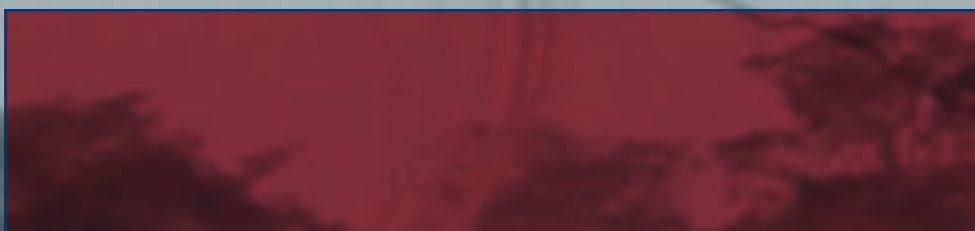




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Eliminating discrimination against indigenous and tribal peoples in employment and occupation

A Guide to ILO Convention No. 111

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A Guide to ILO Convention No. 111

Prepared by PRO169 and the Equality Team,
INTERNATIONAL LABOUR STANDARDS DEPARTMENT

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Eliminating discrimination against Indigenous and Tribal peoples in employment and occupation – A guide to ILO Convention no. 111

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Guide to Convention No. 111 for indigenous peoples

Preface

This Guide on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) for indigenous peoples is part of a broader effort by the ILO to support the development and implementation of national laws and policies guided by international labour and human rights standards.

Convention No. 111 provides an important framework for promoting the rights of indigenous women and men to equality and decent work in line with the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the 2007 United Nations Declaration on the Rights of Indigenous Peoples. Indigenous peoples' equal access to decent work that respects their needs and aspirations is not only a matter of human rights, it is crucial to the attainment of international and national development objectives.

The Guide is intended to serve indigenous peoples and their representatives as a source of information and a tool for engaging with policy and decision makers. At the same time it is a tool for the broader development community, including international and national development professionals.

The publication of this Guide is the result of a collaborative effort of the Project to Promote ILO Policy on Indigenous and Tribal Peoples (PRO169) and the Equality team in the ILO's International Labour Standards Department, bringing together experience gathered in the context of technical cooperation activities and standards supervision. The Guide has been written by Martin Oelz and Birgitte Feiring, with the support of Lelia Jimenez Bartlett and published with the support of DANIDA.

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Introduction

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

Declaration of Philadelphia, 1944

The International Labour Organization (ILO) is the United Nations system’s specialized agency mandated to promote lasting peace through social justice. The protection of workers’ rights and the promotion of decent work opportunities are at the core of the ILO’s Agenda. As stated in the Declaration of Philadelphia, which is an integral part of the ILO’s Constitution, the principle of equal treatment and equal opportunity is a major concern of the ILO. The elimination of discrimination in employment and occupation has also been recognized in the 1998 ILO Declaration on Fundamental Principles and Rights at Work as a fundamental human right that all ILO Members must respect, promote and realize.

Most States have accepted international obligations to achieve the realisation of the right to decent work, without discrimination of any kind.¹ Freedom from discrimination in all aspects of work and employment is a key aspect of this human right, which the *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)* seeks to achieve. Convention No. 111 is one of the eight fundamental ILO Conventions and has been ratified by 165 countries.² The Convention is accompanied by the *Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)*.

Indigenous and tribal peoples are the holders of unique cultures, knowledge systems and livelihood strategies. However, many have lost control over their own development path through historical processes. As a result, they are often excluded from political

¹ See, for instance, article 6 (right to work) of the International Covenant on Economic, Social and Cultural Rights, ratified by 156 states (as of 20 July 2007).

² As of 3 September 2007.

participation and their economies are undermined due to their lack of control over land and resources. Whether these peoples are pastoralists, hunter-gatherers, forest dwellers, peasants, workers in the informal economy or formally employed, most face high levels of discrimination and poverty – together with the lack of proper voice and representation in decision-making. Indigenous women face additional gender-based marginalisation and discrimination.

Convention No. 111 is applicable to – and very relevant for – indigenous workers, but it is hardly known among organisations of indigenous and tribal peoples. Furthermore, the links between the discrimination against indigenous workers and the application of Convention No. 111 have rarely been explored.

Therefore, the objectives of the guide are:

- To demonstrate the relevance of Convention No. 111 to the situation of indigenous and tribal workers;
- To provide practical information on Convention No. 111 to facilitate its use as an instrument to combat discrimination against these workers and promote their access to decent work opportunities; and
- To provide an overview on how the ILO supervises the application of Convention No. 111.

In addition, the *Convention on Indigenous and Tribal Peoples, 1989 (No. 169)*, which was adopted by the ILO in 1989, provides a series of very important elements for overcoming discrimination against these peoples and ensuring equality of opportunity and treatment for them. The guide will therefore also show how elements of Convention No. 169 can guide and contribute to an effective application of Convention No. 111 to help ensure that indigenous and tribal peoples fully enjoy their right to equality of opportunity and treatment in employment and occupation.

The guide is structured in three main parts:

1. Main issues concerning discrimination against indigenous and tribal peoples in employment and occupation
2. The ILO Convention No. 111 and its applicability to the situation of indigenous and tribal peoples
3. An introduction to the ILO's supervisory system

Discrimination against indigenous and tribal peoples in employment and occupation

Who are indigenous and tribal peoples?

Indigenous and tribal peoples³ number over 370 million individuals and represent approximately 5,000 distinct peoples in more than 70 different countries.

The term “indigenous and tribal peoples” is a general denominator for distinct peoples who have been pursuing their own concept and way of human development in a given geographical, socio-economic, political and historical context. Throughout history, these peoples have struggled to maintain their group identity, languages, traditional beliefs, worldviews and ways of life, and the control of their lands, territories and natural resources.

