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75th Session 1988

Report VI (2)

**Partial revision of the Indigenous
and Tribal Populations Convention,
1957 (No. 107)**

Sixth item on the agenda



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INTRODUCTION

At its 234th Session (November 1986) the Governing Body of the International Labour Office decided to place on the agenda of the 75th Session (1988) of the International Labour Conference the following item: "Partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107)".

In accordance with article 39 of the Standing Orders of the Conference which deals with the preliminary stages of the double-discussion procedure, the Office drew up a preliminary report¹ which is to serve as a basis for the first discussion of this question. After briefly summarising the background to the Governing Body's decision, the report presents an analysis of the law and practice on the subject in various countries, and an overview of recent developments. It also includes, as an appendix, extracts from the report of the Meeting of Experts called by the Governing Body in 1986 to advise it on this question. The report, which concluded with a questionnaire, was communicated to the governments of the member States of the ILO, which were invited to send their replies so as to reach the Office by 30 September 1987.

At the time of drawing up the present report, the Office had received replies from the governments of the following 53 member States: Algeria, Argentina, Australia, Austria, Bahrain, Barbados, Benin, Bolivia, Brazil, Bulgaria, Burundi, Canada, Central African Republic, Chile, Colombia, Cote d'Ivoire, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, Finland, Gabon, German Democratic Republic, Federal Republic of Germany, Guatemala, Guinea-Bissau, Honduras, Hungary, India, Ireland, Madagascar, Mexico, Mozambique, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Sweden, Switzerland, Trinidad and Tobago, Uganda, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom, United States, Yugoslavia, Zambia.²

The attention of governments had also been drawn to the recommendation addressed to them by the Governing Body, at its 183rd Session in June 1971, that they should consult the most representative organisations of employers and workers before finalising their replies; governments were asked to indicate which organisations had been consulted. It was also recalled that such consultation is required for States which have ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

¹ ILO: *Partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107)*, Report VI(1) (Geneva, 1987), International Labour Conference, 75th Session, Geneva, 1988.

² Replies that arrived too late to be included in the report may be consulted by delegates at the Conference.

The governments of 17 member States (Australia, Benin, Bulgaria, Canada, Colombia, Cuba, Czechoslovakia, Denmark, Finland, India, Ireland, Japan, Madagascar, Norway, Portugal, Sweden, United Kingdom) stated that their replies had been drawn up after consultations with the most representative organisations of employers and workers, or made known in their replies the opinions expressed on certain points by these organisations. Six governments (Brazil, Canada, Gabon, Switzerland, United Kingdom, United States) communicated the opinions of employers' and workers' organisations separately, or such opinions were communicated separately. In one case (Netherlands: Council of Netherlands Employers' Federations (RCO)) a reply was received from an employers' organisation but not from the government of the country. In three other cases (Brazil: National Confederation of Industry (CNI); Switzerland: Swiss Workers' Union (SGB); United Kingdom: Trades Union Congress (TUC), an employers' or workers' organisation communicated substantial replies (i.e. containing answers to individual questions) while the governments of their respective countries did not. In accordance with article 39, paragraph 3, of the Standing Orders of the Conference as amended at the 73rd Session (1987), replies received from employers' and workers' organisations are reproduced when they have not been reflected in the government's reply.

Following a recommendation made by the above-mentioned Meeting of Experts and approved by the Governing Body, it was suggested that in preparing their replies to the questionnaire governments also consult representatives of indigenous and tribal populations in their countries, if any; it was noted that there was no requirement to do so. The governments of four countries (Australia, Canada, Finland, Sweden) indicated in their replies that they had carried out such consultations; the Government of Peru stated that because of time pressures it had been impossible to hold formal consultations but that the views expressed by these peoples in previous consultations had been taken into account. The Government of Canada included the comments of the indigenous representatives separately in its report; these comments are reproduced in the present analysis.

If the Conference considers it advisable to adopt a revised version of Convention No. 107, the Office will prepare, on the basis of the Conclusions adopted by the Conference, a draft revised Convention which will be submitted to governments. It will then be for the Conference to take a final decision in the matter at a future session.

The present report has been prepared on the basis of the replies received, the substance of which is reproduced below together with brief commentaries; the Proposed Conclusions appear at the end of the report.

REPLIES RECEIVED AND COMMENTARIES

This section contains the substance of the general observations made by governments and of their replies, as well as of any separate replies received from employers' and workers' organisations.

Each question is reproduced and followed by a list indicating the governments that replied to it, grouped in accordance with the nature of the replies (affirmative, negative or other); where a government submitted observations qualifying or explaining its reply, and where separate observations have been received from employers' and workers' organisations (and in one case from an indigenous organisation), the substance of each observation is given, in alphabetical order of countries, after the above-mentioned list. Observations that are the equivalent of a simple affirmative or negative reply are not reproduced, unless they are replies of workers' or employers' organisations which differ from the replies of their respective governments. Where a government deals with several questions in one reply, the substance of its reply is given under the first of these questions. Some governments, in their replies, communicated information on their national law and practice. This information, while most useful for the work of the Office, has not been reproduced unless it is essential to an understanding of the relevant reply.

In cases in which the Office has precise information as to the opinions of representatives of indigenous and tribal populations on the wording of a given point, this information is included briefly in the analysis of the relevant Point in order to assist the Conference in its discussions, given the limited opportunity it will have to consult directly the representatives of the groups concerned.

The summary of the observations on each question is followed by a brief Office commentary referring to the relevant Point (or Points) of the Proposed Conclusions at the end of this report.

General observations

A number of States (Austria, Bahrain, Burundi, German Democratic Republic, Federal Republic of Germany, Guinea-Bissau, Hungary, Ireland, Mozambique, Portugal, Yugoslavia) replied that the revision of the Convention was of no direct concern to them, and/or that there were no indigenous and tribal populations within the meaning of Convention No. 107. This information does not in every case coincide with the information available to the Office, or with its understanding of the scope of Article 1 of Convention No. 107.

Several States (Central African Republic, Czechoslovakia, Guinea-Bissau, Hungary) did not reply to the individual questions, but indicated that the Office report constituted a satisfactory basis for discussion.

Several other States made general observations in addition to their specific comments under individual questions, or in lieu of the same.

Australia. It is no longer appropriate that the basic thrust of the Convention should be towards integration of indigenous and tribal peoples through government activities. The Preamble to the Convention should be amended to remove integrationist language and to acknowledge the rights of indigenous people to determine freely their own economic, social and cultural future.

Canada. The Government communicated detailed information on administrative and other measures taken with regard to indigenous populations in that country.

Chile. Revision is not considered necessary. In Chile there is no difference between indigenous and non-indigenous peoples, and the Government does not agree with discrimination between Chileans and indigenous persons, or with the new concept of self-determination and individual development of the indigenous populations, in an isolated form separate from the rest of Chilean society.

India. The Government agrees that presumptions of cultural inferiority should be removed from the Convention when it is revised. It further considers that it is necessary to examine closely the precise connotations of "integrationism/non-integrationism" and of concepts such as "as much control as is possible over economic, social and cultural development", "right to interact with national society", "self-determination", etc. It considers it necessary that the question of revising the basic orientation of the Convention be remitted to the International Labour Conference, which should decide whether or not such a change in orientation is necessary and, if so, define its conceptual foundations, especially with regard to the concepts mentioned above.

Japan. The Government wishes to reserve the replies to the respective questions owing, for example, to the vagueness of the concrete meaning of the questions concerning the "scope and definition" under the present situation.

Norway. The 1987 Act establishing a "Sameting" indicates that Norway intends to promote the principle by which the Sami people and indigenous populations shall participate actively in discussing and deciding on their own affairs: "the national authorities have the responsibility for securing for the Sami people the necessary means to maintain and further develop their own culture with the purpose of remaining a people in their own right in the future" (quotation from the introduction to the Sami Act).

Sweden. Prior to undertaking a partial revision of Convention No. 107 it is worth recalling that most international instruments relating to human rights came into being after this Convention had entered into force. Those instruments are also applicable to indigenous populations. A working group of the United Nations Commission for Human Rights is currently framing a declaration on the rights of indigenous populations. The Swedish Sami have long declared in various contexts that they do not demand ratification of ILO Convention No. 107 by Sweden. The reasons are obvious. Since the Convention was adopted, views concerning indigenous populations and their ways of life have changed considerably. The Swedish ILO Committee endorses the view expressed in the report that the assimilation strategy which constitutes the basic idea of the Convention represents a paternalist attitude towards indigenous populations. The Committee agrees with the proposals in the report concerning the main emphasis of the Convention. A revised Convention expressing respect for the culture of indigenous populations would also be in keeping with Swedish policy towards immigrants and minorities. The Convention, however, ought not to embody a static view of culture; its principal objectives should be to preserve and develop the culture of indigenous populations on their own terms. Thus, it is essential to provide for the right of indigenous populations to be consulted concerning decisions which affect them. Owing to developments in recent decades, Convention No. 107 can no longer be considered "devoid of immediate interest where Sweden is concerned", and the Swedish ILO Committee therefore wishes to recommend that Sweden take part in the revision of Convention No. 107. However, since the Swedish Sami Rights Committee has for some years now been investigating the situation of the Sami in Sweden and has not yet completed its inquiries, the Committee will confine itself to answering only certain points in the questionnaire.

Title and Preamble

A number of proposals have been received concerning the revision of the title and Preamble of Convention No. 107, though there were no questions in this regard in Report VI (1). The Office suggests that these proposals be taken up after the first discussion of the partial revision by the Conference.

Introduction

Do you consider that the International Labour Conference should undertake a partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107)?

Qu. 1

Total number of replies: 33.

Affirmative: 32. Algeria, Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Hungary, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Sweden, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Chile.

Bolivia. A revision is important in order to reaffirm the basic rights of indigenous populations – particularly with regard to labour – and to guarantee them full participation in national decisions within the framework of the Nation State. It should also facilitate the preservation and development of their cultural identity on a free and equal footing. The possibility of exceeding the ILO's competence should be kept in mind, since some of these questions are covered by other bodies in the United Nations system.

Brazil. National Confederation of Industry (CNI): Yes, as long as the partial revision does not go beyond the ILO's competence, and provided the principles of universality and flexibility are observed.

Bulgaria. Developments concerning these populations make it essential to adopt international instruments guaranteeing greater protection than that provided by Convention No. 107.

Canada. International Business Council (IBC): Yes, in order to bring the Convention into line with present realities and to incorporate principles developed by the Meeting of Experts. Canadian employers reiterate their concern with the extremely broad scope of this subject-matter and its extension beyond the scope of the ILO, namely matters related to employment, labour relations and associated social concerns.

Ecuador. The Conference may proceed with the partial revision of the Convention but the draft is highly prejudicial to the sovereignty of States, and especially to the interests of developing countries (see also under questions 78 and 80).

Finland. Yes. Finland has not ratified the 1957 Convention because its basic starting-points are unsuited to national circumstances, and because the populations covered by it are so small in Finland. They are already covered by the same legislation as others, and opportunities to pursue their traditional trades (reindeer husbandry), language and culture are protected by special legislation.

Madagascar. Yes, since certain provisions are outdated.

Netherlands. Council of Netherlands Employers' Federations (RCO): Emphasis should be placed on the word "partial".

New Zealand. Yes, but the Convention as it stands is outside the ILO's mandate. The questions in Report VI (1) deal to a large extent with matters that are even further outside the ILO's mandate. The revised instrument should deal only with labour-related matters (including social security). Setting standards in respect of the other issues that have been raised is more appropriate for the United Nations Working Group on Indigenous Populations.

Suriname. Yes. Recognition should also be given to the importance of the American Declaration of the Rights and Duties of Man and the activities of the Organisation of American States in this field.

Sweden. Yes. Perhaps Recommendation No. 104 should also be revised.

Switzerland. Swiss Workers' Union (SGB): The Office should examine all possibilities to ensure that indigenous organisations participate directly and effectively in the revision process.

United Kingdom. Trades Union Congress (TUC): Yes, provided that it is made clear that national governments have a responsibility for protecting the rights of individual members of these populations in relation to cultural norms and the customs and traditions of tribal societies.

United States. Yes. The orientation of Convention No. 107 towards integration is inconsistent with the current Indian policy in the United States of self-determination. Other refinements as indicated in reply to other questions would also help to make the Convention more relevant to today's indigenous and tribal populations living in the United States.

Zambia. Yes. The Convention in its present form is outdated and is not in conformity with the aspirations of the peoples concerned.

An overwhelming majority of the governments and employers' and workers' organisations have recognised the need for a partial revision of the Convention; only one State considered it to be unnecessary. While some responses have said that the revised instrument should confine itself to the ILO's normal sphere of activity, others have stressed the need to incorporate international human rights standards adopted since the adoption of Convention No. 107, and to ensure that the new instrument recognises the full rights of indigenous and tribal peoples to enjoy these rights on an equal footing with other members of national society. The Office does not recommend revising Recommendation No. 104 in view of the complexity of the questions involved.

Qu. 2 *If so, and in view of the nature and variety of questions covered in this Convention, would you agree that the Office prepare, as a working basis for the Conference discussion, conclusions with a view to a revised Convention on this subject?*

Total number of replies: 31.

Affirmative: 30. Algeria, Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Sweden, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Ecuador.

Algeria. Yes, on the basis of the responses furnished by member States in consultation with the representatives of the populations concerned.

Finland. Yes. The conclusions in the ILO report are well directed and provide a good basis for the discussion.

The majority of replies are affirmative and call on the Office to prepare Proposed Conclusions as a working basis for the Conference discussion.

Possible Convention

I. PURPOSE OF THE PARTIAL REVISION

Do you consider that the basic orientation of a revised Convention should reflect respect for the cultures and traditions of the indigenous and tribal peoples concerned, and their right to be consulted concerning decisions which affect them? Qu. 3

Total number of replies: 32

Affirmative: 28. Algeria, Argentina, Australia, Bolivia, Bulgaria, Colombia, Cuba, Denmark, Finland, Gabon, Honduras, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Sweden, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 4. Benin, Canada, Ecuador, Egypt.

Australia. Yes. The basic orientation should be changed from the objective of integration to one of respect for the identity of indigenous populations. This is consistent with the Government's policy of recognising the fundamental rights of Aborigines and Torres Strait Islanders to retain their cultural identity and to make their own choices.

Benin. Developments that have occurred since the adoption of Convention No. 107 should have allowed for the integration of these populations into the life of the country and their identification in this integration. Consequently, the revision should focus on modernising the life of these populations.

Bolivia. Yes. Not only the right to consultation but also the wider concept of participation through democratic, representative and pluralistic means, should be taken into consideration. In addition, the integrationist concept of Convention No. 107 and its presumption of the inferiority of these populations should be revised. However, neither

the Office nor the Meeting of Experts has offered a sufficiently detailed justification for the assertion that the concept of integration into national society which characterises Convention No. 107, is obsolete. This delicate question of basic orientation should be debated fully during the 75th Session of the Conference.

Brazil. CNI: Yes, as long as this does not interfere with national sovereignty.

Canada. The basic orientation should reflect respect for the cultures and traditions of the populations concerned. It should reflect the principle that governments should in good faith, whenever possible, consult these populations concerning decisions which directly affect them. The Government understands the term "consultation" in this context to mean seeking in an appropriate manner the views, advice and assistance of the indigenous and tribal populations directly affected by policy, programme or legislative measures.

Canadian Labour Congress (CLC): The basic orientation should reflect respect for the cultures and traditions of these peoples and, more particularly, for the institutions through which their cultures and traditions are given effect. In this context, consultation is a concept devoid of utility and must be replaced by recognition of the right of these peoples to determine and control their own affairs.

Indigenous Working Group (IWG): Yes, but "consultation" is not adequate for all situations, particularly where the fundamental rights of indigenous peoples are concerned. In many instances, provision must be made for the meaningful involvement of indigenous peoples and for their informed consent.

Colombia. Yes, but without the excessive protectionism provided in Convention No. 107.

Cuba. Yes, there are fundamental aspects lacking in the earlier Convention.

Ecuador. Any Convention on indigenous and tribal populations should reflect respect for their cultures and traditions, but not be prejudicial to the sovereignty, security, development and independence of States, or to the right of the State to the preservation, use and usufruct, for its own benefit, of its natural resources.

Finland. Yes, this principle is followed in Finland in taking decisions affecting the Sami population (Skolts included). Society should be tolerant towards the manners and traditions of its various populations.

Mexico. Yes, as well as respect for political and economic self-determination within their communities.

Netherlands. RCO: The first part of this question is covered by Convention No. 111. The second part should be left to existing national systems. The ILO should not go into any details.

New Zealand. Yes, in so far as this is consistent with the response to question 2.

Nicaragua. Yes. This is precisely the policy followed by the Government.

Switzerland. SGB: The current Convention is demeaning for indigenous populations and cannot be reconciled with their fundamental rights, since they are not free but assimilated into non-indigenous cultures and institutions. The orientation of the Convention should be revised with a view to protecting the rights of these peoples to their own development and natural resources.

United States. Yes. Emphasis should be placed on respect for indigenous peoples' decision-making. By assuming responsibility for their own problems, these peoples should become committed to the generation and implementation of their own solutions.

Zambia. Yes, decisions should not be imposed on peoples. If this is done it may lead to a revolt by the peoples concerned. Consultation is a cornerstone of democracy.

With regard to respect for the cultures and traditions of the peoples concerned, the responses are mostly affirmative. Concerning consultation, varying views have been expressed. The Government of Mexico, for example,

proposes the inclusion of respect for political and economic self-determination within indigenous and tribal communities. The Government of Australia proposes that the basic orientation should be respect for their identity. The Government of the United States proposes that the emphasis should be placed on respect for indigenous peoples' decision-making. One workers' organisation suggests that the basic orientation should also reflect respect for the institutions of these peoples through which cultures and traditions are given effect. The comments by the Government of Bolivia are in part justified. The detailed argumentation on these points was contained in documentation supplied to the Meeting of Experts.

The majority of indigenous organisations from which information is available feel that the terms "consultation" and "participation" are inadequate; these terms were largely rejected by the indigenous and tribal representatives at the 1986 Meeting of Experts. They state that there should be more emphasis on the right of these peoples to "determine" and "control" their own affairs, and that economic and social self-determination should be the basic orientation of the revised instrument.

Alternatively, there have been suggestions that provision should be made for the meaningful involvement of indigenous peoples and for their informed consent. It will clearly be difficult to reconcile these very different proposals. The Proposed Conclusions prepared by the Office emphasise that governments should always seek the consent of the peoples concerned in policies and programmes affecting them.

Do you consider that replacing the basic orientation of Convention No. 107, which is focused on integration, by the orientation described in the previous question, will require the partial revision of a number of its Articles?

Qu. 4

Total number of replies: 30.

Affirmative: 29. Algeria, Argentina, Australia, Bulgaria, Canada, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Sweden, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 1. Ecuador.

Australia. Yes. The overall thrust of the Convention in terms of the promotion and protection of indigenous peoples' rights and of economic and social development is still relevant. Amendments are required to various Articles.

Ecuador. The new basic orientation as suggested in the report gives rise to extremely dangerous situations which are conducive to the national disintegration of many member States; this orientation would weaken national unity and facilitate the strategies of foreign powers which seek to use substantial sectors of the populations of other nations against their legitimate interests, endangering the strategic resources of these nations.

Netherlands. RCO: A positive answer to the first part of question 3 does not require that the orientation of integration be abolished. The ILO is not in a position to judge if the concept of integration should be abolished. This should be left to national circumstances and goes beyond the ILO's field of competence. A partial revision of Convention No. 107 is acceptable.

Nigeria. Yes, it will require the partial revision of Articles 1, 2, 3, 4 and 5, all of which emphasise the integrationist approach.

The vast majority of replies agree that the partial revision of a number of Articles of the Convention is required in order to remove the emphasis on integration.

Qu. 5 *Do you consider that it is necessary also to revise the Articles of Convention No. 107 that –*

(a) deal with land (Articles 11 to 14) and

(b) with recruitment and conditions of employment (Article 15)?

Total number of replies: 32.

Affirmative: 22. Algeria, Argentina, Australia, Bolivia, Bulgaria, Colombia, Cuba, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, New Zealand, Nigeria, Norway, Peru, Saudi Arabia, Sierra Leone, Suriname, Zambia.

Negative: 2. Nicaragua, Uganda.

Other: 8. Benin, Canada, Denmark, Portugal, Sierra Leone, Ukrainian SSR, USSR, United States.

Algeria. Yes, with a view to suppressing all persisting restrictions or constraints to the establishment of full equality of treatment between all the populations concerned.

Argentina. This is a matter of fundamental importance.

Benin. (a) No. Integration should provide these populations with the means of accelerating their integration within national life.

(b) Yes. Intervening developments should have allowed for the training of these populations for modern-day professions.

Bolivia. (a) These Articles should be revised to guarantee more clearly the rights of effective ownership, possession and use of lands by indigenous communities. The inclusion of rights over the subsoil would not be compatible with national legislation.

(b) Article 15 should also be revised in order to achieve rules equidistant between effective protection and paternalism.

Brazil. CNI: (a) Yes, as long as the provisions concerning property rights, which are outside the ILO's mandate, are deleted from the text of the Convention.

(b) Yes, as long as this revision does not provide for more favourable treatment than that provided for other workers.

Bulgaria. (a) It would also be necessary to ensure the comprehensive protection of territories occupied by these populations. Any relocation of these populations should be

carried out only with the consent of all concerned. The question of compensation should also be resolved on this basis.

(b) The conditions of employment of these populations should not be distinguished from those of other citizens.

Canada. IWG: Yes, but only to the extent that such revision would strengthen the rights of indigenous peoples in a manner consistent with the fundamental purpose of this partial revision.

Colombia. (a) Yes, provided the forms of protection are adapted to the present circumstances of land tenure in the majority of countries.

(b) Article 15 should be revised to require States to guarantee to indigenous and tribal populations identical rights in the area of employment as those enjoyed by other workers, thus reaffirming equality among all workers, without reinforcing discrimination derived from overly protective standards.

Denmark. Yes, as regards Article 15.

Ecuador. These Articles could be revised, but not in such a way as to serve as instruments for weakening state authority or creating private "sovereignties".

Madagascar. (a) Yes, property rights must be re-examined, in particular collective rights over the land indigenous peoples occupy, and their participation in cases of expropriation proposed by the State.

(b) Yes, the provisions on recruitment and employment of these people should be revised in the light of existing standards in these areas.

Netherlands. RCO: (a) Articles 11-14 should not be revised. The ILO went beyond its competence when Convention No. 107 was adopted.

(b) There is no need to change Article 15. Special measures for these populations are covered by Article 15. Whenever a State ratifies a Convention in the field of recruitment and employment the relevant national laws and legislation are also applicable to these populations. See also Convention No. 111.

New Zealand. Any revised text should deal only with labour-related matters and thus land issues should be excluded.

Suriname. (a) Yes. There is no need for a strict limitation to "land", as "traditional territories" has a wider scope and can be extended to protect natural resources taking into account the national legal system.

(b) Yes, all relevant conditions of work in the widest sense.

Sweden. Yes, as regards Article 15.

Switzerland. SGB: (a) A revision and strengthening of the Articles on land is indispensable.

(b) The provisions on recruitment and employment conditions could also be strengthened, but this takes second place to the need for a new orientation of the Convention, with the new priorities to be established by the indigenous peoples themselves.

Ukrainian SSR. (a) In Articles 11-14, provisions concerning the recognition of the right of collective ownership of the lands which these populations traditionally occupy should be retained.

(b) It is necessary to retain the provisions of Article 15 concerning the prevention of all discrimination between workers belonging to the populations concerned and other workers, in particular as regards matters mentioned in paragraph 2.

USSR. (a) In Articles 11-14, provisions concerning the right of collective ownership of the lands which these populations traditionally occupy should be retained.

(b) It is necessary to retain the provisions of Article 15 concerning the prevention of all discrimination between workers belonging to the populations concerned and other workers, in particular as regards matters mentioned in paragraph 2.

United States. (a) Yes. The term "equivalent" in Article 14 could threaten to diminish the benefits being received by those indigenous and tribal persons already receiving special treatment through treaty rights or special legislation. Throughout the Articles on land, it would be helpful to ensure that language promoting equality also recognises this special treatment.

(b) No. The existing Article is sufficient.

This question received a substantial majority of affirmative replies. A limited number of replies indicated that the partial revision should affect only Article 15 of the Convention and that the land provisions in Articles 11 to 14 should be left unchanged. These questions will be dealt with in more detail under the Articles concerned. The prevailing view that the revision of all of these Articles is a matter of fundamental importance is reflected in the Proposed Conclusions.

Qu. 6 *Do you consider that the revised Convention should replace the term "populations" with the term "peoples" in order to reflect the terminology used in other international organisations and by these groups themselves?*¹

Total number of replies: 32.

Affirmative: 26. Algeria, Argentina, Benin, Bulgaria, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 2. Canada, Ecuador.

Other: 4. Australia, Bolivia, Saudi Arabia, Sweden.

Australia. Such a change would be consistent with the rejection of the integrationist approach, and would more appropriately convey the notion of distinctive identity on which the revision is based. It is significant that the term "peoples" or its equivalent is already used by many countries in their internal legislation dealing with indigenous affairs. However, Australia also recognises that in the context of the United Nations, the term "peoples" has a particular meaning which would be out of place in a Convention intended to cover indigenous peoples with a high degree of political autonomy, even a right to political self-determination and independence, as well as indigenous peoples which are part of a larger nation. Careful consideration should be given to how the meaning of "peoples" can be defined so as to include indigenous groups whose political status may vary widely from country to country.

Benin. Yes. There is room to consider the aspirations of the groups concerned.

Bolivia. The term "populations" would create fewer conflicts, and is probably more widely accepted.

¹ Provisions which otherwise remain unchanged would of course incorporate this modification, if approved. This questionnaire has been drafted on the assumption that this change will be approved.

Bulgaria. In order to maintain coherent terminology, “peoples” may be used, but it should be defined accurately.

Canada. The term “populations” should be retained. It is non-pejorative and its use is consistent with the current practice of United Nations bodies and agencies, including the Working Group on Indigenous Populations. The term “peoples”, on the other hand, does not have a clear meaning in international law and could prevent ratification of a revised Convention by some countries. The words “aboriginal peoples” are used in Canadian law. However, the Government of Canada would, along with many other member States, have strong reservations about supporting the use of the term “peoples” in an international Convention.

IWG: Yes. It is absolutely essential that the distinctiveness of indigenous societies be fully reflected in the terminology of the revised Convention.

Ecuador. The replacement of the word “populations” by the word “peoples” would be futile and unnecessary, unless it was intended to oppose the word “people” to the word “nation”, thus leading to the creation of the right of these groups to separate government and to the creation of their own “State” within the national State.

Finland. Yes. The aspiration for a uniform terminology should be furthered in all possible ways.

Gabon. Yes. The word “peoples” better emphasises the identity demanded by the persons concerned.

Mexico. Yes, in order to use the same language as other international organisations, but above all that used by the Indians themselves.

Netherlands. RCO: No, the word “population” is still correct. The fact that “other international organisations” and these “groups themselves” use the word “peoples” does not justify the proposed change. The ILO should not try to be modernistic. An ILO Convention contains a legal text. The word “peoples”, which has a political connotation, does not belong in an ILO Convention.

Nigeria. Yes. It should however be made clear that the term “peoples” is used to recognise that the groups have an identity of their own.

Portugal. Yes, with the reservation pointed out on page 31 of Report IV (1), that “the Conference discussion makes it clear that the term is used to recognise that these groups have an identity of their own and consider themselves to be peoples, but that the implications of the term within the national context of ratifying States must be determined at the national level”.

