

MONITORING INDIGENOUS AND TRIBAL PEOPLES' RIGHTS THROUGH ILO CONVENTIONS

A compilation of ILO supervisory bodies' comments 2009-2010



International
labour
organization



Programme to Promote ILO Convention No. 169 (PRO 169)
International Labour Standards Department



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INTRODUCTION

“...all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity...”
(Declaration of Philadelphia, 1944)¹⁾

In its pursuit of universal social justice, the International Labour Organization has been concerned with the situation of indigenous and tribal peoples virtually since its inception. Its longstanding engagement in this area led to the adoption in 1957 of the first international instrument concerning indigenous and tribal peoples’ rights, the Indigenous and Tribal Populations Convention (Convention No. 107). In the 1980s, the assimilationist approach of Convention No. 107 was considered outdated; the Convention was revised and replaced in 1989 by the Indigenous and Tribal Peoples Convention, (Convention No. 169).

Convention No. 169 is based on the recognition of indigenous and tribal peoples’ aspirations to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live. The principles of participation and consultation are the cornerstone of the Convention.

Convention No. 169 is the only up to date international treaty, which specifically provides protection for indigenous and tribal peoples. The Convention and the UN Declaration on the Rights of Indigenous Peoples adopted in 2007 are mutually reinforcing instruments providing the framework for the universal protection of indigenous and tribal peoples’ rights.

Convention No. 169 has been ratified by 20 States and has inspired governments and indigenous peoples well beyond the States that have ratified the Convention in their work to promote and protect indigenous peoples’ rights.

Convention No. 107, although closed to ratification, remains in force for 17 States, including Panama, El Salvador, India, Bangladesh, Tunisia and Egypt. States party to this Convention remain under the obligation to implement the provisions of the Convention which are in line with generally accepted human rights principles pertaining to indigenous and tribal peoples, such the principle of consultation and the recognition of rights over the lands that these peoples traditionally occupy.

Other ILO Conventions, such as the Convention on Discrimination in Employment and Occupation, of 1958 (Convention No. 111), the Forced Labour Convention of 1930 (Convention No. 29) and the Worst Forms of Child Labour Convention of 1999 (Convention No. 182), are also particularly relevant to indigenous and tribal peoples and can prove extremely useful to address the situation of these peoples in countries whether or not they have ratified Convention No. 169.

The implementation of all ILO Conventions is monitored by the ILO supervisory bodies. This allows a continuous dialogue to take place between the Organization and the Governments concerned with the involvement of employers’ and workers’ organizations (trade unions), with a view to strengthening the implementation of these Conventions.

The aim of the present publication is to present some of the most recent comments adopted by the ILO supervisory bodies concerning indigenous and tribal peoples. They are preceded by a brief introduction to the ILO supervisory mechanisms.

The compilation is by no means exhaustive, focused as it is primarily on substantive comments concerning a number of States that have ratified either Convention No. 169 or Convention No. 107. Reference is also made to other ILO Conventions.

At the end of the publication, there is a list of comments by the supervisory bodies published in 2009 which address the situation of indigenous and tribal peoples under ILO Conventions Nos. 29, 111, 138 and 182. These comments concern States beyond the number of those that have ratified Convention No. 169 or Convention No. 107.

It is hoped that by making these comments more readily accessible, awareness and dialogue for the implementation of indigenous and tribal peoples’ rights can be further promoted in a spirit of true participation, mutual respect and good faith.

1) Declaration concerning the aims and purposes of the International Labour Organization

PART I

THE ILO'S SUPERVISORY SYSTEM

States are required to submit detailed reports to the ILO on the implementation both in law and in practice of ratified Conventions.

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

THE REGULAR MONITORING OF ILO CONVENTIONS

Reporting on ILO Conventions is governed by Article 22 of the ILO Constitution. One year after the entry into force of a Convention that it has ratified, the government has to send its first report on the implementation of the Convention to the ILO. After this, reports are due at regular intervals. For example, the normal reporting period for Convention No. 169 is every five years. However, if the situation needs to be followed closely, the ILO supervisory bodies may request a report outside the regular reporting cycle.

In accordance with the ILO Constitution (Art. 23), the government has to submit a copy of its report to the most representative workers' and employers' organizations to enable them to make comments on the report, if any. These organizations may also send their comments directly to the ILO. These comments will be brought to the attention of the appropriate supervisory bodies.

The ILO bodies undertaking the regular monitoring of the implementation of ratified Conventions are the Committee of Experts on the Application of Conventions and Recommendations (CEACR; Committee of Experts) and the Committee on the Application of Standards (CAS) of the International Labour Conference.

The Committee of Experts is a body of independent experts, who meet annually in Geneva in November and December. The Committee's mandate is to examine the reports submitted by ILO member States on the measures taken to give effect to ratified Conventions and to assesses the conformity of the country's law and practice with its obligations under the Convention. In these tasks, the Committee also relies on information received from workers' and employers' organizations, as well as, inter alia, official United Nations documents, judicial decisions and legislation.

Following the examination of a report, the Committee may address comments to the government concerned requesting further information on specific points and indicating measures that need to be taken to bring law and practice in line with the obligations under the Convention. The comments of the Committee of Experts come in two forms:

- "Observations", which are comments published in the Committee of Experts' annual report on the application of ILO Conventions; and
- "Direct requests", which are sent directly to the government in question, and generally ask for more information on specific subjects.²⁾

2) Please note that the present publication only contains some of the latest Observations adopted by the Committee of Experts. Direct requests are available at <http://www.ilo.org/ilolex/index.htm>.

The Committee of Experts' annual report is presented to the International Labour Conference, which meets in June. This report is debated at the Conference by the Committee on the Application of Standards (CAS), a tripartite body made up of governments', employers' and workers' delegates. The CAS's main task is to examine a number of individual cases concerning the application of ratified Conventions which have been the subject of observations by the Committee of Experts. At the end of the discussion of each case, the CAS adopts conclusions. The information obtained from this tripartite debate feeds in the supervisory procedures.

THE ROLE OF INDIGENOUS PEOPLES IN THE REGULAR SUPERVISORY PROCEDURE

Although indigenous peoples do not have direct access to the ILO supervisory bodies, they can ensure that their concerns are dealt with in the regular supervision process of ILO Conventions in several ways:

- By sending verifiable information directly to the ILO on, for example, the text of a new policy, law, or court decision.
- By strengthening alliances with workers' or employers' organizations. In order for information other than the kind mentioned above, to be officially taken into account by the ILO, it must be sent by one of the ILO constituents. Usually, workers' organisations have a more direct interest in indigenous issues. Therefore, for the purposes of ensuring indigenous peoples' issues are raised, it is important that they strengthen their alliances with workers' organisations (trade unions).
- By drawing the attention of the ILO to relevant official information from other UN supervisory bodies, fora or agencies, including the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the UN Permanent Forum on Indigenous Issues.
- Through innovative approaches, for example, through establishment of formal relations and procedures between indigenous peoples and governments. For instance, Norway requested that the Saami Parliament submit its own independent comments on the Government's regular reports under the Convention, and that these comments be considered by the ILO alongside the Government report.

SPECIAL PROCEDURES

In addition to the regular supervision, the ILO has "special procedures" to deal with alleged violations of ILO Conventions. The most commonly used form of complaint in the ILO system is called a "Representation", as provided for under Article 24 of the ILO Constitution. A Representation, alleging a Government's failure to observe certain provisions of a ratified ILO Convention can be submitted to the ILO by a workers' or employers' organization. These must be submitted in writing, invoke Article 24 of the ILO Constitution, and indicate the provisions of the Convention alleged to have been violated.

The ILO Governing Body has to decide whether the representation is "receivable" - that is, if the formal conditions have been met to file it. Once the representation has been found receivable, the Governing Body appoints a Tripartite Committee (i.e. one government representative,

one employer representative and one worker representative) to examine it. The Tripartite Committee draws up a report, which contains conclusions and recommendations and submits it to the Governing Body for adoption. The Committee of Experts then follows-up on the recommendations in the context of its regular supervision.

As regards the application of Convention No. 169, representations have been received concerning Argentina, Bolivia, Brazil, Colombia, Denmark, Guatemala, Ecuador, Mexico and Peru.³⁾

ILO INFORMATION RESOURCES

ILOLEX (<http://www.ilo.org/ilolex>) is the ILO's trilingual database (Spanish, French and English), which provides information about ratification of ILO Conventions and Recommendations, comments of the Committee of Experts, Representations and numerous related documents. In ILOLEX, information about a specific Convention and/or a particular country can be searched.

The ILO Handbook of Procedures Relating to International Labour Conventions and Recommendations (revised edition 2006), offers detailed information on issues such as ratification and supervision. It can be found at www.ilo.org/public/english/standards/norm/information/publications.htm

The website of the International Labour Standards Departments is a comprehensive source of information regarding the ILO standards system and related activities (<http://www.ilo.org/normes>) The Programme to Promote ILO Convention No. 169 (PRO169) – a special technical cooperation programme on indigenous and tribal peoples based within the International Labour Standards Department - has established a training website, which provides a series of materials for conducting training on indigenous and tribal peoples' rights, including videos, power point presentations and background materials (<http://www.pro169.org>).

The ILO's website on indigenous and tribal peoples issues (<http://www.ilo.org/indigenous>), contains a series of information resources, manuals, guidelines and information about ILO programmes and projects on indigenous peoples' rights.

³⁾ The reports of Tripartite Committees are available online at <http://www.ilo.org/ilolex/index.htm>



PART II

A SELECTION OF COMMENTS BY THE ILO SUPERVISORY BODIES (2009-2010)

ARGENTINA INDIGENOUS AND TRIBAL PEOPLES CONVENTION, 1989 (NO. 169)

Observation, CEACR 2009/80th Session

The Committee notes a communication from the Association of Health Professionals of Salta (APSADES), of 12 June 2009, forwarded to the Government on 2 October 2009. It also notes a communication from the Confederation of Argentinean Workers (CTA), of 31 August 2009, forwarded to the Government on 18 September 2009. The Committee will examine these communications at its next session together with any observations of the Government in this regard. **The Committee requests the Government to respond to the communication of APSADES and CTA.**

Follow-up to the representation submitted under article 24 of the ILO Constitution (report of the Governing Body (GB.303/19/7) 12 November 2008.) The Committee recalls that in November 2008, the Governing Body adopted a report on the representation made under article 24 of the ILO Constitution by the Educational Workers' Union of Río Negro (UNTER), in which the Governing Body examined issues of consultation at national level as well as issues of consultation, participation and performance of traditional activities of indigenous peoples in the province of Río Negro. The Committee notes that, in its report, the Government refers to the Provincial Survey Programme on Indigenous Communities for the Province of Río Negro, which provides for the survey of 124 communities to be executed over the next two years. However, the Committee notes with **regret** that no information is provided in reply to the recommendations formulated in paragraph 100 of the Governing Body's report. **The Committee therefore asks the Government to provide information, in its next report, with respect to the following recommendations formulated by the Governing Body:**

- (a) continue making efforts to strengthen the CPI and ensure that, when elections of indigenous representatives are held in all the provinces, all the indigenous communities and all institutions considered by the communities themselves to be representative are invited to participate;*
- (b) carry out consultations with regard to the bills referred to in paragraphs 12 and 64 of this report and to establish mechanisms to ensure that consultations with indigenous peoples take place whenever legislative or administrative measures that may directly affect them are being considered. The consultations should be carried out sufficiently early so as to be effective and meaningful;*
- (c) ensure that, in implementing Act No. 26.160, all communities and truly representative institutions of the indigenous peoples likely to be directly affected are consulted and able to participate;*
- (d) ensure that, in accordance with the principle of concurrent powers of national and provincial authorities, effective consultation and participation mechanisms are established involving all the truly representative organizations of the indigenous peoples, as set out in paragraphs 75, 76 and 80 of this report, in particular in the process of implementing national Act No. 26.160;*

(e) in implementing Act No. 26.160 to make substantial efforts, in consultation with and with the participation of the indigenous people of Río Negro Province, to clarify: (1) the difficulties in the procedures for regularizing land, with a view to developing a rapid and accessible procedure that meets the requirements of Article 14, paragraph 3, of the Convention; (2) the question of the levy for land use referred to in paragraph 92 above; (3) any problems in obtaining legal personality; and (4) the issue of dispersed communities and their land rights;

(f) make efforts to ensure that measures are adopted in Río Negro Province, including interim measures, with the participation of the indigenous people involved, to ensure that indigenous stockbreeders have easy access to marks and signs certificates and carry on their activities in conditions of equality, and to strengthen that activity in accordance with the terms of Article 23 of the Convention.

Communication from the UNTER of July 2008. The Committee recalls that in its previous observation it referred to a communication from UNTER, received on 28 July 2008, in which various issues related to the alleged violation of Articles 6, 7, 15(2) and 17(2), of the Convention are raised. The Committee asked the Government to provide information on the points raised in UNTER's communication, so that it could fully examine these matters in 2009. The Committee notes with **regret** that such information was not received. **The Committee urges the Government to provide complete information in its next report on the issues raised in UNTER's communication.**

Follow-up to the seminar/workshop. The Committee notes that, according to the Government, as a result of the seminar/workshop which took place in May 2007, involving representatives of indigenous communities, social partners, the National Institute of Indigenous Affairs (INAI), the Ministry of Labour and the ILO, among others, proposals and an action plan were drawn up for the purpose of applying the Convention relating to the following points: lands, work, health and social security, vocational training, education and communication, and participation and consultation. **The Committee requests the Government to provide information on the follow-up to the proposals and action plan, and the results achieved, particularly with regard to participation and consultation.**

Coordinated and systematic policy

Coordination Council provided for in Act No. 23302. Further to its previous comments, the Committee notes with **interest** that pursuant to INAI Decision No. 042 of 28 February 2008, the Coordination Council provided for in section 5 of Act No. 23302/85 has been created. The Committee notes that pursuant to this Decision, the persons mentioned in the annex are included, on a provisional basis, as the representatives of indigenous communities and shall remain in their posts until replaced by other representatives elected in accordance with the mechanisms established by INAI Decision No. 041/2008. The Committee also notes the establishment of the Advisory Council which has the functions set out in section 15 of Regulatory Decree No. 155/89. **While it considers that the establishment of the Coordination Council and the Advisory Council constitutes progress, the Committee requests detailed information on the procedures for the election of indigenous representatives,**

in particular whether such procedures ensure that the indigenous peoples are able to elect their representatives without any interference. The Committee also requests copies of the decisions mentioned.

Coordination of the various bodies representing indigenous peoples. The Committee notes that the Indigenous Participation Council (CPI) has the functions set out in Act No. 26160, Regulatory Decree No. 1122/07 and Decision No. 587/07 which creates the land survey programme. According to the Government, the CPI has been given considerable recognition by the institutions of the national Government and those of the provincial governments and its minutes are made public to ensure that the communities are aware of the issues dealt with by the CPI. **The Committee requests the Government to provide information on the distribution of competencies and the coordination mechanisms established between the Coordination Council, the Advisory Council and the CPI.**

Lands. Emergency Act No. 26160 on the ownership and possession of traditionally occupied lands. The Committee notes that a central coordination team has been set up in this regard. The Committee notes the detailed information provided by the Government concerning the national programme entitled "Indigenous Communities Land Survey" (Re.Te.Ci.), created under Decision No. 587 of 27 October 2007. Furthermore, the Government indicates that, at the decentralized level, a technical operation team will be set up in each province, which will work in coordination with the CPI and with a member of the provincial executive branch appointed by the Governor. The Committee notes that a "National Coordination Network for the Survey of Lands of Indigenous Communities" has been established and the following instruments have been created to implement the programme: (a) the "jaguar" system, which is a geographical information system; (b) a social community questionnaire, which is a tool for gathering socio-demographic data; (c) a survey of natural and cultural resources; and (d) an administrative procedures and operations manual. As of September 2008, projects were being developed relating to the regularization of lands in Buenos Aires (involving 40 communities), Chaco (involving 40 communities), Río Negro (involving 87 communities) and Salta (involving 330 communities). The Committee notes that the state of emergency declared with regard to the possession and ownership of traditionally occupied lands will last for four years from 23 November 2006, the date on which Act No. 26160 entered into force, and that the suspension of evictions will therefore be lifted on 23 November 2010. **The Committee requests the Government to continue providing information on the progress made and difficulties encountered with regard to the regularization of lands traditionally occupied by indigenous peoples, including information on the following:**

(i) lands claimed by indigenous peoples, including quantity and percentages by province;

(ii) lands regularized in relation to these percentages; and

(iii) lands to be regularized.

Please also indicate the measures envisaged to guarantee the rights laid down in Article 14 of the Convention if the regularization process has not been completed within the period mentioned.

Advances in case law. The Committee notes with interest the detailed information provided by the Government on new decisions relating to the rights established in the Convention. These decisions appear to be in line with the Convention, in terms of both lands and participation. With regard to lands, the Committee notes, for example, the decision of the Magistrate's Court of the Fourth District of the Province of Neuquén in the case of *Antiman, Víctor Antonio y Linares, José Cristóbal Linares s/ usurpación*, of 30 October 2007, in which the court recognized the new era with regard to rights over indigenous lands, ruling that it was "an era of recognition, recovery and reassertion of rights enshrined in the Constitution, as a result of which a decision criminalizing the conduct of the Mapuche people on 31 January 2005 would mean going back in time and failing to recognize the current legal and constitutional framework". With regard to participation and natural resources, the Committee notes that the Supreme Court of Justice, in a decision of 26 March 2009 (S.1144.XLIV, *Salas, Dino y otros c/ Salta, provincial y Estado Nacional*), confirmed the suspension of authorizations for felling and clearing until the completion of an environmental study and stipulated that the study had to be carried out "with the broad participation of the communities living in the affected area". **The Committee requests the Government to continue providing information on this matter. Furthermore, referring to a 2004 ruling which it noted in its previous comments, declaring that the Forestry Act of the Province of Chaco was unconstitutional because the indigenous communities had not been consulted, the Committee requests the Government to report on the measures taken as a result of the ruling.**

The Committee is raising other points in a request addressed directly to the Government.
[The Committee is asked to reply in detail to the present comments in 2010.]

REPRESENTATION (ARTICLE 24) - 2006 - ARGENTINA - C169

Report of the Committee set up to examine the representation alleging non-observance by Argentina of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the Education Workers Union of Río Negro (UNTER), local section affiliated to the Confederation of Education Workers of Argentina (CTERA)

[The representation referred to issues of consultation, representativeness at the national level and in the Province of Río Negro, lands, and discrimination in the performance of traditional activities in the Province of Río Negro relating to the Mapuche people].

[..]

CONCLUSIONS

C. The Committee's conclusions

60. The Committee takes note of the information and annexes submitted by the complainant organization and of the reply and annexes sent by the Government.

61. The Committee notes that the complainant organization alleges, at national level, a lack of consultation on legislative measures liable to affect the indigenous peoples directly; and at the level of the Government of the Province of Río Negro, a lack of appropriate consultation regarding legislative and administrative measures and issues of representativeness; failure to implement the rights of the Mapuche communities (Lofs) to lands which they have traditionally occupied; and discrimination against the Mapuche people in employment and occupation.

Consultation regarding legislative measures of national scope

62. The Committee notes that the complainant alleges failure to hold appropriate consultations on a number of bills and preliminary drafts of national laws. It notes that some of these were incorporated in the Emergency Act (No. 26.160); others expired or were not passed.

63. The material provision here is Article 6 of the Convention.

1. In applying the provisions of this Convention, governments shall:
 - (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
 - ...
 - (c) establish means for the full development of these people's own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose;
2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

64. With respect to the bills submitted to the Senate or to the Chamber of Deputies, referred to in paragraph 12 of this report, the Committee notes that the Government has not provided any information thereon. The Committee recalls that pursuant to Article 61(1)(a) of the Convention, the Government is required to consult the peoples concerned whenever consideration is being given

to legislative or administrative measures which may affect them directly. While this provision does not establish the precise timing of the consultations, the Committee considers that mechanisms should be established to ensure that consultations on relevant legislative or administrative measures take place sufficiently early to ensure that they are effective and meaningful. With respect to the bills referred to in paragraph 12, those that are still under consideration should be the subject of consultation, as indicated above.

65. As to the bills that were incorporated in the Emergency Act, the Committee notes the complainant's objection that the consultation was not appropriate and that in Río Negro, Salta and Misiones, a number of communities were not aware of the elections held to appoint the CPI.

66. The Committee notes that, according to the information sent by the Government, when the Act was in the process of adoption, particular importance was attached to indigenous participation, and the establishment of the CPI, to include representatives of the indigenous peoples of every Argentine province, was promoted. The Committee also takes note of the list of participating communities, the elected representatives in each province and the record of proceedings of the elections in the Province of Río Negro, sent by the Government. It notes in particular that at its first plenary meeting in Chapadmalal, the CPI endorsed the Bill that was taken as the basis for Act No. 26.160 and that the members of the CPI gave their views directly to parliamentarians.

67. Context. The Committee takes note of the efforts the Government has made through the Ministry of Labour and the INAI to set up a body for indigenous participation and consultation at national level through the CPI. It points out that the Committee of Experts on the Application of Conventions and Recommendations noted with particular interest, in its observation of 2006, paragraphs 1 and 4, the measures adopted and planned by the Government to strengthen the bodies responsible for coordinated and systematic action in keeping with the Convention and to further consultation and participation. It notes that in May 2007, after this representation was submitted, the CPI participated in a workshop organized by the Ministry of Labour and the INAI with the cooperation of the ILO, in order to reinforce the mechanism for consultation and participation indicating that such efforts are ongoing.

68. The Committee notes that the Government has made continuous efforts to strengthen and give an institutional basis to consultation bodies through the CPI. Furthermore, it referred the abovementioned Act which, incidentally, protects indigenous communities from eviction to the CPI for consultation, and the CPI held an election to appoint indigenous representatives nationwide who gave their support to the Act.

69. The Committee accordingly takes the view that the Government of Argentina did not violate Article 6 of the Convention in the process of adopting the Emergency Act.

70. The Committee must nevertheless take account of the complainant's objection that some communities in the Provinces of Río Negro, Salta and Misiones were not called on to vote in the abovementioned election. While noting the Government's commitment to strengthen consultation and participation, the Committee takes the view that the Government should pursue efforts to make the CPI more representative and in particular to ensure that the INAI makes certain that, when they call elections for CPI representatives, the provinces invite all communities and

representative institutions of indigenous peoples to participate. The Committee is also of the view that, in the implementation of Act No. 26.160, it is essential to promote the consultation and participation of all communities and representative institutions of indigenous peoples regarding matters that may affect them directly. In this way, as well as meeting the requirements of Article 6 of the Convention, the consultations will gain in legitimacy and contribute to preventing disputes in the future because all the different experiences, problems and views of the indigenous peoples will be taken into consideration. Río Negro Province: Consultation on legislative and administrative measures and issues of representativeness

71. The Committee notes that at provincial level as well the allegations refer to issues of representativeness.

72. Accordingly, the applicable provisions are Article 6 of the Convention, cited above, and Article 12 of the Convention, according to which:

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

73. The thrust of the allegations is that as a representative body, CODECI is not sufficiently representative to ensure effective observance of the rights of indigenous peoples, and that the Government of the Río Negro Province consults only with CODECI and neither consults nor involves the CAI, which, the complainant asserts, represents a number of Mapuche communities and villagers.

74. The Committee notes that the Government does not directly address the issue of whether the CAI is at present representative but points out that the CAI withdrew of its own free will from the Coordinating Committee of the Mapuche Parliament thereby excluding itself from the representative bodies which formerly it had taken part in and even helped to create.

75. The Committee considers on the one hand that, by withdrawing from the Coordinating Committee, the CAI relinquished the best institutional opportunities afforded by Provincial Act No. 2287 to defend indigenous rights and develop policies for indigenous peoples. On the other hand, it considers that the indigenous peoples have the right to elect their own representative institutions. By leaving the Coordinating Committee, the CAI gave up the opportunity to participate in the bodies envisaged in Provincial Act No. 2287, but this does not imply, in so far as it is really representative, that it has lost the rights established in Convention No. 169 and in particular the right to be consulted and to participate regarding issues liable to affect directly the communities it represents. As the Governing Body has already established in other cases, in view of the diversity of the indigenous peoples, the Convention does not impose a model of what a representative institution should involve, the important thing is that they should be the result of a process carried out by the indigenous peoples themselves. But it is essential to ensure that the consultations are held with the institutions that are truly representative of the peoples concerned and the principle of representativity is a vital component of the obligation of consultation it could be difficult in many circumstances to determine who represents any given community. However, if an appropriate consultation process is not developed with the indigenous and tribal institutions or

organizations that are truly representative of the communities affected, the resulting consultations will not comply with the requirements of the Convention.

76. Representativeness is thus an essential requirement for the consultation and participation procedures established by the Convention and signifies the right of the different indigenous peoples and communities to participate in these mechanisms through representative institutions resulting from a process that they themselves carry out. For this requirement to be met, it is essential that the authorities ensure that all the organizations resulting from such a process are invited to take part in the consultation and participation procedures, and that the procedures allow all the different views and sensitivities to be expressed. The Committee will not go into whether or not the CAI is representative. It nevertheless hopes that the government of the province will promote forms of consultation and participation that are broad and include all the representative institutions of indigenous peoples for the purposes of Convention No. 169.

77. As to the complainant's assertion that CODECI does not properly represent the interests of the indigenous peoples, it is not for the Committee to judge the manner in which a representative body functions. Nor will it determine whether or not the body's actions are lawful: such questions, where they arise, are a matter for the national and provincial mechanisms provided for in the law.

78. With regard to the Government's assertion that CODECI performs the functions of a representative body within the meaning of Article 12 of the Convention, which provides that the peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, the Committee points out that the representative bodies referred to in this provision should be construed as performing not functions in general but that of taking legal proceedings. Furthermore, since the Convention does not establish that there shall be only one representative body with the authority to take legal proceedings, it is the Committee's understanding that any representative body appointed by indigenous peoples should be able to do so, pursuant to Article 12 of the Convention.

79. With regard to Decree No. 907 of 2004, which the complainant asserts was not submitted to appropriate consultation, the Committee notes that in its reply the Government does not provide specific information but refers to the fact that the CAI relinquished functions that it could otherwise have performed.

80. As for the complainant's objection to the signing by CODECI and the INAI of Agreement No. 156, and to the El Bolsón agreement, in the Committee's view the issue is again one of representativeness. The Committee understands that CODECI's representativeness derives from the mechanisms laid down in the law and that in accordance with the law CODECI's indigenous members were elected by the Coordinating Committee of the Mapuche Parliament. There are therefore no grounds for finding that the bodies concerned breached the principle of representativeness by drawing up the abovementioned provisions and agreements; each of them acted within the authority conferred on them by law. The Committee further points out that in so far as there are communities and/or representative organizations that are not covered by CODECI, the Government of the Province of Río Negro should broaden consultations and provide for a mechanism that includes these organizations for the purpose of the consultation and participation established in Convention No. 169, particularly as regards legislative and

administrative measures that may affect the peoples directly (see paragraph 75 of this report).

81. The Committee notes with satisfaction that Act No. 26.160 suspends evictions of indigenous communities and orders the regularization of the lands that they traditionally occupy. In the Committee's view, this is an essential step towards effective implementation of the land rights envisaged in the Convention, and marks the beginning of a new phase in which implementation will require legislative and administrative measures to be adopted. It notes in this connection that in a supplementary submission, the complainant sought provision for bodies in which the implementation of the Emergency Act can be opened up to dialogue with the representative organizations of the Mapuche people of the province and in which those affected directly can participate and discuss matters thoroughly and in full knowledge of the facts they need in order to give their consent, which must be free and informed. The Committee considers that in the process of implementation of the law, all the representative organizations of peoples or communities should be able to participate and be consulted about legislative or administrative measures that may affect them directly, with the objective of achieving agreement or consent. The Committee points out, however, that Article 6 does not stipulate that consent must be obtained in order for the consultations to be valid but it does require pursuit of the objective of achieving consent, which means setting in motion a process of dialogue and genuine exchange between the parties to be carried out in good faith. The Committee hopes that the Government will make efforts to ensure that the organizations resulting from the Mapuche people's own processes are able to participate and contribute to creating an opportunity to regularize the indigenous lands opened up by Act No. 26.160.

Province of Río Negro: Rights of the Mapuche (Lof) communities to the lands they traditionally occupy

82. The Committee notes that the main issues here are recognition, measures to identify the lands traditionally occupied and, in particular, procedures to settle land claims by the peoples concerned. The material provision is therefore Article 14 of Convention No. 169:

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned. (Emphasis added.)

Article 6 on consultation is also relevant in so far as the adequate procedures referred to in Article 14(3) concern legislative or administrative measures, which must be the subject of prior consultation.

83. The Committee notes the allegation that there are difficulties in asserting the rights to traditional occupations laid down in the Constitution of 1994 and Provincial Act No. 2887 owing to the application of Provincial Act No. 279 on public lands and Decree No. 967 of

2004 regulating grazing fees. The complainant also alleges that there are difficulties with other measures such as the Act of Agreement on the intangibility of public lands, as well as issues of legal personality, likewise in connection with the assertion of land rights.

84. Having noted the information supplied by the complainant, including the numerous administrative and judicial actions brought by communities to obtain recognition of lands that they traditionally occupy or that they claim as such in the Province of Río Negro, the Committee understands that the main issue raised by the complainant is whether or not there is an adequate procedure in the national legal system to resolve land claims made by the peoples concerned, as Article 14(3) of Convention No. 169 requires.

85. An instance of such difficulties is to be found in paragraph 29 of this report in which the Committee noted that, on the one hand, CODECI recognized the community territory of Lof Casiano on the basis of Provision 13/03 and, on the other, the Ministry of the Interior repealed this provision by Resolution No. 3892 of 8 November 2004 on the ground that nothing in Act No. 2287 and Decree No. 310/98 gave CODECI the authority to issue administrative decisions of this kind. It also took note of other cases of the same nature referred to by the complainant, such as *Sede, Alfredo and others v. Vila, Herminia and others/evictions*, in which the ruling was that the administrative remedies afforded by CODECI had to be exhausted before an application could be made for judicial review.

86. The Committee further noted, in paragraph 30 of this report, that according to the complainant the Land Directorate of the Province of Río Negro applied to the Lof Mapuche Pedraza Melivillo case Act No. 279 on public lands, which establishes that eviction orders are not subject to judicial review and that the only possible defence against treatment as an intruder is possession of one of the following titles: temporary occupancy permit, lease contract, award of sale. It further noted, in paragraph 55 of this report, the Government's reply to the effect that in June 2006, the legal representative of the abovementioned Lof, objecting to Decision No. 83/2006 of the Land Directorate which provides for administrative eviction, took the matter to CODECI, which issued Opinion No. 03/2006, but as yet no administrative decision has been rendered.

87. The Committee also noted, in paragraph 49 of this report, the Government's regret that at present there is no efficient coordination between the Land Directorate of the Province of Río Negro and CODECI, which is why temporary occupancy permits are issued for one year.

88. The Committee has cited the above cases to illustrate the complexities in the laws, institutions and mechanisms of Río Negro Province that the indigenous peoples have to cope with in asserting their rights to land.

89. The Committee notes with satisfaction the Government's statement that where it is shown that indigenous people traditionally occupy public lands, the legislation on indigenous matters takes precedence over Act No. 279 and Decree No. 907/04, because it is both specific to the subject matter and, where national in scope, ranks higher than Act No. 279.

90. The Committee noted earlier a number of instances in which this legislation is applied. It also noted that, according to the Government, Act No. 279 does not violate indigenous rights but

could do so were it to be wrongly or extensively applied.

91. The Committee nonetheless observes that Act No. 26.160 was adopted in order to prevent evictions and regularize traditionally occupied lands and that it affords a new opportunity for overcoming difficulties. It noted earlier the complainant's request that provision be made for bodies in which implementation of Act No. 26.160 can be opened up to dialogue with the representative organizations of Mapuche peoples in the province. And, having noted the application of Act No. 279 on indigenous peoples' lands, the intense administrative and judicial activity in some cases and the opportunities opened up by Act No. 26.160, the Committee is of the view that the Government needs to engage in considerable efforts to identify, with the participation of the indigenous peoples, the difficulties encountered in the procedures for regularizing lands and to work out a rapid and easily accessible procedure that meets the requirements of Article 14(3) of the Convention. The Committee notes that Act No. 26.160 is in force for four years and that it was passed on 1 November 2006. It accordingly hopes that the Government will redouble its efforts to secure rapid progress towards the objective of identifying and regularizing the lands traditionally occupied by indigenous peoples.