ILO Convention No. 169 underlines that these peoples include those who:

- Are descended from populations which inhabited the country or region at the time of conquest, colonisation or establishment of state boundaries
- Retain some or all of their own social, economic, cultural and political institutions

In addition, most indigenous peoples:

- Have strong links to their lands and territories
- Have distinct languages, knowledge systems and beliefs
- Form non-dominant sectors of society

Furthermore, self-identification is a fundamental criterion in determining who is covered by the Convention.

³ The ILO Convention No. 169 uses the terminology of “indigenous and tribal peoples”. For practical reasons, this is hereafter used interchangeably with “indigenous peoples”.

Indigenous peoples' cultures, governance institutions and knowledge systems are often closely related to their traditional occupations. These include handicrafts, rural and community based industries and traditional activities such as hunting, fishing, trapping, shifting cultivation or gathering. In some cases, indigenous peoples are simply identified by their traditional occupations, as, for example, pastoralists, shifting cultivators and hunter-gatherers.

Indigenous peoples often have much in common with other marginalized segments of society. For example they may have weak political representation and participation, limited access to social services, and face discrimination and exploitation in the labour market. However, as distinct peoples, they collectively pursue livelihood strategies, values and aspirations that may be fundamentally different from other sections of society.

Diversity of situations

Most indigenous peoples have developed highly specialized livelihood strategies, which are adapted to the specific conditions of their traditional territories and are highly dependent on access to lands, territories and resources. The era of economic globalisation has increased the pressure on indigenous peoples' lands and resources, implying that in many cases such traditional livelihood strategies, pastoralism or shifting cultivation, for example, may no longer be viable.

Although most indigenous peoples maintain strong links to their traditional lands and territories and maintain some elements of their traditional occupations, many seek alternative income. Today, the overwhelming majority of indigenous groups have some or even most of their members living outside their traditional territories where they have to compete for jobs and economic opportunities.

In short, the situation is far from static: historical processes have had a profound impact on indigenous peoples' occupations and employment situation, and have forced them to develop dynamic and diversified responses in order to adapt to shifting circumstances beyond their control. This diversity of situations will need to be considered when exploring how Convention No. 111 addresses the situation of these peoples.

Restrictions on engaging in traditional occupations (access to lands and resources)

The main problem faced by indigenous peoples regarding their traditional occupations is the lack of recognition of their rights to lands, territories and resources. Many communities have been marginalized and alienated due to land grabbing, large-scale development projects, population transfer, establishment of protected areas, etc.

Decision-makers are often unaware of the importance of indigenous peoples' traditional occupations in the pursuit of poverty reduction, food security and sustainable development as well as for the national economy in general. Traditional occupations are often unjustly disregarded as being outdated or unproductive and are even, in some cases, prohibited by law.⁴ This is further aggravated by the deterioration of environmental conditions, lack of investments, infrastructure and social services in indigenous areas, as well as poor access to markets and credit. The result is widespread malnutrition, poor educational results, health problems, increasing poverty, un- and under- employment, widespread out migration from indigenous lands and the destructions of social fabric and cultural institutions.

Discrimination in employment

Many indigenous peoples have had negative experiences with national and international labour markets where they have often been exploited or included in the most disadvantaged way, for example as bonded labourers in colonial regimes.⁵

Most indigenous and tribal societies have therefore developed diversified economies, comprising both subsistence and market-oriented production in combination with other types of employment. Job opportunities within indigenous territories are often few and many have to migrate – either temporarily or permanently – in search of work and economic opportunities. However, only few indigenous workers obtain well-paid jobs in the formal economy while many take unskilled jobs in the informal economy, with low wages and no social protection mechanisms. In developing countries, indigenous people are often found as domestic, agricultural or construction workers or as small-scale street vendors. Discrimination against indigenous workers is also a well-known phenomenon in richer societies where many indigenous people are un- or under- employed, or dependent on social welfare.

Lack of respect for indigenous peoples' rights and cultures may lead to discrimination against their traditional livelihood strategies and occupations and may also be the cause of discrimination against indigenous individuals seeking employment and economic opportunities outside their traditional lands.

There is a general lack of reliable data and statistics about indigenous peoples and there is even less knowledge about their particular situation with respect to occupation and employment. However, where evidence is available, it indicates that indigenous peoples are being discriminated against and thus belong to the poorest sections of society, with limited opportunities to pursue the occupation of their choice or to find employment.

⁴ This is, for example, the case with shifting cultivation in certain countries in South Asia.

⁵ The situation of forced labour of indigenous peoples was a major consideration leading to the adoption of ILO Convention No. 29 on Forced Labour in 1930.

The World Bank estimates that indigenous peoples constitute approximately 5 per cent of the world's population but 15 % of the poor.⁶ They often have limited access to basic social services (including education and vocational training) and are disproportionately represented among the victims of child labour and forced labour.

As indigenous people seek employment or occupations in the national and international labour market, they are often faced with a number of barriers and disadvantages:

- Many indigenous workers are not able to compete on an equal footing, as their knowledge and skills are not appropriately valued and they have limited access to formal education and vocational training.
- Indigenous workers are often included in the labour market in a precarious way that denies their fundamental labour rights.
- Indigenous workers generally earn less and the income they receive compared to the years of schooling completed is less than their non-indigenous peers. This gap increases with higher levels of education.

Discrimination against indigenous women

Discrimination in employment and occupation affects indigenous men and women differently and gender may be an additional cause of discrimination against indigenous women. In the labour market, indigenous women are more discriminated against than both indigenous men and non-indigenous women. In addition, indigenous women may also be discriminated against within indigenous communities themselves.

Many indigenous women:

- Have less access to education and training at all levels;
- Are more affected by un- and under- employment;
- Are more often involved in non-remunerated work;
- Receive less pay for equal work;
- Have less access to material goods and formal recognition needed to develop their occupation or to obtain access to employment;
- Have less access to administrative and leadership positions;
- Experience worse conditions of work, for example related to working hours and occupational safety and health;

⁶ World Bank: Implementation of Operational Directive 4.20 on Indigenous peoples: An independent desk review, Report No. 25332, 10 January 2003, Operations Evaluation Department, Country Evaluation and Regional relations (OEDCR), World Bank (Washington, DC).

