

Leaflet No. 5

Discrimination in employment and occupation

1. What is discrimination?

To discriminate in employment and occupation is to treat people differently and less favorably because of certain characteristics, such as their sex, ethnic background, or their religion, political beliefs or social origins. Discrimination limits the freedom of individuals to obtain or exercise the type of work to which they aspire. It impairs the opportunities of men and women to develop their potential, skills and talents and to be rewarded according to merit.

Discrimination in employment and occupation means that men and women seeking work or working do not enjoy equality of opportunity and treatment in respect to training, hiring, remuneration, promotion, termination of employment or other terms and conditions of employment. Work-related discrimination occurs in the formal and the informal economy.

2. Why is it relevant for indigenous peoples?

Indigenous and tribal peoples are among the most marginalized groups of society. Unequal treatment and a lack of equal opportunities of indigenous peoples are major factors behind their exclusion from education, training, and employment and the widespread poverty faced by them.

Promoting equality of opportunity and treatment of indigenous and tribal peoples is a key element in reducing poverty among them and for ensuring that they enjoy all their human rights. Promoting indigenous and tribal peoples' equality enhances their participation in the process of economic and social development, while protecting their right to preserve their identities and cultures.

3. What is the link between discrimination and poverty?

Discrimination in employment and occupation often exacerbates or perpetuates poverty, while poverty furthers discrimination at work in a vicious cycle. Lack of work and work that is unproductive, insecure and unprotected, are among the main causes of the material deprivation and vulnerability that indigenous and tribal peoples experience.

Discrimination in the labour market, by excluding members of indigenous communities from work or by impairing their chances of developing market-relevant capabilities, lowers the quality of jobs they can aspire to. This, in turn, enhances their risk of becoming or remaining poor, which further reduces their ability to obtain jobs that can lift them out of poverty.

4. What are the main ILO standards dealing with discrimination?

The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Recommendation (No. 111).

Convention No. 111 protects all workers against discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, and other criteria as may be determined by a ratifying state after consultation with representative employers' and workers' organizations.

Definition of discrimination

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

What does this definition imply?

Under the convention, the concept of discrimination on the basis of race and colour could include discrimination in employment and occupation which is based on whether someone is indigenous or not. Indigenous women often face discrimination on multiple grounds, e.g. ethnic background and sex.

Both direct and indirect discrimination are covered by the Convention. Discrimination does not have to be intentional. What matters is the effects of discrimination. Discrimination, or difference in treatment, could serve to deprive a person of, or limit their access to, equal opportunity. The concept of indirect discrimination refers to apparently neutral situations, regulations or practices, which in fact result in unequal treatment of persons with certain characteristics, e.g. persons belonging to a particular ethnic group (which could be an indigenous or tribal people).

There are some measures, however, that are not considered as discrimination. These include measures based on the inherent requirements of a particular job, measures intended to safeguard the security of the State, and special measures of protection (e.g. to address the specific health needs of women or men) or assistance (e.g. affirmative action and accommodation measures).

Which areas of employment and occupation does Convention No. 111 cover?

The protection of Convention No. 111 applies to all aspects of employment and occupation, both public and private, and extends to:

- access to education, vocational guidance and training;
- access to employment and occupation (i.e. to work, whether self employment, wage employment or in the public service);
- access to placement services;
- access to workers' and employers' organizations;
- career advancement;
- security of job tenure;
- collective bargaining;
- equal remuneration for work of equal value;
- access to social security, welfare facilities and benefits related to employment; and
- other conditions of work including occupational safety and health, hours of work, rest periods, holidays.

What are Governments' obligations under this Convention?

Under Convention No. 111, States must establish and implement a national policy to promote equality of opportunity and treatment in employment and occupation. This policy should apply to both the private and the public sectors. States are required to cooperate with workers' and employers' organizations in the preparation and implementation of their national equality policy. These organizations, in turn, should promote the national equality policy in the workplace and within the organization itself.

Measures to declare and pursue a national equality policy may include laws, equality policies, collective agreements and educational and training activities. They may also include studies and surveys to examine the situation of vulnerable groups, including indigenous peoples, as a means to identify problems and possible solutions. The elimination of discrimination may require affirmative action measures in favour of groups that face discrimination and a lack of equal opportunities.

How has this Convention been applied to indigenous peoples?

■ *Australia*. In its recent comments under Convention No. 111, the Committee of Experts on the Application of Conventions and Recommendations (CEACR – see leaflet No. 1) raised concerns regarding the high rate of unemployment among indigenous Australians and examined the programmes and policies adopted by the Government. In 2003, it requested the Government to provide information on implementation and impact of the various

programmes and projects to promote equal access to education, training and employment of indigenous Australians, including up-to-date statistical information.

■ *Guyana*. In its 2003 direct request on Convention No. 111, the CEACR addressed the low participation of indigenous peoples in training courses. With regard to the low participation levels of Amerindian women workers, it requested information on the measures that have been taken in practice to improve their participation in education, training and employment, particularly in rural areas.

