



ILO standards and the UN Declaration on the Rights of Indigenous Peoples

Information note for ILO staff and partners¹

Introduction

On 13 September 2007, the General Assembly of the United Nations adopted the Declaration on the Rights of Indigenous Peoples (UNDRIP).² With the adoption of the Declaration, the UN has taken a major step forward in the promotion and protection of indigenous and tribal peoples' rights throughout the world.

The ILO welcomes the adoption of UNDRIP and is committed to promoting it.³ Promoting full application of ILO standards, in particular the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and efforts to secure decent work for indigenous peoples, in line with their rights and aspirations, are the ILO's main strategies in this regard.

The present information note is addressed to ILO staff, but also to partners in the UN system and donors. It highlights the relevance of the Declaration for the ILO's mandate and the main ILO Conventions relating to the rights set out in UNDRIP. The Note also addresses the different legal nature of the two instruments and the role of international supervision. In addition, the Note deals with the practical implications of the UNDRIP and Convention No. 169 for the work of the ILO as a part of the UN system, particularly at the country level.

UNDRIP reaffirms the importance of the principles and approaches provided for under Convention No. 169. It therefore provides a fresh impetus for promoting the ratification and implementation of Convention No. 169. The final part of the Note offers some reasons in favour of ratification.

UNDRIP and Convention No. 169

Legal nature

Convention No. 169 is an international treaty adopted by the International Labour Conference in 1989. It is legally binding for States that have ratified it. Treaties in force for any given country must be implemented by that country in good faith. Under the

¹ Prepared by the Equality Team of the International Labour Standards Department.

² The UN Declaration was adopted with 144 States voting in favour, 4 voting against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine).

³ The Committee of Experts on the Application of Conventions and Recommendations welcomed the Declaration at its 2007 session. See also the statement by the Director-General of the ILO on the occasion of the International Day for the World's Indigenous Peoples (9 August 2006), <http://www.ilo.org/public/english/bureau/dgo/speeches/somavia/2006/indigenous.pdf>

ILO Constitution, ILO members must make provisions of ratified Conventions effective.

By contrast, UNDRIP is a Declaration adopted by the General Assembly of the United Nations. Declarations are not subject to ratification and do not have legally binding status. A Declaration adopted by the General Assembly reflects the collective views of the United Nations which must be taken into account by all members in good faith. Despite its non-binding status, the Declaration has legal relevance. For instance, it may reflect obligations of States under other sources of international law, such as customary law and general principles of law.⁴

Differences in legal status of UNDRIP and Convention No. 169 should play no role in the practical work of the ILO and other international agencies to promote the human rights of indigenous peoples through advocacy, capacity building, research or other means. Crucial for the technical and promotional work of the UN system is the commitment of governments wishing to benefit from such assistance to promote and protect indigenous peoples' rights.

Content

The manner in which the provisions of the Convention and the Declaration have been crafted is the result of the particular circumstances of their genesis. Both instruments are significant landmarks in the recognition and protection of the rights of indigenous peoples at the international level.

The provisions of Convention No. 169 and the Declaration are compatible and mutually reinforcing. The Declaration's provisions deal with all the areas covered by the Convention. In addition, the Declaration addresses a number of subjects that are not covered by the Convention.

International supervision

Convention No. 169. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on the Application of Standards of the International Labour Conference are mandated to supervise the application of Convention No. 169 on the basis of periodic reports submitted by ratifying States on the measures taken to give effect to the provisions of the Convention.⁵

In drawing up their reports, Governments are requested to consult with indigenous peoples' representatives.⁶ In some cases, States have communicated to the ILO that

⁴ It is recognized under the jurisprudence of the International Court of Justice that Declarations adopted by the General Assembly can be used as evidence of existing customary international law or of general principles of law. It has also been recognized that Declarations have served as a basis for the development of new customary norms over time. Which provisions are binding upon States as a matter of law must be examined on a case-by-case basis.

⁵ The CEACR is a body made up of independent experts from all regions. The Committee on the Application of Standards is a standing Committee of the International Labour Conference (the main organ of the ILO) which is made up of representatives of governments, and workers' and employers' organizations.

⁶ See the Report form concerning Convention No. 169 adopted by the Governing Body, available at www.ilo.org/normes

representative institutions of indigenous peoples can submit reports (e.g. the Sami Parliament in Norway), a practice that could be promoted in other countries. As is generally the case with ILO Conventions, comments received from workers' and employers' organizations form an additional basis for the supervision of Convention No. 169. The ILO regularly addresses observations concerning the application of the Convention submitted by trade unions in cooperation with indigenous peoples' organizations or institutions.

There are special arrangements with respect to the supervision of Convention No. 169 between the ILO and the United Nations, the World Health Organization (WHO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Food and Agriculture Organization (FAO), and the Inter-American Indian Institute of the Organization of American States. These agencies are entitled to receive the reports submitted by States and they can provide information to the Committee of Experts that may assist it to assess the application of the Convention. Their representatives may also attend the Committee's sessions.