- Are particularly vulnerable to sexual abuse and harassment and trafficking, as they often have to seek employment far away from their communities; and
- Are limited by discriminatory cultural practices which, for example inhibit the education of the girl-child or prevent women from inheriting land or participating in decision-making processes.

While often being subjected to discrimination, indigenous women have also been playing a leading role in the promotion of gender equality within their communities and also through mainstreaming a gender perspective into advocacy for indigenous people's human rights.

Internal discrimination

A phenomenon that is still largely unexplored is discrimination against certain sections within some indigenous societies, based on internal systems of social stratification. One such example is the discrimination against the “blacksmiths” within the Maasai society but more cases may be known as indigenous organisations increase their awareness of the reasons for and implications of discrimination.

Conclusions

Although there is often a lack of specific statistical information on the situation of indigenous and tribal peoples, available data do indicate that the discrimination against them is generalised in most countries where they live, most commonly in the following ways:

- Their livelihood strategies are not recognized or supported;
- Their languages, cultural values and skills are not recognized;
- Their rights to lands and resources are not recognized, which undermines their rights to engage in traditional occupations;
- They have limited access to education and vocational training – or such services are not adequately addressing their needs;
- They experience higher levels of un- and underemployment, have less access to jobs in the formal economy and are generally paid less than their non-indigenous peers;
- They are more affected by severe poverty and thus more vulnerable to becoming victims of child labour, forced labour, trafficking and other human rights violations; and
- Indigenous women face additional gender-based discrimination in the labour market and within their communities.

2

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

When using Convention No. 111 as an instrument to promote the right of indigenous and tribal peoples to equality of opportunity and treatment in employment and occupation, it is important as a first step to examine the basic features and concepts contained in this instrument.

This section looks into the following issues:

- The persons and groups covered by the Convention;
- The definition of “discrimination”;
- The meaning of “employment and occupation”; and
- The obligations of ratifying States.

Considering these features and concepts will assist in identifying the types of discrimination covered by the Convention.

The conclusions outline practical recommendations on how to use Convention No. 111 to promote and ensure equal treatment and equal opportunities for indigenous and tribal peoples.

Who is covered by the Convention?

The purpose of Convention No. 111 is to protect *all* persons, including indigenous peoples, against discrimination in employment and occupation. The Convention protects not only those who have already found employment or exercise an occupation, but also those who are preparing to work or seeking work.

The Convention applies to all sectors of activity and covers all occupations and employment in both public and private sectors, as well as in the informal economy. The Convention deals not only with wage-earning employment, but with independent and own-account work as well. Both nationals and non-nationals should be protected from discrimination on the grounds covered by the Convention.

What is discrimination?

Generally, the term discrimination is used to describe situations where certain individuals are treated differently and less favourably because of certain characteristics such as, for instance, their race, sex, religion or political opinion.

Convention No. 111 places the general principle of non-discrimination in the context of work and employment by providing a very specific legal definition of what constitutes discrimination (Article 1 of the Convention).

Box 1: Definition of discrimination

According to Convention No. 111, discrimination occurs when a **distinction, exclusion or preference** is made (“differential treatment”) **on the basis of certain grounds** such as race, colour, sex, religion, political opinion, national extraction or social origin (“prohibited grounds”), and such differential treatment has a **negative effect on** the enjoyment of **equality of opportunity and treatment in employment and occupation**.

The sections below further elaborate on the meaning and implications of the elements contained in the definition of discrimination as set out in Box 1. If a situation or practice involves all three elements, discrimination in the sense of the Convention may have occurred.⁷

Distinction, exclusion or preference

- These terms refer to the same phenomenon: a person, persons or group is/are being treated differently than others.
- Such differential treatment can exist in or result from a variety of sources including laws, administrative regulations, policies, practices, the functioning of institutions or social patterns.

Grounds of discrimination

- The Convention refers explicitly to seven grounds: race, colour, sex, religion, political opinion, national extraction and social origin.
- While it does not explicitly refer to discrimination against indigenous or tribal peoples, the prohibited grounds of race, colour and national extraction cover

⁷ However, the Convention allows certain distinctions, exclusions or preferences in respect of a particular job if they are based on the inherent requirements of that particular job. See Article 1(2) of the Convention.

discrimination on the ground of a person's ethnicity, language, and indigenous origin or identity.

- Indigenous people may be subject to discrimination based on one or more prohibited grounds. For instance, indigenous peoples may be discriminated against on the grounds of their religion or social origin. Indigenous or tribal women are often discriminated against because they are indigenous and because they are women.

Negative effect on equality of opportunity and treatment

- Differential treatment is discriminatory if it produces negative effects on the enjoyment of equality of opportunity and treatment of person(s) or groups concerned.
- “Equality of opportunity and treatment” includes two aspects: (1) the notion of equal treatment which requires that all persons should be treated on an equal footing; and (2) the notion of equal opportunity which requires that everyone must be offered comparable means and opportunities. The notion of equal opportunity suggests that everybody should be brought to an equal level in order to access work opportunities.
- With the focus on “effect”, it is irrelevant whether the discrimination was intentional or not.
- By emphasising the *effect* on equality of opportunity and treatment, the Convention aims at the elimination of both *direct and indirect discrimination* (see below).

Direct and indirect discrimination

Direct discrimination refers to rules, policies or practices that exclude or disadvantage certain individuals because they belong to a particular group or because they have certain characteristics (example: indigenous origin, sex, religion, etc.). This form is generally easier to identify.

Example

- *An enterprise hires indigenous and non-indigenous workers to perform plantation work as casual workers. However, indigenous workers are not hired under regular labour contracts, under which better wages are paid and benefits and allowances are available.*

Indirect discrimination is often hidden, more subtle and therefore more difficult to identify. It occurs when apparently neutral measures (rules, policies or practices) have a disproportionately adverse impact on one particular group. Even well-intended measures may be discriminatory.