Sierra Leone. Yes, because so many ethnic groups make up the population.

Sweden. If the term “peoples” is used, it should be made clear that this does not imply an extension of the principle of national self-determination to the indigenous population. The introduction of the term “peoples” immediately prompts the question of political self-determination for indigenous populations. Since this question could have far-reaching political effects which are evidently not intended, the substitution of “peoples” for “populations” would be inappropriate.

Switzerland. SGB: Yes, since the term “peoples” better reflects the fact that these persons are organised groups with the right to a collective political identity and a certain degree of autonomy, as used in the United Nations Charter and in other international instruments.

United States. Yes. The term “peoples” should accurately reflect the tribal governments recognised by the United States federal Government.

The vast majority of replies were affirmative. The few negative replies expressed concern that the word “peoples” has a political connotation which does not belong in an ILO Convention, and raises the issue of political

self-determination. It was also stated that the term “peoples” does not have a clear meaning in international law. Notwithstanding these important considerations, there appears to be general agreement that the term “peoples” better reflects the distinctive identity that a revised Convention should aim to recognise for these population groups; moreover, it has been pointed out that the term “peoples” is sometimes used in domestic legislation dealing with these groups.

Reference is made to the reply of the Government of Australia. It is for the reasons indicated in that reply that the Office suggested, in Report VI (1), that the Conference discussion should make it clear that the implications of the term within the national context of ratifying States must be determined at the national level.

The Office does not propose that the revised Convention should provide a complete definition of the term “peoples”, but it would be advisable to clarify that the use of the term in this Convention should not be taken to imply the right to political self-determination, since this issue is clearly beyond the competence of the ILO. This is reflected in the Proposed Conclusions, in the form of a new paragraph of a revised Article 1 of the Convention.

II. SCOPE AND DEFINITIONS

Qu. 7 *Do you consider that Article 1, paragraph 1 (a), should be amended to refer to 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 and regulations?*

Total number of replies: 30.

Affirmative: 27. Algeria, Argentina, Bulgaria, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Sweden, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 2. Bolivia, Ecuador.

Other: 1. Canada.

Qu. 8 *Do you consider that Article 1, paragraph 1 (b), should be amended to refer to 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 and which, irrespective of their legal status, retain some or all of their traditional social, economic, cultural and political institutions?

Total number of replies: 31.

Affirmative: 28. Algeria, Argentina, Australia, Bulgaria, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Sweden, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 2. Bolivia, Ecuador.

Other: 1. Canada.

The replies to these two questions are dealt with together.

Algeria. It seems necessary to revise these Articles completely in order to affirm equality of treatment for all.

Argentina. Yes. It is also important to incorporate the concept of self-identification.

Australia. Yes. Australia suggests a revision along the lines of the Australian policy on identifying Aboriginal and Torres Strait Islanders: "A person of Aboriginal or Torres Strait Islander descent who identifies as an Aboriginal or Torres Strait Islander, and who is accepted as such by the community in which he or she lives." The point of descent and the attitude of the individual and community concerned are very important.

Bolivia. These revisions are not essential.

Canada. The Convention should apply to all indigenous populations, and should ensure that objective criteria are applied in defining the populations covered.

CLC: It is essential that self-definition form the fundamental basis of any defining Articles.

IBC: Yes. The final phrase of Article 1 (1) (a) referring to status regulated by their own customs and traditions, etc., may not be applicable in some countries where integration and assimilation are matters of national policy.

IWG: Yes, but this Convention should clearly be applicable to all indigenous peoples, including those living in colonial situations and under home rule. In Article 1 (1) (b) delete all the words after "colonisation", since some indigenous peoples may no longer have their traditional institutions through no fault of their own.

Colombia. Yes, the drafting is much more precise than that of Convention No. 107.

Cuba. Yes, this is a necessary updating.

Mexico. Yes, but there is a need to add more elements to the characterisation of indigenous peoples, as for example: possession of a given territory, use of a particular language, and ethnic identity or the fact of belonging to an ethnic group.

Netherlands. RCO: Yes, with the exception of the word "political", which should not be introduced. The words "at the time of conquest or colonisation" should be deleted, as they express a subjective opinion.

Norway. Yes. However, the words "or establishment of supremacy by other means" should be added after the word "colonisation".

Portugal. Yes, given that the terminology adopted presupposes cultural inferiority and implies an integrationist vision which is outdated.

Sweden. Yes, subject to the observation made in reply to question 6, above. A "broad" definition of the kind referred to here will require greater consideration to be shown in the Convention for the varying conditions of different indigenous populations.

Switzerland. SGB: Article 1, paragraph 1 (a), should drop the reference to tribal peoples as being "less developed"; it should specify that indigenous peoples who have experienced socio-cultural change as a result of colonisation are covered by the Convention.

United States. Yes. This description accurately portrays the tribal peoples living in the United States.

Zambia. Yes, to remove the connotation of cultural inferiority.

The substantial majority of replies to these questions were affirmative. However, additional points were also proposed. First, the Governments of Argentina and Australia and the CLC of Canada have proposed that the concept of self-identification be included. The Government of Mexico has mentioned the aspect of ethnic identity. This concept is also important to all indigenous organisations from which information is available.

It would seem useful to incorporate the concept of self-identification of indigenous or tribal communities as one important criterion for determining the population groups to which the provisions of the present Convention apply. This is reflected in the Proposed Conclusions. An indigenous organisation has stated that indigenous peoples may, through no fault of their own, no longer possess their traditional institutions, and that for this reason the words "retain some or all of their traditional institutions" may be an unjustifiable criterion. It has therefore proposed the deletion of all the words after "colonisation". It would seem inappropriate to delete all the words after "colonisation" because some reference to social, economic and cultural institutions different from those of other sectors of the national population appears necessary. The Office also considers that the term "some or all" is sufficiently flexible that it covers a very wide range of degrees of retention of these institutions.

Qu. 9 *Do you consider that paragraph 2 of Article 1 should be omitted from the revised instrument, and that other references in the Convention to "semi-tribal populations" should also be omitted?*

Total number of replies: 31.

Affirmative: 30. Algeria, Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Sweden, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Ecuador.

Finland. Yes. The change would correspond to the revised fundamental orientation.

Gabon. Yes, anything which contains the stigma of inferiority should be deleted from the revised Convention.

Nigeria. Yes. "Semi-tribal" has a derogatory connotation.

Switzerland. SGB: All references to "semi-tribal groups" should be omitted since they are demeaning.

United States. Yes. The term "semi-tribal populations" is not commonly used in the United States as a description of Native Americans.

Zambia. Yes, due to its integrationist connotation.

With one exception, there was unanimous agreement that this paragraph should be omitted from a revised instrument. It is therefore proposed to delete this paragraph and all other uses of the term "semi-tribal".

III. GENERAL POLICY

Do you consider that Article 2, paragraph 1, should be amended to provide that governments shall have the primary responsibility for developing co-ordinated and systematic action, in co-operation with the peoples concerned, to ensure both their protection and their participation in the life of their respective countries, with full respect for their social and cultural identity? Qu. 10

Total number of replies: 31.

Affirmative: 24. Algeria, Argentina, Australia, Bolivia, Bulgaria, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Nicaragua, Nigeria, Norway, Peru, Portugal, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 7. Canada, Ecuador, Finland, Madagascar, Mexico, New Zealand, Saudi Arabia.

Australia. Self-determination is an extremely important concept in international relations and constitutes a fundamental human right of peoples. It is intrinsic to that right that all peoples freely determine their political status as well as freely pursue their economic, social and cultural development. "Self-determination" has also been used in another sense by governments, including the Australian Government, in the municipal context, to refer to the conduct by indigenous peoples of their own affairs. In this sense, "self-determination" has not necessarily included the right to determine political status as that right is usually understood at the international level. There may, however, be situations in which a right to "self-determination" would in fact include the right of an indigenous people to determine freely its political status, as provided in the Human Rights Covenants. In examining how reference should be made to "self-determination" in the Convention, it will be necessary to take into account the diverse political circumstances of indigenous peoples. In order to balance the indigenous peoples' desire to set their own goals in relation to their own cultural, material and spiritual development with national governments' responsibility to the national community, to co-ordinate and implement overall development, the Meeting of Experts put forward a proposed amendment to Article 2:

In co-operation with indigenous and tribal peoples, governments shall have the responsibility for developing co-ordinated and systematic action to ensure:

- (a) that indigenous and tribal peoples are able to enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination;
- (b) that indigenous and tribal peoples' territorial rights, economic rights and political, social, cultural and religious institutions are recognised and protected;
- (c) that indigenous and tribal peoples be accorded the respect of determining for themselves the process of development as it affects their lives and institutions.

Australia supports the inclusion of these or similar words in the amended Convention. Consideration will need to be given to the meaning and extent of "economic rights" mentioned above.

Canada. Yes, subject to clarification of the meaning of the term "protection". Canada's understanding is that this means physical protection. If the term "protection" involves more than physical aspects, then it may be difficult for governments to assume an obligation to "ensure" or guarantee open-ended protection of the populations concerned. Canada thus suggests amended wording for Article 2, paragraph 1: "... with a view to protecting the social and cultural identity of those populations, encouraging their self-reliance, and enabling them to participate in the life of their respective countries". This would provide both the necessary flexibility in the obligation and precision as to the type of protection meant. The reference to indigenous self-reliance is in keeping with part of the amendment suggested by Canada IWG and with the Government's policy of encouraging local control and responsibility.

CLC (replying to questions 10 and 11): Questions 10 and 11, as formulated, are paternalistic and integrative in their thrust. The issue of "development" must therefore be addressed within a context which recognises the basic principles of orientation outlined above.

IWG: No, replace with: "Governments shall have the responsibility for developing co-ordinated and systematic action with the full participation and consent of the peoples concerned to ensure their protection, self-reliance and equitable participation in the life of the countries in which they live, with full respect for their social and cultural identity and their means of subsistence."

Ecuador. In general, yes; this is precisely what is advocated by Article 2 of Convention No. 107, taken as a whole.

Finland. Yes. The ILO should aim at issuing directives furthering this principle. The most difficult problem in practice is probably the simultaneous protection of traditions and participation in the life of the predominant culture.

Madagascar. (Replying to questions 10 to 13.) Article 2 should be revised as follows: "In co-operation with indigenous and tribal peoples, governments should implement systematic and co-ordinated action to ensure: (a) that these peoples benefit on an equal footing from the rights and opportunities accorded by national legislation to other sectors of the population; (b) that the economic, social and cultural rights of indigenous and tribal peoples be recognised and protected; (c) that these peoples be granted choice in the development process as it concerns their lives and institutions."

Mexico. Apart from deleting the reference to integration, this Article should be revised in order to suppress its hierarchical tone and the paternalist concept of protection. Moreover, Indian peoples do participate in "the life of their respective countries" in that they form part of national society; however, they are marginalised from the benefits of the national development to which they have in fact contributed.

Netherlands. RCO: The final decision lies with the national authority. "To ensure" should not be added to paragraph 1 of Article 2. It may not be possible to guarantee "full" respect, and the word "full" should be deleted. "In co-operation with the peoples concerned" should be interpreted to mean that the peoples concerned should also themselves contribute to this policy.

New Zealand. (Replying to questions 10 to 32.) The Articles in question should be revised in accordance with the response to question 2, i.e. any matters not relating to labour issues should be excluded from the revised text.

Norway. Yes. It must never become an objective to "freeze" indigenous peoples' culture at a particular stage of development. The main aim must be to develop conditions which uphold and permit the further development of their own culture on their own terms, with the active participation of the peoples themselves and in co-operation with the national authorities. In Norway the planned "Sameting" will be an important milestone in such a development.

Saudi Arabia. The existing text should be retained because it covers the proposed amendment and provides for government responsibility in the area of progressive integration.

Switzerland. SGB: Article 2 should be revised to replace the principle of assimilation by that of internal self-determination as the basic aim of any measures at a national level.

United States. Yes. However, this responsibility should also be shared with the indigenous and tribal populations concerned. No party should be designated as having the primary responsibility. In addition, the term "governments" would be ambiguous in the United States inasmuch as it can refer to either the federal or tribal governments.

Zambia. Yes, the reference to integration should be removed. The people should participate in their programmes.

As pointed out in Report VI(1), Article 2 is the fundamental policy provision of Convention No. 107, and has been heavily criticised for its integrationist approach. While the vast majority of replies to this question were affirmative, a number of suggestions have been made for rewording this Article.

A number of indigenous organisations have expressed strong concern that the concept of participation may in itself be inadequate to ensure respect for their traditions, lifestyles and resources. In this connection, they have also drawn attention to the formulation put forward during the Meeting of Experts and mentioned by the Government of Australia.

The text proposed during the Meeting of Experts would appear to correspond to many of the proposals made in response to the questionnaire. First, it would replace the emphasis on protection of these peoples, which has been criticised as paternalistic, by the concept of recognition and protection of the fundamental rights established by international instruments since the adoption of Convention No. 107, thus responding to the concerns expressed in a number of replies. It would also provide that the peoples concerned would determine for themselves the process of development, and that it should not be imposed on them from outside. At the same time, it may be felt that certain parts of this proposed amendment (particularly its paragraph 2 (c)) belong more appropriately in another part of the Convention (see below under question 22).

The Proposed Conclusions attempt to take into account the largely positive response to question 10, and the concerns and proposals mentioned above.

Qu. 11 Do you consider that paragraph 2 of Article 2 should be amended as follows:

- (a) subparagraph (a) should remain unchanged;
- (b) subparagraphs (b) and (c) should be replaced by a requirement that the action to be taken should include measures for –
 - (i) ensuring that the economic and social rights, and the cultural, political, social and religious institutions of the said peoples are recognised and protected?
 - (ii) raising the standard of living of the peoples concerned?

Total number of replies: 30.

Affirmative: 24. Algeria, Argentina (*proposals for (a)*), Australia (*proposals for (b)*), Bolivia, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Ecuador.

Other: 5. Bulgaria, Canada, Madagascar, Mexico, New Zealand.

Argentina. Yes, except that in subparagraph (a) the word “elements” should be replaced by the word “members”.

Australia. (b) “Economic rights” should be defined as “economic rights within the confines of national law”, or words to that effect, in keeping with current usage in other ILO Conventions. Add to the end of the suggested wording of paragraph 2 (b): “to that enjoyed by other elements of the national community”.

Bulgaria. (a) The words “to the other elements of the population” in paragraph 2 (a) of Article 2 should be replaced by “to the citizens of the country”. This is essential to place the said population on an equal footing with citizens, and would indicate that special regulations applicable to foreigners do not apply to these populations.

(b) The text of subparagraph (c) should be replaced by clause (i) of the question. Instead of the text proposed in clause (ii), that of subparagraph (c) of Article 2 of Convention No. 107 should be used, to emphasise the need for the future socio-economic development of these peoples.

Canada. Paragraph 2 of Article 2 should be amended by deleting the current subparagraph (c) and retaining subparagraphs (a) and (b). This would be consistent with the suggested amendment to paragraph 1 in reply to question 10. The deletion of existing paragraph 2 (c) is consistent with the non-integrationist tenor of the revised instrument.

IWG: (a) No. Amend to read: “2. Such action shall include measures to ensure: (a) that indigenous and tribal peoples are able to enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination, and to benefit on an equal footing from the rights and opportunities which national laws or regulations grant to other elements of the population;”.

(b) Yes, but amend to read: “(b) that the territorial and other fundamental rights, and the cultural, political, social, economic and religious institutions of the said peoples are recognised and protected; (c) an adequate standard of living of the peoples concerned and a process of development more compatible with their aspirations and way of life.”

Colombia. Yes, although a better drafting could be sought for clause (ii).

Ecuador. Subparagraph (a) of paragraph 2 of Article 2 should be left unchanged. It is difficult to understand the advantage of the proposed new text compared with the present text in subparagraphs (b) and (c).

Mexico. Mexico prefers the wording “that permits indigenous and tribal peoples to benefit, in conditions of equality, from the rights and opportunities granted by the State to the remaining members of its national society”. With regard to subparagraphs (b) and (c), Mexico agrees with the proposed revisions and suggests only that the term “protected” be replaced by “defended”.

Netherlands. RCO: (b) Delete the word “political”.

United States. (a) Yes, with an added provision protecting treaty rights and legislation granting special privileges to indigenous and tribal peoples.

(b) Yes. However, these populations should share the responsibility with the government for raising their standard of living. In addition, the term “economic and social rights” needs to be clarified.

While most replies to this question were affirmative, a number of specific proposals for amendments have been made.

This Article – both in Convention No. 107 and in the proposed revision – covers a wide range of questions and it will prove difficult to reach agreement on its wording, but most of the suggestions made above do not vary greatly in their basic meanings. One point for discussion is whether the emphasis should indeed be on the concept of rights, as is proposed, or on the concept of development. As has been pointed out, Convention No. 107 was adopted before the adoption of the International Covenant on Economic, Social and Cultural Rights in 1966. In recent years, declarations adopted by the United Nations and in other forums on development and the right to development have increasingly stressed the notion that meaningful development involves the full realisation of all civil, political, economic, social and cultural rights. (It has in fact been proposed that the Preamble to the revised Convention should make specific reference to the Covenant.)

It should also be borne in mind that the rights to development, and to the benefits accruing from it, are inherent in the ILO’s objectives and standards. If a specific reference is made to these rights here, it is to recall their relevance and to ensure that they form a part of national goals in connection with indigenous and tribal peoples.

With regard to the other proposals made, the word “elements” imparts the notion of rights pertaining to groups and thus is worth retaining (Argentina). The point made by the Governments of Australia, Colombia and Mexico on the drafting of clause (b)(ii) is taken into consideration in the Proposed Conclusions. The United States’ suggestion on shared responsibility coincides to a degree with indigenous groups’ concern to be able to determine their own process of development, and has also been taken into account.

The questions of treaty rights and legislation granting special privileges are raised here for the first time, and by only one respondent (United States). As concerns treaty rights, the Office considers that additional work needs to be done before proposing concrete provisions on such a complicated and controversial issue, and one which affects very few States. It notes, however, that work in this connection has recently begun in the United Nations. The question

of legislation granting special privileges is inherent in the approach taken already in Convention No. 107, to the effect that special measures are called for to protect these specially vulnerable groups and to promote their interests. (See also Article 3 of Convention No. 107, and question 14 below.) In this connection, the Office notes that the replies received from several governments to the effect that the Convention does not apply to them because non-discrimination is provided for in their law, are inconsistent with the intention of the Conference and the comments of the ILO's supervisory bodies concerning, inter alia, Conventions on equality of treatment and on indigenous and tribal populations. In the light of these considerations, a saving clause may be sufficient to meet the concerns of the Government of the United States.

Qu. 12 *Do you consider that paragraph 3 of Article 2 should be omitted from the revised instrument?*

Total number of replies: 29.

Affirmative: 19. Algeria, Bolivia, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Nicaragua, Nigeria, Norway, Portugal, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, Zambia.

Negative: 2. Ecuador, United States.

Other: 8. Argentina, Australia, Bulgaria, Canada, Madagascar, Mexico, New Zealand, Peru.

Algeria. Paragraph 3 of Article 2 as presently formulated should be omitted. The notions to which it refers should be proclaimed in the fundamental texts of these countries and for all other populations inhabiting these territories.

Bulgaria. Yes, if the text proposed under question 11 is adopted.

Canada. The paragraph should be replaced by the following provision: "Such action shall aim at fostering respect for and observance of the human rights and fundamental freedoms of persons belonging to such populations." This would provide a more precise reference to the human rights and freedoms of the members of the populations concerned.

Peru. It should be replaced by the following provision: "The principal objective of these programmes should be promotion of ethnic dignity, social utility, and the associative and solidary tendencies of the population".

Sierra Leone. Yes, because it is already implied.

United Kingdom. TUC: No. It might be altered to read: "All such action should take into consideration the fostering of individual dignity".

United States. No. It should be amended to indicate that one objective of such action shall be the fostering of individual dignity, self-esteem and self-sufficiency.

Zambia. Yes. It implies that these peoples are inferior.

Most replies to this question were affirmative. However, a number of governments and other respondents have proposed that this provision be

retained with certain amendments, though some of these points have already been taken into account in earlier Proposed Conclusions. The Office proposes two alternatives: either this paragraph might be reworded, in accordance with the recommendation made at the Meeting of Experts, to read: "Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination", or the paragraph might be deleted altogether in accordance with the views expressed in the majority of replies to this question. The latter course would be better if it is considered that respect for human rights and fundamental freedoms is already sufficiently implied in the other paragraphs of Article 2, as reworded.

Do you consider that paragraph 4 of Article 2 should remain unchanged? **Qu. 13**

Total number of replies: 30.

Affirmative: 23. Algeria, Bolivia, Bulgaria, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Nicaragua, Nigeria, Norway, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 7. Argentina, Australia, Canada, Madagascar, Mexico, New Zealand, Peru.

Argentina. No. The following rewording is proposed: "Recourse to force or coercion as a means of promoting the participation of these populations in national society should be excluded."

Australia. No. It could read: "Recourse to force or coercion as a means of promoting these objectives shall be excluded."

Canada. A better wording might be: "Governments shall not have recourse to force or any other form of coercion as a means of promoting the integration of these populations into the national community." This wording would more precisely describe the intent of this provision.

CLC: Delete paragraph 4.

IWG: No. Replace with: "Recourse to force or any form of coercion as a means of encouraging the participation of these populations in the national community shall be prohibited."

Colombia. This could be left unaltered, but it would be much more appropriate to have it as one of the first Articles of the Convention since it enshrines a fundamental right of general application.

Mexico. This should be revised by eliminating the reference to integration.

Netherlands. RCO: Yes, keep the principle of integration.

Peru. No. The text should be revised to read: "Recourse to force or coercion as a means of promoting integration, development, the improvement of living conditions or any other similar end should be excluded."

United States. Yes. The prohibition on forced assimilation should not be removed.

Zambia. Yes, it offers protection to the peoples concerned.

While most replies to this question were affirmative, there were a number of suggestions for partial rewording which are almost all consistent with each other. In view of these suggestions, a partial rewording is suggested in the Proposed Conclusions.

Qu. 14 *Do you consider that Article 3 should remain unchanged, except for deleting from paragraph 1 the words "So long as the social, economic and cultural conditions of the populations concerned prevent them from enjoying the benefits of the general laws of the country to which they belong"?*

Total number of replies: 30.

Affirmative: 26. Algeria, Argentina, Australia, Bulgaria, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Ecuador.

Other: 3. Bolivia, Canada, New Zealand.

Bolivia. The amendment suggested would result in a paternalistic approach, since "special measures" would have a permanent character. This could perhaps be solved by adding a phrase such as "so long as they are not able to benefit fully from the legislation on an equal footing".

Canada. Yes, but insert the words "whenever possible". This would remove the integrationist language and would, at the same time, recognise that governments may not always find it possible in all cases to adopt such special measures.

CLC: Delete as proposed, but change the rest of paragraph 1 to refer to: "... institutions, persons, lands, resources and other property, and labour of these peoples", providing that the peoples concerned have the right to accept or reject such measures. Paragraph 2 should be revised in light of the above.

IBC: Yes. It may well be advisable, however, to include a statement describing conditions which render "special measures" necessary or desirable. In the absence of such a statement, justifications and support for special measures may be eroded.

IWG: Delete as proposed, but add to the end of subparagraph 2 (a): "contrary to the wishes of the peoples concerned".

Colombia. Yes, this is very important. Moreover, it would be appropriate to revise paragraph 3 of Article 3 by giving it a positive meaning, establishing that general rights of citizenship can in no way be affected.

Ecuador. Article 3 should remain unchanged since it is weakened by the proposed deletion.

Mexico. Yes, but the term "protection" should in all cases be replaced by "defence".

Switzerland. SGB: Article 3 of the Convention should be revised as suggested to ensure that special protective measures take account of the needs and aspirations of indigenous people. Paragraph 2 should be revised to provide that these special protective

measures shall not serve to isolate or limit the peoples concerned against their will. Paragraph 3 is important and should be retained.

The very great majority of responses to this question were positive, though various amendments were proposed. In view of these comments, and considering that the adoption of special measures of protection may not always be possible or desirable, the Proposed Conclusions suggest that the words "as appropriate" be added to the text suggested in the questionnaire. One reply proposes that this paragraph be extended to refer to lands and resources as well; it is the view of the Office that the single term "property" is in itself sufficient for Article 3 of the Convention. More specific issues in connection with lands and resources are dealt with in Articles 11 to 14 of Convention No. 107 and the corresponding questions below.

It would indeed seem appropriate to provide, in a revised Convention, that special measures should only be adopted in accordance with the wishes of the peoples concerned; the Proposed Conclusions reflect such a change at the end of subparagraph 2 (a) of Article 3.

Do you consider that the introductory phrase of Article 4 should be omitted from the revised instrument? **Qu. 15**

Total number of replies: 29.

Affirmative: 19. Algeria, Australia, Bulgaria, Cuba, Denmark, Egypt, Finland, Mexico, Nigeria, Norway, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 2. Honduras, Nicaragua.

Other: 8. Argentina, Canada, Colombia, Ecuador, Gabon, Madagascar, New Zealand, Peru.

The Governments of *Argentina, Canada, Gabon, Peru, the United States and Switzerland* (SGB) proposed that the words "In applying the provisions of this Convention" should be retained, and the rest deleted from the introductory phrase.

Australia. Yes, to remove the reference to "integration".

Bulgaria. (Replying to questions 15 to 18.) Yes, but the protective measures included in Article 4 of Convention No. 107 should be listed as separate subparagraphs of paragraph 1 of Article 3.

Canada. CLC: (Responding to questions 15 to 18.) Article 4 should be deleted entirely.

Colombia. This could be replaced by a more adequate provision which enshrines the provisions of subparagraphs (a), (b) and (c) as the objective of the programmes carried out by governments.

Ecuador. The deletion of the introductory phrase of Article 4 would leave it without meaning.

Madagascar. (Replying to questions 15 to 17.) In keeping with proposals concerning Article 2, Article 4 should be revised to read as follows: "In applying the provisions of the present Convention, measures should be taken: (a) to allow indigenous and tribal peoples the greatest possible control over their economic, social and cultural development; (b) to consider the danger of destroying the values and institutions of these peoples."

Nicaragua. This is not necessary.

Zambia. Yes, the integrationist overtone should be removed.

While the majority of replies to this question were affirmative, several responses have nevertheless contained the identical suggestion that only the words "relating to the integration of the populations concerned" be deleted from the introductory phrase of Article 4. The Proposed Conclusions reflect these comments. The suggestion made by the Government of Madagascar is taken up in substance elsewhere. That made by the Government of Bulgaria can be examined at a later stage.

Qu. 16 *Do you consider that subparagraph (a) of Article 4 should remain unchanged?*

Total number of replies: 30.

Affirmative: 25. Algeria, Argentina, Australia, Bulgaria, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 5. Bolivia, Canada, Madagascar, Mexico, New Zealand.

Bolivia. A more modern formulation from the anthropological and sociological points of view is desirable.

Canada. No. The Government agrees with Canada (IWG).

IWG: No. Add "and practices" after the word "values".

Mexico. Yes, but religious beliefs are part of their culture, so the word "religion" could be deleted.

United Kingdom. TUC: No. Deletion or "and of the forms of social control".

United States. Yes. The Article can be strengthened by taking due account of these factors even when there is no social and economic change.

Almost all replies to this question were affirmative. A small number of changes have been proposed for the wording of this subparagraph.