92. Levy for land use. Decree No. 967/04. The Committee noted in paragraph 26 of this report that the members of the Río Chico Abajo Mapuche community, which has legal personality granted by the INAI, received from the Land Directorate of the province notices of arrears in grazing fee payments and notices for renewal of temporary occupancy permits applying specifically to fiscaleros. It notes with satisfaction the INAI's request to the Río Negro Province Land Directorate for suspension of the claim to payment of a levy for land use applying to members of indigenous communities that recognize themselves as such, and that the INAI stated that the delay in giving effect to the said proposal, attributable to provincial state bodies CODECI must not end up adversely affecting the communities and their members whose lands have not been regularized. The Committee hopes that the Government will undertake efforts to ensure that Río Negro Province is able to implement solutions in a consistent manner in accordance with the INAI's proposal.

93. Legal personality and Agreement No. 156/1 of 2000 concluded by the INAI and the Province of Río Negro. The Committee takes note of the document Legal personality of the indigenous communities of Río Negro Province, Agreement No. 156/1, attached as Annex 25 to the complainant's first submission. It notes that, according to the Government, this document is not consistent with Agreement No. 156/1 that the Government provided. By means of Agreement No. 156/1 the Institute and the province give their consent to simplifying the requirements for recognition of the legal personality of those communities that so request and sets the following requirements: (a) application for personality filed by the community; (b) location of the community, with a simple sketch showing specific areas that may be included in the future community deed; (c) description of the way the community is organized and of the mechanisms (to be approved by the Directorate General of Legal Persons) for appointing and dismissing its authorities; (d) brief summary of the elements accrediting the community's historical/cultural/ethnic origin, together with available documentation; (e) list of the members of the community with degrees of relationship; and (f) mechanisms for incorporating or excluding members. The Committee observes that the document sent by the complainant is not Agreement No. 156 but a note on paper headed, the Province of Río Negro, Ministry of the Interior, CODECI, which refers to Agreement No. 156 and explains the requirements adding a considerable amount of detail.

Noting that Agreement No. 156, at the seventh indent, gives the INAI the authority to oversee the established procedures and registrations in all such cases as it deems necessary, the Committee hopes that the INAI will ensure that the abovementioned Agreement is fully applied in both the letter and spirit in which it was concluded.

94. With regard to the complainant's assertion that scattered communities lack protection, the Committee notes from what the Government reports (see paragraph 49) that scattered indigenous people may likewise file claims. It nonetheless hopes that this issue will be addressed in the context of the implementation of Act No. 26.160, in consultation with the representative institutions of the indigenous peoples.

Marks and signs certificates

95. The Committee observes that the issue here is that the delivery of marks and/or signs certificates (titles of cattle ownership) is linked to titles of ownership or lease, or temporary occupancy permits provided for in the land law, so Mapuche stockbreeders who engage in traditional occupations and whose lands have not been regularized are systematically excluded. This, according to the complainant, affects their right of admission to an occupation, in this case a traditional activity, on an equal footing with others. The relevant provisions are therefore Article 20(2) and Article 23(1) of the Convention.

According to Article 20(2):

Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers,

According to Article 23(1):

Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.

96. The Committee notes that according to the complainant and the Government does not demur stockbreeding is a traditional activity of the Mapuche people and necessary to their livelihood. It further notes that the requirement to produce a title of ownership or some evidence of legal occupancy which applies to anyone seeking a title of animal ownership (marks and/or signs certificates) is one that the Mapuche people are not at present in a position to fulfil because their lands are in the process of regularization.

97. The Committee has taken due note of the progress made in Argentina since the adoption of the Constitution of 1994 and is aware of the Government's commitment to regularizing lands, reflected in the adoption of Act No. 26.160, which suspends evictions of indigenous communities and orders a land survey to be conducted with a view to regularization. It further notes that according to the Government, these requirements are not discriminatory because, the Government emphasizes, on no account is indigenous status the reason why there are difficulties in delivering these certificates at provincial level. The Committee in no way takes issue with that assertion. However, there need not be intent in order for discrimination to exist. The concept of discrimination encompasses indirect as well as direct discrimination. Indirect discrimination refers

to conditions, regulations, criteria or practices that are apparently neutral and apply to all but which in fact have a disproportionately adverse effect on some. The Committee is therefore of the view that to require a title of ownership or legal occupancy for the delivery of marks and signs certificates amounts to indirect discrimination towards indigenous stockbreeders.

98. Also taking into account the fact that the issue is one of traditional activities, the Committee recalls that according to Article 23, paragraph 1, of the Convention, Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted. Article 2 stipulates that Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action including action promoting the full realization of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions.

99. The Committee took note of the fact that, according to the Government, much land still needs to be regularized, and the issue of certificates is an unwelcome side effect of the land problem. The Committee welcomes the Government's statement to the effect that Act No. 26.160 provides a good opportunity to adjust the system of issuing certificates, and that the province will undoubtedly need to reconsider this question and resolve the matter in ways adapted to the particular situations of the indigenous communities. The Committee notes that section 13 of Decree No. 1888, containing implementing regulations for the Act concerning marks and signs, stipulates with regard to section 13 of the Act that in order to issue the certificates in question, there is a requirement, in the case of indigenous groups, for certification from the community chief. The Committee considers that the implementation of this provision should be examined as part of the adjustment process. Noting that much land remains to be regularized, the Government's view that the province should re-examine the question, and the Government's willingness to apply the Convention, the Committee considers it necessary to adopt measures rapidly to ensure that members of indigenous peoples are no longer required to show title to land or to meet other conditions set out in section 13 of the Act in question in order to obtain the certificates. It also considers that until the issue of land ownership is settled, interim measures should be adopted with the participation of the peoples concerned to ensure that indigenous stockbreeders can obtain marks and signs certificates and carry on their activities under conditions of equality.

RECOMMENDATIONS

D. The Committee's recommendations

100. The Committee recommends to the Governing Body that it approve this report, and, in the light of the conclusions contained in paragraphs 60 to 99, that it:

- (a) request the Government to continue making efforts to strengthen the CPI and ensure that, when elections of indigenous representatives are held in all the provinces, all the indigenous communities and all institutions considered by the communities themselves to be representative are invited to participate;
- (b) request the Government to carry out consultations with regard to the bills referred to in paragraphs 12 and 64 of this report and to establish mechanisms to ensure that consultations with indigenous peoples take place whenever legislative or administrative measures that may directly affect them are being considered. The consultations should be

- carried out sufficiently early so as to be effective and meaningful.
- (c) request the Government to ensure that, in implementing Act No. 26.160, all communities and truly representative institutions of the indigenous peoples likely to be directly affected are consulted and able to participate;
 - (d) request the Government to ensure that, in accordance with the principle of concurrent powers of national and provincial authorities, effective consultation and participation mechanisms are established involving all the truly representative organizations of the indigenous peoples, as set out in paragraphs 75, 76 and 80 of this report, in particular in the process of implementing national Act No. 26.160;
 - (e) request the Government in implementing Act No. 26.160 to make substantial efforts, in consultation with and with the participation of the indigenous people of Río Negro Province, to clarify: (1) the difficulties in the procedures for regularizing land, with a view to developing a rapid and accessible procedure that meets the requirements of Article 14, paragraph 3, of the Convention; (2) the question of the levy for land use referred to in paragraph 92 above; (3) any problems in obtaining legal personality; and (4) the issue of dispersed communities and their land rights;
 - (f) request the Government to make efforts to ensure that measures are adopted in Río Negro Province, including interim measures, with the participation of the indigenous people involved, to ensure that indigenous stockbreeders have easy access to marks and signs certificates and carry on their activities in conditions of equality, and to strengthen that activity in accordance with the terms of Article 23 of the Convention;
 - (g) invite the Government to provide information to the Office regarding the implementation of the issues raised above, for examination by the Committee of Experts on the Application of Conventions and Recommendations.

101. The Committee requests the Governing Body to adopt this report, in particular paragraph 100, and to declare the present proceedings closed.

Geneva, 12 November 2008.

BANGLADESH

INDIGENOUS AND TRIBAL POPULATIONS CONVENTION, 1957 (NO. 107)

Observation, CEACR 2009/80th Session

The Committee notes the Government's report which covers the period from 1 September 2007 to 30 August 2008. It also notes the Decent Work Country Programme for Bangladesh (2006–09) and the National Strategy for Accelerated Poverty Reduction II (2009–11) (NSAPR) published by the Government in October 2008, which address matters relevant to the application of the Convention. ***The Committee welcomes the commitment of the Government, expressed in the NSAPR, to ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and it encourages the Government to seek technical assistance from the ILO in this regard.***

Implementation of the Chittagong Hill Tracts Peace Accord, 1997. The Committee recalls that it has been examining the situation in Bangladesh for many years, against the background of large-scale migration into the Chittagong Hill Tracts (CHT) by non-indigenous Bengali settlers from other parts of Bangladesh, the consequent displacement of indigenous communities from their traditional land, and an armed insurgency by indigenous militants which was resolved by the Chittagong Hill Tracts Peace Accord, 1997. In reply to the Committee's request to identify those provisions of the Peace Accord which remain to be implemented, the Government provided an overview table indicating the status of implementation of the Peace Accord's various provisions. The Committee notes that, according to the Government, the implementation of the following provisions remains "under process": the transfer of authority to appoint local police officers to the district hill councils (Clause B, section 24); the harmonization of the Chittagong Hill Tracts Regulation, 1900, and related laws with the Local Government Council Act of 1989 (Clause C, section 11); the cancellation of land allocation for rubber and other plantations to non-tribal and non-local persons who did not undertake any projects during the last ten years or had not used the land properly (Clause D, section 8). With regard to the land survey envisaged under Clause D, section 2, the NSAPR states that the land survey has not yet started. Referring to 200 temporary army camps, the Government's report considers the Peace Accord's provisions regarding demilitarization as "implemented". The Government's report makes reference to the implementation of Clause B, section 34, which lists subjects to be added to the functions and responsibilities of the Hill District Councils. ***Considering that the implementation of the outstanding provisions are crucial with a view to building and consolidating peace in the region, the Committee requests the Government to take the measures necessary to achieve the full implementation of the Peace Accord and to provide detailed information on the progress made in this regard. Please also provide information on the implementation of Clause B, section 34.***

Articles 2 and 5 of the Convention. Coordinated and systematic government action – collaboration and participation. The Committee notes that a series of government interventions are set out in the NSAPR to address the situation of indigenous communities of the plains and in the CHT, with the overall objective of ensuring their "social, political and economic rights; ensure their security and fundamental human rights; and preserve their social and cultural identity". The NSAPR aims at achieving access of indigenous communities to education, health care, food and nutrition, employment and protection of rights to land and other resources. The

Committee notes that overall responsibility for coordinating governmental activities for indigenous communities in the plains is with the Special Affairs Division, while the Ministry for Chittagong Hill Tracts Affairs continues to take the lead for that region. The Committee also notes the information provided by the Government concerning development projects carried out in the CHT. **The Committee requests the Government to provide information on the concrete measures taken by the relevant line ministries responsible for the action in favour of indigenous communities in the plains and the CHT envisaged under the NSAPR and on the results achieved in improving their situation. It also requests the Government to report on the progress made in adopting and implementing the National Indigenous People's Policy as mentioned in the NSAPR. Finally, the Committee requests that the Government ensure appropriate collaboration and participation of the indigenous communities and their representatives concerned in the design and implementation of measures affecting them, in keeping with Article 5 of the Convention, and to provide information in this regard.**

Legislation in force. The Committee notes the Government's indication that the Chittagong Hill Tracts Regulation, 1900, is still in force, but that it has been supplemented by a number of subsequent laws, including a number of laws passed after the Peace Accord. The Committee also notes that the 1900 Regulation was amended by the Chittagong Hill Tracts Regulation (Amendment) Act, 2003, which has been put in effect as of 1 August 2008. The Committee notes that these amendments concern the transfer to newly established courts of jurisdiction in civil and criminal matters which formerly vested in civil servants at the district and divisional levels. According to a recent ILO study, the amendments do not affect the existing functions of the traditional chiefs and head men in dispensing justice on tribal customary laws (Roy, *The ILO Convention on Indigenous and Tribal Populations, 1957 (No. 107), and the Laws of Bangladesh: A Comparative Analysis*, 2009, p. 30). **The Committee requests the Government to provide, on a continuing basis, information on legislative developments relating to the application of the Convention with regard to the indigenous communities of the plains and the CHT.**

Articles 11–14. Land rights. The Committee recalls that the Peace Accord envisages the rehabilitation of indigenous returned refugees and internally displaced indigenous persons and the resolution of land disputes, followed by a land survey to be conducted by the Government in consultation with the Regional Council. As previously noted by the Committee, the Land Commission Act was enacted in 2001, to provide for the establishment of such a Commission to resolve land disputes in the CHT. While noting that, at the time of reporting, the Land Commission was still not functioning, the Committee understands that a new Chair of the Commission has been appointed recently. According to the Government, a process had been started to amend the Act to bring it in line with the Peace Accord. **The Committee hopes that the process of amending the Land Commission Act will be concluded without delay, and requests the Government to provide information on the measures taken to this end, and any other measures taken to enable the Land Commission to fulfil its functions.**

The Committee notes from the NSAPR that indigenous communities are subject to extortion by “land grabbers”, and that the formulation of a policy to address issues affecting indigenous communities is envisaged. **Recalling that under Article 11 of the Convention, the right**

of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized, the Committee urges the Government to take immediate steps to ensure that the land rights of indigenous people and communities in Bangladesh, including those of the plains, are fully recognized and effectively protected, in collaboration with their leaders. The Committee requests the Government to provide detailed information on the specific measures taken in this regard, including measures to investigate fully reports of illegal seizures of the traditional lands of indigenous communities. In addition, the Committee requests the Government to provide information on the progress made in adopting and implementing the national land policy for indigenous communities envisaged under the NSAPR.

Rehabilitation of returned refugees and internally displaced persons. The Committee notes the Government's indication that it has appointed a new chairperson of the Task Force envisaged under the Peace Accord mandated to rehabilitate indigenous refugees repatriated from India and internally displaced indigenous persons. **While noting that, according to the Government, all refugees from India have been rehabilitated, the Committee requests the Government to provide information on the specific activities undertaken by the Task Force with regard to internally displaced indigenous persons in the CHT who have yet to be rehabilitated. It once again requests the Government to indicate the number of internally displaced indigenous persons yet to be rehabilitated.**

Jum cultivation. The Committee recalls its previous comments regarding statements made by the Government to the effect that it was making efforts to abolish “jum cultivation”, which is the traditional shifting cultivation method of many people in the CHT. The Committee notes that the Government's report no longer refers to the abolition of jum cultivation and that the NSAPR calls for the preservation of the social and cultural identity of the indigenous communities and recognizes their traditional food production systems. The Government indicates that development projects focusing on alternative livelihood strategies were undertaken with the consent and participation of the population concerned “to reduce dependence on jum cultivation”, as produce and income obtained from it was inadequate on account of “constantly shrinking area of jum lands”. **The Committee requests the Government to indicate the measures taken to ensure that indigenous communities have the possibility to continue to engage in jum cultivation, including through accelerating measures protecting their land rights, and the measures taken to include shifting cultivation in relevant policies and programmes regarding rural development.**

PLURINATIONAL STATE OF BOLIVIA
INDIGENOUS AND TRIBAL PEOPLES CONVENTION, 1989 (NO. 169)

Observation, CEACR 2009/80th Session

The Committee notes with **satisfaction** the legislation issued by Bolivia with regard to consultation on oil and gas exploitation and the consultations already held, and these will be referred to in greater detail below. In more general terms, the Committee welcomes the efforts made by Bolivia to achieve full participation which establishes the right of indigenous peoples to decide their own priorities for the process of development, in accordance with *Article 7 of the Convention*.

Articles 2 and 33. Coordinated and systematic action. The Committee notes the dissolution of the Ministry of Indigenous Affairs and Native Peoples (MAIPO). The Committee notes with **interest** that the Government has established the Unit for Indigenous Peoples' Rights (UDPI) at the Ministry of the President's office with the aim of promoting and coordinating the mainstreaming of indigenous peoples' rights within state institutions. The Committee considers that this mainstreaming initiative could provide important channels for achieving greater coordination of state institutions in the handling of issues covered by the Convention and thereby facilitate coordinated and systematic action for its application. **The Committee asks the Government to supply information on the following: (i) the manner in which the UDPI structures and develops this mainstreaming, including the results achieved and any difficulties encountered; (ii) the manner in which the UDPI gives effect to Articles 2 and 33 of the Convention; and (iii) the manner in which the UDPI guarantees indigenous participation according to the terms established by Articles 2 and 33.**

Consultation, participation and natural resources: hydrocarbons

Legislation. For a number of years the Committee has been asking the Government to develop mechanisms and procedures for consultation and participation provided for by the Convention in relation to the exploration and exploitation of natural resources, particularly hydrocarbons (oil and gas). The Committee welcomes the efforts made by the Government to implement the consultation and participation rights of indigenous peoples with regard to natural resources. In this regard, the Committee notes the promulgation of Act No. 3058 (Hydrocarbons Act) (sections 114–118), which provides for mandatory consultation; Supreme Decree No. 29033 of 16 February 2007, issuing regulations for consultation and participation regarding oil and gas activities, which develops procedures for consultation and participation; and Supreme Decree No. 29124 of 9 May 2007, which complements the above.

Supreme Decree No. 29033. The Committee notes that, in the preamble to Decree No. 29033, there are multiple references to the Convention and also to the recommendations made by the ILO Governing Body in the report adopted on the representation made by the Bolivian Workers' Federation (COB) in March 1999 (GB.274/16/7). The Committee notes that this Decree defines an extensive scope of application for consultation in both the personal field (indigenous and original peoples, and peasant farming communities), and in the material field (community lands of origin, community properties and lands to which these groups traditionally occupied or had access to). It establishes that the decision-making and representative bodies of the indigenous

and original peoples and peasant farming communities at national, departmental, regional and local levels are the representative institutions to be involved in the processes of consultation and participation. It also regulates the financing of procedures (charged to the project). The Committee notes in particular that, under section 11 (planning), a joint agreement – between the competent authority and the representatives of the indigenous and original peoples and peasant farming communities – must be drawn up on the procedure to be followed for consultation, which will give rise to a memorandum of understanding. The consultation process will then be executed by the competent authority in coordination with the representative bodies of the indigenous and original peoples and peasant farming communities. The results of the consultation procedure will be set down in a validation agreement, which will state the position, observations, suggestions, additions and recommendations agreed upon by the indigenous and original peoples and peasant farming communities which might be affected. The consultation process will be deemed null and void if the established procedure is not respected, on account of false information or obtaining consent through pressure, intimidation, bribery, blackmail or violence, etc.

The Committee notes that efforts are being made to extend consultation to the mining and metallurgy sectors and work is being done on a project for indigenous participation in benefits and environmental control. **The Committee would be grateful if the Government would supply information on the progress achieved in this respect and on any other new legislation adopted relating to participation and consultation.**

Forced labour, consultation and participation. The Committee will provide a more detailed follow-up regarding forced labour in the context of the Forced Labour Convention, 1930 (No. 29), and in these comments it will examine the general measures adopted and indigenous consultation and participation for the elimination of forced labour. In its previous observation the Committee noted that a plan of action had been formulated, with ILO technical assistance, to eliminate forced labour, most victims of which are members of indigenous peoples, and that consultations on the plan were being held with workers' organizations, indigenous organizations and the Ministry of Indigenous Affairs and Original Peoples. The Committee notes numerous measures adopted by the Government to eliminate forced labour. It notes that these include Act No. 3351 of 21 February 2006 and its regulations (Decree No. 28631 of 8 March 2006), which gives the Ministry of Labour competence for the development and coordination of policies to eliminate forced labour. By virtue of these competencies, the Ministry of Labour, by means of Supreme Decree No. 29292 of 3 October 2007, established the Inter-Ministerial Council for the elimination of forced labour comprising the following: the Ministry of Justice; Ministry of Rural Development, Agriculture and the Environment; Ministry of the President's Office; Ministry of Development Planning; Ministry of Production and Micro-enterprise; and chaired by the Ministry of Labour. It indicates that the elimination of forced labour was based on joint action by various ministries and contained a land reorganization component. According to the report, the main difficulty encountered by this objective has been the resistance of landowners to the land reorganization process.

The report states that the following participatory measures were implemented: (i) the Assembly of the Guarani People approved the 2007–08 Inter-Ministerial Plan for Guarani people, the aim of which is to create decent living conditions for the Guarani families registered in the Chaco Boliviano, further to which the Government approved the execution of the Plan by means of

Supreme Decree No. 29292; (ii) on 5 November 2008, the Ministry of Labour approved the internal regulations of the 2007–08 Inter-Ministerial Plan approved by the Guarani people and formed an executive board comprising six minister members of the Inter-Ministerial Council for the elimination of bonded labour, forced labour and other similar practices and six representatives of the Assembly of the Guarani People; (iii) other actions of the Ministry of Production and the Ministry of Justice. **The Committee encourages the Government to continue its efforts to eliminate forced labour involving indigenous persons and to provide information in this respect, particularly as regards indigenous participation in the formulation, application and monitoring of measures adopted to eliminate indigenous forced labour.**

Articles 21–23. Training. The Committee notes with **interest** that pursuant to Supreme Decree No. 29664 of 2 August 2008, three indigenous universities – of a community, inter-cultural and productive nature – were set up under the collective title of the Indigenous University of Bolivia (UNIBOL). One is for the Aymara people, another for the Quechua people and the third for the Guarani people. Areas of study include: highland (*altiplano*) agronomy, food industry, textiles industry, veterinary science, zoology, oil and gas industry, forestry and fisheries. Academic training will be in each people’s language, with additional courses for learning Spanish and a foreign language. Thesis projects will be defended in the native language of each region. Diplomas will be awarded at higher technical, bachelor’s degree and master’s degree level. The objective of the three universities is to reconstruct indigenous identities and develop scientific knowledge, know-how and technology on the basis of community criteria and the principles of complementarity, cooperative work, individual and collective responsibility, and respect for the environment. **The Committee would be grateful if the Government would continue to supply information in this respect.**

Constitutional reform. **The Committee notes with interest that on 7 February 2009 the constitutional reform establishing a pluri-national State was promulgated and requests the Government to supply information on the changes that have occurred in law and in practice pursuant to the reform, in accordance with the provisions of the Convention.**

The Committee is raising other points in a request addressed directly to the Government.

FORCED LABOUR CONVENTION, 1930 (NO. 29)

Excerpt from: *Direct request, CEACR 2008/79th Session*

The Committee notes with interest the detailed information provided by the Government in its first report.

Articles 1 and 2, paragraph 1, of the Convention: Prohibition of forced labour practices: Servitude and the performance of free personal services.

1. The Committee notes the following provisions of the national legislation respecting the prohibition of forced labour practices:

- Article 5 of the National Constitution, under which “No type of servitude shall be recognized and no one shall be compelled to perform personal services without her or his full consent and due compensation. Personal services may be required only when so established by law.”
- Sections 144 and 145 of Legislative Decree No. 3464 (Act Respecting Agrarian Reform), which abolished the system of tenant farming and any other form of the performance of personal services free of charge or in repayment of a debt.
- The 16th final provision of Presidential Decree No. 29215 under which “No performance of personal services, free of charge or in repayment of a debt, shall be allowed in agrarian properties and the wage system shall be established under all individual or collective contracts as the inalienable form of remuneration.”

The Committee observes that the above provisions prohibit forced labour practices. **With reference to article 5 of the National Constitution, the Committee requests the Government to indicate whether there exist national laws allowing the exaction of personal services and to provide copies of them.**

2. *Forced labour practices.* The Committee notes the information provided by the Government in its report concerning the existence of forced labour practices in the area of the Chaco Boliviano, in the departments of Santa Cruz (Alto Parapetí), Chuquisaca (Provinces of Luis Calvo and Hernando Siles) and Tarija which affect the indigenous communities of the Guarani people, known as “captive communities”. The Committee also notes the document “Trapped in debt bondage in Bolivia” published in 2005 in the context of the ILO Special Action Programme to combat Forced Labour. This document confirms the existence of forced labour practices, under various forms of debt bondage, principally in the sugar cane and nut harvests and in agricultural and stock-breeding ranches. The victims of such practices consist mainly of indigenous populations of Quechua and Guarani origin.

3. *Measures adopted by the Government. (a) Legislative measures.* The Committee notes section 157 of Presidential Decree No. 29215 (Regulations under Act No. 1715 respecting the National Agrarian Reform Service, as amended by Act No. 3545 of 28 November 2006 respecting the re-establishment of the community aspects of the agrarian reform), under the terms of which the existence of a system of servitude, forced labour, bonded labour and/or slavery of captive families or persons in rural areas is contrary to the well-being of society and the community interest and implies failure to respect economic and social functions. Under the terms of sections 28 and 29 of Act No. 3545, lands the use of which is prejudicial to the collective interest (section 28) and is

at the origin of the total or partial failure to comply with economic and social functions (section 29) shall revert to the original property of the nation, without any compensation. Biministerial Resolution No. 007, of 14 November 2007, approves the guide and forms for the classification of economic and social functions in relation to the existence of forced labour.

The Committee observes the importance of measures to combat situations of extreme poverty and vulnerability of victims in processes of eliminating forced labour practices. These measures prevent victims from having forced labour imposed upon them or from reverting to servitude. In this context, the Committee notes with interest the Government's indication in its report that "on the basis of the provisions referred to previously respecting lands, as from the month of November 2007 a process was initiated of the reversion and expropriation of lands in the Chaco zone of the Department of Chuquisaca, taking as a guiding principle the existence of servitude and forced labour affecting ranch properties which still obtain free labour from Guaraní communities". The Committee notes that, in parallel with the expropriation measures, 30 land titles corresponding to an area of 373,813 hectares were delivered to the Assembly of the Guaraní People (APG) in January 2008. **The Committee requests the Government to provide information on the results achieved and on any other measure adopted to eradicate forced labour practices that have been identified.**

(b) *Investigations.* The Committee notes the information provided by the Government on the various ex officio investigations undertaken in 2005 by the ILO, the Ministry of Justice and the People's Ombudsperson on captive families in the Chaco area of Chuquisaca and the investigation that is being carried out in 2008 by the ILO, the Red Cross and the Ministry of Justice on captive communities in the Alto Parapetí, Chaco Santo Cruz. It also notes that, as a result of the Memorandum of Commitment signed on 11 March 2008 at the headquarters of the Inter-American Commission on Human Rights (IACHR) between the Government of Bolivia, the Council of Guaraní Captains of Chuquisaca and civil society organizations, an IACHR delegation visited the country in June 2008 to verify compliance with the Memorandum under which the State undertook to take the necessary protection measures to ensure the integrity of all Guaraní families, their leaders and advisers, and to inform the IACHR of the progress achieved in the process of the territorial reconstitution of the Guaraní people. **The Committee requests the Government to continue providing information on the investigations that are carried out to determine the existence of situations of forced labour among indigenous communities of the Bolivian Chaco and on any other investigation undertaken in sectors and regions where there is evidence of forced labour practices.**

(c) *Other measures.* The Committee notes that Act No. 3351 on the organization of the executive authorities, of 21 February 2006, entrusts the Ministry of Labour with the mandate of coordinating and developing policies for the eradication of any form of servitude and that in this context two units have been established under the direct responsibility of the Minister of Labour. One of these is the Fundamental Rights Unit, which has special responsibility for "Indigenous peoples and the eradication of forced labour", including the provision of specialized technical advice on the application of labour standards governing rural employment and the adoption of public policies and adequate legislation for the eradication of forced labour. **The Committee requests the Government to provide information on the activities carried out by the Fundamental Rights Unit of the Ministry of Labour.**

Article 25. Penalties imposed for the exaction of forced labour. In accordance with Article 25 of the Convention, the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

The Committee notes section 291 of the Penal Code, which establishes sentences of imprisonment of from two to eight years for any person who reduces an individual to slavery or a similar condition. **The Committee requests the Government to provide information on the application in practice of section 291 of the Penal Code in cases of forced labour which have been denounced, particularly in terms of the number of prosecutions that have been launched and the penalties imposed on those responsible.**

[..]

WORST FORMS OF CHILD LABOUR CONVENTION, 1999 (NO. 182)

Excerpt from: *Observation, CEACR 2008/79th Session*

Article 3 of the Convention. Worst forms of child labour. Clause(a). Debt bondage and forced or compulsory labour. Child labour in sugar cane and brazilnut harvesting. In its previous comments, the Committee took note of a communication from the International Confederation of Free Trade Unions (ICFTU), now the International Trade Union Confederation (ITUC), indicating that child labour in the sugar cane and brazil nut sectors is a practice similar to slavery because the children have no alternative but to work with their parents, so like their parents they are subject to a system of debt bondage. Furthermore, although their work is neither recognized nor remunerated, they have joint liability with their parents for the debt and are compelled to work to help their parents to repay it.

In its comments, the ITUC stated that more than 10,000 children work with their parents in the sugar harvest in Bolivia. Of these, around 7,000 work in Santa Cruz, half of whom are between 9 and 13 years of age, and 3,000 work in Tarija. They perform a variety of tasks. For example, boys work with the men in cutting sugar cane and girls and young children work with the women in gathering, stripping and bundling the cane. The children work in difficult conditions and their hours are very long – more than 12 hours a day, starting at 5 a.m. They suffer from respiratory ailments and wound themselves working with machetes. As to brazil nut harvesting, the ITUC stated that children start at age 7 to help their parents in the plantations, assisting with picking and processing the fruit. At harvest time, the children work in the jungle alongside their parents. The work they do is hazardous because they use machetes to crack the nuts and extract the kernels. Moreover, they have to walk for hours to find the trees bearing nuts. Work begins at around 3 a.m. or even 2 a.m. and ends at midday. In some places the children work after school or during the night between 10 p.m. and 6 a.m.

The Committee took note of a study *Enganche y Servidumbre por Deudas en Bolivia* (Entrapment and Debt Bondage in Bolivia), published by the Office in January 2005, which reports such practices. According to the study, the situation of tens of thousands of indigenous agricultural workers in Bolivia is one of debt bondage, with some of them subjected to permanent or semi-permanent forced labour. The study also reports that these practices are to be found not only in the Chaco region but also in the areas of Santa Cruz and Tarija (sugar harvesting) and the northern Amazon area (brazil nut harvesting).

The Committee notes the Government's information on Bolivia's legislation covering slavery or similar practices. Its notes, however, that although the legislation appears to be consistent with the Convention on this point, work by children under 18 years of age in conditions of debt bondage or forced labour is a problem in practice. The Committee expresses its deep concern at the situation of these children. It reminds the Government that under *Article 3(a)* of the Convention, all forms of slavery or similar practices such as debt bondage and forced or compulsory labour are considered to be among the worst forms of child labour and that pursuant to *Article 1*, immediate and effective measures must be taken to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. ***The Committee urges the Government to take the necessary steps to ensure, as a matter of urgency, that the persons using the labour of children under 18 years of age in the sugar cane and brazil***

nut harvesting industry in conditions of debt bondage or forced labour, are prosecuted and that effective and dissuasive sanctions are applied to them. It requests the Government in this connection on the effect given to the provisions that apply to these worst forms of child labour, including statistics on the number and nature of offences reported, the investigations held, prosecutions, and the sentences and penal sanctions applied.

[..]

Article 7, paragraph 2. Effective and time-bound measures. Clause (d). Indigenous children. Identifying and reaching out to children at special risk. The Committee noted previously the information from the Government to the effect that in the large estates of the Chaco region, families of the Bolivian Guarani communities are subjected to debt bondage. As a result of this practice, the children of the families are in the same situation. It further noted that a national action plan to eliminate forced labour was to be adopted. It took into account the problems of the families of Guarani communities who are subjected to debt bondage, and specific measures were to be taken for the children under 18 years of age who are also in debt bondage. The Committee notes that the plan has not yet been adopted. It nonetheless takes due note of the Government's information that it has adopted a Provisional Interministerial Plan 2007–08 for the Guarani people. The Committee observes that the children of indigenous peoples often fall victim to exploitation, which can take many forms, and are at risk of falling into the worst forms of child labour. ***It requests the Government to provide information on the time-bound measures taken under the Provisional Interministerial Plan 2007–08 for the Guarani people, in order to prevent the children of these people falling into debt bondage or forced or compulsory labour. The Committee also requests the Government to provide a copy of the National Plan for the Elimination of Forced Labour as soon as it is adopted.***

[..]

DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION, 1958 (NO. 111)

Excerpt from: *Observation, CEACR 2009/80th Session*

[..]

