of their parents or grandparents, and half to indicate their ethnic identity. It is obvious that an indigenisation process, further to a long history since the initial immigration (the founding peoples having arrived three centuries ago!) widely affects the Canadian population. This reluctance towards registering old ethnic distinctions and the desire to affirm a national identity can perhaps be explained as a reaction to multiculturalism policies. The 1996 and 2001 censuses specifically included the Canadian category as a heading for origins. Nearly a quarter of the population indicated it as their sole ethnic origin in 2001, while 16% declared it in combination with another origin. An additional survey relating to ethnic identity, the *Ethnic Diversity Survey*, was conducted at the same time as the census to understand the issue of the influence of a person's origin on their participation in social, economic and cultural life and to analyse how Canadians of different origins interpret and declare their ethnic affiliation, or how they select (or not) certain identifications.

The question[23] on ethnic origin in the 2001 census:

Question 17 : "To which ethnic or cultural group(s) did the ancesters of this person belong?

For example, Canadian, French, English, Chinese, Italian, German, Scottish, Irish, Cree, Micmac, Métis, Inuit (Eskimo), Indian from India, Ukranian, Dutch, Polish, Portuguese, Filipino, Jewish, Greek, Jamaican, Vietnamese, Lebanese, Chilean, Somalian, etc.

Indicate all of the groups which apply to you."

In the 2001 Census, the question on ethnic origin included 25 examples, classed in descending order according to their frequency in the 1996 declarations. By its structure, the proposed list tends to over-represent the groups that had featured the most by bringing them to the respondents' attention.

The positive action provisions of the 1982 *Charter*, as well as those included in the 1986 *Employment Equity Act* and the 1988 *Multiculturalism Act*, also had a considerable influence on the data collected in the census. The inclusion of a "Black" category in 1986 complied with the *Employment Equity Act*, although this was not really sufficient to cover the spectrum of minorities likely to face discrimination. The evaluation of the population covered by the *Equity Act* proved therefore to be difficult and the law introduced the concept of "visible minorities" in the "designated groups" benefitting from its provisions. "Visible minorities" is understood to mean persons "persons who are non-Caucasian in race or non-white in colour and who are recognised as such by their employer or accept this recognition of themselves". The list includes groups divided into geographic origins, but makes implicit reference to attributes relating to colour or appearance:

- "Blacks", including the descendants of emancipated American slaves or who were refugees in Canada (*native-born blacks)* and natives of the Carribean and Africa;
- Migrants from South-East Asia, China and the Philippines;

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[23] The text presenting the question read as follows: "Although the majority of people in Canada consider themselves Canadians, the information on their ancestral origins which have been collected since the 1901 census, illustrates the evolution of the composition of Canada's diverse population. This question is therefore based on the origins of the individual's ancestors.

- Migrants from Latin America;
- “Arabs” and Middle-Easterners (Maghreb, Iran, Lebanon, etc.);
- Migrants from the Indian subcontinent (India, Pakistan, Sri Lanka, Nepal, Bangladesh).

The wording of the question does not incorporate a reference to the minority concept and substantiates its objective: “This information serves as a basis for programmes which provide each person with equal opportunities to participate in the social, cultural and economic life of Canada”. Its development was difficult and numerous tests were conducted to evaluate whether the question on ethnic origin was sufficient to provide the data required for the categorisation of “visible minorities’” situation. Between 1985 and 1995, while basing its principal analyses of the visible minorities on data stemming from the question on ethnic origin, Statistics Canada conducted no less than ten surveys or trials containing one or more questions aimed at directly measuring visible minorities. The results demonstrated that there was no satisfactory cross-reference between the “black” category and ethnic origins, nor for Latin American origins. A question dedicated specifically to race was considered and then abandoned. At first, the general public’s reaction to the “visible minority” concept was relatively poor. Besides the misunderstanding as to what the category meant, there was a great deal of opposition to the questions asked. A process of familiarisation with the visible minority category was then set in motion through its regular use within official reports and social science analyses. In a few years, acceptance of this category and what it covered improved, leading to its introduction into the 1996 census. While in 1981, the visible minority population was nearly 5% of the total population, in 2001 it was over 13%. This increase is essentially due to significant immigration in the Nineties, particularly Asian.

The identification of native origins was added to these categorisations. Although it overlaps the question on ethnic origin, native origin has a separate history within the Canadian census and is still the subject of specific questions. These questions are intended not only to collect the identity of persons descending from “First Nations”, but also to record their legal status. For many years, natives were portrayed through racial terminology. In the 2001 census, they were identified via 4 different questions: question 17 on “ethnic origin”, question 18 on “native identity”, question 20 on affiliation to an “Indian tribe or First Nation” and question 21 on the “registered Indian” or “Treaty Indian” status (under the Canadian *Indian Act*).

6) Classification in Australia

The measurement of ethnic and cultural diversity of the Australian population followed the multiculturalist model. Since the beginning of the 20th century, nationality and country of birth categories were used; since 1971, the "immigrant" classification extended to include the collection of the parents' country of birth. This development was a result of increased awareness regarding the multicultural nature of Australian society. The recognition of the "diversity" of Australian origins coincides with the abolition of the *White Australian Policy* (in 1973) and the implementation of the multiculturalism policy. The need to class Australians other than by their country of birth stemmed from changes in the perception of origins and their valorisation within the framework of a multicultural society. However, the test initiated in 1971 to introduce the parents' countries of birth in the census did not achieve its goal. User groups and academics called upon the ABS to include a direct question on the ethnic origin of inhabitants in the 1981 census.

The project was not however completed in time for that year's census and an expert committee, chaired by the demographer W.D. Borrie, was responsible for considering the possibility of an *ethnic question* and for defining its format. This *Population Census Ethnicity Committee* submitted its report in 1984, which concluded in favour of a question on origin rather than ethnicity. Indeed, the various tests conducted persuaded the committee that a direct question on "identity" or affiliation would not be understood. As a consequence, self-perception appeared to be less acceptable and less well answered than a question on ancestry (*historical approach*). However, the committee recognised that self-identification was the most satisfactory in terms of reporting the diversity of origins, particularly in a situation where immigration is quite old and origins have been mixed over generations. However self-perception could not be used without the term "ethnic" and this in itself would lead to misunderstandings and hostile reactions. Thus, the committee recommended the introduction of a question relating to *ancestry*.

Although the rate and quality of responses were satisfactory, the use of the census results relating to *ancestry* was relatively poor. For this reason, the question was abandoned in the following census and did not appear again until 2001. In the meantime, ethnicity was constructed by using *surrogate variables* such as: place of birth, parents' place of birth, main language other than English spoken at home, religion, proficiency in spoken English, or the year of arrival in Australia.

A further test was undertaken during the preparation of the 1996 census and concluded that the poor quality of data on ancestry was particularly due to: the level of non-response, the extremely wide reporting of an "Australian" origin, including from people born outside of Australia, and the uncertainty of respondents as regards the meaning of "ancestry". The question was therefore still not reintroduced in 1996, but new user requests continued to be sent to the census bureau and a new committee was established (*Census Consultative*

Committee on Ancestry). The committee proceeded to consult users in order to ascertain the most acceptable formulation from the point of view both of the population's expectations and the statistical methodological criteria. A question on ancestry including pre-coded responses was preferred. Its use is associated to the parents' countries of birth (with two options: born in Australia or born *overseas*) and the respondent's country of birth. Thus, the ethnic origin of Australians over two generations was obtained by cross-referencing the country of birth (detailed), the parents' countries of birth (two options) and ancestry.

