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Organization

**Discussion paper**

# Indigenous Persons with Disabilities

Access to Training and Employment

Minerva C. Rivas Velarde



Gender,  
Equality  
and Diversity  
Branch  
(GED)

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# Acronym list

<b>AANDC</b>	Aboriginal Affairs and Northern Development Canada
<b>ACHPR</b>	African Commission on Human and Peoples' Rights
<b>ADA</b>	Americans with Disabilities Act
<b>ADB</b>	Asian Development Bank
<b>AIHW</b>	Australian Institute of Health and Welfare
<b>AVIR</b>	American Indian/Alaska Native Vocational Rehabilitation
<b>CBR</b>	Community-Based Rehabilitation
<b>CBEP</b>	Community-Based Employment Programme
<b>CIDA</b>	Canadian International Development Agency
<b>COAG</b>	Council of Australian Governments
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>ECLAC</b>	Economic Commission for Latin America and the Caribbean
<b>ECOSOC</b>	Economic and Social Council
<b>EMRIP</b>	Expert Mechanism on the Rights of Indigenous Peoples
<b>HRC</b>	Human Rights Council
<b>FASD</b>	Foetal Alcohol Spectrum Disorder
<b>ICF</b>	International Classification of Functioning, Disability and Health
<b>ICIDH-2</b>	International Classification of Impairment, Disability and Handicap
<b>IEP</b>	Indigenous Employment Programme
<b>IPRA</b>	Indigenous Peoples' Rights Act
<b>IWGIA</b>	International Work Group for Indigenous Affairs
<b>NCAI</b>	National Congress of American Indians
<b>NDIS</b>	National Disability Insurance Scheme
<b>OECD</b>	Organization for Economic Co-operation and Development
<b>PFII</b>	Permanent Forum on Indigenous Issues
<b>PIDS</b>	Philippine Institute for Development Studies
<b>RSA</b>	Rehabilitation Services Administration
<b>SSDI</b>	Social Security Disability Insurance
<b>SSI</b>	Supplemental Security Income
<b>UNDRIP</b>	United Nations Declaration on the Rights of Indigenous Peoples
<b>USAID</b>	United States Agency for International Development
<b>WHO</b>	World Health Organization

# Preface

The International Labour Organization (ILO) is devoted to the promotion of decent work for all. In this regard, the principle of ‘equality of opportunity and treatment in employment and occupation’ and addressing discrimination based on multiple grounds are central. While the ILO has a long standing commitment to promoting the employment of persons with disabilities as well as the rights of indigenous peoples, this discussion paper is a first attempt to combine both these areas of work.

Indigenous peoples’ cultures, languages and traditions have made significant contributions to our history. However, they have been severely affected by historical marginalization and continue to face severe disadvantage as is visible across key human capital indicators such as education, employment and health. Moreover, persons with disabilities are over-represented among indigenous peoples. The United Nations Permanent Forum on Indigenous Issues (UNPFII) estimates that the number of indigenous persons with disabilities in the world today could be approximately 54 million (2013). They are disproportionately exposed to unemployment and poverty, and face a higher risk of labour exploitation than non-indigenous persons with disabilities.

The paper was prepared as a resource for a panel discussion organized by the ILO in cooperation with the Government of Australia during the 14th Session of the UNPFII on 23 April 2015 in New York. It is hoped that the paper will continue to encourage debates, research and action at the international, national and local levels to ensure the access of indigenous persons with disabilities to decent work and dignifying livelihoods.

Geneva, May 2015

# Outline of the report

This report is divided into seven sections.

**Section One**, “Introduction”, presents an overview of the progress made over the last three decades towards the recognition of the rights of indigenous peoples, including challenges faced by indigenous persons with disabilities. It also introduces the purpose of this discussion paper and its development.

**Section Two**, “Gathering information on indigenous persons with disabilities”, presents an analysis of the general principles provided by international frameworks for the identification of indigenous peoples. Moreover, it offers an overview of the information available regarding the prevalence of disability amongst indigenous peoples. It ends with an overview of disability scholarship dedicated to understanding disability from an indigenous perspective.

**Section Three**, “International standards concerning employment, work and livelihoods of indigenous persons with disabilities”, reviews relevant legal frameworks for the protection of the right to work for indigenous persons with disabilities.

**Section Four**, “Occupation and employment of indigenous peoples”, presents an analysis of participation in work and employment by indigenous persons with disabilities. Starting with a discussion of indigenous livelihoods, and then elaborating upon traditional approaches to income generation, it moves to analyse disability support available to indigenous persons with disabilities. Community-based rehabilitation is presented as a possible option for providing disability services, as well as vocational training, for indigenous persons with disabilities in isolated and underserved settings.

**Section Five**, “Country strategies to foster employment for indigenous persons with disabilities”, presents case studies in which the national law, policy and employment trends of seven countries are analysed as they relate to indigenous persons with disabilities. These seven case studies give us a first overview of the challenges faced when designing policies that aim at improving the employment situation of indigenous persons with disabilities.

**Section Six**, “Main findings and areas requiring more research”, offers the reader a summary of the findings of this discussion paper, incorporating the views of key stakeholders and non-governmental organizations (NGOs), as well as areas that would require further research.

**Section Seven**, “Conclusion”, reminds us of the need for more action, action which will need to fully involve indigenous persons with disabilities themselves.

# 1. Introduction

Over the last three decades much progress was made with regards to the recognition of the rights of indigenous peoples. Landmarks of this progress include: the adoption of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), which is the only legally binding international instrument open to ratification that deals specifically with the rights of indigenous and tribal peoples;<sup>1</sup> and the ongoing work of the Human Rights Council (HRC) and the Economic and Social Council (ECOSOC) in appointing experts and advisory bodies to examine ways to overcome existing obstacles to the full and effective protection of the rights of indigenous peoples.<sup>2</sup>

This progress was also reflected in the work of the different UN human rights treaty bodies, such as the Committee on the Elimination of Racial Discrimination, human rights bodies at the regional level<sup>3</sup> and multiple court decisions that, to date, have built up considerable jurisprudence as regards the rights of indigenous peoples (International Labour Organisation, 2008a). This pathway of development took another significant step forward with the adoption, in 2007, of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The UNDRIP<sup>4</sup> explicitly demand that particular attention be paid to the needs of indigenous persons with disabilities, who often face multiple forms of discrimination on the bases of race, ethnicity, gender, language and disability; this hinders their participation in education, training and employment, leading to social exclusion and severe poverty. The then United Nations High Commissioner for Human Rights Louise Arbour referred to the adoption of the UNDRIP as “a triumph for justice and human dignity following more than two decades of negotiations between governments and indigenous peoples’ representatives” (United Nations High Commissioner for Human Rights, 2007).

However, progress made in recognizing the rights of indigenous peoples in international law has not yet translated into concrete improvements in their living conditions and wellbeing. From birth, indigenous peoples worldwide remain more likely to live in poverty, to suffer alarming rates of ill health, and to lack access to healthcare, education and employment.<sup>5</sup>

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1 The Indigenous and Tribal Populations Convention, 1957 (No. 107) was the very first attempt to codify comprehensively international obligations of states in respect to indigenous and tribal populations. Convention No. 169 replaced Convention No. 107, which, however, remains in force for 17 countries.

2 The mechanisms and mandates on indigenous peoples’ rights of the HRC and ECOSOC include the Special Rapporteur on the rights of indigenous peoples, the Expert Mechanism on the rights of indigenous peoples and the UN Permanent Forum on Indigenous Issues.

3 E.g., the African Commission on Human and Peoples’ Rights and the Inter-American Commission and Court of Human Rights.

4 Article 21 (2) and Article 22 (1).

5 Garcia-Alix and Hitchcock, 2009; Hitchcock, Sapignoli and Babchuk, 2011; ILO and African Commission on Human and Peoples’ Rights, 2009; Organization for Economic Co-operations and Development (OECD), 2012; Permanent Forum on Indigenous Issues, 2013a; World Bank, 2005.

The United Nations Convention on the Rights of Persons with Disabilities, or CRPD, (2007) is the first legally binding United Nations instrument specifically directed to protect the rights of people with disabilities.<sup>6</sup> In its preamble, it calls for special protection from aggravated discrimination, such as that faced by indigenous persons with disabilities. The Committee on the Rights of Persons with Disabilities – the body of independent experts which monitors the implementation of the Convention – has emphasized the critical social deprivation experienced by indigenous persons with disabilities worldwide.<sup>7</sup> In its recommendations, the Committee has urged member states to improve their data gathering, to provide protection and means for social development, and to foster opportunities for work, employment and good livelihoods for indigenous persons with disabilities. To meet such recommendations, and to address structural and social barriers faced by indigenous persons with disabilities to their right to work, multisectoral and multiagency efforts are required.

The prevalence of disability tends to be higher within indigenous peoples worldwide than amongst non-indigenous groups.<sup>8</sup> The high prevalence of disability amongst indigenous peoples is viewed as both cause and consequence of severe poverty, violence and unsafe living conditions, including exposure to environmental degradation, toxic waste and the adverse impacts of development projects (Carson, Dunbar, Chenhall, & Bailie, 2007; Connell, 2011). The lack of access to employment, training and disability-specific support has created poverty traps for indigenous persons with disabilities.<sup>9</sup> These multiple forms of social deprivation and segregation, arising from the intersection of indigeneity and disability, have recently been addressed by the outcome document of the World Conference on Indigenous Peoples (United Nations General Assembly, 2014).<sup>10</sup> This document calls for the protection of the rights of indigenous persons with disabilities, particularly in regard to their inclusion in decision-making, non-discrimination, and continuing to improve their social and economic conditions.

## 1.1 Objectives

The purpose of this discussion paper is to contribute to the call originating from the World Conference outcome document by providing a first overview of the available data regarding access to employment for indigenous women and men with disabilities. It concentrates on the following objectives:

- Examining international experiences in the vocational training and employment of indigenous persons with disabilities, highlighting examples of good practice and successful outcomes, as well as examples of initiatives that have not worked well;

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6 Principles and values portrayed in the CRPD recall the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and C111 – Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Their mandates are mutually reinforcing.