Given that this is a very general provision calling on governments to take account of these factors in applying the provisions of the Convention, significant changes to the text would not appear advisable or necessary. However, in view of the fact that "practices", as applied to culture and religion, is a more concrete expression than "values", it would appear useful to adopt the suggestion of Canada (IWG) to add the words "and practices" after the words "cultural and

religious values". The suggestion made by the Government of Mexico is not shared by others, and there appears to be good reason to retain a special protective measure for religion. As concerns the United Kingdom (TUC) proposal, see below under question 28.

Do you consider that the words "unless they can be replaced by appropriate substitutes which the groups concerned are willing to accept" should be deleted from subparagraph (b) of Article 4? **Qu. 17**

Total number of replies: 30.

Affirmative: 23. Algeria, Bolivia, Bulgaria, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Mexico, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 2. Ecuador, Sierra Leone.

Other: 5. Argentina, Australia, Canada, Madagascar, New Zealand.

Argentina. This wording should be replaced by: "unless this results from the decision of the groups concerned".

Australia. No. Instead, add after "willing to accept" the words "and have consented to".

Colombia. Yes. Moreover, emphasis should be given to the duty of governments to take the necessary measures to avert this danger.

United States. Yes. Removing the condition strengthens the Article.

A large majority of replies were in the affirmative, but two responses indicated a preference for revised wording which would stress that the values and institutions of these peoples can be replaced only with their consent or by their decision.

While the principle of consent is always important, the Office considers that this subparagraph would be strengthened by removing the phrase, as suggested in this question. This is because the provision in this subparagraph is for a general principle that recognises the danger involved in disrupting the values and institutions of indigenous and tribal peoples. There would thus appear to be no strong need to limit this provision by providing for exceptions and possible substitutes, even in cases in which this might occur with the consent of the peoples concerned.

Do you consider that the words "whenever such adjustments take place" should be added at the end of subparagraph (c) of Article 4? **Qu. 18**

Total number of replies: 27.

Affirmative: 21. Algeria, Argentina, Bolivia, Bulgaria, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, Nigeria, Peru, Portugal, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, Zambia.

Negative: 3. Colombia, Nicaragua, United States.

Other: 3. Canada, Mexico, Saudi Arabia.

Canada. No. The Government agrees with Canada (IWG).

IWG: No. But add "in conjunction with the peoples affected" at the end of the subparagraph.

Colombia. This does not appear necessary.

Gabon. Yes. However, the Government does not see what this would add.

Mexico. This does not seem to be necessary. It would seem better to delete the words "aimed at".

Nicaragua. This is not necessary.

Nigeria. Yes. It is only right for the government to consult them whenever any legislative or administrative measures which may affect them are being considered.

Saudi Arabia. The addition of these words is not important because their meaning is implicit in the wording of this paragraph.

United Kingdom. TUC: No. Instead, add the words "both as long-term strategy and whenever such adjustments took place" at the end of the subparagraph.

United States. No. It is important that such policies be adopted and in place, but it is not necessary to require the adoption of policies every time adjustments take place.

While a fairly substantial majority of replies to this question were affirmative, several respondents considered the addition to be unnecessary. In view of these reservations, it might be preferable simply to replace the term "the difficulties" by the term "any difficulties", and then to include an additional phrase, as suggested by one indigenous organisation, providing that these policies should be adopted in conjunction with the peoples affected.

Qu. 19 *Do you consider that Article 5 should be replaced by a provision which requires that governments should, whenever possible, undertake consultations with the peoples concerned, or with their representatives where they exist, whenever consideration is being given to legislative or administrative measures which may affect them?*

Total number of replies: 30.

Affirmative: 20. Algeria, Argentina, Australia, Bulgaria, Cuba, Denmark, Finland, Gabon, Honduras, Madagascar, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Zambia.

Negative: 4. Ecuador, Ukrainian SSR, USSR, United States.

Other: 6. Bolivia, Canada, Colombia, Egypt, Gabon, New Zealand.

Bolivia. A more precise formulation should be studied in order to provide for democratic consultations in conformity with constitutional and other standards established by the State for these purposes.

Canada. Article 5 should be replaced by the following: "Governments shall, whenever possible, undertake consultations with the populations concerned, or with their representatives where they exist, whenever consideration is being given to legislative or administrative measures which directly affect them." This is in line with the approach taken in reply to questions 3 and 6.

CLC: Yes. However, the limiting proviso "whenever possible" should be removed, and the patronising reference to "representatives wherever they exist" replaced with "undertake negotiations with the peoples concerned through their own institutions".

IWG: Yes. But amend to read: "Governments shall ensure the participation of the peoples concerned, whenever consideration is being given to constitutional, legislative or administrative measures which may affect them".

Colombia. This is not considered indispensable but if the substitution is made, the drafting should not be so general and should specify the areas in which the consultations are to be carried out.

Ecuador. The Government believes firmly that Article 5 should remain unchanged.

Finland. Yes. There is a Special Government Council for Sami affairs and a Sami Assembly in Finland which give their opinion on matters concerning the population.

Madagascar. In view of Madagascar's reply to question 10, Article 5 should be replaced by a provision requiring governments to co-operate with the peoples concerned, or with their representatives where they exist, whenever consideration is given to legislative or administrative measures which may affect them.

Mexico. Yes, but the term "whenever possible" should be replaced by the term "as an obligation".

Norway. Yes. The prime objective should be to transfer the greatest possible degree of decision-making power to the groups concerned in areas which are of special importance to them. In areas where such delegation of power does not take place, consultations should be implemented, but these arrangements should be subsidiary to the principle of greatest possible internal autonomy.

Portugal. Yes, within the framework explained by the Office in Report VI (1).

Switzerland. (SGB): Article 5 should be replaced by a provision guaranteeing that the legally valid voice of indigenous peoples, through a representative or consultative process decided on by the peoples themselves, be heard at the time of every legislative or administrative decision affecting them.

Ukrainian SSR. Article 5 should remain unchanged, because the proposed amendments might limit the rights of the populations concerned.

USSR. Article 5 should remain unchanged, because the proposed amendments might limit the rights of the populations concerned.

United Kingdom. TUC: Yes, but with the proviso that Article 5(c) should be retained.

United States. No. The existing wording already requires collaboration. However, the nature of the consultations is not clear. In addition, it is not clear whether the term "governments" only refers to national governments. The revision should clearly indicate that tribal governments also have the responsibility of consulting with their members.

Zambia. Yes. The people should participate in their own programmes.

Replies to this question were broadly affirmative, and while a number of specific proposals have been made for revised wording, most seek the same result. Certain governments have indicated in their replies that consultation should be a definite requirement and obligation, or that consultation arrangements should be subsidiary to the principle of greatest possible internal autonomy. Others have stated that an emphasis on consultation alone, without corresponding reference to the development of civil liberties and participation in elected institutions, might have the undesired effect of reducing the rights of the peoples concerned.

A number of indigenous and other non-governmental organisations have stated in their comments that the principle of consultation is not in itself adequate. They have indicated that the emphasis should be on the capacity of these peoples to determine their own lives and actions and to give their consent with regard to the programmes and activities which may affect them. In this regard, reference may be made to the deliberations of the Meeting of Experts (see in particular paragraphs 45 to 60, reproduced in Appendix I of Report VI (1)).

These observations raise highly complex issues of control and autonomy, among other things, with which it will prove difficult to deal in this one Article of a revised Convention. It does not appear possible to reconcile these viewpoints entirely, but it may be possible to revise Article 5 in such a way as to place more emphasis on the requirement to give indigenous and tribal peoples a voice in the decisions affecting them. The question of the degree of decision-making to be lodged with them is discussed further under question 20.

As concerns the point raised by the Government of the United States, both here and elsewhere in its reply, it seems clear that the proposals so far made focus on national governments and their subdivisions, and not on the internal governmental processes of these peoples. There are, however, elements of the Proposed Conclusions which would tend towards protection of the rights of members of these peoples vis-à-vis their own governments, including Point 13 (b) and (c) and, more particularly, Point 11 of the Proposed Conclusions.

Qu. 20 *Do you consider that these consultations should be carried out in such a way as to provide these peoples with an effective voice in deciding on such measures?*

Total number of replies: 30.

Affirmative: 26. Algeria, Argentina, Australia, Bulgaria, Canada, Colombia, Cuba, Denmark, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Ecuador.

Other: 3. Bolivia, Egypt, New Zealand.

Bolivia. This is inherent in a democratic system.

Canada. Yes, on the assumption that "effective voice" means that the competent public authorities must act in good faith when undertaking consultations. If this is the meaning of the phrase, then it is implicit in the consultation process described in Canada's replies to questions 3 and 19, and does not require a separate provision.

CLC: Yes, but "effective" should be replaced with "decisive".

IBC: Yes. This is essential within the meaning of the reply to question 19. "Effective voice", however, must be construed as genuine consultation, and not interpreted as a veto or uniquely predominant voice in deciding issues related to the overall national interest and welfare.

Colombia. This is of special importance. It assigns a genuinely active and participatory role to indigenous peoples, in contrast to the protected passive status given to them in the existing Convention.

Ecuador. See reply to question 19.

Finland. Yes. It corresponds to the present situation in Finland.

Madagascar. This is a matter of co-operation and these peoples should therefore have an effective voice in the decisions taken.

Mexico. By all means, and not only with regard to legislative and administrative measures, but measures of all kinds.

Netherlands. RCO: No, final decisions have to be taken by Government and Parliament. There is no reason to place these people in a more favourable position than other groups of the population.

United Kingdom. TUC: Yes. Reference should also be made to the need to encourage the people concerned to join and participate in trade unions.

United States. Yes. However, it is not clear what the term "effective" means.

While the majority of replies to this question were in the affirmative, doubts have been raised concerning the meaning and implications of the term "effective". While some replies have called for the use of a stronger term, such as "decisive", others have pointed to the possible ambiguities in interpretation.

In this regard, it should be noted that the provision which would emerge from the Proposed Conclusions contains a general principle for the application of all Articles of the present Convention (Article 6 of Convention No. 107 and the proposals for its revision deal more specifically with development policies and programmes). The term "effective" was proposed in the questionnaire in order to convey the principle that consultations should be more than *pro forma*, and should ensure genuine involvement of and negotiation with indigenous and tribal peoples whenever consideration is given to legislative or administrative measures which may affect them.

Certain indigenous organisations have proposed the term "decisive voice". It has been brought to the attention of the Office that similar language has been proposed in the reports of recent international commissions concerning indigenous peoples, human resources and the environment (e.g. the 1987 Report of the United Nations World Commission on the Environment and

Development and the 1987 Report of the Independent Commission on International Humanitarian Issues entitled *Indigenous peoples*.

An ILO Convention should of course not promote concepts which are contrary to international law or to a consensus which may be emerging in the United Nations system or wherever else the situation of indigenous and tribal populations is being discussed. It clearly must also take close account of the express wishes of those it is intended to protect.

At the same time, a Convention must be drafted in a form which lends itself to ratification. Fears have been expressed that a specific provision requiring consent by indigenous and tribal peoples would prevent the revised Convention from being ratified, and that its application could even lead to dissolution of States.

The 1986 Meeting of Experts discussed these questions at length. While all of the experts supported the principle of control by indigenous and tribal peoples of all the measures affecting them, most of them recognised the difficulties inherent in including an unreserved obligation to this effect in a revised Convention. For these reasons the Proposed Conclusions include an amended version of questions 19 and 20 which go further than Convention No. 107 in requiring ratifying States to seek the consent of the peoples concerned, while leaving the degree of control to be exercised by these peoples and by governments to decision at the national level. This formulation is also consistent with the promotional aspects of the revised Convention, indicating a tendency toward requiring consent in appropriate fields.

Finally, the Proposed Conclusions would require governments to provide these peoples with the opportunities to develop their own institutions in accordance with their own wishes.

Qu. 21 *Subject to questions 22 and 23, do you consider that Article 6 should remain unchanged?*

Total number of replies: 29.

Affirmative: 24. Algeria, Argentina, Bolivia, Bulgaria, Canada, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Nicaragua, Nigeria, Norway, Portugal, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Peru.

Other: 4. Australia, Madagascar, Mexico, New Zealand.

Australia. In the first sentence, the phrase "areas inhabited by these" should be deleted and replaced by "indigenous", as it implies that this development should only occur in indigenous communities, and therefore is very restrictive. In the second sentence, the phrase "the areas in question" should be replaced by "indigenous populations" and the word "such" by "their".

Canada. CLC: No. Article 6 assumed that the State has a unilateral right to “develop” regions used or occupied by indigenous peoples. Therefore, subparagraphs (a) and (b) of the additional paragraph proposed under question 22 must be sufficiently strong so as to negate that assumption. At a minimum, the wording must be unambiguous with regard to “control” (delete “as much as possible”) and ensure that where consent is given by indigenous peoples to any development, they exercise a decisive voice at all stages of that development.

IWG: No. Change “areas inhabited” to “regions used or occupied” and “areas in question” to “regions in question”.

Madagascar. The present wording of Article 6 implies that these peoples are still at a lower level than the remainder of the national population in the area of education.

Mexico. “Economic development” should be changed to “integral development”.

Peru. No. This Article should be amended in order to emphasise the right of indigenous peoples to full participation in development plans, as well as the need to carry out prior social and environmental studies which permit an evaluation of the impact that such plans would have on the indigenous peoples concerned.

Switzerland SGB (replying to questions 21 to 23): Yes. These changes are an important element in the new direction to be taken by the Convention. Development projects should be preceded by social and environmental studies and propose that such studies be “independent” and “carried out in consultation with the peoples concerned”.

A large majority of replies to this question were in the affirmative. A small number of replies expressed the view that the term “high priority” is insufficient, and that greater emphasis should be given to the concept of full participation, control, consent and a decisive voice in development plans. In addition, textual changes have been proposed to clarify that the provisions should refer to “indigenous areas” or to the regions used or occupied by these peoples, rather than only to the areas inhabited by them. Finally, it has been suggested that the term “development” should refer to more than “economic development”, and that the term “economic” might therefore be replaced by a new term such as “integral”.

With regard to the first group of comments, the Office suggests that the inclusion of the provisions proposed in subparagraphs (a) and (b) of question 22 (below) makes it clear that the State should not unilaterally develop indigenous and tribal areas without the consent and involvement of these peoples. At the same time, it is only realistic to note that most of the financing and administration of development comes from governments.

With regard to the second group of comments, it does seem important that paragraph 1 of this Article (see also questions 22 and 23) should refer to the areas inhabited by these peoples, rather than to indigenous development in general terms. If there were no specific reference to the areas inhabited by these peoples, then much of the purpose of this paragraph would appear to be lost. Concerning the use of the term “economic development”, it would indeed seem possible either to replace this with a more comprehensive adjective, or to delete it altogether. Point 14 of the Proposed Conclusions (second sentence) thus refers to special projects for the development of the areas in question.

Qu. 22 *Do you consider that a paragraph should be added to Article 6 providing –*

- (a) that the peoples concerned should be involved at all stages in the formulation and implementation of plans for development of the areas which they inhabit, and*
- (b) that they should enjoy as much control as possible over their own economic, social and cultural development?*

Total number of replies: 30.

Affirmative: 27. Algeria, Argentina, Australia, Bolivia, Bulgaria, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Ecuador.

Other: 2. Canada, New Zealand.

Bolivia. These are worth consideration, especially (a). In (b) the phrase “as much control as possible” should be clarified.

Canada. Subparagraph (a) should be amended to read as follows: “the populations concerned shall be involved, to the extent possible, in the formulation and implementation of development plans and programmes intended to improve their quality of life and work and level of education”. This amendment would recognise that it may not always be possible for the populations concerned to be involved at all stages in development plans and programmes. It would focus on specific programmes as well as plans, and these programmes and plans would relate primarily to people rather than to areas.

IWG: (a) Yes. But change “areas which they inhabit” to “regions they use or occupy”.

(b) Yes. But change “should enjoy as much control as possible over” to “should control”.

Madagascar. Yes, with the reservations expressed under question 21.

Saudi Arabia. (a) Yes, provided that the words “whenever possible” be inserted in this paragraph in order to ensure flexibility in the text.

United States. (a) Yes. The term “involved” should be strengthened. The peoples concerned should take responsibility for their problems and become committed to the generation and implementation of their solutions.

(b) Yes.

Zambia. (b) Yes, to afford the people the right to participate in day-to-day activities.

The great majority of replies to this question were in the affirmative. Certain textual changes have been put forward either to provide for some flexibility, or to strengthen the terminology adopted. With regard to the former, it has been suggested in two replies that the words “whenever possible” or “to the extent possible” should be inserted because it may not always be possible for the peoples concerned to be involved at all stages in development plans and

programmes. It has been proposed by Canada (IWG) – reflecting a view strongly endorsed by other indigenous organisations – that the words “enjoy as much control as possible” should be replaced by the words “should control”. This relates to the same issues discussed above, particularly under questions 10, 11, 19 and 20.

The Proposed Conclusions recognise the general principle that the peoples concerned should have the right to decide their own priorities for the process of development and to exercise control over it. In order to achieve this, they should therefore be involved to the extent possible in the formulation and implementation of plans and programmes for the development of the areas which they inhabit. The inclusion of the words “to the extent possible” is not intended to be a limitation in any way of the right to be involved in the formulation and implementation of development plans and programmes, but simply to provide the necessary flexibility if involvement at all stages does not prove logistically possible.

The proposal by Canada (IWG) under question 22 (*a*) reflects the difficulty of formulating concepts which accurately take account of the many kinds of living and land use patterns among these peoples. The issue is discussed under questions 33 to 46.

Do you consider that another paragraph should be added to Article 6 providing that, whenever appropriate, social and environmental studies should be carried out before any such development activities are begun, in order to assess the possible impact of these activities on the peoples concerned? Qu. 23

Total number of replies: 29.

Affirmative: 27. Algeria, Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Denmark, Ecuador, Finland, Gabon, Honduras, Mexico, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Madagascar.

Other: 1. New Zealand.

Argentina. The Government agrees with the proposal and suggests that cultural matters be added to the social and ecological studies.

Canada. CLC: Yes, where the peoples concerned have consented.

IBC: Yes. The approaches indicated in questions 22 and 23 provide tools for meaningful consultation and means for offering indigenous peoples an effective voice in discussions and decisions.

IWG: Yes. But at the end of the provision add “and fully mitigate or eliminate any adverse effects”.

Colombia. This is very appropriate.

Ecuador. This might be acceptable.

Madagascar. No, because governments should co-operate with the peoples concerned in all the decisions affecting them.

Mexico. These studies should be carried out in all cases in co-ordination with members of the peoples concerned.

United States. Yes. However, the studies required should not be costly. The United States favours some level of flexible pre-development consideration of social and environmental impacts.

With only two exceptions, all replies to this question were affirmative. The point has been raised that such studies should be carried out in co-ordination with, and with the consent of, the peoples concerned. In order to be effective, such studies would need to be carried out under these conditions, and this has been taken into account in the Proposed Conclusions.

Qu. 24 *Do you consider that paragraph 1 of Article 7 should remain unchanged?*

Total number of replies: 30.

Affirmative: 26. Algeria, Argentina, Australia, Bolivia, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Norway, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 2. Canada, Peru.

Other: 2. Bulgaria, New Zealand.

Bulgaria. (Replying to questions 24 to 27.) In order to define the rights and obligations of these populations, paragraphs 1 and 2 of Article 7 could be combined, taking paragraph 1 as the basis, with the addition of the words "where this does not conflict with the national legal system". Paragraph 3 should be retained in its present form. In determining the procedure for resolving conflicts, use could be made of the experience of a number of countries where this is done by the appropriate judicial body.

Canada. Paragraphs 1 and 2 of Article 7 should be amended to read as follows:

"1. In defining the rights and duties of the populations concerned under national law, the competent authority shall take due account of their customs.

2. These populations shall be allowed as far as possible to retain their own customs and institutions where these are not incompatible with the national legal system."

So amended, paragraph 1 would be more precisely consistent with the legal situation in Canada, where "customary laws" do not have an independent force under the national legal system. For similar reasons, the amendment to paragraph 2 would recognise the importance of ensuring the integrity of the national legal system while allowing for the preservation, as much as possible, of customs and institutions.

CLC: No. The words "and duties" should be deleted.

IBC: It would be useful to add a reference to traditions: "... regard shall be had to their customary laws and traditions".

IWG: No. As drafted, Article 7 could imply that governments have a right to define the fundamental rights of indigenous peoples in unilateral fashion. Replace paragraph 1 of Article 7 with: "Where general civil and penal laws are applied to indigenous and other tribal peoples, governments shall take into account wherever possible relevant customary laws and practices".

Peru. No. It should be revised in order to suppress its integrationist and paternalist content, and to maintain the possibility that in countries like Peru the national legal system should recognise the legal system of indigenous peoples, respect them and contribute to their development on their own terms.

Suriname. Yes, with special regard to customary laws; this provision could probably be emphasised more strongly.

Switzerland. SGB: Article 7 should be replaced by a provision dealing with "all questions relating to family relations, property and government of these people within their own communities, having the greatest possible regard for their own laws". It is important that the right of these peoples to change and adapt their own laws be guaranteed (hence the organisation's resistance to concentrating only on "customs") and that their laws be recognised as having territorial effect.

United States. Yes. However, in order to promote greater clarity, the populations concerned should attempt to codify their customary laws.

The great majority of replies to this question were in the affirmative, though several proposed partial rewording of paragraph 1 in order to eliminate any paternalistic implications; other reservations were also expressed. One indigenous organisation has pointed out that this provision should be concerned not so much with the definition of the rights and duties of the peoples concerned, as with the application of general civil and penal laws to them.

Indeed, as implied in several replies, it would seem that the fundamental principle established by this paragraph is that the customary laws, practices and traditions of indigenous and tribal peoples should be taken into account whenever ordinary national law is applied to the peoples concerned. The use of the term "customary law" is not intended to be restrictive; it should be understood to cover all means of internal regulation practised by these peoples themselves. The Proposed Conclusions take these points into account.

Do you consider that paragraph 2 of Article 7 should be amended to provide that these peoples should as far as possible be allowed to retain their own customs and institutions? **Qu. 25**

Total number of replies: 31.

Affirmative: 25. Algeria, Argentina, Australia, Bolivia, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Madagascar, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Sweden, Uganda, Ukrainian SSR, USSR, Zambia.

Negative: 2. Ecuador, United States.

Other: 4. Bulgaria, Canada, Mexico, New Zealand.

Argentina. Yes, but delete the term “as far as possible”.

Canada. CLC: There should be no qualification on such a right; therefore, the words “as far as possible” are unacceptable. The original wording “shall be allowed” is also unacceptable and should be amended to indicate that it is a right which governments must recognise. The requirement of compatibility with the national legal system should be deleted.

IBC: While the existing wording of Article 7, paragraph 2, may require reconsideration, its replacement by vague wording such as “as far as possible” may not be helpful. In Canada there are practical examples of conflicts related to fishing and hunting rights and industry wildlife compensation issues. The phrase “as far as possible” would not assist in resolving such conflicts.

IWG: Yes. But replace with: “Equitable procedures involving the people concerned shall be established to resolve conflicts between customary and national laws, and consideration and respect shall be given to customary laws and practices as far as possible”. This is basically what was suggested by the Meeting of Experts.

Colombia. Yes, but the term “shall have the right to maintain” should be used.

Ecuador. This paragraph should remain unchanged.

Madagascar. This paragraph should be revised to provide only that the peoples concerned should be able to retain their customs and institutions.

Mexico. This paragraph should state that these peoples have the inalienable right to conserve their cultures, traditions and institutions; and that the State and the rest of national society should respect them and assist them in preserving those cultures, traditions and institutions.

Sweden. Yes. It is pointed out that both national law and the customary law of the indigenous population may put women at a disadvantage compared with men. From an equal opportunity point of view, customary laws which do not disfavour women should be retained as far as possible.

Switzerland. SGB: See under question 24.

United Kingdom. TUC: No. Merely replace “or the objectives of integration programmes” with “or with human rights proclaimed by the United Nations Declaration”.

United States. No. The words “where these are not incompatible with the national legal system” need to be retained. If those words were deleted, the United States would have to repeal the Indian Civil Rights Act in order to be in compliance. Such unacceptable practices as slavery or wife-selling were at one time among the customs and institutions of some tribes.

Zambia. Yes. It contains aspects of the integrationist and paternalistic orientation.

While most replies to this question were in the affirmative, a number suggested that firmer language is required. There would appear to be a strong current of opinion that a revised instrument should contain the unqualified provision that the said peoples shall have the right to retain their own customs and institutions. At the same time, some replies have pointed out that customary laws may place certain sectors, for example women, at a disadvantage, or that they may be at variance with nationally or internationally recognised human rights practices. Thus, on the one hand, the revised instrument should recognise unequivocally the right of these peoples to retain their own customs, institutions and lifestyles, while on the other, responses to both this and other questions have pointed to the need to take into account evolving international human rights law as pertinent to the specific situation of

indigenous and tribal peoples. It would thus seem inadvisable to delete altogether some kind of qualifying clause similar to "as far as possible". The Proposed Conclusions thus provide that these peoples should have the right to retain their own customs and institutions when these are not incompatible with internationally recognised human rights. The points made by the Governments of Sweden and the United States should be covered by such a formula.

Do you consider that the above-mentioned provision should be supplemented by a requirement that, where necessary, procedures should be established to resolve conflicts between customary and national law? Qu. 26

Total number of replies: 30.

Affirmative: 25. Algeria, Australia, Bolivia, Colombia, Cuba, Ecuador, Denmark, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 3. Argentina, Canada, Egypt.

Other: 2. Bulgaria, New Zealand.

Australia. Yes. Any changes to the text of the Convention must reflect the primacy of national legislation over customary law. What is being sought is an administrative procedure to enable customary law to be accommodated within national law, whenever possible.

Canada. CLC: Where there are conflicts of a very serious nature, the process of resolution should be by negotiation; however, the State should recognise customary law.

Colombia. Yes. This is necessary to achieve the real and effective application of the standard.

Ecuador. It is acceptable to propose the institutionalisation of procedures to harmonise the national legal system with the customs of these peoples in cases of conflict.

Finland. Yes. A conditional provision of this kind may be necessary in some countries.

Mexico. Because of the importance attached to this aspect of customary law, this should be dealt with in a specific and separate Article.

Nigeria. Yes, but greater attention should be given to its provisions.

Portugal. Yes, considering the good results of existing examples of such procedures.

Suriname. Yes, this seems a necessary general guarantee, in view of the differences in national legal systems.

United Kingdom. TUC: The national legal system should take precedence on matters of individual rights.

United States. Yes. It would be helpful if conflicts between customary and national law were resolved so as to provide clarity concerning existing rights, responsibilities and privileges.

The majority of replies to this question were in the affirmative. One government indicates that this aspect of customary law is of sufficient importance to merit a separate Article in the Convention. The Proposed Conclusions retain the text as formulated in this question.

Qu. 27 *Do you consider that paragraph 3 of Article 7 should remain unchanged?*

Total number of replies: 30.

Affirmative: 27. Algeria, Argentina, Australia, Bolivia, Canada, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 3. Bulgaria, Colombia, New Zealand.

Canada. CLC: No. The words "according to their individual capacity" should be deleted and a recognition of an obligation to the indigenous community should be added.

IWG: No. The paragraph should be deleted. Indigenous peoples, in general, conform to a collectivist view of human rights based on their traditions, as opposed to the individualistic approach of contemporary western societies. A correct balance must be achieved between individual and collective human rights.

Colombia. Paragraph 3 of Article 7 should be omitted and its contents transferred to Article 3, which envisages general provisions on the fundamental rights of indigenous peoples. If the paragraph in question remains in this Article, it will not achieve the effect of providing for obligations in respect of the relationship between national and customary rights.

Madagascar. Yes, but the words "according to their individual capacity" should be deleted.