■ *Indonesia*. The CEACR has noted information provided by the International Federation of Free Trade Unions (ICFTU) according to which transmigration of certain ethnic groups results in discrimination against indigenous groups in public sector employment. The Committee requested the Government to provide information in reply to these allegations.

■ *Rwanda*. In a recent direct request, the CEACR commented on the application of the Convention in respect to underprivileged ethnic groups, particularly the Batwa (“Pygmies”). The Government was requested to provide information on the measures taken or envisaged to ensure these groups enjoy equality of opportunity and treatment in employment and occupation.

Equal Remuneration Convention, 1951 (No. 100) and Recommendation No. 90

Experience shows that indigenous women are particularly vulnerable to become victims of pay discrimination. Such discrimination may occur particularly in sectors employing predominantly indigenous women. A recent study of the Ministry of Women's Affairs (MWA) of New Zealand identified wage disparities between Maori and non-Maori as one of a wide range of disadvantages suffered by Maori women.

Convention No. 100 establishes the principle of equal remuneration for men and women workers for work of equal value. The rationale of the Convention is that remuneration for work should be determined on the basis of the value of the work performed, rather than on the basis whether it is performed by men or women.

The principle of equal remuneration for men and women workers work of equal value requires that all components of remuneration are paid without any discrimination based on sex. It implies a comparison of the jobs performed by men and women with regard to value and content as established through objective criteria such as effort, skill, and responsibility.

5. What is the ILO doing to eliminate discrimination?

As with other areas of ILO work, its work on discrimination falls into two main categories:

Supervision of relevant Conventions

As seen in the examples above, the CEACR systematically examines the application of all international labour standards, including those on non-discrimination and equality. The Committee engages in a dialogue with the government concerned, and makes recommendations for further progress (more information in leaflet No. 1).

Technical assistance

As part of the follow-up to the 1998 Declaration on Fundamental Rights and Principles at Work (see leaflet 1), the Global Report entitled “Time for Equality at Work” was published in 2003. The report provides a dynamic picture of the nature and extent of discrimination in the world of work. Following the report's discussion at the International Labour Conference, the ILO adopted an action plan to address discrimination in the world of work, which is now being implemented.

The ILO provides technical assistance to government, and workers' and employers' organizations to promote the application of international labour standards on non-discrimination and equality. Various ILO offices at the regional and country levels undertake promotional and training activities to enhance knowledge and raise awareness of ILO standards on non-discrimination and equality. Specialized non-discrimination training is being provided to judges and labour inspectors. Lawyers and human rights activists have been trained in order to enable them to fight discrimination in the courts. The ILO's contributions to national poverty reduction strategy development and implementation processes mainstream the principle of non-discrimination.

6.Does it have any specific projects concerning discrimination against indigenous peoples?

The above-mentioned action plan under the 1998 Declaration has a special focus on contributing to the elimination of racial and ethnic discrimination faced by indigenous and tribal peoples, paying attention to its gender dimensions. An audit of selected Poverty Reduction Strategy Papers (PRSPs) has recently been undertaken to, inter alia, examine the reflection of indigenous concerns these strategies.

In Latin America, recent studies commissioned by the ILO highlighting the linkage between forced labour and discrimination against indigenous peoples. In Bolivia, this has led to the development of national strategy to eliminate forced labour, with particular attention to linkages between forced labour and ethnic discrimination.

Discrimination issues are also addressed within the context of the Project to Promote ILO Policy on Indigenous and Tribal Peoples (PRO 169 – see leaflet No. 2).

7.Where can I look for further information about my own country?

Electronic resources

- To read the full text of comments by the CEACR regarding the application of Conventions Nos. 111 and 100 in ratifying States, go to www.ilo.org/ilolex/index.htm. See leaflet 1 for more details on this database.
- To access more information about the ILO's work on Conventions Nos. 100 and 111, go to www.ilo.org/normes and click on "subjects covered by ILS" to find more information on ILO work on discrimination. You can also e-mail infonorm@ilo.org if you have any questions.
- For more information on technical cooperation activities under the ILO's Declaration on Fundamental Principles and Rights at work that specifically concern indigenous peoples and discrimination, you can go to the web site of the ILO programme to follow-up the Declaration at www.ilo.org/declaration. Alternatively, you can e-mail DECLARATION@ilo.org.

Key publications

- *Equality in Employment and Occupation, Special Survey on Convention No. 111*, International Labour Office, 1996.
- *Time for Equality at Work, Global Report under the ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Office, 2003.
- Tomei, M., *Acao afirmativa para a iguladade racial: caracteristicas, impactos e desafios*, Documento de Trabalho, ILO Brasilia, 2005.
- Tomei, M., *Affirmative action for racial equality: features, impact and challenges*, ILO, Geneva (forthcoming).
- Tomei, M., *Indigenous and Tribal Peoples and Poverty Reduction Strategy Papers (PRSPs): an ethnic audit of selected PRSPs*, International Labour Office, 2005.
- *Fundamental Rights at Work and International Labour Standards*, International Labour Office, 2003