In addition to the regular supervision described above, there are special procedures under the ILO Constitution that can be invoked in cases of alleged non-compliance with the Convention.⁷

UNDRIP. The Declaration has no special supervisory system attached to it. However, the UN's human rights bodies and mechanisms can rely on the Declaration and address implementation issues within their respective mandates:

- The Permanent Forum on Indigenous Issues;
- The Human Rights Council, including its Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people and the expert mechanism set up in December 2007 to advise the Council on questions relating to the promotion and protection of human rights of indigenous peoples;
- UN human rights treaty bodies, particularly the Committee on the Elimination of Racial Discrimination (CERD).

UNDRIP and other ILO instruments

The ILO is devoted to promoting social justice through reducing poverty, achieving fair globalization and advancing opportunities for all women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. A number of the Declaration's provisions, as outlined below are particularly relevant to the ILO's mandate, and are relevant to ILO instruments beyond Convention No. 169.

Article 17 of UNDRIP provides in a general manner that "Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law."

⁷ For further information on ILO standards supervision, see *the ILO Handbook on procedures relating to international labour Conventions and Recommendations*, available at <http://www.ilo.org/public/english/standards/norm/information/publications.htm>

Discrimination

Article 2 of the Declaration states that: “Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.” Article 17(3) of the Declaration states that: “Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.”

Child labour

Article 17(2) of the Declaration provides that “States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.”

Forced labour

UNDRIP does not have a specific provision on forced labour though Article 17(1) of the Declaration recognizes that indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law. And Article 21(1) states that “Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of ... employment, ...”

The ILO Conventions concerning discrimination, child labour and forced labour are ratified by the vast majority of ILO member States⁸, which thus have assumed international obligations to apply them effectively, including in respect of indigenous and tribal peoples. The ILO has elaborated practical guidelines on how to apply the Conventions regarding discrimination and child labour in the specific context of indigenous and tribal peoples⁹.

Implications for the ILO and the UN system

Article 41 of the Declaration states that the “organs and specialized agencies of the United Nations system shall contribute to the full realization of the provisions of the Declaration...”. Article 42 provides that “the United Nations and its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies....shall promote

⁸ The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) has been ratified by 166 countries; the Minimum Age for Admission to Employment Convention, 1973 (No. 138) has been ratified by 150 countries; the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour Convention, 1999 (No. 182) has been ratified by 165 countries; the Forced Labour Convention, 1930 (No. 29) has been ratified by 172 countries; the Abolition of Forced Labour Convention, 1957 (No. 105) has been ratified by 168 countries (all figures as of 10 December 2007).

⁹ PRO 169/IPEC, 2006: *Handbook on Combating Child Labour among indigenous and tribal peoples*. Geneva: ILO, and PRO 169/Equality Team 2007: *Eliminating discrimination against indigenous and tribal peoples in employment and occupation. A guide to ILO Convention No. 111*, Geneva: ILO, 2007.

respect and full application of the provisions of this Declaration and follow-up on the effectiveness of this Declaration”.

The ILO hopes that with the adoption of UNDRIP, the work of the UN system as a whole for indigenous peoples will gain momentum. Addressing indigenous issues more systematically and in a more coherent manner, particularly at the country-level, is of particular importance.

The Guidelines on Indigenous Peoples’ Issues issued by the United Nations Development Groups (UNDG) in February 2008, are intended to facilitate this process. The Guidelines’ stated objective is to assist the UN system to mainstream and integrate indigenous peoples’ issues in processes for operational activities and programmes at the country level. The ILO has been an active partner in the elaboration of the Guidelines.

The UNDG Guidelines rely on the Declaration and Convention No. 169 as the main reference documents concerning indigenous peoples for the CCA/UNDAF process. Reference is made also to other international instruments, including ILO Conventions on discrimination, forced labour and child labour.

Programmes and projects of the ILO and partner agencies should refer to Convention No. 169 and the Declaration. As regards the Convention particular attention should be paid to reports, conclusions and recommendations made by the ILO supervisory bodies with respect to the country concerned. The Declaration can be used to support and promote inclusion of indigenous peoples’ issues in ILO Decent Work Country Programmes (DWCP).

The ILO promotes joint dissemination of UNDRIP and Convention No.169 and includes the Declaration in its training packages and methodologies.

Why is ratifying Convention No. 169 important?

- Campaigns for ratification in themselves provide a platform for advancing indigenous peoples’ issues - a process towards ratification can create consensus and shared commitment.
- Ratification provides a commitment-based platform for establishing harmonious and cooperative relationships between indigenous peoples and the State.
- Ratification opens the way for ILO supervision and technical assistance, ensuring systematic and long-term follow-up to the commitments undertaken.
- The acceptance of legal obligations by a given State is seen by donors and development partners as an indicator of commitment and sustainability.
- Ratifying States can be held accountable for non-compliance at the international level.
- Ratified treaties are a source of international law that can be invoked in judicial proceedings at the national level.