United States. Yes. It is important that the populations concerned not be prevented from exercising the rights granted to all citizens and from assuming the corresponding duties. However, conflicts are possible and need to be resolved when they occur.

The very great majority of replies to this question were in the affirmative. However, the Government of Colombia and Canada (IWG) both propose the deletion of this paragraph of Article 7, though on different grounds.

As noted above, there seems to be a general consensus that human rights standards of general application should be applicable without discrimination to indigenous and tribal peoples, and that these principles should be reflected adequately in the revised instrument. The proposed wording is of more limited application than Article 3 of Convention No. 107, and aims at preserving the rights of indigenous and tribal persons within the national legal system if conflicts arise from the application of customary law.

Two respondents felt that the words "according to their individual capacity" should be deleted. These proposals may be predicated on the idea that the

provision is patronising. However, as its purpose is rather to mitigate the impact of the requirement concerning duties, this phrase is maintained.

Do you consider that Article 8 should remain unchanged except for the deletion of its introductory phrase "To the extent consistent with the interests of the national community and with the national legal system"? Qu. 28

Total number of replies: 29.

Affirmative: 19. Algeria, Bolivia, Bulgaria, Cuba, Denmark, Egypt, Finland, Gabon, Madagascar, Nigeria, Norway, Peru, Saudi Arabia, Suriname, Sweden, Uganda, Ukrainian SSR, USSR, Zambia.

Negative: 9. Argentina, Australia, Canada, Colombia, Ecuador, Honduras, Mexico, Nicaragua, United States.

Other: 1. New Zealand.

Argentina. The words that should be deleted are "with the interests of the national community".

Australia. The introductory phrase could be retained. The concept of "methods of social control" needs to be clarified.

Bulgaria. Yes. The words "as far as possible" in subparagraph (a) of Article 8 could be deleted, and the words "to the extent that this does not conflict with national legislation" added at the end.

Canada. CLC: In addition to deleting the introductory phrase, attention should be given to providing a greater standard of recognition than is indicated by phrases such as "borne in mind".

IBC: The existing introductory phrase is substantially more specific than "as far as possible".

IWG: No. Delete the introductory phrase, but also change "borne in mind" in subparagraph (b) of Article 8 to "fully taken into account".

Colombia. The deletion is not appropriate because States cannot renounce their jurisdiction in penal matters, which are concerns of public order. Moreover, the harmonisation of ordinary and native legislations is an essential aspect of the Convention. The deletion of the phrase in question could lead to difficulties of interpretation, which might result in a lack of ratifications.

Cuba. Yes, but compatibility should in some way be facilitated.

Ecuador. Article 8 should remain unchanged.

Mexico. No. Apart from the deletion of the introductory phrase, the drafting of subparagraph (a) should be improved by replacing the Spanish term "represión" by a more adequate term.

Switzerland. SGB: Not only should the preceding requirement for "consistency" with national legal systems be omitted but provision should also be made in subparagraph (b) for the "customs and values of social control of these peoples to be respected by the responsible authorities and courts".

United Kingdom. TUC: No. A new introductory phrase should read: "To the extent consistent with the national legal system and with human rights proclaimed by the United Nations Declaration."

United States. No. Deleting the phrase appears to be inconsistent with the supremacy of the national legal system in the United States.

Zambia. Yes. It implies that the culture of the indigenous people is inferior.

While the absolute majority of replies to this question were affirmative, there were also many negative or qualified replies. In view of these diverse comments, it would seem appropriate to suggest a partial rewording of Article 8 in the light of the amendments proposed to Article 7. The words "the interests of the national community and with" can be deleted from the introductory phrase, and the remainder of the introduction should apply only to subparagraph (a) of Article 8, while adding a reference to internationally recognised human rights. The reference to "methods of social control" should also be modified, as suggested by the Government of Australia. Subparagraph (b) might then be revised accordingly, and become a separate paragraph of this Article.

Qu. 29 *Do you consider that Article 9 should remain unchanged?*

Total number of replies: 30.

Affirmative: 28. Algeria, Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Mexico.

Other: 1. New Zealand.

Brazil. CNI: No, the exception should cover only those cases not prescribed by law.

Canada. CLC: Article 9 should be revised to read: "Compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law unless the people consent to the particular services concerned".

IWG: No. Replace with: "Compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law unless the people fully consent to the particular services concerned".

Colombia. Yes, although forced labour should be prohibited for all persons in national legislation. Mere drafting amendments of Convention No. 107 will not achieve the objective of doing away with a philosophy which, while being very protectionist, accentuates the inequalities that it aims to avert. To prohibit forced labour specifically for indigenous peoples, rather than linking them to other citizens in conditions of equality, sets them apart and thus accentuates the belief that this group is of an "inferior" character.

Mexico. No. This matter merits further analysis because there are indigenous groups for whom unremunerated labour is considered as a compulsory service to the community in certain circumstances (*tequio, faena, manovuelta*).

United States. Yes. The exaction from the members of the populations concerned of compulsory personal services is unacceptable.

The vast majority of replies to this question were in the affirmative. However, the point has been raised that in some indigenous communities unremunerated labour is considered to be a compulsory service to the community. In this regard it should be noted that Article 2(e) of the Forced Labour Convention, 1930 (No. 29), specifically exempts "minor communal services . . . performed by the members of the community . . .". Furthermore, during the 1957 Conference discussion on the adoption of Convention No. 107, the Conference agreed that certain cases of indigenous community work, which were undertaken voluntarily and for mutual benefit, were not covered by the prohibition established in the text of Article 9. The Committee of Experts has taken the view that the compulsory personal services provided for in the present Article are those enacted by landlords or other outside employers, rather than the minor communal services undertaken by and on behalf of the community itself.

The point raised by the Government of Colombia concerning special treatment merits consideration, but the Office considers that adopting special protective measures for this specially vulnerable population group does not reinforce the idea that they are inferior.

For these reasons, it does not appear necessary to revise Article 9, in particular in view of the fact the vast majority of replies to this question were in the affirmative. Nevertheless, if the Conference considers that further clarity is required on this point, it would be possible to draft a second paragraph to be added to Article 9, providing that minor communal services as defined in Convention No. 29 are not considered to be compulsory personal services for the purposes of the present Convention.

Do you consider that paragraph 1 of Article 10 should be amended by replacing "improper application of preventive detention" by "abuse of their fundamental rights"? **Qu. 30**

Total number of replies: 29

Affirmative: 28. Algeria, Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Norway, Peru, Portugal, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 1. New Zealand.

Brazil. CNI: Article 10 should be omitted altogether as its provisions are beyond the ILO's mandate.

Canada. Yes, but delete the word "specially", so that the safeguards in question would be the same as those enjoyed by other citizens.

CLC: Yes. But provision should be made for use of their own language.

IBC: The phrase "abuse of their fundamental rights" is extremely broad and ambiguous. If the existing, more specific wording is replaced, a more specific formulation should be used.

Finland. Yes. A more comprehensive expression is appropriate.

United States. Yes. This is an acceptable substitution. However, the term "fundamental rights" needs to be clarified.

The vast majority of replies to this question were in the affirmative. While the view has been expressed that the term "fundamental rights" may require clarification, the Office considers that it would be advisable to retain this term as it is already utilised in paragraph 1 of Article 10 of Convention No. 107. While it has been proposed that the term "specially" be deleted, it would appear preferable to retain this term, as indigenous and tribal peoples would appear to need particular safeguards over and above those provided for other members of national populations.

The point raised by Canada (CLC) is a valid one, since if indigenous and tribal peoples cannot use their own language in courts they may be unable to protect their rights effectively. The Committee of Experts has in fact considered that the provision of assistance to enable them to use their language is a necessary implication of the words "effective protection". While no addition to the Proposed Conclusions is suggested, it would be possible to include one.

The question of the ILO's competence is dealt with elsewhere.

Qu. 31 *Do you consider that paragraph 2 of Article 10 should be amended by replacing "degree of cultural development" by "culture"?*

Total number of replies: 30.

Affirmative: 29. Algeria, Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 1. New Zealand.

Canada. CLC: Yes. However, there should be a requirement with regard to translation in all proceedings.

United Kingdom. TUC: No. The TUC would wish to replace "account shall be taken of the degree of cultural development of the populations concerned" with "no adverse judgement shall be made on the basis of cultural difference".

United States. Yes. The term "degree of cultural development" is inappropriate. However, it may be helpful to consider other factors (such as economic and social).

The very great majority of replies to this question were in the affirmative. While one response has proposed a substantially different wording, it would

appear preferable to have minimal changes to the substance and wording of this provision, in order to eliminate the patronising sentiments present in the existing paragraph 2.

The point has been made that factors other than “culture”, including economic and social factors, should also be taken into account. Indeed economic factors – in particular the ability to pay fines – may be of considerable importance in the application of penalties. This proposal has therefore been taken into consideration in the Proposed Conclusions. One indigenous organisation has proposed the wording “cultures, values and customs”, as a more concrete formulation. As concerns the proposal by Canada (CLC), see the previous question.

Do you consider that paragraph 3 of Article 10 should remain unchanged? **Qu. 32**

Total number of replies: 30.

Affirmative: 29. Algeria, Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 1. New Zealand.

Brazil. CNI: No. The provision in question should be deleted.

Canada. CLC: Yes. However, particular emphasis should be given to consistency with the values of the peoples involved.

Colombia. Yes, but the drafting could better reflect present-day terminology and should extend the content of this paragraph, making greater reference to new methods of rehabilitation.

Gabon. Add at the end of the paragraph “to the degree provided for by national legislation”.

United States. Yes. Rehabilitation is a preferred approach.

While the suggestions made have merit, the wording in Convention No. 107 is sufficiently wide to cover the suggestion made by the Government of Colombia; the observations made by Canada (CLC) and Gabon are covered in questions 18 to 24 above.

IV. LAND

Questions 33-46 – General

Certain governments made general observations concerning land rights, covered in questions 33-46 of the questionnaire:

Canada. Provisions regarding land in a revised Convention should give greater recognition to: means other than "ownership" for the effective control of lands by indigenous and tribal populations; historical developments and agreements; the need for governments to recognise currently occupied lands of indigenous and tribal populations while also providing for a process respecting their traditional lands which they no longer occupy.

IWG: The flourishing of indigenous peoples, the strengthening and development – let alone the very survival – of their societies, economies, cultures and lifestyles depend upon adequate land and resource bases. Traditional lands designated as "indigenous" lands must be adequate to provide for the economic self-reliance and self-determination of indigenous peoples, and the sharing of lands must only take place with the informed consent of those indigenous peoples directly involved.

India. Conclusions 4 to 7 of the Meeting of Experts, in so far as they pertain to the question of land rights, etc., do not accurately reflect the serious reservations and lack of consensus evident in paragraphs 61 to 83 of the report of the Meeting of Experts. In these circumstances, since no consensus has emerged, any attempt to rephrase Articles 11 to 14 of Convention No. 107 requires that the Office undertake further work to facilitate the emergence of a clearly defined consensus. This must be done well before the 75th Session (1988) of the Conference.

New Zealand. Articles 11-14 should be excluded from the revised text.

Norway. The questions in Part IV deal with land rights on the basis of the provisions of Convention No. 107, to which Norway is not a party, and which was drafted without regard for the traditions of the Sami in Norway or for legal developments with regard to property law in Norway including regions inhabited by the Sami. The questions do not therefore in all respects have direct relevance to the situation of the Sami. In Norway, title to land and the right of use of land in the area inhabited by the Sami are in principle governed by the same legislation which applies elsewhere in the kingdom. Right of ownership has generally been recognised with regard to land which has been intensively used for economic purposes, whereas less intensive economic activities have formed the basis for right of use only. Sami rights of land use enjoy measures of legal protection. They are entitled to compensation if they suffer losses, for example, in connection with hydro-electric development. However, they have no legal claim to compensation in the form of land, an arrangement which would in practice be difficult to implement. It is therefore declared public policy that areas necessary for Sami reindeer husbandry shall as far as possible be kept intact. The question of Sami land rights is now being considered in the Commission on Sami Legal Matters. The Commission is charged with describing the current legal situation with regard to land rights. At the present time, Norwegian authorities are precluded from prejudging the final outcome of this process. The basic aim is to safeguard the legal status of the Sami population in order to enable these people to maintain and develop their culture. The absence of definite replies to questions 33-46 should be considered in this light.

Qu. 33 *Subject to question 34 below, do you consider that Article 11 should remain unchanged?*

Total number of replies: 29.

Affirmative: 21. Algeria, Argentina, Australia, Bolivia, Bulgaria, Colombia, Cuba, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Portugal, Sierra Leone, Suriname, Ukrainian SSR, USSR, Zambia.

Negative: 4. Ecuador, Peru, Uganda, United States.

Other: 4. Canada, India, New Zealand, Norway.

Brazil. CNI: No. This Article should be revised to the effect that the property rights referred to are related to the lands effectively occupied by these populations, taking account of their cultural stage. Thus the reference to lands traditionally occupied should be deleted.

Canada. Article 11 should be amended to read as follows: "Governments shall ensure that possession, use or ownership, collective or individual, of lands which the members of the population concerned occupy, is recognised". So amended, Article 11 would provide for government action to ensure recognition of indigenous lands. The provision would allow for the effective control of lands through possession and use, in accordance with the approach and issues outlined in ILO Report VI(1), pages 46 and 91, and with the Canadian situation. Deletion of the word "traditionally" from Article 11 would make clear that the provision applied to lands which the indigenous populations actually occupy. These lands are distinguished from the traditional lands of these populations which may no longer be occupied by them in a manner recognised by the national legal system.

CLC: Article 11 is insufficient as it stands. The right of ownership must be a collective one (not one accruing to the "members"). The right should be broadened to a territorial one which would encompass flora, fauna, resources (both renewable and non-renewable), as well as sea ice, sea and coastal fishing rights where these are appropriate. In addition, provision should be made for inalienability, as well as effective protection against incursions.

IBC (replying to questions 33 and 34): Questions of land claims resolution, self-government, co-management, subsurface resource rights, renewable resource harvest, financial compensation and other related issues, cannot be treated on an international basis, except at the level of general guide-lines based on commonly defined terminology.

Colombia. Yes, but it should be complemented by a phrase indicating that the property rights of indigenous peoples should be recognised and respected in the same manner as those of other citizens.

Peru. No. This should be revised in order to reflect the notion of territory. In the context of inter-ethnic relations, this notion tends to be replaced by that of lands to the prejudice of the rights of the Indians. One should point to the need to preserve and safeguard wherever possible the right of national or ethnic sovereignty of the indigenous people over their ancestral territories, over and above the simple right of property and without prejudice to the unity to which the corresponding national societies aspire.

Switzerland. SGB (replying to questions 33-36): Article 11 is one of the strongest and most useful provisions of the current Convention. However, it could be made still stronger by guaranteeing legally effective protection of property rights. Article 11 should be revised to include among property rights all natural resources including flora and fauna, freshwater areas, sea ice areas, minerals and other underground raw materials belonging to the areas settled by these peoples from time immemorial, or used by them over the same period. No exception should be made regardless of the national legal system. However, the following possibility could be considered: "Where in accordance with the national legal system precious metals and other underground raw materials are exclusively state property, the agreement of the peoples concerned to the prospecting for an exploitation of such resources should be obtained".

USSR. Article 11 should be complemented with the provisions proposed in questions 34, 35 and 36.

United States. No. The term "traditionally occupy" (present tense) may not apply to situations where members of the populations concerned have been removed from their traditional lands. Some consideration should be given to eliminating the word "traditionally".

The clear majority of replies to this question were affirmative. However, a number of complex issues have been raised, both in the responses to this specific question and in the more general observations concerning land rights. These issues include, among other things: whether the notion of “land” should be extended to “territory” for the purposes of Article 11; whether this Article should cover the notions of “possession” and “use” of land, as well as the notion of “ownership” itself; whether the use of the term “traditionally” might be deleted; whether the rights of land ownership should accrue to the peoples as a group, rather than to their members; whether a preference might be expressed for collective rather than individual forms of land ownership; and whether specific reference might be made to the concept of “inalienable” land ownership.

It should be noted that both terms “lands” and “territories” are used in the present Convention. While the term used in Article 11 is “lands”, Article 12 refers to “habitual territories”. Where the question of ownership is concerned, it would seem preferable to retain the term “lands” in Article 11 because – in spite of the preference expressed by indigenous representatives at the Meeting of Experts – not all of the peoples concerned can be said to occupy or possess “territories” in the sense in which this term is generally used in international law. For several centuries many of the groups concerned have farmed small land areas and plots, either individually or in communal holdings and communities, whereas others have enjoyed the possession and occupation of contiguous and undivided land areas more easily referred to as “territories”. Thus the use of the term “territories” for the purposes of Article 11 might raise complex issues with regard to the peoples covered by this instrument.

The importance of the concepts of possession and use has been raised both in government replies, and by participants at the Meeting of Experts. In view of the fact that certain of the peoples concerned may indeed attach more importance to these concepts than to the legal notion of ownership, it would indeed seem appropriate also to refer to possession and use in this provision. It may be noted here that the Committee of Experts, in supervising the implementation of Convention No. 107, has recognised the importance of these concepts.

Two governments have suggested that consideration be given to deleting the term “traditionally” from Article 11. This term cannot realistically be taken to imply that these peoples should have recognised rights of ownership over all the lands traditionally occupied by them at all previous stages of their history (although procedures may be established to deal with land claims made on the basis of immemorial possession – see below). The Committee of Experts has taken the view that the use of the term “traditionally” refers to the manner of, and criteria for, land occupation, rather than giving rise to a detailed inquiry into past history, though it is also consistent with claims for restitution. In this light it would appear preferable to retain the term “traditionally” in a revised instrument.

With regard to the forms of land ownership, it would appear that one purpose of this Article is to recognise that the peoples concerned have a right of land ownership, possession and use, in accordance with their own customs and

traditions, even though these may be different from those prevailing for other members of national society. The Government of Colombia has suggested that Article 11 be complemented by a phrase indicating that the property rights of indigenous and tribal peoples should be recognised and respected in the same manner as those of other citizens. This would, however, appear to require that these peoples adapt to the prevailing national system rather than that the national system recognise their right to ownership and possession of these lands, which is what the present instrument requires and which appears to reflect the prevailing opinion.

One respondent has suggested that provision be made for inalienability in this Article. In this regard, it may be noted that the indigenous and tribal representatives present at the Meeting of Experts unanimously concluded that these lands should be inalienable and that this is consistent with other available information on the wishes of these peoples. However, as this issue concerns the transmission of rights of ownership, it would be dealt with more appropriately under Article 13.

In view of the opinions expressed, and of the doubts raised as to the use of the word "ownership" alone, the Proposed Conclusions add a reference to possession. If this amendment were to be accepted, there would appear to be no need to retain the words "collective or individual" in the first paragraph of a revised Article 11. No preference would be expressed, and it could be left to the peoples concerned to determine their own preferential form of land holding and ownership.

Do you consider that a paragraph should be added to Article 11 providing that governments should take steps, where this has not already been done, to determine the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their right of ownership?

Qu. 34

Total number of replies: 29.

Affirmative: 26. Algeria, Argentina, Australia, Bolivia, Bulgaria, Colombia, Cuba, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Canada.

Other: 2. New Zealand, Norway.

Argentina. Yes; after "the lands which these populations traditionally occupy", add the words "and those which they now occupy".

Canada. No. On the other hand, the revised Convention should, in a separate Article, provide for the resolution of claims to traditional lands, as suggested in the reply to question 46.

CLC: Yes. However, the word "determine" should be replaced by "identify", and States should be required to protect the environmental integrity of indigenous lands and resources.

IWG: Yes. But the proposed paragraph should be amended to read: "Governments shall take steps, where this has not already been done in collaboration with those peoples concerned, to determine the lands which the peoples concerned traditionally use or occupy, and to guarantee effective protection of their rights to legal ownership. Such steps shall be carried out by the treaty-making process in those countries where such a process exists, or may be introduced with the consent of those peoples concerned."

Peru. Yes, as long as this paragraph includes the idea expressed in Peru's response to the previous question, namely the notion of sovereignty.

Suriname. Yes, as concerns their right of ownership. This provision should be supplemented with other rights such as tenure, ground rent, forms of possession and the use of premises under licence.

The great majority of replies to this question were affirmative. Some suggestions have been made for partial rewording, as for example: to use "identify" rather than "determine"; to provide that the steps should be taken in collaboration with the peoples concerned; to include reference to treaty rights; and to include reference to ground rent, possession and tenurial arrangements, as well as ownership. The Proposed Conclusions incorporate the word "identify". While collaboration is important, this principle is already proposed above in provisions on general policy, and it may not be necessary to repeat the requirements for consent, collaboration or consultation throughout the instrument. The question of treaty claims is discussed below under questions 45 and 46. If there is agreement that the term "possession" should be included as suggested under the previous question, it may prove useful to repeat the term here. In view of the large number of affirmative replies, the Proposed Conclusions are based on the text of question 34 with these minor amendments.

Qu. 35 *Do you consider that the right of ownership over lands already provided for in Article 11 should extend to natural resources, including fauna and flora, waters, ice and mineral and other subsoil resources, pertaining to the lands traditionally occupied by the peoples concerned?*

Total number of replies: 29.

Affirmative: 15. Algeria, Cuba, Bulgaria, Egypt, Finland, Gabon, Madagascar, Mexico, Peru, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States.

Negative: 11. Argentina, Australia, Benin, Bolivia, Canada, Colombia, Ecuador, Nicaragua, Nigeria, Saudi Arabia, Zambia.

Other: 3. Honduras, New Zealand, Norway.

Argentina. No. This is impossible under Argentina's legal system.

Australia. No. In Australia ownership of minerals on Aboriginal land and reserves is vested in the Crown in the name of the State, with the exception of New South Wales, where Aboriginal ownership of land extends to certain minerals pertaining to the land. Commonwealth land rights legislation applying in the Northern Territory provides for compensation at the mining stage, linked to the value of minerals. The extension of the right of ownership over lands to minerals is unlikely to be acceptable to Australia because of the division of ownership of subsurface rights between the Commonwealth and the States. Such a move could also lead to further restriction on access to such lands for mineral activities.

Benin. No. The State should be the owner of natural resources and should exploit them for the benefit of the entire national community.

Bolivia. In Bolivia the ownership rights over land include rights to fauna, flora and waters. Whether subsoil rights should be covered by special legislation should be considered in national laws.

Brazil. CNI: No. It is important to point out that such a provision is outside the ILO's mandate.

Bulgaria. (Replying to questions 35 and 36.) Yes, within the context of the national judicial system. The text should provide that the right of ownership and exploitation of such territories is transferred to these populations.

Canada. In Canada most indigenous populations, including Indians on reserve lands, have the use and benefit of fauna and flora on lands which they legally occupy. On most reserve lands the populations have subsurface mineral rights as well. However, access to such natural resources as mineral and other subsoil resources generally depends on the provisions of specific treaties, negotiated settlements and legislation and, therefore, should not be stated as a general right in the revised Convention.

CLC: See under question 33.

IBC: No. Details on these issues have to be resolved within a national context.

IWG: Yes. But change "shall extend to" to "shall include sacred hunting and burial grounds and".

Colombia. This would involve conflict with the legislation of many countries providing for absolute state dominion over natural resources pertaining to the soil and subsoil. The inclusion of a provision as proposed would be very dangerous.

Ecuador. The extension of property rights over land to mineral and other subsoil resources would conflict with national interests and legislation and prevent Ecuador from ratifying a revised Convention.

Mexico. Yes. This should be extended to natural resources.

Nigeria. No. In most countries the State has exclusive rights to subsoil and natural resources, although a percentage of the profit is given to the peoples, whether indigenous or not, who occupy the land where the minerals are found.

Saudi Arabia. No. Natural resources belong to the State although the peoples concerned should receive fair compensation.

United States. The term "lands" should be extended to include flora and fauna, waters, ice and mineral and other subsoil resources. The term "traditionally occupied" is more inclusive than "traditionally occupy".

Zambia. The right of ownership over lands already provided for in Article 11 should not extend to mineral and other subsoil resources, water and ice. These should be under the control of the State.

There was a marginally greater number of affirmative than negative replies to this question. However, a number of governments raised very strong

objections to the inclusion of a provision of this nature in a revised instrument, generally stating that it would be incompatible with domestic legislation which gives the State exclusive rights over subsoil and natural resources. In this regard one government has drawn a distinction between natural resources on the one hand, and subsoil and mineral resources on the other, stating that it would be possible to provide for ownership over the former, but not the latter, in a revised instrument.

In view of the widespread concerns expressed by governments, it would not appear possible to include a provision on the basis of question 35. Nevertheless, in view of the absolute majority of affirmative replies to this and the following question, it would seem appropriate that a revised instrument provide for special measures in this area (see under question 36).

Qu. 36 *Do you consider that where, under the national legal system, land ownership does not carry with it the ownership of mineral and other subsoil resources pertaining to the land, special measures should be taken to protect these peoples in relation to the control and exploitation of such resources?*

Total number of replies: 29.

Affirmative: 23. Algeria, Argentina, Australia, Bulgaria, Canada, Cuba, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Peru, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 3. Benin, Colombia, Ecuador.

Other: 3. Bolivia, New Zealand, Norway.

Bolivia. Special measures would not be appropriate.

Canada. Yes, in accordance with national law and practice, protective measures should be available. In Canada land ownership does not always carry with it the ownership of mineral and other subsoil resources since there are significant variations from one province to another. Besides the general protective measures available under Canadian law, certain additional protective measures are available to Indians on reserve lands, since minerals can only be developed with their consent. Furthermore, Canada's comprehensive land claims policy provides for "resource revenue-sharing" and environmental management.

CLC: States should be required to recognise, through legislation and other means, the rights of indigenous peoples to own and control surface and subsoil resources. Under no circumstances, however, should a revised Convention permit States or other economic interests to extract resources from the lands (and waters) of indigenous peoples without their informed consent expressed through their own institutions. Indigenous societies must have full control over mineral extraction and the right to share equitably in the proceeds from any extraction to which they have given their consent.

IBC: This point should be addressed within the context of meaningful consultation as outlined in the proposed revisions to Article 6.

Colombia. No. See under question 35.

Ecuador. The implications of this revision would conflict with national interest to the extent of making ratification of the Convention inconvenient.

Gabon. Yes, although it does not appear necessary to include such a provision if the previous one is adopted.

Mexico. Yes. It should in any case be provided that these people carry out the exploitation of their subsoil resources.

The large majority of replies to this question were affirmative. As noted above, a distinction has been drawn in certain cases between control over surface natural resources, including flora and fauna and waters, and mineral and subsoil resources. For example, the Government of Canada has indicated that in that country most indigenous populations have the use and benefit of fauna and flora on lands which they legally occupy, but that access to such natural resources as mineral and other subsoil resources generally depends on the provisions of specific treaties, negotiated settlements and legislation. At the same time, whereas land ownership in Canada does not always carry with it the ownership of mineral and other subsoil resources, minerals can only be developed with indigenous consent. The Government of Australia has described the diverse state laws within its federal system. In that country ownership of land extends to certain minerals pertaining to the land in the state of New South Wales, but is otherwise vested in the Crown. In the Northern Territory Commonwealth land rights legislation provides for compensation at the mining stage, linked to the value of minerals. The Government of Nigeria notes that, although the State generally has exclusive rights to subsoil and natural resources, a percentage of the profit is given to the peoples affected. The Government of Mexico considers that in the first place it should be arranged that the peoples concerned carry out the exploitation of their subsoil resources. Meanwhile one workers' organisation considers that indigenous societies must have full control over mineral extraction and the right to share equitably in the proceeds from any extraction to which they have given consent, and that in no circumstances should such extraction take place without the informed consent of the peoples concerned expressed through their own institutions. Similar views have been expressed by indigenous peoples' organisations in Australia, and in a number of their meetings and declarations.

