



Governing Body

341st Session, Geneva, March 2021

Institutional Section

INS

Date: 12 March 2021

Original: English

Fourteenth item on the agenda

Reports of the Officers of the Governing Body

Second report: Representation alleging non-observance by Ecuador of the Indigenous and Tribal Peoples Convention, 1989 (No. 169)

1. By a communication dated 29 January 2021, Public Services International (PSI), the National Workers' Federation of Provincial Governments of Ecuador (FENOGOPRE) and the National Confederation of Public Servants of Ecuador (CONASEP) made a representation to the International Labour Office under article 24 of the ILO Constitution alleging non-observance by Ecuador of the Indigenous and Tribal Peoples Convention, 1989 (No. 169). A summary of the representation is contained in the appendix.
2. In accordance with article 1 of the Standing Orders concerning the procedure for the examination of representations, as revised by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of the representation and informed the Government of Ecuador accordingly.
3. Pursuant to article 2(1) of the Standing Orders, the Director-General brought the representation before the Officers of the Governing Body, who, according to paragraph 3 of the same article, shall report to the Governing Body on the receivability of the representation. Article 2(2) lays down the conditions for the receivability of a representation. In the light of these conditions, the following observations can be made in the present case:

- (a) the representation was communicated to the International Labour Office in writing;
 - (b) it emanates from industrial associations of workers;
 - (c) it makes specific reference to article 24 of the ILO Constitution;
 - (d) it concerns a Member of the Organization;
 - (e) it refers to Conventions to which the Member against which the representation is made is a party;¹
 - (f) it indicates in what respect it is alleged that the Member against which it is made has failed to secure the effective observance within its jurisdiction of the said Conventions.
4. Taking into account the above conditions, the Officers of the Governing Body consider that the representation is receivable in terms of article 2(2) of the Standing Orders. According to article 2(4) of the Standing Orders, the Governing Body, in reaching a decision on the receivability of the representation, on the basis of the report of its Officers, shall not enter into discussion of the substance of the representation. In accordance with article 3(1), if the Governing Body decides that the representation is admissible, it shall set up a tripartite committee to examine it, composed of members of the Governing Body chosen in equal numbers from the Government, Employers' and Workers' groups.

► Draft decision

5. **In the light of the information contained in document GB.341/INS/14/2, and taking into consideration the recommendation of its Officers, the Governing Body decided that the representation was receivable and to set up a tripartite committee to examine it.**

¹ Ecuador ratified Convention No. 169 in 1998.

► Appendix

Summary of the representation

In its communication dated 29 January 2021, Public Services International (PSI), the National Workers' Federation of Provincial Governments of Ecuador (FENOGOPRE) and the National Confederation of Public Servants of Ecuador (CONASEP) allege that Ecuador has failed to observe its obligations under the Indigenous and Tribal Peoples Convention, 1989 (No. 169). In particular, the complainant organizations indicate that the Government has contravened its obligation to consult the Shuar Arutam indigenous peoples in relation to the authorization of the mining projects San Carlos-Panantza and Warintza; and that it has not taken measures to protect the integrity of the Shuar Arutam indigenous communities affected by the Covid-19 pandemic.

The complainant organizations indicate that the Shuar Arutam indigenous peoples has a population of 12,000 persons who traditionally occupy a territory of 220,000 hectares in the province of Morona Santiago, in the south of the Amazonia region. They indicate that, over the last 20 years, the Government has granted mining concessions to private companies affecting 56 per cent of the territory of the Shuar Arutam indigenous peoples, without consulting the communities concerned.

According to the complainant organizations, the San Carlos-Panantza project affects 15,187.99 hectares of the territory of the Shuar Arutam indigenous peoples. The complainant organizations indicate that the Comptroller General of the State observed that the competent Government authorities had failed to establish a procedure for the identification of the impacts of the project on the water sources for the communities concerned, recommending that the Government suspend the operations of the project and initiate negotiations with the affected actors. They indicate that the Government only organized informative meetings with some of the members of the affected communities instead of undertaking culturally adequate consultations, as required by the Convention. Representatives of the Shuar Arutam indigenous peoples have taken legal actions before national courts to suspend the operation of the project. Their actions were rejected both by the judges of first instance and the appeal court. Despite the recommendations of the Comptroller General of the State, in 2016, members of the army and the police forcibly displaced members of the affected Shuar Arutam communities living in the project area, giving rise to situations of violence. The complainant organizations further indicate that since 2018 there is a pending action before the Constitutional Court aimed at enforcing the recommendations of the Comptroller General of the State.

In relation to the Warintza mining project, the complainant organizations indicate that it is in its exploratory phase and covers, within its influence area, territories of the Shuar Arutam indigenous peoples. They mention that the company in charge of the project is creating divisions among Shuar Arutam indigenous communities as only a few participated in dialogues organized by the company itself. The complainant organizations allege that the company has established a "strategic alliance" with indigenous members that are not the legitimate representatives of the Shuar Arutam indigenous peoples in order to obtain support for the project. Furthermore, they indicate that consultations undertaken by the Government in relation to the project, in the presence of the company, were not in line with the Convention. They also refer to an agreement on benefits, signed in September 2020 by the company and only some of the

affected communities, which has been rejected by the representatives of the Shuar Arutam indigenous peoples.

In addition, the complainant organizations indicate that the Government has failed to meet the needs of the Shuar Arutam indigenous peoples in the context of the COVID-19 pandemic. They mention that, as of October 2020, 60 per cent of the community members have been infected by the virus, while mining operations continue within indigenous territories despite this health situation.

Finally, the complainant organizations indicate that in June 2020 the Ministry of Energy and Non-Renewable Resources published a National Plan for the Development of the Mining Sector 2020–30 without the active participation of indigenous peoples in the process of its conception.