7 Committee on the Rights of Persons with Disabilities, 2012a, 2012b, 2013, 2014.

8 Australian Bureau of Statistics, 2010; Instituto Nacional de Estadística, 2012; National Congress of American Indians, 2012; Permanent Forum on Indigenous Issues, 2013a; Philippine Coalition on the UN Convention on the Rights of Persons with Disabilities and advocates, 2013; Statistics New Zealand Tatauranga Aotearoa, 2013.

9 Concluding observations of the CRPD Committee on the initial reports of Argentina, Australia, Peru and Costa Rica (Committee on the Rights of Persons with Disabilities, 2012a, 2012b, 2013, 2014a).

10 See Outcome document of the high-level meeting of the General Assembly: the World Conference on Indigenous Peoples, paragraphs 9, 1, 17 and 33.

## 1. Introduction

- Discussing ways in which skills training and preparation for work contribute to the successful employment of indigenous persons with disabilities, looking at training and active labour market programmes targeting indigenous peoples, and whether these are disability-inclusive;
- Describing and commenting on the policy frameworks that seem most conducive to promoting training and employment opportunities for this group;
- Examining issues relating to land property rights and how these impact on livelihood opportunities for indigenous persons with disabilities, again with a particular focus on women.

## 2. Gathering information on indigenous persons with disabilities

The gathering of information on indigenous persons with disabilities is key to improving social accountability and the monitoring of their human rights. In order to foster good livelihoods, training and employment, it is necessary to identify indigenous persons with disabilities and to obtain information on their situation. An appropriate set of indicators and statistics could enable the design and implementation of effective responses to the needs of this group. However, to date there is insufficient data on the population size, location, geographical mobility and living conditions of indigenous persons with disabilities worldwide (Permanent Forum on Indigenous Issues, 2013), which hinders effective policy responses. To tackle this lack of information, it is necessary to understand the challenges behind collecting such data, both in terms of the logistics of obtaining the data and the political implications related to the recognition of this group.

This section presents an overview of the general principles developed for the identification of indigenous peoples, followed by a discussion of available data regarding their location and rates of prevalence of disability. It concludes with a brief analysis of indigenous perspectives on disability.

### 2.1 Who are indigenous peoples?

Internationally defining “indigenous peoples” has proved to be a challenging endeavour, particularly within the United Nations (UN), as some member states have been reluctant to recognize the existence of indigenous peoples within their territories. Such attitudes are reflected in the very limited number of countries that recognize indigenous peoples in their constitutions or legislation.<sup>11</sup> An official definition of “indigenous” has not been adopted by any United Nations body (Levi & Maybury-Lewis, 2010; Yoshioka & Hirotochi, 2010).

Several international frameworks have been developed which propose general principles for the identification of indigenous peoples. These include the *Report on the Problem of Discrimination Against Indigenous Populations* (1986) by the UN Special Rapporteur Mr José Martínez Cobo,<sup>12</sup> the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the *Operational Directive of the World Bank 4.10* (2005). These three frameworks were developed to serve particular purposes: the Special Rapporteur provides a set of recommendations for state members in identifying a population in need of special protection against discrimination, whilst the ILO Convention No. 169 is a legally binding international instrument that outlines to state members to whom this convention

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11 (African Commission on Human and Peoples' Rights, 2005; Escárcega, 2010).

12 In 1971, the United Nations Economic and Social Council appointed a Special Rapporteur, Mr José Martínez Cobo (Ecuador) to study patterns of discrimination against indigenous peoples.

shall apply, and the *Operational Directive 4.10* is an internal policy that aims to ensure that all projects financed by the World Bank fully respect the dignity, rights, economies and cultures of indigenous peoples.<sup>13</sup>

The African Commission on Human and Peoples' Rights (2005) argues that "a strict definition of indigenous peoples is neither necessary nor desirable" (p. 87). It advocates for a contemporary understanding of the term "indigenous people" that moves away from notions of biological determination or aboriginality, promoting self-identification as a key principle in the recognition of indigenous peoples. The Commission focuses on identifying those groups that are in a position of subordination, who have become marginalized in their own countries and need recognition and protection of their basic human rights.

The principles of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) offer a significant contribution to this human rights debate. Its mandate is also inclusive of tribal peoples. Article 1 gives the following definitions:

- a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

Article 2 highlights that: "Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply".

Self-identification is also central to the United Nations Declaration on the Rights of Indigenous Peoples. The UN-DRIP purposely does not provide a definition of indigeneity and recognizes diversity across indigenous peoples worldwide, stating in its preamble: "The situation of indigenous peoples varies from region to region and from country to country and the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration" (2007).

Self-identification involves an act of empowerment by claiming a social, cultural and political identity. It affirms the right to belong to an indigenous group, honouring an ancestral history and acknowledging transcendental links.

## 2.2 Statistics on indigenous persons with disabilities

The *World Report on Disability* (2011) estimates that 15 per cent of the world's population has a disability, of whom 3 per cent has a severe disability; as many as 80 per cent of all people with disabilities live in developing countries (World Health Organization & World Bank 2011). The Permanent Forum on Indigenous Issues applied

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13 Such projects aim "to (a) avoid potentially adverse effects on the Indigenous Peoples' communities; or (b) when avoidance is not feasible, minimize, mitigate, or compensate for such effects. Bank-financed projects are also designed to ensure that the Indigenous Peoples receive social and economic benefits that are culturally appropriate and gender and intergenerationally inclusive" (World Bank, 2005). *Operational Directive 4.10* was prepared for use by World Bank staff and is not necessarily to be deemed a complete treatment of the subject.

this estimate to indigenous populations, claiming that the number of indigenous persons with disabilities in the world today could be approximately 54 million (2013). Thus, this “guesstimate” may not be representative for some countries where the prevalence of disability amongst indigenous peoples tends to be higher than across the non-indigenous population<sup>14</sup> due to severe poverty, exposure to violence and social deprivation.

Statistics regarding indigenous peoples and indigenous persons with disabilities tend to be limited and rare, both domestically and internationally, and inadequately captured in official data such as censuses and government surveys (Buvinic & Mazza, 2005; Meekosha, 2011; Mikkelsen, 2014). Three main reasons are suggested:

- the reluctance of states to recognize their indigenous peoples;
- resource constraints for the development and application of a more comprehensive set of instruments;
- a lack of engagement with indigenous perspectives on disability.<sup>15</sup>

In order to address the current data deficiencies, the knowledge limitation regarding indigenous perspectives on disability requires further investigation.

## 2.3 Indigenous perspectives on “disability”

There is a small but growing international body of research into indigenous perspectives on disability. Indigenous scholarship has documented that indigenous communities find the term “disability” alien and rather contradictory to their traditional beliefs around impairments.<sup>16</sup> For example, in Western Australia Ariotti’s 1999 study on the social construction of Anangu disability showed that the Anangu people, rather than looking at impairments, celebrated uniqueness in accepting the diversity of humanity. In New Zealand, Fitzgerald (1997) claimed that the ancestral Māori conception of humanity embraces difference and uniqueness, seeing disability as a natural part of one’s being, and not as an impairment. Indigenous peoples’ rejection of the concept of impairment as linked to a limitation was also evident in indigenous peoples in the Americas. Gotto (2009) studied how indigenous persons with intellectual disabilities are perceived by their own communities in southern Mexico. His results showed that within such groups indigenous persons with intellectual disabilities are valued and respected members, recognized for their contribution rather than their impairments. Their impairments were seen as natural and unique personal characteristics, rather than a limitation on their functioning and/or capabilities. Being “disabled” has to some extent been rejected as a concept by indigenous peoples. However, such disassociation is not exclusive to indigenous peoples, and reiterates the need to further reflect about the variety of lived experiences of disability. The British scholar Tom Shakespeare (1996) prudently stated that having an impairment could be a common experience, whilst “being disabled” is a specific social identity of a minority.

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14 Aboriginal Affairs and Northern Development Canada, 2013; Asociaciones Costarricenses de Personas con Discapacidad, 2011; Australian Bureau of Statistics, 2010; Health Canada, 2009; Instituto Nacional de Estadística, 2012; Lindblom, 2014; Robertson et al., 2013; Statistics New Zealand Tatauranga Aotearoa 2013.

15 Anaya, 2009; Cunningham and Kanyinke Sena, 2012; Meekosha, 2008.

16 Aiken and Leigh, 2011; Almeida and Angelino, 2013; Ariotti, 1999; Connell, 2007; Fitzgerald, 1997; Gotto, 2009; H. Hickey, 2008; S.J. Hickey, 2008; King, 2010; Rivas Velarde, 2014.

## 2. Gathering information on indigenous persons with disabilities

Disability scholars have analysed the juxtaposition of social characteristics that impact on disabled people's life experiences, such as race, historical background, gender, legal status and racial hierarchy.<sup>17</sup> Their writing draws attention to the need to enhance the voices of persons with disabilities from the so-called "southern" countries, as there is yet insufficient conceptual reflection emerging from the global south. Disability Studies programmes must engage with the impact that historical oppression and cultural assimilation have had on the lives of indigenous persons with disabilities.<sup>18</sup>

The field of Disability Studies aims to represent and empower persons with disability, portraying their views and lived experience. Disability models have a core role in academia and in policy-making, providing a theoretical underpinning for international law and frameworks. The principles of the social model of disability are at the heart of the United Nations Convention on the Rights of Persons with Disabilities.<sup>19</sup> The social model regards disability as socially produced – caused by social structures rather than by a person's impairment (Oliver, 1992). Full participation, non-discrimination and barrier removal are central to the arguments of the social model and to the CRPD (Kayess and French, 2008). The Convention on the Rights of Persons with Disabilities does not contain a definition of disability but states

“Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.”

The approach taken by the CRPD provides state parties with a conceptual basis that promotes a more inclusive definition of disability within their national laws and policies.<sup>20</sup>

Another important framework is the *International Classification of Functioning, Disability and Health* (ICF) reflects the principles of the biopsychosocial model (Birkenbach, 1999). The biopsychosocial model describes disability as the interaction between individuals who have a health condition and their personal and environmental contexts. It defines disability as:

“An umbrella term for impairments, activity limitations and participation restrictions. Disability is the interaction between individuals with a health condition (e.g. cerebral palsy, Down syndrome and depression) and personal and environmental factors (e.g. negative attitudes, inaccessible transportation and public buildings, and limited social supports (World Health Organization, 2011).”