Indigenous women. The Committee notes that, in the framework of the sectoral programme support to the rights of indigenous peoples and of the programme to regularize and title indigenous lands (*Componente Saneamiento y Titulación de Tierras Comunitarias de Origen Fase II 2005–09*), funded by Denmark, a strategy is to be formulated for cross-cutting gender activities in the regularization of lands, with a view to including systematic participation by women in all processes of regularization of agricultural land. The Committee notes that, in the period 1997–2005, women accounted for 46 per cent of a total of 42,178 titles and certificates issued. It also notes with **interest** that the Distribution of Lands and Human Settlements Programme of the Lands Vice-Ministry includes a gender perspective in many activities, for instance a gender dimension has been incorporated in the Five-Year Plan to regularize and issue titles in respect of community ancestral lands. **The Committee requests the Government to continue to provide information on this matter.**

[..]

BRAZIL
INDIGENOUS AND TRIBAL PEOPLES CONVENTION, 1989 (NO. 169)

Observation, CEACR 2009/80th Session

The Committee notes the communication from the Union of Rural Workers of Alcántara (STTR) and the Union of Family Agriculture Workers of Alcántara (SINTRAF), of 20 October 2009, forwarded to the Government on 6 November 2009. The Committee will examine this communication at its next session together with the observations of the Government in this regard. **The Committee requests the Government to respond to the communication of the STTR and SINTRAF.**

The Committee recalls that on 27 August 2008 it received a communication from the STTR and SINTRAF on the application of the Convention in the country, which was sent to the Government on 5 September 2008. It also recalls that on 1 September 2008, it received a communication from the Single Confederation of Workers (CUT) sent to the Government on 18 September 2008. This communication also attached comments made by the following indigenous organizations: the Coordinating Committee of the Indigenous Peoples of the North-East, Minas Gerais and Espírito Santo (APOINME), the Indigenous Council of Roraima (CIR), the Coordinating Committee of the Indigenous Organizations of Brazilian Amazonia (COIAB) and the Warã Brazilian Indian Institute. Furthermore, the Committee recalls that it received a communication, dated 19 September 2008, from the Workers’ Union of the Federal University of Santa Catarina (SINTUFSC), forwarded to the Government on 4 November 2008.

Quilombola communities of Alcántara. The Committee notes that by means of a communication of 26 December 2008, the Government provided information with regard to the observations formulated by the STTR and SINTRAF. The Committee notes that the information submitted by the Government only refers to one of the issues raised by the STTR and SINTRAF, namely the situation of Quilombola communities in the face of the establishment and expansion of the Alcántara Launch Centre (CLA) and the Alcántara Space Centre (CEA) on territory traditionally occupied by Quilombola communities, without their being consulted and without their participation. The Committee notes that, according to what emerges from the information submitted by the Government, the Technical Study on Identification and Demarcation was published. Following an administrative conciliation procedure between the governmental institutions concerned (Ministry of Science and Technology, Ministry of Agricultural Development, National Institute for Settlement and Agrarian Reform (INCRA), the Brazilian Spatial Agency and the Alcántara Space Centre), the Study established that 78,105.3466 hectares will be considered as territory of the Quilombola communities of Alcántara. The Committee understands that this entailed the reduction of the territory occupied by Quilombola communities and notes that the indications regarding the extent of such reduction differ. The Committee also notes that, according to article 11 of Decree No. 4887/2003, when the lands occupied by descendants of Quilombola communities overlap with, among others, national security areas, appropriate measures shall be taken to ensure the sustainability of these communities, conciliating, at the same time, States’ interests. In this regard, the Committee notes that according to the Advisory Opinion/AGU/MC/N.1/2006 of the Attorney General, in the event of overlapping interests, conflicts shall be settled in the light of the principle of “reasonableness”.

The Committee recalls that, as indicated in its previous observation, the communities in question appear to meet the requirements for being covered by the Convention and they identify themselves as tribal peoples within the meaning of *Article 1(1)(a)* of the Convention. Inasmuch as these communities meet the requirements set out in *Article 1* of the Convention, the Articles of the Convention shall be applied when addressing the issue which is the object of the communication. The Committee recalls the special importance for the cultures and spiritual values of the peoples covered by the Convention of their relationship with the lands or territories which they occupy or otherwise use and the obligation of governments to respect that relationship. The Committee considers that the recognition and effective protection of the rights of these peoples to the lands that they traditionally occupy in accordance with *Article 14* of the Convention is of vital importance for safeguarding the integrity of these peoples and, consequently, for respecting the other rights established in the Convention.

Likewise, the Committee emphasizes that governments have the obligation, under *Article 6(1)(a)* and *(2)*, of the Convention, to consult the peoples covered by the Convention, through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly, with the objective of achieving agreement or consent to the proposed measures. The Committee also draws the Government's attention to the fact that, pursuant to *Article 7(3)* of the Convention, governments shall ensure that studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The Committee cannot overemphasize that the results of these studies shall be considered as fundamental criteria for the implementation of these activities. The Committee notes that the information provided by the Government does not contain any reference to the participation of the affected communities in the procedure mentioned above. Neither does it contain references to their consultation. **In light of the above, the Committee asks the Government to provide detailed information on:**

- (i) the way in which the participation and consultation of the Quilombola communities affected were ensured, through their representative institutions, with the objective of achieving agreement or consent about the solution of the case, including information on the participation of these communities in the elaboration of the Technical Study on Identification and Demarcation;**
- (ii) the way in which due account was taken of the obligation to ensure the cultural, social and economic integrity of the Quilombola communities affected when reconciling the conflicting interest of the parties involved in the issue at hand;**
- (iii) the measures adopted to carry out studies in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of the establishment and expansion of the CLA and the CEA, including with a view to ensuring the viability of the traditional activities of these communities;**
- (iv) the progress made in identifying and demarcating the lands traditionally occupied by the Quilombola communities following the adoption of the Technical Study on Identification and Demarcation and the measures adopted to guarantee the rights of ownership and possession of these communities over their traditional lands and to safeguard their right to use lands not exclusively**

occupied by them but to which they have traditionally had access for their subsistence and traditional activities; and

- (v) the special measures adopted, in accordance with Article 4 of the Convention, to safeguard the persons, institutions, property, labour, cultures and environment of the communities concerned for as long as the recognition and demarcation of their lands is pending.**

Communication from Workers' Union of the Federal University of Santa Catarina (SINTUFSC), dated 19 September 2008. **The Committee asks the Government to reply to the communication from SINTUFSC so as to allow the Committee to examine it in detail at its next session.**

Noting the Government does not provide information in respect to the other points raised in its previous observation, the Committee is bound to repeat its previous observation, which read in relevant parts as follows:

Article 1, paragraph 2. Undermining of the application of the criterion of self-identification. The CUT also states that the criterion of self-identification established in *Article 1(2)* of the Convention was incorporated in national law by means of Decree No. 4887/2003, which regulates the procedure for granting titles regarding lands occupied by the remaining Quilombola communities. Nevertheless, the Government is allegedly undermining self-identification by means of subsequent legislation (Decree No. 98/2007), thereby preventing issues regarding land titles from being settled since doing so depends on registration of communities. It is, according to the trade union, more and more difficult to obtain registration and thus secure the application of other rights, in particular with regard to land. The violation of the criterion of self-identification is also visible in the dispute between the Quilombola community of Isla de Marambai and the Navy. The communities identify themselves as indigenous and claim the protection afforded by the Convention. Although occurring less frequently, the indigenous identity of the Indians of the North-East is sometimes not recognized either, and this makes the recognition of their rights to the lands they have traditionally occupied more difficult. In the light of the information received, the Committee considers that the Quilombola communities appear to meet the requirements laid down by *Article 1(1)(a)* of the Convention, according to which the Convention applies 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 or regulations". *Article 1(2)* states that "self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups for which the provisions of this Convention apply". **The Committee requests the Government to provide information on the application of the Convention to the Quilombola communities, and should the Government consider that these communities do not constitute tribal peoples within the meaning of the Convention, the Committee requests the Government to state the reasons for its viewpoint.**

Communication from the CUT

Articles 2, 6, 7 and 33. Consultation and participation. The communication indicates that although there has been an increase in social dialogue, the effectiveness of such forums is

questioned by the indigenous peoples because of their defining features (places which are difficult to access, convocations issued with little notice or superficial discussions) and the impression exists that the sole purpose of such consultations with the peoples, when they are actually held, is to rubber-stamp public policies. The Committee reminds the Government, as it has done repeatedly, that consultation and participation must not just be formal and devoid of content but must constitute a genuine dialogue, by means of appropriate mechanisms, so that they can result in projects including those in which the peoples covered by the Convention may participate in their own development. **The Committee requests the Government to examine the existing mechanisms for consultation and participation, in cooperation with the indigenous organizations, so as to ensure that they are in conformity with the Convention, and to supply information in this respect.**

Article 6. Consultation and legislation. The communication indicates that no consultation takes place with regard to the legislative and administrative measures referred to in Article 6 of the Convention. Examples of this are Decree No. 98/2007 concerning the Palmares Cultural Foundation referred to above, the draft Act concerning mining on indigenous lands (PL No. 1610/1996) and draft Decree No. 44/2007, which suspends the application of Decree No. 4887/2003 regulating the procedure for granting titles regarding Quilombola lands. **The Committee notes that governments have the obligation to consult the peoples covered by the Convention whenever consideration is given to legislative or administrative measures which may affect them directly, and requests the Government to supply information in this respect.**

Article 14. Lands. The CUT points out that the Constitution guarantees for Indians and Quilombola communities the right to the lands which they occupy but, although there are 343 indigenous territories and 87 Quilombola territories which are registered, land titles have still not been regularized for most of the lands; 283 indigenous lands and 590 Quilombola lands are the subject of administrative proceedings and 224 indigenous lands have not even reached this stage. The number of indigenous persons who have been killed has increased, particularly in Mato Grosso do Sul, as a result of unresolved land disputes. **The Committee requests the Government to supply information on the application of Article 14 of the Convention with regard to the Quilombola communities.**

Articles 6, 7 and 15. Participation, consultation and natural resources. Detailed reference is made to five projects in which the CUT alleges there has been no participation or consultation: (1) the Belo Monte hydroelectric project; (2) diversion of the River San Francisco; (3) draft Act No. 2540/2006, which proposes authorization for a hydroelectric project at the Tamanduá Falls on the River Cotingo in the Raposa Serra do Sol indigenous territory; (4) the Guaraní-K'iwóá indigenous territory, where 12,000 indigenous persons live confined to reserves such as Dourados, living in abject poverty, with projects and policies implemented without any consultation or participation; (5) mining in the Cinta Larga indigenous territory, which will be severely affected by the draft law on mining, regarding which there has been no consultation with the peoples concerned. **The Committee expresses its concern regarding the allegations and reminds the Government that, under the terms of Article 7, it must ensure that studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation**

of these activities. The Committee requests the Government to supply detailed information regarding the cases referred to above.

The Committee hopes that the Government will supply detailed information in this regard. The Committee requests the Government to send its comments on these communications, together with its reply to the present comments. Noting that the Government's report does not provide a reply to the questions posed by the Committee in its 2005 direct request, it requests the Government to also include a reply to the 2005 comments.

[The Government is asked to reply in detail to the present comments in 2010.]

REPRESENTATION (ARTICLE 24) - 2006 - BRAZIL - C169

Report of the Committee set up to examine the representation alleging non-observance by Brazil of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the Union of Engineers of the Federal District (SENGE/DF).

[The representation referred to the drafting procedure and basic provisions of Bill No. 62 of 2005 concerning the administration of public forests (PLC/62-2005), introduced by the President of the Republic. The SENGE/DF alleged that indigenous peoples were not consulted on the impact which the adoption of PLC/62-2005 would have on the administration of public forests, which could be leased to private entities (concession holders) for long periods. The complainant pointed out that the Brazilian people have never before been confronted with legislation entailing such serious potential consequences without prior in-depth public debate].

[..]

III. CONCLUSIONS

The Committee's conclusions

35. The Committee takes note of the information and annexes submitted by the complainant organization and of the Government's response and annexes, which include a copy of the Act in question.

Prior consultation on the drafting of the Act

36. The Committee notes that the complainant organization alleges that, during the drafting of Act No. 11284 of 2 March 2006 concerning the administration of public forests, there was no prior consultation with the indigenous peoples likely to be affected by it, in particular regarding the impact of the Act on the peoples in question in view of the fact that timber exploration and exploitation would take place on, or in the vicinity of, their lands.

37. The Committee notes that the Regional Conference of Indigenous Peoples of Matto Grosso alleges that it was not consulted on the impact of timber exploration and exploitation on lands occupied by indigenous peoples, or in areas close to their lands.

38. The Committee notes that, according to the Government, three consultative meetings were held with the CONAFLO, on which the COIAB is represented, as well as other indirect forms of consultation. Furthermore, the Government states that the Bill was the subject of in-depth discussions at the government level, including consultation with the Ministry of Justice, which is linked to the FUNAI.

39. The applicable provisions in this case are Articles 2, 4, 6, 7, 13, 14, 15(2) and 33 of Convention No. 169.

40. The Committee will first consider whether Act No. 11284 of 2 March 2006 concerning the administration of public forests is a legislative measure that is likely to affect indigenous peoples directly, with a view to ascertaining whether it should have been subject to the consultation process provided for by Article 6 of the Convention.

According to Article 6 of the Convention:

1. In applying the provisions of this Convention, governments shall:
 - (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

41. The Committee notes that, according to the maps provided by the complainant organization, which are of official origin (Ministry of Justice/FUNAI and IBAMA), there is an overlap between national forests and lands of varying legal status which are occupied by indigenous peoples. The Committee notes that the Government did not question the validity of these maps or offer any observations on them. Furthermore, it notes that, according to the Government, the Act will not affect indigenous lands, but it also notes that the Act does not identify the unaffected indigenous lands. It further notes that these lands will be identified at a later date. Although the Committee will examine this issue in greater detail with regard to the practical application and impact of the Act, it points out that the need to identify the lands that will be excluded shows that the Act is likely to have a direct effect on the peoples concerned. It further notes that, according to the Government, the indigenous peoples were consulted in some form at three meetings, which indicates that the Government does not question the relevance of the consultation process. In the light of the foregoing considerations, the Committee concludes that the Act concerning the administration of public forests, as a legislative measure which may directly affect the people concerned, comes within the meaning of Article 6 of the Convention and that it should have been subject to the consultation process provided for by that Article.

Consultation process provided for under Article 6 of the Convention.

42. The second question that will be examined by the Committee is whether the consultations that were undertaken were in accordance with the provisions of Article 6 of the Convention. The Committee draws the Government's attention to the fact that the consultation process provided for by Article 6 of the Convention includes specific requirements. Not just any consultation process will be in compliance with the Convention. In keeping with paragraph 2 of Article 6, consultation must take place in accordance with procedures that are appropriate to the circumstances, through the indigenous peoples's representative institutions, in good faith and with the objective of achieving agreement or consent to the proposed measures. Appropriate procedures are those that create the conditions necessary to reach an agreement or consent concerning the proposed measures. This means that the expression appropriate procedures must be understood in relation to the aims of the consultation. There is no single model of appropriate procedures, which should take into account national circumstances, the circumstances of the indigenous peoples concerned and the nature of the measures which are the object of the consultation process. As regards the consultation process itself, it should take into account the opinions of the various peoples involved in order to facilitate an exchange of information and ensure that the procedure used is considered appropriate by all parties. The Committee emphasizes this point because the validity of the consultative processes provided for by the Convention, as a mechanism to prevent and resolve conflicts, depends on the creation of fruitful mechanisms for dialogue. The consultation laid down in the Convention is therefore not merely a formal requirement but a genuine instrument for participation. The Committee

notes that, according to the Government, three meetings were held with CONAFLO, on which the COIAB is represented, but it also notes that the Government does not indicate the criteria applied with regard to the representative institutions mentioned in Article 6 of the Convention. Nor has the Government provided any information regarding the allegations that the Regional Conference of Indigenous Peoples of Matto Grosso was not consulted. With reference to the other procedural requirements (appropriate procedures, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent), the Committee notes that the Government has not provided sufficient information on the way in which it has met these requirements. The Committee also notes that no records or any other type of document relating to the procedures used and the topics discussed have been submitted by the Government, in particular relating to the different points of view regarding the impact on indigenous communities of exploration and exploitation of forestry resources. In the light of the above information, it would appear that, while there was some consultation with the indigenous peoples concerned, it was not enough to meet the requirements of the Convention. The Committee furthermore expresses its concern with regard to the long-term impact that this legislation may have on the indigenous peoples of the Amazon, in view of the fact that the Act provides for timber concessions to be awarded over a period of 40 years. Consequently, the Committee concludes that the consultations were not undertaken in conformity with the consultation process provided by Article 6 of the Convention.

Broader context of consultation and participation

43. The Committee would like to make it clear that Article 6 must be understood within the broader context of consultation and participation. According to Article 2(1), Governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity and, according to Article 33(1) and (2), The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned. These programmes shall include: (a) the planning, coordination, execution and evaluation, in cooperation with the peoples concerned, of the measures provided for in this Convention; (b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in cooperation with the peoples concerned. In sum, Articles 2 and 33 of the Convention provide for coordinated and systematic action by governments, with the participation of the peoples concerned, to protect the rights of these peoples and to guarantee respect for their integrity, and for such participation, from the conception to the evaluation stage, of the measures provided for in the Convention. In this context, the ILO's supervisory bodies have repeatedly stated that Consultation, as envisaged in the Convention, extends beyond consultation on specific cases: it means that application of the provisions of the Convention must be systematic and coordinated and undertaken in cooperation with the indigenous peoples as part of a gradual process in which suitable bodies and machinery are established for the purpose.

44. Furthermore, the Committee emphasizes that the Convention does not provide for a specific solution to questions related to the exploration and exploitation of natural resources on land occupied or otherwise used by indigenous peoples. However, the Convention does require the existence of effective consultation and participation machinery, in order to ensure that indigenous peoples participate in their own development. It recalls that consultation and participation are the

cornerstone of the Convention and that such mechanisms are not merely a formal requirement but are intended to enable indigenous peoples to participate effectively in their own development. The appropriate use of these mechanisms also contributes to preventing and resolving conflicts of interest, creating inclusive development projects, and thus increasing social cohesion with respect for diversity. The Committee will go on to examine other aspects of consultation and participation.

Application of the Act and the impact of the exploration and exploitation of natural resources.

45. Thirdly, the Committee will examine the question of the application of the Act, its impact and the consultation and participation envisaged by the Convention in this particular case, in other words with regard to the exploration and exploitation of natural resources. In this case, the Convention not only provides for consultation at the stage of drafting the relevant legislation, but also sets out specific consultation and participation mechanisms, in Article 15(2) read in conjunction with Article 13(2) and Article 7. According to Article 15(2) of the Convention: In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall, wherever possible, participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities. The lands to which Article 15(2) refers are defined in Article 13(2), which stipulates that: The use of the term lands in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

46. The Committee notes that the concerns raised relate to the impact of logging on indigenous peoples: the safeguarding of indigenous lands when logging companies open up roads and access routes to areas near or on their lands; transit routes for timber; the use of rivers; and the question of access by outsiders to indigenous land where companies have been granted concessions in the vicinity of those lands. Furthermore, there has been uncertainty in cases where public forests are located on (within) indigenous land, as is the case of the Yanomami (State of Roraima) and Alto Rio Negro regions.

47. The Committee welcomes the Government's statements to the effect that indigenous lands are excluded from potential logging concession zones and that this ensures that indigenous peoples are not directly affected by the legislation in question. In this context, it notes that, according to section 11 of Act No. 11284, With regard to forestry concessions, the Annual Plan of Forest Concessions (PAOF) shall take into account: (IV) the exclusion of indigenous lands, areas occupied by local communities and areas of interest, in order to establish conservation areas enjoying comprehensive protection.

48. The Committee also notes the Government's statements to the effect that the Act concerning the administration of public forests does not contain self-executing provisions, that is to say, it does not specify tasks requiring immediate implementation. The Committee notes that the implementation of the Act will require compliance with a series of procedures. It draws the Government's attention to the fact that the procedures provided for in the Act include the

requirement to hold public consultations at the regional level, during which the views will be heard of indigenous communities whose lands may be close to forestry concession areas, always bearing in mind that these zones shall never be adjacent. The Committee also notes that Decree No. 5795 of 5 June 2006 created a new consultative committee on matters pertaining to the administration of public forests, which will represent various sectors and comprise 22 members, one of whom will be a COIAB representative.

49. The Committee duly notes that the information contained in the two paragraphs above represents an important opportunity, if the measures provided for by the Convention are applied, to implement the consultation and participation machinery required by the Convention with regard to the exploration and exploitation of natural resources, namely in Article 15(2) concerning consultation and natural resources and in Article 7 concerning the participation of the indigenous peoples in plans and programmes for national and regional development which may affect them directly.

50. The Committee draws the Government's attention to the fact that, under Article 15(2) of the Convention, it must consult the indigenous peoples concerned regarding state-owned resources located on the lands defined in Article 13(2) of the Convention, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands that is to say, before licences are granted with a view to ascertaining whether and to what degree their interests would be prejudiced. Furthermore, the peoples concerned must, wherever possible, be able to participate in the benefits of such activities and receive fair compensation for any loss or damage they may sustain as a result of such activities. The Committee therefore considers that the Government should adopt additional regulatory and practical measures to ensure that the consultation provided for in Article 15(2) takes place, including the procedural requirements stipulated in Article 6, before licences are granted for the timber exploration and exploitation provided for in the Act concerning the administration of public forests.

Consultation as part of the process of identifying which lands would be excluded from the Annual Plan of Forest Concessions

51. Having indicated that, under the terms of Article 13(2), the provisions of Article 15(2) of the Convention apply to the total environment of the areas which the peoples concerned occupy or otherwise use, the Committee notes that the Act concerning the administration of public forests does not define the term indigenous lands for the purpose of excluding them.

52. The Committee has also noted that, according to a map provided by the SENGE/DF, there is an overlap between the lands covered by the proposed Act and certain indigenous lands, and that the Regional Conference of Indigenous Peoples of Matto Grosso cites as examples the cases of the Yanomami and the Alto Rio Negro. The Committee noted that the other map provided by the SENGE/DF includes indigenous lands at different stages of the registration process, and classifies these lands in the following manner: (i) to be identified; (ii) identification in progress; (iii) identified; (iv) delimited; (v) demarcation in progress; (vi) demarcated; (vii) officially approved; and (viii) registered.

53. The question therefore arises concerning: (1) the manner in which the indigenous lands to be excluded from timber exploration and exploitation are to be determined; and (2) the procedure that will be used to determine the impact of exploration and exploitation activities on the eight

land categories referred to above, in cases where an overlap is shown on the maps and on lands in the vicinity of the indigenous peoples territories.

54. In order to resolve these problems, Article 7 of the Convention must be applied in addition to the other Articles referred to. Under the terms of Article 7:

1. The peoples concerned shall 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, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.
2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and cooperation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.
3. Governments shall ensure that, whenever appropriate, studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.
4. Governments shall take measures, in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

55. In the light of the provisions of Article 7(1) of the Convention, the Committee considers that, for timber exploration and exploitation to comply with the Convention, indigenous peoples should be involved in the formulation, implementation and evaluation of plans and programmes likely to affect them directly. In particular, with regard to the application of section 11(IV) of Chapter IV (forestry concessions) of the Act concerning the administration of public forests, indigenous peoples should, under the terms of this section, participate in determining the indigenous lands to be excluded from logging activities.

56. As regards the lands referred to in paragraph 53 above (namely, lands in one of the eight categories mentioned in paragraph 52, lands where there are overlaps, and land in the vicinity of timber concession zones), in so far as they are lands which the peoples concerned occupy or otherwise use within the terms of Article 13(2) of the Convention, they must be subject to consultation as laid down in Article 15(2) in the manner indicated by the Committee in paragraph 42 of this Report.

Studies

57. Likewise, under the terms of Article 7(3) of the Convention, studies must be carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The same Article stipulates that the results of these studies shall be considered as fundamental criteria for the implementation of these activities. Finally, the environmental impact assessment studies laid down in the Act are not sufficient to ensure compliance with this Article of the Convention; they must include the social, spiritual and cultural impact and be carried out in cooperation with the peoples concerned.

58. By way of a conclusion on the impact of logging activities on the indigenous peoples of the Amazon likely to be affected by timber concessions, the Committee notes that, while the Act concerning the administration of public forests does not regulate these aspects to the extent stipulated by the Convention, it does contain provisions which do not contradict the Convention, although supplementary provisions are required. The Committee refers to Chapter IV of the Act, on forestry concessions, which, in order to comply with the Convention, must include consultation and participation in the manner laid down in Articles 7 and 15(2) of the Convention. While the Committee notes that the inclusion of a representative of the COIAB on the consultative committee, as laid down in Decree No. 5795 of 5 June 2006, creates an opportunity for consultation, it reiterates that not all consultation and participation complies with the consultation and participation requirements laid down in the Convention. The Committee refers in particular to paragraph 42 of this Report. Furthermore, the consultation and participation provided for in Articles 6, 7 and 15(2) of the Convention include partners, objectives and methods that require more than the inclusion of an indigenous representative on a general committee. Likewise, the indigenous peoples concerned should participate in determining the lands to be excluded from timber exploration. As regards compensation and the indigenous peoples share in any benefits, the Committee, while noting that, according to section 41.9 of the Act concerning the administration of public forests, specific resources may benefit the indigenous peoples, considers that provision must be made for fair compensation and for participation by the peoples concerned in the benefits to which Article 15(2) of the Convention refers.

Safeguarding land rights

59. With regard to the opinion of the IAB submitted by the complainant, as to whether the new Act provides less protection for indigenous peoples in terms of their land rights than the current system, the Committee notes that, according to the Government, the new Act would help to strengthen protection. The Committee hopes that, when implementing the Act concerning the administration of public forests, the Government will bear in mind the obligation, laid down in Article 14 of the Convention, to recognize the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy, and to guarantee effective protection of those rights of ownership and protection.

Special measures

60. With regard to Article 4 of the Convention, application of which is sought by the complainant organization, the Committee notes the Government's statements to the effect that the purpose of the Act is to safeguard the rights of all Brazilians. It requests the Government, when developing mechanisms to implement the Act, to bear in mind that, under the terms of Article 13 of the Convention, governments are required to respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship. It trusts that the Government will take the necessary special measures aimed at safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned, as required under the terms of Article 4 of the Convention.

61. The Committee reminds the Government that it may ask for technical assistance from the Office, if it is considered necessary.

IV. RECOMMENDATIONS

The Committee's recommendations

- 62.** The Committee recommends to the Governing Body that it approve this Report and, in the light of the conclusions contained in paragraphs 35 61, that it:
- (a) request the Government to adopt the measures needed to complement the consultation process concerning the impact of timber concessions envisaged in the Act concerning the administration of public forests on the indigenous people likely to be affected, taking into account the terms of Article 6 of the Convention and the Committee's conclusions set out in paragraphs 42 44 of this Report;
 - (b) request the Government to adopt in particular the relevant regulatory and practical measures to implement the consultation process laid down in Article 15(2) of the Convention, including the procedural requirements stipulated in Article 6, before licences are granted for the timber exploration and/or exploitation envisaged in the Act concerning the administration of public forests;
 - (c) request the Government to ensure that the consultation process required under Article 15 of the Convention is implemented in relation to the lands referred to in paragraph 52 of this Report, whatever their legal status may be, provided that they comply with the criteria of Article 13(2) of the Convention (lands which the peoples concerned occupy or otherwise use);
 - (d) invite the Government, under the terms of Article 7(1) of the Convention, to guarantee the participation of the indigenous peoples in the formulation, implementation and evaluation of plans and programmes related to the logging activities referred to, including the determination of the land to be excluded under the terms of section 11(IV) of the Act concerning the administration of public forests;
 - (e) request the Government, in accordance with Article 7(3) of the Convention, to ensure that studies are carried out, in cooperation with the peoples concerned, with a view to assessing the social, spiritual and environmental impact on the peoples concerning of the logging activities envisaged in the Act;
 - (f) request the Government to ensure that the indigenous peoples affected by logging activities participate, whenever possible, in the benefits of such activities and receive fair compensation for any loss or damage they may sustain as a result of such activities;
 - (g) request the Government to ensure that logging activities do not affect the rights of ownership and possession laid down in Article 14 of the Convention;
 - (h) request the Government to adopt special measures to safeguard the persons, institutions, property, labour, cultures and environment of the peoples affected by logging activities;
 - (i) recommend that the Government request ILO technical assistance and cooperation, if it considers it appropriate, in order to implement, in cooperation with the social partners,

the recommendations set out in the present report, and to promote dialogue among the parties;

- (j) entrust the Committee of Experts on the Application of Conventions and Recommendations with following up the questions raised in this report with respect to the application of the Indigenous and Tribal Peoples Convention, 1989 (No. 169); and
- (k) make this report publicly available and close the procedure initiated by the representation of the complainant alleging non-observance by Brazil of the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

Geneva, 17 March 2009.

COLOMBIA
INDIGENOUS AND TRIBAL PEOPLES CONVENTION, 1989 (NO. 169)

Observation, CEACR 2009/80th Session

The Committee takes note of the communication of 27 August 2009 by the Workers’ Trade Union Confederation of the Oil Industry (USO), sent to the Government on 2 September 2009. It also notes the communication of 28 August 2009 from the Union of Workers of the National Mining Enterprise “Minercol Ltda.” (SINTRAMINERCOL), sent to the Government on 18 September 2009. It further notes the communication of 31 August 2009 by the International Trade Union Confederation (ITUC) sent to the Government on 3 September 2009. The Committee notes that the Government’s report was received on 14 August 2009 and that, consequently, it contains no observations responding to the abovementioned communications.

The Committee notes that the recent communications from the USO, SINTRAMINERCOL and ITUC follow up on issues raised by the Committee in its previous comments, such as the situation of the Afro-Colombian communities of Curvaradó and Jiguamiandó, the situation in the Chidima and Pescadito reservations and the situation of the Embera Katío peoples of Alto Sinú. A new dimension that arises is that of the implementation of the Mandé Norte project which is affecting the Afro-Colombian community of Jiguamiandó and the Embera community of the Urada Jiguamiandó reservation and is related to matters brought up by the Committee in earlier comments.

In view of the gravity of the events alleged, the persistence of the issues raised by the Committee and the irremediable consequences that could result, the Committee will have regard to the relevant information contained in the new communications, as it relates to matters that have already been raised by the Committee. Before turning to the specific cases, however, the Committee deems it appropriate to make some general remarks on the situation of indigenous and Afro-Colombian peoples in Colombia, since the problems in applying the Convention indicated in the communications are widespread.

The Committee notes with **serious concern** the persistence of violence in the country. It is particularly worried to note that the indigenous and the Afro-Colombian communities are still the brunt of violence, intimidation, dispossession of lands and the imposition of projects on their territory without consultation or participation, and continue to suffer violations of the rights laid down in the Convention. It notes with **regret** that, according to the communications, the leaders of these communities and the organizations involved in defending the communities’ rights are often the victims of violence, threats, harassment and stigmatization because of their work and that, according to the allegations, the offenders often go unpunished.

The Committee takes notes of the statement made by the United Nations Special Rapporteur on the situation of human rights defenders on completion of a mission to Colombia in September 2009 to the effect that indigenous and Afro-Colombian leaders, as well as other categories of human rights defenders, have been killed, tortured, ill treated, disappeared, threatened, arbitrarily arrested and detained, judicially harassed, under surveillance, forcibly displaced or forced into exile (United Nations Press Release, 18 September 2009). The Committee also notes that, according to the Special Rapporteur on extrajudicial summary of arbitrary executions, such

executions affect the indigenous and Afro-Colombian peoples disproportionately (Press Release, 18 June 2009). The Committee notes that similar concerns were expressed by the United Nations Committee on the Elimination of Racial Discrimination and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (see, respectively, concluding observations, CERD/C/COL/CO/14, 28 August 2009, paragraphs 12, 14 and 15, and Preliminary note on the situation of indigenous peoples in Colombia, A/HRC/12/34/Add.9, 23 September 2009) which likewise emphasize that there are serious problems regarding the indigenous and Afro-Colombian communities' rights to land and consultations (respectively, paragraphs 19–20, and 10–11).

The Committee notes that according to Resolutions Nos 004 and 005 of January 2009 by the Constitutional Court of Colombia which concern indigenous and Afro-Colombian peoples who have been, or are in danger of being, forcibly displaced, there is “a general attitude of indifference at the horror the indigenous communities of the country have had to bear in recent years”. It also notes the Court's view that “the response of the state authorities ... has mainly been to issue rules, policies and official documents, which, while valuable, have had little practical effect” (Resolution No. 004).