Formulation of the question on ancestry in the 2001 census:

What is the person's ancestry ?
(for example : Vietnamese, Hmong, Dutch, Kurdish, Australian South Sea Islander, Maori, Lebanese …)
Provide more than one ancestry if necessary

English
Irish
Italian
German
Greek
Chinese
Australian
Other, Please specify

The measurement of ethnic origins is therefore essentially constructued on the basis of heterogeneous variables which, when cross-referenced, recreate what other countries collect directly via self-identification. The paradox here is that the Australian census also includes a question on ancestry similar to that used in the United States or Canada, but its use remains limited and its collection does not extend to administrative files, in particular those completed for equality programmes. Consquently, the ancestry variable does not feature in the main list provided by the Standards for Statistics on Cultural and Language Diversity. These standards replaced the *Non-English speaking background* (NESB) standard previously used to measure needs and disadvantages, which was considered inappropriate. It defines two groups of variables to be collected not only in the census but also from the administrative departments in all of the Australian states and territories. The first group of basic variables include country of birth, the main language other than English spoken at home, proficiency in English and indigenous status. In addition to this basic group, the complete standard also includes: ancestry, the father's country of birth, the mother's country of birth, first language spoken, languages spoken at home, religious affilation and year of arrival in Australia.

Like Canada, Australia also collects data on its natives, the Aboriginals and Torres Strait Islanders. Until 1967, Aboriginals were not surveyed and only minimal statistical data in their regard was available, other than administrative records held by the States. The definition used until the Fifties was that of "blood quantum", similar

to the American “one drop blood” definition. After a detour around the "Aboriginal race" concept, a new definition was adopted combining three parameters:
“An Aboriginal or a Torres Strait Islander is a person of Aboriginal or Torres Strait Island descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he lives”.

This definition is enshrined in the constitution and used by the adminstrative departments responsible for applying preferential policies to Aboriginals. However, the verification of the three criteria is only really carried out for issuing aboriginality certificates providing rights to services or to participate in local community elections. In the census and most statistics relating to Aboriginals, categorisation is based on self-identification.

7) Classification in Great Britain

The classification adopted for the first time in 1991 was revised for the 2001 census. It is the result of a long process of tests and consultations starting in the late Sixties. During an initial phase which ended in 1981, the OPCS departments carried out a series of tests to perfect a question on ethnic and racial origin. The categories tested first describe geographic and national origin, before shifting towards a heterogeneous list, combining colour/race and national origins. A first version of the question was proposed in 1977 and included a distinction between *Whites* and a series of geographic origins relating to the larger non-white immigration flows (Carribean, African, Asian Indian, Pakistani, etc.). While the majority of immigrants are classed without a problem in the list, Carribeans strongly opposed the geographic classification, as well as the overall approach. The OPCS departments believed that a question referring to colour would have been more acceptable (such as Black British), as it is symmetrical to the *white* designation. However, at the time, the government took a stance against terms referring to “race” in the framework of a *mandatory* census, although this was a possibility for voluntary social surveys. Another series of tests excluding reference to colour also proved not to be very convincing, and disapproval of the very principle of a question on ethnic origin extended to those being surveyed. Eventually, the idea was abandoned by the government and the 1981 census did not include any question on ethnic origin or the parents’ place of birth.

After this initial failure, the lack of information collected through the census on the “ethnic minority’” situation caused significant difficulties for the CRE. The adjustment of local positive action policies requires extremely accurate information than the census was able to provide. As a consequence, the government asked the OPCS to undertake exploratory work. A new series of tests was conducted starting in 1985, in order to reformulate the question and obtain a better performance in the declarations. The accuracy of the responses, in terms of the expectations of those in charge of the test, was between 86% for *Blacks* and 90% for *Whites*. The 1991 census therefore incorporated a question relating to ethnic origin which in fact combines "racial" and “ethnic” elements.

Question asked in the 2001 census

What is your ethnic group ?

White
British
Irish
Any other White background (Please describe)

Mixed
White and Black Caribbean
White and Black African
White and Asian
Any other Mixed background (Please describe)

Asian or Asian British
Indian
Pakistani
Bangladeshi
Any other Asian background (Please describe)

Black or Black British
Caribbean
African
Any other Black background (Please describe)

Chinese or other ethnic group
Chinese
Any other (Please describe)

The role played by the census in political and social reports in evident in the evolution that took place between 1991 and 2001. Although in 1981 and 1991 the debate mainly concerned the possibility of an ethnic question, the focus between 1991 and 2001 was directed at the content of the question itself. During various consultations with the general public, producers and users of the census, the objectives of the question were gradually modified in line with strong demands for the recognition of British society's diversity. Not only was the *White* category subdivided to reflect its internal divisions,[24] but specific methods were introduced to report mixed race. Unlike the American decision to incorporate multiple responses, the categories were pre-completed, with combinations favouring racial mixing between *Whites* and other groups.

In publications following the census, the "mixed" responses constituted a group in its own right: 1.2% of the population was classed in this group. Unlike the reallocation technique used in the United States leading to exclusive categories, the standard chart distributed by the ONS retains the *Mixed* category. However, the *mixed* category is included in the different ethnic groups within the general statistics on minorities. In 2001, "minorities" represented 7.9% of the British population, 14.6% of which had mixed origins including *White* ancestry. The application of these new categories in the monitoring system will likely require the reclassification of the *Mixed* category into the minorities group, but this has not as yet been addressed by the various *codes of practice*.

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[24] We also note the benefit in attenuating the racial denomination of *white* by a breakdown into national subdivisions.

8) Classification in the Netherlands

Ethnic and racial classification in the Netherlands presents two unique elements: the first is that it does not have a census where this classification would be easily identifiable, the second is it does not collect data based on self-identification, but favours a classification constructed from “objective” variables. While the various policies refer to “ethnic minorities”, Dutch statistics have constructed a classification based on “foreign background”.

The Dutch statistics agency (CBS) has developed a classification standard based on the concept of generation. The first generation consists of persons born abroad, with at least one parent born abroad. The second generation covers persons born in the Netherlands with at least one parent born abroad. The other cases are classed as natives[25].

“Persons of foreign background” covered by the first and second generation are then divided between Western backgrounds (all European countries, except the Netherlands and Turkey (?), North America, South Sea Islands, Japan and Indonesia) and non-Western backgrounds (Turkey, Asia, Africa and Latin America). The classification of Indonesia and Japan in the “Western” category is justified by the relatively high social and economic positioning of these two groups in the Netherlands. The country of origin of persons of the second generation is initially determined by the mother’s country of birth and, if the information is not available or if the mother was born in the Netherlands, by the father’s country of birth. The classification principle is thus matrilineal, which leads to the over-representation of maternal lineage in the case of mixed immigrant origins.

Information on the parents’ countries of birth is collected from population registries. It can be cross-referenced with that relating to the parents, by matching the personal data with that of the spouse, parents and children. The reconstruction of the third generation is thus theoretically possible, although the quality of information on the parents’ countries of birth is quite poor for immigrants. The files compiled from the population registries can then be compared with other administrative documents, such as those on housing conditions, social welfare, unemployment, etc. In 2001, the non-Western foreign background population represented 9.3% of the Dutch population, with rapid growth in the second generation’s position within this group.

The logic behind the categorisation followed by Dutch statistics thus favours an “objective” identification through the collection of information on country of birth and is based on a “generational” reading of integration. This approach had been developed for over 50 years in the United States until the age of the migratory waves no longer allowed for the parent country of birth to be used to identify origin. By its structure, the trace is lost at the third generation. Indeed, the reconstruction of a genealogy over three generations poses two significant problems: the collection of information on the grandparents’ countries of birth is difficult to achieve in a census or

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[25] Where individuals were born abroad and where the two parents were born in the Netherlands.

population registry; the combination of origins could be quite numerous in the case of four grandparents and the classification principle would be subjected to contestable judgments. Within a few years, self-identification will be necessary in the Netherlands, as it is in the United States and in Canada.

B/ Disability categories

The consideration of disability has required the development of extremely complex mechanisms which for the most part preceded the emergence of discrimination concerns. Medical care relating to disabilities and related social support has instigated the production of a considerable quantity of statistics. However, these statistics are not devised specifically to demonstrate the disadvantages experienced by disabled people. The statistics reflect medical activities, indicate the degree of physical or mental injuries and impairment, or describe the support provided per category of beneficiaries and according to a particular disability.