What is important to highlight is that indigenous peoples discourses have been largely absent from these global initiatives. Neither the social model or the biopsychosocial model have fully engaged with indigenous peoples' rejection of the concept of disability and cultural beliefs around human uniqueness, nor with their historical

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17 Balcazar et al., 2010; Gilroy, 2009; Hayes, 2002; Hollinsworth, 2012; Meekosha, 2008; Söder, 2009; Tate, 1997; Vehmas and Mäkelä, 2008.

18 Gilroy, 2009; S.J. Hickey, 2008; Hollinsworth, 2012; Meekosha, 2011; Meekosha, 2011; Rivas Velarde, 2014.

19 See Paragraph (e) of the Preamble and Article 1, Paragraph 2 of the CRPD, Article 3: General Principles.

20 Article 1 outlines that persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

## 2. Gathering information on indigenous persons with disabilities

oppression, which goes beyond the experience of physical or social barriers. (Barker & Murray, 2010; Bevan-Brown, 2013; Connell, 2011; Hickey, 2008; Hollinsworth, 2012; Meekosha, 2011; Meekosha, 2008; Rivas Velarde, 2014).

In 2003 Senior tested the applicability of the *International Classification of Impairment, Disability and Handicap*, known as the *ICIDH-2*, on Aboriginal and Torres Strait Islanders. The study's results highlighted the lack of understanding of the community and an inability to incorporate local cultural beliefs into this framework. Senior illustrated the limitation of the framework by elaborating on the role that sorcery beliefs have in some communities, such as the Ngukurr people in Northern Australia. The study showed that persons with disabilities were unable to relate to the designations portrayed in the *ICIDH-2*. Participants were unable to understand them and had different views about what being disabled meant. Ngukurr people tended to link physical, sensorial or intellectual impairments – as well as illness, pain and even death – with sorcery. Senior's study pointed out that traditional conceptualisations of health and disability have not been sufficiently explored, and that such knowledge gaps impeded the applicability of the *ICIDH-2* to this population.

The Washington Group claims that current instruments, including the *ICF*, and their use in measuring the prevalence of disability are not fully efficient in capturing data from culturally diverse groups. This intergovernmental and interagency group of experts on disability statistics, have recommended member states to look into the cultural variations in interpretation of functioning and disability “between countries, or between groups within countries” (Washington Group on Disability Statistics, 2006, p. 12), pointing out that such cultural difference might be best examined via expert discussion. This recommendation regarding culturally diverse groups is relevant to indigenous peoples and reiterates the need to fully engage indigenous persons with disabilities at all levels of decision-making.

The Washington Group states that “disability can be measured for a variety of purposes and each purpose can be related to different conceptual components” (Washington Group on Disability Statistics, 2006, p. 2). This statement issues a call for caution in the comparison of data across boundaries, and for consideration of cultural discrepancies.

Knowledge gaps and social, economic and political constraints experienced by indigenous persons with disability can only be tackled by listening to their voices and concerns. The implementation of ILO Convention No. 169, the CRPD and the UNDRIP can foster visibility for indigenous persons with disabilities by fully engaging with indigenous peoples' discourses on disability, opening up a dialogue about their lived experiences, their needs and priorities, the protection of their livelihoods and the development of partnerships towards equality of opportunity.

# 3. International standards concerning the employment, work and livelihoods of indigenous persons with disabilities

This section presents an overview of the most relevant human rights instruments for the protection of the rights of indigenous persons with disabilities, their livelihoods and opportunities for work, training and development.

## 3.1 The United Nations Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities entered into force on 3 May 2008. The CRPD was the first legally binding United Nations instrument specifically directed at the rights of persons with disabilities (Lord & Stein, 2008), a response to the absence of any international treaty expressly protecting this group (Stein, 2007). Its purpose is enunciated in Article 1: “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity”. Article 3 outlines its eight principles, including those of non-discrimination, equality of opportunity and accessibility. The preamble of the CRPD specifically acknowledges indigenous peoples as vulnerable groups, prone to multiple or aggravated forms of discrimination.

The CRPD provides legal mechanisms and a structure for the discussion of disability rights, and work and employment specifically. Article 27 declares that States Parties have an obligation to:

“[R]ecognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation” (CRPD, 2007: Article 27[1]).

The CRPD specifically addresses reasonable accommodation,<sup>21</sup> equality of access to employment and the promotion of vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities. From an indigenous perspective, it is important to read these provisions together with Article 5 of the Convention (addressing equality and non-discrimination), Article 9 (concerning accessibility) and Article 30 (on participation in cultural life, leisure and sports), to ensure that such implementation is harmonious with the culture, traditions and livelihoods of indigenous peoples (Rivas Velarde, 2014).

## 3.2 The United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly on 13 September 2007. This declaration establishes a universal framework of minimum standards for the survival, dignity, wellbeing and rights of the world's indigenous peoples. The UNDRIP mandate covers both individual and collective rights, including as regards employment and occupation. It promotes indigenous peoples' full and effective participation in all matters that concern them.

Article 17 (1) of the UNDRIP states that "indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law" and charges States Parties with "recognizing the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions" (UNDRIP, Preamble paragraph VI). Moreover, Article 21 (2) calls for attention to the improvement of economic and social conditions for indigenous persons with disabilities.

## 3.3 The ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169)

ILO Convention No. 169 is the only international legally binding instrument, open to ratification, dedicated to protecting the rights of indigenous peoples. This convention came into effect on 5 September 1991, replacing the Indigenous and Tribal Populations Convention, 1957 (No. 107).<sup>22</sup> ILO Convention No. 169 was considered a paradigm shift that moved away from the integrationist approach of its predecessor to reflect a contemporary approach to indigenous rights based on its underlying principles of full participation and consultation, outlined in Articles 6 and 7.

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21 According to Article 2 of the CRPD, reasonable accommodation means: "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms" (CRPD, 2007).

22 Convention No. 107 is no longer open for ratification; it is still in force for 17 countries.

### 3. International standards concerning the employment, work and livelihoods of indigenous persons with disabilities

ILO Convention No. 169 provides a legal instrument for the protection of indigenous peoples from discrimination in recruitment and access to employment. It calls for the promotion of equal opportunities and equal treatment in employment for men and women, as well as protection from sexual harassment and from hazardous working conditions (Articles 20–24).

Articles 21–23 of ILO Convention No. 169 address vocational training, handicrafts and rural industries. Article 22 indicates that:

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.
2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.
3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

Part 3 of the Convention calls for partnership between governments and indigenous peoples for the development for national frameworks that are responsive to the labour needs and rights of indigenous peoples. Furthermore, it recognizes that:

“Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognized as important factors in the maintenance of their cultures and in their economic self-reliance and development” (ILO Convention No. 169, Article 23).

In addition to Convention No. 169, several other ILO instruments are relevant for addressing the right to work of indigenous persons with disabilities, in particular the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).

The ILO Convention No. 111 is a widely ratified<sup>23</sup> instrument. Its Article 2 outlines that:

“Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof” (ILO Convention No. 111 [2]).

Alongside ILO Convention No. 169, , Convention No. 111 calls for the taking of measures to non-discrimination for indigenous peoples regarding the promotion and protection of employment, vocational training or occupations

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<sup>23</sup> With 172 ratifications.

inclusive of trade farming, handicrafts and hunting. ILO Convention No. 159<sup>24</sup> is another key instrument in this context. Its principles – of consultation, non-discrimination and equal opportunities between workers with and without disabilities – and those of Article 27 of the CRPD are mutually reinforcing. Together, these instruments can contribute to the improvement of access to vocational training, employment and occupations for indigenous persons with disabilities.

## 3.4 Key features of international instruments

These three instruments The UNCRPD, the UNDRIP and ILO Convention No. 169 together provide a comprehensive legal framework for the protection of the right to work for indigenous persons with disabilities. There is however a need to fully explore the differences and commonalities of these instruments. Analysing the UN CRPD from an indigenous peoples' perspective and analysing the ILO C169 and the UNDRIP from a disability perspective would be part of such a process, a process that needs to be led by indigenous persons with disabilities themselves. How to combine an approach strongly based on collective rights and the concept of self-determination of indigenous people with an approach that is based on promoting the individual autonomy of persons with disabilities will most likely lead to extremely interesting discussions and conclusions. Article 19 of the UN CRPD which promotes living in the community of persons with disabilities and ensuring that they have the same choices as other members of the community seems to be particularly relevant in this context, in particular when we think of indigenous persons with disabilities living in indigenous communities. Inclusion and mainstreaming are key elements in disability rights but might require some adjustments to avoid being seen as assimilation.

It is important, then, to highlight key principles that underline a human-rights-based approach to training, employment and occupations of indigenous persons with disabilities. Self-determination should be understood as a prerequisite for the realization of all indigenous peoples' rights, including the right to work. Fundamental to persons with disabilities are the principles of equal recognition before the law, freedom to make their own choices, participation and consultation, and accessibility. This suggested framework does not exhaust all the legal features in these three instruments that could benefit indigenous persons with disabilities. Any policy or programme seeking to benefit indigenous persons with disabilities must be based on a framework combining these key principles originating from the three global instruments.

The mandates of the CRPD, UNDRIP and ILO Convention No. 169 together can address the gap associated with work and employment and indigenous persons with disabilities by building into their Articles an indigenous/disability pathway that makes visible, and safeguards against, rights infringements experienced by indigenous persons with disabilities across international boundaries (Rivas Velarde, 2014). These instruments, however, need concrete responses within domestic systems to make a difference to the functional lives of indigenous persons with disabilities (Beco, 2009). These mechanisms, and the policies that arise from them, must be based on a clear understanding of the work and employment needs of indigenous persons with disabilities.

In exploring international legal standards regarding employment and training for indigenous persons with disabilities, it is important to discuss how these standards have influenced domestic policies and practices. The next section analyses available evidence regarding access to employment, disability support and the protection of livelihoods of indigenous persons with disabilities.

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<sup>24</sup> With 82 ratifications.