The Committee notes with **concern** from the Government's report that in the last year there has been a significant increase in the number of killings of indigenous people. It notes the Government's statement that the National Directorate of Public Prosecutions has devised and is implementing a comprehensive action plan aimed at greater efficiency in the investigation of cases in which the victims are members of indigenous communities. It also notes the initiatives taken to comply with the orders set forth in Resolution No. 004 of the Constitutional Court concerning the preparation of a “programme to guarantee the rights of indigenous peoples affected, or in danger of being affected, by displacement” and “ethnic safeguard plans”.

The Committee urges the Government to:

- (i) adopt without delay and in a coordinated and systematic manner all necessary measures to protect the physical, social, cultural, economic and political integrity of the indigenous and Afro-Colombian communities and their members and to guarantee full observance of the rights laid down in the Convention;**
- (ii) take urgent measures to prevent and punish acts of violence, intimidation and harassment against members of the communities and their leaders and to investigate the alleged offences efficiently and impartially;**
- (iii) immediately suspend the implementation of projects affecting indigenous and Afro-Colombian communities until an end has been put to all intimidation of the affected communities and their members and until the participation and consultation of the peoples concerned has been ensured through their representative institutions in a climate of full respect and trust, pursuant to Articles 6, 7 and 15 of the Convention;**
- (iv) provide detailed information on the results of the investigations held under the action plan of the National Directorate of Public Prosecutions; and**

(v) provide information on the measures taken to comply with the resolutions of the Constitutional Court.

Afro-Colombian communities of Curvaradó and Jiguamiandó. In its previous observation the Committee expressed deep and growing concern at the allegations made in the USO's communication of 2007 and at the lack of any response to them by the Government. The USO referred in particular to the presence of paramilitary groups in the community territory, impunity for violations of the fundamental rights of members of the community and the “judicial persecution” against members of these communities and members of supporting organizations who are accused of assisting the guerilla. The Committee urged the Government to take the necessary measures without delay to guarantee the lives and physical and moral integrity of the members of the communities, to put an end to all persecution, threats or intimidation and to ensure that the rights laid down in the Convention are implemented in a climate of security.

The Committee notes with deep concern that, according to the USO's communication of 2009, the threats, harassment and attempts on the lives and integrity of members of the community have not stopped. The USO alleges in its communication that although the Colombian Institute for Rural Development (INCODER) issued Resolutions Nos 2424 and 2155 in 2007 clarifying and setting the boundaries of the private property of community territories, recognizing collective entitlement, in a show of bad faith third parties continue to occupy these lands. It further alleges a lack of prompt and timely investigations of those responsible, and the persistence of “judicial persecution” and smear campaigns against members of the communities and their supporting organizations.

The Committee notes that according to the Government's report, in February 2009 the company “Agropalma” voluntarily handed over 254 hectares of territory to the Community Council of the Rio Curvaradó Basin. According to the report, 220 of these were sown with palm trees, 100 per cent of which were diseased (bud rot) upon delivery. The Committee notes that the legal offices of the Ministry of the Interior and Justice and the Ministry of Agriculture and Rural Development are engaged in initiatives for the physical restitution of the territories. **The Committee refers to its previous comments and also urges the Government to take all necessary steps to ensure effective protection of the rights of the Curvaradó and Jiguamiandó Afro-Colombian communities over their lands, and to prevent any intrusion, in accordance with Articles 14(2) and 18 of the Convention. Please provide information on the measures taken to this end and report on the restitution of lands at the initiative of the abovementioned ministries.**

The Embera Katío and Embera Dóbida peoples. Chidima and Pescadito reservations. In its previous observation, the Committee noted the invasion by outsiders of the lands of the Embera Katío and Embera Dóbida peoples and a series of activities that were implemented without consulting these peoples. The Committee urged the Government to take steps as a matter of urgency to put an end to the intrusion and asked it to join the three plots of the Chidima reservation into one in so far as there had been traditional occupation of the land. It also asked the Government to suspend activities arising from concessions granted for exploration and/or infrastructure projects, pending the consultation and participation of the indigenous peoples, in accordance with Articles 6, 7 and 15 of the Convention.

The Committee notes that in its communication of 2009, the USO alleges that the Government has taken no steps to carry out a study of traditional occupation by these communities in the Chidima reservation with a view to joining the three plots, as the Committee requested. It also notes that the settlers are still present. It notes that according to the Government's report, as a result of Constitutional Court decision No. C-175 of 2009, the establishment, reorganization, restructuring and extension of reservations is no longer the responsibility of the Directorate of Indigenous Affairs, Minorities and Roma of the Ministry of the Interior and Justice, but of INCODER.

The USO also states that the abovementioned projects are still ongoing with no consultation of the indigenous peoples. It also asserts that there have been threats to the lives and physical integrity of a number of indigenous leaders and that the army's presence in the territory is growing ever more permanent. Further, on 1 June 2009, the communities filed a constitutional complaint (*acción de tutela*) against the national bodies, seeking a halt to the construction works for the Ungía-Acandí highway, and the infrastructure, hydroelectric and mining exploration and exploitation works, on grounds of breach of their right to prior consultation, participation and collective ownership; but the complaint failed. With regard to the mining concession in the municipality of Acandí, the USO reports that the Environmental Alternatives Diagnosis is being conducted and that according to the Ministry of Environment, Housing and Territorial Development, "prior consultation is not required" as regards this study. The Committee would point out to the Government that according to *Articles 6, 7 and 15* of the Convention, the peoples concerned must participate and be consulted regarding environmental impact studies.

The Committee again urges the Government to take steps as a matter of urgency to put an end to all intrusion in the lands of the Embera Katío and Embera Dóbida peoples and to suspend exploration and exploitation activities and implementation of infrastructure projects affecting them, pending full compliance with Articles 6, 7 and 15 of the Convention. It also repeats its requests to the Government to take steps to join the three plots of the Chidima reservation into one in so far as there has been traditional occupation of the land and to guarantee effective protection of the rights of ownership and possession of the peoples concerned, in accordance with Article 14(2) of the Convention.

Embera Katío people of Alto Sinú. The Committee recalls that the case of the Embera Katío people of Alto Sinú was examined by the Governing Body in connection with the construction, without consultation, of the Urrá I hydroelectric dam in a report adopted in 2001 (document GB.282/14/4). In that report, the Governing Body recommended that the Government maintain dialogue with the Embera Katío people in a climate of cooperation and mutual respect, in order to seek solutions to the situation that this people was going through and that it provide information in particular on measures taken to safeguard the cultural, social, economic and political integrity of this people, prevent acts of intimidation or violence against its members and compensate them for the losses and damage suffered. The Committee notes with **regret** that according to the ITUC's communication of 2009, there has been no compensation for the damage caused to the Embera Katío people by the Urrá I dam, and that, in 2008, a project for the construction of a new dam on their territory was submitted. The ITUC indicates that in June 2009, the Ministry of Environment turned down the application for an environmental licence for the project but that the risk that projects for the exploitation of environmental resources will be imposed remains latent. It further indicates that the people's traditional authorities have reported an ever-growing

military presence on their territory since 2007 and that this is involving the community directly or indirectly in armed conflict. It further alleges that the protection machinery set up to safeguard the lives and personal safety of the members of the community has grown gradually weaker and that in the last few years there has been a serious decline in the situation regarding security and guarantees. **The Committee refers to its earlier comments and requests the Government to guarantee the right of the Embera Katío people to decide their own priorities for the process of development and participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly, in accordance with Article 7 of the Convention.**

Mandé Norte project. The Committee notes with **concern** the communication sent by SINTRAMINERCOL in 2009, alleging that the Embera people in the Urada Jiguamiandó reservation are in imminent danger of forced displacement due to the implementation, without consultation, of the Mandé Norte mining project, the militarization of their land, the threat of armed conflict and the invasion and disregard of their holy places by the armed forces. SINTRAMINERCOL indicates that the Colombian Institute of Agrarian Reform (INCORA) issued Resolution No. 007 of 2003 establishing a reservation for the Embera Dóbida community covering a total area of 19,744 hectares consisting of two plots of unplanted land that form part of the Pacific Forest Reserve. In 2005, a licence was granted for the technical exploration and economic exploitation of a copper, gold and molybdenum mine in an area of approximately 16,000 hectares for a period of 30 years, renewable for a further 30 years. Of these 16,000 hectares, the areas located in the municipality of Carmen del Darién, amounting to 11,000 hectares, are traditional lands and the reserve of the indigenous Embera people of Urada Jiguamiandó. Overall, the project affects more than 11 indigenous communities, two Afro-Colombian communities and an unspecified number of peasant communities. The organization adds that the indigenous and Afro-Colombian communities were not consulted before the mining contracts were signed. For the exploration phase, consultation was carried out by the Working Group on Prior Consultation of the Ministry of the Interior and Justice and the procedure was challenged by the indigenous and Afro-Colombian authorities on the grounds that the persons with whom the consultation was planned, agreed on and endorsed, were not legitimate representatives of the communities. Furthermore, it was when the activities to implement the project began that military personnel started to move in to the River Jiguamiand Basin. According to SINTRAMINERCOL, since January 2009, the licence holder has been engaged in a campaign to discredit the communities and their leaders and support organizations and to invalidate their legitimacy. The Committee notes that the USO's communication of 2009 makes the same allegations regarding the Afro-Colombian community of Jiguamiand, which is likewise affected by the project.

The Committee points out that the principle of representativeness is an essential component of the requirement to consult laid down in *Article 6* of the Convention. As the Governing Body noted in another case, if an appropriate consultation process is not developed with the indigenous and tribal institutions or organizations that are truly representative of the communities affected, the resulting consultations will not comply with the requirements of the Convention (document GB.282/14/2, paragraph 44). The Government is therefore bound to ascertain that the consultations are held with the institutions that truly represent the peoples concerned before any programme for prospecting or exploiting their lands is undertaken. The Committee further observes that a climate of mutual trust is essential to any consultations if a genuine

dialogue between the parties is to be established so that appropriate solutions can be sought to the problems at hand, as the Convention requires. The Committee further considers that the militarization of the area where the project is being carried out and the campaigns to discredit and deny the legitimacy of the communities, their leaders and support organizations are not consistent with the basic requirement that consultations must be genuine. It points out that the obligation to consult should be viewed in the light of the fundamental principle of participation set forth in *Article 7(1) and (3) of the Convention*. **The Committee urges the Government to:**

- (i) suspend activities related to the implementation of the Mandé Norte project until it has ensured the participation and consultation of the peoples affected through their representative institutions in a climate of full respect and trust, in accordance with Articles 6, 7 and 15 of the Convention;**
- (ii) take the necessary steps to put an end to the climate of intimidation; and**
- (iii) conduct studies, in cooperation with the peoples concerned, to assess the impact of the abovementioned project, in accordance with Articles 7(3) and 15(2), of the Convention, bearing in mind the obligation to protect the social, cultural and economic integrity of the peoples, in accordance with the spirit of the Convention.**

Please provide full information on the measures taken to these ends.

The Awa people. Noting the Ombudsperson's Resolution No. 53 of 2008 which refers to threats, harassment, disappearances and killings of members of the Awa people, as well as the recent statement by the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, condemning the killings of members of the Awa people on the morning of 25 August 2009 in the department of Nariño, the Committee requests the Government to provide full information on the situation of the Awa people and the measures taken in response to the Committee's previous comments.

Consultations. Legislation. The Committee recalls that in two reports it issued on representations in 2001, the Governing Body found Decree No. 1320 of 1998 to be inconsistent with the Convention in terms both of the adoption process, which did not involve consultations, and of its content, and accordingly asked the Government to amend it in order to align it with the Convention, in consultation with and with the active participation of the representatives of the indigenous peoples of Colombia (documents GB.282/14/3 and GB.282/14/4). The Committee also recalls that the Constitutional Court of Colombia, in judgement No. T-652 of 1998, suspended application of the abovementioned Decree in the specific case of the indigenous communities of Embera Katío of Alto Sinú because the Decree was inconsistent with the Constitution of Colombia and the Convention. The Committee further notes that on several occasions the Constitutional Court has been exemplary in identifying problems regarding the holding of prior consultations with the communities concerned, on the latest occasion in judgement C-175/09 of 18 March 2009 on the adoption of Act No. 1152 of 2007 (Rural Development Statute), which the Court found to be unenforceable on grounds of non-compliance with the requirement for prior consultation. The Committee notes from the information supplied

by the Government in its report that the Working Party on Prior Consultation of the Ministry of the Interior and Justice, established by Resolution No. 3598 of 2009, has drafted a statute to regulate the consultation process. The Committee notes with **regret** that this bill was not the subject of any consultations or process of participation with the indigenous and tribal peoples. It further notes with **concern** that, according to the abovementioned communication, the content of the bill has not eliminated the problems of Decree No. 1320 and does not envisage consultation as a process of genuine negotiation between the parties involved.

The Committee urges the Government to ensure that the participation and consultation of indigenous peoples is established in the abovementioned provisions that are to regulate the consultation process and refers the Government to the recommendations made by the Governing Body in the two reports mentioned above regarding the fundamental requirements to be observed as to content. The Committee encourages the Government to seek technical assistance from the Office on this matter and asks it to provide a copy of the abovementioned draft regulations.

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to report in detail in 2010.]

DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION, 1958 (NO. 111)

Excerpt from: *Observation, CEACR 2009/80th Session*

[..]

Discrimination on grounds of race, colour and social origin. The Committee notes that there is no reference in the Government's report to the Committee's requests concerning a communication from the Single Confederation of Workers of Colombia (CUT) relating to discrimination in access to employment with regard to members of indigenous and Afro-Colombian peoples. The Committee also notes the concern expressed by the Committee on the Elimination of Racial Discrimination (CERD/C/COL/CO/14, 28 August 2009) at the fact that, despite national policies establishing special measures, in practice Afro-Colombian and indigenous peoples continue to have great difficulty in securing respect for their rights and continue to be the victims of de facto racial discrimination and marginalization. The Committee further notes that the National Development Plan 2006–10 proposes the formulation of a comprehensive policy for indigenous peoples, including components relating to territoriality, identity, autonomy, governance and development plans. **The Committee therefore requests the Government once again to take effective measures towards the elimination of discrimination in access to employment or occupation on the basis of social origin, race, colour or physical characteristics. It also requests the Government to take steps to ensure that no investigations into the social background of workers are carried out which result in discrimination on the basis of social origin, that actions are taken to prohibit in law and in practice discriminatory vacancy announcements and to promote the employment of Afro-Colombian and indigenous peoples, and to supply information on the measures taken. The Committee also requests the Government to provide detailed information on the training and employment situation of indigenous and Afro-Colombian men and women, including those living in the Pacific region.**

[..]

Indigenous women. Noting that the Presidential Office for Equal Rights for Women is designing actions in favour of indigenous women with a view to tackling the various forms of discrimination which affect them and promoting equal opportunities, the Committee requests the Government to provide further information on these actions and the results achieved with regard to education, vocational training, employment and occupation, including information on the pilot project referred to in the report.

COSTA RICA
INDIGENOUS AND TRIBAL PEOPLES CONVENTION, 1989 (NO. 169)

Observation, CEACR 2009/80th Session

Articles 2, 6 and 7 of the Convention. Indigenous legislation and consultation. The Committee notes that, according to the Government's report, Bill No. 12032 for the autonomous development of indigenous peoples has been shelved and replaced by Bill No. 14352 on the same subject which is still before the Legislative Assembly. The Government states that the current Bill seeks the consolidation of self-determination rights entailing the right of indigenous peoples to negotiate with States on equal terms. The Government indicates that Bill No. 14352 was submitted for consultation with the indigenous peoples between 22 July and 9 September 2006 in the 24 indigenous territories and on 11 September 2007 it obtained the majority approval of the Standing Committee on Social Affairs of the Legislative Assembly. The Committee notes that the Government reiterates the political will and support for keeping this initiative alive in the Legislative Assembly. **The Committee requests the Government to provide information on the manner in which consultations were undertaken, regarding the Autonomous Development of Indigenous Peoples Bill (No. 14352) including information on the representative institutions of the indigenous peoples which were consulted and the other requirements laid down in Article 6 of the Convention in the light of its general observation of 2008, and on the outcome of these consultations.**

Article 14. Lands. The Committee notes sections 5, 6, 11, 12, 13 and 14 of Bill No. 14352 and that these sections govern a summary procedure for the reclaiming of lands. It notes that these sections provide that: (i) within this rapid procedure, if the lands being reclaimed were occupied by a party purchasing indigenous lands in good faith, the State will finance the recovery of such lands (section 12); (ii) as regards the possession of lands by indigenous peoples since time immemorial, the prevailing criterion will be that the burden of proof regarding legitimate possession will fall exclusively on non-indigenous parties claiming possession, who will be entitled to the payments to be made by the State (section 13(d)); and (iii) the corresponding Indigenous Territorial Council may participate and become involved at any time in the procedure, and the requirements regarding identification and written documentation are simplified, these being acceptable even in handwritten form. **The Committee hopes that Bill No. 14352 will be adopted in the near future and requests the Government to provide information regarding the status of its adoption. In the absence of the adoption of the Bill, the Committee requests the Government to supply detailed information on the manner in which such matters are currently regulated, particularly the issue of lands reclaimed by indigenous persons which are owned or occupied by non-indigenous persons.**

The Committee further notes that, according to data from the National Commission for Indigenous Affairs (CONAI) sent by the Government, the total surface area of indigenous territories in Costa Rica is 334,447 hectares, 38 per cent of which are still in non-indigenous hands. The Committee notes the information to the effect that lands have been bought by the Institute of Agrarian Development with a view to returning them to indigenous peoples. **Taking account of the fact that indigenous peoples are currently in possession of 62 per cent of their lands, the Committee requests the Government to supply information in its next report on the increase in the percentage of indigenous lands resulting from the**

new initiatives for reclaiming land, in order to be able to evaluate developments in the recovery of traditionally occupied lands.

Articles 7 and 16. Development projects, participation, consultation and relocation. With regard to its previous observation and the issues relating to the Boruca hydroelectric project, which might give rise to the relocation of indigenous peoples, the Committee notes that the project has not yet been implemented and that its characteristics and name have changed, now being known as the “El Diquís” hydroelectric project. The Government indicates that the population has been kept informed but at the current stage of the project no formal consultation has yet been undertaken because the project is still in the feasibility study phase. The Government indicates that, according to Executive Decree 32966-MINAE, for projects involving indigenous peoples or any possibilities of dispute, a participatory and interactive process must be launched. The Electricity Institute of Costa Rica (ICE) has so far maintained a relationship of mutual respect with the communities, which in turn have remained open to dialogue and participation. In its previous comments the Committee noted that it was estimated that 3,000 persons of the Teribe and Brunca indigenous peoples would be affected by the flooding of 14.7 per cent of the total surface area of their lands.

The Committee notes that, according to information from CONAI attached to the Government’s report, the ICE initially approached the community of the indigenous territory of Térraba with a view to obtaining the community’s consent for conducting preliminary studies. The community gave its consent on condition that an agreement was signed between the ICE and the community setting out in detail the terms and conditions under which their permission was given. When no such agreement was forthcoming, the community launched a series of actions, including in the courts, to expel the ICE until such time as an agreement was reached in which the community would benefit from any implementation of the project. CONAI asserts that the Government issued a statement supporting the ICE, declaring that the construction of the dam was in the national interest. The community challenged this decision in the Supreme Court of Justice on the grounds that it violated their ownership and consultation rights. ***Recalling that, with regard to development activities, the consultation and participation provided for in the Convention are closely linked and that Article 7 of the Convention provides that indigenous peoples must participate in the formulation of development plans (paragraph 1) and in studies which assess the social, spiritual, cultural and environmental impact on them of planned development activities (paragraph 3), the Committee requests the Government to ensure as soon as possible that the indigenous peoples concerned enjoy the right of participation provided for in this Article and to keep it informed in this respect. Furthermore, recalling that the results of these studies must be considered as fundamental criteria for the implementation of these activities, the Committee requests the Government to keep it informed of the results of such studies and on the consideration which has been given to them. Should provision be made for relocations, the Government is asked to ensure that this issue is the subject of further consultation pursuant to Article 16 of the Convention and the Committee requests the Government to keep it informed in this regard.***

Article 28. Indigenous languages. The Committee notes the Government’s statement that Act No. 7878 of 2003 implies that the State has the obligation to guarantee the preservation of indigenous languages. It notes a 2007 decision of the Constitutional Chamber of the Supreme

Court of Justice, according to which the protection of the aboriginal languages of Costa Rica not only helps to preserve the right of indigenous peoples to express themselves in their own language but also contributes to maintaining the cultural heritage of the nation. ***The Committee requests the Government to keep it informed of any educational measures adopted to preserve these languages, including the provision of bilingual education.***

The Committee is raising other points in a request addressed directly to the Government.

ECUADOR
INDIGENOUS AND TRIBAL PEOPLES CONVENTION, 1989 (NO. 169)

Observation, CEACR 2009/80th Session

The Committee notes the detailed report supplied by the Government of Ecuador and the comments sent by the Ecuadorian Confederation of Free Trade Unions (CEOSL), including an alternative report on the application of the Convention in Ecuador. The alternative report analyses the situation of the indigenous peoples from the ratification of the Convention in 1999 until July 2006 and was drawn up by the “Observatory for the Monitoring of Convention No. 169”, with the support and participation of various civil society groups, indigenous organizations, academic institutions, etc. The alternative report refers to problems regarding the criteria used for censuses, a greater incidence of poverty among indigenous peoples compared with non-indigenous peoples, a lack of consultation and participation particularly with regard to natural resources, and the violation of territorial rights. As regards the greater incidence of poverty, the alternative report indicates that, according to the sixth Population and Housing Census, nine out of ten persons self-defined as indigenous and seven out of ten persons self-defined as black are poor, whereas slightly less than five out of ten persons self-defined as white are poor. The Committee notes that the Government did not make any comments on this report but that, according to the Secretariat of Peoples, Social Movements and Civic Participation in official letter No. 0767-DM-SPPC-08, the alternative report could be very useful for drawing up the Government’s report on the application of the Convention.

Legislation and changes. The Committee notes the Government’s indications in various paragraphs of its report that information is provisional since, at the time the report was drafted, the adoption of the new Constitution was pending. The Committee notes that the Constitution of Ecuador came into force in October 2008 at the time of its publication in the Official Register (RO). The Government states repeatedly that changes will be made in law and in practice on the basis of the new Constitution, and that the new Constitution represents progress with regard to the indigenous peoples. The Committee notes with interest that the new Constitution establishes rights which are laid down by the Convention, including rights regarding lands, consultation, participation, cross-border cooperation, and protection and preservation of the environment. In order to have a fuller idea of the changes arising from the Constitution, the Committee requires more information on the changes made in law and in practice on the basis of the new Constitution. **The Committee therefore requests the Government to supply information on the main changes in law and in practice relating to the Convention, resulting from the adoption of the 2008 Constitution.**

Articles 2 and 33 of the Convention. Coordinated and systematic action. Agencies or other appropriate mechanisms. The Committee notes that, by means of Decree No. 133 of 13 February 2007, published in RO No. 35 of 7 March 2007, the Secretariat of Peoples, Social Movements and Civic Participation was established, which, with the support of the Ministry of Labour, will safeguard and coordinate the rights of indigenous peoples and communities. The Government states that in order to ensure coordinated and systematic action via the abovementioned Secretariat, three institutions were set up: the Council for the Development of Afro–Ecuadorian Peoples (CODAE), the Council for the Development of Indigenous Peoples and Nationalities (CODENPE) and the Council for the Development of the Montubio People of the

Ecuadorian Coast and Sub-tropical Zones of the Coastal Region (CODEPMOC). The “Project for the development of indigenous and black peoples of Ecuador (PRODEPINE)”, to which the Committee referred in previous comments, was cancelled and taken over by CODENPE. In addition, CODENPE became an autonomous entity on the basis of the Organic Act concerning the institutions of the indigenous peoples of Ecuador (RO No. 175 of 21 September 2007).

The Committee requests the Government to institutionalize and reinforce the bodies responsible for indigenous policy and also indigenous participation in those bodies, and to provide information on the measures taken in this regard, as well as information on the following:

- (i) the activities of those bodies; and**
- (ii) the form that indigenous participation in those bodies takes, with reference to Articles 2 and 33 of the Convention.**

Articles 6, 7 and 15. Consultation, oil activities and monitoring of the implementation of the recommendations made in document GB.282/14/2. The Government stated recently that it would be in a position in its next report to provide information on mechanisms for consultation with the indigenous and Afro–Ecuadorian peoples, once the Secretariat referred to above had the relevant data and results and also in relation to the 2008 Constitution. The Committee also notes the Government’s statement that as part of the procedures undertaken at the Ministry of Mining and Petroleum for obtaining an oil concession, the indigenous communities who would be affected by such a concession are consulted. The Committee notes that, according to the alternative report sent by the CEOSL, serious problems exist in relation to consultation, participation and oil exploitation, and particular emphasis is placed on the serious problems which the Sarayacu community has been facing since 1996 until the present day. Reference is also made to other situations in which serious shortcomings are alleged with regard to consultation, failure to comply with rulings, problems of representation, violence and other problems, with particular reference to “Block 31” in the province of Orellana and “Blocks 18 and 24” in Ecuadorian Amazonia. With regard to Block 24, the Committee notes that, in 2001, the Governing Body adopted a report concerning a representation made by the CEOSL (see GB.282/14/2). In its previous comments the Committee asked the Government to provide information on the application of the recommendations of the Governing Body contained in paragraph 45 of its report. The Committee notes the Government’s statement that it is the new Secretariat of Peoples, Social Movements and Civic Participation which will be responsible for follow-up action on this matter. The Committee expresses its **concern** at the time which has elapsed and at the lack of information concerning action taken to comply with the recommendations of the Governing Body. **The Committee requests the Government to intensify its efforts to resolve the disputes referred to above by means of consultation and participation and requests it to provide information on the cases referred to, particularly regarding action taken to comply with the recommendations of the Governing Body in the case of Block 24.**

With reference to its general observation of 2008, the Committee requests the Government to supply information on the measures taken with regard to the following:

- (i) including the requirement of prior consultation in legislation regarding the**

exploration and exploitation of natural resources;

(ii) engaging in systematic consultation on the legislative and administrative measures referred to in Article 6 of the Convention; and

(iii) establishing effective consultation mechanisms that take into account the vision of governments and indigenous and tribal peoples concerning the procedures to be followed.

Part VIII of the report form. Noting: (1) the imminent changes to be made on the basis of the new Constitution; (2) the Government's stated intention to make progress as regards consultation and participation; (3) the alternative report sent by the CEOSL; and (4) the fact that the Secretariat of Peoples, Social Movements and Civic Participation considers that the alternative report is extremely useful, the Committee considers that it would be extremely beneficial for the Government to consult the principal indigenous organizations with a view to the preparation of its next report, as this would enable it to conduct an analysis, with the participation of the peoples concerned, of the situation regarding the application of the Convention and the corresponding proposals for improving its application. ***The Committee requests the Government to supply information in this respect.***

The Committee is raising other points in a request addressed directly to the Government.

EL SALVADOR

INDIGENOUS AND TRIBAL POPULATIONS CONVENTION, 1957 (NO. 107)

Observation, CEACR 2008/79th Session

Articles 11 to 14 of the Convention. Land rights. The Committee recalls that a communication was received in September 2003 from the Sindicato Integración Nacional de Indígenas Organizados (INDIO), a workers' organization registered in the country, which noted with regret that the indigenous populations of the country were losing their land rights, in particular, due to the construction of a hydroelectric dam, and that they had been unable to obtain land rights in other contexts as well. The Committee notes the Government's statement, in reply to its previous observation on this subject, to the effect that the indigenous populations were allocated lands, as shown by data from the Salvadorean Institute for Agrarian Reform (ISTA). The Committee also notes that, according to the Government's report, there were no cases of displacement of indigenous populations. However, the Committee notes the comments made by the United Nations Committee on the Elimination of Racial Discrimination (CERD) concerning the vulnerable situation of indigenous populations with regard to land ownership (CERD/C/SVL/CO/3, 4 April 2006, paragraph 11). The Committee also observes that the indigenous populations of Panchimalco and Izalco filed a complaint on the pollution and sale of their lands with the Office of the Procurator for the Protection of Human Rights (newsletter of the Inter-American Institute of Human Rights, 23 January 2008). The Committee also draws the Government's attention to the profile of the indigenous populations of El Salvador, drawn up with the support of the World Bank and the participation of indigenous representatives, published in June 2003. According to this profile, the indigenous populations are suffering an alarming degree of poverty as a result of the dispossession of their lands (p. ix). ***The Committee urges the Government to take all necessary steps to recognize and promote the rights of the indigenous populations with regard to lands traditionally occupied by them in order to put an end to their current vulnerable situation and requests the Government to supply detailed information in this regard. The Committee also requests the Government to provide information on the state of the proceedings instituted with respect to the complaint submitted by the indigenous populations of Panchimalco and Izalco, including information on resolutions and decisions issued and results achieved.***

Recalling that in its general observation of 1992, it invited governments to seriously consider the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Committee encourages the Government to consider this possibility and to provide information on any progress made in this regard.

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to reply in detail to the present comments in 2010.]

DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION, 1958 (NO. 111)

Excerpt from: *Observation, CEACR 2008/79th Session*

[..]

Indigenous workers. The Committee notes the various programmes undertaken by the Government for agricultural workers which, according to the Government, have also benefited indigenous peoples, such as the project for the “Promotion of family micro-enterprises in rural areas of the north-east of El Salvador”, the “Presidential programme for the distribution of fertilizers” and the distribution of improved seed for white maize, sorghum, beans and grass. However, the Committee refers to its comments under the Indigenous and Tribal Populations Convention, 1957 (No. 107), and to similar comments made by the Committee on the Elimination of Racial Discrimination (CERD) (CERD/C/SLV/CO/13, 4 April 2006, paragraph 11), to the effect that the difficult situation concerning land ownership is continuing to have a negative impact on the possibility for indigenous peoples to perform their traditional occupations. Consequently, so that the indigenous peoples can benefit in practice from the abovementioned initiatives, it appears essential that measures are adopted to resolve the problem of land ownership. In this respect, the Committee notes the programmes conducted by the Salvadorian Institute of Agrarian Reform (ISTA) concerning the transfer of land to which indigenous communities, according to the Government, had access on the same terms as the rest of the groups concerned. **The Committee requests the Government to supply detailed information on the manner in which the indigenous communities involved have participated in the land transfer programmes conducted by the ISTA. The Committee also requests the Government to supply information on any measure adopted or contemplated, with a view to making progress towards effective equality for indigenous peoples in the area of employment and occupation.**

[..]

GUATEMALA
INDIGENOUS AND TRIBAL PEOPLES CONVENTION, 1989 (NO. 169)

Observation, CEACR 2009/80th Session

The Committee notes the communication from the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers’ Rights (MSICG), of which the following are members: the General Confederation of Workers of Guatemala (CGTG); the Single Trade Union Confederation of Guatemala (CUSG); the National Trade Union and People’s Coordinating Body (CNSP); the Committee of Rural Workers of the *Altiplano* (CCDA); the National Indigenous, Rural Workers and People’s Council (CNAICP); the National Front for the Defence of Public Services and Natural Resources (FNL); and the Trade Union Confederation of Guatemala (UNSITRAGUA). The communication was dated 28 August 2009, and was forwarded to the Government on 19 October 2009. The Committee will examine the communication in 2010, together with any observations of the Government in this regard. The Committee also recalls that in its previous observation it did not examine the Government’s report of 2008, as it was received late, and will therefore examine it in the present observation, together with the report of 2009.

Sacatepequez and cement company. State of emergency. In its previous observation, the Committee noted the communication from the MSICG, received on 31 August 2008. The communication referred to the award of a permit in the Sacatepequez case and the implementation of a mining project by force, despite the fact that the proposal for exploitation by mining was totally rejected by the community, with 8,936 votes against and four in favour. It added that a state of emergency was declared with a view to imposing the establishment of the cement company without consultation. The Committee notes the information provided by the Government concerning Government Decree No. 3-2008 introducing the state of prevention. However, it notes that no information has been provided on the special measures adopted, as requested by the Committee, to safeguard the persons, institutions, property, labour, cultures and environment of the peoples concerned, in accordance with *Article 4 of the Convention*.

With regard to the application of *Articles 6, 7 and 15* of the Convention in the present case, the Committee notes the indication by the Ministry of Energy and Mining that it is impossible for it to hold consultations in accordance with the Convention due to the absence of specific regulations on this subject. It adds that, in view of the absence of such provisions, the Ministry has to comply with the Mining Act that is currently in force, which establishes a series of requirements that have to be met by the party concerned to obtain a mining permit and, once they have been fulfilled, requires the administration to grant the permit without giving it any option to do otherwise. It further notes that the Ministry urged those interested in obtaining permits to approach the indigenous communities and inform them fully concerning their projects. The Committee notes that, according to the Government’s report, a forum for dialogue was established for the Government and the representatives of the communities concerned with a view to assessing the situation.