The anti-discrimination schemes dedicated to disability are the most recent in all of the countries under study. These schemes are constructed gradually, and are beginning to use statistical data describing the situation of disabled people from a perspective other than that of medical or social care. However, the challenges facing the collection of statistics concerning ethnic and racial origin are even more acute in the case of disability. These challenges result from the definition itself of what is to be considered a disability and the technical difficulties in collecting data, difficulties that can be rather significant depending on the definition adopted. In addition, the main strategy of anti-discrimination schemes consists in favouring the adaptation of structures to facilitate access and development for disabled people. The concept of reasonable accommodation or adjustment does not require the same statistical tools as the monitoring of positions or careers. Also, for the time being, efforts are focused on improving the representation of disabled peopled in employment, with reference to quantified objectives which are rarely attained. From this perspective, once the question of the disability definition is resolved and the degrees of severity or incapacity taken into account, the simple distribution of the workforce according to the presence (or not) of a disability is sufficient.

It is worth noting that the indirect discrimination concept is not incorporated into a number of the schemes, or it is minimised through recourse to individualised treatment instead of a group approach. However it is indeed through considering the ground in its collective impact which justifies the use of statistical data and leads to the implementation of a monitoring system. In Great Britain, the 1995 *Disabilility Discrimination Act* does not include the indirect discrimination concept. Discrimination is defined as a “failure to comply with the duty to make reasonable adjustments for a disabled person". As a consequence, the action strategies differ and the use of monitoring by the DRC remains for the most part optional.

We will not describe the data collection methods for disability in detail in light of the wealth of literature on the subject and the numerous existing statistical sources. We will focus on a presentation of the main sources of data and the definitions used by anti-discrimination legislation relating to disability.

Disability definitions, used here in a generic sense, are numerous and vary according to the users and practices in use: research, eligibility for assistance, equality programmes, pressure groups. An initial division distinguishes the functional descriptions of the disabilities and assesses their implications. With regard to the implications, two sources of definition are identified, one based on medical criteria and the other on the perception of limitations from the point of view of disabled people themselves. The latter definition favours the subjective aspect of disability, which is seen as a limitation persons believe to suffer, irrespective of the validation of this perception by a functional assessment.

The majority of the countries under study have adopted the international definitions and classifications, in particular those created by the WHO. Three major classification systems influenced the definition of disability, as well as the design of the programmes and decisions concerning eligibility to programmes: the impairment perspective, the functional limitations perspective and the ecological perspective.

The *impairment* perspective favours the medical model, which views disability as an illness, abnormality and personal tragedy, an inherent characteristic of disabled individuals. This perspective was the basis for the International Classification of Diseases (ICD), a system coding diseases and health problems used by most health services around the world under the responsibility of the World Health Organisation (WHO). Today, there is much criticism of the medical model due to its limitations, in that it does not take into account the role of the social or ecological environment in the disabling process. The policies designed to follow this perspective are aimed at "rectifying" anomalies.

The *functional limitations* perspective resulted from attempts to broaden the medical model to include non-medical criteria on disability, particularly criteria relating to the social and physical environment. Nevertheless, the concept that impairments are the direct cause of disability remains central to this perspective. Moreover, according to the functional limitations perspective, disability is considered in quantitative terms, by measuring the functional restrictions against a standard. The International Classification of Impairments, Disability and Handicap (ICDIH) established in 1980 by the OMS is the first major classification system to specifically place emphasis on functional disability. From this perspective, the use of “contextual” statistical data is key.

The ecological perspective was developed under and influenced by the social movement for disabled people in the Seventies, but became more prevalant in the Nineties in response to criticism of the other models. According to this perspective, disability is seen a result of the interaction between impairment, activity restrictions and barriers to participation in a specific social or physical environment, such as work, home or school. It rejects the linear cause-and-effect explanation of disability and presents disability as the interaction between personal factors (age, sex and cultural identity), environmental factors (the social context in which the person lives) and lifestyle (the person's daily activities). It shifts the focus from a fixed impairment that is part of a person’s organic system to other more changeable factors that affect the person’s participation in society. If an environment is adapted to the person, disability can change or even disappear. Even if the impairment has an objective reality related to the body or mind, disability has more to do with society’s failure to account for the needs of disabled people. There are many variations of the social model, but all portray disability as a social construct created by ability-dominated environments. In response to criticism levelled at the ICIDH classification system, the WHO revised it, publishing the latest version in 2001 under the name of International Classification of Functioning, Disability and Health (ICF).

On the whole, the countries under study combine the three perspectives. In light of the novelty of emerging anti-discrimination schemes, their design tends to be relatively similar despite significant differences in each country’s health care systems. In terms of data production, the systems combine medical and administrative sources, censuses and specialised surveys. It is these surveys that provide the most complete approach to disability, in so much as taking into account not only impairments, whether objective or subjective, but also the social and environmental development context, requires the collection of a significant amount of data. Unlike ethnic and racial origin which can be reported in a relatively simple manner, disability has multiple factors. A number of questions are required to create categories.

In Canada, Article 3 of the *Employment Equity Act* provides a specific definition for “persons with a disability”:

“persons with a disability” means persons who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and who

(a) consider themselves to be disadvantaged in employment by reason of that impairment, or

(b) believe that a employer or potential employer is likely to consider them to be disadvantaged in employment by reason of that impairment,

and includes persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace”.

The Canadian definition includes drug or alcohol addiction in the list of disabilities, while the British definition does not. The consideration of the subjective aspect of disability (feeling restricted) and its social dimensions is common to all of the countries, but the Netherlands also include social exclusion as a source of disability.

In Great Britain, the 2001 census included a question on disability, which emphasises activity restrictions:

“*Do you have any long-term illness, health problem or disability which limits your daily activities or the work you can do ? (include problems which are due to old age)”*

The wording of the question has evolved since 1991, following several tests demonstrating the high level of non-response and the poor quality of data collected on questions on disability that are too general, or that attempt to evaluate the use of services and care. However, a question was added on the voluntary help provided to the family, friends, neighbours or others in disability situations or difficulties due to old age. The *Office for National Statistics* (ONS) departments believe that the census is not the appropriate medium for collecting data on disability.

In Canada, the 2001 census directly addresses disability with two questions. These questions provide the data needed to produce the availability analyses of disabled persons for the purposes of the *Employment Equity Act* and the various governmental services and programmes ensuring the participation of persons with disabilities in social life. They also serve to constitute the samples used in the post-census surveys directly aimed at evaluating disabilities. Conducted in 1991, the *Health and Activity Limitations Survey* (HALS) was replaced by the *Participation and Activity Limitations Survey* (PALS) which is now the main source of data on disability relating to employment, education, income, tax and financial support, housing access, transport, recreational activities, leisure, health care and voluntary work.

Other Statistics Canada surveys allow for the identification of disabled people: Aboriginal Peoples Survey (1991, 2001), National Population Health Survey (1994 to 1999), Canadian Community Health Survey (2000, 2001); National Longitudinal Survey on Children and Youth (1994 to 2001); Survey of Labour and Income Dynamics (1993 to 2001). The data from these surveys complements the data on availability and are used to develop the policies or to observe the performance of the various programmes, such as the Canadian pension scheme disability benefit programme and the tax credit programme for disabled people, which collect and process certified medical information.

Questions on disability in the Canadian 2001 census:
Question 7: “Does this person have difficulties in hearing, seeing, communicating, walking, climbing the stairs, bending over, learning or doing other similar activities?”.
Question 8: “Does a physical or mental state or a health problem reduce the quantity or nature of activities that this person is able to do: a) at home? B) at work or at school? C) in other activities, for example, in terms of travel or leisure?”.

The United States census also includes two questions which class the population according to impairments and functional activity limitations, and evaluate the difficulties for carrying out activities. The data collected in the census is complemented by two main sources: the *Survey of Income Program and Participation,* which is a longitudinal survey conducted over two and a half years and, especially, the *National Health Interview Survey* (NHIS-D) extension to disability conducted in 1994-1995. Pursuant to Executive Order 13078, the Bureau of Labor Statistics was charged with producing data portraying the rate of employment of disabled adults. The monitoring programmes are in the process of development and the methodologies and statistical categorisations are still in an experimental stage.