# 4. Occupation and employment of indigenous peoples

Traditional livelihoods for indigenous peoples have been affected by lack of access to traditional lands and land-grabbing (International Labour Organisation, 2013).<sup>25</sup> Additionally, indigenous peoples have been particularly disadvantaged in terms of access to education, vocational training and employment (Carson et al., 2007; Kirmayer, Dandeneau, Marshall, Phillips, & Williamson, 2011; The Lancet, 2012). These barriers to basic needs, such as food, water, shelter, education and health services, have produced significant differences in earnings, and traps and cycles of marginalization (Hall & Patrinos, 2006; Hall & Patrinos, 2012; Patrinos & Skoufias, 2007). In exploring economic opportunities for indigenous peoples in Latin America, Patrinos and Skoufias state that it is urgent to review and reframe indigenous affairs, creating policies that facilitate “access not only to one key productive asset, such as land, but also to complementary assets, such as training and infrastructure, which affect the returns to land” (Patrinos & Skoufias, 2007, p. 2).

## 4.1 Employment participation of indigenous persons with disabilities

Work and employment from an indigenous perspective must be considered in a broader manner than just as a means of generating an income, in an employee–employer model. It must also reflect participation in traditional occupations and livelihoods, customary views of community living and the generation of human capital and wealth.

Patrinos and Skoufias (2007) analysed development and wealth generation as they relate to indigenous peoples. They pointed out important cultural differences between indigenous and non-indigenous peoples regarding employment, poverty reduction strategies and wealth generation, clarifying that, for some indigenous peoples, the accumulation of wealth beyond their needs and/or obtaining formal employment attached to social security may conflict with their views. It is therefore important to bear in mind differences in aspirations, social context and individual preferences while discussing work and employment opportunities for indigenous persons with disabilities.

Furthermore, indigenous peoples are migrating from rural to urban areas in increasing numbers. This tendency has been linked to forced migration due to land rights infringements, or the pursuit of access to social services and social mobility (Comisión Económica para América Latina, 2014). Recent data from the Economic Commission for Latin America and the Caribbean (ECLAC) (2014) show that indigenous people who have migrated to urban locations are at greater risk of being underpaid, working in high-risk jobs and lacking social security and health insurance; they also tend to be overexposed to physical and sexual exploitation. Such a trend raises many

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<sup>25</sup> “Land-grabbing” refers to “the explosion of (trans)national commercial land transactions and land speculation” (Franco, 2012, p. 34)

concerns in relation to indigenous persons with disabilities, particularly women – but also in relation to land rights, development and resource control. The ECLAC has advocated for a new approach to public policy and law that recognizes indigenous territories beyond their physical dimension, acknowledging their social, cultural and symbolic meaning for indigenous peoples.

Regarding urban job opportunities, the employment of persons with disabilities in the open job market<sup>26</sup> instead of sheltered workshops or day centres has gained in visibility since the CRPD took effect.<sup>27</sup> The rights-based approach to employment promoted by Article 27 of the CRPD has also been strengthened by economic arguments promoted by international agencies, such as the OECD, which see the lack of employment for those with disabilities as a hindrance to national development. The OECD argues that failure to provide employment for such a large slice of the working-age population is detrimental to economic development, also emphasising that anti-poverty strategies must take this into account. Disability is a major cause of income poverty, exacerbating household costs including those of healthcare, treatment and rehabilitation (2010).

A different approach to generating wealth and good livelihoods for indigenous persons with disabilities has been promoted by non-governmental organizations (NGOs). Trickle Up is an NGO<sup>28</sup> that has been successful in implementing micro-enterprise opportunities for persons with disabilities. Their projects focus on increasing the participation of persons with disabilities in the economic sector, with particular attention paid to women. Their strategy is based upon opening access to financial services through strong savings programs and local capacity-building, with a strong emphasis on tackling multidimensional aspects of poverty, on the removal of barriers and on community empowerment (Trickle Up, 2013).

In discussing the promotion of micro-enterprise and the OECD proposal with regard to the promotion of work and employment for persons with disabilities, it is important to refer back to the collective approach of the CRPD, UNDRIP and ILO Convention No. 169 to self-determination, non-discrimination, consultation and participation and equal recognition before the law and accessibility. Employment strategies, law and policy must observe indigenous peoples' rights and honour indigenous identity, traditions and costumes.

The participation of people with disabilities in the workforce is strongly dependent upon the means of support made available. The following section provides an overview of the role of community-based rehabilitation (CBR) in fostering employment for indigenous persons with disabilities.

## 4.2 Community-based rehabilitation as an option for indigenous persons with disabilities

Disability support models such as community-based rehabilitation (CBR) have been successfully implemented for decades within indigenous communities and with ethnic minorities all over the globe (Balcazar, Suárez-Balcazar, Taylor-Ritzler, & Keys, 2010; Hiranandani, Kumar, & Sonpal, 2014). CBR has helped indigenous persons

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26 Gaining employment in the open market refers to unrestricted job opportunities, determined by supply and demand.

27 Germundsson et al., 2012; Hiranandani et al., 2014; Mizunoya and Mitra, 2013.

28 This initiative has been supported by the United States Agency for International Development (USAID).

#### 4. Occupation and employment of indigenous peoples

with disabilities to overcome social and economic barriers to health, rehabilitation and disability services, as well as enabling access to education and vocational training.<sup>29</sup> CBR, which is increasingly designed as community based inclusion, brings relevant services closer to persons with disabilities by building capacity amongst community members and strengthening multisectoral collaboration.

CBR is a multisectoral strategy; its implementation requires the combined efforts of persons with disabilities, their family members and their communities, as well as governmental and non-governmental health, education and social services. CBR allows people to organize themselves to meet disability related needs as identified by the community. The notion of empowerment is at the heart of CBR and disability-inclusive development (Kuipers, 2014). CBR has been proven to contribute to overcoming cultural barriers and resource constraints, allowing people with disabilities to access adequate support within their communities.

CBR facilitates cooperation between key actors in the community, which contributes to the dissemination of information and enables engagement with people who may not even have had any contact with health, vocational or social services. The collaboration between CBR workers and schools, community groups and even the criminal justice mechanism is very important, given the high rates of imprisonment of indigenous persons with intellectual disabilities (Frize, Kenny, & Lennings, 2008; Hayes, 2002; Paterson, Ruben, & Nossar, 1998). In indigenous communities, disability tends to be identified throughout community life; in other words, the schoolteacher, community leader and health workers know who requests support due to disability. Such information tends to be collected via everyday encounters, as having a formal medical evaluation or participating in a government survey may not always occur. Furthermore, indigenous persons with disabilities tend to rely on family members for support instead of on formal disability services. Therefore, CBR structures are seen as an effective and comprehensive support model. CBR promotes training, employment and income generation for disabled people (International Labour Organisation, 2008b): “CBR programmes can contribute to the economic wellbeing of disabled people living in different economic, political and cultural contexts through community-based skills training programmes” (International Labour Organisation, 2011, p. 2).

Access to training, job coaching and financial support for income-generating activities are key activities of CBR programmes (World Health Organisation, 2010). The *ILO Skills Development through Community-Based Rehabilitation (CBR): A Good Practice Guide for Skills Development through CBR* (2008) outlines in great detail how CBR can be utilized towards skills development, entrepreneurship and in employment services. Although this model has been mostly applied to overcome resource constraints in rural and semi-rural areas, its principles of capacity-building, cooperation and community-driven values are entirely transferable to urban locations.

Indigenous peoples' participation in employment, their livelihoods and the disability support services available all vary greatly, depending on the context. The next section will present seven studies from low-, middle- and high-income countries and analyse various approaches to the generation of jobs and protection of livelihoods for indigenous persons with disabilities.

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<sup>29</sup> Almeida and Angelino, 2013; McBain-Rigg and Veitch, 2011; The Lancet, 2012.

# 5. Country strategies on employment for indigenous persons with disabilities

Country strategies for increased employment participation will be discussed, examining strategies tailored to meet the needs of indigenous persons with disabilities as well as those mainstream employment services that have adapted to cater to this population. A sample of seven countries was selected, on the basis of availability of relevant data and across a high- to middle-income range, in order to explore various approaches. The information available from four of the countries (Australia, Canada, New Zealand and United States) is much more detailed than the information from the other three countries (Costa Rica, Mexico and Philippines). Furthermore, the information provided on the different schemes is based on desk research.

## 5.1 Australia

Aboriginal and Torres Strait Islander peoples experience significantly poorer health and social outcomes than other Australians. According to the 2012–13 ABS Health Survey, 36% of all Indigenous Australians had a disability or restrictive long-term health condition and 10% had a profound, severe or moderate core activity limitation. Indigenous Australians were 1.5 times as likely to have a disability or restrictive long-term health condition as non-Indigenous Australians<sup>30</sup>. Most Aboriginal and Torres Strait Islander peoples live in non-remote areas, with an estimated 35 per cent living in major cities, 44 per cent in regional areas, and 21 per cent in remote areas<sup>31</sup>. Indigenous people with high care needs tend to relocate from rural or semi-rural areas to urban locations in order to access disability services (Australian Bureau of Statistics, 2010). Difficulties with employment were reported by 57% of Indigenous Australians aged 15–64 with a disability, including permanently being unable to work (17%) and restrictions in the type of work they can do (27%) (AHMAC 2014). The Council of Australian Governments (COAG) expects to halve the gap in employment outcomes between Australians of Aboriginal and Torres Strait Islander identity and other Australians by 2018 (Ministerial Council for Education Early Childhood Development and Youth Affairs, 2010)

Closing the Gap is a national integrated strategy to improve the lives of indigenous Australians. In 2014, Closing the Gap clearing house<sup>32</sup> published a review of current employment rates for indigenous people with disabilities. This document highlights the absence of labour market programmes assisting indigenous job seekers with disa-

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30 Australian Health Ministers' Advisory Council, 2015, Aboriginal and Torres Strait Islander Health Performance Framework 2014 Report, AHMAC, Canberra.

31 2011 Australian Bureau of Statistics Census data.

32 The Closing the Gap clearing house is an initiative which was proposed by the Council of Australian Governments and is jointly funded by all Australian governments. It is hosted by the Australian Institute of Health and Welfare and the Australian Institute of Family Studies.

bilities, and the lack of a comprehensive evaluation to determine whether current employment programmes are engaging effectively with indigenous persons with disabilities. This report confirms the need for affirmative action. Recalling the evidence from Canadian and US mainstream disability-focused job programmes, it recommends assisting indigenous persons with disabilities to find jobs in the open market, rather than promoting vocational training or sheltered workshops. It argues that on-the-job support has proven more sustainable and resulted in more positive outcomes for job seekers. It also advocates for unlimited individualized support, as well as for the integration of vocational and health services in job programmes in order to facilitate access and effective adherence (Biddle, Brennan, & Yap, 2014).

