

Leaflet No. 2

ILO Convention No. 169, and ILO programmes specifically addressing indigenous and tribal peoples.

The ILO takes its mandate to work on indigenous issues from its Indigenous and Tribal Peoples Convention, 1989 (No. 169). This Convention is the only international instrument that is in force that addresses these peoples specifically. The ILO's Indigenous and Tribal Populations Convention, 1957 (No. 107) pre-dates Convention No. 169, but is no longer open for ratification. However this Convention is still in force for a number of countries that have ratified it and not yet ratified Convention No. 169.¹

Convention No. 169 has been ratified by 17 countries². It is also used as a reference or guide for policy and legislative development in inter-governmental organisations, in countries that have not ratified it, and by indigenous peoples themselves as a tool for the promotion of their rights.

1. Who are indigenous and tribal peoples?

There is no agreed international definition of who indigenous and tribal peoples are. Convention No. 169 contains a statement of coverage in its Article 1, which lists elements for identifying indigenous peoples. In recognition of the fact that it is often difficult to distinguish historical precedence in some countries especially in Asia and Africa, the ILO adopts a different approach to identifying these peoples.

- This approach looks at the social, cultural and political situation of the peoples concerned. These peoples may have a way of life, culture, or social structure that is different from that of the dominant population, or they may be politically or economically marginalized. Indigenous and tribal peoples do not need to be in a numerical minority to be covered, and often they are not. Nor does the Convention rely on historical precedence alone to identify who are indigenous and tribal peoples, though this is a factor.
- The ILO also considers it fundamental whether the people in question identify themselves as belonging to an indigenous or tribal people.

2. What are the basic principles of Convention No. 169?

Non-discrimination

In recognition of the fact that indigenous and tribal peoples are likely to be discriminated against in many areas, the first general, fundamental principle of Convention No. 169 is non-discrimination. Article 3 of the Convention states that indigenous peoples have the right to enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. In Article 4, the Convention also guarantees enjoyment of the general rights of citizenship without discrimination.

Another principle in the Convention concerns the application of all its provisions to male and female indigenous persons without discrimination (Article 3). Article 20 provides for prevention of discrimination against indigenous workers.

Special measures

In response to the vulnerable situation of indigenous and tribal peoples, Article 4 of the Convention calls for special measures to be adopted to safeguard the persons, institutions, property, labour, cultures and environment of these peoples. In addition, the Convention stipulates that these special measures should not go against the free wishes of indigenous peoples.

¹ Convention No. 107 was revised in the late 1980s, as its integrationist approach was considered outdated. However, for those countries in which the Convention is still in force, it can provide protection concerning a number of issues, including in the areas of land and displacement, and conditions of work.

² As of May 2005: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Guatemala, Honduras, Mexico, Netherlands, Norway, Paraguay, Peru, Venezuela.

Recognition of the cultural and other specificities of indigenous and tribal peoples

Indigenous and tribal peoples' cultures and identities form an integral part of their lives. Their ways of life, customs and traditions, institutions, customary laws, forms of land use and forms of social organization are usually different from those of the dominant population. The Convention recognizes these differences, and aims to ensure that they are protected and taken into account when any measures are being undertaken that are likely to have an impact on these peoples.

Consultation and participation

The spirit of consultation and participation constitutes the cornerstone of Convention No. 169 on which all its provisions are based. The Convention requires that indigenous and tribal peoples are consulted on issues that affect them. It also requires that these peoples are able to engage in free, prior and informed participation in policy and development processes that affect them. The principles contained in Convention No. 169 can provide important and useful guidelines for the implementation of programmes and processes that affect indigenous and tribal peoples – even in countries that have not ratified it. *The principles of consultation and participation in Convention No. 169 relate not only to specific development projects, but also to broader questions of governance, and the participation of indigenous and tribal peoples in public life.*

Consultation should be undertaken in good faith, with the objective of achieving agreement. The parties involved should seek to establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect and full participation. Effective consultation is consultation in which those concerned have an opportunity to influence the decision taken. This means real and timely consultation. For example, a simple information meeting does not constitute real consultation, nor does a meeting that is conducted in a language that the indigenous peoples present do not understand.