The Committee wishes to draw the Government’s attention to the fact that the right of indigenous peoples to be consulted on each occasion that measures are envisaged which are likely to affect them directly is derived directly from the Convention, irrespective of whether or not consideration has been given to the adoption of specific national legislation. It also wishes to note that the

obligation to ensure that indigenous peoples are consulted in accordance with the Convention rests with the Government, and not with private individuals or enterprises. Furthermore, the provisions of the Convention relating to consultations have to be read in conjunction with Article 7, which sets out the right of indigenous peoples to decide their own priorities for the process of development and to participate in the formulation, implementation and evaluation of plans and programmes for development which may affect them directly. In this respect, it recalls that in its 2008 general observation on the Convention, the Committee emphasized that “[d]isregard for such consultation and participation has serious repercussions for the implementation and success of specific development programmes and projects, as they are unlikely to reflect the aspirations and needs of indigenous and tribal peoples”. It also emphasizes that *Article 7(3)* of Convention provides that governments shall ensure that studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities, and that *Article 15(2)* establishes that consultations have to be held with a view to ascertaining whether and to what degree the interests of indigenous peoples would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of resources pertaining to their lands. Furthermore, in accordance with *Article 7(4)*, governments shall take measures, in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

The Committee therefore urges the Government to:

- (i) bring existing legislation, such as the Mining Act, into conformity with Articles 6, 7 and 15 of the Convention;**
- (ii) adopt without delay all the necessary measures to hold constructive dialogue in good faith between all the parties concerned in accordance with the requirements set out in Article 6 of the Convention to seek appropriate solutions to the situation in a climate of mutual trust and respect, taking into account the Government’s obligation to safeguard the social, cultural and economic integrity of indigenous peoples in accordance with the spirit of the Convention; and**
- (iii) immediately suspend the alleged activities while such dialogue is being held and assess, in cooperation with the peoples concerned, the social, spiritual, cultural and environmental impact of the envisaged activities and the extent to which the interests of indigenous peoples would be prejudiced, in accordance with Articles 7 and 15 of the Convention.**

Please provide detailed information on the measures adopted regarding these matters.

Articles 14 and 20. Land and wages. In its previous observation, the Committee noted that the communication referred to above indicated that the rights to lands recognized in the Convention were being violated and mentioned the following cases: Finca Termal Xauch, Finca Sataña Saquimo and Finca Secacnab Guaquitim. It added that indigenous peoples are not recognized as the traditional occupants and that, having been employed on their own lands, their wages were not paid and they were violently removed and their ranches burned. With reference to the June 2007 report of the Governing Body (GB.299/6/1), the Committee recalled that, although

the regularization of lands takes time, indigenous peoples should not be adversely affected by the duration of this process and it requested the Government to adopt transitional measures in order to protect the land rights referred to in *Article 14* of the Convention and to provide detailed information on the wages due.

The Committee notes the Government’s indication that a National Policy for Integral Rural Development has been formulated which, according to the report, is intended, among other objectives, to “reform and democratize the system for the use, holding and ownership of lands”, “promote laws for the recognition of the rights of possession, ownership and allocation of lands to persons belonging to rural indigenous peoples” and “promote decent work in rural areas in general”. However, the Committee notes that information is not provided on the cases referred to previously, in which the allegations concern violations of the rights of indigenous peoples to their lands, nor is information provided on the transitional measures requested by the Committee. **The Committee once again requests the Government to provide information on the transitional measures adopted to protect the land rights of indigenous peoples until progress is made in the regularization of lands. It requests the Government to provide information on the situation with regard to the Finca Termal Xauch, Finca Sataña Saquimo and Finca Secacnab Guaquitim and to indicate the measures adopted to ensure that indigenous peoples enjoy the full benefit of the rights set out in the labour legislation, in accordance with Article 20 of the Convention. It invites the Government to provide a copy of the National Policy for Integral Rural Development and to supply information on its implementation in relation to the peoples covered by the Convention. It also refers to the additional comments on this subject contained in the direct request on the Convention.**

Articles 2 and 33. Coordinated and systematic action with the participation of indigenous peoples. The Committee notes that, according to the Government, multi- and intercultural public policies, formulated by presidential committees with representation of the Maya, Garífuna and Xinca peoples, have been implemented. The Government cites as an example its public policy on living in harmony and eliminating racism and racial discrimination. The Government also refers to a Bill on sacred sites and a preliminary draft of legislation to regularize land occupancy. The Government states that progress is being made, but recognizes that there is still some way to go towards effective implementation, which involves a gradual process of establishing the appropriate bodies and mechanisms. In its previous comments, the Committee noted the creation of the State Inter-Institutional Coordination Unit on Indigenous Issues (CIIE), comprising 29 state institutions involved in indigenous issues, and the establishment in 2005 of the Indigenous Advisory Council (CAI). It also noted that, according to comments by the Council of Mayan Organizations of Guatemala (COMG), sent by the General Confederation of Guatemalan Workers (CGTG), there was still only token participation by indigenous peoples.

The Committee recalls that in the report of June 2007 on the representation made under article 24 of the ILO Constitution by the Federation of Country and City Workers (FTCC) alleging the non-observance of certain provisions of the Convention (GB.299/6/1), the Governing Body called on the Government to develop coordinated and systematic action, within the meaning of *Articles 2 and 33* of the Convention, with the participation of indigenous peoples, when applying its provisions. The Committee also draws the Government’s attention to its 2008 general observation, in which it notes that *Articles 2 and 33* provide that governments are under an

obligation to develop, with the participation of indigenous and tribal peoples, coordinated and systematic action to protect the rights and to guarantee the integrity of these peoples. In this regard, the Convention calls for the establishment of agencies and other appropriate mechanisms to administer programmes, in cooperation with indigenous peoples, including all stages from the planning to the evaluation of the measures proposed in the Convention. While the Committee understands that ensuring full application of the Convention is a continuing process, it notes that the information provided does not appear to suggest that the Government's action is either coordinated or systematic, nor does it show the existence of agencies or mechanisms that would allow indigenous peoples to participate effectively in the development and implementation of such action. **The Committee therefore urges the Government, in cooperation with the peoples concerned, to take the measures and establish the mechanisms provided for in Articles 2 and 33, which should allow for coordinated and systematic action to implement the Convention, and to provide detailed information in this respect.**

Legislation on consultation and participation. For several years, the Committee has been following the issue of the establishment of institutional mechanisms for consultation and participation as envisaged by the Convention. The Committee notes that in its most recent report, the Government refers to a draft General Act on the rights of indigenous peoples of Guatemala (registered as No. 40-47), which was tabled in the Plenary of the Congress on 11 August 2009 and is awaiting the opinion of the Committee on Legislation and Constitutional Matters and the Committee on Indigenous Peoples. Reference is also made to the Bill on the consultation of indigenous peoples (registered as No. 36-84), which was tabled in the Plenary of the Congress on 25 July 2007 and is still awaiting the opinion of the Committee on Legislation and Constitutional Matters and the Committee on the Economy and External Trade. The Committee also understands that there is another Bill on consultation, under No. 40-51, which received a favourable opinion in the Committee on Indigenous Peoples on 27 September 2009. It further notes that the Ministry of Energy and Mining refers to a third legislative initiative on the subject, under No. 34-13. The Committee also notes that, in accordance with section 26 of the Act respecting urban and rural development councils (Decree No. 11-2002), "until the Act is issued governing the consultation of indigenous peoples, the consultations with the Maya, Xinca and Garifuna peoples on development measures promoted by the executive authorities and which directly affect these peoples may be held through their representatives in the development councils".

In its previous comments, the Committee noted that, according to the Government, the High-level Committee of the Ministry of Energy and Mines submitted a proposal to amend the Mining Act to the President of the Republic, focusing on "information, participation and consultation of the peoples concerned". The Committee notes that, according to the Government's report, this draft has not been transmitted to the Legislative Department, which is consequently unaware of its contents.

The Committee recalls that it has been following these matters since the ratification of the Convention; that the lack of appropriate consultation mechanisms was the subject of a report and recommendations by the Governing Body in response to a representation; that on various occasions it has examined comments by trade unions on serious situations relating to the lack of consultation and the exploitation of natural resources; and that in 2005 it noted the fact that the Office of the Human Rights Ombudsperson had expressed concern about the award by

the Government, without prior consultation, of 395 exploration and exploitation permits. The Committee also refers to its 2008 general observation on the application of the Convention, in which it considered it important that governments, with the participation of indigenous and tribal peoples, as a matter of priority, establish appropriate consultation mechanisms with the representative institutions of those peoples. The Committee expresses its **concern** at the lack of measures to this end. In its previous comments, the Committee noted that the Bill on consultation would be finalized shortly and that a High-level Committee was working on amendments for the inclusion of prior consultation in the mining legislation. However, regrettably no progress appears to have been made concerning these initiatives. Moreover, legislative initiatives appear to have multiplied in a seemingly uncoordinated manner. While the Committee understands that measures to ensure consultation and participation take time, it emphasizes that the steps required in the short, medium and long term need to be clearly established so that the results required under the Convention can be achieved. **The Committee therefore urges the Government to take all the necessary measures to ensure the establishment of appropriate machinery for consultation and participation as provided for in the Convention, taking into consideration its general observation of 2008, and to provide detailed information in this regard. The Committee reminds the Government that it can request technical assistance from the Office and asks it to provide detailed information on the measures envisaged with a view to adopting and implementing legislation on consultation and participation. Please provide information on the effect given in practice to section 26 of the Act on urban and rural development councils.**

Follow-up of a communication from the Trade Union Confederation of Guatemala (UNSITRAGUA) alleging lack of consultation and participation in relation to the granting of a permit to Montana-Glamis Gold. For several years, the Committee has been following up comments from UNSITRAGUA relating to the permit for mining exploration and exploitation granted to Montana-Glamis in the departments of San Marcos and Izábal, which would extend over an area covering lakes Atitlán and Izábal. The Committee reiterated its invitation to the Government to continue making efforts to hold consultations with the peoples concerned, taking into account the procedure laid down in *Article 6* of the Convention, to ascertain whether and to what degree their interests will be prejudiced, as required by *Article 15(2)* of the Convention. The Committee repeatedly invited the Government to examine whether, with the continuation of exploration and exploitation by Montana-Glamis, it would be possible to carry out the studies provided for in *Article 7(3)* of the Convention in cooperation with the peoples concerned before the potentially harmful effects of these activities become irreversible. Furthermore, the Committee invited the Government to redouble its efforts to shed light on the incident in which a villager died in the course of a demonstration against the installation of a cylinder for the mine and has requested it to provide detailed information in this respect.

The Committee notes that the Government reiterates that no permit of any kind has been granted for Lake Izábal and that discharges of any kind into any body of water have been prohibited. The Committee notes with **regret** that the Government has not provided new information in this regard. The Committee recalls that, in its previous comments, it observed that the Government did not deny the alleged lack of consultation, but stated that the enterprise had undertaken an environmental impact study that was approved by the relevant government office. Furthermore, the Committee noted the concerns expressed by the Office of the Human Rights Ombudsperson in its May 2005 report on mining activity. The above Office expressly referred to the project to

which the UNSITRAGUA objected and expressed its concern regarding the risks of open-cast mining, and particularly the procedure used in this case, i.e. cyanide leaching. According to the above Office, this type of procedure has had damaging effects on the environment and health in other countries and has been prohibited in other regions of the world, and its potential impact would affect: (1) water sources; (2) air quality, through the release of particles; and (3) the useful and fertile life of the soil, permeated by cyanide solutions. The Committee drew the Government's attention to the fact that these risks should be subject to prior consultation under *Article 15(2)* of the Convention, as well as the studies provided for in *Article 7(3)* of the Convention.

Consequently, the Committee, noting that the Government's report reiterates the information provided previously, expresses its concern regarding the lack of progress in the case under examination and urges the Government to suspend the exploitation in question until the studies provided for in Article 7(3) of the Convention and the prior consultation provided for in Article 15(2) of the Convention can be carried out, and to provide detailed information in this regard. Furthermore, the Committee asks the Government to take the measures necessary to shed light on the incident in which a villager died in the course of a demonstration against the installation of a cylinder for the mine and requests it to provide detailed information in this respect.

Follow-up of the 2007 recommendations of the Governing Body. The Committee notes with regret to note that the Government's report does not contain information on the matters raised in its 2007 observation as a follow-up to the recommendations adopted by the Governing Body in its report of June 2007. The report concerned a representation alleging a lack of prior consultation of the peoples concerned regarding the award of a permit for mining exploration for nickel and other minerals, number LEXR-902 of 13 December 2004, to the Izábal Exploration and Mining Corporation SA (EXMIBAL) to begin exploratory mining in the territory of the indigenous Maya Q'eqchi people (GB.299/6/1). **The Committee urges the Government to provide detailed information in its next report on the action taken to give effect to the 2007 recommendations of the Governing Body (GB.299/6/1).**

The Committee is raising other points in a request addressed directly to the Government.
[The Government is asked to reply in detail to the present comments in 2010.]

DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION, 1958 (NO. 111)

Excerpt from: *Observation, CEACR 2009/80th Session*

[..]

Discrimination on the basis of race and colour. Indigenous peoples. The Committee notes the conclusions of the "Analysis of Racism in Guatemala, 2009" concerning the cost of discrimination on the basis of ethnic group or race against indigenous peoples. It notes, in particular, that according to this study the wage gap between indigenous workers and non-indigenous workers is around 8,500 quetzales per year. It notes that this gap is the result of discrimination and of the different working conditions and levels of education between indigenous persons and non-indigenous persons. With regard to access to education, it also notes that the gap between indigenous persons and non-indigenous persons has been narrowing at the pre-primary and primary levels, but has been widening even further at the middle and university levels. **The Committee requests the Government to provide information on the measures taken or envisaged to eliminate the gaps between indigenous persons and non-indigenous persons, as identified in the "Analysis of Racism" study, with regard to access to education, employment and occupation and with regard to working conditions, including information on the measures taken in the context of the public policy on coexistence and the elimination of racism, and on the results achieved.**

[..]

HONDURAS
INDIGENOUS AND TRIBAL PEOPLES CONVENTION, 1989 (NO. 169)

Observation, CEACR 2008/79th Session

Article 1 of the Convention. The Committee notes that according to the Government, the Convention covers the various ethnic groups that lived in Honduras before colonization and also those known as “pueblos negros” (which include, among others, Afro-Hondurans and the Garifuna), who, though not originally from Honduras, live in much the same social, economic, ecological and geographical conditions. The 2001 census recorded 493,146 indigenous peoples and “pueblos negros”, accounting for 6.33 per cent of the population of Honduras. They currently account for an estimated 15.7 per cent according to the Strategic Plan for the Comprehensive Development of Indigenous Peoples. The Government indicates that the indigenous and “pueblos negros” of Honduras are: (1) Miskito; (2) Garifuna; (3) Pech; (4) Tolupan; (5) Lenca; (6) Tawahka; (7) Nahoa/Nahuatl; (8) Maya Chorti; and (9) English-speaking black peoples.

Articles 2 and 33. Coordinated and systematic action. Agencies. The Committee notes that the Government, through the Ministry of the Interior and Justice (SGJ) established the Indigenous Peoples Unit (UPA), which serves as an intermediary between the Government and the indigenous and “pueblo negros” of Honduras. This unit’s mandate includes: mainstreaming and institutionalizing the issue of indigenous peoples covered by the Convention; participation in the National Advisory Board; ensuring coordination of the development processes by promoting indigenous participation; contributing to the reinforcement of representative bodies, and facilitating communications between the State and the indigenous peoples. The UPA is engaged in an ongoing dialogue with the National Confederation of Indigenous Peoples of Honduras and other indigenous movements. The Committee notes that the UPA’s work in mainstreaming and ensuring participation and support to reinforce the indigenous peoples’ representative bodies could have a key role in the application of the Convention. The Committee notes, however, that it is not clear to what extent indigenous peoples participate in the work of the UPA. The Committee notes in this regard that in order to comply fully with the Convention, it is not sufficient to establish governmental bodies to liaise with indigenous peoples: it is necessary to ensure the participation of indigenous peoples in these bodies. **The Committee requests the Government to provide detailed information on the manner in which indigenous peoples participate in practice in the activities of the UPA, in particular in the preparation, implementation and follow-up thereof.**

Articles 2, 7 and 33. Strategic plan. The Committee notes with interest the Strategic Plan for the Comprehensive Development of Indigenous Peoples, which, as stated in its introduction, was drawn up with the participation of the indigenous peoples. It notes that the Plan and a bill now under discussion are to be the pillars of Honduras’s future policy on indigenous and “pueblos negros”. The institutional framework for the Plan provides for the management and responsibility to be shared by the political and technical representatives of the peoples covered by the Convention and the institutions of the State. After describing the current institutional framework, the Plan puts forward a proposal for the future institutional framework. Priority actions is to be implemented within five years, medium-term objectives are set for implementation in ten years, and a general, long-term objective is to be implemented over 25 years. Implementation of the Plan is to begin in 2008. **The Committee requests the Government to provide information**

on the implementation of the Plan and on the results achieved.

Article 6. Legislation. The Committee notes that the Bill on the Comprehensive Development of Indigenous and Afro-Honduran Peoples includes important principles for implementing the Convention. The introductory part states that participation of the indigenous and “pueblos negros” in preparing this Bill was unprecedented in the history of Honduras and that the Bill gives effect to Convention No. 169. The Committee further notes that the Bill defines the concept of traditional authority. **The Committee hopes that the Bill will be approved shortly and asks the Government to provide information on the progress made in this regard.**

Articles 6, 7 and 15. Consultation, participation and natural resources. The Government states that in carrying out consultations the following mechanisms are used flexibly: (1) thematic meetings with indigenous participation; (2) internal community consultation; (3) participatory evaluation meetings; (4) discussion groups on socio-environmental management; and (5) verification meetings. The Committee understands that these mechanisms are steps in the same process: proposals for action are submitted, the community analyses them, a further meeting is held to make any amendments or adjustments, and in the penultimate phase adjustments are submitted on the basis of recommendations from the communities, ways and means are discussed, agreements are reached and recorded in the form of decisions. Lastly, a verification meeting is held to carry out an audit of the previous consultation, and the written commitments arising from the strategies agreed during the consultations are set out in a comprehensible and verifiable manner. **The Committee notes with interest this approach to consultations based on a process of dialogue and participation, and asks the Government to provide information on the consultations held on the basis of this procedure, together with copies of decisions, resolutions and any other material used in the various stages of the consultations.**

Articles 6, 13, 14 and 33. Lands and participation. The Committee notes that one of the immediate priorities of the Government is the granting of land titles, and that the Strategic Plan indicates the status of the lands of each indigenous peoples and the action to be undertaken. It also notes with interest that the Bill aims, pursuant to section 15(g), “to guarantee the participation of the indigenous and black peoples of Honduras in the delimitation and titling of their lands”. **The Committee hopes that the Government will be in a position to provide in its next report practical examples of the application of this important provision.**

The Committee welcomes the developments mentioned above as positive steps towards the establishment of mechanisms that could pave the way for the provisions of the Convention to be fully implemented. It notes in particular that a Strategic Plan and a Bill have been drafted on a participatory basis and that bodies for their implementation have been established. **The Committee hopes that the Government will pursue efforts to strengthen these bodies and mechanisms with a view to expanding the institutional basis for participation of indigenous peoples in the development, implementation and monitoring of policies that affect them. It also hopes that the Government will be able to report on progress made in this respect.**

The Committee is raising other points in a request addressed directly to the Government.

WORST FORMS OF CHILD LABOUR CONVENTION, 1999 (NO. 182)

Excerpt from: *Observation, CEACR 2008/79th Session*

[..]

Article 7, paragraph 2. *Effective and time-bound measures. Clause (d) Children at special risk. Indigenous children.* The Committee previously noted that, in its concluding observations of February 2007 (document CRC/C/HND/CO/3, paragraph 21), the Committee on the Rights of the Child expressed concern at the lack of information concerning the most vulnerable groups, including indigenous children. The Committee notes **with interest** that, according to the information provided by the Government, a programme of action aimed at contributing to the prevention and removal of indigenous girls, boys and adolescents from child labour benefited 300 persons between October 2007 and February 2008. The Committee also notes that, according to the information available to the ILO-IPEC, a study on indigenous children has been carried out in the country. **Noting that indigenous children are often victims of exploitation, which may take on very different forms, and are at risk of being engaged in the worst forms of child labour, the Committee requests the Government to continue its efforts to protect these children, in particular by adopting measures to make them less vulnerable. It requests the Government to provide information in this regard.**

[..]

INDIA
INDIGENOUS AND TRIBAL POPULATIONS CONVENTION, 1957 (NO. 107)

Observation, CEACR 2009/80th Session

Communication dated 27 August 2009 from the International Trade Union Confederation (ITUC). The Committee notes that the ITUC’s communication was forwarded to the Government on 3 September 2009 for its comment and that the Government has not yet provided any comments in reply. In their communication, the ITUC draws the Committee’s attention to the situation of the Dongria Kondh indigenous community, a group of about 8,000 people living in 90 settlements scattered over and at the base of the Niyamgiri Hills, Lanjigarh, in the State of Orissa. The Dongria Kondh practice shifting cultivation in the hills, and also rely on them as a source of water, wood and traditional plants. The communication also describes the sacred nature of the hills for this indigenous community. According to the ITUC, India’s Ministry of Environment and Forests gave environmental clearance on 28 April 2009 for operating a bauxite mine at the top of the Niyamgiri Hills, occupying close to 700 hectares of the traditional lands of the Dongria Kondh. Bauxite from the mine is to be processed at a refinery plant at Lanjigarh, which is at the foot of the hills. The ITUC cites reports attesting to a negative environmental and health impact of the mining project threatening the very basis of the community’s existence. The ITUC states that neither the Government of India nor the Government of the State Orissa have ever consulted with the community as regards leasing of the lands or any other aspect of the mining project. While some public hearings regarding the project were held, the ITUC submits that these were inappropriate to ensure that the interests of the Dongria Kondh could be taken into account. The Committee also notes that the Supreme Court of India ordered the establishment of a “Special Purposes Vehicle (SPV)” with the State of Orissa and the companies pursuing the mining project as stakeholders, which is to provide a rehabilitation package involving, inter alia, an obligation by the companies to contribute to the development of the affected tribal areas. However, according to the ITUC, no development plans have been disclosed to the local communities nor has their participation been sought. The ITUC submits that the Government has failed to give effect to Articles 2, 5, 11, 12, 20 and 27 of the Convention.

The Committee requests the Government to provide detailed information in reply to all the issues raised by the ITUC. While awaiting a reply from the Government, the Committee, given the seriousness of the situation, nevertheless wishes to express concern over the reported adverse impact on the Dongria Kondh of the bauxite mining and processing activities on the lands which they traditionally occupy and which appear to be central to their very existence. The Committee expresses serious concern at the apparent lack of involvement of the tribal communities affected in matters relating to the project which affects them directly. The Committee urges the Government to take the measures necessary to ensure their rights and interests are fully respected and guaranteed, and to indicate the measures it has taken. In this regard, the Committee also requests the Government to report on the implementation of the rehabilitation and development measures ordered by the Supreme Court, and the measures the Government has taken to ensure the involvement of the communities themselves in the design and implementation of such measures.

Articles 2, 5 and 27 of the Convention. Coordinated and systematic action. The Committee

notes from the Government's report that a National Tribal Policy is still under consideration, but not yet finalized. The Government indicates that the policy would aim at strengthening the legal protection and empowerment of the tribal communities, raising levels of human development, and at encouraging and protecting tribal traditions. The policy would also focus on particularly vulnerable tribal groups. The Prime Minister of India, when addressing the Chief Ministers' Conference on the Implementation of the Forest Rights Act, 2006, on 4 November 2009, welcomed the efforts made by the Ministry of Tribal Affairs towards achieving consensus on the National Tribal Policy. The Committee considers that the elaboration and implementation of such a policy would indeed provide an important opportunity to strengthen the Government's action to protect the rights and interests of India's tribal population in accordance with international standards. The Committee takes this opportunity to encourage the Government to draw on and consider ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169), which revises Convention No. 107, which is also encouraged by the Governing Body of the ILO and would be consistent with the recognition of the need for new approaches in dealing with tribal affairs as highlighted by the Prime Minister on 4 November 2009. **The Committee asks the Government to continue to provide information on the progress made in adopting the National Tribal Policy, including information on how the collaboration with and consultation of tribal groups and their representatives in the process of developing the policy is sought. Noting that the Government in its report, and through a request made to the ILO in May 2009, expressed interest in sharing experiences with other countries regarding strategies for the improvement of the situation of tribal groups, including through workshops and training programmes to be organized in cooperation with the ILO, the Committee looks forward to receiving information on the holding of such activities and their outcomes.**

Articles 11–13. Land rights. Legislative developments. The Committee notes the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 ("Forest Rights Act, 2006"). The Act recognizes individual and collective rights of tribal and other forest dwellers with regard to land they have traditionally occupied or used, as defined in section 3 of the Act. The Gram Sabha (assembly of all men and women in the village above 18 years of age) is the authority mandated to receive rights claims, to consolidate and verify them and to prepare a map delineating the area of each claim that it recommends to be accepted. A subdivisional-level committee set up by the state Government is responsible for examining resolutions passed by the Gram Sabha and for preparing a record of forest rights for final decision by a district-level committee. In addition, a state-level monitoring committee is to be established to oversee the process, which reports to the ministry of the central Government dealing with tribal affairs. The functions and procedures of these various committees are laid down in the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Rules, 2007. The Committee notes that special provision is made to ensure representation of women, scheduled tribes and other tribal groups in the Gram Sabha and the committees at the different levels.

The Committee notes that under the Forest Rights Act no member of a forest-dwelling tribe or other traditional forest dweller shall be evicted until the recognition and verification procedure is complete (section 4(5)). Once the process of recognition and vesting of rights is complete, the Act allows under certain conditions the relocation of forest dwellers from their land to create protected areas for wildlife conservation. Among the specified preconditions for such relocation,

there must be no other reasonable options to avoid irreversible damage or threat to the existence of a species in its habitat. Further, a resettlement package providing for a secure livelihood must be prepared, communicated to rights holders, and receive the free and informed consent of the Gram Sabha concerned. **The Committee requests the Government to provide information on the implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, including information on the number of claims processed and title deeds issued, as well as any grievances brought against decisions made under the Act and their outcomes. The Committee also asks the Government to indicate whether any relocation has taken place and, in such cases, provide information indicating that resettlement has complied with Article 12(2) and (3) of the Convention. In addition, the Committee asks the Government to indicate whether any further legislative initiatives are envisaged to ensure that the rights of the tribal population to the land they have traditionally occupied are identified and protected to give effect to Article 11 of the Convention.**

The Sardar Sarovar Dam Project. In its previous observation, the Committee requested the Government to provide information regarding the number of persons displaced by the Sardar Sarovar Dam Project and their resettlement and compensation. In its report, the Government states that a total of 244 villages will be affected by the dam project either by total or partial submergence or otherwise, which are home to 46,606 families comprised of 127,446 persons (based on the 1991 Census). Recalling its comments over many years on this project, the Committee notes that the number of affected persons, a majority of them being belonging to the tribal population, has continued to increase. The Government, in its report, reiterates the requirements for resettlement and rehabilitation that had been established by the Narmada Water Disputes Tribunal in 1979. However, the Government states that the three states involved in the project introduced more favourable conditions since then and provides detailed information regarding the amount of land allocated and other assistance provided. According to the Government's report, as of 31 July 2008, all 32,434 affected families at this date had been resettled. **The Committee requests the Government to continue to provide updated information on the number of persons belonging to the tribal population displaced from the land they traditionally occupy as a result of the Sardar Sarovar Dam Project and the measures taken to guarantee their resettlement and compensation in conformity with Articles 12(2) and (3) of the Convention.**

Parts III–VI of the Convention. The Committee notes the information provided by the Government on measures taken in the areas of education and training, including vocational training, and employment and social security. It also notes that, according to the comments made by the Centre of Indian Trade Unions (CITU) in their communication dated 25 August 2009, the members of the tribal population are not able to benefit from the job reservations made for them in government employment and state-owned enterprises due to the lack of education and training made available to them. The CITU suggests that the Government provide more detailed statistics on the employment situation of tribal population. **The Committee requests the Government to continue to provide updated information on the various measures taken in the areas of education, training and employment and other areas covered in Parts III–VI of the Convention to the benefit of the tribal population, including statistical information of the participation of men and women belonging to tribal groups in education and employment.**

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to reply in detail to the present comments in 2010.]

DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION, 1958 (NO. 111)

Excerpt from: *Observation, CEACR 2009/80th Session*

Articles 1, 2 and 3 of the Convention. Discrimination based on social origin. The Committee notes the information provided by the Government regarding the implementation of India's quota system for employment by the central and state governments of persons considered to belong to "scheduled castes, scheduled tribes and other backward classes". The Committee notes that as of 1 January 2006 persons considered to belong to the schedules castes, which amount to 16.23 per cent of the Indian population according to the Eleventh Five-Year Plan (2007–12) ("11th Plan"), were represented in central government services as follows: 13 per cent in group A; 14.5 per cent in group B; 16.4 per cent in group C; and 18.3 per cent in group D (excluding sweepers). In November 2008, a special recruitment campaign was launched to fill up the backlog of reserved vacancies. No new information is at the Committee's disposal regarding the achievements of the reservation system in state government employment. The Committee further notes the detailed information provided on the various programmes and schemes aimed at the educational and economic empowerment of the scheduled castes, including education grants, coaching, loans and subsidies. In this context, the Committee also notes that the 11th Plan points to the need for new measures to address the persisting exclusion and discrimination of the scheduled castes, including with regard to employment. More specifically, the Plan states that there is a need to complement protective legislation with "promotive legislation which should cover the rights of scheduled castes with respect to education, vocational training, higher education and employment" (paragraph 6.48), and it also mentions the possibility of affirmative action in the private sector. **Recalling that discrimination in employment and occupation against men and women on account of being considered to belong to a certain caste is unacceptable under the Convention and that continuing measures are required to end such discrimination, the Committee requests the Government to continue to provide comprehensive information on the implementation of the various existing schemes and programmes in this regard, including the reservation system for the public service at the central and state levels. The Committee also asks the Government to provide information on the design and implementation of any new measures, including those referred to in the 11th Plan. Finally, the Committee reiterates its request to the Government to provide information on the specific measures taken to launch and intensify awareness-raising campaigns on the prohibition and unacceptability of caste-based discrimination in employment and occupation, including information on the steps taken to seek the cooperation of workers' and employers' organizations in this regard.**

With regard to the enforcement of protective legislation, the Committee notes the Government's indication that the Protection of Civil Rights Act, 1955, which provides punishment for the practice of untouchability, is implemented by the respective state governments and union territory administrations. The Government provided statistical information on the cases handled by the police and the courts. According to this information, the total number of court cases regarding scheduled castes under the 1955 Act was 2,613, only 63 of which resulted in a conviction. Similarly, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which aims at the prevention of offences against persons belonging to scheduled castes and tribes is implemented by the states and union territories. According to the Government's report, there

were 104,003 cases before the courts in 2007 under the 1989 Act, out of which 6,505 resulted in a conviction. The statistical information suggests that under both Acts large numbers of cases remained pending. The Committee notes the Government's indications that the Parliamentary Committee on the Welfare of the Scheduled Castes and Scheduled Tribes recommended that the competent central ministries and the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes meet regularly to devise ways and means to curb offences of untouchability and atrocities and ensure effective administration of the two Acts. A dedicated committee was set up for this purpose which held three meetings in 2008–09. The Committee also notes that the 11th Plan called for enforcement of the two Acts in letter and spirit and suggests measures to educate judicial officers, public prosecutors and police officials, with a view to ensuring more and speedier convictions. The Government's report states that some 430 million rupees have been provided to 25 states and union territories to strengthen the enforcement of the two Acts. **The Committee requests the Government to continue to provide detailed information on the measures taken to ensure strict enforcement of the Protection of Civil Rights Act, 1955, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, including the measures mentioned in the 11th Plan, and on the number and outcome of the cases handled by the competent authorities.**

The Committee recalls its comments over many years regarding the practice of manual scavenging and the fact that *Dalits*, and very often *Dalit* women, are usually engaged in this practice due to their social origin in contravention of the Convention. The Committee notes that, according to the Government's report, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, so far had been adopted by 20 states and all union territories. Five states that have not adopted the Act report that they do not have dry latrines or that they are scavenger free; two have adopted their own legislation on the subject. With regard to the Act's enforcement, the Government's report states that the state of Uttar Pradesh had reported 27,114 cases of prosecutions. Enforcement information regarding other states has not been provided. The Committee is also aware that in an order of 8 May 2009 the Supreme Court of India (*Safai Karamchari Andolan and others v. Union of India and others*) noted that a detailed report submitted by the petitioner showed that scavenger work is widely prevalent in various districts of the state of Rajasthan. The Committee further notes that the Akhil Bhartiya Safai Mazdur Congress provided findings of field research in Solapur and Pandarpur, two cities in the state of Maharashtra. This research found the continuing existence of manual scavenging, and that it was practiced by municipal employees belonging to particular castes. Similarly, the National Action Plan for the Total Eradication of Manual Scavenging by 2007, which was subsequently extended, refers to reports that in several states municipal employees still perform manual scavenging.