The Remote Jobs and Community Programme (RJCP) commenced in 2013 to provide a more integrated and flexible approach to employment and participation services for job seekers living in remote Australia. It combined a range of mainstream, Indigenous and disability employment services and community development programmes in remote communities. The programme also offers tailored services to those with disabilities according to their needs and job preferences, along with financial assistance for work-related equipment and modifications, as well as a supported wage system. In late 2014, the Australian Government announced changes to the programme as part of broader reforms to employment services. The reformed RJCP aims to ensure employment services are tailored to the unique labour markets and economic conditions in remote Australia. The reforms seek to address passive welfare and provide clearer pathways to move job seekers from continuous work-like activities on to work experience and ultimately into sustainable employment (The Australian Government Department of the Prime Minister and Cabinet, 2015).

The Indigenous Advancement Strategy (IAS) was implemented in 2014. The new flexible programme structure of the IAS enables the Government to support Indigenous peoples' physical, emotional and social wellbeing, maintenance of Indigenous culture and participation in the economic and social life of Australia. The IAS assists Indigenous adults to find employment and have the opportunity to own their own home, work or run their own business, and provide for themselves and their families. The IAS will address some of the issues raised, for example, Gray and Hunter (2012) evaluation of the previous Indigenous Employment Programme. The evaluation highlighted a failure to address multiple barriers faced by Indigenous people, which include "having been arrested or incarcerated, intergenerational effects of past child removal policies, alcohol and other drug addiction, mental health problems, poor physical health, family violence and a lack of literacy and numeracy" (Gray et al., 2012, p. 13).

The National Disability Insurance Scheme (NDIS), introduced in 2013, offers individualized support for eligible people with permanent and significant disability, their families and carers. Individualized funding allows individuals to set up their own care plan and targets. Funding is allocated to employment support and job coaching, as well as to accessing mainstream vocational training to gain work experience in the desired area. In relation to indigenous Australians, the NDIS stated that this scheme "will have a role in funding early intervention and prevention approaches. It is not a panacea for broad indigenous disadvantage" (Commonwealth of Australia, 2011, p. 560). Nevertheless, it guarantees flexibility and a wider range of options. Particular attention is to be given to its reach and cultural appropriateness regarding indigenous persons with disabilities.

It is the view of the author of this discussion paper that cultural appropriateness would require the NDIS to frame its language, terms and implementation in a manner respectful to indigenous livelihoods, including full participation of indigenous persons with disabilities and the exploration of the meanings – from an indigenous perspective – of concepts such as disability, support, community inclusion and work. The NDIS should frame its procedures, referrals and budget allocation in terms compliant with the context in which indigenous peoples live, and also

address the history and abuses experienced by indigenous peoples in Australia. However, such expectations seem to fall short under the current scheme.

Biddle and Al-Yaman (2012) analysed the extent to which the NDIS contributes to improving the lives of indigenous persons with disabilities. They found that Aboriginal and Torres Strait peoples tend to distance themselves from the term “disability” – even those who are regular users of disability services – which often hinders their access to further support (King, 2010). This attitude has been attributed to two phenomena: firstly, that impairments may not represent an issue within their already challenging environments, and therefore people may not feel “disabled” by their impairments; and secondly, that given the high rates of disability amongst indigenous peoples, such conditions are perceived as “normal” across indigenous communities (Ariotti, 1999; Biddle et al., 2012; King, 2010). This disassociation and cultural barrier does not seem to be addressed under the NDIS. Additional barriers arise from environmental and systematic hindrances that can prevent indigenous peoples from even attaining a proper disability assessment, without which they may not access disability services.

This second layer of exclusion arises from the mismatch between the needs of indigenous peoples and the reach of the disability support scheme. Some issues heavily affect indigenous peoples, such as Foetal Alcohol Spectrum Disorder (FASD). In areas such as Fitzroy Valley in North Western Australia, FASD is severely affecting community life. Prevalence of FASD there is high, and the lack of support available to families has led to a rapid deterioration in health and, in several cases, to the development of secondary (mostly mental health) disabilities within the community (Fitzpatrick, Elliott, Latimer, Carter, Oscar, Ferreira, Olson, Lucas, Doney, Salter, Peadon, Hawkes, & Hand, 2012). Depending on the level of permanent impairment and impact on functional capacity an individual presenting with Fetal Alcohol Spectrum Disorder (FASD) or Fetal hydantoin may become an NDIS participant

Although significant progress has been achieved in Australia since the introduction of the NDIS, challenges continue to arise in relation to its coverage and implementation. Continued negative social indicators highlight that there is a need for a comprehensive interagency approach to disability services, training and employment.

## 5.2 Canada

Some 30 per cent of aboriginal adults in Canada reported having disabilities; those between 15 and 34 years old have a disability rate three times the national average, according to the Department of Employment and Social Development in Canada (2013). High rates of disability are often related to poverty, lack of health services and historical disenfranchisement (Czyzewski, 2011; Greenwood & de Leeuw, 2012). Disaggregated data regarding prevalence of different types of disability is very limited and scattered. However, it has been documented that indigenous children are three times more likely than non-indigenous children to have physical disabilities (Permanent Forum on Indigenous Issues, 2013b). Indigenous peoples in Canada are also severely affected by Foetal Alcohol Spectrum Disorder. Salmon (2011) found that previous estimates of 25 cases of FASD per 1,000 births underestimate the real magnitude of the issue. Additionally, Lindblom (2014) found that although the prevalence of autism has risen, the aboriginal population tends to be under-represented in official data and under-detected, due to cultural and structural barriers to healthcare and disability services.

## 5. Country strategies on employment for indigenous persons with disabilities

Indigenous peoples in Canada are also over-represented in negative social outcomes, including employment rates and employment income. First Nations peoples<sup>33</sup> have historically been faced with greater rates of unemployment and low income than those of the non-aboriginal population (Aboriginal affairs and northern development Canada, 2013). Such inequalities are even more pronounced for indigenous persons with disabilities, due to reduced access to employment, education, vocational training and disability-specific support (Bougie, Kelly-Scott, & Arriagada, 2013).

In 2006 Durst studied the experience of indigenous persons with disabilities living in urban settings. The study found that disability and employment services were not responsive to the needs of indigenous persons with disabilities. Noted shortfalls included inadequate and restricted information, limited engagement of services with elders and other members of clients' families, and attitudinal barriers such as feeling discriminated against and feelings of low self-worth and social isolation. Disability and health services are often inaccessible for indigenous persons with disabilities, who are often obliged to leave their communities and move to bigger towns where they can access support services on a regular basis. However, this relocation often deprives them of the support of their families and results in isolation. Despite the overall perception of a lack of employment opportunity available to them, employment was valued highly amongst participants in this study. Further research conducted by Shier, Graham, and Jones (2009) corroborated discrimination as a strong barrier to employment and training in Canada, finding that in some cases employment opportunities were denied because of the employer's negative perception of disability.

The Aboriginal Skills and Employment Training Strategy was created in 2009 as part of Canada's Economic Action Plan. This programme is open to all indigenous peoples from Canada and includes a subdivision that specifically supports aboriginal persons with disabilities, providing tailored employment and training support. Services include preparation for work, skills enhancement workshops, employment referrals and ongoing support in maintaining a job or in pursuing training and education. This support is provided by counsellors from local branches who work on a one-to-one basis with participants. The process includes setting up goals and supporting people to explore available opportunities. The programme links participants up with mainstream training, as well as with jobs in the open market.

The programme was evaluated in 2013 and it was found that, to increase the employment participation rates of aboriginal persons with disabilities, a wider and more comprehensive approach to employment services is required, including key actors at the community level and potential employers. The results showed that aboriginal persons with disabilities were somewhat less likely than non-disabled Aboriginal people to benefit from the programme and to obtain employment after completion. However, most participants felt it had helped them to further develop the essential skills needed in life and work (Department of Employment and Social Development in Canada, 2013).

Despite the limited results in increasing employment participation of indigenous persons with disabilities, the programme was successful in establishing partnerships between aboriginal communities and local services. Recommendations based on the evaluation results claimed that partnerships between communities and key

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<sup>33</sup> Canada utilises the term "First Nations" or "Aboriginal people" as all-encompassing term that includes Inuit, First Nations and Métis. In policy the most frequently used term is First Nations.

stakeholders will allow further insight into the needs of each community and the resources available to people there, including services and personnel. The evaluation found that programme outcomes tended to be more positive when:

- planning and delivery involved various stakeholders, including employers;
- projects were tailored to meet the specific needs of the person, according to aboriginal lifestyles and culture;
- programming incorporated flexible schedules; and
- aboriginal elders were involved in programme delivery.

Individual support needs may include attending to family dynamics, engagement with peers within the community and the workplace, the accommodation of preference as to location as well as vocation, the fulfilment of health-care needs and the assurance of cultural safety.

### 5.3 Costa Rica

In 2011 the prevalence of disability across indigenous peoples in Costa Rica was 19.57 per cent, almost double the national disability average of 11 per cent (Instituto Nacional de Estadística y Censos, 2011). Official data provided by the Ministry of Employment show that 65 per cent of all adults with disabilities in Costa Rica are unemployed. The shadow report submitted in 2011 by NGOs to the CRPD Committee strongly disputed the state's data, claiming that the unemployment rates presented as national data are not representative of the reality of indigenous persons with disabilities, and that unemployment across this group can be as high as 80 per cent in some regions. However, the data available do not clarify whether these rates refer to people permanently out of the workforce, people seeking work, the unemployed, or those working informally or without salary (Asociaciones Costarricenses de Personas con Discapacidad, 2011). Reports provided by the state and by NGOs to the Committee in 2011 outlined that negative indicators on employment were reinforced by the fact that a large majority of persons with disabilities in Costa Rica (up to 80 per cent) did not complete basic education, and almost none were land or property owners. Such indicators were even more severe for those belonging to indigenous communities (Asociaciones Costarricenses de Personas con Discapacidad, 2011; Gobierno de Costa Rica, 2011).