In Article 6, the Convention provides a guideline as to how consultation with indigenous and tribal peoples should be conducted:

- Consultation with indigenous peoples should be undertaken through *appropriate procedures*, in *good faith*, and through the *representative institutions* of these peoples;
- The peoples involved should have the opportunity to *participate freely at all levels* in the formulation, implementation and evaluation of measures and programmes that affect them directly;
- Another important component of the concept of consultation is that of *representativity*. If an appropriate consultation process is not developed with the indigenous and tribal institutions or organizations that are truly representative of the peoples in question, then the resulting consultations would not comply with the requirements of the Convention.

The Convention also specifies individual circumstances in which consultation with indigenous and tribal peoples is an obligation.

Right to decide priorities for development

Article 7 of Convention No. 169 states that indigenous and tribal peoples have the right to “decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control over their economic, social and cultural development”. This has been interpreted by the ILO's supervisory bodies as an essential consideration when consultations with indigenous peoples take place.

3. What is the ILO doing to promote and protect the rights of indigenous and tribal peoples? Does it have any specific projects with indigenous peoples?

There are two main approaches adopted by the ILO to promote and protect the rights of indigenous and tribal peoples:

- Supervision of relevant Conventions; and
- Technical cooperation.

Supervision of Convention No. 169

Consultation and participation have been the key themes running through the application and supervision of the Convention.

The ILO supervisory system (explained in leaflet 1) is designed to monitor the implementation of ILO Conventions and is an ongoing and effective process of dialogue with countries that have ratified relevant Conventions.

Governments are required to report regularly to the ILO on the implementation of the Conventions that they have ratified. Two inter-related themes have arisen repeatedly in the supervision of Convention No. 169:

- The duty of States to consult with indigenous and tribal peoples when consideration is being given to legislative or administrative measures that affect them; and
- The duty of consultation prior to the exploration or exploitation of natural resources on the lands they occupy or use.

Some examples:

One Representation (a form of complaint - see leaflet 1 for details) filed under Convention No. 169 alleged that logging concessions overlapping with indigenous territories had been granted in Bolivia. The Government in question was requested to apply the provisions of Article 15 of the Convention, which states that governments should consult with indigenous and tribal peoples prior to permitting any programmes for the exploration or exploitation of resources pertaining to their lands. It was also requested to conduct environmental, cultural, social and spiritual impact studies jointly with the peoples concerned, prior to authorizing the exploitation of natural resources.

Consultation has been dealt with by ILO supervisory bodies in the context of displacement of indigenous peoples from their lands for the purposes of development projects. One example is a representation concerning the failure to resolve indigenous land claims arising from the displacement of indigenous communities due to the construction of a dam in the State of Oaxaca, Mexico. There are also a number of other instances in which indigenous and tribal peoples have been, or are to be, displaced from their lands in order to make way for the construction of hydroelectric dams. These include the construction of a dam in the Alto Sinú region of Colombia (threatening to flood much of the territory occupied by the Emberá Katío community), and the expropriation of 111,656 hectares of ancestral lands in the indigenous Rural Community of Santo Domingo de Olmos in Peru in order to make way for a hydroelectric project. In each instance, one of the primary concerns of ILO supervisory bodies has been the apparent lack or inadequacy of consultations with the indigenous peoples affected by these projects.

Technical cooperation

The supervisory process is complemented by an extensive programme of technical cooperation. There are programmes addressing the core principles of the ILO: on discrimination, forced labour and child labour. There are also two projects within the ILO that address indigenous issues exclusively. The overarching objective for these two programmes is to promote the rights of indigenous and tribal peoples and contribute to the improvement of their socio-economic situation, in compliance with the principles of Convention No. 169.

These projects are:

■ **The Project to Promote ILO Policy on Indigenous and Tribal Peoples (PRO-169)**. This project works primarily on policy issues, and provides capacity building for governments, indigenous peoples and other relevant actors, to promote the protection in law and in practice of their rights.

■ **The INDISCO Programme** works primarily at the grassroots level, and aims to strengthen the capacities of indigenous and tribal peoples, helping them design and implement their own development plans and initiatives through their own organizations while safeguarding their traditional and cultural values.

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

If you are interested in what the ILO is doing on indigenous issues in your country, you can do any of the following:

- Consult the ILO's indigenous and tribal peoples website at www.ilo.org/indigenous. Here, you can look for information by project, theme or country. Individual project contact details are also on this website.
- Consult the ILOLEX database on the ILO website (if you are interested in obtaining information concerning the ILO supervisory system, see leaflet 2)
- Contact the ILO Office in your area (see Annexe for a list of the regional offices of the ILO).
- Contact the Project to Promote ILO Policy on Indigenous and Tribal Peoples directly (PRO169@ilo.org).