Examples

- *A national vocational training scheme that applies to all parts of the population, including indigenous peoples, does not take into account the cultural differences between indigenous*

and non-indigenous groups(e. g. different languages, different ways to relate to the land, different cultural traditions, etc). This leads to low participation of indigenous peoples and as a result to fewer opportunities for indigenous peoples to access employment or to exercise the occupations of their choice, including traditional occupations.

- *The laws, regulations and policies on rural development do not acknowledge, or may even discourage, traditional livelihood activities that indigenous groups wish to pursue. As a result, the programmes and facilities to promote rural development may undermine the possibility of indigenous peoples pursuing their traditional occupations and livelihood strategies.*

Not all measures taken that have a negative effect on indigenous peoples are *per se* discriminatory. Such measures may be permitted if they are necessary and proportionate to achieve a legitimate objective. Whether a specific measure stands this test has to be decided on a case-by-case basis, depending on the specific circumstances. However, when applying the Convention to situations or practices affecting indigenous and tribal peoples, it would not be appropriate to accept justifications that are based on stereotypes concerning the capabilities, interests and aspirations of indigenous and tribal peoples, or other disregard for their rights and dignity. Rather, in order for a specific measure not to qualify as indirect discrimination, it would have to be shown that the measure's objective takes account of the rights and dignity of indigenous peoples, including the right to be consulted on matters that concern them.

The need to avoid and eliminate indirect discrimination requires decision-makers to take into account the differences between persons and groups when designing and implementing laws, policies and other measures, in order to avoid discriminatory outcomes. A situation should be created in which indigenous peoples enjoy equal opportunities in accessing the training, public services, and the resources that are necessary for them to obtain decent work, in conditions respectful of their cultures, ways of life and aspirations. The potential impact and effects of planned measures on indigenous and tribal peoples and communities should be assessed in consultation with the communities concerned.

The concept of indirect discrimination can thus serve as a tool to challenge views, perceptions and approaches concerning social and economic development held by dominant segments of society that so far have failed to recognize the rights and cultures of indigenous peoples.

What is meant by “employment and occupation”?

Convention No. 111 aims at the elimination of discrimination with respect to all aspects of “employment and occupation”. Article 1 (3) provides that the terms “employment” and “occupation” include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

“Employment” refers to work performed under an employment relationship with an employer. “Occupation” means the trade, profession or type of work performed by an individual, irrespective of the branch of economic activity or the professional status of the worker. Traditional occupations pursued by indigenous peoples, such as subsistence farming, handicraft production or hunting, are occupations covered by the Convention.

The notes below provide further details as to the situations that are covered by the Convention:

Education, vocational guidance and training

Without equal access to training, any real possibility of entering an employment or occupation would be illusory, inasmuch as training is one of the keys to the promotion of equality of opportunities. The Convention does not cover only vocational training in a narrow sense but any education or training that is necessary to obtain access to any given employment or to exercise a particular occupation. This includes skills development schemes or facilities for workers in the informal economy.

Indigenous and tribal peoples should have access to training that is based on their economic environment, social and cultural conditions and practical needs, as such training is more likely to promote their equal opportunities. When developing such training it is important to consult with the peoples concerned.

Example

- *An indigenous educational institution in a Latin America has been providing Bilingual Intercultural Education (BIE) over a number of years, taking into account the linguistic and cultural differences of indigenous peoples. However, new rules for selection of candidates for teacher training were introduced. These rules established admission requirements that were almost impossible to fulfil for the overwhelming majority of indigenous students. As a result, indigenous students were de facto excluded from training to become bilingual teachers. The new rules had been introduced without appropriate consultation and participation of indigenous peoples.*

Access to employment and particular occupations

Equality in respect of access to employment includes equal access to and equal treatment by placement services and other measures promoting employment in public work programmes, or other active labour market measures; and non-discrimination and equal opportunities in the context of recruitment and hiring.

Example

- *An enterprise indicates to an employment agency that it does not accept job seekers with an indigenous background.*

Equality in respect of access to particular occupations implies that nobody should be excluded from exercising the occupation of their choice on discriminatory grounds. Where indigenous peoples pursue their traditional occupations, they should enjoy access to credit, market facilities, agricultural extension and skills training facilities on an equal footing with other parts of the population. In all these cases, state policies will need to focus on equal opportunity in providing the skills, assets and resources on an equal basis.

Examples

- *Pastoralists who have migrated to a city wish to commercialize traditional herbs. In order to establish themselves economically they seek to obtain micro-loans. However, the financial institutions reject their loan applications based on the assumption that, because of the nomadic way of life of pastoralist communities, these people could disappear from the city and it will be very difficult to trace them. In this case, the justification for not giving access to loans could be based on a stereotype.*
- *A recent ILO study in South East Asia reported discriminatory practices against indigenous women bringing their agricultural products to the markets. Non-indigenous shopkeepers used ancient stones for weighing rather than kilogram measurement, which they are supposed to use as per the rule of the market. As result, indigenous women received a lower price for their products, and were thus deprived of the equal opportunity to develop themselves as entrepreneurs.⁸*

Access to land and natural resources is generally the basis for indigenous peoples to engage in their traditional occupations. Recognition of the ownership and possession of the lands which they traditionally occupy, access to land which they have used for traditional activities, and measures to protect the environment of the territories they inhabit are therefore crucial with a view to enabling indigenous peoples to pursue their traditional occupations. Where indigenous peoples' rights to ownership, possession or use of land are recognised under the law, these rights should be protected effectively.

Example

- *Land policies and laws may have the effect of depriving indigenous and tribal peoples from the land necessary to exercise shifting cultivation.⁹*

⁸ Sadeka Halim, *Case study on Gender Related Challenges Among the Indigenous Peoples in Bangladesh*, ILO/PRO-169 (forthcoming).