Steps have been taken to improve the legal framework regarding employment of persons with disabilities, such as non-discrimination legislation embedded in Law 7600 on "Equal Opportunities for Persons with Disabilities" (1996). In 2007 the government of Costa Rica created an Inter-ministerial Technical Commission on Employability of Disabled Persons, aiming to create programmes and strategies for the technical training and employability of persons with disabilities. In 2008, Law 8661 and 8661A were adopted to directly implement the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol into Costa Rican domestic law. Despite these legal developments, challenges regarding indigenous persons with disabilities remain unsolved. Thus there is no information on the inclusion of indigenous persons with disabilities in this legislation, nor on its impact on this population.

In 2012 the National Plan for the Labour Inclusion of Persons with Disabilities was implemented. Led by the Ministry of Labour and the National Council of Rehabilitation and Special Education, it provides an overarching strategy to increase the participation of persons with disabilities in vocational training, education and skills de-

velopment, entrepreneurship and small business. The programme does not detail any particular action directed to foster economic development among indigenous persons with disabilities. However, the National Plan's 2012 report (Ministerio de Trabajo y Seguridad Social de Costa Rica) states that in the Terraba region a group of indigenous persons with disabilities were granted credit to set up a small company, "Tamalera", to trade in traditional food. This grant was awarded through the National Programme to Support Micro-enterprises, provided alongside training in business development and administration. Although this is cited as a success of the National Plan and evidence of its impact, it is not clear whether further measures will be taken to expand this practice.

In Costa Rica, indigenous peoples' organizations have been part of the group preparing the shadow report for the CRPD Committee, actively engaging with the National Legislative Assembly through the unit dedicated to the defence of the rights of people with disabilities (Asociaciones Costarricenses de Personas con Discapacidad, 2011). These mechanisms have enhanced the participation of indigenous persons with disabilities in decision-making and in the creation of public policy.

In August 2014 the government of Costa Rica launched the "Agreement for an Inclusive and Accessible Country". The aim of this agreement is to improve access for persons with disability to social services such as healthcare, and to increase their participation in education and employment. The agreement has three pillars: to fight government corruption; to foster economic growth and the increased employment of persons with disabilities; and to reduce inequality and extreme poverty. It indicates that special attention should be given to the full participation of women, youth and the indigenous population in new endeavours and programmes resulting from this agreement. To stimulate the participation of indigenous persons with disabilities in education, the agreement provides scholarships specifically to this group through the National Education Fund. This is the first time a national policy has addressed the need to respect indigenous world views and cosmogony in education, health and agriculture, inclusive of other areas of government policy and service delivery.

### 5.4 Mexico

Mexico's 2010 census reported a disability prevalence of 7.9 per cent among indigenous peoples, in comparison with 5.3 per cent across the non-indigenous population. These rates vary greatly across different regions. In the Purepecha region of Michoacán, the prevalence is above 20 per cent. Indigenous NGOs have strongly criticized the disability rates provided by the National Institute of Statistics, arguing that the application of the census is limited, and that the data presented are biased and unrepresentative of the reality (Instituto Nacional de Estadística, 2012; Montufar, 2010).

In 2005, the National Survey on Discrimination stated that 83 per cent of persons with disabilities were unemployed due to discrimination. The 2013 version of this survey did not include disaggregated data on employment rates. However, it did reiterate that persons with disabilities and indigenous peoples are the social groups most discriminated against in Mexico. It also states that unemployment, or loss of employment, is often a result of discrimination. The survey explored the perceptions regarding wages among both employees and employers. The results showed that persons with disabilities felt themselves to be underpaid, while employers believed that employees with disabilities can diminish production and considered it fair to pay them less (Consejo Nacional para Prevenir la Discriminación and Secretaría de Desarrollo Social, 2013).

The results of the 2005 National Survey on Discrimination raised several questions, particularly whether such negative trends of discrimination have changed over the last nine years. However, recent national studies show continued negative indicators. In 2014 the Mexican Council Against Discrimination published a joint report with the Ministry of Social Development looking at access to education for indigenous children and children with disabilities. The results show that 70 per cent of such children live in conditions of poverty or extreme poverty. This is a strong indication of the social deprivation experienced by these households, and of the constraints upon the future development of those children (Consejo Nacional para prevenir la Discriminacion, 2013).

Since 2001 the Mexican Constitution has recognized that *Estados Unidos Mexicanos* is a multi-ethnic and pluricultural country (Cámara de Diputados del h. Congreso de la Unión Mexico, 2013). This significant constitutional reform recognized indigenous sovereignty and self-determination along with indigenous languages, control of land and traditions, including customary forms of justice. The strength of the Mexican leadership in regard to disability rights has been widely acknowledged by the international community (McCallum, 2010) since 2001 in Durban, South Africa, when Mexico began to advocate for the creation of a convention to protect the rights of persons with disabilities (United Nations General Assembly, 2001). These reforms and political leadership demonstrated a shift in the ethos and philosophy of Mexican legislation that should enable significant improvements to the lives and opportunities of indigenous persons with disabilities. However, the impact of this shift has not yet reached the ground.

Since the 1990s, development programmes in Mexico have been heavily based on cash transfers. Development programmes such as “Contigo”, “Progresas” and “Oportunidades” (recently renamed “Prospera”) have been effective in increasing health, school attendance, access to housing and improvement of livelihoods for those living in extreme poverty (Cruz, De la Torre, & Velázquez, 2006; Molyneux, 2006; Secretaria de Desarrollo Social, 2010). Of those programmes, only “Oportunidades” created a line of action specifically for indigenous peoples, fostering investment in health, education and agriculture in the area. There is no information available regarding the participation of indigenous persons with disabilities.

While overall these programmes have been positive, the sustainability and long-term effects of cash transfer programmes nonetheless underpin a bigger challenge: the promotion of assistentialist approaches to development, which are seen as fostering codependency, paternalism and centralised decision-making (Copestake, 2008). In other words, in the long term such approaches may work against indigenous sovereignty, the promotion of civil and social rights, or respect for the inherent principles of the 2001 constitutional reform regarding indigenous self-determination.

The new National Programme for the Inclusion and Development of Persons with Disability 2014–2018, detailed in its *Strategy 1.6* some implementation procedures to be followed when working with indigenous communities. These include the dissemination of information – in indigenous languages – on social services such as education, health, vocational training and access to credit. It specifically addresses the need to generate jobs and self-employment opportunities for indigenous persons with disabilities in urban and remote rural areas, and mandates the creation of special lines of affirmative action for women, youth and elderly people. The Ministry of Labour and Social Security is responsible for the creation of an information bank to detail the progress of this plan, including disaggregated data on the beneficiaries of each programme (Presidencia de la República, 2014). This particular point is of great importance, as it will allow monitoring of the participation of indigenous persons with disabilities.

Although progress has been observed within the National Programme for the Inclusion and Development of Persons with Disability, the CRPD Committee (2014b) has in its first review of Mexico shown great concern about the level of social deprivation experienced by indigenous persons with disabilities. It has recommended that Mexico strive to improve access to basic resources such as shelter, water, food and healthcare. In relation to Article 27, their recommendation puts a great emphasis on promoting employment for indigenous women with disabilities.

### 5.5 New Zealand

In Aotearoa/New Zealand, Māori with disabilities are one of the most disadvantaged social groups in the country (The Lancet, 2012). Their disability prevalence is 32 per cent, in comparison to 24 per cent for the non-Māori population. Māori had a higher-than-average disability rate. Approximately 13 per cent of all Māori are unemployed, 6 per cent above the non-Māori unemployment rate. Whilst more than 30 per cent of Māori with disabilities under 25 years old are employed, this rate drops to 11 per cent for those over 25 (Statistics New Zealand Tatauranga Aotearoa, 2013).

The Māori, unlike many indigenous peoples, signed a treaty with the colonisers to protect the sovereignty of their people.<sup>34</sup> In 1975, the Treaty of Waitangi Act set up the Waitangi Tribunal to make recommendations on claims brought by Māori regarding unresolved breaches of promise by the Crown. To date, the Treaty principles are embedded in all New Zealand law and policy (Wyeth et al., 2010). Māori identities, practices and rights, like those of all cultures, were and are constantly undergoing renegotiation, change and development.

In order to improve the livelihoods of Māori with disabilities, the New Zealand Ministry of Health launched the Māori Disability Action Plan 2012–2017. This action plan was created after a consultation with Māori with disabilities throughout all regions. It outlines the need to foster greater personal leadership and choice, and promotes control over disability support. It also highlights the need to incentivise participation by Māori with disabilities in the workforce, and to develop leadership skills and career pathways. Awareness workshops on this action plan and its implementation have been conducted throughout the country by the Māori Leadership Group.

Whānau Ora is a family-centred approach to Māori wellbeing. It is “an inclusive interagency approach to providing health and social services to build the capacity of all New Zealand families in need. It empowers whānau<sup>35</sup> as a whole rather than focusing separately on individual family members and their problems” (Ministry of Māori Development Te Puni Kōkiri & Ministries of Social Development and Health, 2011). Launched in 2010, it focuses on whānau self-management and the taking of responsibility for economic, cultural and social development. Funding allocated to this programme allows beneficiary families to set goals and together design a pathway to their achievement. It includes access to vocational training and tailored job-searching strategies.

The Whānau Ora framework is built around whānau aspirational aims, including self-management, healthy whānau lifestyles, full participation in society, confident participation in te ao Māori and Pasifika, successful involvement in wealth creation, and cohesive, resilient and nurturing whānau. These gains are strengthened by reciprocal

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<sup>34</sup> The Treaty of Waitangi was signed in 1840 by the representatives of the British Queen and over 500 Māori chiefs.

<sup>35</sup> ‘Whānau’ is a far wider concept than that of the Western term ‘family’. It represents a web of relationship (generally through kinship, but often also community or common purpose), including but not restricted to the nuclear family unit.

commitments between and across generations, and between individual ambitions and shared hopes of Whānau (Hon Minister Tariana Turia, 2014).

