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# **Indigenous Peoples: Discrimination in Employment and Occupation**

“...all human being, irrespective of race, creed, or sex, have the right to pursue both their materials well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity ...”

Declaration of Philadelphia, 1944

# Discrimination against indigenous peoples:

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- They have lost control over their development path through historical processes;
- Are often excluded from political participation;
- Traditional economies and occupations are undermined due to lack of control over land, territories and resources
- Most face high levels of poverty
- Indigenous women face additional gender-based marginalization and discrimination.

# Discrimination against traditional occupations

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- Marginalization through land grabbing, large scale development project, population transfer, protected areas, etc.
- Decision-makers are often unaware of importance of traditional occupation for poverty reduction and sustainable development
- Traditional occupations (e.g. shifting cultivation, pastoralism) are disregarded or even prohibited by state law.
- Lack of investment, infrastructure and social services, as well as poor access to market and credit
- Lack of reliable data and statistics

# Discrimination in employment

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- Disadvantaged with regards to access to education, vocational training and formal employment...
- Social services are often inadequate to their needs
- Their knowledge and skills (e.g. of indigenous languages) not valued in the labour market
- Mostly employed in informal sector; low wages, and no social protection mechanisms.
- Disproportionately represented among victims of child labour, forced labour etc..

# Results of discrimination

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- Widespread malnutrition, poor educational results, health problems, increasing poverty, unemployment or underemployment.
- Widespread out-migration from indigenous lands
- Destruction of social fabric and cultural institutions
- Represent 5% of world's population but 15% of the World's poor (WB)

# **ILO Convention No. 111 on Employment and Occupation**

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- Adopted in 1958 upon request by the UN
- First non-discrimination treaty.
- Fundamental ILO Convention and main ILO instrument on discrimination
- Closely related to the provisions of other human rights treaties concerning equality and work (e.g. right to work, article 6 of ICESCR)
- 166 ratifications as of August 2008

# Objective

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- Promotion of equality of opportunity and treatment in employment and occupation, with a view to **eliminating discrimination**
- Covers all workers and all sectors of employment, including self-employment and non-wage work

# What kind of discrimination?

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- The Convention addresses discrimination based on
  - Race, colour and national extraction, including ethnicity/indigenous origin or identity
  - Sex
  - Religion
  - Political opinion
  - Social origin

# Definition:

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- any distinction, exclusion or preference....,
- which has the effect of nullifying or impairing equality of opportunity or treatment
- in employment or occupation

# What is meant by “employment and occupation”?

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- Access to vocational training
- Access to employment and particular occupations (including traditional occupations)
  - Occupation means the trade, profession or type of work performed irrespective of branch of economic activity or professional status
- Terms and conditions of employment

# What is not discrimination?

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- Distinctions based on inherent job requirements
- Special measures of protection and assistance
- Measures affecting an individual who is suspected of or engaged in activities prejudicial to the security of the State

# Special measures

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- Special measures of protection and assistance are not deemed to be discrimination
  - Special measures provided for in ILO standards (e.g. C.107 and C.169)
  - Special measures introduced at the national level designed to meet requirements of certain workers (e.g. based on sex, disability, age, family responsibilities, or social or cultural status)

# Indirect discrimination

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- Apparently neutral law, policy or practice which has a disproportionate negative impact on a particular group protected by the Convention or by national legislation, and which has no objective job-related justification

# Challenges

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- National laws often emphasize “formal equality”
- Equality often seen exclusively as an individual human right
- The laws providing protection from discrimination tend to cover the formal economy
- Convention No.111 gives Governments latitude to decide what measures to implement are appropriate
- Weak enforcement mechanisms

# Opportunities

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- Measures taken to apply the Convention must be effective:
  - Mainstreaming equality concerns into national development policies
  - Concept of indirect discrimination
  - Special measures (art. 5)
  - Cooperation with “other appropriate bodies” (art. 3(a))
- Respect principles of ILO Convention No.169