⁹ Kamal Aryal and Elisabeth Kerkhoff, *The right to practice shifting cultivation as a traditional occupation in Nepal: A case study to apply ILO Conventions Nos. 111 and 169*, ILO/PRO169 (forthcoming).

Terms and conditions of employment

The concept of “terms and conditions of employment” referred to in the Convention provides that all persons, without discrimination, should enjoy equality of opportunity and treatment in the following areas:

- Career advancement;
- Job tenure;
- Remuneration for work of equal value; and
- Conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and health measures, as well as social security measures, welfare facilities and benefits provided in connection with employment.

Examples

- *Indigenous agricultural workers are paid less for the same work than their non-indigenous peers.*
- *While indigenous workers are not provided with appropriate health protection equipment (e.g. to handle hazardous chemicals), such equipment is provided to non-indigenous supervisors.*

What are special measures?

Under the Convention, special measures can be taken to protect certain specific groups in order to meet their particular needs. Such measures, taken to respond to the protective needs of the groups concerned, are not deemed to be discriminatory.

Convention No. 111 specifically refers to special measures provided for in ILO Conventions and Recommendations, such as Conventions Nos. 107 and 169 that specifically address the situation of indigenous and tribal peoples. On this basis, Convention No. 111 allows ratifying States to take special measures to protect the rights, cultures and lifestyles of indigenous peoples.

Examples

- *Special measures to ensure effective protection with regard to recruitment and employment conditions of indigenous and tribal workers, as far as they are not protected by the laws applicable to workers in general (Convention No. 169, Art. 20(1)).*
- *Special measures to prevent encroachment or illegal taking-over of indigenous peoples' lands by non-indigenous outsiders (Convention No. 169, Articles 14 (2) and 14 (3)).*

The Convention also allows countries to take positive or affirmative action, sometimes referred to as *special temporary measures*. These are measures that aim at

compensating for past discrimination or at overcoming existing discrimination with a view to achieving equality. These measures are of a temporary nature, and thus maintained as long as necessary to achieve their objective, i.e. equality of the groups in favour of which they are taken. Accordingly, the implementation should be assessed on a regular basis.

Examples

➤ *Special educational grants for indigenous youth or reserved jobs in public sector employment.*

Any special measure taken should be determined in consultation with the groups concerned in advance.

What are the State's obligations under the Convention?

Article 2 of Convention No. 111 provides that the States must adopt and implement a national policy to promote equality of opportunity and treatment in employment and occupation, with a view to eliminating discrimination. Such a policy should not only include legal provisions prohibiting discrimination, but also proactive measures to achieve equality in practice. Where groups such as indigenous and tribal peoples, who are protected by the Convention, face inequalities in employment and occupation, the situation should be corrected.

While the Convention provides for a great deal of flexibility in designing such a national policy, the policy should make a practical and effective contribution to the elimination of discrimination. The Convention itself lists certain elements that a national policy should contain. These include the following:

- Enacting and enforcing appropriate legislation;
- Repealing discriminatory statutory provisions and administrative practices or instructions;
- Ensuring non-discrimination in public employment, and vocational guidance and training, as well as employment services under the government's authority;
- Promoting educational programmes (e.g. to promote awareness and respect for indigenous and cultures and lifestyles); and
- Cooperation with workers' and employers organisations, as well as other appropriate bodies (e.g. national equality or human rights commissions).

Recommendation No. 111 contains further guidance on what a national policy to promote equality in employment and occupation could entail.

National equality policies in the context of Convention No. 111 that have no impact on existing inequalities between indigenous peoples and other parts of the population in the area of employment and occupation should be reviewed and strengthened. In this regard, consultation with and participation of the indigenous and tribal peoples and communities concerned ensures that any measure taken to promote their equality in employment and occupation is in line with their needs and interests.

While the responsibility to adopt and implement an appropriate national policy under Convention No. 111 lies with the Government, this issue is also subject to international supervision by the ILO (see Part 3). In fact, the Convention specifically requires Governments to report to the ILO on the action taken in pursuance of the national equality policy and the results achieved by such action (Article 3(f)).

Conclusions

Convention No. 111 promotes equal access to decent work of indigenous and tribal peoples. It defines the principle of equality of opportunity and treatment in the context of work and provides for certain steps and measures that ratifying States must take in order to respect, promote and realize this principle.

In order to identify situations that may involve discrimination as defined by Convention No. 111, it is necessary to examine carefully the facts that are thought to constitute discrimination. After the facts have been identified, they need to be linked to the elements making up the definition of discrimination (see box 1). If all elements can be identified, discrimination in employment and occupation may have occurred. The final step in such an examination is to assess whether the distinction, exclusion or preference that negatively affects indigenous peoples, is justified by an objective and legitimate reason.

Checklist 1 below provides guidance for examination of concrete situations with a view to identifying discrimination that is contrary to the Convention.

Checklist 2 has been included to assist indigenous and tribal peoples and relevant decision-makers in examining the national policy to promote equality of opportunity and treatment in employment and occupation, which is either in place or under consideration in their countries.

Checklist 1: Identifying discriminatory laws, policies and practices

1. Determine what constitutes the “distinction, exclusion or preference”?

- ✓ Identify the person(s) or groups that face differential treatment.
- ✓ Identify the act, omission or process that treats the persons or groups concerned differently or leads to exclusions (a law, administrative regulation, policy or practice etc).
- ✓ Identify the author, if any, of the act or omission (e.g. an administrative body or authority or private actors (such as an enterprise)).

2. Establish that the differential treatment is based on a prohibited ground

- ✓ Do the person(s) or groups that face differential treatment or exclusion have personal characteristics that relate to one or more of the prohibited grounds of discrimination (race, colour, sex, religion, political opinion, national extraction or social origin)?
- ✓ Is the treatment due to the person’s indigenous or tribal origin?
- ✓ In a case of suspected indirect discrimination, do the apparently neutral measures disproportionately affect indigenous peoples, as compared to non-indigenous parts of the population?