There are thus diverging views with regard to the extent of indigenous control, in particular where the extraction of mineral resources is involved. However, there would seem to be a wide measure of agreement, firstly that the peoples concerned should be enabled to control wildlife and other resources which pertain to their traditional lands, and which are fundamental to the continuation of their traditional lifestyles; and secondly, that the consent of the peoples concerned should always be sought before mineral development takes place on their lands, and fair compensation paid for such activities. It would be inappropriate to specify the manner in which such consent should be sought at the national level, and the exact procedures to be undertaken before any mineral activity on their lands commences in individual countries. Nevertheless, in view of the evident dangers that these activities may hold for the preservation of

indigenous and tribal lands, it would seem important that a revised instrument establish the general principle that the consent of these peoples be sought, through appropriate procedures, before any such activities be undertaken.

In the light of these considerations, the Proposed Conclusions contain two separate paragraphs on this point. The first provides for measures to safeguard the rights of these peoples to surface resources without reference to ownership. The second deals with exploration for or exploitation of mineral and other subsoil resources.

Qu. 37 *Do you consider that paragraph 1 of Article 12 should be amended by deleting all the words after "habitual territories", taking into account the next question?*

Total number of replies: 29.

Affirmative: 17. Algeria, Australia, Bulgaria, Canada, Cuba, Finland, Gabon, Madagascar, Mexico, Nigeria, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Zambia.

Negative: 8. Argentina, Bolivia, Ecuador, Egypt, Nicaragua, Ukrainian SSR, USSR, United States.

Other: 4. Colombia, Honduras, New Zealand, Norway.

Argentina. Everything should be deleted after "except in accordance with national laws and regulations".

Bolivia. The present text should be retained since it contains explicit and limited justifications.

Canada. Yes. Except that the words "their habitual territories" should be changed to "lands they occupy" for the reasons given in reply to questions 33 and 34.

IBC: No. It is not possible to delete completely all reference to national security, national economic development, health of any part of the population, or other important considerations which may have to be balanced with the claims of the indigenous people.

Colombia. Yes, it should be revised, but it is necessary to retain the possibility of removing these peoples for reasons of national security.

Ecuador. The implication of this revision would conflict with national interest to the extent of making ratification of the Convention exceedingly inconvenient.

Finland. Yes. In that case, the notion that populations shall not be removed without their free consent from their habitual territories is included in paragraph 1 of Article 12.

Ukrainian SSR. Paragraph 1 of Article 12 should remain unchanged because it clearly defines the exceptional cases in which the removal of the populations may take place.

USSR. Paragraph 1 of Article 12 should remain unchanged because it clearly defines the exceptional cases in which the removal of the populations may take place.

United Kingdom. TUC: No.

While the majority of replies to this question were affirmative, a number of reservations have been expressed. Two replies indicated that the reference to

national security should be retained in some form, while others stated that the phrase "except in accordance with national laws and regulations" should be retained. For example, the Governments of the Ukrainian SSR and the USSR consider that this phrase should be retained because it defines clearly those exceptional cases where the removal of the peoples concerned may take place.

The proposed revision of Article 12 should be seen as a whole. The concept in Report VI (1) was that the first paragraph would include the statement of principle that indigenous and tribal peoples should not be removed from their habitual territories without their free consent. The rest of the revised Article (see under question 38) would specify the procedures which should be followed if this consent could not be obtained, but would not specify any reasons which would justify their removal without following these procedures.

The suggestion that the words "except in accordance with national laws and regulations" be retained would also be covered by the procedural steps required.

It should also be pointed out that omitting the reference to national security, or other exceptional reasons, would by no means prohibit removals for these motives. They would quite simply be subject to the procedures contemplated in subsequent paragraphs. This principle is reflected in the Proposed Conclusions.

Do you consider that in cases where the removal of these peoples is necessary as an exceptional measure, and where the free consent of these peoples cannot be obtained, no such removals should take place except following adequate procedures including public inquiries, which provide the opportunity for effective representation of the peoples concerned?

Qu. 38

Total number of replies: 29.

Affirmative: 21. Algeria, Australia, Bulgaria, Canada, Cuba, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, Nigeria, Peru, Portugal, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 4. Argentina, Bolivia, Colombia, Nicaragua.

Other: 4. Ecuador, New Zealand, Norway, Saudi Arabia.

Bolivia. Such procedures would appear unnecessary if the Convention includes general requirements for consultation and participation.

Bulgaria. Yes. For such cases it is necessary to provide for the possibility of appealing to the competent judicial or administrative body, and every citizen should have this right.

Canada. CLC: No. Consent must always be a requirement.

IBC: Yes, such a revision is desirable. More, however, than a reference to an "exceptional measure" will be needed if the text proposed in question 38 is to be useful.

Colombia. The proposed drafting seems inadequate and unclear. It should be established that any removal of indigenous peoples for whatever reason should take place with the consultation and agreement of their representatives. Moreover, States should be obliged to provide these peoples with all necessary information so that the consultations on removals take place in the context of clear understanding of the reasons which motivated them, and the possible options provided.

Ecuador. The revision is considered inappropriate.

Mexico. If the removal is unexpected it should nevertheless not take place until all services are provided in the new place of residence.

United States. Yes, but the term "effective representation" needs to be clarified.

Zambia. Yes, this will offer a form of consultation with the peoples concerned.

The majority of replies to this question were in the affirmative. The Government of Colombia considers that the text as drafted in this question is insufficiently clear, and that the provision should rather establish that any removal of indigenous peoples for whatever reason should take place with the consultation and agreement of their representatives. The Government of the United States suggests that the term "effective representation" requires clarification.

With regard to the first of these observations, the Office considers that this provision might be given a more positive content. It might provide that, where the removal of these peoples is considered necessary as an exceptional measure, such removals should take place only with their free and informed consent, moving to this provision an element contained in paragraph 1 of Article 12 of Convention No. 107. The next sentence might provide for the procedures to be followed in the cases where this consent cannot be obtained.

The exact nature of such procedures would have to be determined at the national level. Nevertheless, for purposes of clarification, the revised Convention could provide that these procedures should be established by national laws or regulations, which provide the opportunity for effective representation of the peoples concerned. The term "effective representation" means that the peoples concerned should have a real and meaningful opportunity to participate in making the decision, which would appear to cover the point made by the Government of Colombia. It appears worth while to require special procedures for removals, rather than leaving them to the general consultation mechanism, in view of the particular importance they may play. The Proposed Conclusions in this regard are based on the language of the conclusions reached by the Meeting of Experts, which includes the reference to public inquiries.

Qu. 39 *Do you consider that paragraph 2 of Article 12 should remain unchanged, except for the addition of a requirement that lands provided in compensation should be of legal status at least equal to that of the lands previously occupied by them?*

Total number of replies: 29.

Affirmative: 23. Algeria, Argentina, Australia, Bulgaria, Colombia, Cuba, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, Zambia.

Negative: 1. Ecuador.

Other: 5. Bolivia, Canada, New Zealand, Norway, United States.

Argentina. The Government agrees with the proposal, suggesting only that the populations should receive ownership of the lands provided as compensation.

Bolivia. This could cause difficulties in areas where a particular legal status covers lands, and could be prejudicial to the interests of these peoples. More important than the exact status of the lands is that the populations should have legal security.

Canada. The Government proposes amending the paragraph so that the relevant passage reads: "... they shall, wherever possible, be provided with lands of quality and legal status at least equal", etc. It adds that it may not always be possible to provide land of equal quality and legal status; compensation can also be provided in cash or involve other appropriate arrangements. In Canada the acquisition of land often depends on obtaining the agreement of private individuals, municipal authorities or provincial governments.

CLC: Provisions relating to removal must require indigenous consent.

IWG: No. In the first sentence of paragraph 2, add the words "and size" after the words "lands of quality". A further sentence should be added: "Criteria on which compensation is to be based shall fully take into account the value of the habitual territories or replacement lands to the peoples concerned both from a collective and individual standpoint."

Ecuador. Paragraph 2 of Article 12 should remain unchanged, without any additions.

Mexico. Provided that the amount of compensation is fair.

United States. The paragraph should remain unchanged.

A substantial majority of replies to this question were in the affirmative, though some proposals have been made for small modifications. One proposal is that reference be made to the right of ownership over the lands provided as compensation. Another is for the rewording of the relevant passage to read: "... they shall, wherever possible, be provided with lands of quality and legal status at least equal", etc. Yet another is for the insertion of the words "and size" after the words "lands of quality".

The notion of equal legal status appears useful, in that the peoples concerned should have the same rights over their new lands as over the lands from which they may be removed. As indicated under question 33, this may not always include ownership, and ownership may not always be desirable. A reference to size would seem too precise and limiting, in that it may prove logistically impossible to provide alternative lands of identical dimensions. The Government of Canada has proposed the insertion of the words "wherever possible", to reflect the fact that it may not always be possible to provide land of equal quality and legal status. However, when an identical suggestion was made at the time of adoption of the original Convention No. 107, the prevailing view then was that the inclusion of the words "wherever possible" would weaken the

protection afforded by the proposed text. This view would seem to be equally valid today. The suggestion by the Government of Bolivia merits attention, but would appear covered by the idea of "at least equal", which does not necessarily mean identical.

In view of the generally positive response, the Proposed Conclusions are based on the text put forward in this question.

Qu. 40 *Do you consider that paragraph 3 of Article 12 should remain unchanged?*

Total number of replies: 29.

Affirmative: 26. Algeria, Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Ecuador, Egypt, Finland, Gabon, Madagascar, Mexico, Nicaragua, Nigeria, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 3. Honduras, New Zealand, Norway.

Canada. CLC: Paragraph 3 of Article 12 should be revised to read "Peoples and their members".

The vast majority of replies to this question were affirmative. It is therefore proposed that this paragraph be left unchanged.

Qu. 41 *Do you consider that paragraph 1 of Article 13 should be amended by deleting all the words after "regulations"?*

Total number of replies: 29.

Affirmative: 22. Algeria, Argentina, Australia, Bolivia, Bulgaria, Colombia, Cuba, Egypt, Finland, Gabon, Honduras, Mexico, Nigeria, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, USSR, United States, Zambia.

Negative: 3. Ecuador, Nicaragua, Ukrainian SSR.

Other: 4. Canada, Madagascar, New Zealand, Norway.

Canada. Replace the words "transmission of rights of ownership and use" by the words "transmission of rights of possession, use or ownership". The reference to "possession, use or ownership" is consistent with the approach taken and the Canadian situation described in reply to questions 33 and 34. In Canada the Indian Act provides the framework for transferring rights of occupation within reserve lands. Under self-government arrangements, alternative mechanisms can be negotiated at the request of the community involved.

CLC: All words after "shall be respected" should be deleted.

IBC: Yes, subject to comments at the opening of this part.

Ecuador. The deletion is considered inappropriate.

Switzerland. SGB (replying to questions 41-44): As suggested, Article 13 of the Convention should be revised so that the exception clause in paragraph 1, currently enabling national legal systems to disregard indigenous systems of ownership rights, is omitted. In addition, this Article should contain the additional provision that "Any decision regarding the capacity of these populations to transfer rights of ownership and use of land as individuals should take account of these populations' own laws and customs and should only be taken in consultation with them".

United States. Yes. Removing the condition strengthens the Article.

The great majority of replies to this question were affirmative. The concept of possession has been added in the Proposed Conclusions, in line with the formulation adopted above.

Do you consider that paragraph 1 of Article 13 should be supplemented by providing that any decision regarding the capacity of these people to transmit rights of ownership and use of land should be taken in consultation with the peoples concerned? **Qu. 42**

Total number of replies: 28.

Affirmative: 23. Algeria, Argentina, Australia, Bolivia, Bulgaria, Cuba, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 2. Colombia, Ecuador.

Other: 3. Canada, New Zealand, Norway.

Canada. The supplementary provision should read as follows: "Decisions regarding the capacity of these populations to transmit rights of possession, use or ownership of land shall be taken in consultation with the populations concerned". The reference to "possession, use or ownership" is consistent with the approach taken and the Canadian situation described in reply to questions 33 and 34. In Canada, under the Indian Act, the transmission of rights of ownership is the responsibility of the Governor-in-Council, on condition that the prior approval of the Indian band concerned has been obtained.

CLC: Any decision regarding the capacity should be determined by the peoples concerned. However, land should be inalienable beyond transmission among the indigenous peoples themselves.

IWG: Yes. But in the proposed new provision, replace the words "taken in consultation" by "made together with".

Colombia. The meaning of the proposed provision seems to be unclear and also unnecessary.

Ecuador. The proposed addition is considered as damaging to the powers of the State.

The great majority of replies to this question were affirmative. The Government of Canada has proposed a reference to the concept of possession. The Canadian Labour Congress considers that any decision regarding this capacity to transmit ownership rights should be determined by the peoples concerned, and that land should be inalienable beyond transmission among the indigenous peoples themselves. Similar views have been expressed by indigenous organisations. Concern has also been expressed that the meaning of this provision is unclear.

In view of these observations, the Office feels it would be useful to provide further clarifications. At the Meeting of Experts, as noted earlier, all the indigenous and tribal representatives present expressed their view that their lands should be inalienable. Furthermore, as noted in Report VI (1), legislation has been enacted in a number of countries in recent years providing for restrictions on the alienation, mortgaging or other encumbrance of indigenous lands. Laws have thus been adopted in a number of countries, providing special procedures for the transmission of rights of ownership and use of land for the peoples concerned. While the view has been expressed that these lands should be inalienable, it would appear preferable – and more consistent with the agreed basic orientation for a revised instrument – that the decision regarding the capacity of the said peoples to alienate their lands or otherwise transmit rights of ownership and use should be taken with the consent of these peoples themselves. There are, indeed, cases in which the peoples concerned may wish to transmit such rights outside the group.

These considerations are reflected in the Proposed Conclusions.

Qu. 43 *Do you consider that paragraph 2 of Article 13 should remain unchanged?*

Total number of replies: 29.

Affirmative: 25. Algeria, Argentina, Australia, Bolivia, Bulgaria, Colombia, Cuba, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, Nicaragua, Nigeria, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 4. Canada, Mexico, New Zealand, Norway.

Canada. Add the words “where necessary” after the words “Arrangements shall be made”, and replace the words “ownership or use” by the words “ownership, possession or use”. See reply under questions 33 and 34.

CLC: This provision should be stronger, and should be rephrased to avoid the appearance of paternalism.

IWG: No. Change “Arrangements” in paragraph 2 to “Proper legal measures”.

Mexico. The Government proposes a change in the Spanish wording for “lack of understanding”.

Zambia. Yes, except that penalties should be specified in the event of harmful trespass on the traditional lands.

The large majority of replies to this question were affirmative. However, the opinion has also been expressed that this provision should be stronger. In view of the serious consequences of the abuses contemplated by this provision, a somewhat stronger version is suggested (Point 37).

Do you consider that a paragraph should be added to Article 13 providing that any unauthorised intrusion upon, or use of, the lands of the peoples concerned by persons not belonging to these peoples should be considered as an offence, and that appropriate penalties for such offences should be established by law? **Qu. 44**

Total number of replies: 30.

Affirmative: 27. Algeria, Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Ecuador, Egypt, Finland, Gabon, Honduras, Mexico, Madagascar, Nicaragua, Nigeria, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Benin.

Other: 2. New Zealand, Norway.

Benin. No, for reasons of State.

Canada. Yes, but after the word "persons" add the words "or groups".

CLC: Yes. Penal sanctions must be applied to such intrusions.

IBC: Such a provision should also recognise that unauthorised intrusion or use could also be undertaken by persons belonging to the indigenous people.

IWG: Yes, but add "and recourse procedures" after the word "penalties".

Colombia. Yes, this is perfectly in line with the previous provision, and is indispensable to its effectiveness.

Ecuador. The addition proposed in this question might be pertinent.

Suriname. Yes. For the practical application of this provision, effective remedies are also necessary.

In view of the very large majority of affirmative replies to this question, a provision to this effect has been included in the Proposed Conclusions. While the suggestion has been made that the words "or groups" be added after the word "persons", it would seem that the word "persons" is sufficient to cover any number of intruders on the lands of the peoples concerned. The addition of a reference to recourse procedures appears useful, in allowing these peoples to take appropriate measures to compel the expulsion of intruders. Finally, the point made by Canada (IBC) appears valid.

Subject to question 46, do you consider that Article 14 should remain unchanged? **Qu. 45**

Total number of replies: 28.

Affirmative: 22. Algeria, Argentina, Australia, Bolivia, Bulgaria, Colombia, Cuba, Ecuador, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Portugal, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, Zambia.

Negative: 1. United States.

Other: 5. Canada, Egypt, New Zealand, Norway, Peru.

Canada. Yes, but add the words "where feasible and appropriate" after the words "land for these populations," in subparagraph (a), to reflect the fact that the provision of more land is not always possible or feasible, nor is it the appropriate solution in all cases. In some cases, land for agrarian purposes may not be available; in others, the acquisition of such land may involve the cutting and clearing of forests which are crucial to the preservation of the environment.

IBC: Yes. It is only realistic to note, however, that in many countries it may not be feasible to provide land adequate to meet the needs of "any possible increase in their numbers".

Colombia. Yes, although more emphasis could be given to the need for a comprehensive land policy to form a substantial part of national development programmes.

Peru. No. It should be revised to include procedures enabling indigenous claims for restitution of their ancestral territories to be dealt with.

Switzerland. SGB (replying to questions 45 and 46): Article 14 should be retained in so far as, under its provisions, indigenous peoples are included in national agrarian programmes. The additional provisions should be included as suggested. In practice, it might prove necessary to make the form and amount of repayment or compensation dependent on the availability of national raw materials.

United States. No. It should be clear that the equivalent treatment obligation is subject to existing treaty obligations.

The very great majority of replies to this question were affirmative. Certain replies have indicated that it may not always be possible to provide more land for these peoples. Thus it has been suggested that the words "where feasible and appropriate" be added after the words "land for these populations". In this regard the Office points out that the existing words of Article 14 provide for the peoples concerned to receive equivalent treatment to that accorded to other sections of the national community, and do not of themselves require the provision of more land for the peoples concerned. The main purpose of this Article would appear to be the securing of equal treatment for the peoples concerned in agrarian and land policies. The Proposed Conclusions reflect the positive response to this question.

Qu. 46 *Do you consider that a paragraph should be added to Article 14 providing that adequate procedures should be established within the national legal system to resolve land claims by the peoples concerned?*

Total number of replies: 29.

Affirmative: 24. Algeria, Argentina, Australia, Bulgaria, Colombia, Cuba, Ecuador, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Egypt.

Other: 4. Bolivia, Canada, New Zealand, Norway.

Canada. The provision should read as follows: "Adequate procedures shall be established within the national administrative and legal system to resolve claims by the populations concerned to territories traditionally occupied by them and their ancestors, but to which under national law the populations do not have a right to possession, use or ownership". The provision should be a separate Article as it is broader in scope than agrarian programmes, which are the subject of Article 14. Alternatively, the provision could be added as a third paragraph to Article 13.

CLC: Yes. However, the procedures to be established to resolve land claims must be acceptable to the indigenous peoples concerned.

IWG: Yes. But this issue should be addressed in a separate Article. The proposed paragraph should read: "Adequate procedures shall be established within the national legal system to resolve issues respecting land and resource rights and treaties of the peoples concerned". Also, at the end of the proposed provision, the following sentence should be added: "Such procedures shall fully involve the peoples concerned and include any problems concerning the spirit and intent or implementation of any land claims agreement, law or treaty pertaining to these peoples."

United States. Yes. Adequate procedures should be established to resolve land claims by the peoples concerned quickly and fairly.

The large majority of affirmative replies indicates general agreement that a provision of this kind should be included in a revised Convention. However, there have been certain proposals for partial rewording. First, under both this and other questions, certain replies have indicated that particular reference should be made to treaty rights and obligations. Second, it has been pointed out that administrative as well as legislative measures are required to deal with land claims. Third, it has been proposed by the Government of Canada that this provision should specify more clearly the lands to which claims may be made. The suggestion has also been made that this provision is of sufficient importance to merit a separate Article.

It would indeed appear appropriate to make specific reference to treaty claims in this provision, and this view is reflected in the Proposed Conclusions. While it is true that administrative measures as well as legislative measures are required to deal with land claims, it is the view of the Office that specific reference to administrative measures would be superfluous. This would appear already to be implied in the existing language. The Office also considers that it would be inappropriate to define in too much detail the lands to which this provision applies, as the current legal status of the lands to which claims may be made will vary greatly from country to country. It is therefore proposed to leave the text as formulated in this question, except for the inclusion of a reference to treaty claims and obligations.

The question of whether this provision should be a separate Article can be considered at a later stage.

V. RECRUITMENT AND CONDITIONS OF EMPLOYMENT

Subject to questions 48 and 49, do you consider that Article 15 should remain unchanged? **Qu. 47**

Total number of replies: 29.

Affirmative: 22. Argentina, Australia, Bolivia, Canada, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, India, Mexico, Nicaragua, Nigeria, Norway, Portugal, Suriname, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Uganda.

Other: 6. Algeria, Bulgaria, Colombia, Madagascar, Peru, Sweden.

Algeria. One must avoid having two types of legislation. This would be a form of discrimination contrary to the objectives of the revision of the present Convention.

Bolivia. In view of the efforts made at all levels in Bolivia to ensure the application of the laws to everyone, Article 15 should remain unchanged.

Brazil. CNI: No. This Article should be revised in order to permit the observance of the legal norms of each State.

Bulgaria. (Replying to questions 47 to 49.) It is necessary to establish the principle that these populations enjoy protection in legislation on an equal footing with all citizens with regard to occupational safety and health and labour legislation. In addition to such protection, it would be useful to provide for the possibility of more extensive special protection to cover the areas indicated in paragraph 2 of Article 15, and also those mentioned in questions 48 and 49. It would also be useful in this connection to emphasise measures taken against alcoholism, drug abuse and infectious diseases.

Colombia. If the purpose of the revision of the Convention is to overcome its present deficiencies, to make it compatible with the evolving and present situation, and to put indigenous peoples in their rightful place and not in a position of great inferiority, this revision should not be limited to keeping all its standards unchanged. On the contrary, Article 15 should be revised to oblige States to make all necessary efforts and adopt all necessary measures so that labour legislation is applied effectively and in its entirety to indigenous peoples as to all workers.

Gabon. CPG: Article 15 should be revised. The Confederation does not see why certain workers should not benefit from the same protection as others.

India. (Replying to questions 47 to 49.) The present wording of Article 15 appears appropriate to deal with the issues raised. As regards the protection of indigenous and tribal seasonal migrant workers who undertake temporary labour at agricultural and mining enterprises, and safeguards against coercive labour system practices, this could be covered by specific national legislation. It need not be covered by a specific amendment to the Convention but could be part of a Recommendation.

Madagascar. Each Member should take special measures to ensure that workers belonging to the populations concerned enjoy effective protection with regard to recruitment and conditions of employment.

New Zealand. Yes. Article 15 is not applicable in New Zealand, where workers belonging to the populations concerned do have the same protection granted by law to workers in general. It is recommended that it remain unchanged.

Peru. No. It should be revised to include provisions allowing for the protection of indigenous seasonal workers who undertake temporary labour in agricultural and other enterprises, as well as guarantees for these workers against coercive recruitment and employment practices.

Sweden. (Replying to questions 47 to 49.) Article 15 should be framed with reference to generally applicable ILO standards, e.g. Conventions Nos. 29 and 105, 100 and 111, 87 and 98, etc., and if necessary made to include supplementary provisions on "positive action".

Switzerland. SGB (replying to questions 47 to 49): Article 15 of the present Convention, which should be retained in its basic form, could be strengthened by the suggested addition of provisions to protect seasonal and migrant workers, and to ensure that they do not become dependent on systems of forced recruitment.

The large majority of replies to this question were in the affirmative. The various comments made on the substance and wording of this Article would appear to cover two basic issues of concern. The first is that Convention No. 107 should not provide for separate legislation regarding the recruitment and conditions of employment of the peoples concerned, because this might in itself constitute a form of discriminatory treatment. The second is that more emphasis should be placed on positive measures. In this regard, the Government of Colombia considers that substantial revision of this Article may be required, providing that States shall adopt all necessary measures so that labour legislation is applied effectively and in its entirety to indigenous peoples.

As concerns both the possibility of adverse discrimination and the comments of the Government of Sweden, reference is made to Article 5, paragraph 1, of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which provides that special measures of protection provided for in other Conventions adopted by the ILO shall not be deemed to be discrimination. In Report VI(1) examples of special measures of protection were cited, in cases where workers from among the peoples concerned were clearly more vulnerable than other categories of workers to exploitative conditions of recruitment and employment. It is inherent in all ILO instruments that special measures may be adopted without prejudice.

The Conference may well consider that there is room to place more emphasis on positive measures, in order to promote more genuine equality of opportunity for indigenous and tribal workers. In this regard, mention has been made in Report VI(1) of affirmative action programmes, quotas and other preferential recruitment and employment practices in certain countries on behalf of indigenous and tribal peoples. The view was also expressed by both experts and observers at the Meeting of Experts that Article 15 could be revised and modernised in a comprehensive fashion. In this regard an observer from an indigenous organisation pointed out that the labour legislation in many countries was acceptable but that enforcement was totally lacking and that adequate mechanisms were needed to ensure that the persons concerned could in fact enjoy the rights guaranteed to them.

In view of the fact that most replies considered that Article 15 should be left unchanged, subject to questions 48 and 49, the existing text of this Article is reproduced in the Proposed Conclusions (though the wording of paragraph 2 (c) has been brought into line with the terminology used in more recent instruments in these fields). If the Conference were to consider that a more comprehensive revision is required, this might focus on the following two points. First, paragraph 2 of Article 15 might be amended so as to change its emphasis from doing “everything possible to prevent all discrimination”, to providing that each Member should pursue a policy designed to promote equality of opportunity for workers belonging to the peoples concerned and other workers, with regard to the issues already enumerated there. Second, it might provide – as proposed by the Government of Colombia – that all necessary measures should be adopted to ensure that national labour legislation is applied effectively and in its entirety to workers belonging to the peoples concerned.

Qu. 48 *Do you consider that a paragraph should be added to Article 15 requiring Members to take special measures for the protection of seasonal and migrant workers belonging to the peoples concerned, particularly in connection with exposure to pesticides and other toxic substances?*

Total number of replies: 29.

Affirmative: 23. Algeria, Argentina, Australia, Cuba, Denmark, Ecuador, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 2. Bolivia, Egypt.

Other: 4. Bulgaria, Canada, Colombia, Sweden.

Bolivia. The use of pesticides and other toxic substances used in agriculture is a constant concern of the technical services, and it is therefore not necessary to include it.

Canada. The word “special” should be deleted from the provision suggested to reflect the fact that the intent of the paragraph may also be met through the adoption of measures applying to all workers.

IBC: This acknowledges a valid concern but such protection should extend to all seasonal and migrant workers, not only those belonging to indigenous peoples.

Colombia. Possibly, but there are more important aspects on which emphasis is lacking.

Ecuador. The addition of a paragraph on protection for seasonal and migrant workers would be appropriate.

Mexico. Yes, but it should be clearly specified of what these protective measures are to consist.

Netherlands. RCO: No. This is already covered in Article 15, paragraph 2 (c).

Suriname. Yes. National environmental regulations might be inadequate and special protection is required.

United States. Yes. It would be helpful to indicate other possible measures as well.