The Committee notes that the Government's efforts continued to concentrate on the conversion of dry latrines under the centrally sponsored Integrated Low Cost Sanitation (ILCS) Scheme. Following implementation difficulties, the Scheme has been reviewed and new guidelines have been in effect since February 2008. The Government indicates that, within one year of the revision of the guidelines, the states of Andhra Pradesh, West Bengal, Nagaland and Assam had stated that they had no dry latrines in their states. According to the Government, only four states have reported the existence of such latrines (Bihar, Uttar Pradesh, Uttarakhand and Jammu and Kashmir). Under the revised ILCS Scheme it is envisaged that within a period of three years (2007–10) all remaining dry latrines will be converted. The 11th Plan referred to 342,000

remaining manual scavengers, while according to Government's report a total of 138,464 manual scavengers were still to be liberated under the ILCS Scheme as of 31 March 2009. A Self-Employment Scheme for the Rehabilitation of Manual Scavengers has been formulated to rehabilitate the remaining scavengers in a time bound manner by March 2009 through training, and extension of loans and subsidies.

The Committee notes that the Government has continued to take measures towards the elimination of the practice of manual scavenging. However, the Committee expresses **serious concern** that, despite these efforts, thousands of *Dalit* men and women still find themselves trapped in this inhumane and degrading practice. The Committee is particularly concerned at the apparent weak enforcement of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993, and that the practice even continues in employment under the Government's authority contrary to *Article 3(d)* of the Convention. **The Committee urges the Government to ensure the full enforcement of the 1993 Act and to take all measures necessary to ensure that the practice is eliminated effectively, including through low-cost sanitation programmes and promoting decent work opportunities for liberated scavengers. The Committee requests the Government to provide detailed information on measures taken regarding these issues and the results achieved, including statistical information. Please provide detailed information on: (i) the status of the pending litigation on the issue in the Supreme Court together with copies of any orders that may have been passed by the Court; and (ii) the enforcement of the 1993 Act at the central and state levels.**

[..]

MEXICO
INDIGENOUS AND TRIBAL PEOPLES CONVENTION, 1989 (NO. 169)

Observation, CEACR 2009/80th Session

The Committee notes the communication from the Trade Union Delegation of *Radio Educación*, section XI of the National Union of Education Workers (SNTE), dated 25 September 2009, which was sent to the Government on 5 October 2009. It also notes the communication from the Independent Union of Daily Workers (SITRAJOR), dated 7 September 2009, which was also sent to the Government on 5 October 2009. Owing to their late arrival, the Committee will examine both communications in 2010, together with the observations of the Government in this respect. With reference to its previous observation, the Committee also recalls that it was unable to examine the Government's report fully owing to its late arrival and will therefore examine it in its direct request, together with the most recent report.

Community of San Andrés de Cohamiata. Follow-up to the Governing Body report of June 1998 (GB.272/7/2). The Committee notes with **regret** that the Government's report does not contain any information in reply to its previous observation in which it examined the case of the Community of San Andrés de Cohamiata on the basis of a communication received from the SNTE, dated 7 November 2007. In this communication, the SNTE alleged that the Government of Mexico had not complied with the recommendations made by the Governing Body in a 1998 report on the representation submitted by the abovementioned trade union years earlier (GB.272/7/2).

The Committee recalls that the subject of the representation was the claim made by the Union of Huichol Indigenous Communities of Jalisco, through union delegation D-III-57 of the SNTE, for the return to the Huichol community of San Andrés de Cohamiata of 22,000 hectares awarded by the Federal Government to agrarian groups in the 1960s. The land claimed included Tierra Blanca, El Saucito, in the State of Nayarit (which includes the villages of El Arrayán, Mojaras, Corpus, Tonalisco, Saucito, Barbechito and Campatehuala) and Bancos de San Hipólito, in the State of Durango.

The Committee also recalls that it re-examined the case of the community of San Andrés de Cohamiata in its direct request of 2001 and its observation of 2006, in connection with the receipt of communications from the SNTE which referred in particular to the situation of the community of Tierra Blanca and the community of Bancos de San Hipólito or Cohamiata.

In its observation of 2008, the Committee noted that the Government, according to the 2007 communication from the SNTE, was still failing to take the necessary action to rectify the situations which had given rise to the representation and that the territorial situation of the community of Bancos had seriously deteriorated since there was a real threat that what the SNTE called the "legalized dispossession" of the lands of this community might become definitive. The SNTE indicated in its communication that the agrarian tribunals had issued a ruling validating the Presidential Decision of 1981 which had been contested by the Huichol community. This Decision awarded the Bancos lands to the agrarian community of San Lucas de Jalpa. The SNTE also indicated that, on 10 August 2007, the community filed a claim for the protection of constitutional rights (*amparo*) against the ruling of the Higher Agrarian Tribunal and this is the final

judicial procedure available in national law.

The SNTE alleged that, as things stand at present, the agrarian legislation does not provide for adequate procedures as referred to under *Article 14(3) of the Convention*, to recognize land traditionally occupied by indigenous peoples and that, on the contrary, the courts only recognize the validity of official documents. The union pointed out that, although there was substantial proof that the Huicholes had lived on the lands from time immemorial – as shown by the existence of titles granted by the Spanish Crown, as well as topographical, historical and anthropological studies – this was insufficient because there were no procedures in national law to establish a link between the facts as presented and international standards.

The Committee expressed its concern because the situation which had given rise to the representation remains unchanged. It observed that the key issue at stake in this case is the way in which national law and the Convention regulate land rights and remarked that, under Conventions Nos 107 and 169, "traditional occupation" is in itself a source of rights. However, it noted that, although the Government maintains that the procedures of the agrarian tribunals give expression to *Article 14*, the SNTE asserted that these procedures failed to take account of the evidence of traditional occupation because they gave precedence to the formal validity of the titles granted to San Lucas de Jalpa over the concept of traditional occupation. The Committee also pointed out that "the Convention does currently apply with respect to the consequences of the decisions taken prior to its entry into force" (GB.276/16/3, paragraph 36). In the light of the above, the Committee asked the Government to do its utmost to guarantee the application of *Article 14* in settling this case, including by means of negotiation, and to provide information in this respect. It also asked the Government to provide detailed information on the manner in which national law gives expression to *Article 14* of the Convention and especially the concept of traditional occupation as a source of ownership rights.

The Committee understands that since the communication from the SNTE in 2007, various judicial rulings were issued on the case in question, culminating in *amparo* ruling No. 46/2009 of 17 June 2009 from the Administrative Collegial Tribunal and the ruling of 11 August 2009 issued by the Higher Agrarian Tribunal in compliance with the final judgement of the Collegial Tribunal: (i) declaring the partial nullity of the Presidential Decision of 28 July 1981, solely with respect to the disputed area of land of 10,720 hectares, which was issued in the proceedings for the recognition of, and granting of title to, communal property in favour of San Lucas de Jalpa, in order to make the village of Bancos de Calitique (or Cohamiata) a party to the proceedings; (ii) declaring the nullity of the proceedings which gave rise to the negative report from the Agrarian Advisory Board dated 20 June 1985 rejecting the award of land to the village of Bancos de Calitique; and (iii) ordering the Single Agrarian Tribunal of Durango to institute the claim of Bancos de Calitique dated 8 March 1968 as proceedings for the recognition of, and granting of title to, communal property. It also adds that the Single Agrarian Tribunal must also take into consideration in both proceedings that none of the claimant agrarian groups holds titles to land.

While noting these developments, the Committee is bound to express its **concern** at the fact that, although the proceedings for the recognition of, and granting of title to, communal property are being reintroduced, the obstacle remains that, according to the allegations, there is no adequate procedure which enables land claims to be settled in conformity with the Convention. The Committee again reminds the Government that, with regard to the application of the

Indigenous and Tribal Populations Convention, 1957 (No. 107), it emphasized the fact that traditional occupation confers the right to land under the terms of the Convention, regardless of whether that right has been recognized or not. Similarly, *Article 14* of Convention No. 169 provides that traditional occupation is in itself a source of rights. This means that if claims to land demonstrating traditional occupation cannot be settled, the land rights of indigenous peoples may be violated.

In particular, this implies that the procedures referred to by *Article 14(3)*, of Convention No. 169 can only be considered “adequate” if they enable indigenous peoples to assert traditional occupation as the source of their land rights and thereby settle their claims. In this respect, the Committee wishes to emphasize once again that “the Convention does currently apply with respect to the consequences of the decisions taken prior to its entry into force” (GB.276/16/3, paragraph 36) and that, in the case in question, tackling the consequences which are still felt at the present time is precisely what is necessary.

However, the Committee recalls that one of the allegations made by the SNTE is basically that judicial rulings under national law took no account of the proof of traditional occupation by the community of Bancos, such as titles granted by the Spanish Crown, and topographical, historical and anthropological studies submitted by the community, and precedence was given to the formal validity of the titles granted to the agrarian community of San Lucas de Jalpa, whereas it was precisely those titles which were contested for having been granted without taking account of the traditional occupation by the community of Bancos.

The Committee also expresses its **deep concern** at the fact that the claims in question have remained before the agrarian tribunals for decades without any solution being reached. In addition to the above the Committee considers that a criterion for determining procedures are “adequate”, in accordance with the terms of *Article 14(3)*, of the Convention, is that they enable land claims to be settled within a reasonable period of time. The Committee also recalls that, according to the terms of *Article 14(2)*, of the Convention, Governments have the obligation to take the necessary steps to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession. In this respect, the Committee also wishes to emphasize that *Article 12* of the Convention states that the peoples concerned must be able to take legal proceedings for the effective protection of their rights or, in other words, legal procedures must exist which enable the effective protection of their rights.

Moreover, the Committee cannot overemphasize the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories which they occupy or otherwise use and the obligation of governments to respect that relationship. The Committee considers that the recognition and effective protection of the rights of indigenous peoples to the lands that they traditionally occupy in accordance with *Article 14* of the Convention is of vital importance for safeguarding the integrity of these peoples and, consequently, for respecting the other rights established in the Convention.

Emphasizing the Government’s obligation to recognize the rights of the peoples concerned to the lands that they traditionally occupy and to which they have traditionally had access in accordance with Article 14 of the Convention, the

Committee urges the Government to take all necessary steps without delay to ensure full compliance in practice with this provision in resolving the case of the community of Bancos and, in particular, to ensure that account is taken of traditional occupation as a source of land rights, including through negotiations. Recalling that the claim submitted by the community of San Andrés de Cohamiata also covers the reincorporation of areas other than Bancos, the Committee also requests the Government to take the necessary steps to ensure that there are adequate procedures in accordance with the terms described above to settle the land claims which are still pending. More generally, the Committee requests the Government to contemplate the possibility, in consultation with the indigenous peoples, of modifying existing procedures relating to land claims in order to solve the problems relating to the full application of Article 14 of the Convention such as those which have arisen in the case of San Andrés de Cohamiata. The Committee also requests the Government to supply detailed information on the measures taken in this respect and also with regard to compliance with the recommendations contained in paragraph 45(a) and paragraph 45(b)(i), (ii) and (iii) of Governing Body report GB.272/7/2.

Articles 2, 3 and 7. Forced sterilization. Follow-up to the Governing Body report of March 2004 (GB.289/17/3). The Committee refers to its observations of 2006 and 2007 containing its follow-up to the Governing Body report of March 2004 (GB.289/17/3) and with regard to point (g) of paragraph 139 of the report (forced sterilization), including on the basis of a communication received from SITRAJOR.

The Committee recalls that the reports of the Commission for the Defence of Human Rights (CODDEHUM-GUERRERO) and the National Human Rights Commission sent by SITRAJOR refer to complaints, investigations, observations and recommendations regarding cases in which members of public health institutions, both state and federal, were alleged to have performed vasectomies on indigenous men and fitted indigenous women with intra-uterine devices as a method of birth control, without their free, informed consent, in the States of Guerrero and Oaxaca. The Committee also noted the report’s reference to a specific local study alleging that the health system for indigenous communities is precarious, and referring to the inhumane and discriminatory treatment of indigenous persons in health-care centres, and to the practice of forced contraception of women by tying their fallopian tubes without their consent.

The Committee notes the Government’s indication in its report that the health institutions of the Government of Mexico have no record of judicial or administrative complaints concerning alleged violations of the sexual and reproductive rights of the indigenous population. The Government states that, in the context of the “Opportunities” programme of the Mexican Social Security Institute (IMSS), guidance is given on family planning and the result of such activities was that more than 12,000 persons came to the medical centres to take permanent contraceptive measures, their freedom of choice being fully respected. ***The Committee requests the Government to supply information on the steps taken to guarantee that the decision to take permanent contraceptive measures is indeed a free choice and to ensure that the persons concerned are fully aware of the permanent nature of the contraceptive measures concerned. The Committee also requests the Government to supply information on the extent to which indigenous peoples participate and are consulted with regard to reproductive health and family planning programmes and***

policies. The Committee requests the Government to carry out thorough investigations into the allegations of forced sterilization and supply information on the results of the investigations and, if applicable, the penalties imposed and the measures taken to compensate the victims. The Committee also requests the Government to provide information on the steps taken to promote community health services for indigenous peoples with their full participation.

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to reply in detail to the present comments in 2010.]

NEPAL
DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION, 1958 (NO. 111)

Excerpt from: Observation, CEACR 2008/79th Session

[..]

Equality of opportunity and treatment in employment and occupation, irrespective of sex, ethnicity, indigenous origin, religion and social origin. The Committee notes that the Minister of Finance, in his budget speech in September 2008, highlighted that pervasive socio-cultural and economic discrimination and inequality on the basis of class, caste, region and gender had become a serious problem of the country and that it was urgent to properly address the demands raised by various oppressed castes, women, Dalits and indigenous and ethnic groups. The Minister announced a number of measures targeting these groups. The Committee also notes from the Government's report that the current interim plan emphasizes the empowerment of women and marginalized groups, including through access to gainful employment. The adoption of a new National Employment Policy and employment generation programmes are envisaged under the ILO Decent Work Country Programme (2008–10) which stresses that all outcomes of the Programme should reach marginalized women, young people, Dalits, indigenous people (Janajati) and other minorities. **The Committee requests the Government to provide information on the following:**

- (i) the progress made in adopting a National Employment Policy and the measures taken to ensure that it adequately addresses the situation of women, Dalits and indigenous peoples, in line with their rights and aspirations; and**
- (ii) the specific programmes and projects aiming at promoting equality of opportunity and treatment of women, indigenous peoples, Dalits and other marginalized groups, including information on the outcomes of these programmes. In this regard, please provide statistical information on the position of men and women in the labour market, as well as statistical information indicating the progress made in addressing discrimination and inequality faced by Dalits, indigenous peoples and other marginalized groups.**

[..]

NORWAY
INDIGENOUS AND TRIBAL PEOPLES CONVENTION, 1989 (NO. 169)

Observation, CEACR 2009/80th Session

The Committee notes the Government's report due on 1 September 2008 which was, however, only received by the ILO on 15 December 2008, after the Committee's last session. The Committee recalls the communication received from the Norwegian Sami Parliament dated 28 August 2008, and notes the additional communication from the same body dated 29 April 2009. The Committee also notes the Government's reply dated 20 October 2009, to the Sami Parliament's comments of 29 April 2009. The Committee recalls that the Sami Parliament, according to the wishes expressed by the Government upon ratification, plays a direct role in the dialogue associated with supervision of the application of the Convention.

The Committee notes that the Government's report provides an update with regard to the application of various parts of the Convention, while the comments of the Sami Parliament focus on a number of specific aspects. The Committee will highlight certain positive developments and also address some specific questions in relation to which difficulties have arisen.

Follow-up to the Committee's previous comments. In its 2003 observation, the Committee examined information provided by the Government and the Sami Parliament regarding the preparation and submission to the National Parliament (*Storting*) of draft legislation to regulate legal relationships and administration of land and natural resources in the county of Finnmark (draft "Finnmark Act"). On that occasion the Committee urged the Government and the Sami Parliament to renew discussions on the disposition of land rights in the Finnmark, in the spirit of dialogue and consultation embodied in *Articles 6 and 7 of the Convention*. The Committee notes with **satisfaction** that following the Committee's comments, the *Storting's* Standing Committee on Justice held formal consultations with the Sami Parliament and the Finnmark County Council to discuss the draft legislation in question and received several rounds of written comments from these bodies. The final draft legislation prepared by the Standing Committee on Justice was unanimously endorsed by the Sami Parliament and a large majority of the Finnmark County Council and adopted by the *Storting* in June 2005 as the Act relating to the legal relations and management of land and natural resources in the county of Finnmark (the "Finnmark Act").

The Committee notes that with the entry into force of the Finnmark Act, state ownership of some 95 per cent of the land in Finnmark was transferred to a newly created body, the Finnmark Estate, which is managed by a board composed of six members (three members elected by the Finnmark County Council and three by the Sami Parliament). Section 5 of the Act acknowledges that through prolonged use of land and water areas, the Sami have collectively and individually acquired rights to land in Finnmark, and clarifies that the Act does not interfere with collective and individual rights acquired by the Sami and other people. In order to establish the scope and content of the rights held by Sami and other people living in Finnmark "on the basis of prescription or immemorial usage or on some other basis", the Act establishes a process for the investigation and recognition of existing rights to land, and, in this regard, provides for the establishment of a commission ("Finnmark Commission") and a special court (the "Uncultivated Land Tribunal for Finnmark"). The Committee notes that the Finnmark Commission was appointed by Royal Decree of 14 March 2008, while the Uncultivated Land Tribunal for Finnmark

had not yet been established at the time of reporting.

The Committee notes that under section 29 of the Finnmark Act, the Commission "shall investigate rights of use and ownership to the land" taken over by the Finnmark Estate "on the basis of current national law". In this connection, the Committee also notes that section 3 clarifies that "the Act shall apply within the limits that follow from ILO Convention No. 169" and that it shall be applied "in compliance with the provisions of international law concerning indigenous peoples and minorities". The Committee trusts that the steps necessary will be taken to ensure that the process of identifying and recognizing rights of use and ownership under the Finnmark Act will be consistent with *Article 14(1)*, and also *Article 8* of the Convention which requires due regard to customs and customary law of the indigenous peoples concerned in applying national laws and regulations. **The Committee requests the Government to provide information on further developments and progress made regarding the survey and recognition of existing rights in Finnmark county, including information on the work of the Finnmark Commission and the Uncultivated Land Tribunal for Finnmark.**

The Committee further notes that the Finnmark Act provides that the Sami Parliament may issue guidelines for assessing the effect of changes in the use of uncultivated land on Sami culture, reindeer husbandry, use of uncultivated areas, commercial activity and social life (section 4). The guidelines are to be approved by the competent Ministry. The Act requires the state, county and municipal authorities to assess the significance of such changes in the use of uncultivated land, taking into account the guidelines of the Sami Parliament. **The Committee looks forward to receiving information on the implementation of the Finnmark Act as regards the management of the use of uncultivated land in Finnmark county and on how the rights and interests of the Sami have been taken into account in this process.**

Article 6. Consultation. Both the Government's report and the Sami Parliament's comments highlight that following the experience of putting in place the Finnmark Act, the need for an agreed framework for consultations became evident. The Committee notes with **interest** that agreement between the Government and the Sami Parliament on such a framework was reached with the establishment of the "Procedures for consultations between the state authorities and the Sami Parliament of 11 May 2005" (PCSSP). The PCSSP recognize the right of the Sami to be consulted on matters that affect them directly, set out the objective and scope of the consultation procedures in terms of subject matter and geographical area, as well as general principles and modalities regarding consultations. The Committee notes that the PCSSP are a framework agreement, which means that the state authorities and the Sami Parliament can conclude special consultation agreements concerning specific matters, as may be necessary.

With regard to the implementation of the PCSSP, the Committee notes that the Government and the Sami Parliament, in some instances, express differing views on whether or not the agreed consultation procedure has been respected. These differences appear to be related principally to the issue of whether a consultation has been initiated early enough, to uncertainties as to whether a consultation process on a specific matter has actually commenced or concluded and to whether certain announcements made by state authorities during a consultation process amount to a lack of good faith. For instance, the Sami Parliament considers that the Government prematurely announced its position on how to deal with Sami rights in the new Mining Act in March 2008, before consultations had been concluded. **The Committee welcomes the**

PCSSP as a significant step towards ensuring that consultations, in accordance with the Convention, take place with regard to all matters affecting the Sami directly, and looks forward to receiving continuing information on its implementation and on any special agreements with regard to specific matters. Welcoming the apparently increasing number of consultation processes, the Committee encourages the Government and the Sami Parliament to consider ways and means to address and settle disagreements regarding the PCSSP's application, particularly with regard to the abovementioned differences, in a timely fashion. Noting that under the PCSSP, the state authorities are to inform the Sami Parliament "as early as possible" about the "commencement of relevant matters which directly affect the Sami", and emphasizing that consultations should be initiated as early as possible to ensure that indigenous peoples get a real opportunity to exert influence on the process and the final outcome, the Committee hopes that the Government will take the measures necessary to ensure that these requirements are applied fully and systematically.

Articles 14 and 15. Rights to land in traditional Sami areas south of Finnmark county. The Committee notes that the Sami Rights Committee was reappointed on 1 June 2001 to report on issues relating to the Sami's right to, disposition and use of land and water in traditional Sami areas other than those covered by the Finnmark Act. The Government indicates that the main report of the Sami Rights Committee was presented in December 2006, and was circulated broadly for comments which were to be received by 15 February 2009. The Committee notes that the Sami Parliament expresses concerns that the process of identifying rights takes a long time and that interventions by governmental authorities in areas where rights have not been identified was "a constantly recurring problem". **The Committee welcomes the ongoing efforts with regard to the land rights of the Sami in their traditional areas south of Finnmark county. The Committee trusts that Articles 14 and 15 will be duly taken into account in this process and that consultation and participation in accordance with Articles 6 and 7 will take place. While acknowledging that the identification of rights under Article 14 is a process which may require considerable time, the Committee also considers that transitional measures should be adopted during the course of the process, where necessary, in order to protect the land rights of the indigenous peoples concerned, while awaiting the outcome of the process.**

The Mining Act. The Committee notes that the Mining Act was amended in 2005, in conjunction with the enactment of the Finnmark Act. The amendments, inter alia, provided that "significant emphasis" shall be placed on the due consideration of Sami interests in Finnmark when applications for licensed prospecting are being considered and that bodies representing Sami interests are to be heard with regard to such applications. The amendments also provide that in case of mines on the land owned by the Finnmark Estate, the King may determine a higher "landowner's fee". The Committee further notes that a new Mining Act was enacted on 19 June 2009, which will enter into force on 1 January 2010. The new Mining Act carries over the provisions concerning Sami interests in Finnmark, but fails to address these issues in other traditional Sami areas. The Sami Parliament describes the consultation process beginning in 2007 regarding a new Mining Act as difficult, and lacking real dialogue and good faith on the part of the Government. The Government states that the consultations had been conducted in accordance with the PCSSP; however, full agreement could not be reached and the consultation had therefore been concluded without full agreement being reached. The Committee notes the

Government's statement that the follow-up to the 2006 report of the Sami Rights Committee will establish the basis for legal amendments regarding Sami rights outside Finnmark, including possible amendments to the Mining Act.

The Committee notes that the issue of benefit sharing was one of the issues on which the Government and the Sami Parliament disagreed. The Government considered that a benefit-sharing mechanism, such as the one provided for under the Finnmark Act, where the funds emanating from a higher landowner's fee is received and managed by the Finnmark Estate as the landowner, was "appropriate to fulfil the obligations under *Article 15(2)* of the Convention." The Sami Parliament considered that benefit sharing should not be limited to the landowner; in other words, indigenous peoples who are not owners of the land concerned but have traditionally used it should also participate in the benefits of exploration and exploitation of resources pertaining to the lands.

The Committee observes that *Article 15(2)*, second sentence, reads as follows: "The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities." As stated in the first sentence of *Article 15(2)* this applies in "cases where the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands". The term "lands" in *Article 15(2)* is to be understood as defined in *Article 13(2)* as including "the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use". On this basis, the Committee confirms that the Convention does not limit the participation in benefits and the receipt of compensation under *Article 15(2)* to indigenous peoples who are landowners under the national legislation. The Committee, however, considers that there is no single model for benefit sharing as envisaged under *Article 15(2)* and that appropriate systems have to be established on a case by case basis, taking into account the circumstance of the particular situation of the indigenous peoples concerned.

In the present case, the Committee notes that agreement between the Sami Parliament and the State had been reached on 95 per cent of previously state-held land to be owned by the Finnmark Estate in the management of which Sami representatives participate on an equal footing with other representatives. The Committee also notes that the Finnmark Estate receives the funds emanating from the landowner's fee and is competent to decide on how these funds are to be used. Based on the information before it, the Committee is not in a position to assess how this mechanism has functioned in practice with a view to allowing the Sami to participate in the benefits of mining activities in Finnmark. **The Committee asks the Government to send information in this regard. In any event, the Committee recommends that the functioning of the mechanisms intended to ensure that the Sami, as the indigenous people concerned, participate in the benefits of mining activities as envisaged in Article 15(2) be reviewed jointly by the State authorities and the bodies representing Sami interests, from time to time. More generally, the Committee considers it of importance that the national mining legislation is amended as soon as possible to ensure the effective application of Articles 14 and 15 in traditional Sami areas south of Finnmark county, and urges the Government and the Sami Parliament to renew discussions on this matter. It calls on the Government to ensure that until such legislation has been enacted, the Sami rights in the areas concerned are safeguarded by other appropriate means.**

PANAMA
INDIGENOUS AND TRIBAL POPULATIONS CONVENTION, 1957 (NO. 107)

Observation, CEACR 2009/80th Session

Chan 75 hydroelectric project. The Committee notes that, according to the observations on the situation of the Charco la Pava community presented to the Human Rights Council by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/12/34/Add.5, 7 September 2009), in January 2008, construction work began on the Chan 75 hydroelectric dam in the district of Changuinola (Bocas del Toro). It noted that this project would entail the flooding of the lands of various communities of the Ngöbe indigenous people, including Charco la Pava, Valle del Rey, Guayabal and Changuinola Arriba, with a population of approximately 1,000 persons, and that another 4,000 indigenous persons would also be affected. It also notes that, according to the Special Rapporteur (ibid.), the start of the construction work was accompanied by protests by members of the communities and these protests were suppressed by the national police. It further notes the allegations in the report concerning the permanent presence of officers of the national police who have been assigned the task of ensuring the further progress of the work.

The Committee understands that the communities affected were not consulted in relation to the decision to implement the hydroelectric project. The Committee also notes that the current situation arose from the failure to recognize the rights of the abovementioned indigenous communities relating to their traditional lands and the consequent consideration of those lands as state land. The Committee further notes the precautionary measures adopted by the Inter-American Commission on Human Rights in June 2009, requesting the State of Panama to suspend the construction work in order to avoid irreparable damage to the ownership rights of the Ngöbe indigenous people.

The Committee notes the information supplied by the Government to the effect that on 10 August 2009 a high-level round table was established to conduct a dialogue on the issues affecting the indigenous communities as a consequence of the construction of the Chan 75 hydroelectric dam. The Committee notes that the round table comprised the Deputy Minister for Governance and Justice, the Minister for External Relations, the Minister for Social Development, the Administrator-General of the National Environment Authority, the Governor of Bocas del Toro province, the mayor of the district of Changuinola, the National Assembly deputy for the area, two representatives of each of the communities affected by the project with their legal adviser, and two representatives of the company responsible for the project (AES) with their legal advisor.

The Committee recalls that under the terms of *Article 11 of the Convention*, governments have the obligation to recognize the right of ownership of indigenous populations over the lands traditionally occupied by them. The Committee also wishes to emphasize that consideration must be given, in defining the rights of these populations, to their customary laws in accordance with *Article 7*. Furthermore, the Committee draws the Government's attention to *Article 5*, which states that, in applying the provisions of the Convention, governments must seek the collaboration of the indigenous populations and their representatives with regard to the formulation and implementation of the relevant measures.

The Committee notes that in his statement of 25 November 2009, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people expressed his “extreme concern about the forced eviction and the destruction of their housing suffered on 20 November 2009 by the Naso communities of San San and San San Druy, in Changuinola, Bocas del Toro province”. According to the statement, “about 150 riot policemen evacuated with tear gas bombs more than 200 indigenous Naso living in the communities of San San and San San Druy. After they were taken out of the area, employees of the Ganadera Bocas company entered the area with machinery and proceeded to demolish indigenous people houses” (UN Press Release, 25 November 2009).

The Committee expresses its **serious concern** in the face of these events and recalls that, according to the principle set out in Article 12 of the Convention, the groups affected cannot be removed from their territories without their free consent, subject to certain specific exceptions. ***The Committee urges the Government to take all necessary steps, in collaboration with the representatives of the indigenous communities affected by the Chan 75 project, to recognize the rights of these communities over the lands traditionally occupied by them. It urges the Government to seek agreed solutions between all the parties concerned to remedy the current situation and provide information on all progress achieved in this respect, including information on any agreements reached by the abovementioned round table for dialogue. The Committee asks the Government to ensure that measures are adopted to protect the institutions, persons, property and labour of the communities affected until a solution of the issue is reached.***

Land rights. The Committee notes the draft Act No. 411 of 2008, which establishes a special procedure for awarding collective ownership of lands of indigenous peoples and prescribes other provisions. It notes that this draft Act is before the Committee for Indigenous Affairs of the National Assembly of Deputies. The Committee understands that the draft Act will encompass draft Act No. 17 concerning the rights of the Emberá and Wounaan peoples and will enable examination of the issue of the recognition of the Bri-bri territory and the creation of the comarca (indigenous region) of Pueblo Naso. ***The Committee requests the Government to send a copy of draft Act No. 411 of 2008 and indicate to what extent the indigenous peoples were consulted with regard to the preparation of this legislative text. The Committee also requests the Government to supply information on any progress made with regard to the adoption of the draft Act.***

The Indigenous and Tribal Peoples Convention, 1989 (No. 169). The Committee notes the Government's indication to the effect that it has examined the possibility of ratifying Convention No. 169, although no major progress has been achieved owing to the complexity of the matters covered by the Convention and the discrepancies which exist in relation to national law and practice. The Committee recalls that, in its general observation of 1992 on the Convention, it emphasized the fact that Convention No. 169 is more oriented than Convention No. 107 towards respect for and protection of the cultures, ways of life and traditional institutions of indigenous and tribal peoples. It therefore encouraged governments which had ratified Convention No. 107 to give serious consideration to ratifying Convention No. 169. ***The Committee hopes that the Government will continue to consider ratifying Convention No. 169 and encourages it to seek technical assistance from the Office in order to address any difficulties which might arise in connection with ratification. It requests the Government to provide***

information on any progress made on this matter.

Socio-economic situation of indigenous peoples. The Committee notes that according to the fourth National Report on the Situation of Women in Panama (2002–07), in indigenous areas, 98.5 per cent of the population lives in poverty and 89.7 per cent lives in extreme poverty. The Committee notes with **interest** the numerous programmes implemented by the Government in the areas of health, education, vocational training and support for indigenous enterprise development with a view to eliminating extreme poverty and improving the social, economic and cultural situation of the indigenous peoples. **The Committee requests the Government to supply information on the implementation of these programmes and their impact, also indicating the manner in which the participation of indigenous peoples and their representatives in the formulation and implementation of programmes is ensured.**

The Committee is raising other points in a request addressed directly to the Government.

