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**Committee of Experts on the Application  
of Conventions and Recommendations**

# **Indigenous and Tribal Peoples Convention, 1989 (No. 169)**



**General observation,**  
publication 2019

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At its 2018 session (November–December), the Committee of Experts on the Application of Conventions and Recommendations (CEACR) adopted a general observation on the application of the Indigenous and Tribal Peoples Convention, 1989 (No. 169). The text of this observation is reproduced below.

As part of the regular supervisory system on the application of ILO international labour standards, the CEACR is an independent body whose function is to provide an impartial and technical assessment of the application of these standards by ILO member States. The CEACR is composed of 20 experts, eminent jurists from different geographical regions, legal systems and cultures.

In addition to the comments directly addressed to Governments, the CEACR may decide to publish the so-called “general observations” on certain issues concerning the application of a Convention.

## General observation

Throughout its 100 years of existence, the matter of indigenous peoples has always been on the ILO agenda. On the occasion of the 30th anniversary of the adoption of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Committee wishes to highlight some important advances made in the application of this instrument which the Committee has been able to note in its examination of the measures taken by the States that have ratified it. This anniversary also allows the Committee to underline some of the difficulties which continue to hamper the full realization of the rights of indigenous and tribal peoples enshrined in the Convention.

The Convention is the only international treaty that comprehensively and specifically covers the rights of indigenous and tribal peoples. The Committee recalls that the Convention revises the Indigenous and Tribal Populations Convention, 1957 (No. 107), which aimed at the integration of indigenous and tribal populations into the national communities of States. Considering that this approach was regarded as outdated, Convention No. 169 embodies the principles of respect for the cultural integrity of indigenous peoples, recognizing their value, and of their participation in decisions that affect them. To date, a total of 23 countries have ratified Convention No. 169. At its 328th Session (October–November 2016), the Governing Body requested the Office to commence follow-up with the member States currently bound by Convention No. 107, encouraging them to ratify Convention No. 169 as the most up-to-date instrument in this subject area.

With regard to the *identification* of indigenous and tribal peoples, the Committee has underscored the importance of guaranteeing that all peoples who meet the criteria provided for in the Convention, independent of their legal recognition in national legislation, enjoy the rights recognized in this instrument. The Convention enumerates a set of objective criteria to identify indigenous and tribal peoples. It provides that 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. Thus self-identification constitutes the subjective criterion which complements the objective criteria. The Committee has noted that many countries sent detailed statistical information in relation to the number and geographical location of indigenous and tribal

peoples. In addition, it should be noted that when conducting population census, some countries applied the criteria of self-identification. In this respect, the Committee reiterates that having reliable statistical data on the indigenous population, their location and socio-economic conditions constitutes an essential tool for effectively guiding and defining policies relating to indigenous peoples, as well as for monitoring the impact of the action carried out. All this is also crucial to enable governments to take appropriate measures to recognize, protect and value the cultural and social identity, customs and traditions of indigenous peoples.

The Committee notes that the fundamental concept of the Convention is the right of indigenous peoples to *participate* effectively in decisions that may affect them, as well as in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly. In order to ensure effective participation, the Committee considers it key to develop and strengthen institutions with the participation of indigenous peoples. Several countries have established bodies tasked with formulating and coordinating national policy on indigenous matters, whether these be ministries or vice-ministries responsible for foreign affairs, advisory councils, coordinating bodies or independent institutions. In some countries, a cross-cutting approach has been adopted through the establishment of specifically dedicated areas in most ministries and public institutions. Furthermore, other countries have created permanent dialogue and participation forums. Irrespective of the type of structure established, the Committee has noted on various occasions that the body responsible for indigenous affairs must have adequate staff and financial resources, a well-defined legal framework and decision-making power. Additionally, indigenous peoples must be represented and participate in those institutions.

The Committee notes that the measures taken to strengthen indigenous and tribal peoples' representative institutions contribute to fulfilling the State's obligation to develop a *systematic and coordinated action* to implement the Convention. The aim of the systematic and coordinated action is to guarantee consistency among the different governmental institutions responsible for implementing the programmes and policies relating to indigenous peoples and is essential for the elimination of the inequalities that continue to affect some of these indigenous peoples. Often, the Committee has requested governments to provide information on the measures to

give effect to that coordination and the manner in which the participation of indigenous peoples is guaranteed in the planning, implementation and evaluation of those measures.

The Committee underscores that the Convention enshrines the right of indigenous peoples to be *consulted* as a tool for ensuring the full participation of indigenous peoples in decisions that affect them. To that end, the Convention provides for the obligation of the State to consult with the indigenous peoples whenever consideration is being given to legislative or administrative measures which may affect them directly; and particularly before undertaking or permitting any programmes for the exploration or exploitation of existing resources pertaining to their lands. The Committee notes that in several countries, considerable efforts have been made to establish appropriate mechanisms for consultation with indigenous peoples, with the active participation with those peoples. Specific laws have been adopted which define the scope of the consultation and govern its procedure. In other countries, legislative drafts are being examined, aimed at regulating the consultation process with indigenous peoples. The Committee recalls the importance of carrying out prior consultation with the indigenous peoples before adopting such legislation or establishing such consultation mechanism. In this respect, the Committee notes that the Convention and the comments of the Committee have comprised a reference framework for these initiatives. The Committee also had the opportunity to clarify the concept of “consultation” in its general observations published in 2009 and 2011. The Committee noted that consultations must be formal, full and exercised in good faith; and there must be a genuine dialogue between governments and indigenous and tribal peoples characterized by communication and understanding, mutual respect, good faith and the sincere wish to reach a common accord. The Committee also recalls that it is incumbent upon governments to establish appropriate mechanisms for consultation at the national level and that public authorities must undertake consultations, without interference, in a manner appropriate to the circumstances, through indigenous and tribal peoples’ representative institutions, and with the objective of reaching agreement or consent to the proposed measures.