Questions on disability in the 2000 United States census (long form):

Question 16 : “Does this person have any of the following long-lasting conditions :
a. Blindness, deafness, or a severe vision or hearing impairment ?
b. A condition that substantially limits one or more basic physical
c. Activities such as walking, climbing stairs, reaching, lifting, or carrying ?”

Question 17 : “Because of a physical, mental, or emotional condition lasting 6 months or more, does this person have any difficulty in doing any of the following activities :

a. Learning, remembering, or concentrating ?
b. Dressing, bathing, or getting around inside the home ?
c. Going outside the home alone to shop or visit a doctor’s office ?
d. Working at a job or business ?”

The Australian census does not include any questions on disability, despite legal prompting to collect data to meet the needs of the *Standard Rules on the Equalisation of Opportunity for People with Disabilities* and the *Disability Discrimination Act* programmes. The data is produced by the departments administrating the action programmes, in particular the progress report on *Family and Community Services* (FaCS). Apart from these institutional sources, data on disability is taken from surveys, such as the survey conducted by the *Commonwealth Disability Services* in 1998. The main source is the *Australian Bureau of Statistics Disability, Ageing and Career* survey. Conducted in 1993, 1998 and in 2003, the survey uses the WHO 2001 Classification (ICF) disability definitions.

C/ Religion and sexual orientation

The grouping of religion and sexual orientation may appear provocative, but their connection here is based on their similar characteristics from the point of view of their categorisation in the context of anti-discrimination schemes.

A basic theoretical question unites the two grounds in a discrimination analysis. Indeed, the central notion on which the indirect discrimination concept is based is that a non-relevant and prohibited characteristic is used to perform a selection, and that this consideration only becomes apparent through its negative impact. By registering this characteristic within the categories, the use of statistics enables discrimination to be factualised. Sexual orientation and religion are not *immediately visible* characteristics. They relate to affiliations, personal beliefs or practices, which, in order to be perceived by observers and eventually interpreted as a “negative signal” by allowance or selection systems, must be expressed via distinctive and identifiable signs: codified clothing, attitudes, expressions, and even quite simply a public expression (*coming out*). However, statistical registration only incorporates declared identities. How can one know if a person reporting a minority religion is recognised as such within their social environment and is subject to unfavourable treatment because of this religious affiliation? The same question can be asked with regard to sexual orientation.

In order to replicate the monitoring system used in schemes dedicated to ethnic or racial origin discrimination to monitor religion and sexual orientation, it would be necessary to collect statistical data from companies and their relevant employment zones. These would not describe “sexual” identity (in terms of sexual orientation, not gender) or religion, but the spontaneous classification made by observers like those in charge of selection who are potentially able to breed prejudice towards a given religion or sexual orientation. One can only imagine the complexity of the reporting system that would need to be established.

1) Religion or ethnic origin?

Although religious discrimination is strongly condemned it is not the focus of a specific scheme within any of the countries under study. Beyond general prohibitions and calls to respect religious belief, there is no programme seeking to establish equal opportunities for religious minority groups. As with disability, the logic consists in removing the barriers that restrict the social participation of persons due to their religious practices.

The strategy used in the fight against religious discrimination is aimed at ensuring the conditions of individual practices, particularly those with strict observances (with regard to clothing, food, specific temporality, etc.), when these are accepted as legitimate. This assumes identifying situations where these observances cannot be complied with because of the “non-adaptability” of equipment and services. The objective is to favour a "reasonable adjustment" which is based on a compromise between the needs of persons belonging to a religious group and the degree of acceptability and feasibility of the adjustment within the relevant structures. Promoting the implementation of reasonable adjustments is the main field of action for equal treatment policies relating to religion.

This strategy does not really require statistical tools, to the extent defined in the section on monitoring. However, the "reasonable" nature of the adjustments required is in part determined by the numerical representation of religious groups. Even if in theory one individual expressing a need is able may obtain an adjustment, his request will be considered all the more legitimate if it concerns a *common* practice. In this sense, the use of statistics is also helpful for conducting reasonable adjustment policies.

The statistics required for reasonable adjustment are logically those that measure the number of participants or "adherents" in the sense that religious obligations create specific needs. At present most of the data collected reports *religious identity*, irrespective of effective practices or adherence to a church or a religious dogma. The definition of religion used in collection systems is more of a proxy or complement to ethnicity. It follows the principle of recognition within the framework of cultural and religious diversity. This link between religion and ethnicity is moreover strongly implied by jurisprudence on discrimination. Many objections towards religious practices have been re-defined as racial discrimination. The porosity of the boundaries between grounds of discrimination is illustrated by the quasi-blending of religion and certain ethnic origins. This blending however is only transitional and it is certain that the permanent inscription of minority religions in the societies under study will in the long-term lead to the division of religion and origin through the transmission and expansion of new religions.

Categorisation in the statistical apparatus

After many debates and consultations, a question on religion was introduced in the 2001 British census. Such a question was already used in Northern Ireland, but had never before been asked in Great Britain. To this end, an amendment to the 1920 *Census Act* was required, and the question on religion has a special status as the response is optional, an exemption to the mandatory rule which is a characteristic of the census. The objective of adding religion as an item stemmed from the *Race Relations Act* which jointly covers racial and religious discrimination. Here, religion *clarifies* ethnicity. In fact, religion is used to subdivide the ethnic groups obtained via the *ethnic question* into ethnic-religious groups. However their definition results more from ethnicity than religion itself. This convolution is particularly noticeable in the case of Sikhs and Muslims whose representative associations played a major role in the acceptance of the question on religion.

A diversion campaign on the issue of religion was launched prior to the census. Based on a model similar to that of the Australian campaign, an initiative broadcast over the internet recommended declaring one's self as a "Jedi" follower (the belief system of the main protagonists of the *Star Wars saga*). The theory was that a high number of responses would confer official recognition on the Jedi religion. The hoax did however obtain the adherence of 390,000 respondents. This underlines the importance of census recognition and that of the categories that formalise its nomenclatures.

Question in the 2001 census in Great Britain:

Question 10 : "What is your religion ? (this question is voluntary, one box only)

None
Christian (including Church of England, Catholic, Protestant and all other Christian denominations)
Buddhist
Hindu
Jewish
Muslim
Sikh
Any other religion"

Australia also records religion in its census, as well as in administrative files. Australian statistics consider religion to be an indicator of society's cultural diversity. To account for this diversity, the ABS developed the Australian Standard Classification of Religious Groups (ASCRG) based on religious practices and belief systems in ascending order. Religions and religious groups which are closely linked by their inherent characteristics are thus found at the same level within the classification structure. This methodology was developed and revised following information and advice received from researchers and religious experts, and was the subject of extensive consultations with religious communities and groups.

Question in the 2001 census in Australia:

Question 19 : «"What is the person's religion ? (answering the question is optional)

- Catholic
- Anglican (Church of England)
- Uniting Church
- Presbyterian
- Greek Orthodox
- Baptist
- Lutheran
- Islam
- Buddhism
- Other (specify)
- No religion"

This classification is used for the collection, aggregation and dissemination of data relating to the various religious affiliations of the Australian population and aims at improving the quality of statistical data at the administrative level (hospital or school admission forms). This statistical data can be used for programmes in various fields: the adaptation of educational services, building places of worship, the provision and supply of care services or the diversification of social services provided by religious bodies. They can be used to determine "chaplaincy" needs in schools, hospitals, universities and any other institutions, and even to allocate broadcast time to public radio or other broadcast mediums.

Like the British census, the response to the question on religion is voluntary and not mandatory. A campaign for the "Jedi" declaration was conducted and forced the ABS to justify the collection on religion in the census. It was clearly stated that the goal was not to assess the degree of membership to a religion or philosophy, but to provide the necessary data for the management of religious pluralism in Australia.