The University of Waikato evaluated Whānau Ora in 2013 (Robertson, Masters, Lane, Tapara, Corbett, Graham, Gosche, Jenkins, & King, 2013). The results indicated significant improvements in rebuilding whānau relationships and wellbeing by addressing and helping to overcome domestic violence, particularly against women. Positive outcomes were also shown in employment, with a large majority of the participants prioritizing this area. Participants associate employment with independence, success and development. Whānau Ora seems to have apposite impact in connecting Māori with disabilities with vocational training and employment in the open market by providing tailored support to the person with disability alongside their whānau (extended family) (Robertson et al., 2013). Whānau Ora involves the promotion of a *kaupapa Māori*, or Māori worldview, embedded into mental health services, physical and cardiac rehabilitation, community involvement and health awareness workshops. Whānau leadership is at the heart of this policy: it moves away from person-centred thinking<sup>36</sup> to serve individuals as part of a greater group – whānau, iwi (tribal group) and hapū (subtribe).

Both Māori and non-Māori jobseekers with disabilities can access the Mainstream Programme<sup>37</sup>, an employment scheme that offers packages of subsidies, training, and other support to help persons with significant disabilities get work and to enable them to gain sustainable employment. It is hosted by the Ministry of Development and is available in a large range of state-sector and private-sector businesses and organizations. However, there is no official data to show the success rates of this programme in integrating and benefiting Māori with disability.

In 2011, the New Zealand Human Rights Commission published “Tracking Equality at Work for Disabled People”, noting that disability is the most frequent focus of enquiry and complaint to the Commission in the area of employment. It addressed double barriers faced by Māori with disabilities – discrimination, social isolation, higher rates of poverty and less access to education than non-Māori people with disabilities. The report provides ten recommendations to the government and private sector, including the promotion of the new equality framework with New Zealand businesses and employers in order to reinforce the case for greater equality, diversity and equal treatment at work (New Zealand Human Rights Commission, 2011).

## 5.6 The Philippines

The indigenous peoples in the Philippines are officially recognized by the Philippine Constitution and the Indigenous Peoples Rights Act (IPRA). The Republic Act No. 8371 (1) “recognize, protect and promote the rights of indigenous Cultural Communities/ indigenous peoples”. It also creates a National Commission on indigenous peoples, establishes implementing mechanisms and funds are allocated. Indigenous peoples in the Philippines represent around 13 per cent of the entire Philippine population and they are present in 65 of the 78 provinces in the country (GOVPH, 2014). There are no official statistics on the unemployment rates amongst indigenous persons with disabilities. However, the Philippines has the highest unemployment rate among members of the Association of Southeast Asian Nations, with 7.3 per cent unemployment in 2013 (International Labour Organization,

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36 For a detailed example of how Whānau Ora works, see [Whānau Ora Pathway \(online PDF\)](#).

37 See [Mainstream Employment Programme \(website\)](#).

2014). According to the Philippine Institute for Development Studies, unemployment rates amongst persons with disabilities can be four times higher than those for non-disabled people (Mina, 2013).

Tabuga and Mina (2011) found that Filipino women with disability are more likely to be unemployed, partly caused by their severely restricted access to education and safe livelihoods. Their study stated that the majority of women with disability experienced gender-based violence, and that frequently this trend intersects with age and ethnic origin, causing double layers of discrimination and segregation.

In 2012, the Philippine Institute for Development Studies (PIDS, 2012) conducted a quantitative study to analyse employment trends across persons with disability in Metro Manila and in Rosario, Batangas Province. These two locations have fairly large indigenous populations; nevertheless, the study does not detail whether or not the participants self-identify as indigenous. The results showed that approximately half of the population with disability is unemployed; those living in the city were more likely to obtain a job than those living in rural areas. Jobs obtained by persons with disabilities tended to be low-skilled, and the majority of those employed were considered vulnerable workers, either self-employed or unpaid family workers (Mina, 2013). The report highlights that the lack of specific support, accessibility and rehabilitation services prevents persons with disabilities from pursuing employment.

Youth unemployment is a major issue in the country, both for those with and without disability. This issue has been targeted by the JobStart programme, launched in 2014 by the Department of Labour and Employment in collaboration with the Asian Development Bank (ADB) and the Canadian International Development Agency (CIDA). The programme aims to increase youth employability by providing access to technical and life skills training demanded by employers, and by mentoring and tutoring young persons to improve their job searches and outcome, followed by on-the-job training. The pilot stage of this programme will be implemented in four regions of the country. It is, however, uncertain whether measures have been taken to ensure accessibility for indigenous people, persons with disabilities and women, as these groups are not mentioned in the outline of the programme.

The Philippines has been called by The Human Rights Council (The Human Rights Council, 2012) to review its implementation of the Magna Carta for Persons with Disabilities (1992), which commits to providing equal opportunities and non-discrimination for persons with disabilities, inclusive of employment. The Philippine Labour and Employment Plan 2011–2016 has prioritized the creation of opportunities for disadvantaged and/or vulnerable groups of workers, which under the description of the plan includes women, youth, low-skilled persons with disabilities and ethnic groups. This plan, prioritizes investment in the Community-Based Employment Programme (CBEP), which aims to contribute to the national goal of inclusive growth, poverty reduction and job creation. The plan also delivers training regarding agrarian reform and the development of sustainable livelihoods. However, there is no information available regarding how these programmes are integrating indigenous rights, indigenous views on disability, disability-specific support and the cultural sensitivity of their interventions and the enforcement of the Disability Act (1993) on accessibility.

The National Plan of Action for the Promotion and Protection of Human Rights highlights the need to involve persons with disabilities more closely in the review of laws; it is unclear how this participation will occur, however. The shadow report submitted by civil society to the CRPD Committee (Philippine Coalition on the U.N. Convention on the Rights of Persons with Disabilities, 2013) suggested that the participation of women with disabilities and other vulnerable groups, such as children and indigenous persons, has been insufficient or, in some cases, completely

absent. This report urged the government to strengthen its activity in the monitoring and implementation of the CRPD to ensure inclusion and non-discrimination.

### 5.7 United States of America

Indigenous peoples in the United States experience the highest rate of disability of any group in the country. Some 24 per cent of American Indians and Alaska Natives have a disability, compared to 19 per cent of the general population (United States Census Bureau, 2010). American Indians and Alaska Natives are more likely to be poor and less likely to obtain education and employment, particularly those with disabilities (National Congress of American Indians, 2012). The 2010 census reported that American Indians and Alaska Natives were over-represented amongst those who reported difficulty finding a job or remaining employed because of a health condition. These negative social indicators have a particular impact on those living on tribal lands, due to their unique circumstances and legal environments.

The Americans with Disabilities Act of 1990 “prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation” (ADA, 1990). However, the application and reach of this instrument did not benefit those living on reservations, because it specifically excludes Indian tribes from its requirements – which implies that such legislation may not be enforceable. As a result of this exclusion, the American Indian Disability Legislation Project was set up. By conducting a national survey, this project found that American Indians and Alaska Natives perceived themselves to be “caught in a public policy paradox”, as there were some legislative issues between protecting “the sovereignty of tribal governments and ensuring the civil rights guaranteed to all persons with disabilities” (American Indian Disability Legislation Project, 1995, p. 9). The American Indian Disability Legislation Project also found that fewer than 6 per cent of people living on reservations were aware of the existence of the ADA. However, they considered it very important to improve the quality of life of persons with disabilities living on reservations, and stated that work was needed to promote community inclusion and access to healthcare, employment and education. In 1995 the Congress of American Indians began to advocate for the enforcement of the ADA across all tribal and native lands. This campaign had very positive results. Whilst some tribes approved the ADA as it was, others, such as the Confederated Salish and Kootenai Tribes, passed their own very similar version of ADA through tribal resolution in 1995 (National Council on Disability, 2003).

The views and needs of American Indians and Alaska Natives with disabilities living in rural locations were explored in a study by Marshall, Johnson, Martin Jr, Saravanabhavan, and Bradford (1992). They found that these groups associated employment with wellbeing, viewing it as a means to gain economic stability and as a source of satisfaction. But fewer than a quarter of those participating in this study were employed, due to a lack of basic assistive devices, a lack of accessible transportation and discrimination. More than a decade later, Dutta, Gurvey, Chan, Chou, and Ditchman (2008) found that attitudes and social barriers to employment for Native Americans and Alaska Natives with disabilities were not much different from the previous findings of Marshall et al. (1992). Their study looked at the impact of vocational rehabilitation services on employment outcomes for persons with disabilities in the US, using data from the Department of Education and the Rehabilitation Services Administration (RSA). Their results show that Native Americans with either physical or intellectual impairments have 50 per cent or lower chance of finding employment than non-indigenous persons with disabilities. The results were equally negative for those who undertook training in preparation for work, since their chances of finding employment did not subsequently improve. However, this study also shared examples of success, pointing out that job placement

assistance, on-the-job support and maintenance in the open market are more likely to lead to successful employment than preparation for work or other approaches to employment.

Aiming to overcome barriers and increase the participation of American Indians and Alaska Natives in open employment, the National Congress of American Indians endorsed the Ticket to Work and Self Sufficiency programme in 2010. This programme is an avenue to employment for persons with disabilities who want to join, or re-enter, the workforce. It is directed at people receiving Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI). Participants in this programme, called “ticket holders”, receive access free of charge to employment services, vocational rehabilitation services and other support services leading to self-supporting employment.

The programme aims to enhance social security services to American Indians and Alaskan Natives with disabilities, and to assist members of tribal communities in the areas of career development and employment outcomes. Since its endorsement by the NCAI, the programme has been provided to American Indians and Alaskan Natives with disabilities by American Indian/Alaska Native Vocational Rehabilitation (AIVR) services. It connects individuals with jobs in the open market, offering comprehensive support and coordination with disability, health and rehabilitation services. Each “ticket holder” sets up their own job goals and develops an individual work plan.

The Ticket to Work programme had been operating since 1999 as a mainstream disability employment and support programme. Its results and outcomes have been evaluated on various occasions. Although these results do not include data from American Indian and Alaskan Native “ticket holders”, they are of great relevance. Evaluation highlighted that failures on the programme are often related to a lack of engagement with the social context of the “ticket holder”, unclear communication, or waiting and intervention time.<sup>38</sup> Although it is not possible to transfer this finding to an indigenous context, it is important to bear this recommendation in mind for the future development of the indigenous outreach aspect of Ticket to Work.

Lessons learned can positively influence the development of employment and training options for indigenous persons with disabilities. Along with Dutta et al. (2008), Morton (2013) and Cimera (2012) showed that persons with disabilities in the US are more likely to gain sustainable employment and obtain better wages when working in the community rather than in sheltered workshops, regardless of the nature of their disability.

