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:

- 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

- 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

- 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

- 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

- 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

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?

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

- 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”?  

- 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?

- 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

- 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

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

- 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

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