The proposed categories cover detailed subdivisions for the Christian world while other religions are portrayed by their overall denomination. The classification standard embraces this inequality in the subdivisions' detail. The first level identifies 7 main groups: Buddhism, Christianity, Hinduism, Islam, Judaism, Other religions, and No religion. The second level only proposes a subdivision for Christianity (17 sub-groups are identified) and other religions (11 sub-groups).

The question on religion has been asked in all of the Canadian decennial censuses since 1871 in order to collect information on the denomination or religion of respondents, even if they do not practice their religion. The data collected was an essential element for the application of the constitutional rights of the "founding peoples" and linguistic minorities (the right to Catholic and Protestant teaching for French and English speakers) and for the division of powers between provinces (education being a field of provincial jurisdiction). Other Statistics Canada surveys, like the General Social Survey, collect more detailed information on religious practices, or the General Social Survey - Victimisation, recounting hate crimes perpetrated against members of certain religious groups.

Question in the 2001 Census in Canada:

Question 22: “What is the religion of this person? Indicate a precise denomination or religion, even if this person is not practicing. For example, Roman Catholic, Ukrainian Catholic, United Church, Anglican, Lutheran, Baptist, Greek Orthodox, Jewish, Islam, Hindu, Sikh, etc.

Specify only one denomination or religion (space to be completed), or "Any religion" box.”

The respondents must report a specific denomination or religion, even if they do not practice the religion. For babies and young children, the respondents must report the specific denomination or religion in which they will be raised. A classification has been used since 1991 for the publication and the distribution of data. It was modified in 2001 and distributes responses over the following religious groups: Catholic, Protestant, (Christian) Orthodox, Christian not elsewhere stated, Muslim, Jewish, Buddhist, Hindu, Sikh, Eastern Religions and no religious affiliation.

There is no direct statistical recording of religion in the Netherlands. Religion is assigned according to country of origin and a majority presence of a religion within the countries of origin. Thus, Muslims and Hindus are estimated on the basis of the “foreign background” population (see ethnic and racial categories above) and the ratio of Muslims and Hindus within the corresponding countries. For those originally from Turkey, Surinam and Morocco, the proportion of Muslims and Hindus was taken from the 1988 *SPVA* survey (non-Western immigrants’ social position and use of welfare services).

Moreover, a question on religion was asked in the *POLS* survey (a survey on living conditions). This question reads as follows: *‘ To which church or religious group do you belong ?’* and the respondents are asked to choose from a list: None, Roman Catholic, Dutch Reformed, Calvinist, Islam, Another church or religious group. Affiliation is supplemented by a question on the frequency of attendance upon a place of worship (church or mosque) or religious ceremonies. The data collected is only used to indicate orders of magnitude. It can vary considerably according to the relevant method of reporting used (direct question on religion or question filtered through the concept of a belief).

This rapid overview of the data collected on religion demonstrates that it is not meant to fulfill the objectives of anti-discrimination monitoring. It is intended to reflect religious diversity and to refine the ethnic and racial classifications. From a political standpoint, these statistics are used to justify the adaptations and adjustments necessary to take the needs of religious minorities into account. For the time being, they are not used to identify unfavourable treatment affecting people considered to belong to a religious minority. This problematic may arise due to the continuing tensions resulting from September 11 and the debates on the role of Islam in North America, Europe and Australia.

2) Coming out: sexual orientation and being a couple

Like religion, sexual orientation does not benefit from equal opportunity programmes. The strategy adopted mainly consists of removing the barriers and prohibitions faced by same-sex couples and emanating from the laws on marriage and partnership, adoption and benefits relating to special provisions for couples and families. Moreover, certain professional bodies clearly establish discriminatory access standards towards homosexuals, such as the United States Armed Forces. For these situations, using statistics to prove unequal treatment is futile. The exclusion is complete and does not need to be demonstrated by the indices. Action must thus be based on the evolution of legal standards.

Once all explicitly discriminatory regulations been suppressed, the question of unequal treatment concealed behind apparently neutral measures is raised. Bringing this to the fore requires, for sexual orientation like other grounds, statistics that demonstrate suspicious disparities and differentials. The absence of statistics documenting sexual orientation is therefore prejudicial. Militant organisations are starting to focus on the social and economic impact of indirect discrimination based on sexual orientation. Employment access, career development or access to housing, are areas that are now subject to equality claims. The *Stonewall* organisation in Great Britain, an association defending the rights of gays, lesbians and bisexuals, developed an argument favouring the statistical monitoring of sexual orientation and published a guide for employees and employers illustrating means to fight discrimination. The organisation recommended monitoring in companies, encouraging gay, lesbian and bisexual employees to declare their orientation. In parallel, it is pressuring the ONS to ensure the British census includes a direct question on sexual orientation and that the estimates no longer be based on same-sex couples.

The identification of sexual orientation in the censuses is only carried out by reporting same-sex cohabitant partners. While the information can be derived from the household composition, most statistical bodies have only recently published estimates on same-sex partners. In view of the increased visibility of gay and lesbian groups, the latest censuses have led to publications on same-sex partners in all of the countries under study. Two hypothetical cases are presented: either the couple's status is deduced from the information on the sex of the partner, without a specific question allowing the reporting of a same-sex couple, or this option is specifically provided for in the questionnaire. The information in official registries can be added to the census statistics when registered unions between same-sex partners are authorised, or even marriage in the case of the Netherlands and probably Canada in the near future.

Categorisation in the statistical apparatus

In Canada, sexual orientation is a ground for discrimination prohibited by the Charter of Human Rights, and same-sex couples are legally recognised. It is mainly due to the development of case law – which has in itself resulted from the initiatives of citizens and human rights commissions before the courts – that the need for data on same-sex couples emerged.

For this purpose, the definition of a common-law couple was modified in the 2001 census: Statistics Canada currently defines it as "two people of the opposite sex or of the same sex who live together as a couple without being legally married to each other". This definition is quoted in the questions on common-law partners and on the relationships of household members with the respondent. The data collected is used in Canadian programmes for child tax benefits, old age security and the pension scheme.

Furthermore, two Statistics Canada surveys incorporated a direct question on the sexual orientation (and not on the "sexual behaviour") of respondents: the Canadian Community Health Survey (2003, initial results made available in the summer of 2004) and the General Social Survey - Victimisation (2004, five-yearly survey aimed at measuring discrimination and hate crimes). In 2003, the two surveys incorporated the same question (self-reporting), which reads as follows:
"Do you consider yourself as: heterosexual, homosexual (lesbian or gay), bisexual?".

An explanation of the terms used can be provided to the respondent upon request.

The Netherlands adopted very open legislation on sexual orientation, decriminalising homosexuality and recognising civil unions between same-sex partners, and, since 2001, marriage between same-sex partners. The statistical sources are thus initially the official registries. However, these registries only partially represent same-sex couples and only provide information relating to new unions. Estimates were carried out by processing information from the population registry on same-sex cohabitants and by excluding family members and joint tenants. By their structure, these estimates are inaccurate as the true nature of relationships between same-sex cohabitants is impossible to establish other than by a direct question.

The United States, Great Britain and Australia use the household composition table where relationships are reported to identify same-sex couples. The absence of a specific incentive for same-sex couples to declare themselves as such in the census must lead to significant under-representation.

It goes without saying that cohabitation is not the same as sexual orientation and the question of direct reporting is highly sensitive. The monitoring results reported by *Stonewall* are interesting in this regard. By way of example, among the pioneering companies that have tested sexual orientation monitoring, only 5% to 7% of employees agreed to participate. The *London Fire Brigade* introduced questions on sexual orientation and religion in its annual employee census. The questions are preceded by an explanation as to their use, as well as a reminder as to the voluntary nature of the response. The extension of this type of monitoring for all of the *Public Authorities* in Great Britain is not however on the current agenda.

IV - CONCLUSIONS AND RECOMMENDATIONS

"To have an equality policy without ethnic monitoring is like aiming for good financial management without keeping financial records." The CRE, *Good Practice, Ethnic Monitoring*.