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<sup>38</sup> Morton, 2013; Thornton et al., 2006; Thornton et al., 2007; Thornton et al., 2004.

# 6. Common issues resulting from the case studies

The seven national case studies discussed show that successful employment and livelihood strategies depend largely on indigenous peoples' leadership and community participation. Employment participation tends to be highly valued by indigenous persons with disabilities, regardless of the limited opportunities available. Unemployment is often related to discrimination, as well as involuntary transformations of indigenous livelihoods such as land loss and forced migration (Hall & Patrinos, 2012). The case studies show that the creation of employment must also create pathways of reconciliation between non-Indigenous and Indigenous cultures, as well as, honour indigenous self-determination.

The case studies showed that current strategies are falling short in responding to the employment and occupations needs of indigenous persons with disabilities, given current high unemployment rates. However lesson have been learned, some data extracted from the case studies showed that to be effective, any employment strategy must be based upon a deep understanding of the local social and political context as well as the nature of the issues faced by each community, region and country. The Canadian and New Zealand case studies showed that outcomes tend to be more positive when:

- programme planning and delivery involve various stakeholders, including employers;
- employment programmes are adaptable to each individual needs and preferences in a culturally harmonious manner;
- context and family dynamics are addressed;
- health and rehabilitation needs are considered;
- personal preferences are central to the delivery of employment services, including vocational preferences and desired location.

Successful approaches to employment programmes must foster links between disability and health services. Addressing the disability-specific needs of indigenous peoples, as well as facilitating the provision of reasonable accommodation in the workplace, contributes to successful employment outcomes.

## 6.1 Main findings and areas requiring further research

One of the objectives of this report was to examine available information on international experiences in vocational training and employment for persons with disabilities, highlighting examples of good practices and successful outcomes, as well as examples of initiatives that have not worked well. The data available show that doing this is difficult as usually there is no information on rates of participation of indigenous persons with disabilities in training and employment, their working conditions, what support is available.

Nonetheless, the data gathered do permit the assertion that participation in the labour market requires improvement, with affirmative action used as a means to empower indigenous persons with disabilities. Due to heightened situations of risk and vulnerability, legal protection measures such as culturally sensitive laws and regulations, non-discrimination legislation and policies, complaint mechanisms and human rights awareness are also crucial.

### **Barriers and failures**

Barriers to employment and wealth generation often arise from a lack of access to health and disability services. Indigenous peoples are over-represented among the poor worldwide (Hall & Patrinos, 2012). For indigenous persons with disabilities, social deprivation obstructs opportunities to attain an adequate standard of living, and ultimately obstructs access to basic healthcare, disability services and rehabilitation (Grech, 2009).

Additionally, programme failures often relate to a lack of understanding of cultural frameworks and community dynamics, as well as to a disconnection from the health and rehabilitation needs of indigenous persons with disabilities.

### **Cultural safety**

Among the lessons learned is that it is necessary to establish cultural safety protocols in relation to employment. The term “cultural safety” is in increased circulation in government policy related to community wellness, development and health in countries such as Australia, Canada and New Zealand (Brascoupé & Waters, 2009; Downing, Kowal, & Paradies, 2011). It refers to the development of safeguards to avoid any actions that diminish or disempower the cultural identity of indigenous peoples; in other words, it refers to “the changing power structures” (Brascoupé & Waters, 2009, p. 9). Cultural safety involves training in cultural sensitivity for non-indigenous people and the implementation of workplace protocols. But more importantly, it refers to changes in power structures by shifting from top-down approaches to working in partnership with communities, guided by meaningful consultation and participation. Examples from New Zealand and Canada show that community-led employment strategies tend to be more effective than centralized ones.

## **6.2 Policy frameworks for training and employment**

There is a gap associated with the employment opportunities and sustainable livelihoods of this group. Policy responses need to address rights infringements experienced by indigenous persons with disabilities worldwide, which include historical marginalization and lack of access to healthcare and rehabilitation, education and social services.

In general, the literature favoured on-the-job training over preparation-to-work training for mainstream disability employment. There was very limited information, however, on whether this approach has targeted indigenous persons with disabilities. Some limited data pooled from Canada and the US showed that indigenous persons with disabilities who completed preparation-to-work training did not improve their chances of obtaining, or retaining, a job. Nevertheless, participants valued having attended such training.

### **A gap at the intersection of indigeneity and disability**

Although in most of the countries covered in this report, there is legislation on non-discrimination and equal opportunities, those instruments tend not to refer explicitly to indigenous persons with disabilities. The CRPD country reports, recommendations made by the CRPD Committee, Special Studies conducted by the Permanent Forum on Indigenous Issues (PFII) and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) recognize that being indigenous and disabled can lead to double layers of discrimination, oppression, isolation and disempowerment. They concurred on the need for affirmative action, the inclusion of indigenous persons with disabilities in decision-making, and an increase in emphasis on rights accountability (United Nations General Assembly, 2014). For the progressive realization and monitoring of the UNDRIP, CRPD and ILO Convention No. 169, this gap must be addressed, and an indigenous pathway built into their mandate that highlights and safeguards the rights of indigenous persons with disabilities.

## **6.3 Land property rights**

Access to land is considered a key feature of indigeneity (Anderson, 2007; Anderson, Crengle, Leialoha Kamaka, Chen, Palafox, & Jackson-Pulver, 2006; Kirmayer & Valaskakis, 2009) and is associated with better health, a higher quality of life and good livelihoods for indigenous peoples (Ubink, Hoekema, & Assies, 2010; Watson, 2007). Information on access to land rights for indigenous persons with disabilities is limited and scattered. It is very important to highlight this knowledge gap and reiterate the need to explore whether indigenous persons with disabilities, in particular indigenous women with disabilities, have experienced any barriers to accessing their land rights. Data from Costa Rica showed that persons with disabilities are less likely to be property owners and have access to land (Asociaciones Costarricenses de Personas con Discapacidad, 2011). There may be additional factors to this statistic, but it is certainly relevant to current debates regarding personhood and citizenship as they relate to Article 12 of the CRPD, “Equal recognition before the law” (Quinn, 2010). Discussions are required on how this Article should be interpreted and implemented in relation to the land rights of indigenous persons with disabilities.

### **Higher exposure to exploitation**

Findings suggest that indigenous persons with disabilities are often exposed to exploitation. Studies from the Philippines indicated that indigenous persons sometimes have unpaid jobs, which raises concerns regarding the issue of forced labour. Further information must be gathered about these issues, paying particular attention to children and women with disability. Data regarding the risk of physical and sexual abuse is very limited (Comisión Económica para América Latina, 2014). Such exploitation has been linked to conditions of extreme social deprivation; as we know; indigenous persons are disproportionately exposed to extreme poverty and violence. However, the extent to which violence is affecting the lives of this group remains unknown.

### **Disability support for indigenous communities**

Regarding basic support and access to disability services, we know that caregivers are predominantly women, but not what support is provided to caregivers across indigenous communities. In relation to safe working conditions and disability, further research is required that addresses the link between indigenous persons with disabilities education, safety at work, and social protection.

### **Cash transfer schemes**

In terms of reducing poverty, fostering good livelihoods and access to work and employment, data from Mexico showed that cash transfers can improve the livelihoods of indigenous peoples, as can access to education and vocational training. However, this strategy is not sustainable. It is unknown how these programmes link people up with jobs in the open market, with formal training, food sovereignty, or micro-credits for stabilizing sustainable business.

### **Rural outreach**

There is also an urgent need to engage further with indigenous persons with disabilities in remote rural settings, with a view to developing evidence-based practice specific to that context.

### **Other areas that require more research**

The findings of this very first discussion paper raise several issues that require further research. It is necessary to examine emerging data that suggest ongoing violence and labour exploitation of indigenous persons with disabilities; as well as analyse why indigenous persons with disability are less likely to benefit from employment strategies. It is also very important to improve data collection and cultural sensibility of population census and other national surveys. Furthermore it is crucial to investigate further how governments are engaging with indigenous persons with disabilities to foster good livelihood and to implement the right to work as reflected in ILO Convention No. 169, the CRPD and the UNDRIP.

In discussing the objectives of this discussion paper, good practices and knowledge gaps have both been identified. The following section draws from these a set of tentative conclusions to inform the development of a rights-based approach to training and employment for indigenous persons with disabilities.

# 7. Conclusion

The UNDRIP, ILO Convention No. 169 and the CRPD reaffirm the inherent and inalienable right of self-determination as pre-eminent, and as a prerequisite for the realization of all rights, inclusive of the right to work. The findings of this discussion paper suggest that indigenous persons with disabilities are more likely to be unemployed, to live in poverty and to lack access to training and education, as well as to healthcare and rehabilitation. It is urgent that their voices be amplified.

A prescriptive or one-size-fits-all approach to enhancing training and employment for indigenous persons with disabilities is not feasible, since the situations of indigenous persons vary from region to region and from country to country. It appears that most of the literature on this topic is produced by high-income countries. Caution should be exercised in interpreting such information, as outcomes and experiences from these sources may not apply to other contexts where infrastructures and economic means are more restricted.

The findings have shown that any efforts to improve access to training, employment and good livelihoods for indigenous persons with disabilities require:

- that multiple structural barriers to employment, training and good livelihoods need to be addressed. Such barriers include multiple forms of discrimination, historical marginalization, lack of access to land and to social services such as healthcare and education;
- that a multiagency approach be applied to the employment and training needs of indigenous persons with disabilities;
- that the cultural competency of policy-makers in areas such as health, education and employment be strengthened by gaining awareness of indigenous issues via capacity-building and fostering partnerships with indigenous communities.

This discussion paper argues that historical marginalization and rights infringements can be counteracted by strengthening the influence of the UNDRIP, ILO Convention No.169 and CRPD in relation to the right to work. It is recommended that the key principles suggested in Section 3.4 be viewed as a starting point for debate on the creation of environmental conditions conducive to good livelihoods and working conditions for indigenous persons with disabilities.

It is important that these efforts will involve fully indigenous persons with disabilities in line with the principles enshrined in the ILO Convention 169, the UNDRIP and the UN CRPD. “Nothing about us without us”, the global motto of the disability community, needs also to be fully respected when dealing with indigenous persons with disabilities.

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