



ORGANIZACION INTERNACIONAL DEL TRABAJO

Equipo Técnico Multidisciplinario (ETM)

Pueblos Indígenas



Introduction to ILO Convention No. 169

When Convention No.169 on Indigenous and Tribal Peoples was adopted, the International Labour Conference (Geneva, June, 1989) observed that in many parts of the world these peoples do not enjoy the fundamental human rights to the same degree as other members of the national societies to which they belong, and recognized their aspiration to exercise control of their own institutions, their own livelihood and their economic development.

The new Convention, which revises ILO Convention No.107 (1957), 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 and regulations, and to those peoples of independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographic region to which the country belongs, at the time of conquest or colonization 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.

The basic concepts of the Convention are respect and participation. Respect for the culture, spirituality, social and economic organization and their identity, all constituting essential premises regarding the *enduring nature* of indigenous and tribal peoples. Convention No. 107 was intended to provide protection, but it also assumed that the problem of indigenous and tribal populations was one that would disappear with the gradual integration of these peoples into the societies in which they lived. Convention No. 169 also presumes that indigenous and tribal peoples are able to speak for themselves and to take part in the decision-making process as it affects them and that they have a *right* to take part in this decision-making process, and that their contribution will be a valuable one in the country in which they live.

Self-identification as indigenous (or tribal) shall be considered as a fundamental criterion for determining the groups to which the provisions of this Convention apply. In other words, no State or group has the right to deny the identity of an indigenous or tribal individual or collectivity. The inclusion of the term "peoples" instead of "populations" was the result of lengthy discussions and consultations during the process leading to the adoption of the Convention. It was finally agreed that the only correct term was "peoples" because this term conveys recognition of the existence of organized societies with an

identity of their own, rather than mere groupings sharing some racial or cultural characteristics. After protracted discussions, it was also decided that 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." (third paragraph of article 1.)

The inclusion of this paragraph responded in part to the concern expressed by several governments over the question as to whether the use of the term "peoples", in this connection, would mean that their right to secede from the countries in which they lived would be recognized in international law. It was also decided that it was outside the competence of the ILO to determine how the term "self-determination" should be interpreted in general international law. It was understood, however, that the Convention does not impose any limitation on self-determination nor takes any position for or against self-determination.

Two articles (articles 6 and 7) are central to the way the Convention should be applied. Article 6 requires governments to establish means by which these peoples can freely participate at all levels of decision-making in elective and administrative bodies, too at least the same extent as other sectors of the population. It also requires governments to consult indigenous and tribal peoples, through adequate procedures and their representative institutions, whenever consideration is given to legislative or administrative measures which may affect them directly. Consultations on the application of the Convention have to be undertaken in good faith and in a form appropriate to the circumstances, with the aim of achieving an agreement or consent to the measures proposed.

Article 7 is the other of the central provisions of the Convention. It states that these peoples have the right to decide their own development priorities and to exercise control over their own economic, social and cultural development. With regard to regional and national plans and programmes affecting them directly, indigenous and tribal peoples shall participate in their formulation, implementation and evaluation. Moreover, plans of overall economic development for the areas inhabited by indigenous and tribal communities have to be designed with a view, among other things, to improve their living conditions, employment opportunities, and educational attainments. In addition, governments are required, whenever appropriate, to carry out, in cooperation with the indigenous or tribal peoples concerned, studies in order to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The cooperation of indigenous and tribal peoples must be sought also in the design, execution and evaluation of health and education services, including vocational training schemes.

Convention No. 169 reinforces various provisions already present in Convention No. 107; for example, that indigenous and tribal peoples have the right to retain their customs and institutions, including traditional methods of dealing with offenses committed by their members, where these are not incompatible with fundamental rights established by national and international law. In applying national laws and regulations to the peoples concerned, governments are also required to have due regard to the customary law and the social, economic and cultural characteristics of indigenous and tribal peoples. The new Convention provides that indigenous and tribal peoples shall be able to take legal proceedings to protect their rights. Also, that measures have to be taken by the judiciary

enabling the peoples concerned to understand and be understood in these proceedings.