This study has presented the systems for statistical data collection developed in the framework of anti-discrimination schemes in the United States, Canada, Australia, Great Britain and the Netherlands. We have compared the historical and political contexts in which the anti-discrimination schemes were formulated, as well as the various strategies employed and their phasing, the constitutional principles driving the schemes, the general legislation prohibiting discrimination, the applicable, often sectorial, laws and policies, and the agencies responsible for monitoring the application of the legislation and the proper operation of the scheme. We then examined the role of statistics and monitoring in the schemes, detailing their rationality, objectives and the structure of the monitoring system. Lastly, we examined the methods for producing statistics intended to measure discrimination based on the four grounds covered by this study: ethnic and racial origin, religion, disability and sexual orientation.

Finally, we will present the salient, yet inevitably partial, conclusions, intended to give substance to the reflection initiated by the Community action programme. On the basis of these conclusions, we suggest recommendations for adapting the systems of data collection in the Member States, to comply with the requirements of the Directives on discrimination and their transposition.

1. The anti-discrimination schemes in the countries under study were developed in stages. This phasing of actions relates to the dynamic in constructing a definition for the discrimination problematic, followed by the operationalisation of the law and initiatives. The discrimination issue was placed on the political agenda because of increased awareness and mobilisation campaigns. Increased awareness with regard to the extent of discrimination and its systemic nature, that is, the fact that it is inherent in the operation of social structures, is confirmed by studies most often using statistical data as a basis for their results. During this phase, legal mechanisms were reorganised to improve access to the law and complaint handling. At the same time, the laws, regulations and circulars were screened to remove discriminatory restrictions and exclusions. Jurisprudence clarified the definition of the discrimination concept. However, this strategy was unable to substantially improve the situation of discriminated groups. Judicial action based on general principles and limited to direct discrimination is insufficient in the fight against unequal treatment.

2. The adoption of the indirect discrimination concept was a turning point for the anti-discrimination schemes and led to an active policy of initiating legal proceedings and establishing equal treatment programmes. This benefit covered all of the provisions which, although neutral in appearance, had a *significant negative impact* on persons belonging to a protected group. A process to review practices and procedures was undertaken to check their impartiality. This review essentially involved a statistical assessment of the prejudices that occurred, affecting the representation of protected groups in selection or allowance trials. The objective of this strategy consisted in re-establishing the neutrality of procedures irrespective of a person's characteristics other than those relevant to a selection process. The equal treatment programmes – be they referred to as *Equal Opportunities, Equity* or *Affirmative Action* – all adopted this strategy.

3. The idea governing equal treatment policies is that the "spontaneous" dynamics of the systems concerned (labour market, education system, housing infrastructure, services and administrations, etc.) lead to persons with one or several stigmatized characteristics to be put to an unfair disadvantage. In order to *effectively* impose equal treatment, monitoring of apparently fair procedures is required and, where it is proven that they are not fair, any anomalies must be corrected. The shift from formal to effective equality requires implementing an extremely complex tool: the monitoring system. Unlike the logic followed in direct discrimination, which awaits complaints and only proceeds with an examination into discriminatory intent if the charges brought forward have been adequately proved, action against indirect discrimination is carried out *a priori* and on a continuous basis.

4. The indirect discrimination concept and the related action schemes, are intrinsically linked to statistics by their logic and objectives. The definition of indirect discrimination is based on quantitative concepts: significant effects and comparisons between groups. The cognitive tools used to capture indirect discrimination, which is the reasoning on which legal and political developments are based, are statistical. The group concept is the focus: treatment is no longer personalised, it is collective and only relates to individuals in terms of their real or assumed affiliation to a protected group. This shift from the individual to a group is strictly analogous to the operations carried out by statistics: impersonal aggregates that highlight a collective situation. As a consequence, all of the main elements of an intervention scheme require statistics: data recording and collection, the inclusion of personal characteristics into comparative tables, the production of indicators demonstrating differentials and the assessment of their extent and variations, the development of quantified objectives for rectifying procedures and promoting equality, and the assessment of the effects of the programmes, etc.

5. The schemes are also a referential mark of diversity and multiculturalism management. Equality is not achieved by monitoring the impartiality of procedures only. It must take into account the potentially discriminatory consequences of the application of a uniform treatment to *different* persons. Actions are determined by the importance given to differences and the necessary adaptation of the structures designed for a majority. In light of the diversity of resources and practices, one needs to differentiate treatment in order to establish equivalence in the access and use of goods and services. The “adjustment” or “reasonable accommodation” objectives respond to this logic of equality in spite of differences.

6. The equal treatment of protected groups is exemplified through proportional representations which take into account skills, qualifications and other required characteristics. Numerous indicators are created to establish the levels of representation and distribution: “under-use”, “under or over-representation”, “concentration” or “segregation”. Non-discrimination is portrayed by a *fair* distribution and is in fact a quantitative assessment. However, correcting or redressing inequalities calls upon qualitative methods, associated with quantified objectives, which enable the measuring of progress in achieving equality.

7. The monitoring system uses standardised classifications for protected groups. These classifications relate to the grounds defined by general laws, and, particularly, by laws and policies regarding application. Thus, equal treatment programmes establish the list of designated groups. This list is then converted into categories by the bodies responsible for collecting data. The format of the categories complies with two objectives, which are partly complementary and partly contradictory: reporting identities and defining the categories required for action. The final categories are the result of a compromise, but their suitability in the schemes is the primary objective. This tension is particularly significant in the case of ethnic and racial classifications. Nomenclatures are standardised in each country for these classifications, but there is no comparability between one country and another. The adopted ethnic and racial nomenclatures are *ad hoc* and reflect the historical, demographic and social contexts of each country.

8. The benefit of monitoring is not only the technical collection of data essential to conducting equality programmes. The involvement of the operators in monitoring allows them to develop an objective perception of discrimination (*awareness*) and makes them accountable and responsible for the progress achieved. The mere use of monitoring increases awareness and the understanding of discrimination mechanisms. It sets in motion a virtuous process of inspection and revision of practices and creates sensitivity towards minority groups and their participation in society.

9. The production of statistics reporting “sensitive” characteristics complies with the data protection laws. All of the countries under study have enacted laws that offer a high level of protection and provide for conditions under which the collection of sensitive data can be carried out. Exemptions to restrictions and controls are provided, particularly when in the public interest or for compliance with legal obligations. In all of the countries under study, the freedom given to monitoring sensitive data essentially depends on the confidence placed in the statistical institutions. Their role in the collection of data, in particular through censuses, makes them the guarantors of operational security and confidentiality. The objectives relating to the promotion of equality are considered to be a sufficient guarantee of the proper use of information.

In the context of the European anti-discrimination directives, the experience of the countries under study provides information on the dynamics of action schemes which use the indirect discrimination concept. The coherence and integration of action systems within the Member States are yet to be achieved. They will require the implementation of monitoring systems and the use of statistical data based on models yet to be designed. We can nevertheless identify strategies that appear to be essential in terms of the operationalisation of the fight against discrimination.

1) Strategy 1: Build shared diagnostics by producing studies on discrimination in the Member States and emphasise their systemic nature.

Although discrimination is condemned throughout the Member States, its extent and effects are still not fully understood. Public opinion and political decision-makers still relate it to isolated, even dispersed, racist behaviour explained by the increased visibility of immigrants in European societies. Prejudice at the root of discrimination is seen as a transitory reaction which will disappear over time if integration is achieved. This partial vision does not allow for a true measurement of the social processes that cause discrimination. It is therefore important to encourage the production of knowledge by launching research programmes on discrimination in the Member States. These studies should favour comparative analyses in order to avoid national specificities, which are sometimes blind to determinations embedded in national histories. The results from these studies would allow for a shared and consensual diagnosis to be formed on the systemic nature of discrimination.

2) Strategy 2: Build a case explaining monitoring objectives and means.