American Federation of Labor and Congress of Industrial Organisations (AFL-CIO): Yes, but also all seasonal and migrant workers should be protected and existing instruments should be strengthened or new instruments should be adopted which would apply to all workers.

Certainly it is not only workers from the peoples concerned who suffer under arduous labour conditions as seasonal and migrant workers, with inadequate protection in law and in practice. However, as noted in Report VI (1), it would appear that these peoples tend to form a particularly large proportion of such workers in many countries. The problems encountered by them in this regard were discussed in some detail during the Meeting of Experts. The insertion of a provision on behalf of seasonal and migrant workers in a revised Convention by no means precludes the elaboration of further standards on behalf of all such workers at a later date.

With regard to the nature of the protection provided, this must inevitably vary in accordance with circumstances. As a very minimum, it should involve protection under the general labour legislation applicable to other rural workers. Examples were given in Report VI(1) of ways in which general labour legislation has been made applicable to seasonal workers. Moreover, special measures may be required, over and above the application of general labour law, to ensure that these workers are not exposed to hazardous living and working conditions, in particular through the use of pesticides and toxic substances.

Finally, it may be noted that one of the most urgent requirements, both to protect seasonal and migrant workers and to eradicate coercive systems of recruitment and employment in general, is a more adequate system of labour inspection in order to supervise working conditions. As already noted, the view has been expressed that major problems arise not only because of inadequate labour legislation but also through inadequate application of existing law. The problem is, of course, dealt with specifically in the Labour Inspection Convention (No. 81) and Recommendation (No. 81), 1947, and in the Labour Inspection (Agriculture) Convention (No. 129) and Recommendation (No. 133), 1969. In addition, a large number of ILO Conventions include a requirement that adequate inspection services be created, where they do not already exist, to ensure that the Convention is applied in practice.

It may therefore be appropriate to insert a new provision in this connection.

Do you consider that another paragraph should be added to Article 15 requiring Members to take all possible measures to ensure that members of these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of induced indebtedness?

Qu. 49

Total number of replies: 29.

Affirmative: 26. Algeria, Argentina, Australia, Bolivia, Canada, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 3. Bulgaria, Colombia, Sweden.

Bolivia. This would be consistent with the general prohibition of such practices in international instruments and modern legislation.

Canada. IWG: Yes. But at the end of the proposed provisions, the following paragraph should be added: "Members shall take steps to ensure that development projects affecting or taking place in the territories of the peoples concerned include employment and training opportunities, equity participation, revenue-sharing and other significant benefits to these peoples."

Colombia. This is repetitive: see reply to question 29.

Ecuador. Although other international instruments deal with these matters, the proposed addition would not weaken this Convention.

Mexico. Yes. The cases of peoples having institutions like *tequio* or *faena*, which are systems of unremunerated compulsory labour for the benefit of the community and part of their traditional organisation, should also be taken into consideration. Normally, in such cases the labour benefits the entire community. It is through such practices that they have built roads, small irrigation works, schools, clinics, sports facilities, etc., which have a direct effect in improving conditions of communal life.

Netherlands. RCO: No. This is already included in Article 15, paragraph 1.

Suriname. Yes, also according to the National Labour Code.

United States. Yes. These coercive recruitment systems are unacceptable.

AFL-CIO: Yes, but the organisation considers that workers not belonging to these groups should also be protected from this type of exploitation.

The large majority of replies to this question were affirmative. The observations made by the Government of Mexico, to the effect that systems of unremunerated compulsory labour exist within the traditional organisation of certain indigenous communities, have already been dealt with under question 29. In view of the generally positive response, a provision based on this question has been included in the Proposed Conclusions.

The point raised by Canada (IWG) was also discussed during the Meeting of Experts. If the Conference wished to take it up, it might be dealt with more appropriately, for example, under questions 21 to 23.

VI. VOCATIONAL TRAINING, HANDICRAFTS AND RURAL INDUSTRIES

Canada. IWG: Amend the title of Part VI to read: "Vocational training, locally based industries and subsistence economies". The title should reflect a broader scope of economic development so as to be applicable and relevant to all indigenous peoples in different parts of the world. Also, in view of the profound cultural and economic

significance of indigenous harvesting practices, it would be a glaring omission to exclude specific mention of subsistence economies in the revised Convention.

Do you consider that Article 16 should remain unchanged?

Qu. 50

Total number of replies: 30.

Affirmative: 28. Algeria, Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Suriname, Uganda, Ukrainian SSR, USSR, Zambia.

Negative: 1. United States.

Other: 1. Sweden.

Canada. CLC: Yes, with the consent of the peoples concerned.

New Zealand. Yes, but "the same opportunities" do not necessarily result in an equitable share of the opportunities or their benefits. Indigenous people can be precluded from taking advantage of the opportunities by their lack of familiarity with the system or low economic base. Equity is to do with fairness and justness, not equality.

Sweden. Attention should be paid to the need for "positive action".

Switzerland. SGB (replying to questions 50-56): Articles 16 to 18 should be revised to remove the demeaning references to "the stage of cultural development" and "adjustment of modern methods". Apart from this, the organisation welcomes the suggestions for choice with regard to technical support, which takes account both of traditional technologies and of the cultural heritage of these populations.

United States. No. It should include a proviso that recognises special treatment provided by treaty or regulation.

AFL-CIO: Yes.

The very large majority of replies to this question were affirmative. It has been suggested that more attention be paid to positive action, leading to greater equality of opportunity. It should be noted that special facilities for the peoples concerned are dealt with under the next question. The purpose of Article 16 is to emphasise that the peoples concerned shall receive at least equal opportunity with other members of the population. However, in order to place more emphasis on affirmative measures, taken with the agreement of the peoples concerned, a further sentence might be added providing for measures to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application. (This is based on a suggestion made by the Government of Canada, under question 51.)

Do you consider that paragraph 1 of Article 17 should remain unchanged?

Qu. 51

Total number of replies: 30.

Affirmative: 28. Algeria, Argentina, Australia, Bolivia, Bulgaria, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Suriname, Sierra Leone, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 2. Canada, Mexico.

Canada. (Replying to questions 51-53.) Article 17 should be amended to read as follows:

"1. Any vocational training measures shall, where necessary, be based on a study of the economic environment, social and cultural conditions and needs of the populations concerned and shall aim at providing individuals with skills broadly marketable on the local and national labour markets, as determined by these individuals' potential, abilities and aspirations.

2. Measures shall be taken to enable and encourage participation of persons belonging to the populations concerned in vocational training programmes, facilities and services of general application.

3. Whenever vocational training measures – programmes, facilities and services – of general application do not meet the particular needs of individuals belonging to the populations concerned governments shall provide special programmes, facilities and services for such individuals."

The revised wording would emphasise participation of members of indigenous populations in normal training measures for the population at large, while allowing for the establishment of special programmes, facilities and services for individuals who manifestly need them. This approach would help to avoid segregation and consequent discrimination against minorities which may result from separate facilities/programmes. It would also emphasise the participation of members of indigenous populations in the national or local labour market through training and development of marketable skills based on their individual abilities, potential and aspirations.

IWG: No. Change "special needs" to "particular needs".

Mexico. It should read: "... governments, in co-ordination with these peoples, shall provide ...".

United States. Yes, except that the term "facilities" should be changed to "programmes".

The very large majority of replies to this question were affirmative. While it has been suggested that reference be made to the need for co-operation with the peoples concerned, this would appear to be more appropriate in the subsequent paragraph. While the Government of Canada has made proposals for substantial rewording of Article 17, these proposals would appear to be of most relevance to Article 16 and the second paragraph of Article 17. In view of the generally positive response, the Proposed Conclusions reflect no change to this paragraph.

Qu. 52 *Do you consider that paragraph 2 of Article 17 should be replaced by a provision that any special training facilities should be based on a careful study of the economic environment, social and cultural conditions and practical needs of the peoples concerned?*

Total numbers of replies: 30.

Affirmative: 24. Algeria, Argentina, Australia, Bolivia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Suriname, Uganda, Ukrainian SSR, USSR, Zambia.

Negative: 3. Ecuador, Sierra Leone, United States.

Other: 3. Bulgaria, Canada, Colombia.

Bulgaria. The text can be retained in its present form, but omitting the words "for which these populations have traditionally shown aptitude".

Canada. IWG: Yes. But change "cultural conditions and practical needs" to "cultural conditions, and professional and practical needs". Add the following provision to the proposed paragraph: "To the extent possible, the studies conducted shall involve the peoples affected and the training facilities shall be progressively under their responsibility and control".

Colombia. Paragraph 2 should be kept in its present form with the addition of the factor of real needs.

Ecuador. The substitution is not necessary, because the text of the present Article provides for the same thing as the proposed amendment.

Mexico. Yes, but with the clarification that studies should be carried out in co-operation with the peoples concerned.

United States. No. The paragraph should be replaced by a provision that any special training and other related programmes should be based on the economic, social and cultural needs of the peoples concerned. In this way the scope of the provision is expanded to include other related programmes and studies are not required to be undertaken if the economic, social and cultural needs are already known.

AFL-CIO: Yes.

While the majority of replies to this question were affirmative, several comments have been made. The major concerns expressed relate to carrying out the studies provided for in paragraph 2 of Article 17. The suggestions made by the Governments of Mexico and the United States, and by Canada (IWG), in this regard are reflected in the Proposed Conclusions.

Furthermore, Canada (IWG) has proposed an additional provision to the effect that the training facilities should come progressively under the responsibility and control of the said peoples. Such a provision would be consistent with the approach proposed in the area of education. Given that this paragraph deals specifically with the training programmes adapted to the particular needs of the said peoples, it would seem appropriate that the peoples concerned should ultimately assume responsibility for the operation of these programmes, and the Proposed Conclusions include a suggestion to this effect.

Do you consider that paragraph 3 of Article 17 should be omitted from the revised instrument?

Qu. 53

Total number of replies: 29.

Affirmative: 23. Algeria, Argentina, Australia, Bulgaria, Cuba, Egypt, Finland, Gabon, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 4. Colombia, Ecuador, Honduras, Sierra Leone.

Other: 2. Bolivia, Canada.

Bolivia. The substance could be retained if drafted better.

Colombia. Paragraph 3 should remain, because an essential purpose of the revised Convention is to oblige States to contribute to overcoming the backwardness of indigenous peoples and incorporating them within the process of development in which all citizens participate.

Ecuador. Paragraph 3 of Article 17 is necessary.

Netherlands. RCO: No. The words "with the advance, etc." can be deleted.

Suriname. Yes, in view of the new concept, this provision is outdated.

United States. Yes. There is no need to condition the provision of training programmes. In addition, the integrationist approach is objectionable.

Zambia. Yes. The paragraph is patronising.

The large majority of replies to this question were affirmative. The suggested revision of Article 17(1) necessarily implies that special training facilities should be provided only so long as they might be needed.

Qu. 54 *Do you consider that paragraph 1 of Article 18 should be amended by deleting all the words following "populations concerned"?*

Total number of replies: 30.

Affirmative: 21. Argentina, Australia, Bolivia, Bulgaria, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Madagascar, New Zealand, Nicaragua, Nigeria, Peru, Portugal, Saudi Arabia, Suriname, Uganda, Zambia.

Negative: 7. Algeria, Ecuador, Mexico, Sierra Leone, Ukrainian SSR, USSR, United States.

Other: 2. Canada, Norway.

Canada. It should be amended to read as follows: "Handicrafts, community-based and rural industries shall, as far as possible, be encouraged as factors in the economic development of the populations concerned." So amended the paragraph would, as in part of the comments of Canada (IWG), refer specifically to community-based industries. At the same time the words "as far as possible" would make the provision sufficiently flexible to allow for examination of all relevant factors in programme development.

CLC: Yes, with the consent of the peoples concerned.

IWG: Yes, but it should be further amended to read: "Arts and crafts, community-based and rural industries, and subsistence economies shall be encouraged as important factors in the economic development of the peoples concerned." In addition, the following sentence should be added: "In particular, it is recognised that activities such as hunting, fishing, trapping and gathering are of vital cultural significance to these peoples and continue to make a substantial contribution to their economies, providing them with food, raw materials and income."

Ecuador. The proposed amendment is unnecessary.

Gabon. CPG: The Confederation would rather delete the text after the words "standard of living".

Mexico. No. One should also add that handicrafts should be promoted for cultural and not only for economic reasons.

Norway. (Replying to questions 54-56.) Indigenous peoples should also be familiarised with and put in a position to avail themselves of (not adapt to) modern technology and methods in fields such as production and marketing but it must be up to them to decide whether, how and to what extent this should be done. Knowledge of their own culture and technology will be especially important in this type of assessment, and the development of such knowledge should be provided for. There is also a need for research into traditional technology, as well as research aimed at finding new production methods in accordance with the peoples' traditions. The Government sees question 55 as amenable to this interpretation.

Portugal. Yes, in order to delete protectionist language.

Suriname. Yes, also in view of the planned national small-scale projects.

United States. No. It should rather be amended to indicate that handicrafts and rural industries shall be encouraged as one possible way of meeting the economic, social and cultural needs of the concerned populations.

AFL-CIO: Yes.

While the majority of replies to this question were affirmative, some negative replies and alternative formulations were also received. One important concern has been that the terms "handicrafts" and "rural industries" are in themselves insufficient to portray the activities and occupations intrinsic to the traditional lifestyles of many of the peoples concerned. Proposals have been made that there be reference to "community-based industries" and to other traditional subsistence activities such as hunting and gathering, fishing and trapping.

There would indeed seem to be good reason not to limit these provisions to handicrafts and rural industries. The term "community-based industries" is therefore suggested, and the Proposed Conclusions also incorporate the suggestion that encouragement should be given to traditional activities.

Do you consider that paragraph 2 of Article 18 should be replaced by a requirement that technical assistance should be provided where appropriate for the development of handicrafts and rural industries?

Qu. 55

Total number of replies: 30.

Affirmative: 24. Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Denmark, Egypt, Finland, Honduras, Mexico, New Zealand, Nicaragua, Nigeria, Peru, Portugal, Saudi Arabia, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 2. Gabon, Sierra Leone.

Other: 4. Algeria, Ecuador, Madagascar, Norway.

Algeria. The paragraph should be retained but it could be complemented by a provision that technical assistance be provided, wherever possible, to develop handicrafts and rural industries.

Brazil. CNI: It should be deleted.

Canada. (Replying to questions 55 and 56.) It should be replaced by the following: "Where appropriate, technical assistance shall be provided for the development of handicrafts, community-based and rural industries; the technical assistance provided shall take into account the traditional technologies and culture of these populations and aim at enabling them to raise their standard of living and familiarise themselves with alternative methods of production and marketing." So amended the paragraph would, as in part of the comments of Canada (IWG), refer specifically to community-based industries. The amendment would also recognise that whatever technical assistance is provided should be provided in an appropriate and sensitive manner. At the same time, the words "aim at enabling them" reflect the fact that it is for the populations concerned to apply the assistance for their own benefit.

IWG: Yes. But amend the proposed paragraph 2 to read: "Technical and financial assistance shall be provided where appropriate for the development of arts and crafts, community-based and rural industries, subsistence economies and other forms of development engaged in by the peoples concerned."

Colombia. Yes. This is a great improvement.

Ecuador. The paragraph seems to provide for the same thing as the proposed revision.

Madagascar. Yes, but decisions regarding technical assistance should receive the free consent of the peoples concerned.

United States. Yes. However, the technical assistance should be provided upon the request of the concerned population.

The large majority of replies to this question were affirmative. It is proposed, in view of the preceding comments, that this provision should apply to more than handicrafts and rural industries alone. The view has also been expressed that such technical assistance should be provided with the consent of, or upon the request of, the peoples concerned. This would not, however, appear appropriate. The more general suggested provisions covering consultations appear to provide for the former; whereas the latter would place an additional requirement on these peoples not imposed on other population groups before receiving assistance.

Qu. 56 *Do you consider that the technical assistance referred to in the previous question should take into account both traditional*

technologies and the cultural characteristics of these peoples, and that it should enable them to raise their standard of living and to familiarise themselves with alternative methods of production and marketing?

Total number of replies: 30.

Affirmative: 26. Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Mexico, New Zealand, Nicaragua, Nigeria, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 4. Algeria, Ecuador, Madagascar, Norway.

United States. Yes. The concerned populations should be able to choose between traditional and modern technologies.

In view of the large majority of affirmative replies, a provision to this effect is included in the Proposed Conclusions.

VII. SOCIAL SECURITY

Do you consider that Article 19 should be amended to provide that social security schemes should be extended progressively, wherever practicable, to cover the peoples concerned? **Qu. 57**

Total number of replies: 29.

Affirmative: 26. Algeria, Argentina, Australia, Bulgaria, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 3. Canada, Ecuador, Madagascar.

Argentina. Yes, with the condition that the words "wherever practicable" be deleted.

Brazil. CNI: The revision of Article 19 should provide only for the implementation of social security in equality of treatment with other citizens.

Bulgaria. Yes. A new paragraph should be added to encourage any initiatives aimed at providing these groups with assistance in the area of social security.

Canada. It should be amended to read: "The populations concerned shall have access to social security schemes and entitlements without discrimination."

IWG: Yes. But replace with: "Social security schemes shall, in consultation with the peoples concerned, be extended progressively where possible to cover those peoples."

Colombia. Yes, but the words "wherever practicable" should be deleted because the duty of improving the living conditions of these peoples, and particularly the least

protected of them, should not be subject to conditions nor to subjective considerations which might lead to priority being given to other sectors.

Cuba. Yes, but it should be made clear that the steps taken in this area should correspond to those for the enforcement of Article 15, as it is proposed to revise it.

Ecuador. Article 19 provides for the same thing as the proposed revision.

Gabon. CPG: The persons concerned should benefit from the same conditions of social protection as other citizens, without discrimination for or against them.

Madagascar. Article 19 should provide that social security systems be extended progressively to cover the peoples concerned.

Mexico. Yes, but this should be made an obligation for governments (without the phrase “wherever practicable”). Moreover, they should exploit the potential of the science referred to as traditional medicine, which has been an important factor for the protection and development of Indian peoples.

Portugal. Yes, to have greater clarity in drafting.

Suriname. Yes, this is more flexible than the existing formulation.

Switzerland. SGB: Article 19 should be revised to provide for the gradual extension of the social security system to all members of these populations as soon as is practicable.

United States. Yes, but the term “wherever practicable” should be clarified.

Zambia. Yes. Social security schemes should cover all the peoples.

The majority of replies to this question were affirmative. While there were no negative replies, a number of alternative formulations were put forward, with a view to providing the peoples concerned with benefit from social security schemes without discrimination, and to omitting the words “wherever practicable”.

Evidently, this provision should enshrine the firmest possible principle that social security schemes should be extended to the peoples concerned as soon as possible. However, it must be recognised that social security schemes have not as yet been extended to the rural workforce and their families in a very large number of countries, and there are practical reasons why the extension of schemes may prove logistically difficult. In view of the promotional nature of this provision, and the practical difficulties inherent in its implementation, as well as the need to avoid any appearance of discrimination, the Proposed Conclusions maintain the text of question 57, omitting the words “wherever practicable”.

VIII. HEALTH

Qu. 58 *Do you consider that paragraph 1 of Article 20 should remain unchanged?*

Total number of replies: 28.

Affirmative: 25. Algeria, Argentina, Bulgaria, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, New Zealand,

Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, Zambia.

Negative: 1. United States.

Other: 2. Canada, Mexico.

Brazil. CNI: Yes.

Bulgaria. These services should be provided free of charge to the populations concerned.

Canada. It should be amended to read as follows: "1. Governments shall take the necessary steps to assure adequate health services for the populations concerned, or shall provide resources to these populations to allow them to design and deliver services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health." Amended in this way, the provision would reflect, for example, initiatives by the federal governments to transfer control of these health services to the Indian population and meet the objective underlying the amendments proposed by the IWG.

CLC: This provision should be strengthened and take into account the need for consent by the peoples concerned, based on their own economic, social and cultural values.

IBC: Yes.

IWG: No. The existing Article 20 is considerably weaker than the health provision in the International Covenant on Economic, Social and Cultural Rights (Article 12). In order to ensure greater compatibility, Article 20 should be amended as follows: "Governments shall take the necessary steps to assure adequate health services for these peoples so that they may enjoy the highest attainable standard of physical and mental health."

Gabon. CPG: Yes.

Madagascar. Yes, provided that account is taken of the opinion of the peoples concerned.

Mexico. The following should be added: "with the support and participation of the beneficiaries themselves".

Netherlands. RCO: Yes.

New Zealand. (Replying to questions 58-61). Yes, in so far as this is consistent with the reply given to question 2.

Norway. Systematic studies should be carried out on the traditional healing methods of indigenous peoples.

Switzerland. SGB (replying to questions 58-61): Article 20 should be strengthened by the addition of the provision that "health services should be planned, co-ordinated and implemented in co-operation with the peoples concerned". A further provision should also be added to stress that "in the provision of these health services, account should be taken of the traditional healing practices of the peoples concerned".

United Kingdom. TUC: Yes.

United States. No. Paragraph 1 of Article 20 should be amended to read that national governments shall ensure the availability of adequate health services.

AFL-CIO: Yes.

The majority of replies to this question were in the affirmative and coincided with the views expressed by representative organisations of

indigenous peoples. The participation of these peoples in the setting up of health services designed to benefit them was advocated.

In this context, it should be pointed out that it has already been proposed that under paragraph 2 of Article 20 (see comments on questions 59 and 60), provision should be made to involve these peoples in the planning and administration of the health services set up for their benefit. On the other hand, the proposals by the Governments of Canada and the United States, and to some extent by Canada (IWG), to change the government's role from assuming the responsibility for health services to ensuring that they be made available, would provide a more flexible obligation which could more easily accommodate the other suggestions being made.

It also seems appropriate, in the light of the proposals made, to include a statement of an objective, reflecting the wording of the International Covenant on Economic, Social and Cultural Rights. All these ideas have been taken up in the Proposed Conclusions.

Qu. 59 *Do you consider that paragraph 2 of Article 20 should be amended to provide that health services should be planned and administered in co-operation with the peoples concerned and based on systematic studies of the economic, social and cultural conditions?*

Total number of replies: 28.

Affirmative: 25. Algeria, Argentina, Bulgaria, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, Zambia.

Negative: 2. Ecuador, United States.

Other: 1. Canada.

Brazil. CNI: No.

Canada. Paragraph 2 of Article 20 should be amended to read as follows:

"2. (a) Health services shall, to the extent possible, be community based. The services shall be planned and administered in co-operation with the populations concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional healing practices.

(b) The health care system shall, to the extent possible, allow for the training and employment of local community health workers, and focus on primary health care while maintaining strong links to other levels of care."

The amended provisions would reflect the fact that, in addition to social, economic and cultural conditions, geography may play an important role in the types of health services which may be provided in indigenous communities. At the same time, the provision would not require that systematic studies be made of these conditions as such studies may not be necessary or possible in all cases. What is important is that the services should take these conditions into account. The revised provisions would be consistent with the

recognition in Canada that major health problems in indigenous communities are related to social and environmental conditions and cannot be remedied by medical improvements alone. Consequently, increasing emphasis is being placed on health services which respond to the social and environmental realities of indigenous communities. The amended provisions would also be consistent with the focus by the World Health Organisation on community-based primary health care services, community participation in both planning and delivery, the incorporation of traditional healers and the establishment and maintenance of good links to secondary and tertiary care systems.

CLC: This provision should be strengthened and take into account the need for consent by the peoples concerned based on their own economic, social and cultural values.

IWG: Yes.

Colombia. Yes, it is vital that there should be dialogue between the indigenous peoples and the authorities.

Gabon. CPG: No.

Netherlands. RCO: No, this would be in conflict with existing national systems which are (or should be) applicable to all.

United Kingdom. TUC: Yes.

United States. No. Paragraph 2 of Article 20 should be amended to provide that health services be planned and administered in co-operation with the peoples concerned and based on their economic, social and cultural needs. In this way, studies would not be required to be undertaken when economic, social and cultural needs are already known.

See the comments at the end of question 60.

Do you consider that the same paragraph should be supplemented by providing that in the provision of these health services, account should be taken of the traditional healing practices of the peoples concerned? **Qu. 60**

Total number of replies: 26.

Affirmative: 23. Algeria, Argentina, Bulgaria, Colombia, Cuba, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, New Zealand, Nigeria, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 2. Ecuador (see the reply to question 59), Nicaragua.

Other: 1. Canada.

Algeria. Yes; however, an attempt must be made to ensure that modern methods of preventive medicine and care are introduced for these peoples.

Brazil. CNI: No.

Canada. See the reply to question 59.

IWG: Yes. However, the following sentence should be added to the proposed text of paragraph 2: "Where possible, health services shall be progressively under the responsibility and control of the peoples concerned."

Egypt. Yes, as such practices are often more efficient than those which are set up; what is more, this new provision is in line with the overall trend to respect the culture and traditions of these peoples.

Netherlands. RCO: No, paragraph 2 already takes such a provision into account.

United Kingdom. TUC: No, as this seems to be covered by the provision referred to under question 59.

The large majority of replies to both this question and question 59 are in the affirmative. The suggestion is made in one of these replies that account be taken not only of economic, social and cultural conditions but also of geographical conditions. It is also proposed that health services be based on these conditions rather than necessarily on systematic studies of them, and this is reflected in the Proposed Conclusions.

Furthermore, one of the indigenous peoples' representative organisations suggests that the responsibility for the health services should gradually be handed over to the peoples in question; this is also consistent with other replies concerning the assumption of responsibility by these peoples. In addition, the Government of Canada in particular has made proposals for provisions on community-based and primary health care, and for training of members of these communities. While no such proposals are made in the Proposed Conclusions, they would be consistent with other proposals and with the approach taken by the World Health Organisation. The Conference may therefore wish to discuss whether it wishes to make these provisions wider and more detailed.

Qu. 61 *Do you consider that paragraph 3 of Article 20 should remain unchanged?*

Total number of replies: 27.

Affirmative: 25. Algeria, Argentina, Bulgaria, Canada, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Mexico, New Zealand, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 2. Colombia, Madagascar.

Brazil. CNI: Yes.

Canada. CLC: This provision should be strengthened and take into account the need for consent by the peoples concerned, based on their own economic, social and cultural values.

IWG: Yes.

Colombia. Possibly.

Gabon. CPG: Yes.

Madagascar. The peoples concerned should participate in the decision to set up, develop and administer these services.

Netherlands. RCO: Yes.

United Kingdom. TUC: Yes.

United States. Yes, although it would be desirable to clarify the term "general measures of social, economic and cultural development".

Apart from some slight reservations, all the replies to this question were in the affirmative (including the comments provided by some indigenous peoples' representative organisations). Consequently, it is considered that the wording of paragraph 3 of Article 20 should remain unchanged.

IX. EDUCATION AND MEANS OF COMMUNICATION

Do you consider that Article 21 should remain unchanged?

Qu. 62

Total number of replies: 30.

Affirmative: 28. Algeria, Argentina, Bolivia, Bulgaria, Canada, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 2. Chile, New Zealand.

Brazil. CNI: Yes.

Canada. CLC: Yes.

IBC: Yes.

IWG: No. The words "have the opportunity" should be replaced by "have the right and appropriate opportunities".

Colombia. Yes, but it is vital to reiterate the obligation to respect cultural and religious traditions as well as languages or mother tongues.

Gabon. CPG: Yes.

Madagascar. Yes, but always in co-operation with the peoples concerned.

New Zealand. To provide an opportunity "on an equal footing" does not necessarily result in an equitable share of the opportunities or their benefits, given a lack of understanding of the system and inadequate economic resources. Equity by definition is concerned not so much with the notion of equality as it is with the notion of fairness and what is just.