PAKISTAN
INDIGENOUS AND TRIBAL POPULATIONS CONVENTION, 1957 (NO. 107)
Observation, CEACR 2009/80th Session

Article 2 of the Convention. The Committee notes from the Government's report that the development of the Federally Administered Tribal Areas (FATA) is pursued under the FATA Sustainable Development Plan 2006–15 (SDP) which covers a wide range of sectors, including education, health, infrastructure, rural development, agriculture, industry and mining, and skills development. The Committee also notes the list of projects prepared by the FATA secretariat contained in the Government's report. However, the Committee notes with **concern** the Government's indications that the recent conflict in FATA have severely impacted on the implementation of the SDP. In this context, the Committee also notes that the Pakistan Workers' Federation (PWF), in a communication of 21 September 2008, stressed the need for further action by the Government to promote the welfare of the tribal population which continues to be affected by poverty and unemployment. **Recalling that under Article 2 of the Convention, the Government has the primary responsibility for developing coordinated and systematic action for the protection of the tribal population concerned, including action to promote the social, economic and cultural development of the population concerned and to raise their standard of living, the Committee urges the Government, in cooperation with its international partners, to take the necessary steps to address the consequences of the conflict in the tribal areas, including through appropriate recovery and rehabilitation measures, and to ensure the full implementation of the SDP. The Committee requests the Government to provide detailed information on the measures taken and the results achieved in this regard. While noting the Government's indication that the administration of the Provincially Administered Tribal Areas (PATA) of the North–West Frontier Province (NWFP) and of Baluchistan is under the direct responsibility of these two provinces, the Committee reiterates its request for information on the measures taken to apply the Convention to the population concerned in these areas.**

The Committee is raising other points in a request addressed directly to the Government.

PARAGUAY

INDIGENOUS AND TRIBAL PEOPLES CONVENTION, 1989 (NO. 169)

Observation, CEACR 2009/80th Session

The Committee recalls that in 2006 the Conference Committee on the Application of Standards urged the Government to take measures to enable it to send full information on the questions raised by the Committee of Experts on a regular basis. In 2008 the Committee noted with regret that the Government's report had not been received and therefore repeated its previous comments. **Noting that the Government's report was received in September 2009, the Committee hopes that the Government will continue its efforts to provide regular reports.**

Article 20 of the Convention. Recruitment and conditions of employment. The Committee refers to its previous comments concerning discrimination relating to wages and treatment based on the indigenous origin of workers, particularly those working on ranches within the country and for Mennonite communities, which in certain cases constitute situations of forced labour. The Committee notes the conclusions of the report on the Mission to Paraguay by the United Nations Permanent Forum on Indigenous Issues in 2009 that a system of servitude and forced labour exists in the Chaco region. It notes the Government's indication that the Ministry of Justice and Labour has established, under Resolution No. 230 of 2009, a tripartite committee, the Committee on Fundamental Rights at Work and the Prevention of Forced Labour, which has been entrusted with the task of drawing up an action plan on fundamental rights at work and the prevention of forced labour involving the participation of the Paraguayan Indigenous Institute (INDI). Furthermore, it notes that in September 2008, the Regional Labour Directorate opened an office in the town of Teniente Irala Fernández (Chaco region). It also notes that the eradication of forced labour is one of the priorities of the 2009 Decent Work Country Programme and that the Decent Work Country Programme includes the promotion of the Convention. **The Committee requests the Government to provide further information on the implementation of the above action plan and its impact on the eradication of forced labour involving indigenous peoples, including information on the extent to which the indigenous peoples concerned were consulted and participated in the development of that plan. Furthermore, the Committee requests the Government to provide information on the results of the inspections carried out by the Office of the Regional Labour Directorate for the Chaco region, the action taken and penalties imposed, and on any other initiatives undertaken by that Office with the aim of eradicating forced labour of, and discrimination against, indigenous peoples, particularly those working on ranches or in Mennonite communities. The Committee also refers to its comments under the Forced Labour Convention, 1930 (No. 29).**

Articles 2, 6, and 33. Coordinated and systematic action and consultation. The Committee notes that, according to the Government's report, the INDI can rely on the collaboration of a series of indigenous organizations and the support of several coordinating bodies, such as the Coordinating Committee for the Self-Determination of Indigenous Peoples (CAPI). In this regard, the Committee notes that in April 2009, the CAPI drew up, with the participation of 15 indigenous organizations, a series of "proposals for public policies on indigenous peoples". It also notes the creation under Decree No. 1945 of the National Programme on Indigenous Peoples (PRONAPI) coordinated by the INDI, under which, according to the report, consultations will be held with

indigenous peoples so that they can define their own needs. The Committee understands that based on the outcome of the consultations held in the context of the PRONAPI and on the CAPI initiative, an indigenous policy could be defined and a legislative reform carried out which includes the creation of a State body on indigenous affairs with the participation of indigenous peoples with regard to both its definition and composition. Noting the various organizations which collaborate with the INDI and its different coordinating bodies, the Committee emphasizes the importance of institutionalizing the participation of the peoples covered by the Convention in devising, implementing and overseeing the public policies which affect them, in accordance with Articles 2 and 33 of the Convention. **The Committee requests the Government to provide information on the outcome of the consultations held in the context of the PRONAPI and on the CAPI initiative and on any resulting initiatives relating to legislative reform, including with regard to the institutionalization of indigenous participation. Noting that the Executive Authority's Human Rights Network, created in June 2009, is competent to draw up a schedule of proposed measures, such as laws incorporating the international instruments ratified by the State, the Committee requests the Government to provide information on the initiatives undertaken by the Network in relation to the Convention and on the measures taken to ensure coordination with the INDI and the participation of the peoples concerned.**

Article 14. Rights to land. The Committee notes that, according to the report on the Mission to Paraguay by the United Nations Permanent Forum on Indigenous Issues, 40 per cent of the indigenous communities in Paraguay still have no legal title to their lands. The Committee also notes that in July 2009, the Inter-American Commission on Human Rights filed an application with the Inter-American Court under Case No. 12420 concerning the land rights of the indigenous community Xákmok Kásek of the Enxet-Lengua People whose land claim has been pending since 1990. The Committee notes the information provided by the Government concerning the legislation in force with regard to land claims by indigenous communities and the difficulties encountered in practice due to their geographical dispersion and creation of new communities. The Committee also notes the indigenous land regularization project, which is based on an agreement signed between the INDI and the World Bank; implementation of which began in 2008. **The Committee requests the Government to take all the necessary measures, including measures of a procedural nature, to make rapid progress, in consultation with the peoples concerned, with regard to the regularization of indigenous lands and requests it to provide information on the following:**

- (i) the progress made in the context of the INDI/World Bank project in that regard;**
- (ii) the initiatives undertaken by the Inter-Institutional Committee responsible for the implementation of the measures necessary to carry out international rulings (CICSI);**
- (iii) the particulars and the percentage of indigenous communities whose lands have still not been regularized.**

The Committee also refers to its previous comments and requests the Government to provide information on the application of Acts Nos 1372/88 and 43/89 establishing a procedure for the regularization of settlements of indigenous communities, in particular

with regard to resolving cases in which the land occupied is insufficient given the number of indigenous claims, and on the establishment of adequate procedures within the national legal system, in accordance with Article 14(3).

Article 15. Natural resources. With regard to the exploitation of forestry resources, the Committee notes that under Resolution No. 1324 of 2008, the INDI suspended indefinitely the application of Resolution No. 139/07 on environmental and forestry management in relation to lands assigned to indigenous communities until adequate consultations with indigenous peoples determine whether the Resolution concerned will be amended or repealed. The Committee notes that Resolution No. 139/07 was adopted with the aim of “curbing the obvious plundering taking place in several communities” and that it was suspended because “in many circles there is a confusion between the authorization to implement management plans and the plundering of forest resources”. **The Committee requests the Government to provide information on the consultations held for the purpose of amending Resolution No. 139/07 in relation to lands assigned to indigenous communities and their outcome, and on the measures taken to protect the rights of indigenous peoples to the natural resources existing on their lands, including their rights to participate in the use, management and conservation of those resources. The Committee once again requests the Government to provide information on the penalties imposed by the Office of the Environmental Prosecutor at the request of the INDI in cases of ecological offences, and on applications submitted to the INDI by exploration companies seeking information on the existence of indigenous communities in certain areas of the country.**

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to reply in detail to the present comments in 2011.]

FORCED LABOUR CONVENTION, 1930 (NO. 29)

Excerpt from: *Observation, CEACR 2009/80th Session*

Articles 1, paragraph 1, and 2, paragraph 1, of the Convention. Debt bondage of indigenous communities in the Chaco. In its previous observation the Committee once again expressed its concern about the existence of cases of debt bondage in the indigenous communities of the Chaco. It noted the report *Debt bondage and marginalization in the Chaco of Paraguay*, carried out under the technical cooperation project called “Forced labour, discrimination and poverty reduction among indigenous peoples”, which is part of the Special Action Programme to combat Forced Labour (SAP-FL) of the ILO. The investigation summarized in the report confirms the existence of forced labour practices, specifying a number of factors that lead to situations of forced labour encountered by many indigenous workers on the estates of Chaco: the payment of wages to workers that are below the legal minimum; providing them with insufficient quantities of food; charging excessive prices for those provisions available for purchase, there being no access on the estates to other markets or means of subsistence (hunting and fishing); and the payment of partial or total wages in kind. All of these lead to the indebtedness of workers which obliges them, and in many cases their families as well, to work permanently on the estates. The report was confirmed during workshops conducted separately with organizations of employers and workers as well as for the inspection services.

The Committee also noted the comments of the International Trade Union Confederation (ITUC) concerning violations of section 47 of the Labour Code, which provides that a contract will be void when it fixes a salary under the minimum wage or if it involves direct or indirect obligations to buy goods or food from shops, businesses or a place determined by the employer. Articles 231 and 176 of the Labour Code provide that only 30 per cent of wages can be paid in kind, and the value of these goods must be the same as those at the nearest urban settlement. The ITUC asserts that such provisions are not being enforced in practice, thus creating conditions of indebtedness leading the indigenous workers of the Chaco into situations of forced labour.

The Committee observed that debt bondage constituted forced labour within the meaning of the Convention and a serious violation of the same, and it hoped that in its next report the Government would communicate information on the various measures taken or envisaged to combat practices by which forced labour is imposed on the indigenous workers of Chaco.

The Committee notes the discussion which took place in the Committee on the Application of Standards of the Conference in 2008 and its conclusions, in which it manifested its concern about the consequences for the indigenous workers of their situation as landless peasants, as well as the vulnerability of these workers. The Conference Committee considered that measures of an urgent nature needed to be taken.

Measures taken by the Government

Decent Work Country Programme. The Committee notes that the Government, through a tripartite initiative, has concluded a Decent Work Country Programme with the ILO, of which the objectives include better compliance with labour standards, through programmes to eradicate forced labour and the worst forms of child labour as well as strengthening labour inspection and

the adaptation of Paraguayan laws to the ILO Conventions ratified by the country.

Commission on Fundamental Rights at Work and the Prevention of Forced Labour. Action plan concerning forced labour. The Committee notes that by Resolution of the Minister of Labour and Justice No. 230 of March 2009 a Commission on Fundamental Rights at Work and the Prevention of Forced Labour was established. The action plan developed by the Commission includes, besides actions of awareness raising among sectors of workers and employers, a radio campaign of one month to raise awareness among the society at large and a training activity for labour inspectors followed by a visit to rural establishments. An investigation concerning indigenous women and discrimination is also planned. In addition, an Office of Labour Administration in the locality Teniente Irala Fernández (Chaco) has been established. The Committee takes due note of the actions undertaken by the Government with a view to the eradication of forced labour of the indigenous communities of Chaco; however, the measures taken so far, although they are a first step, must be reinforced and lead to systematic action which is commensurate with the dimensions and gravity of the problem, if the latter is to be solved.

The Committee hopes that the Government will provide information about the mandate and functioning of the Office of Teniente Irala Fernández (Chaco), and the mechanisms foreseen for reporting cases of forced labour (procedures, competent authorities, judicial assistance). Given the principal role in the fight against forced labour played by the inspection services, the Committee hopes that the Government will provide information about the activities of these services and the measures taken to reinforce them.

The Committee further hopes that the Government will provide information about the number of cases in which the inspection services have detected infringements of sections 47, 176, and 231 of the Labour Code and refers it to the comments made on the application of the Protection of Wages Convention, 1949 (No. 95), and the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

[..]

**CONCLUSIONS, ILC COMMITTEE ON THE APPLICATION OF STANDARDS,
CONVENTION NO. 29, PARAGUAY**

ILC, 97th session, June 2008

The Committee took note of the information provided orally by the Government representative and of the discussion that followed.

The Committee took note that in its comments the Committee of Experts referred to the existence of bonded labour practices in the indigenous communities of the Chaco and in other parts of the country which constituted a serious violation of the Convention.

With regard to the setting up of the Inspection Unit and the creation of the National Tripartite Committee on Fundamental Principles and Prevention of Forced Labour, the Committee observed that these were not functioning and no progress had been made by the action of these bodies.

The Committee took note of the Government’s representative’s statement that joint action between workers, employers and the Government was indispensable in finding a solution to the problem and that a new Government would be installed next August. The Committee also took note that, regarding the National Tripartite Committee on Fundamental Principles and Prevention of Forced Labour, the latter would be established shortly. Regarding the functioning of the regional office, the Committee took note that the Government had requested ILO cooperation for training of those persons who would be in charge of the office under the Ministry of Justice and Labour. The Committee welcomed the decision by the Government to include, among its priorities, the issue of forced labour in indigenous communities.

The Committee took note with concern of the conditions of forced labour to which the abovementioned communities were subjected and also of the non-compliance with the provisions of national legislation, with regard to the level of wages and the methods of payment which would help prevent forced labour. The Committee also noted the large informal economy where conditions conducive to bonded labour also existed.

The Committee also noted the consequences for the situation of these workers that their condition as landless peasants implied as well as the vulnerable situation that they were placed in by having to move to cities where they were obliged to beg and sometimes to enter into prostitution. Such displacements were the result of the intensive cultivation of soya in the settlements of indigenous communities.

The Committee took note with concern that this situation also affected children, who were forced into dangerous work such as in brickworks, in quicklime factories and quarries and certain sectors of the informal economy. The Committee also took note of the violence carried out against the National Peasants’ Organization (ONAC).

The Committee expected that action would be given urgent priority in order to put an end to bonded labour in the indigenous communities of the Paraguayan Chaco as well as in other parts of the country that may be affected, thereby ensuring compliance with the Convention. The Committee took note that the Government had requested ILO technical assistance.

PERU
INDIGENOUS AND TRIBAL PEOPLES CONVENTION, 1989 (NO. 169)

Observation, CEACR 2009/80th Session

The Committee takes note of the discussion that took place in the Conference Committee on the Application of Standards in June 2009 and the conclusions of the Conference Committee. It also notes the observations of 23 July 2009 by the General Confederation of Workers of Peru (CGTP), which were sent to the Government on 31 August 2009. The CGTP's observations were prepared with input from the Inter-Ethnic Association for the Development of the Peruvian Rainforest (AIDSESP), the National Coordinating Committee for Communities Affected by Mining (CONACAMI), the National Agrarian Confederation (CNA), the Peasant Farmers' Confederation of Peru (CCP), and non-governmental organizations belonging to the Indigenous Peoples Working Group of the National Coordinating Committee on Human Rights. The Committee further recalls that in its previous observation it did not address the whole of the Government's report because of its late arrival. It will accordingly examine it as appropriate in this observation, together with the latest report.

The Committee notes that the Conference Committee indicated that the Committee has raised concerns in comments it has been making for years about persistent problems in applying the Convention in a number of areas, and went on to express grave concern at the incidents in Bagua and urge all parties to refrain from violence. It observed that the present situation in the country was linked to the adoption of legislative decrees relating to the exploitation of natural resources on lands traditionally occupied by indigenous peoples, and urged the Government immediately to establish a dialogue with indigenous peoples' representative institutions in a climate of mutual trust and respect. It called on the Government to establish mechanisms for dialogue as required by the Convention in order to ensure systematic and effective consultation and participation. It further urged the Government to remove the ambiguities in the legislation as to the identification of the peoples covered by it, and to take the necessary steps to bring national law and practice into line with the Convention. In this connection, the Conference Committee asked the Government to elaborate a plan of action in consultation with the representative institutions of the indigenous peoples.

The Committee shares the **grave concerns** of the Conference Committee about the incidents in Bagua in June 2009 and considers that they are related to the adoption, without consultation or participation, of decrees affecting the rights of peoples covered by the Convention to their lands and natural resources. The Committee notes that both the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the United Nations Committee on the Elimination of Racial Discrimination have likewise expressed such concern at the situation of the indigenous peoples in Peru (see respectively, A/HRC/12/34/Add.8, 18 August 2009, and CERD/C/PER/CO/14-17, 31 August 2009). The Committee recalls that the Conference Committee called on the Government to make further efforts to guarantee indigenous peoples' human rights and fundamental freedoms without discrimination in accordance with its obligations under the Convention. The Committee is of the view that a prompt and impartial inquiry into the events in Bagua is essential to ensuring a climate of mutual trust and respect between the parties, a prerequisite for establishing genuine dialogue in the search for agreed solutions, as the Convention requires. **The Committee accordingly urges the Government to take the necessary steps to have the incidents of June 2009 in Bagua effectively and**

impartially investigated, and to provide specific information on the matter.

Article 1 of the Convention. Peoples covered by the Convention. The Committee notes that in its report the Government states, as it did during the discussion in the Conference Committee, that a draft Framework Act on Indigenous or Original Peoples of Peru has been prepared, which sets out a definition of indigenous or original peoples, with a view to removing ambiguities from the national legislation regarding identification of the peoples covered. The Committee notes that section 3 of the draft contains such a definition, whereas section 2 states that indigenous or original peoples of Peru include "the so-called peasant communities and native communities; as well as indigenous people in a situation of isolation and a situation of initial contact; it likewise applies to those who identify themselves as descendants of the ancestral cultures settled in Peru's coastal, mountain and rainforest areas". The Committee notes that, although the definition in section 3 of the draft reproduces the objective elements of the Convention's definition, it makes no reference, unlike section 2, to the fundamental criterion of self-identification. The Committee also notes that the objective elements of the definition in the abovementioned draft include the criterion that these peoples "are in possession of an area of land", which does not appear in the Convention. The Committee would point out in this connection that *Article 13* of the Convention stresses the special importance for these peoples of the cultures and spiritual values of "their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use". The Committee also draws the Government's attention to the fact that *Article 14(1)* of the Convention, and in particular the expression "the lands which they traditionally occupy", has to be read in conjunction with *Article 14(3)* on land claims, in that the Convention likewise covers situations in which indigenous and tribal peoples have recently lost occupation of their lands or have been recently expelled from them. **The Committee accordingly urges the Government, in consultation with the indigenous peoples, to align the definition in the draft Framework Law on Indigenous or Original Peoples of Peru with the Convention. Please also supply information on the manner in which effective consultation and participation is ensured with indigenous peoples in the preparation of the abovementioned draft. Furthermore, the Committee again asks the Government to provide information on the measures taken to ensure that all those covered by Article 1 of the Convention are likewise covered by all provisions of the new legislation and enjoy the rights set forth therein on an equal footing.**

Article 2 and 6. Coordinated and systematic action and consultation. Plan of action. With regard to the Conference Committee's request for a plan of action to be drawn up in consultation with the representative institutions of indigenous peoples, the Committee notes the Government's statement that proposed guidelines have been submitted for the development of a plan of action aimed at responding to the main observations put forward by the ILO's supervisory bodies. Although the report affirms that the plan of action must be formulated in collaboration with the representatives of indigenous peoples, the Committee notes that there is no information on the manner in which participation of the indigenous peoples in this process is to be established, and that a "meeting with the representatives of the indigenous organizations" is envisaged with regard to the implementation phase of the abovementioned plan.

The Committee also notes that several bodies have been set up whose purpose, according to the Government's report, is to establish dialogue with the indigenous peoples of the Amazonian and Andean areas. The Committee notes that, in March 2009, a Bureau for Ongoing Dialogue

between the State and the Indigenous Peoples of the Amazonian Area of Peru was established and that, according to section 2 of Supreme Decree No. 002-2009-MIMBES establishing the Bureau, it “may” (*podrá*) include representatives of indigenous peoples. It also notes the Multisectoral Committee to deal with indigenous problems in the Amazonian area (Supreme Decree No. 031-2009-PCM of 19 May 2009), and observes that the minutes of the opening and first ordinary session of the Committee make no mention of indigenous representatives. It further notes the Bureau for Comprehensive Development of Andean Peoples (RS 133-2009-PCM, of 24 June 2009), the Bureau for Dialogue on the Comprehensive Development of Andean Peoples in Extreme Poverty (RS 135-2009-PCM of 26 June 2009) and the National Coordinating Group for the Development of Amazonian Peoples, which is responsible for formulating a comprehensive sustainable development plan for these peoples (Supreme Resolution No. 117-2009-PCM of 26 June 2009). With regard to the latter body, the Committee notes that it set up four working group to work on the composition of the Commission of Inquiry into the Bagua incidents, the revision of the legislative decrees, mechanisms for consultation and a national development plan for the Amazon region. The Committee likewise notes the concern expressed by the People’s Ombudsperson about the status of the dialogue process established within the abovementioned Group.

The Committee has insufficient information to assess the level of participation ensured for indigenous peoples in the various bodies mentioned above. It nonetheless considers that the information supplied appears to indicate that, at least in some cases, the participation of indigenous peoples through their legitimate representatives and dialogue between the parties is not effective. The Committee also expresses **concern** that the proliferation of bodies with mandates that sometimes overlap may hamper the development of a coordinated and systematic response to the problems of protecting and ensuring the rights of indigenous peoples established in the Convention. **The Committee urges the Government to ensure full and effective participation and consultation of the indigenous peoples through their representative institutions in the preparation of the abovementioned plan of action, in accordance with Articles 2 and 6 of the Convention, so as to address in a coordinated and systematic manner outstanding problems concerning the protection of the rights of the peoples covered by the Convention, and to align law and practice with the Convention. It also asks the Government to provide information on this matter and on the work of the various bodies mentioned above, indicating how the participation of the peoples concerned and the coordination of the activities of these bodies are ensured, as well as coordination between the work of these bodies and the preparation of the plan of action. Please provide a copy of the plan of action as soon as it is finalized.**

Articles 2 and 33. INDEPA. The Committee refers to its previous observation, in which it noted the CGTP’s assertion that the National Institute of Andean, Amazonian and Afro-Peruvian Peoples (INDEPA) lacked real authority. The Committee notes from the CGTP’s 2009 communication that although the administrative autonomy of INDEPA has been restored, indigenous participation in its Governing Council has not been re-established and no concerted policies have been developed on any issues affecting the indigenous peoples. The CGTP further asserts that there is no forum for cooperation on such policies. The Committee notes the Government’s statement that Ministerial Resolution No. 277-2009-MIMDES establishes a sectoral committee responsible for drafting new “regulations on the organization and functions of INDEPA”. The Committee notes that the sectoral committee is composed of the Vice-Minister for Social Development of the

Ministry for Women and Social Development (MIMDES), the Executive President of INDEPA and the Director-General of the General Office of Planning and Budget of MIMDES, and that it has the authority to invite specialists and representatives from various institutions in the public and the private sectors. The Committee notes that the abovementioned Resolution contains no express reference to the participation of indigenous peoples. It further notes that the reform of INDEPA is likewise envisaged in the guiding framework for development of the abovementioned plan of action. The Committee reminds the Government that indigenous peoples must participate in designing mechanisms for dialogue and recalls the concerns raised previously about coordination between the various bodies and activities. **The Committee urges the Government to ensure effective participation by the representative institutions of indigenous peoples in the design and implementation of mechanisms for dialogue and the other mechanisms needed for the coordinated and systematic administration of programmes affecting indigenous peoples, including the reform of INDEPA. It also asks the Government to ensure that such mechanisms have the necessary resources to perform their functions properly and have independence and real influence in the decision-making process. Please provide information on the measures taken in this regard.**

Articles 6 and 17. Consultation and legislation. In its previous observation, noting that Legislative Decrees Nos 1015 and 1073 were adopted without consultation, the Committee expressed concern that communications are still being received alleging a lack of prior consultation on the measures provided for in *Articles 6 and 17(2)* of the Convention, and urged the Government to take steps without further delay, with the participation of the indigenous peoples, to devise appropriate mechanisms for participation and consultation. The Committee notes that in its communication of 2009 the CGTP states that no mechanisms have been established for prior consultation, so the indigenous peoples are unable to have a say in specific decisions that affect them. The Committee notes that Legislative Decrees Nos 1015 and 1073 setting conditions for disposing of communal land were repealed by Act No. 29261 of September 2008, and that Legislative Decrees Nos 1090 and 1064 approving, respectively, the Forests and Wild Fauna Act and the Legal Regime for the Exploitation of Lands for Agrarian Use were repealed by Act No. 29382 of June 2009. The Committee notes that, according to the Government, the working groups set up within the National Coordinating Group for the Development of Amazonian Peoples have responsibility for revising the legislative decrees and dealing with the issue of prior consultation. The Committee understands, however, that the issue of consultation is likewise addressed in the draft Framework Act on Indigenous or Original Peoples of Peru. It also takes note of a Bill on consultation, No. 3370/2008-DP of 6 July 2009, submitted to Congress by the People’s Ombudsperson. **The Committee stresses the need for indigenous and tribal peoples to participate and be consulted before the adoption of legislative or administrative measures likely to affect them directly, including in the drafting of provisions on consultation processes, as well as the need for provisions on consultation to reflect among other things the elements set forth in Articles 6, 7, 15 and 17(2), of the Convention. The Committee also refers the Government to its previous comments on the need for a coordinated and systematic approach. It urges the Government to establish, with the participation of the peoples concerned, the mechanisms for participation and consultation required by the Convention. It also asks it to send information on the manner in which it ensures that the peoples concerned participate in and are consulted about the formulation of provisions governing consultation. It requests the Government to provide information on any progress made in this regard.**

The Committee reminds the Government that the Conference Committee welcomed the Government's request for technical assistance and encourages it to pursue this course.

Articles 2, 6, 7, 15 and 33. In its previous observation, the Committee noted that the communications received referred to many serious situations of conflict connected with a dramatic increase in the exploitation of natural resources on lands traditionally occupied by indigenous peoples, without participation or consultation. The Committee notes that, in its communication of 2009, the CGTP refers to a statement by the People's Ombudsperson to the effect that there has been an increase in social and environmental conflicts in the country and that they are concentrated in indigenous areas and are related to access and control of natural resources. The CGTP asserts that the Peruvian State persists with a "top-down" approach, imposing its projects in the Amazonian and Andean areas. It asserts that development policies lack sufficient guarantees to protect the environment for the indigenous peoples and that the Ministry of Environment lacks the authority to intervene in energy and mining policies. It refers to a ruling by the Constitutional Court (file No. 03343-2007-PA-TC), in proceedings brought by the regional government of San Martín against various petroleum enterprises and the Ministry of Energy and Mines regarding hydrocarbon projects being carried out in a regional conservation area. In its ruling, taking account of the provisions of the Convention, the Court reaffirmed the right of indigenous peoples to be consulted before the start-up of any project that might affect them, and also referred to article 2(19) of the Constitution which requires the State to protect ethnic and cultural plurality in the Nation (paragraph 28). The CGTP furthermore refers to a number of "emblematic instances" of exploration and exploitation of natural resources affecting indigenous peoples, such as the Cacataibo people, who live in voluntary isolation, the Awajun and Wampí peoples and the communities of Chumbivilcas province.

The Committee notes the Government's statement that the Peruvian State construes consultation as "processes whereby points of view are exchanged" and has held a series of socialization workshops. It also notes that the Government refers to Decree No. 012-2008-MEM (regulations on citizens' participation in hydrocarbon activities), according to which the purpose of consultation is "to reach better understanding of the scope of the project and its benefits", which is much narrower than what the Convention provides.

The Committee wishes to point out that *Article 6* of the Convention provides that the consultations shall be undertaken with the objective of achieving agreement or consent to the proposed measures. Although *Article 6* of the Convention does not require consensus in the process of prior consultation, it does require, as the Committee underlined in its general observation of 2008 on the Convention, the form and content of consultation procedures and mechanisms to allow the full expression of the viewpoints of the peoples concerned, "so that they may be able to affect the outcome and a consensus could be achieved". The Committee wishes to underscore that the Convention requires a genuine dialogue to be established between the parties concerned to facilitate the quest for agreed solutions, and emphasizes that, if these requirements are met, consultation can play a decisive role in the prevention and settlement of disputes. The Committee further points out that meetings solely for the purpose of information or socialization do not meet the requirements of the Convention.

The Committee considers that Supreme Decree No. 020-2008-EM regulating citizens'

participation in the mining subsector has similar limitations. Noting that the Decree envisages the possibility of citizens' participation after a mining licence has been granted, the Committee is of the view that it does not meet the requirements of the Convention. **The Committee urges the Government to take the necessary steps to bring national law and practice into line with Articles 2, 6, 7 and 15 of the Convention, taking into account the right of the peoples covered by the Convention to decide on their own priorities and participate in national and regional development plans and programmes. Recalling that the Conference Committee welcomed the Government's request for technical assistance, the Committee encourages the Government to pursue that course. It also asks it to:**

- (i) suspend the exploration and exploitation of natural resources which are affecting the peoples covered by the Convention until such time as the participation and consultation of the peoples concerned is ensured through their representative institutions in a climate of full respect and trust, in accordance with Articles 6, 7 and 15 of the Convention;**
- (ii) provide further information on the measures taken, in cooperation with the indigenous peoples, to protect and preserve the environment of the territories they inhabit, in accordance with Article 7(4) of the Convention, including information on coordination between the Energy and Mining Investment Supervisory Body (OSINERGMIN) of the Ministry of Energy and Mines and the Environmental Evaluation and Control Agency (OEFA) of the Ministry of Environment; and**
- (iii) provide a copy of Supreme Decree No. 002-2009-MINAM of 26 January 2009, regulating the participation and consultation of citizens in environmental matters.**

With regard to the benefits of extraction activities, the Committee notes the information supplied by the Government concerning a system of mining royalties and a mining tax. It also notes that in its communication of 2009, the CGTP indicates that this system allows the benefits to be distributed within the state apparatus with no benefits going directly to the communities affected.

The Committee requests the Government to provide information on the specific measures taken to ensure that the peoples concerned participate in the benefits accruing from the exploitation of natural resources in their lands and receive fair compensation for any damage they may sustain as a result of such activities.

Article 14. Legislative Decree No. 994. The Committee notes the observations made by the CGTP in its communication of 2009 concerning Legislative Decree No. 994 "which promotes private investment in irrigation projects to broaden the agricultural horizon". The Committee notes in particular that the abovementioned Decree lays down a special regime for promoting private investment in irrigation projects on unused land (*tierras eriazas*) with agricultural potential belonging to the State. The Committee notes that section 3 of the Decree establishes as state property all *tierras eriazas* with agricultural potential other than such lands for which a title for private or communal ownership is entered in the public records. The Committee notes with **concern** that this provision does not establish the rights of indigenous peoples over traditional lands where there is no official title of ownership. The Committee recalls that, in accordance

with the Convention, traditional occupation confers a right to the land regardless of whether or not such right has been recognized and that, consequently, *Article 14* of the Convention protects not only the lands over which the peoples concerned already have title of ownership but also the lands they traditionally occupy. **The Committee urges the Government to take the necessary steps to determine the lands that the peoples concerned traditionally occupy and to guarantee effective protection of their rights of ownership and possession, including through effective access to appropriate procedures for settling their land claims. Please provide information on the measures adopted to this end.**

Article 31. Educational measures. In its previous comments, the Committee expressed its concern at a number of statements which could give rise to prejudice or misconceptions regarding indigenous peoples. In this regard, the Committee expresses **concern** at the CGTP's statement in its communication of 2009 that a discriminatory and aggressive attitude towards indigenous peoples on the part of the public authority continues to be noted. **The Committee urges the Government to take educational measures as a matter of urgency in all sectors of the national community so as to eliminate any prejudice there may be about the peoples covered by the Convention, in accordance with Article 31.**

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to reply in detail to the present comments in 2010.]

**CONCLUSIONS, ILC COMMITTEE ON THE APPLICATION OF STANDARDS,
CONVENTION NO. 169, PERU**

ILC, 98th session, June 2009

The Committee noted the statement of the Government representative and the discussion that followed. The Committee noted that the Committee of Experts had issued comments over a number of years, expressing concerns over the continuing problems in the application of the Convention in several areas, particularly with regard to the need to establish harmonized criteria for the identification of indigenous peoples (Article 1), the need to develop systematic and coordinated action to protect the rights of these peoples and to guarantee respect for their integrity (Articles 2 and 33), as well as the need to establish adequate mechanisms for consultation and participation, which were provided with the necessary means to carry out their functions, including with regard to the adoption of legislative measures and exploitation of natural resources (Articles 2, 6, 7, 15, 17(2) and 33). The Committee expressed its concern that the Government had repeatedly failed to provide replies to the specific requests for information made by the Committee of Experts.