The fight against systemic discrimination requires equal treatment programmes to be established for the main areas (employment, education, housing, services) as well as a necessary monitoring system. Because of its constraints on operators and respondents, participation by all depends upon the approval of the objectives and means provided by the anti-discrimination scheme. The construction and distribution of arguments explaining the monitoring's objectives, role and function are a determining factor in the acceptance and therefore effectiveness of a scheme. The binding measures taken to impose a monitoring system, involving penalties, guarantees a higher level of commitment from the operators.

3) Strategy 3: Provide guidelines for data collection and standards for categorisations.

Monitoring operations are guaranteed by the use of a protocol for data collection and category standards. Without standardised collection procedures, the diversity of the data produced does not result in the assessments required to conduct equal treatment programmes. These standards present different problems depending on the ground in question. The production of a standard on disability is already underway and, although it has encountered difficulties, appears to be achievable at the European level. The production of data on sexual orientation still requires exploratory work. The methodological difficulties concern the definition of what should be identified: sexual practices or identities. Should the monitoring process only be based on same-sex couples to whom the question of access to rights recognised for couples of the opposite sex is addressed? Or does it exceed the boundaries of equality between couples and thus concerns the equal treatment of persons irrespective of their sexual orientation? In the second case, categorisation should not only be based on same-sex couples.

Similarly, it is important to clarify the objectives for the fight against religious discrimination before committing to a monitoring process on this ground. The current use of data on religion mainly consists in analysing the characteristics of religious minorities and their demographic evolution. From the public policy point of view, these statistics justify the adaptation and accommodation required to take the needs of religious minorities into account.

For the most part, the issue of data collection and the production of classification standards mainly relates to ethnic and racial discrimination. There are no means to identify a method or nomenclature that is *universal and replicable* from one country to another, given that the categories are contingent on national history.

However, it is recommended that the development of “racial and ethnic" categories in the Member States be guided by a few basic principles:

- *Terminology.* Despite the scientific invalidation of "race" as a biological concept, it continues to be used as a descriptive category in society for populations. This terminology is also used in international documents and directives relating to discrimination. Based on social perceptions more than on unconvincing genetic variations, “racial" categories report visible features (phenotype, colour, etc.). However, the ambiguity conveyed by "racial" terminology and its strong similarity with racist speech resulted in it being withdrawn from statistical production. Recourse to neologisms, such as “visible minorities”, is a proven solution. The use of “ethnic” categories as a substitute for racial categories, as is the case in Great Britain, does not work in all languages and semantic fields.
- *Categorisation.* Although the nomenclatures are specific to each of the Member States, it is important to underline that the categories must endeavour to replicate the forms of classification used in stereotypes and prejudice. The use of "loose" variables, which are only approximate, should be abandoned. From a practical point of view, country of birth is not an indication of colour, nor is it able to represent "race" or ethnic origin. The nationality variables of an individual's country of birth and that of his/her parents are used within immigration and integration studies, but are not suitable to the analysis and initiatives in the fight against discrimination. European societies are now multicultural and discrimination no longer only concerns immigrants or their children. It is important that this be recognised and that the collection systems be appropriately adapted. The issue with the use of variables on the country of birth is that these variables refer to immigration and lead to a reductive interpretation of discrimination phenomena. A conceptual and judicial clarification will require the use of appropriate categories.
- *Method.* Of the various methods, self-identification offers the best compromise between the requirements of the anti-discrimination scheme, statistical epistemology and respondent’s expectations. Its generalisation throughout the collection system involves adjustments, but it is the only method that complies with the "consent" clause allowing respondents to provide sensitive information relating to them, as set out by the European directive on data protection.
- *The process for defining categories.* The acceptability and content quality of categories are significantly improved when respondents and civil society organisations are involved in the development of the classifications. As these are *a priori* problematic categories, an extensive consultation process helps ensure that the questions are viewed positively and that they allow for an effective identification with the proposed categories. Consultation programmes are also an opportunity to explain the objectives of data collection and to overcome the fear that the statistics may be used for improper purposes and the stigmatisation resulting from the categorisation. The susceptibility and distrust towards sensitive categories does not necessarily stem from “minorities”. Members of the majority have reservations about being classed in "ethnic or racial"

> category classifications. The acceptability of statistical reporting of personal characteristics which could lead to discrimination is conditioned by the shared conviction of the severity of discriminative phenomena and the need to modify society's structures. If this belief is not shared, or if it is only shared by the victims of discrimination who have developed an awareness of the systemic nature of undue treatment, the exposure that this statistical registration attracts is rarely approved.

The debate in Europe on the anti-discrimination initiatives to be implemented is paradoxical. Although there is a lack of statistical indicators to assess the extent of discrimination in the Member States, the belief is widely shared that discrimination is widespread and that there is a need to mobilise all social institutions and stakeholders to reduce this discrimination. Nevertheless, the collection of statistics relating to ethnic or racial origin, religion, disability or sexual orientation has been the subject of strong resistance. The experience of the countries under study in this report demonstrates that the lack of sufficient statistics to illustrate and evaluate discrimination is not compatible with establishing an operational scheme whose main characteristic is the intensive use of statistical data. It appears necessary - and possible - to transcend the European paradox opposing the fight against discrimination and the production of "sensitive" statistics. It is a *sine qua non* condition for ensuring that the schemes created by the European directives are coherent and operational. The three strategies recommended above set out the minimum conditions for a meaningful consideration of the implications of European directives on discrimination. They propose the adjustments required for effectively establishing equal treatment in the Member States.

Anti-discrimination schemes are often criticised because they do not produce spectacular results. The improvement of the minority situation is relatively slow, despite all of the investments. Quantified assessments of current policies demonstrate positive results for certain groups, but also a form of reconstruction of discriminatory mechanisms which limit progress and maintain inequalities. One must nevertheless take into account the nature of anti-discrimination policies and the breadth of the structures they attempt to change. This type of action cannot be assessed only through a cost-benefit analysis based on statistical indicators over the short or medium term. The first result of anti-discrimination policies, particularly of monitoring, is the increased awareness of inequalities in treatment and their structural nature. Changing social structures and mentalities requires this awareness and cannot be envisaged without the continuous assessment of the fairness of practices. This assessment must not only be carried out by independent bodies, but must also, and most importantly, be carried out by all of the stakeholders who will thus become co-producers of non-discrimination. The consequences of this level of involvement can only be assessed over the long term. Anti-discrimination initiatives are part of a long - very long - historical process.

Appendix 1 : Table of the main events in anti-discrimination legislation and policies

Dates	**United States**	**Australia**
Before 1945	1941: E.O 8802, F.Roosevelt Prohibition against racial discrimination in corporations under federal contract 1948: E.O 9981, Harry Truman Desegration in the Armed Force	
1945		
1946		
1947		
1948		
1949		
1950		
1951		
1952		
1953		
1954	The *Brown Case* : desegration in schools, end of "separate but equal"	
1955		
1956		
1957		
1958		
1959		
1960		
1961	E.O 10925 J.F.Kennedy "Affirmative Action against discriminatory practices"	
1962		
1963		
1964	Civil Rights Act, Equal Employment Opportunity Commission (EEOC)	
1965	Voting Rights Act, E.O 11246 : Office of Federal Contract Compliance Programs (OFCCP)	
1966	Enactment of Standard 100 codifying ractial statistics by l'EEOC	Immigration opens to qualified workers from Asia

Dates	**United States**	**Australia**
1967		Aboriginals acceed to citizenship and end of legal discrimination
1968	Fair Housing Act	
1969	Philadelphia Plan launching Affirmative Action	
1970	Census: Hispanic question,	
1971	The *Griggs case* : "indirect discrimination" concept	
1972	Equal Employment Opportunity Act	
1973	Equal Pay Act, Rehabilitation Act (Handicaps)	Official end to *White Australian Policy,* *Inquiry into the Departure of settlers from Australia Report* Shift from integration to multiculturalism
1974	Equal Educational Opportunities Act	
1975		Racial Discrimination Act
1976		
1977	Federal Statistical Directive 15, OMB : Ethnic and racial categories standard	Multiculturalism Policy Creation of the *Australian Ethnic Affairs Council* (AEAC)
1978		
1979		
1980		
1981		Human Rights Commission Act (first version of the HREOC)
1982		
1983		
1984		Sex Discrimination Act *Population Census Ethnicity Committee Report*
1985		
1986		Human Rights and Equal Opportunity Commission Act Census: introduction of the *ancestry question* , abandoned in 1991
1987		
1988		Privacy Act
1989		*National agenda for a multicultural Australia*
1990	American with Disabilities Act (ADA)	RDA amendment: introduction of indirect discrimination
1991		Council for Aboriginal Reconciliation Act
1992		Disability Discrimination Act
1993		
1994		
1995		