The Committee wishes to highlight that consultation should be seen as an essential instrument for the promotion of effective and meaningful social dialogue, mutual understanding as well as legal certainty. Consultation also constitutes an important step towards

guaranteeing the free, effective and permanent participation of indigenous and tribal peoples in decision-making processes that affect them. The Committee recalls that, from a joint reading of the provisions of the Convention, it follows that consultation goes beyond one particular measure. Consultation aims also at promoting the application of all the provisions of the Convention in a systematic and coordinated manner, in cooperation with the indigenous peoples, which entails a gradual process of establishing adequate bodies and mechanisms for this purpose.

With respect to the matter of *land*, the Committee recalls that the Convention recognizes the spiritual and cultural value that indigenous peoples attribute to the land. On several occasions, the Committee has noted that the use of the term “lands” in the Convention covers the total environment of the areas which the peoples concerned occupy or otherwise use (for example, for hunting, fishing or religious and cultural rituals). With respect to the rights of ownership and possession of indigenous peoples over the lands which they traditionally occupy, the Committee notes that measures have been adopted with a view to securing legal recognition of this right in national legislation. In certain countries this right is enshrined in the Constitution. In this respect, indigenous land titling programmes and policies have been developed and implemented, and various governments have provided detailed information on the titled regions and the communities benefiting from these programmes. It is also necessary to note the adoption and implementation of land restitution plans for internally displaced persons with the participation of the indigenous peoples concerned. Despite the adoption of such measures, the determination of lands traditionally occupied by indigenous peoples, and ultimately the recognition of their rights to ownership and possession, continue to be critical issues in some countries, even generating conflict. The Committee recalls that the recognition of traditional occupation as the source of ownership and possession rights is the cornerstone on which the land rights system established by the Convention is based, and encourages governments to take the necessary measures to establish appropriate procedures in this regard. Furthermore, the Committee wishes to emphasize the need to adopt specific measures to prevent the removal of indigenous peoples from their land. In this regard, the Convention establishes that the removal and relocation of indigenous peoples from their lands constitutes an exceptional measure and shall only take place with their free and informed consent.



With regard to *conditions of employment*, the Committee has noted with concern the serious abuses against indigenous workers, especially in rural areas and the agricultural sector. In this respect, the Committee requested governments to adopt measures to eradicate forced labour and discrimination against men and women workers belonging to indigenous peoples, highlighting the need to ensure respect of their fundamental rights at work. To this end, it is fundamental to strengthen labour inspection in regions inhabited by indigenous peoples. The Committee also highlighted the importance of adopting measures to promote the participation of women in the labour market. With respect to vocational training, the Committee invited governments to develop vocational training programmes taking into account indigenous peoples' economic, environmental, social and cultural conditions.

The Committee recalls that under the Convention the right of indigenous peoples is recognized to participate in the formulation and implementation of *education* programmes. The Committee has noted that, in order to promote the use of indigenous peoples' traditional languages in schools, several governments have formulated and implemented bilingual education with the participation of members of those peoples. At the same time, indigenous teacher training programmes on the education curriculum have been carried out, taking cultural perspectives into account in their implementation. The Committee also noted special measures adopted to revive languages at risk of extinction.

The Committee welcomes the measures taken by governments to promote intercultural *health* services to which the members of indigenous communities contribute with their knowledge of traditional medicine. The Committee also encourages governments to intensify efforts to extend social security coverage to the members of indigenous peoples. In this regard, the Committee particularly emphasizes the importance of ensuring that account is taken of the characteristics, needs and specific views of indigenous and tribal peoples in the formulation and implementation of national social protection systems.

The Committee highlights the fact that, despite the progress made in the implementation of policies and programmes for recognizing and implementing the rights of indigenous peoples provided for in the Convention, the *human rights* situation of indigenous peoples in a number of countries remains a source of concern. The Committee has urged governments on several occasions to take measures to prevent

acts of violence suffered by indigenous peoples and their representatives, including murder and intimidation, in the context of their action to defend their rights. The Committee is also concerned at the complaints submitted by the social partners relating to the criminalization of social protest. The Committee recalls the obligation of States which have ratified the Convention to ensure that indigenous peoples fully enjoy all their human rights. In this regard, the Committee underlines the importance of taking appropriate measures to ensure that all acts of violence against indigenous persons or peoples are investigated and that the personal integrity and safety of members of indigenous peoples are guaranteed. The Committee recalls the importance of ensuring that indigenous peoples are aware of their rights and have access to justice in order to assert their rights. The Convention specifically provides that measures shall be taken to ensure that indigenous or tribal peoples can understand and be understood in legal proceedings.

The Committee notes that, as part of the implementation of the Strategy for indigenous peoples' rights for inclusive and sustainable development, adopted by the Governing Body in 2015, the Office will need to continue with awareness-raising and training activities relating to the Convention and devise and disseminate tools encompassing experiences and good practices to provide guidance for constituents when adopting policies and programmes relating to indigenous peoples. The Committee welcomes the adoption of this Strategy which demonstrates the importance of the Convention for the fulfilment of the ILO's mandate, and hopes that in this context the Office can provide appropriate technical assistance to countries which request it. The Committee notes that the Strategy provides for reinforcing collaboration within the United Nations system with respect to promoting the rights of indigenous peoples. In this regard, the Committee notes that the Convention and the United Nations Declaration on the Rights of Indigenous Peoples, adopted in 2007, constitute two legal instruments of different nature and scopes which complement and reinforce each other. The Committee considers that the effective implementation of the Convention contributes towards achieving the objective of the Declaration as well as towards achieving the United Nations Sustainable Development Goals.

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