(Replying to questions 62-70.) Yes, in so far as this is consistent with the reply to question 2 and the comments/amendments outlined above.

Switzerland. SGB (replying to questions 62-70): Articles 21 and 26 should be strengthened by: changing Article 22, paragraph 1, to provide that "education programmes for the peoples concerned should be adapted to their special needs, and should in particular take account of their cultural values and characteristics"; and changing Article 22, paragraph 2, to provide that "the planning, co-ordination and implementation of education programmes should be carried out in full consultation with the peoples concerned". Furthermore, Article 24 should be omitted.

Netherlands. RCO: Yes.

United Kingdom. TUC: Yes.

United States. Yes, with the proviso that special treatment afforded by treaty or legislation is recognised.

AFL-CIO: Yes.

On the whole, the replies to this question are in the affirmative. The point made by Canada (IWG) appears implied in the present text; explicit mention of a right does not appear necessary. The point made by the Government of Colombia appears to be covered in later questions and that made by the Government of the United States seems to be necessarily implied. The points raised by Switzerland (SGB) are discussed below. Consequently, the present wording of Article 21 could remain unchanged. In this context, it is relevant to point out, as did one of the replies, that educational programmes alone are not enough to ensure that these populations have the opportunity to acquire education at all levels on an equal footing; what really counts is that there should be an improvement in their economic and social conditions. It may also be observed that these comments, expressed by one government, are very much on the same lines as the views put forward by a number of representative organisations of indigenous peoples.

Qu. 63 *Do you consider that paragraph 1 of Article 22 should be amended to provide that education programmes for the peoples concerned should be adapted to their special needs, and should in particular take account of their cultural characteristics?*

Total number of replies: 29

Affirmative: 28. Algeria, Argentina, Bolivia, Bulgaria, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 1. Canada.

Brazil. CNI: No.

Canada. This paragraph should be amended to read as follows: "Education programmes for the populations concerned shall be adapted to their particular needs and shall take account of their cultural characteristics, where feasible and appropriate." Amended in this way, the provision would reflect the need to provide also for educational mobility while taking particular needs or cultures into account. Furthermore, it would be more consistent with the situation in Canada where there are 53 aboriginal languages and many cultural groups. While over half of the Indian students receive native language instruction at the elementary- and secondary-school levels and culturally sensitive curriculum material is available to some groups, the provision should be sufficiently flexible to take account of practical limits to adapting education programmes to particular needs or cultures.

CLC: Yes, this provision should be amended. However, the suggested amendment is not sufficiently strong. Control over the development and conduct of such programmes should lie with the peoples concerned.

IBC: Yes.

IWG: Yes, but the words "special needs" should be changed to "particular needs" and "cultural characteristics" to "traditions and cultures".

Colombia. Yes, as mentioned under the previous question.

Finland. Yes. An attempt has been made to take the special needs of the Sami population into consideration.

Gabon. CPG: Yes.

Madagascar. Yes. See also the reply to question 62.

Mexico. Yes, with the suggestion that "their socio-cultural and linguistic characteristics" be taken into account.

Netherlands. RCO: No.

United Kingdom. TUC: Yes.

United States. Yes, but this paragraph should be expanded to provide that education programmes be specially designed to meet the economic, social and cultural needs of the populations concerned.

The majority of replies to this question are affirmative; however, in the more detailed replies, it is stressed, albeit in different ways, that education programmes should be adapted to the special needs of these peoples and take into account their specific cultural values and characteristics. It is also suggested that measures be adopted to ensure that control over the development and planning of such programmes should lie with the peoples concerned. Several representative organisations of indigenous peoples make similar proposals. The question of language is dealt with under question 66. The Proposed Conclusions take account of the observations made.

Do you consider that paragraph 2 of Article 22 should be amended by adding that the formulation of education programmes should be carried out in full consultation with the peoples concerned? **Qu. 64**

Total number of replies: 29.

Affirmative: 25. Algeria, Argentina, Bolivia, Bulgaria, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 2. Ecuador, Mexico.

Other: 2. Canada, Madagascar.

Bolivia. The consultation should be carried out in accordance with the constitutional standards of each country.

Brazil. CNI: No.

Canada. This paragraph should be amended to read as follows: "The formulation of such programmes shall, when appropriate, be preceded by ethnological surveys. The programmes shall be developed and implemented in consultation with the populations concerned." This will reflect the fact that ethnological surveys may not be possible or necessary in all cases. Amended in this way, the provision would extend the requirement for consultation to the implementation of programmes. The word "full" has been deleted from the suggested amendment as the meaning of "full consultation" is unclear. (See the reply to question 20.)

CLC: It should be stipulated that programmes are carried out in accordance with the decisions of the peoples concerned.

IBC: Yes.

IWG: Yes. However, as consultation alone is inadequate in many cases, the following sentence should be added to the proposed provision: "Where possible, education services shall be progressively under the responsibility and control of the peoples concerned." The words "formulation of education" should also be changed to read "formulation and financing of education".

Madagascar. It should be added that the formulation of education programmes should be carried out with the full co-operation of the peoples concerned.

Mexico. No. This paragraph should stipulate that not only the formulation but also the implementation and evaluation of the education programmes of indigenous peoples should be carried out and jointly conducted by the State and by (trained) indigenous staff, in consultation with their own peoples. Furthermore, education should be bilingual and encourage the strengthening and development of the cultures of the various indigenous groups.

Netherlands. RCO: Yes.

United Kingdom. TUC: Yes.

United States. Yes. However, a goal should be established for the populations concerned to assume the control and responsibility of educating their own peoples. In addition, the rights, responsibilities and privileges associated with the term "full consultation" are not clear.

AFL-CIO: Yes.

With one exception, the replies to this question are, on the whole, in agreement with the suggestion it makes. In the detailed replies, however, it is stressed that it is not only the formulation but also the implementation and evaluation of education programmes that should be carried out in consultation with the peoples concerned. These observations are in line with the views expressed by representative organisations of indigenous and tribal peoples. One of the governments suggests that this paragraph of Article 22 should stipulate that the education programmes should aim at handing over the control of and responsibility for these programmes to the peoples concerned, an opinion which coincides with the views expressed by most indigenous and tribal representatives in this connection. Another government refers to the need to involve trained indigenous personnel in the administration of these programmes. While these proposals go beyond those made in Report VI(1), on which other respondents have focused, they are not incompatible with the thrust of the revision. The Proposed Conclusions thus contain an additional point to this effect.

According to some observations, ethnological surveys should be carried out only when necessary or in consultation with the peoples concerned. The

suggestion made by the Government of Canada takes these points into account and is reflected in the Proposed Conclusions.

Do you consider paragraph 1 of Article 23 should remain unchanged? **Qu. 65**

Total number of replies: 29.

Affirmative: 25. Algeria, Argentina, Bolivia, Bulgaria, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Mexico, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, Zambia.

Negative: 1. United States.

Other: 3. Canada, Madagascar, New Zealand.

Brazil. CNI: No. This provision should be deleted.

Canada. Paragraphs 1, 2 and 3 of Article 23 should be replaced by the following provision: "In the instruction of children belonging to the populations concerned, appropriate measures shall, to the extent possible, be taken to preserve indigenous languages." This provision would allow for flexibility in the timing and focus of indigenous language instruction. The amendment suggested in question 66, and the present paragraphs 1 and 3 of Article 23, are confusing and rigid. The confusion arises from the apparent assumption in these provisions that the mother tongue or even the language most commonly used by a particular indigenous group, is an indigenous language. In Canada this is the case for some; however, for a majority of native people in the country, English is the mother tongue and the language most used at home. The effective result of Article 23, paragraph 1, would therefore be to require instruction in English, which is contrary to the basic intent of the provision. Furthermore, it is assumed both in the existing provisions and in the suggested amendments that all indigenous languages are written with some standardised notation and grammar. This is still not the case for all of the 53 indigenous languages in Canada. The requirement embodied in these provisions would raise serious difficulties in Canada. It also envisages a fairly rigid phasing of language instruction without a clear rationale. From Canadian experience with language instruction in the two official languages, success is possible with a variety of teaching situations and arrangements.

CLC: Yes.

IWG: Yes.

Gabon. CPG: Yes.

Madagascar. The education programme provided for under article 23 should be decided upon in co-operation with the peoples concerned.

Netherlands. RCO: Yes.

New Zealand. Paragraph 1 should be amended to read "in the language of their choice" because any decision on this subject should be left to the particular indigenous group concerned.

United Kingdom. TUC: Yes.

United States. No. The “group to which they belong” needs to be clarified. It would be preferable to use the term “national language or in one of the official languages of the country”. In addition, the words “where this is not practicable” need to be clarified.

AFL-CIO: Yes.

See the commentary at the end of question 66.

Qu. 66 *Do you consider that paragraph 2 of Article 23 should be amended by providing that provision should be made for a progressive transition from the mother tongue or vernacular language to equal fluency in the national language or in one of the official languages of the country?*

Total number of replies: 31.

Affirmative: 22. Algeria, Argentina, Bolivia, Bulgaria, Cuba, Denmark, Egypt, Gabon, Honduras, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 9. Canada, Colombia, Ecuador, Finland, Madagascar, Mexico, New Zealand, Norway, Sweden.

Brazil. CNI: No. This article should be deleted.

Bulgaria. The following words should be added: “from earliest childhood”.

Canada. See the reply to question 65.

CLC: This provision should be amended to ensure that the indigenous peoples concerned exercise a decisive voice on this issue.

IWG: Yes.

Colombia. The provision should refer not to a progressive transition, but to the teaching of the national language so that the peoples master two languages: the official language for administrative and legal matters and the native language for life within the community.

Ecuador. Paragraph 2 of Article 23 advocates the same approach as that contained in the proposed amendment.

Egypt. Yes, paragraph 2 of Article 23 should be amended in such a way as to provide for the need to ensure a progressive transition from the mother tongue or vernacular language to equal fluency in the national language, without, however, abandoning the mother tongue.

Finland. Apart from their mother tongue, members of indigenous populations should also have a command of the national language of the country in which they live. Sufficient attention should also be paid to keeping up the mother tongue.

Gabon. CPG: Yes.

Madagascar. See the reply to question 65.

Mexico. This paragraph should stipulate that the mother tongue should come first and that the national language should be learnt and adopted as a second language.

Netherlands. RCO: Yes.

New Zealand. Paragraph 2 should be amended as suggested but with the additional amendment that the transitional programme from the mother tongue to the national language should be determined in consultation with the peoples concerned.

Norway. Instruction in the mother tongue and the indigenous culture should form the basis for learning other languages. The aim should be to develop competence in both the mother tongue and the national and/or official language of the country.

Sweden. Paragraph 2 of Article 23 assumes that the transition from the mother tongue to the national language is desirable or at all events inevitable. Since a people's own language forms an essential part of their own culture, the aim must be to preserve the language of the indigenous population and achieve bilingualism.

United Kingdom: TUC: Yes.

United States. Fluency in the national language or in one of the official languages of the country is desirable.

AFL-CIO: Yes. Adding the term "vernacular language" would be helpful.

The majority of replies to this question and to question 65 are in the affirmative. However, in several replies – to these questions and to question 67 – it is stressed that the opinion of the indigenous peoples concerned should always be taken into account; the importance of the mother tongue or vernacular language of the people concerned is also emphasised. Mention is also made of the relevance of these languages as a medium of the social and cultural values of these peoples.

The reply of the Government of the United States to question 65 appears to be contrary to the sense of the corresponding provision in Convention No. 107 and the view is not shared by others. The term "the group to which they belong" is intended to be a general formulation, capable of flexible application. The comments of the Government of Canada merit special attention, coming from a State with practical experience in this area. However, the Office does not consider these provisions to be as inflexible as does the Government of Canada. First, the Committee of Experts on the Application of Conventions and Recommendations has always considered that Article 23 is partly promotional and thus constitutes a goal as well as an immediate obligation (see also Article 28). Second, the fact that the most commonly used language is the dominant language poses no problem in practice as it would merely make it unnecessary to apply this Article. Finally, various suggestions made to involve the peoples concerned appear to be covered by questions 63 and 64, in the light of which these questions should be understood. It may be noted that the proposals in Report VI(1) set out to achieve equal fluency in the vernacular and national languages.

Do you consider that paragraph 3 of Article 23 should remain unchanged? **Qu. 67**

Total number of replies: 28.

Affirmative: 24. Algeria, Argentina, Bulgaria, Colombia, Cuba, Ecuador, Egypt, Finland, Gabon, Honduras, Mexico, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 4 . Bolivia, Canada, Madagascar, New Zealand.

Argentina. Yes, provided that the words “as far as possible” are deleted.

Bolivia. Provision should also be made for the development of these languages as they are a vital expression of indigenous cultures.

Brazil. CNI: Yes.

Canada. See the reply to question 65.

CLC: The words “as far as possible” should be deleted and the words “where this is desired by the peoples concerned” added.

IBC: Yes. It is particularly important that fluency in the mother tongue and the other national languages is fostered in order to support accessibility and qualification for the widest possible range of employment opportunities.

IWG: No. This paragraph should be amended to read as follows: “Appropriate measures shall be taken to preserve and promote the development and practice of indigenous languages.”

Gabon. CPG: Yes.

Madagascar. See the reply to question 65.

Netherlands. RCO: Yes.

New Zealand. The words “as far as possible” should be omitted. The paragraph states an important provision which should be expressed in a positive manner.

United Kingdom. TUC: Yes.

United States. AFL-CIO: Yes.

Generally speaking, all the replies to this question are affirmative. One of the replies insists upon the need to adopt the necessary measures to preserve and develop indigenous languages; in spite of the fact that this point appears to have been covered by the provisions in the previous paragraph, in its amended form, this sentence has been added in the Proposed Conclusions.

Finally, in order to reinforce this provision, the paragraph might be amended by deleting the words “as far as possible”. They were intended to cover situations in which it is not possible – or desirable, as suggested by Canada (CLC) – to do so, but the provision may be considered sufficiently flexible to allow this interpretation.

Qu. 68 *Do you consider that Article 24 should be omitted from the revised instrument?*

Total number of replies: 29

Affirmative: 24. Argentina, Australia, Bolivia, Bulgaria, Colombia, Cuba, Denmark, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, New

Zealand, Nicaragua, Nigeria, Norway, Peru, Saudi Arabia, Suriname, Uganda, Ukrainian SSR, USSR, Zambia.

Negative: 3. Ecuador, Sierra Leone, United States.

Other: 2. Algeria, Canada.

Algeria. A unified national system of education should be introduced, while taking into account any particularities which might require certain adaptations over a fixed period.

Brazil. CNI: No.

Canada. Article 24 should be replaced by the following provision: "The imparting of general knowledge and skills that will help children to fully participate on an equal footing in the national community shall be an aim of primary education for the population concerned." This provision would remove the integrationist tenor of the existing Article 24, while referring to the ability to participate on an equal footing in the wider community as being one of the objectives of primary education for native children. The new provision would also be consistent with the cross-cultural approach reflected in the existing Articles 25 and 26 of the Convention.

CLC: Yes.

IBC: Yes.

IWG: Yes.

Ecuador. The omission of Article 24 of the instrument would prejudice the national interests of member States, especially those which are less developed, whose legitimate aspirations towards national integration, and possibly their internal and external security, would be seriously jeopardised.

Gabon. CPG: No.

Netherlands. RCO: No.

United Kingdom. TUC: Yes.

United States. No. Article 24 should be amended to establish the goal of providing the quantity and quality of educational services and opportunities which will permit the concerned populations to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their economic, social and cultural well-being.

AFL-CIO: Yes.

A large number of the replies to this question agree that Article 24 should be omitted because it advocates much-debated integration. Some governments, on the other hand, suggest that this Article be replaced by one which would lay down new goals for education of the children of these peoples. The Proposed Conclusions reflect these suggestions.

Do you consider that Article 25 should remain unchanged?

Qu. 69

Total number of replies: 29.

Affirmative: 27. Algeria, Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, New

Zealand, Nicaragua, Nigeria, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 2. Mexico, Norway.

Brazil. CNI: Yes.

Bulgaria. Yes. In addition, provision should be made for the adoption of measures within the educational system of the country and in different sectors of national society.

Canada. CLC: Yes.

IBC: Yes.

IWG: Yes, but add the following: "In addition, efforts shall be made to ensure that history books and other educational materials provide a fair, accurate and informative portrayal of the societies and culture of the peoples concerned."

Gabon. CPG: Yes.

Mexico. Such measures could consist, for example, in disseminating the values and accomplishments of the indigenous peoples among the national community, so that the latter may know them and understand them as belonging to other cultures, but on an equal footing with the rest of the human race.

Netherlands. RCO: Yes.

Norway. Yes, but adding the following: "Other parts of the majority population should be given insight into the culture of the people concerned. Especially those being in most direct contact with the population group concerned should have the opportunity of instruction in the language of the population concerned."

United Kingdom. TUC: Yes.

United States. Yes. Actions to eliminate prejudices would be helpful.

Nearly all of the replies to this question are affirmative. Some observations – both of governments and of organisations representing certain indigenous peoples – propose additional provisions to strengthen this principle. However, it appears that the terms of this Article, as a basic principle, could serve as a starting-point for adopting, at the national level, some of the measures proposed in the observations.

Qu. 70 *Do you consider that Article 26 should remain unchanged?*

Total number of replies: 30.

Affirmative: 29. Algeria, Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Gabon, Honduras, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 1. Madagascar.

Brazil. CNI: No. Paragraph 2 should be omitted.

Bulgaria. Yes, but it should state that all major communication media should be used.

Canada. CLC: Yes.

IBC: Yes.

IWG: No. In paragraph 1 the words "labour and social welfare" should be replaced by "economic opportunities, education and health matters, and social welfare", and "social and cultural characteristics" by "traditions and cultures".

Gabon. CPG: Yes.

Madagascar. The words "if necessary" should be omitted.

Netherlands. RCO: Yes.

United Kingdom. TUC: Yes.

United States. Yes. It is important for the concerned populations to be fully informed. However, the rights and duties are not always clear. In these cases, they need to be clarified.

AFL-CIO: Yes.

Practically all of the replies to this question are affirmative. Only one government and one organisation representing certain indigenous peoples make observations or suggest changes with a view to strengthening these provisions. However, as in the case of Article 25, it is considered that the present wording of Article 26 lays down adequate basic principles to enable some of the measures suggested in the observations to be adopted at the national level.

X. ADMINISTRATION

Do you consider that the first paragraph of Article 27 should be amended by adding after "agencies" a reference to other appropriate mechanisms? Qu. 71

Total number of replies: 28.

Affirmative: 26. Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Ecuador.

Other: 1. Algeria.

Algeria. The present Article 27 already constitutes a satisfactory basis. However, paragraph 1 could be supplemented as suggested in order to further improve efficiency in implementing the programmes provided for, with a view to raising the level of these peoples in all spheres.

Brazil. CNI: Yes.

Canada. Yes. However, it should be understood that bodies which have an independence from governments may also be involved in administering relevant programmes. Such bodies have been established in Canada as a result of land claims settlements or self-government legislation.

CLC: After "shall", the following should be added: "recognise indigenous peoples' cultural, social and economic institutions and, where possible, create or develop agencies to liaise with the indigenous people's institutions and organisations which shall administer the programme".

IBC: Yes.

IWG: Yes.

Ecuador. Article 27 should remain unchanged.

Egypt. Yes, in order to ensure greater flexibility in choosing the most appropriate means of applying these provisions.

Mexico. It should be added that it is essential, above all, for the indigenous peoples themselves to participate in such mechanisms.

Netherlands. RCO: Yes.

New Zealand. (Replying to questions 71-73.) Yes, in so far as this is consistent with the reply to question 2.

Portugal. Yes, in order to provide explicitly for more means which may be used for the purposes concerned.

Switzerland. SGB (replying to questions 71-73): Article 27 should be strengthened by adding to paragraph 2(a) on planning, the provision that "co-ordination and implementation of measures adopted under the terms of the Convention should be handled in such a way as to give the peoples concerned the widest possible administrative responsibility for their own affairs".

United States. Yes. In many cases, other appropriate measures may be preferable to creating agencies.

AFL-CIO: Yes.

Nearly all of the replies to this question are affirmative. It is generally considered that inclusion of the term "other appropriate mechanisms" would give greater scope to this paragraph of Article 27. One government and some organisations representing certain indigenous peoples suggest, respectively, that the creation of such agencies and mechanisms be carried out with the participation of the peoples concerned, and that the institutions of indigenous peoples be recognised and support given to the creation and development of agencies to liaise with the institutions, organisations and mechanisms concerned. Lastly, one workers' organisation representing certain indigenous peoples suggests that measures be carried out in such a way as to grant indigenous peoples administrative responsibility for their own affairs. All of these suggestions appear to be covered in the next question.

Qu. 72 *Do you consider that paragraph 2 (a) of Article 27 should be amended to provide that the programmes adopted in application of the Convention should include planning, co-ordination and execution, in collaboration with the peoples concerned, of the measures provided for in the Convention?*

Total number of replies: 29.

Affirmative: 26. Algeria, Argentina, Australia, Bolivia, Bulgaria, Cuba, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Ecuador.

Other: 2. Canada, Colombia.

Algeria. As regards this subparagraph, the new text should provide for collaboration of the peoples concerned in the adoption of the measures provided for in the Convention and those undertaken in application of the Convention.

Bolivia. Consultation should take place in the context of the national societies, structured according to a democratic, representative and pluralist tradition, so that a common nationality and national State may be consolidated.

Brazil. CNI: No.

Canada. Paragraph 2 and subparagraph (a) should be amended to read as follows: "The programmes adopted in application of the Convention shall include –

(a) planning, co-ordination and execution, in co-operation with the populations concerned, of the measures provided for in the Convention."

The term "co-operation" is consistent with the usage in question 10. "Collaboration", on the other hand, may not be possible in all circumstances.

CLC: The following should be added: "as approved by the peoples concerned".

IBC: Yes.

IWG: Yes. But involvement of indigenous peoples should not apply only to subparagraph (a). Therefore, the introductory words in paragraph 2 should be amended as follows: "These programmes shall be undertaken in collaboration with the peoples concerned and shall include ...".

Colombia. The Government does not consider it appropriate to refer only to programmes adopted in application of the Convention, since governments also adopt programmes for indigenous peoples as part of their national development plans.

Ecuador. See the reply to question 71.

Egypt. Yes, in order to keep to the general line which should be followed.

Netherlands. RCO: Yes.

United Kingdom. TUC: Yes.

United States. AFL-CIO: Yes.

Zambia. Yes, in order to provide the peoples with a form of participation.

Practically all of the replies to this question are affirmative. In some cases they specify that not only measures provided for by the Convention should be referred to but also those adopted at the national level; other replies suggest that collaboration of the peoples concerned should refer to all of the subparagraphs of this paragraph and not only to subparagraph (a).

The Office expresses some reservations on suggesting that the collaboration or co-operation language apply to the whole of paragraph 2 of revised Article 27, since, in the first place, the principle seems well established, and in the second, the activities covered in subparagraphs (b) and (c) are only consequences of the

measures taken under (a) and are in any case particularly suited to governments. Nevertheless, two alternatives are given in the Proposed Conclusions.

Qu. 73 *Do you consider that subparagraphs (b) and (c) of paragraph 2 of Article 27 should remain unchanged?*

Total number of replies: 29.

Affirmative: 28. Algeria, Argentina, Australia, Bulgaria, Canada, Colombia, Cuba, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 1. Bolivia.

Bolivia. Subparagraphs (b) and (c) of this Article could be improved.

Brazil. CNI: Yes.

Canada. CLC: Subparagraph (c) should read as follows: "Supervision through indigenous institutions of the application of these measures."

IBC: Yes.

IWG: No. See the reply to question 72.

Netherlands. RCO: Yes.

United Kingdom. TUC: Yes.

United States. Yes, except that in subparagraph (b), the term "if necessary" should be inserted between the words "measures" and "to".

AFL-CIO: Yes.

All of the replies to this question are affirmative. Some make suggestions to strengthen subparagraph (c) in particular, but this point appears to have already been covered in previous questions. The point raised by the United States may be considered to have been covered by the present text.

XI. GENERAL PROVISIONS

Qu. 74 *Do you consider that Article 28 should remain unchanged?*

Total number of replies: 30.

Affirmative: 28. Algeria, Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 2. United States, New Zealand.

Brazil. CNI: Yes.

Canada. CLC: Yes.

IBC: Yes. This consideration is absolutely essential.

IWG: Yes. It is necessary to maintain flexibility, but this provision should not be used by governments to justify their non-performance of reasonable obligations. Therefore, the following should be added to the end of Article 28: "In conformance with the spirit and intent of the terms of this Convention."

Ecuador. The Government considers that Article 28 must remain unchanged.

Netherlands. RCO: Yes.

New Zealand. (Replying to questions 74 and 75.) Yes. In so far as this is consistent with the reply to question 2.

Suriname. (Replying to questions 74 and 75.) Yes. There is no need to amend these Articles.

Switzerland. SGB (replying to questions 74 and 75): It is not considered necessary to amend Articles 28 and 29.

United Kingdom. TUC: Yes.

United States. Yes. Flexibility should be maintained.

AFL-CIO: Yes.

All of the replies to this question are affirmative. Some of the observations made reiterate the need to maintain flexibility in the application of the Convention, without permitting non-compliance. The point raised by the IWG of Canada may be considered to be implicit in the Convention. The Proposed Conclusions therefore reflect this point.

Do you consider that Article 29 should remain unchanged?

Qu. 75

Total number of replies: 28.

Affirmative: 28. Algeria, Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Saudi Arabia, Sierra Leone, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Argentina. The words "and national laws" should be added at the end of the Article.

Brazil. CNI: Yes.

Canada. CLC: No. This Article is not strong enough and should be amended in the light of other international human rights instruments, and according to the wishes of indigenous peoples.

IBC: Yes.

IWG: No. The protection provided in Article 29 is far from adequate. The words "shall not affect" should therefore be replaced by "shall not adversely affect". The following two paragraphs (which are similar to Article 5 of the International Covenant on Economic, Social and Cultural Rights) should also be added:

“Nothing in the present Convention shall be interpreted as implying for any government, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or obligations recognised herein, or at their limitation in a manner not provided for in this Convention.

No restriction upon or derogation from any of the fundamental rights of the peoples concerned that are recognised or existing in any country in virtue of law, Conventions, regulations or custom shall be admitted on the pretext that this Convention does not recognise such rights or that it recognises them to a lesser extent.”

Netherlands. RCO: Yes.

United Kingdom. TUC: Yes.

United States. Yes. These benefits should be recognised.

AFL-CIO. Yes.

Most of the replies to this question are affirmative; according to some, the provision contained in Article 29 should be strengthened by referring to national laws or other international instruments relating to human rights.

As regards the latter suggestion, it would be more appropriate to include a reference of this kind in the Preamble to the revised instrument rather than in the body of the Convention. As regards the reference to national law, it should be recalled that, under paragraph 8 of article 19 of the ILO Constitution, the ratification of a Convention by any Member shall not be deemed to affect any law, award, custom or agreement which ensures more favourable conditions than those provided for in the Convention. Therefore, since there is a provision with a broader coverage, the present wording of the Article may be retained.

XII. TRANSITIONAL PROVISIONS

Qu. 76 *Do you consider that the ratification by a Member of the revised Convention should ipso jure involve the immediate denunciation of Convention No. 107?*

Total number of replies: 27.

Affirmative: 26. Algeria, Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Ecuador, Egypt, Finland, Honduras, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Peru, Portugal, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Gabon.

Brazil. CNI: Yes.

Canada. CLC: Yes.

IBC: Yes.