No doubt one of the most important chapters of the Convention is the one dealing with land rights, since land and its natural resources are in fact the principal source of livelihood, social and cultural cohesion, and spiritual welfare of indigenous and tribal peoples. The Convention requires that governments shall respect the special importance for the cultures and spiritual values of these 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. The rights of ownership and possession over the lands which they traditionally occupy shall be recognised and, in addition, measures shall be taken in appropriate cases 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. The Convention also requires that adequate procedures shall be established within the national legal system to resolve land claims of the peoples concerned and that governments shall take steps to identify the lands which these peoples traditionally occupy and to guarantee effective protection of their rights to ownership and possession. Furthermore, the new instrument contains provisions regarding the rights of indigenous and tribal peoples to the resources pertaining to their lands. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

The Convention provides that indigenous and tribal peoples shall not be removed from the lands which they occupy. This important general principle is to safeguard the peoples concerned from being removed from their lands, mainly because of the denial of their customary rights; and when relocated, they have often not been properly compensated or resettled. However, when relocation is necessary as an exceptional measure, it should take place only with their free and informed consent. Governments are first required to seek the free and informed consent of the peoples concerned. In the cases in which consent cannot be obtained, relocation can only take place after appropriate procedures established by national law and regulations. These have to include public enquiries, whenever appropriate, and the peoples concerned should have the opportunity for effective representation at these enquiries in every case.

Convention No. 169 provides that indigenous and tribal peoples should have an opportunity to acquire education at all levels, at least on an equal footing with the rest of the national community and that these educational programmes and services should be adapted to address their special needs and should incorporate their histories, their knowledge and technologies, their value systems and their aspirations. It provides that, whenever practical, children belonging to these peoples should 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. Indigenous education must be bilingual and bicultural. The Convention further mandates governments to promote among non-indigenous citizens respect, tolerance and understanding of indigenous peoples, through educational measures providing an accurate and non-biased depiction of the past and values of these peoples. Regarding health, governments are required to secure for the peoples concerned the highest attainable standard of physical and mental health. To achieve this goal, health services shall be adequate, namely community-based and drawing upon their traditional preventive and healing practices and medicines. This constitutes a recognition of the value of traditional medicine and of the need to preserve and further develop it. The Convention also establishes that coverage of social security schemes,

applicable to all citizens, shall be gradually expanded, to encompass indigenous and tribal peoples.

The Convention contains a number of other important provisions. For example, it requires governments to adopt special measures to ensure [the] effective protection of the peoples concerned with regards to recruitment and conditions of employment. Special measures should be taken to ensure equal opportunities and equal treatment in employment for men and women from indigenous and tribal peoples. With regards to indigenous women workers, there is a provision, unique in international law, which protects them from sexual harassment and abuses. A number of provisions deal with vocational training and promotion of rural and community-based industries, as well as with the obligation of governments to recognize subsistence economy and traditional activities such as hunting, fishing, trapping and gathering as important factors in the maintenance of their cultures, their economic self-reliance and their development. Regarding contact and co-operation across borders, the Convention provides that governments should take measures to facilitate contacts and cooperation between these peoples across borders, including the adoption of international agreements or treaties in order to provide special access to them. This provision also means that indigenous and tribal peoples are able to, and would benefit from, communicating with peoples in other countries in order to build international solidarity.

A number of general provisions require that governments deal with, for example, the establishment of agencies or other appropriate mechanisms to administer programmes affecting indigenous and tribal peoples, and to ensure that they have the necessary resources to carry out the functions assigned to them.

Convention No. 169 is the most comprehensive and up-to-date international instrument on the rights of indigenous and tribal peoples. As all other ILO Conventions adopted since 1919, Convention No. 169 is drafted as a treaty. It is an agreement which becomes legally binding once it is ratified by governments. Until ratified, it serves as a guideline. When a country ratifies the Convention, the State commits itself to improve the laws and take appropriate actions in accordance with the provisions and principles the new instrument contains.

At the same time, a government is obligated to periodically inform **ILO's** supervisory bodies regarding the measures taken for the application of the ratified Convention and to respond to the questions, observations or direct requests submitted by the Committee of Experts on the Application of Conventions and Recommendations.

The Convention has been so far ratified by Norway, Mexico, Colombia, Bolivia, Costa Rica, Paraguay, Peru, Honduras, Denmark, Guatemala, the Netherlands, Ecuador and Fiji. A number of other governments have submitted the Convention to the Legislature or have expressed interest in ratifying it.

Convention No. 169 came into force on September 6, 1991, twelve months after the date on which the ratification of two member States were registered with the Director General of the ILO (Norway and Mexico). After this date, Convention No. 107 is no longer open to further ratification and remains in force only in those countries which having ratified it have not ratified the new Convention.



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