Dates	**United States**	**Australia**
1996		Charter of Public service in a culturally diverse society
1997	OMB review of statistical classifications *Race and Ethnic Standards for Federal Statistics and Administrative Reporting*	Work place relation Act (religion and sexual preferences)
1998		Australian Reconciliation Convention (Aboriginals)
1999		A new agenda for multicultural Australia Creation of the Council for Multicultural Australia (CMA)
2000	Census: mixed race option	
2001		Census: the ancestry que*stion returns*
2002		
2003		
2004		

Dates	**Canada**	**Great Britain**
Before 1945	Policy restricting immigration on racial grounds	
1945	Racial terminology is abandoned in policies and statistics	
1946		
1947		
1948		
1949		
1950		
1951		
1952		
1953		
1954		
1955		
1956		
1957		
1958		Racial riots in Nottingham and Notting Hill
1959		
1960		
1961		
1962		*First Commonwealth Immigration Act*
1963	Royal Commission on Bilingualism and Biculturalism	
1964	Canadian Declaration of Rights	
1965		First *Race Relations Act*
1966		

Dates	**Canada**	**Great Britain**
1967	*Ruling abolishing th* e discriminatory immigration policy on the basis of origin	
1968		Second *Race Relations Act* , *Commonwealth Immigration Act* : Restrictive immigration policy
1969	Law on official languages, bilingualism is recognised Decriminalisation of sexual relations between adults of the same sex	
1970		
1971	Canadian multiculturalism policy First completely self-administrated census Lax on statistics	
1972		
1973		
1974		
1975		Sex Discrimination Act
1976		Enactment of the *Race Relation Act* of reference,
1977		Creation of the *Commission for Racial Equality* (CRE)
1978	Law on immigration	
1979		
1980		
1981		
1982	Canadian Charter of Rights and Freedoms Creation of the Human Rights Commission	
1983		
1984	Commission on equal employment opportunity	The *Mandla vs Dowell Lee* case: case law on religious discrimination
1985	Law on the protection of personal data	
1986	Law on employment equity: definition of visible minorities Census: handicap question	Concept of systemic discrimination
1987	"Systemic discrimination" concept (Supreme Court decision)	Equal opportunity policy
1988	Canadian law Canadian	
1989		
1990		
1991		Census: introduction of the *ethnic question*
1992		
1993		

Dates	**Canada**	**Great Britain**
1994		Codes of practice, standards, guidelines
1995		
1996	Canadian law on human rights	Disability Discrimination Act
	Census: question on "visible minorities"	
1997		
1998		Data Protection Act, creating the *Information Commissioner*
1999		Lord Scarman Report: *The Stephen Lawrence Inquiry*
2000	Extension of rights and obligations of heterosexual partners	Race Relations (Amendment) Act: *Race equality schemes*
	to homosexual partners (federal level)	Creation of the *Disability Rights Commission*
2001	Census: same-sex couples	Census: question on religion and mixed origin
	Survey of participation and restrictions in activities	
	Survey on ethnic diversity	
2002	Civil union for same-sex partners (Quebec)	
2003	Supreme Court decisions in favour of homosexual marriages	RRA *Regulations*: positive duty, accountability, equity plan
	(Quebec, Ontario, British Columbia)	

Dates	**The Netherlands**
1971	Last population census
1972	
1973	
1974	
1975	
1976	Hostages taken by Molluscan activists
1977	
1978	
1979	WRR Report on "ethnic minorities" (*Etnische Minderheden*) (WRR: *Wetenschappelijke Raad voor het Regenringsbeleid*)
1980	
1981	
1982	
1983	Introduction of a prohibition of discrimination in the constitution Ethnic minority policy (*Minderhedennota*)
1984	Computerisation of population data (GBA)
1985	Creation of the LBR (national anti-discrimination agency)
1986	
1987	
1988	Public financing of muslim and hindu schools
1989	New WRR report: *Allochtonenbeleid*
1990	
1991	
1992	
1993	
1994	Wet BEAA : employers registration of minorities in their workforce (Promotion of Proportional Labor market Participation of Allochtones) AWGB: Law on equal treatment, Creation of the CGB, commission for equal treatment Civil registry for same-sex couples
1995	
1996	
1997	
1998	SAMEN law (labour market participation) Mediator for ethnic minorities (BAM: Bedrijfsadviseur minderheden)
1999	Law on personal data protection *Wet Bescherming persoonsgegevens* (transposition of the EU directive)
2000	
2001	Same-sex couple marriages
2002	
2003	Abolition of the SAMEN Act Law on equal treatment for disabled persons and those suffering from a chronic illness Statistics Netherlands Act
2004	

Appendix 2 : Major Anti-Discrimination Agencies

Countries	Agencies	Laws of reference and year of creation	Grounds covered
United States	Equal Employment Opportunities Commission (EEOC)	*Civil Rights Act*, 1964	All grounds
	Office for Federal Contract Compliance Programs (OFCCP)	Implemented by the Labour Ministry following Presidential *Executive Order* 11246, 1965	Race, colour, sex, religion, national origin, disability and Vietnam veterans
Great Britain	Commission for Racial Equality (CRE)	*Civil Rights Act*, 1976	Race, national origin, colour
	Disability Rights Commission (DRC)	*Disability Discrimination Act*, 1995	Disability
Canada	*Human Rights Commission*	*Canadian Charter for Rights and Freedoms, 1982-1985*	All grounds
Australia	Human Rights and Equal Opportunities Commission (HREOC)	*Human Rights and Equal Opportunities Commission Act*, 1986 *Native Title Act*, 1993	Sex, ethnic and racial origin, disability, Aboriginals and Torres Strait Islanders
The Netherlands	Aboriginal and Torres Strait Islander Commission (ATSIC)	*Algemene Wet Gelijke Behandeling*, 1994	Aboriginals and Torres Strait Islanders
	Commissie Gelijke Behandeling (CGB) *Equal treatment commission*		All grounds except disability, added in 2003

Appendix 3 : Legislation on Employment Equality

Countries	Laws or programmes	Scope of application and main elements of the programme	Groups covered
United States	*Civil Rights Act (Title VII)* 1964 and *Equal Employment Opportunity Act* (1972)	Private sector employers with at least 100 employees and employers under federal contract with at least 50 employees Annual report following the S*tandard 100*	Minorities (Blacks, natives, Hispanics, Asians), women and disabled people
	OFCCP *Executive Order n°11246* 1965 (Affirmative Action)	Employers under federal contract (including sub-contractors). Annual report following the *Standard 100*	Idem + veterans
Canada	*Employment Equity Act* (1986)	"Federal" corporations or under federal responsibility and including over 100 employees. Equalisation of the representation of designated groups at all levels of remuneration and professions, annual report on monitoring, penalties and loss of federal contracts.	Visible minorities, women, natives, disabled people
Great Britain	*Race Relations Act* *Disability Discrimination Act*	Mandatory for public authorities (bodies, institutions and public companies, including the territorial authorities), recommended for private companies.	Ethnic groups, disabled people
Australia	*National Charter on Public Service in a Culturally Diverse Society*	Public sector (variations according to the States)	Minorities, non-mother tongue English speakers, Aboriginals, women, disabled people
Netherlands	*SAMEN*	Private and public companies with over 35 private and public employees Equalisation of the representation of minorities, annual monitoring report, penalties in the event of non-compliance with the programme	Non-Natives: Turks, Moroccans Surinamese, West Indians Other non-Westerners

European Commission

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