3. What is the negative effect on equality in employment and occupation?

- ✓ In which ways does the distinction, exclusion or preference have a negative effect?
- ✓ Identify the aspect of employment and occupation that is affected (training, access to particular occupations, access to necessary resources, recruitment, terms and conditions of work, dismissal, etc).
- ✓ Examine how indigenous men and women are affected.

4. Is there a valid and legitimate justification?

- ✓ Is the differential treatment justified because it is based on an inherent requirement of a particular job (e.g. a non-indigenous job applicant has been preferred over an indigenous applicant due to a difference in qualifications that are actually needed for the job)?
- ✓ In case of suspected indirect discrimination, the following questions should be examined to determine whether the measure concerned could be justified because it is necessary and proportionate to achieve an legitimate objective:
 - Is the objective of the measures concerned based on respect for indigenous peoples' rights and dignity?
 - Has the distinct situation of the indigenous and tribal peoples concerned (practical needs, economic situation, language, etc) been taken into account when designing and putting in place the measures concerned?
 - Have the communities concerned been consulted?
 - Have any alternative measures been explored that are more respectful of the indigenous and tribal people's right to exist and maintain their culture and institutions?

Checklist 2: Strengthening the national policy to eliminate discrimination against indigenous and tribal peoples

In order to effectively eliminate discrimination against indigenous and tribal peoples, the following elements should be considered in the national policy:

- ✓ Legislation prohibiting and preventing discrimination in employment and occupation against indigenous peoples, as well as effective enforcement of such legislation. Ensuring access of indigenous and tribal peoples to judicial and administrative procedures.
- ✓ Measures to protect indigenous and tribal peoples in the informal economy from work-related discrimination, forced labour and other exploitative labour practices.
- ✓ Provisions to ensure that indigenous and tribal peoples can carry out their traditional occupations without undue restrictions and to this end recognizing their right to exist and to maintain their cultures, traditions and institutions in national law and policies.
- ✓ Social dialogue on indigenous and tribal peoples' and persons equal opportunities to access decent work.
- ✓ Promotion of awareness and respect for indigenous cultures and traditions among non-indigenous segments of society.
- ✓ Providing educational and training opportunities on at least an equal footing with the rest of the national community. Ensure that the training programmes offered are based on the practical needs, social and cultural conditions and economic environment relevant to the peoples concerned. Consider the provision of bilingual and intercultural education.
- ✓ Consultation with and participation of indigenous and tribal peoples in the development and implementation of measures designed to promote their equality of opportunity and treatment in employment and occupation, including any special measures.

- ✓ Mainstreaming the promotion of equal opportunities in employment and occupation in relevant national policies, such as land policies, poverty reduction strategies, rural or local development programmes, training policies, employment policies (including *inter alia*, active labour market measures, environmental policies, and gender policies).
- ✓ Enhanced cooperation between governmental units responsible for labour and employment matters, human rights, or indigenous and tribal affairs.
- ✓ Integration of a gender perspective in all measures undertaken to promote equality of opportunity and treatment of indigenous and tribal peoples.
- ✓ Monitoring of the situation of indigenous peoples in employment and occupation on the basis of appropriate data (disaggregated by sex).

The ILO's supervisory system

States are required to **report regularly** to the ILO on the implementation of ratified Conventions, indicating not only whether national laws are in conformity with the Convention in question, but also informing the ILO about what has been done to make sure the Convention has had an impact on a practical level.

It is important to remember that, unlike the rest of the UN system, the ILO is a **tripartite** organisation. This means that its constituents, and therefore also decision-makers, are not only governments, but also workers and employers, (**ILO constituents**). These all have an active role to play in the supervision of ratified conventions.

➤ *More detailed information concerning the supervisory procedures of the ILO can be found in Rules of the Game: a brief introduction to International Labour Standards and in the Handbook on procedures relating to international labour Conventions and Recommendations¹⁰*

The regular monitoring of ILO Conventions

Reporting on ILO Conventions is regulated by article 22 of the **ILO Constitution**. States are required to report on ratified ILO Conventions at intervals of **one to five** years, depending on which Convention is concerned, and on any problems encountered in the implementation of the Convention. Reports on Convention No. 111 are required at least every two years.

Workers' and employers' organisations can submit observations concerning the application of ratified Conventions in their own right (article 23 of the ILO Constitution), either to their governments or directly to the International Labour Office. They may, for instance, draw attention to a discrepancy in law or practice regarding a Convention that might otherwise have gone unnoticed.

The ILO body examining the application of ratified Conventions is the **Committee of Experts on the Application of Conventions and Recommendations (CEACR)**. This is a body of up to 20 independent experts that meets in Geneva once

¹⁰ <http://www.ilo.org/public/english/standards/norm/information/publications.htm>

a year. The Committee examines States' reports, observations from workers' and employers' organisations and other information of relevance, such as information from the United Nations System. The latter includes information from the UN committees responsible for monitoring human rights treaties as well as official information emerging from relevant UN bodies and mandates, including the Permanent Forum on Indigenous Issues and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples.

The CEACR engages in a process of ongoing dialogue with governments on the application of ratified Conventions, and this regular supervision can be very effective in identifying implementation and information gaps and suggesting measures and mechanisms for improved implementation. The Committee's comments on the fulfilment by States of their standard-related obligations take the form of either "observations" or "direct requests":

- **Observations.** Observations are the CEACR's public comments on the application of ILO Conventions. They highlight areas of progress as well as areas of concern and may also request further information on certain topics. Observations are published every year in book format¹¹ and on the ILOLEX online-database (<http://www.ilo.org/ilolex>).
- **Direct requests.** These are sent directly to the government in question, and generally ask for more information on specific subjects. They are also published on the ILO web site (ILOLEX).

¹¹ The Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III(1A).