The Committee noted the Government's indication that a draft framework law on indigenous peoples had been prepared, which, inter alia, defined "indigenous and aboriginal peoples" in terms of Article 1 of the Convention. With regard to Articles 2 and 33, the Government referred to the National Institute of Andean, Amazonian and Afro-Peruvian Peoples (INDEPA), which was established in 2005. With regard to Articles 6 and 17, the Government stated that Legislative Decrees Nos 1015 and 1073, regarding the conditions for the disposal of communal land, had been repealed by Act No. 29261 of 2008. Regarding consultation and participation, the Government had established a Roundtable for Permanent Dialogue between the State of Peru and the Indigenous Peoples of the Peruvian Amazon in March 2009, and in April 2009 the Government had put in place a multi-sectoral commission as another forum for dialogue to address the concerns of the indigenous peoples of the Amazon.

The Committee noted the Government's statement that a number of Legislative Decrees had been issued in 2008 relating to the exploitation of natural resources, including Legislative Decrees Nos 1064 and 1090, and that the divergence of views between the Government and the indigenous peoples concerned regarding these Decrees may not be resolved through the mechanisms of dialogue in place. The Government also informed the Committee of a subsequent mobilization of indigenous peoples and incidents in Bagua on 5 June 2009, which led to numerous deaths and injuries among indigenous peoples and the police.

The Committee expressed its grave concern regarding this violence and the resulting deaths and injuries, and urged all parties to abstain from violence. The Committee called on the Government to make further efforts to guarantee indigenous peoples' human rights and fundamental freedoms without discrimination, in accordance with its obligations under the Convention (Article 3). The Committee noted that the present situation in the country emerged in connection with the enactment of legislative decrees relating to the exploitation of natural resources on lands traditionally occupied by indigenous peoples. The Committee noted that the Committee of Experts, over a number of years, had commented on the enactment of legislation regarding these issues without consultation of the indigenous peoples concerned, which was contrary to the Convention.

The Committee welcomed the stated commitment of the Government to re-establish dialogue, and to put in place a coherent legislative framework addressing the rights and concerns of indigenous peoples. The Committee stressed that genuine dialogue must be based on respect for indigenous peoples' rights and integrity. The Committee welcomed the recent suspension of Legislative Decrees Nos. 1064 and 1090 by Congress, and the establishment of a National Coordination Group for the development of indigenous peoples of the Amazon on 10 June 2009, in order to facilitate the search for solutions to the claims of indigenous peoples of the Amazon. The Committee called on the Government to make more efforts to ensure that no legislation regarding the exploration or exploitation of natural resources was being applied or enacted without prior consultation with the indigenous peoples affected by these measures, in full conformity with the requirements of the Convention.

The Committee stressed the Government's obligation to establish appropriate and effective mechanisms for consultation and participation of indigenous peoples, which was the cornerstone of the Convention. Indigenous peoples had the right to decide their own priorities and to participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly, as provided for in Article 7(1) of the Convention. This would remain an issue of concern if the bodies and mechanisms for consultation and participation of indigenous peoples had no real human and financial means, independence or influence on the relevant decision-making processes. In this regard, the Committee urged the Government to immediately establish a dialogue with indigenous peoples' representative institutions in a climate of mutual trust and respect, and called on the Government to establish dialogue mechanisms as required under the Convention, in order to ensure systematic and effective consultation and participation. In addition, the Committee called on the Government to remove the ambiguities in the legislation as to the identification of the peoples covered by it by virtue of Article 1, which was also a key aspect to be addressed in order to achieve sustainable progress in the application of the Convention.

The Committee urged the Government to take the measures necessary to bring national law and practice into line with the Convention, without delay. The Committee requested the Government to elaborate a plan of action in this regard, in consultation with the representative institutions of indigenous peoples. The Committee welcomed the Government's request for technical assistance and considered that the ILO could make a valuable contribution in this regard, including through the ILO's Programme to Promote ILO Convention No. 169 (PRO169). The Committee requested the Government to provide complete information in its report under article 22 of the ILO Constitution in 2009 replying to all the issues raised in the Committee of Experts' observation, as well as the matters raised in the communications received by the Committee of Experts from the various workers' organizations, which were prepared in collaboration with organizations of indigenous peoples.

Finally, the Committee took note with interest of the information provided by the Government that an invitation had been extended to the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples to visit the country.

FORCED LABOUR CONVENTION, 1930 (NO. 29)

Excerpt from: *Observation, CEACR 2008/79th Session*

Article 1, paragraph 1, and Article 2, paragraph 1, of the Convention. Forced labour by indigenous communities. In the observations that it has been making for many years, the Committee has referred to the existence of forced labour practices (slavery, debt bondage and serfdom) affecting members of indigenous communities, particularly in the Atalaya region in sectors such as agriculture, stock-raising and forestry. In its previous observation, the Committee requested information from the Government on the approval and implementation of the Plan of Action for the Eradication of Forced Labour.

Measures taken by the Government. The Committee notes the establishment of the National Commission to Combat Forced Labour, created by Presidential Decree No. 001-2007-TR, of 13 January 2007, the purpose of which is to act as the permanent coordination body for policies and action against forced labour in the various sectors at both the national and regional levels. Under the presidency of the Minister of Labour and Employment Promotion, the Commission is composed, among other members, of representatives of the Ministries of Labour, Health, Education, Agriculture and of employers' and workers' organizations. The Committee notes with interest that Presidential Decree No. 009-2007-TR approved the National Plan to Combat Forced Labour (hereinafter, the "National Plan"), in the context of which the medium- and long-term policies are intended to address structural issues (the conditions of vulnerability of the victims) and the adoption of short-term coordinating measures to resolve specific instances of forced labour. The measures envisaged in the National Plan include: legislative action to specifically criminalize forced labour and to repress such practices; measures to strengthen and train the inspection services; undertaking investigations in sectors in which there are indications of situations of forced labour; developing a communication strategy to inform the population concerning the problem of forced labour and the computerized processing of complaints of cases of forced labour.

Legislative measures. The Committee notes that one of the objectives of the National Plan (component III) is "the existence of legislation in conformity with international standards respecting freedom of work and rules which give legal guarantees for action against forced labour".

The Committee notes the action that has been envisaged in the National Plan and hopes that the Government will provide information on the progress achieved in relation to:

- the formulation and harmonization of the legislation to combat the issue of forced labour;
- the formulation of a draft text to regulate private employment agencies and systems for the training of the labour force, focusing on the prevention of forced labour, and their integration into the mandate of the labour inspectorate;
- the preparation of a study on the viability of establishing standards for work in specific economic activities in which there are indications of forced labour;
- providing ex officio legal defence services free of charge for citizens who have been victims of forced labour, with the criminal prosecution of persons who have actively committed the crime of forced labour.

Inspection. The Committee notes the major role of labour inspection in combating forced labour and that the action envisaged in the National Plan for institutional strengthening in the field of inspection, includes:

- the creation of mobile inspection units in geographical areas that are difficult to access in which forced labour situations have been identified;
- the establishment of machinery to receive complaints and forward them to the corresponding services;
- the inclusion of a module on forced labour in training plans for the staff of the labour inspection system;
- the inclusion of the subject of fundamental labour rights in the curriculum for the police school.

The Committee notes that, among the first actions planned, a bi-national workshop for Peru and Brazil is to be held in the city of Pucallpa-Ucayali, with the participation of specialists from the Brazilian mobile inspection unit. The principal objective of the workshop is to undertake practical action in the region of Ucayali to combat forced labour in the illegal felling of wood.

The Committee requests the Government to provide information on the conclusions formulated at the bi-national seminar for Peru and Brazil and on the other action envisaged in the National Plan in relation to inspection services.

Research and statistics. Among the measures envisaged to identify the groups affected and the number of victims, the National Plan includes:

- undertaking research on forced labour in specific sectors in which there are indications of situations of forced labour, such as nut harvesting in Madre de Dios, domestic work, fishing and artisanal mining, agriculture and various sectors of production throughout the Peruvian Amazon;
- undertaking regular diagnostic exercises to evaluate the existence or identify evidence of forced labour and its gender dimensions in general terms.

With regard to domestic work under conditions of forced labour, the Committee notes the comments of the International Confederation of Free Trade Unions (ICFTU), now the International Trade Union Confederation (ITUC), forwarded to the Government in September 2006. In its comments, the ITUC alleges that elements of forced labour are found in the domestic work sector. Women form a majority of that sector and they live and work in the household of the employer. Employers often keep their identity documents and this makes it impossible for them to leave their jobs. In many cases, they do not receive any remuneration because they are indebted to their employer, who deducts from their wages food, housing, medical fees and the value of any damage caused by such workers, who have to continue working without wages to cover the costs.

The Committee hopes that the Government will provide information on the investigations that have been carried out in the sectors envisaged in the National Plan, and particularly on the situation of domestic work and the ITUC's allegations.

[..]

TUNISIA

INDIGENOUS AND TRIBAL POPULATIONS CONVENTION, 1957 (NO. 107)

Observation, CEACR 2008/79th Session

The Committee notes the Government's brief report which indicates that issues related to indigenous and tribal populations do not arise in Tunisia. In addition, the Government indicates that under article 6 of the Constitution all Tunisians have equal rights and duties and are equal before the law.

While noting these indications, the Committee also notes that the 2003 Report of the Working Group of Experts on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights has addressed the situation of the Berbers (Amazigh) of North Africa which identify themselves as indigenous peoples. The Working Group refers to estimates according to which 5 per cent of the population of Tunisia are believed to be Amazigh.

The Committee recalls that the Convention has been revised by the Indigenous and Tribal Peoples Convention, 1989 (No. 169) which is oriented towards respect for and protection of indigenous and tribal peoples' cultures, ways of life and traditional institutions. **As indicated in its 1992 general observation, the Committee therefore encourages the Government to consider ratifying Convention No. 169.**

The Committee notes that pending such consideration, the Government remains under the obligation to give effect to the provisions of Convention No. 107 which remain relevant, including *Articles 5, 7 and 11*, or any other provisions which may be applied while respecting generally accepted human rights principles pertaining to indigenous and tribal peoples. **The Committee requests the Government to provide information on the application of the relevant provisions of the Convention, including information on the measures taken to seek the collaboration of representatives of any populations which fall under the scope of the Convention as envisaged in Article 5(a).**

[The Government is asked to reply in detail to the present comments in 2010.]

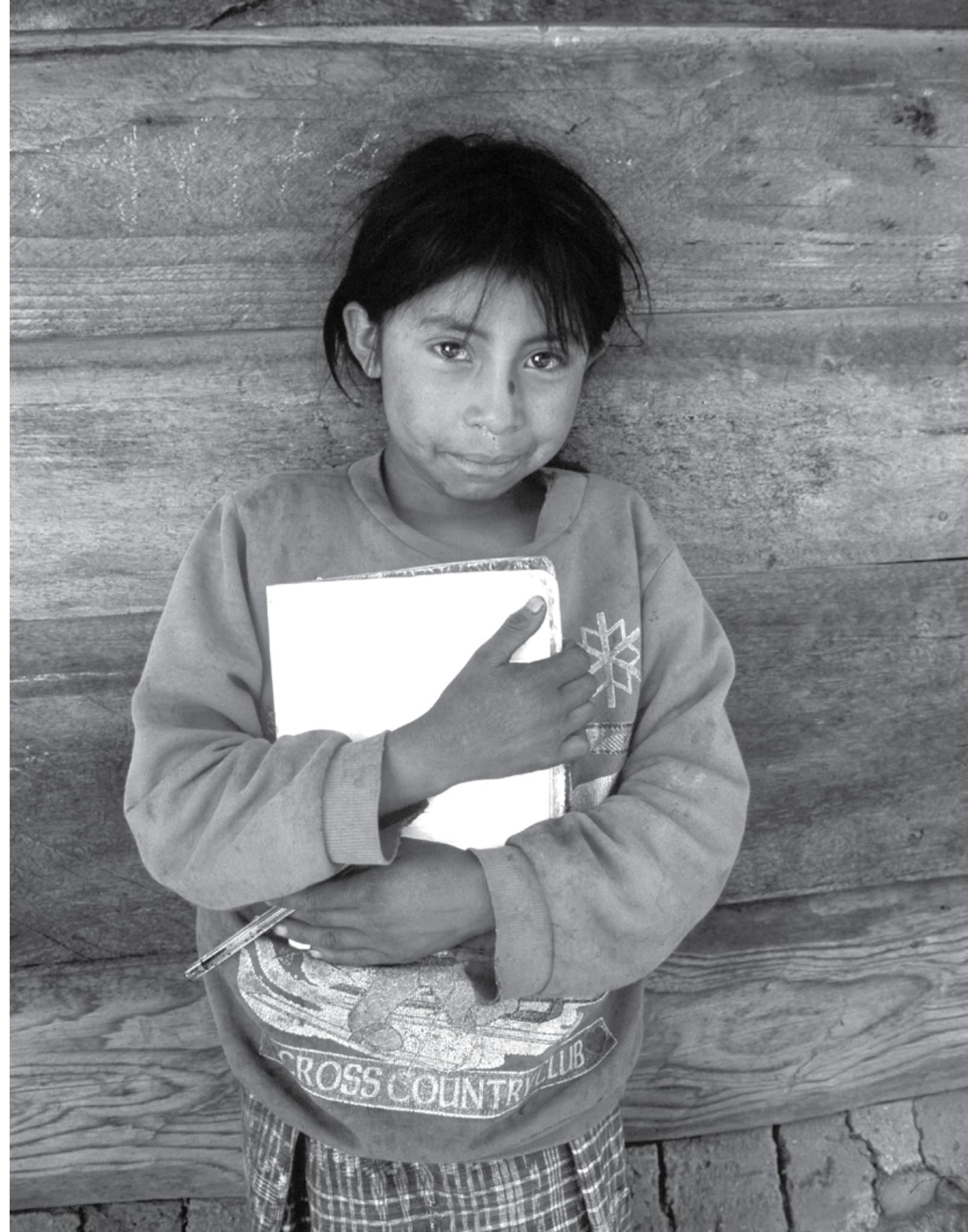
BOLIVARIAN REPUBLIC OF VENEZUELA

INDIGENOUS AND TRIBAL PEOPLES CONVENTION, 1989 (NO. 169)

Observation, CEACR 2009/80th Session

Education and means of communication. Indigenous Languages Act. The Committee notes with **interest** the Indigenous Languages Act, which came into force on the date of its publication in the *Official Gazette* No. 38981 of 28 July 2008. The purpose of the Act is to regulate, promote and reinforce the use, revival, preservation, defence and development of indigenous languages, a means of communication and cultural expression to which indigenous peoples and communities are entitled, the National Institute for Indigenous Languages being set up as the implementing body. It notes in particular that under section 17 of the Act, in order to be president or vice-president of the National Institute for Indigenous Languages, it is necessary to: (1) be indigenous; (2) speak the language of the indigenous people concerned; (3) be trained and have professional and academic experience in the use, research, development and dissemination of indigenous languages; and (4) be nominated by an indigenous people, community or organization. The Committee notes that, under section 28 of the Act, indigenous peoples and communities have the right to participate in the formulation, planning and implementation of public policies relating to indigenous languages and that other sections of the Act also establish the right to participation. **Noting that the final transitional provision of the Act establishes that the Institute will begin to operate no later than one year following the entry into force of the Act, the Committee requests the Government to supply information on the functioning of the Institute and on the application of the Act in practice, particularly the manner in which section 17 is applied and the manner in which participation provided for in the other sections of the Act is undertaken.**

The Committee is raising other points in a request addressed directly to the Government.



ANNEX 1

List of some of the Committee of Experts’ comments published in 2009 that address the situation of indigenous and tribal peoples under the following Conventions:

- Forced Labour Convention, 1930 (No. 29)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Minimum Age Convention, 1973 (No. 138)

CEACR: Individual Observation concerning Forced Labour Convention, 1930 (No. 29)
Democratic Republic of the Congo (ratification: 1960) Published: 2009

CEACR: Individual Observation concerning Forced Labour Convention, 1930 (No. 29)
Peru (ratification: 1960) Published: 2009

CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **Argentina** (ratification: 1968) Published: 2009

CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **Burundi** (ratification: 1993) Published: 2009

CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **Brazil** (ratification: 1965) Published: 2009

CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **Chile** (ratification: 1971) Published: 2009

CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **Democratic Republic of the Congo** (ratification: 2001) Published: 2009

CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **Colombia** (ratification: 1969) Published: 2009

CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **Ethiopia** (ratification: 1966) Published: 2009

CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **Morocco** (ratification: 1963) Published: 2009

CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **Nepal** (ratification: 1974) Published: 2009

CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **El Salvador** (ratification: 1995) Published: 2009

CEACR: Individual Observation concerning Minimum Age Convention, 1973 (No. 138)
Honduras (ratification: 1980) Published: 2009

CEACR: Individual Observation concerning Worst Forms of Child Labour Convention, 1999 (No. 182) **Bolivia** (ratification: 2003) Published: 2009

CEACR: Individual Observation concerning Worst Forms of Child Labour Convention, 1999 (No. 182) **Honduras** (ratification: 2001) Published: 2009

CEACR: Individual Direct Request concerning Forced Labour Convention, 1930 (No. 29)
Bolivia (ratification: 2005) Submitted: 2009

CEACR: Individual Direct Request concerning Forced Labour Convention, 1930 (No. 29)
Central African Republic (ratification: 1960) Submitted: 2009

CEACR: Individual Direct Request concerning Forced Labour Convention, 1930 (No. 29)
Congo (ratification: 1960) Submitted: 2009

CEACR: Individual Direct Request concerning Forced Labour Convention, 1930 (No. 29)
Nepal (ratification: 2002) Submitted: 2009

CEACR: Individual Direct Request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **Argentina** (ratification: 1968) Submitted: 2009

CEACR: Individual Direct Request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **Brazil** (ratification: 1965) Submitted: 2009

CEACR: Individual Direct Request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **Ecuador** (ratification: 1962) Submitted: 2009

CEACR: Individual Direct Request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **Finland** (ratification: 1970) Submitted: 2009

CEACR: Individual Direct Request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **Guyana** (ratification: 1975) Submitted: 2009

CEACR: Individual Direct Request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **Nicaragua** (ratification: 1967) Submitted: 2009

CEACR: Individual Direct Request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **Philippines** (ratification: 1960) Submitted: 2009

CEACR: Individual Direct Request concerning Minimum Age Convention, 1973 (No. 138)
Bolivia (ratification: 1997) Submitted: 2009

CEACR: Individual Direct Request concerning Minimum Age Convention, 1973 (No. 138)
Congo (ratification: 1999) Submitted: 2009

CEACR: Individual Direct Request concerning Minimum Age Convention, 1973 (No. 138)
Colombia (ratification: 2001) Submitted: 2009

CEACR: Individual Direct Request concerning Worst Forms of Child Labour Convention, 1999 (No. 182) **Bolivia** (ratification: 2003) Submitted: 2009

CEACR: Individual Direct Request concerning Worst Forms of Child Labour Convention, 1999 (No. 182) **Chile** (ratification: 2000) Submitted: 2009

CEACR: Individual Direct Request concerning Worst Forms of Child Labour Convention, 1999 (No. 182) **Congo** (ratification: 2002) Submitted: 2009

CEACR: Individual Direct Request concerning Worst Forms of Child Labour Convention, 1999 (No. 182) **Colombia** (ratification: 2005) Submitted: 2009

CEACR: Individual Direct Request concerning Worst Forms of Child Labour Convention, 1999 (No. 182) **Ecuador** (ratification: 2000) Submitted: 2009

CEACR: Individual Direct Request concerning Worst Forms of Child Labour Convention, 1999 (No. 182) **Guatemala** (ratification: 2001) Submitted: 2009

CEACR: Individual Direct Request concerning Worst Forms of Child Labour Convention, 1999 (No. 182) **Suriname** (ratification: 2006) Submitted: 2009

ANNEX 2

Report form for the Indigenous and Tribal Peoples Convention, 1989 (No. 169)

The present report form is for the use of countries which have ratified the Convention. It has been approved by the Governing Body of the International Labour Office, in accordance with article 22 of the ILO Constitution, which reads as follows: "Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such a form and shall contain such particulars as the Governing Body may request."

PRACTICAL GUIDANCE FOR DRAWING UP REPORTS

First reports

If this is your Government's first report following the entry into force of the Convention in your country, full information should be given on each of the provisions of the Convention and on each of the questions set out in the report form.

Subsequent reports

In subsequent reports, information need normally be given only on the following points:

- (a) any new legislative or other measures affecting the application of the Convention;
- (b) replies to the questions in the report form on the practical application of the Convention (for example, statistics, results of inspections, judicial or administrative decisions) and on the communication of copies of the report to the representative organisations of employers and workers and on any observations received from these organisations;
- (c) replies to comments by supervisory bodies: the report must contain replies to any comments regarding the application of the Convention in your country which may have been addressed to your Government by the Committee of Experts or by the Conference Committee on the Application of Conventions and Recommendations.

Article 22 of the Constitution of the ILO

Report for the period ... to ... made by the Government of ... on the INDIGENOUS AND TRIBAL PEOPLES CONVENTION, 1989 (No. 169) (ratification registered on ...)

- I. Please give a list of laws, regulations, rules, etc., which give effect to the provisions of the Convention. Where this has not already been done, please forward copies of such texts to the International Labour Office with this report. Please give any available information concerning the extent to which these laws, regulations and rules have been enacted or modified to permit, or as a result of, ratification.
- II. Please indicate in detail for each of the following Articles of the Convention, the provisions of the above-mentioned legislation, administrative regulations, etc., or other measures under which each Article is applied. In addition, please provide any information specifically requested on certain Articles. If in your country ratification of the Convention gives the force of national law to its terms, please indicate by virtue of what constitutional provisions the ratification has had this effect. Please also specify what action has been taken to make effective those provisions of the Convention which require a national authority to take certain specific steps for its implementation, such as measures to define its exact scope and the extent to which advantage may be taken of permissive exceptions provided for in certain Articles of the Convention, measures to draw the attention of the parties concerned to its implementation, and arrangements for adequate supervision and penalties. If the Committee of Experts or the Conference Committee on the Application of Conventions and Recommendations have requested additional information or have made an observation on the measures adopted to apply the Convention, please supply the information asked for or indicate the action taken by your Government to settle the points in question.

PART I. GENERAL POLICY

Article 1

- 1. This Convention applies 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 or the establishment of present state boundaries and who; irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
- 2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.
- 3. The use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.
 - 1. Please indicate the groups of the national population which, in the Government's view, fall within the scope of the Convention and are covered by the measures designed to give effect to it.
 - 2. Please indicate the size of the groups concerned (census or estimate) and the regions of the country inhabited by them.
 - 3. Please indicate how effect is given to paragraph 2 of this Article.

Article 2

- 1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.
- 2. Such action shall include measures for:
 - (a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and 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, their customs and traditions and their institutions;
 - (c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.
 - 1. Please give particulars of the measures taken to implement this Article.
 - 2. Please indicate the public authorities or other entities responsible for developing and carrying out these programmes.
 - 3. Please indicate how the peoples concerned have been associated in the development of these programmes.

Article 3

- 1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.
- 2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention. Please indicate any special measures which have been adopted to apply this Article.

Article 4

- 1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.
- 2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.
- 3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.
 - 1. Please indicate any special measures which have been found appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.
 - 2. Please indicate the manner in which the wishes of the peoples concerned have been determined in such cases.

Article 5

In applying the provisions of this Convention:

- (a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;
- (b) the integrity of the values, practices and institutions of these peoples shall be respected; (c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected. Please indicate how account is taken of the provisions of this Article, any difficulties encountered in its application, and how the participation and co-ordination of the peoples concerned has been assured.

Article 6

- 1. In applying the provisions of this Convention, governments shall:

- (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
 - (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
 - (c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.
2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstance, with the objective of achieving agreement or consent to the proposed measures.
 1. *Please indicate the manner in which the peoples concerned are consulted when consideration is being given to legislative or administrative measures which may affect them directly.*
 2. *Please indicate the manner in which the participation of these peoples in decision-making has been facilitated.*

Article 7

1. The peoples concerned shall 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, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.
2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.
3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.
4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.
 1. *Please give particulars of measures which have been taken for the development of these regions, and indicate how the participation of the peoples concerned in the formulation, implementation and evaluation of these measures is assured.*
 2. *Please indicate whether studies have been carried out to assess the impact on these peoples of planned development activities, and how these peoples have been associated with them.*
 3. *Please indicate the measures taken to protect and preserve the environment of the territories inhabited by these peoples, and how they have been associated with these measures.*

Article 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.
2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.
3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

Please indicate how account is taken of the customs or customary laws of the peoples concerned, in applying national laws and regulations, and any procedure which may have been established for resolving conflicts which may arise in the application of paragraph 2.

Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.
2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

Please give examples of the practice followed in the application of this Article.

Article 10

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of

their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

Please give examples of the practice followed in the application of this Article.

Article 11

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

Please indicate the methods of supervision employed and the sanctions prescribed to ensure the application of this Article.

Article 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

1. *Please indicate the methods which ensure that the peoples concerned are able to take legal proceedings for the protection of their rights.*
2. *Please indicate the methods used to ensure that members of these peoples can understand and be understood in legal proceedings.*

PART II. LAND

Article 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.
2. The use of the term "lands" in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

Article 14

1. The rights of ownership' and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the rights of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Paragraph 1

1. *Please indicate the forms of land-holding practised by the peoples concerned, the regions where these forms apply, and the groups which benefit from them.*
2. *In the case of collective ownership, please indicate the principal forms in which the rights recognised by law are exercised. In the case of individual ownership, please indicate whether there is any common use of land and the legal basis for it.*
3. *Please indicate any cases in which nomadic or other groups use lands not exclusively occupied by them, and the form in which the right to do so is recognised.*

Paragraph 2

Please indicate the steps which have been taken to identify the lands concerned and to guarantee the effective protection of the rights of these peoples to these lands.

Paragraph 3

Please indicate whether procedures exist to resolve land claims by the peoples concerned, and examples illustrating their use.

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or subsurface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

1. Please indicate how the rights of these peoples to natural resources have been specially safeguarded, and how they are exercised.

2. Please indicate whether the State retains the ownership of any resources pertaining to lands, and if so what procedures exist to apply paragraph 2 of this Article.

Article 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.
2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.
3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.
4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases 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. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.
5. Persons thus relocated shall be fully compensated for any resulting loss or injury.
 - 1. Please indicate whether, and in what cases, the peoples concerned may be removed from the lands which they occupy, and the procedures followed in such cases in accordance with paragraph 2.*
 - 2. Please give particulars of the cases in which persons or groups belonging to the peoples concerned have been removed from their habitual territories, and of the measures taken for their relocation and/or compensation. Please describe in particular the steps taken to obtain their free and informed consent in such cases; and if this could not be obtained the procedures established by national laws and regulations for taking such decisions.*

Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.
2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.
3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.
 - 1. Please indicate what procedures have been established by these peoples for the transmission of land rights among their own members, and whether there is any limitation on their right to alienate their lands or otherwise transmit their rights outside their own community.*
 - 2. Please indicate what measures have been taken to apply paragraph 3.*

Article 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

Please indicate the arrangements made to give effect to this provision, and the sanctions prescribed in case of infringements.

Article 19

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population 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. Please give particulars of existing national agrarian programmes, and of the measures taken to give effect to this Article in relation to such programmes (e.g. provision of land, land and water use rights,

technical advice, supply of tools and equipment, marketing and credit facilities).

PART III. RECRUITMENT AND CONDITIONS OF EMPLOYMENT

Article 20

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.
2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:
 - (a) admission to employment, including skilled employment, as well as measures for promotion and advancement;
 - (b) equal remuneration for work of equal value;
 - (c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, 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.
3. The measures taken shall include measures to ensure:
 - (a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;
 - (b) that workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;
 - (c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;
 - (d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.
4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.
 - 1. Please indicate the special measures adopted, within the framework of national laws and regulations, to ensure the protection provided for in paragraph 1. If such measures have not been considered necessary, please explain why.*
 - 2. Please indicate the measures taken to prevent all discrimination as regards the various measures mentioned in paragraph 2.*
 - 3. Please indicate the measures taken in application of paragraph 3, and indicate what measures have been taken to ensure adequate labour inspection in the areas concerned.*

PART IV. VOCATIONAL TRAINING, HANDICRAFTS AND RURAL INDUSTRIES

Article 21

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

Please indicate the measures taken to implement this Article.

Article 22

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.
2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.
3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

Please indicate whether any studies have been carried out in application of paragraph 3, and how the peoples concerned were involved in these studies.

Please indicate whether any steps have been taken to enable the peoples concerned to assume responsibility for such programmes.

Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these peoples and whenever appropriate, ensure that these activities are strengthened and promoted.
2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.
Please indicate the measures taken to implement this Article.

PART V. SOCIAL SECURITY AND HEALTH

Article 24

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.
Please indicate to what extent existing social security schemes cover the peoples concerned, both as concerns wage earners among them and others, and what measures have been taken to extend their coverage if necessary.

Article 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.
2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.
3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.
4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.
Please supply information, in particular, on the number and kinds of health services which exist in “ the regions inhabited by these peoples, the size of their medical, paramedical and nursing staff, and the distribution of the staff among the regions served. Please also supply an estimate of the number of indigenous or tribal peoples benefiting from these services.
Please give particulars of the measures taken in accordance with paragraphs 2, 3 and 4.

PART VI. EDUCATION AND MEANS OF EDUCATION

Article 26

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.
Please indicate the measures in force to provide the peoples concerned with education at all levels, and supply information as to the numbers and kinds of schools, the number of teachers, the regions in which the schools operate, the number of pupils, etc.

Article 27

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.
2. The competent authority’ shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.
3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this

- purpose.
1. *Please indicate how educational programmes and services for the peoples concerned have been developed and implemented in accordance with this Article, and what measures have been taken for the training of members of these peoples and their involvement in the formulation and implementation of these programmes.*
 2. *Please indicate what steps have been taken to recognise the right of these peoples to establish their own institutions and facilities, to establish minimum standards for this purpose, and to provide appropriate resources.*

Article 28

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.
2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.
3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned. Please indicate the measures taken to give effect to this Article.

Article 29

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.
Please indicate the measures taken to give effect to this Article.

Article 30

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.
2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples. Please indicate the measures taken to give effect to this Article, and, by way of example, supply samples of documentary material used in this connection.

Article 31

Educational measures shall be taken among all 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. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.
Please indicate the measures taken to give effect to this Article.

PART VII. CONTACTS AND CO-OPERATION ACROSS BORDERS

Article 32

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.
Please indicate whether any of the indigenous or tribal groups in the country are separated by international borders from other members of their own peoples in other countries. If so, please indicate the measures taken to give effect to this Article, and in particular whether any international agreements to this effect have been concluded.

PART VIII. ADMINISTRATION

Article 33

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.
3. These programmes shall include:
(a) the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;

- (b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.
Please give particulars of the agencies which administer the programmes covered by this Convention, and indicate what measures have been taken to ensure that they have the means necessary for the proper fulfilment of their functions.

PART IX. GENERAL PROVISIONS

Article 34

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

Article 35

The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

- III. In so far as such information has not been supplied under Part II above, please state to what authorities and institutions the application of the above-mentioned laws, regulations, rules, etc., is entrusted.
- IV. Please state whether courts of law or other tribunals have given decisions involving questions of principle relating to the application of the Convention. If so, please supply: the text of these decisions.
- V. If your country has received assistance or advice within the context of a technical co-operation project being carried out by the ILO, please indicate what action was taken as a result. Please indicate also any factors which may have prevented or delayed such action.
- VI. Please give a general appreciation of the manner in which the Convention is applied in your country including, for instance, extracts from official reports, information regarding the number and nature of contraventions reported, and any other particulars bearing on the practical application of the Convention.
- VII. Please indicate the representative organisations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organisation.⁴ If copies of the report have not been communicated to representative organisations of employers and/or workers, or if they have been communicated to bodies other than such organisations, please supply information on any particular circumstances existing in your country which explain the procedure followed. Please indicate whether you have received from the organisations concerned any observations, either of a general kind or in connection with the present or the previous report, regarding the practical application of the provisions of the Convention or the application of the legislation or other measures implementing the Convention. If so, please communicate the text of these observations, together with any comments that you consider useful.
- VIII. Although such action is not required, the government may find it helpful to consult organisations of indigenous or tribal peoples in the country, through their traditional institutions where they exist, on the measures taken to give effect to the present Convention, and in preparing reports on its application. In so far as this is not already stated in the report, please indicate whether such consultations have been carried out, and what the result has been.

4) Article 23, paragraph 2, of the Constitution reads as follows: "Each Member shall communicate to the representative organisations recognised for the purpose of article 3 copies of the information and reports communicated to the Director-General in pursuance of articles 19 and 22."



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