IWG: Yes.

Colombia. Yes; this is indispensable, since the coexistence of both instruments delays the desired progress.

Gabon. No. In view of the new nature of the prescribed measures and the work which needs to be done, a date should be fixed.

Madagascar. Yes; in so far as the unrevised part of the current Convention is incorporated in the revised Convention.

Netherlands. RCO: Yes.

Switzerland. SGB (replying to questions 76 and 77): Ratification of the revised Convention by a Member should have the effect *ipso jure* of immediate denunciation of Convention No. 107.

United Kingdom. TUC: Yes.

United States. Yes. Ratification by a Member of the revised Convention would indicate lack of support for the existing Convention No. 107. If the Convention is revised along the indicated lines, it would be impossible to fulfil obligations imposed by both simultaneously.

AFL-CIO. Yes.

All of the replies to this question are affirmative, except one. In any case, this has been expressly provided for in Article 36 of Convention No. 107. The revised Convention should therefore contain a provision to this effect.

Do you consider that Convention No. 107 should be closed to further ratifications when the revised Convention comes into force? Qu. 77

Total number of replies: 26.

Affirmative: 25. Algeria, Argentina, Australia, Bolivia, Bulgaria, Canada, Colombia, Cuba, Ecuador, Egypt, Finland, Gabon, Honduras, Madagascar, New Zealand, Nicaragua, Norway, Peru, Portugal, Suriname, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Negative: 1. Mexico.

Algeria. Convention No. 107 should be closed to further ratifications, not from the date on which the revised Convention comes into force, but from the date on which the latter is adopted by the International Labour Conference.

Brazil. CNI: Yes.

Canada. CLC: Yes.

IBC. Yes.

IWG. Yes.

Mexico. No. The Government considers that it is possible to continue enriching it in future, although the relevant consultations should be maintained after its application.

Netherlands. RCO: Yes.

United Kingdom. TUC: Yes.

The replies to this question are all affirmative, except for one, which states that it may be possible to continue enriching the Convention currently in force. It should therefore be considered that if the basic orientation of the Convention

is being changed, in order to respond to new trends and the policies which have been implemented as regards indigenous peoples, and in view of the fact that the unrevised Articles would be included in the revised Convention, the Convention currently in force should be closed to further ratifications. The revised Convention should therefore contain a provision to the effect that the Indigenous and Tribal Populations Convention, 1957 (No. 107), should be closed to further ratifications.

XIII. SPECIAL PROBLEMS

- Qu. 78** (1) *Are there any particularities of national law or practice which, in your opinion, are liable to create difficulties in the practical application of the instrument as conceived in this report?*
 (2) *If so, how would you suggest that these difficulties be met?*

Total number of replies: 26.

Affirmative: 1. United States.

Negative: 18. Australia, Benin, Bolivia, Bulgaria, Cuba, Egypt, Finland, Honduras, Madagascar, Mexico, New Zealand, Nicaragua, Nigeria, Peru, Uganda, Ukrainian SSR, USSR, Zambia.

Other: 7. Argentina, Canada, Colombia, Ecuador, Saudi Arabia, Suriname, Zambia.

Argentina. Subject to the reservations expressed, the Government considers that there are no difficulties in the application of the Convention.

Bolivia. There would not be any difficulties if the observations made were taken into account.

Brazil. CNI: (1) Yes.

(2) To leave the adaptation of the Convention to national conditions up to each member State.

Canada. Please refer to the following observations made by the Government: general observations; introduction to its replies on questions 33 to 46 (land); replies to questions 24 and 25 (customary law and retention of customs and institutions); replies to questions 62 to 67 (education and means of communication) and reply to question 79 (jurisdiction).

IBC: The extraordinary scope of this Convention once again requires consideration of the nature and role of an international Convention. The IBC calls to the attention of governments, employers' and workers' organisations, and of the International Labour Office, the following excerpt from paragraph 16 of the report of the Meeting of Experts: "A Convention required ratification to be valid, for only then did governments voluntarily accept its obligations and make possible the supervision of its application on a regular basis by the ILO's supervisory bodies. The proposals made by the Meeting should therefore be a compromise between the ideal, the requirements of flexibility and adaptability to different situations, and the basic needs of the populations it was intended to protect and to assist." The Convention should provide for national approaches to ensure full and meaningful consultation with representatives of indigenous peoples; to

instil in national, social, educational, employment, economic and political practices and institutions a respect for the culture of indigenous peoples; and adequate mechanisms to discuss and resolve constitutional issues. The Convention cannot realistically or successfully stipulate the manner in which these matters can be carried out in each national context.

IWG: The practical application of the revised Convention should not create serious difficulties if governments demonstrate a genuine spirit of co-operation, good faith and the political will to undertake the necessary reforms.

Colombia. (1) It may be that there are some difficulties, especially economic constraints, but probably the main problem is lack of awareness of the need to involve indigenous peoples in national life.

(2) Ratification of the Convention could contribute to resolving such difficulties, but political awareness is also necessary.

Ecuador. (1) The revised Convention, along the basic lines now laid down, would be unconstitutional, illegal and inappropriate. It would run counter to articles 2, 4, 19, 46, 48, 51, 78 and 118 of the Constitution; to provisions of the Civil Code, the Mining Code and acts respecting hydrocarbons, water and national security, among other laws. In addition, it would hinder the strengthening of national unity, create forms of discrimination among Ecuadorians, withdraw subsoil and mining resources from state control, impede the legitimate action of the State (the exercise of its sovereignty) and restrict control of its borders.

(2) It would constitute an instrument of national disintegration and destabilisation.

Saudi Arabia. (1) It will be difficult to apply the Convention to the nomadic populations, since they have no fixed place of residence.

(2) The Convention should not be applied to this category.

Suriname. (1) There are no legal problems involved in the practical application of the instrument.

(2) A reply is now under consideration.

United Kingdom. TUC: (1) No.

(2) Not applicable.

United States. (1) Yes. For instance, proposing to disrupt the current system of property rights would likely be met with vigorous opposition in the United States, making the practical application of the instrument difficult.

(2) Potential difficulties should be addressed through appropriate forums.

A large proportion of the replies to this question are negative; they consider that the application of the Convention would not create difficulties. The remaining replies indicate various possible difficulties which governments may face in applying the Convention, some of which may be attributed to situations which are contrary to the Convention itself, such as those arising out of a lack of awareness, at the national level, of the specific problems of indigenous peoples, or else are due to the economic situation of the country. Other difficulties, on the other hand, may arise out of the provisions themselves of the revised Convention. However, as has been stated in a number of replies, not only on this question but on others in the questionnaire, or in the general observations made by governments, employers' and workers' organisations, and organisations representing certain indigenous peoples, it would be possible to overcome many of these difficulties if a national awareness of the specific problems of indigenous peoples is fostered and if governments display the necessary political will to apply the provisions of the revised Convention.

In any case, a solution of the difficulties referred to is also made possible by the flexibility principle contained in various Articles of the revised Convention and by the general principles of flexibility laid down in Article 28 of the Convention currently in force, and which should be retained in the revised Convention, as has already been stated.

Qu. 79 (*Federal States only*) *Do you consider that, in the event the instrument is adopted, the subject-matter would be appropriate for federal action, or wholly or in part for action by the constituent units of the federation?*

Total number of replies: 7.

Affirmative: 1. USSR.

Negative: 1. Nigeria.

Other: 5. Australia, Canada, Finland, Mexico, United States.

Australia. The subject-matter would be appropriate for concurrent action by all units of the federation.

Brazil. CNI: Yes.

Canada. Canada is a federal State consisting of a federal Government, ten provinces and two territories. As mentioned in the Government's introductory comments, while under the law, the federal Government has exclusive legislative authority over "Indians" (which has been interpreted by the courts as including the *Inuit*) and "lands reserved for the Indians"; provincial governments have legislative authority in a number of areas touched on by this Convention, notably education and health care. The provinces are also owners of most of the public lands in Canada within their respective boundaries. As regards métis and non-status Indians, the question of whether legislative authority in this area belongs to either the federal or the provincial level of government, or both, has not yet been determined by the courts. However, it should be noted that social programmes and other measures applicable to all citizens, at the national, provincial or territorial level, also apply to métis and non-status Indians. In addition, specific provincial and federal measures have been enacted to benefit the population. Given the above-mentioned complexity, action in Canada on aboriginal issues generally requires co-operation between provincial, territorial and federal authorities.

IWG: In the event the instrument is adopted, the subject-matter would be appropriate for federal action in the light of the special constitutional responsibility of the federal Government for the indigenous peoples of Canada (section 91(24) of the Constitutional Act, 1967). Where provincial lands are affected, the involvement of provincial governments may be required. In all instances, the indigenous peoples affected must fully participate in the implementation of the Convention through equitable and appropriate procedures.

Mexico. In the particular case of Mexico, such action would be the responsibility of the federal and state authorities.

Switzerland. SGB: It is considered that the flexible manner of applying the Convention provided for under Article 28 takes sufficient account of the peculiarities of national legal systems, and their practice, without endangering the revision's fundamental

aims. In the case of federal States, however, difficulties could only arise if the national government, having ratified the Convention, declines to exercise constitutional authority over constituent units of its federation. It might, therefore, be prudent to include in the revision a declaration to the effect that "the provisions of the present Convention extend to all units within signatory States without limit or exception".

United States. The revised instrument will need to be considered by the executive and legislative branches of government before a decision on its adoption or application to states and local governments can be made.

Depending on the political structure of the State, some of the governments of the federal States point out in their replies, in particular, that matters relating to indigenous populations – in the legislative or administrative sphere – are appropriate for action by the federal government; others consider that both federal authorities and the constituent units of the federation are competent in this respect. However, it is always explicitly acknowledged that, given the scope of the matters covered by the Convention, the federal government should receive the support of local governments – whether states, provinces or territories – in order to fully implement its provisions.

Reality, on the other hand, appears to dictate the need for joint action, that is, both by the central government and by the state authorities, on matters relating to indigenous peoples, especially in certain cases, such as those relating to land rights. This opinion is shared both by governments and by organisations representing certain indigenous peoples.

It may be added that the question has arisen on occasion in supervising the application of Convention No. 107 in the federal States that have ratified it. These problems have not been insuperable, however, given the flexibility inherent in that Convention with regard, in particular, to methods of implementation.

Are there, in your opinion, any other pertinent problems not covered by the present questionnaire which ought to be taken into account when the instrument is being drafted? If so, please specify. **Qu. 80**

Total number of replies: 21.

Negative: 13. Australia, Cuba, Egypt, Finland, Honduras, Madagascar, Nicaragua, Nigeria, Uganda, Ukrainian SSR, USSR, United States, Zambia.

Other: 8. Argentina, Canada, Colombia, Ecuador, Mexico, Peru, Suriname, Sweden.

Argentina. The Government considers that the present questionnaire adequately covers the subjects involving the populations concerned.

Brazil. CNI: The Confederation considers that in revising existing instruments or drawing up new ones, attention should be given to the direct consequences of their provisions on employment, investment and international trade. It would also be opportune, necessary and appropriate to make every effort, in the ILO's normative activity, to give instruments the necessary flexibility and universality.

Canada. In line with the report of the Committee of Experts, the Government of Canada believes that this revision should be limited to issues already encompassed by the present Convention; other domestic and international processes exist which can deal with other questions which go beyond the scope of the Convention.

CLC: Yes. Two important issues remain to be discussed: treaties and self-determination.

IBC: No.

IWG: Yes. There are a number of pertinent problems or issues of major significance to indigenous peoples that are not specifically addressed. It is precisely through lack of recognition and protection of certain essential elements (which are distinctive among indigenous peoples) that assimilation and erosion of indigenous societies and indigenous rights are perpetuated. Major issues that merit specific reference include –

- (1) Treaty-making and treaty rights: The historical treaty-making process continues to be vital as an effective means of resolving issues and improving relations between indigenous peoples and national governments. The significance of treaties and the need to fully respect their spirit and intent should be highlighted in the Preamble and text of the Convention (see replies to questions 34 and 46).
- (2) Subsistence economies: In the light of the special significance of subsistence economies to indigenous and tribal peoples, appropriate recognition of and support for such activities must be expressly provided for in the Convention (see observations concerning Part IV ("Land") and questions 10, 54 and 55).
- (3) Self-reliance and fundamental rights: The partial revision of the Convention still places too much emphasis on the responsibilities of national governments, without making it clear that governmental actions must be carried out in a manner that clearly advances indigenous self-reliance. A new orientation fostering self-reliance and protection and respect for the fundamental rights of indigenous and tribal peoples must be adequately reflected throughout the Convention (see replies to questions 10 and 11 (a) and (b)).
- (4) Indigenous control and self-determination: Assimilation and extreme prejudice to indigenous rights and interests will continue to be suffered by indigenous peoples, if we continue to exercise too little control over matters affecting our societies and traditional territories. The Convention must emphasise that certain key subject-matters shall be progressively under the responsibility and control of the peoples concerned (for example, see replies to questions 22, 52 and 60).

In addition, the right to self-determination of peoples which is affirmed in the International Bill of Rights should at least be referred to in the Convention's Preamble (see comments on Preamble for text proposed during the Meeting of Experts).

Colombia. No. The Government feels that it is necessary to insist on the need for a truly thorough revision of the Convention, since the aim is not to have a new instrument which is nearly identical to the earlier one, but one which lays down progressive, broad, flexible, real and lasting standards.

Ecuador. The Government reiterates in full its reply to question 78, especially paragraph (1). The problems posed by the draft are insuperable, and its adoption would constitute a blow to the member States, especially those of the Third World.

Mexico. Account should be taken of the new multi-cultural and multi-ethnic concepts of respect, preservation and strengthening of indigenous cultures and of the need for their participation in all decisions affecting them.

Peru. The questionnaire fails to examine exhaustively the problem of relations between indigenous peoples and national governments, especially as regards recognition of their representative organisations at various levels, towards which governments adopt ambiguous attitudes. Provisions should be included which establish the obligation of governments not only to recognise such organisations but also to encourage their formation and contribute to strengthening them. Emphasis should also be given to the need for all matters relating to indigenous peoples and their interests to be dealt with only through the appropriate representative organisations.

Suriname. General problems, such as the need for protection against excessive forms of tourism and scientific research.

Sweden. The present Convention makes no reference to the female indigenous population. The revised instrument should rectify this and give consistent attention to the situation of the female indigenous population.

Switzerland. SGB: It is necessary that the aims of the new Convention be clearly stated in its Preamble, namely to guarantee indigenous peoples both the greatest possible measure of control of their own economic, social and cultural conditions and – in the spirit of the emerging international consensus – to recognise that indigenous peoples have the right to determine their own future and – the greatest claim – that to the right to define their relationship to national States.

United Kingdom. TUC: The TUC considers that while the revision is desirable, the report and questionnaire do not adequately acknowledge the need for a balance to be found between respect for cultural tradition of indigenous and tribal populations and for fundamental rights of members of such populations. The TUC proposes that reference should be made to the primacy of human rights in the Preamble and in the body of the revised instrument.

The observations made on this question raised, in very general terms, many of the points which were raised in more specific terms in replies to preceding questions of the questionnaire or expressed, again generally, in the introductory observations made by some governments, employers' and workers' organisations and organisations representing certain indigenous peoples.

The Office considers that all of the problems raised above have been dealt with, in various forms, in the replies to various questions and in the analysis of these replies.

PROPOSED CONCLUSIONS

The following are the Proposed Conclusions, which have been prepared on the basis of the replies summarised and commented upon in the preceding section. They have been drafted in the usual form and are intended to serve as a basis for discussion by the Conference of the sixth item on the agenda of its 75th Session (1988). They incorporate the proposed changes (in italics) to the text of Convention No. 107. Deletions, however, are not indicated.

Some differences in drafting will be found between the Proposed Conclusions and the Office questionnaire that are not explained in the Office commentaries. These differences are due to concern both for concordance between the various languages and for the terminology to be adapted as far as possible to that already employed in existing instruments.

Conclusions proposed with a view to a revised Convention

I. SCOPE OF THE REVISED CONVENTION AND DEFINITIONS

1. The revised Convention should replace the term “populations” with the term “peoples” in order to be consistent with the terminology used in other international organisations and by these groups themselves.

2. The revised Convention should apply to –

- (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 and *who*, irrespective of their legal status, *retain some or all of their traditional* social, economic, cultural and *political* institutions.

3. *Self-identification as indigenous or tribal should be considered as an important criterion for determining the population groups to which the provisions of the revised Convention should apply.*

4. The indigenous and other tribal *peoples* mentioned above should be referred to in the revised Convention as “the *peoples* concerned”.

II. GENERAL POLICY

5. Governments should have the responsibility, *in co-operation with the peoples concerned*, for developing co-ordinated and systematic action for the protection of *these peoples and the promotion of their rights*.

6. Such action should include measures for –

- (a) enabling the said *peoples* to benefit on an equal footing from the rights and opportunities which national laws or regulations grant to other *members* of the population;
- (b) *promoting the full realisation of the social, economic and cultural rights of these peoples, with respect for their social and cultural identity and institutions*;
- (c) *raising the standard of living of the peoples concerned to that enjoyed by other members of the national community*.

7. *Alternative A. Indigenous and tribal peoples should enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination.*

Alternative B. Paragraph 3 of Article 2 of Convention No. 107 should be omitted from the revised instrument.

8. Recourse to force or coercion *against the peoples concerned contrary to the objectives of the revised Convention* should be excluded.

9. Special measures should be adopted *as appropriate for safeguarding the institutions, persons, property and labour of the peoples concerned*.

10. Such special measures of protection –

- (a) should not be used as a means of creating or prolonging a state of segregation, *contrary to the wishes of the peoples concerned*;
- (b) should be continued only so long as there is need for special protection and only to the extent that such protection is necessary.

11. Enjoyment of the general rights of citizenship, without discrimination, should not be prejudiced in any way by such special measures of protection.

12. In applying the provisions of the revised Convention –

- (a) due account should be taken of the cultural and religious values *and practices* and of the forms of social control existing among these *peoples*, and of the nature of the problems which face them both as groups and as individuals when they undergo social and economic change;
- (b) the danger involved in disrupting the values and institutions of the said *peoples* should be recognised;
- (c) policies aimed at mitigating *any* difficulties experienced by these *peoples* in adjusting to new conditions of life and work should be adopted, *in co-operation with the peoples thereby affected*.

13. In applying the provisions of the revised Convention, governments should –

- (a) *seek the consent of the peoples concerned through appropriate procedures whenever consideration is being given to legislative or administrative measures which may affect them;*
- (b) *promote the participation of the said peoples in elective institutions, and in administrative bodies responsible for policies and programmes affecting them;*
- (c) *provide these peoples with opportunities for the full development of their own institutions and initiative.*

14. *The improvement of the conditions of life and work and level of education of the peoples concerned should be given high priority in plans for the overall economic development of areas inhabited by them. Special projects for development of the areas in question should also be so designed as to promote such improvement.*

15. *The peoples concerned should have the right to decide their own priorities for the process of development as it affects their lives and institutions, and to exercise control over their own economic, social and cultural development. To this end, they should be involved to the extent possible in the formulation and implementation of plans and programmes for the development of the areas which they inhabit.*

16. *Whenever appropriate, social and environmental studies should be carried out, in collaboration with the peoples concerned, to assess the possible impact of planned development activities on the said peoples.*

17. *In the application of national legislation to the peoples concerned, due regard should be had to their customary laws.*

18. *These peoples should have the right to retain their own customs and institutions, where these are not incompatible with internationally recognised human rights.*

19. *Procedures should be established to resolve any cases of conflict between customary and national law.*

20. *The application of the Points 17, 18 and 19 should not prevent members of these peoples from exercising, according to their individual capacity, the rights granted to all citizens and from assuming the corresponding duties.*

21. *To the extent compatible with the national legal system and internationally recognised human rights, the use of methods customarily practised by the peoples concerned for dealing with crimes or offences committed by members of these peoples should be respected.*

22. *The customs of these peoples in regard to penal matters should be taken into consideration by the authorities and courts dealing with such cases.*

23. *Except in cases prescribed by law for all citizens the exaction from the members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, should be prohibited and punishable by law.*

24. *The peoples concerned should be specially safeguarded against the abuse of their fundamental rights and should be able to take legal proceedings for the effective protection of these rights.*

25. In imposing penalties laid down by general law on members of these peoples account should be taken of *their economic, social and cultural characteristics*.

26. Preference should be given to methods of rehabilitation rather than confinement in prison.

III. LAND

27. The rights of ownership *and possession* of the peoples concerned over the lands which *they* traditionally occupy should be recognised.

28. *Governments should take steps as necessary to identify the lands which the peoples concerned traditionally use and occupy, and to guarantee effective protection of their rights of ownership and possession.*

29. *Special measures should be taken to safeguard the control of the peoples concerned over natural resources pertaining to their traditional territories, including flora and fauna, waters and sea ice, and other surface resources.*

30. *Governments should seek the consent of the peoples concerned, through appropriate mechanisms, before undertaking or permitting any programmes for the exploration or exploitation of mineral and other subsoil resources pertaining to their traditional territories. Fair compensation should be provided for any such activities undertaken within the territories of the said peoples.*

31. *Subject to Points 32, 33 and 34 below, the peoples concerned should not be removed from their habitual territories.*

32. *Where the removal of the said peoples is considered necessary as an exceptional measure, such removals should take place only with their free and informed consent. Where their consent cannot be obtained, such removals should take place only following appropriate procedures established by national laws and regulations, including public inquiries, which provide the opportunity for effective representation of the peoples concerned.*

33. *In such exceptional cases of removal, these peoples should be provided with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist, and where the peoples concerned prefer to have compensation in money or in kind, they should be so compensated under appropriate guarantees.*

34. Persons thus removed should be fully compensated for any resulting loss or injury.

35. Procedures for the transmission of rights of ownership, *possession* and use of land which are established by the customs of the peoples concerned should be respected, within the framework of national laws and regulations.

36. *The consent of the peoples concerned should be sought when considering the adoption of national laws or regulations concerning the capacity of the said peoples to alienate their land or otherwise transmit rights of ownership, possession and use of their land.*

37. Persons who are not members of these *peoples* should be prevented from taking advantage of the customs referred to in Point 35 or of lack of understanding of the laws on the part of the members of these *peoples* to secure the ownership, *possession* or use of land belonging to them.

38. *Unauthorised intrusion upon, or use of, the lands of the peoples concerned should be considered as an offence, and appropriate penalties for such offences and other appropriate recourse procedures should be established by law.*

39. National agrarian programmes should secure to the *peoples* concerned treatment equivalent to that accorded to other sections of the national community with regard to –

- (a) the provision of more land for these *peoples* when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;
- (b) the provision of the means required to promote the development of the lands which these *peoples* already possess.

40. *Adequate procedures should be established within the national legal system to resolve land claims by the peoples concerned, including claims arising under treaties.*

IV. RECRUITMENT AND CONDITIONS OF EMPLOYMENT

41. Each Member should, within the framework of national laws and regulations, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to the *peoples* concerned so long as they are not in a position to enjoy the protection granted by law to workers in general.

42. Each Member should do everything possible to prevent all discrimination between workers belonging to the *peoples* concerned and other workers, in particular as regards –

- (a) admission to employment, including skilled employment;
- (b) equal remuneration for work of equal value;
- (c) medical and social assistance, *occupational safety and health, employment injury benefit* and housing;
- (d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

43. *The measures taken should include measures to ensure –*

- (a) *that workers from the peoples concerned, including seasonal and migrant workers in agricultural and other employment, enjoy protection under national labour legislation;*
- (b) *that workers from the peoples concerned are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;*

(c) that workers from the peoples concerned are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude.

44. Particular attention should be paid to the establishment of adequate labour inspection services in areas where workers from the peoples concerned undertake wage employment.

V. VOCATIONAL TRAINING, HANDICRAFTS AND RURAL INDUSTRIES

45. Persons belonging to the peoples concerned should enjoy the same opportunities as other citizens in respect of vocational training measures.

46. Measures should be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

47. Whenever programmes of vocational training of general application do not meet the special needs of persons belonging to the peoples concerned, governments should provide special training facilities for such persons.

48. Any special training facilities should be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection should be carried out in co-operation with these peoples.

49. The peoples concerned should progressively assume responsibility for the operation of these training programmes.

50. Handicrafts, rural and community-based industries and other traditional activities of the peoples concerned should be promoted as factors in their economic development.

51. Technical assistance should be provided when appropriate for the development of the above-mentioned skills, occupations and activities.

52. Such technical assistance should take into account both traditional technologies and the cultural characteristics of these peoples, enabling them to raise their standard of living and to familiarise themselves with alternative methods of production and marketing.

VI. SOCIAL SECURITY AND HEALTH

53. Social security schemes should be extended progressively to cover the peoples concerned.

54. Governments should ensure that adequate health services are made available to the peoples concerned, so that they may enjoy the highest attainable standard of physical and mental health.

55. Health services should be planned and administered in co-operation with the peoples concerned, taking into account their economic, geographic, social and

cultural conditions. In the provision of these health services account should be taken of the traditional healing methods of the peoples concerned.

56. The development of such services should be co-ordinated with general measures of social, economic and cultural development.

VII. EDUCATION AND MEANS OF COMMUNICATION

57. Measures should be taken to ensure that members of the *peoples* concerned have the opportunity to acquire education at all levels on an equal footing with the rest of the national community.

58. Education programmes for the *peoples* concerned should be adapted to *their special needs, and should take into account their traditional values and their social, economic and cultural characteristics.*

59. The formulation of such programmes should, *when appropriate*, be preceded by ethnological surveys. *The programmes should be developed and implemented in consultation with the peoples concerned.*

60. *The competent authority should ensure the training of members of these peoples and their involvement in the implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to the peoples concerned.*

61. Children belonging to the peoples concerned should be taught to read and write in their mother tongue or, where this is not practicable, in the language most commonly used by the group to which they belong.

62. Provision should be made for a progressive transition from the mother tongue or the vernacular language *to equal fluency* in the national language or in one of the official languages of the country.

63. Appropriate measures should be taken to preserve *and promote the development and practice* of the mother tongue or the vernacular language.

64. The imparting of general knowledge and skills that will help children to *take part in the life of the national community* should be an aim of primary education for the *peoples* concerned.

65. Educational measures should be taken among other sections of the national community and particularly among those that are in most direct contact with the *peoples* concerned with the object of eliminating prejudices that they may harbour in respect of these *peoples*.

66. Governments should adopt measures, appropriate to the social and cultural characteristics of the *peoples* concerned, to make known to them their rights and duties, especially in regard to labour and social welfare.

67. If necessary this should be done by means of written translations and through the use of media of mass communication in the languages of these *peoples*.

VIII. ADMINISTRATION

68. The governmental authority responsible for the matters covered in the revised Convention should create or develop agencies *or other appropriate mechanisms* to administer the programmes involved.

69. *Alternative A.* The programmes referred to above should include planning, co-ordination and execution, *in co-operation with the peoples concerned, of the measures provided for in the revised Convention.*

Alternative B. The programmes referred to above *should be undertaken in collaboration with the peoples concerned* and should include planning, co-ordination and execution *of the measures provided for in the revised Convention.*

70. *The programmes referred to above should also include proposals to the competent authorities for legislative and other measures and supervision of the application of these measures.*

IX. GENERAL PROVISIONS

71. The nature and scope of the measures to be taken to give effect to the revised Convention should be determined in a flexible manner, having regard to the conditions characteristic of each country.

72. The application of the provisions of the revised Convention should not affect benefits conferred on the *peoples concerned* in pursuance of other Conventions and Recommendations *and should not diminish benefits accorded to them under treaties, international instruments or national legislative and administrative measures.*