Box 2: Comments by the Committee of Experts concerning indigenous peoples under Convention No. 111: Some examples from the Committee's 80th Session (2006)¹²

Belize was requested to provide detailed information on the measures taken to promote equal opportunity and treatment of men and women from indigenous communities in employment and occupation, as well as information on any results achieved in promoting balanced representation in vocational training and in the widest range of economic activities and work.

Cameroon was invited to provide information on measures taken to improve the living and working conditions of indigenous and tribal peoples, in particular with regard to equality of opportunity and treatment in employment and occupation. The Committee also requested statistical information, disaggregated by sex, on the situation of the Baka, Bagyèli and Mbororo in the labour market, including participation in education and vocational training.

In its comments addressed to the Government of **Kenya**, the Committee of Experts emphasized that legal protection alone may not be sufficient to promote equal opportunities for all groups of the population to appropriate training and education, as well as equal opportunities to access employment and occupations, including traditional livelihood activities. On that basis, the Committee asked the Government to provide information on any measures taken or envisaged to promote and ensure that minority groups enjoy work and employment opportunities on an equal footing with other parts of the population.

Concerning **New Zealand**, the Committee noted that labour market inequalities between Maoris and Pacific people continued to exist. It considered that where marked labour market inequalities along ethnic lines exist, a national policy to promote equality of opportunity and treatment, as envisaged in Articles 2 and 3 of the Convention, should include measures to promote equality of opportunity and treatment of members of all ethnic groups in respect to access to vocational training and guidance, placement services, employment and particular occupations, and terms and conditions of employment. In order to achieve the objective of the Convention it is necessary to address gaps in training and skills levels, as well as to examine and eliminate other difficulties and barriers that Maoris, Pacific people and members of other ethnic groups, face in accessing and retaining employment in the various sectors and occupations.

¹² The full texts of the respective observations and direct requests are available on ILOLEX.

Special procedures

In addition to the regular procedures for supervising the implementation of ILO Conventions, there are also procedures to deal with more serious situations, and alleged violations of these Conventions. The most commonly used complaints procedure in the ILO system is as follows:

- **Representations.** These are governed by article 24 of the ILO Constitution. A Representation alleging a Government's failure to observe certain provisions of ratified ILO Conventions can be **submitted to the ILO by a workers' or employers' organisation**. These should be submitted in writing, and invoke article 24 of the ILO Constitution, as well as outline which provisions of the Convention in question are alleged to have been violated. Once the representation has been received, the ILO's Governing Body appoints a **Tripartite Committee** (i.e. one government representative, one employer representative and one worker representative) to examine it.

Can indigenous peoples participate in the supervision of ILO Conventions?

Given the tripartite structure of the ILO, **where do indigenous peoples fit in?** There are several ways in which indigenous peoples can ensure that their concerns are taken into account in the regular supervision of ILO Conventions by the CEACR:

- If a new policy, law, or court decision emerges, then this kind of information can be sent **directly to the ILO**. The texts of laws and court decisions, for example, may be considered as **verifiable, objective information**.
- In order for other kinds of information to be officially taken into account by the ILO, it must be sent by one of the ILO constituents. Usually, workers' organisations have a more direct interest in indigenous issues. Therefore, for the purposes of ensuring indigenous peoples' issues are raised, it is important that they strengthen their **alliances with workers' organisations** (trade unions).
- **Technical cooperation** is another way that the ILO can assist governments and indigenous peoples in making progress towards the implementation of ratified Conventions. Sometimes technical cooperation is directly related to the supervision of ILO Conventions, and can help to overcome problems in their implementation.
- Through **innovative approaches**, for example, through establishment of formal relations and procedures between indigenous peoples and governments. For instance, Norway requested that the Saami Parliament submit its own independent comments on the Government's regular reports under the Convention, and that these comments be considered by the ILO alongside the Government report.

Conclusions

As shown in Part I of this Guide, Convention No. 111 is highly relevant and fully applicable to indigenous and tribal peoples. It is intended to protect them from discrimination at work, irrespective whether it occurs with regard to the exercise of their traditional occupations and livelihood activities, vocational training or education, or through the operation of public or private employment agencies. The Convention is intended to protect indigenous and tribal workers irrespective of whether they work in the informal or formal economy, and irrespective of their employment status.

Identifying discrimination against indigenous and tribal peoples in employment and occupation is a first step towards addressing and eliminating it. One remaining challenge is to generate a better understanding and more specific data on the discrimination against indigenous and tribal workers, including particular data on situation of indigenous women.

At the national level, indigenous and tribal peoples may be able to take legal action to challenge such discrimination on the basis of national legislation, but they may sometimes also rely on international law, including Convention No. 111. Raising sound discrimination concerns and arguments in the context of advocacy, negotiations and dialogue with policy and decision makers is another important course of action that this Guide is intended to stimulate. Such activities should aim at strengthening the national policies that ratifying countries adopt and implement to promote equality in employment and occupation. Elimination of discrimination in employment and occupation can be achieved only if such national policies benefit all groups of the population on an equal footing, including indigenous and tribal peoples.

References

- Equality at Work: tackling the challenges, Global Report under the ILO Declaration on Fundamental Principles and Rights at Work*, ILO, 2007.
- General Survey on Equality of Opportunity and Treatment in Employment and Occupation*, Committee of Experts on the Application of Conventions and Recommendations, ILO, 1988.
- Handbook on Combating Child Labour among indigenous and tribal peoples*, PRO169/IPEC, ILO, 2006.
- Handbook on procedures relating to international labour Conventions and recommendations*, ILO, Revised edition 2006.
- ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169): A Manual*, Project to Promote ILO Policy on Indigenous and Tribal Peoples, 2000.
- Special Survey on Equality of Opportunity and treatment in Employment and Occupation*, Committee of Experts on the Application of Conventions and Recommendations, ILO, 1996.
- Time for Equality at Work: Global Report under the ILO Declaration on Fundamental Principles and Rights at Work*, ILO, 2003.
- Tomei, M., *Ação afirmativa para a igualdade racial: características, impactos e desafios*, Documento de Trabalho, ILO Brasília, 2005.
- Tomei, M., *Affirmative Action for Racial Equality: Features, impact and challenges*, DECLARATION WP/44/2005, ILO, 2005.
- Tomei, M., *Indigenous and Tribal Peoples and Poverty Reduction Strategy Papers (PRSPs): an ethnic audit of selected PRSPs*, ILO, 2005.
- Thomas, V.(ed.), *Traditional Occupations of Indigenous Tribal Peoples: Emerging Trends*, Project to Promote ILO Policy on Indigenous and Tribal Peoples, 2000.
- Vera Rojas, Patricia, *La Discrimination en los Procesos de Selección de Personal*, ILO, DECLARATION Working paper No. 46, November 2006.

ILO websites

International Labour Standards Department:

www.ilo.org/normes

ILOLEX database:

<http://www.ilo.org/ilolex/>

Project to Promote ILO Policy on Indigenous and Tribal Peoples:

<http://www.ilo.org/indigenous>

Programme to Promote the Declaration:

www.ilo.org/declaration

Annex 1: ILO Convention No. 111

Discrimination (Employment and Occupation) Convention, 1958

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, and

Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and

Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

Article 1

1. For the purpose of this Convention the term *discrimination* includes –
 - a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
 - b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with

representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

3. For the purpose of this Convention the terms *employment* and *occupation* include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Article 2

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.

Article 3

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice –

- a) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;
- b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;
- c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;
- d) to pursue the policy in respect of employment under the direct control of a national authority;
- e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;
- f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

Article 4

Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

Article 5

1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.

2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

Article 6

Each Member which ratifies this Convention undertakes to apply it to non-metropolitan territories in accordance with the provisions of the Constitution of the International Labour Organisation.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications

and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

- a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;
- b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

Annex 2: ILO Recommendation No. 111

The Discrimination (Employment and Occupation) Recommendation, 1958

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Discrimination (Employment and Occupation) Convention, 1958,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight, the following Recommendation, which may be cited as the Discrimination (Employment and Occupation) Recommendation, 1958:

The Conference recommends that each Member should apply the following provisions:

I. Definitions

1.

(1) For the purpose of this Recommendation the term discrimination includes –

- a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
- b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

(2) Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof is not deemed to be discrimination.

(3) For the purpose of this Recommendation the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

II. Formulation and Application of Policy

2. Each Member should formulate a national policy for the prevention of discrimination in employment and occupation. This policy should be applied by means of legislative measures, collective agreements between representative employers' and workers' organisations or in any other manner consistent with national conditions and practice, and should have regard to the following principles:

- a) the promotion of equality of opportunity and treatment in employment and occupation is a matter of public concern;
- b) all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of –
 - i) access to vocational guidance and placement services;
 - ii) access to training and employment of their own choice on the basis of individual suitability for such training or employment;
 - iii) advancement in accordance with their individual character, experience, ability and diligence;
 - iv) security of tenure of employment;
 - v) remuneration for work of equal value;
 - vi) conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment;
- c) government agencies should apply non-discriminatory employment policies in all their activities;
- d) employers should not practise or countenance discrimination in engaging or training any person for employment, in advancing or retaining such person in employment, or in fixing terms and conditions of employment; nor should any person or organisation obstruct or interfere, either directly or indirectly, with employers in pursuing this principle;
- e) in collective negotiations and industrial relations the parties should respect the principle of equality of opportunity and treatment in employment and occupation, and should ensure that collective agreements contain no provisions of a discriminatory character in respect of access to, training for, advancement in or retention of employment or in respect of the terms and conditions of employment;

f) employers' and workers' organisations should not practise or countenance discrimination in respect of admission, retention of membership or participation in their affairs.

3. Each Member should –

- a)* ensure application of the principles of non-discrimination –
 - i)* in respect of employment under the direct control of a national authority;
 - ii)* in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;
- b)* promote their observance, where practicable and necessary, in respect of other employment and other vocational guidance, vocational training and placement services by such methods as –
 - i)* encouraging state, provincial or local government departments or agencies and industries and undertakings operated under public ownership or control to ensure the application of the principles;
 - ii)* making eligibility for contracts involving the expenditure of public funds dependent on observance of the principles;
 - iii)* making eligibility for grants to training establishments and for a licence to operate a private employment agency or a private vocational guidance office dependent on observance of the principles.

4. Appropriate agencies, to be assisted where practicable by advisory committees composed of representatives of employers' and workers' organisations, where such exist, and of other interested bodies, should be established for the purpose of promoting application of the policy in all fields of public and private employment, and in particular –

- a)* to take all practicable measures to foster public understanding and acceptance of the principles of non-discrimination;
- b)* to receive, examine and investigate complaints that the policy is not being observed and, if necessary by conciliation, to secure the correction of any practices regarded as in conflict with the policy; and
- c)* to consider further any complaints which cannot be effectively settled by conciliation and to render opinions or issue decisions concerning the manner in which discriminatory practices revealed should be corrected.

5. Each Member should repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy.

6. Application of the policy should not adversely affect special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status are generally recognised to require special protection or assistance.

7. Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State should not be deemed to be discrimination, provided that the individual concerned has the right to appeal to a competent body established in accordance with national practice.

8. With respect to immigrant workers of foreign nationality and the members of their families, regard should be had to the provisions of the Migration for Employment Convention (Revised), 1949, relating to equality of treatment and the provisions of the Migration for Employment Recommendation (Revised), 1949, relating to the lifting of restrictions on access to employment.

9. There should be continuing co-operation between the competent authorities, representatives of employers and workers and appropriate bodies to consider what further positive measures may be necessary in the light of national conditions to put the principles of non-discrimination into effect.

III. Co-ordination of Measures for the Prevention of Discrimination in All Fields

10. The authorities responsible for action against discrimination in employment and occupation should co-operate closely and continuously with the authorities responsible for action against discrimination in other fields in order that measures taken in all fields may be co-coordinated.

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