

Leaflet No. 8: The ILO and Indigenous and Tribal Peoples

Key Words and Ideas

Economic and Social Rights

International Labour Conference

ILO Convention Concerning Indigenous and Tribal Peoples, 1989

(No. 169)

ILO Convention Concerning Indigenous and Tribal Populations, 1957

(No. 107)

Project to Promote ILO Policy on Indigenous and Tribal Peoples

INDISCO Programme

***Summary:** The International Labour Organization (ILO) is one of the most active of the UN specialized agencies in promoting the rights of indigenous peoples, particularly their economic and social rights. The ILO has taken a leading role in setting comprehensive international standards for the rights of indigenous peoples by adopting such instruments as the Indigenous and Tribal Peoples Convention, 1989 (No. 169).*

What is the ILO?

The International Labour Organization (ILO), founded in 1919, is the oldest of the specialized agencies of the UN system. As do other specialized agencies, the ILO has its own constitution, its own members and its own supervisory bodies, budget and staff, and it cooperates with the United Nations in areas of common interest. The ILO supervisory system works with some of the supervisory systems created through certain UN human rights instruments, such as the Committee for the Elimination of Racial Discrimination and the Committee for the Elimination of Discrimination Against Women. The ILO also participates at UN meetings that deal with indigenous issues, including the Working Group on Indigenous Populations, the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights. The ILO is jointly responsible for convening the annual UN inter-agency consultations on indigenous issues, which is held in Geneva.

The ILO's mandate includes developing and establishing international labour standards to improve the living and working conditions of people around the world. These standards take the form of Conventions and Recommendations that establish minimum international standards on a range of work-related issues, including fundamental human rights in the workplace, such as the right to be free from discrimination, the right to equal pay for work of equal value, the elimination of forced and child labour, and the right to freedom of association and collective bargaining. Once ratified by a government, ILO Conventions create legally binding obligations for that government. ILO Recommendations often complement Conventions by supplementing the provisions of Conventions, and by setting detailed guidelines for the application of the Convention. Recommendations are not international treaties, but are non-binding guidelines for the development and application of national policy and practice.

The ILO's structure is unique among the UN system agencies. It is the only international organization formed of governments, with representatives of employers and workers taking part in all its activities. This tripartite system enables the representatives of employers' and workers' organizations to participate in all of the ILO's discussions, deliberations and decisions on an equal footing with government representatives.

The tripartite structure of the ILO is reflected in the composition of the **International Labour Conference** (ILC). The ILC, a general assembly that meets in Geneva every June, provides a world forum for the discussion of social and labour issues. It is attended by 4-member delegations from each of the ILO's 175 Member States. Each delegation is composed of two government members, one employers' delegate and one workers' delegate, who can be accompanied, as necessary, by technical advisers. Each delegate may speak and vote independently, which means that workers and

employers together share an equal voice with governments in forming ILO policies and programmes. Its activities include electing the Governing Body, adopting the ILO Programme, and voting on the ILO budget, which is financed by all Member States. The ILC also adopts international labour standards, in the form of Conventions and Recommendations, passes resolutions on ILO general policy and activities and decides whether to admit new Member States.

The Governing Body is the executive body of the ILO. It meets three times a year in Geneva: in March, in June (after the ILC), and in November. Like the ILC, the Governing Body has a tripartite structure. It is composed of 56 full members (28 governments, 14 employers' representatives and 14 workers' representatives) and 66 deputy members (28 governments, 19 employers' representatives and 19 workers' representatives). The International Labour Office in Geneva is the permanent secretariat for the ILO. It prepares the documents and reports used in the conferences and meetings of the Organization (such as the General Report of the Committee of Experts on the Application of Standards, reports to the Governing Body and its committees, etc.). The Office also runs technical cooperation programmes that support the standard-setting work of the ILO. The Office has a department responsible for all matters relating to international labour standards, as well as departments responsible for workers' and employers' activities.

The ILO and Indigenous Issues

The ILO was the first international body to address indigenous issues in a comprehensive manner. It has been working to protect and promote the rights of indigenous and tribal peoples since the early 1920s. The ILO's activities in the area of indigenous and tribal peoples falls within two main areas of activity: the promotion and supervision of the two Conventions relating to indigenous and tribal peoples; and technical assistance programmes to improve indigenous and tribal peoples' social and economic conditions.

SETTING STANDARDS FOR THE RIGHTS OF INDIGENOUS AND TRIBAL PEOPLES

The ILO is responsible for the only two international instruments relating exclusively to indigenous and tribal peoples: the **Indigenous and Tribal Populations Convention, 1957 (No. 107)** and the **Indigenous and Tribal Peoples Convention, 1989 (No. 169)**. Convention No. 107 is now closed for ratification, but remains valid for those countries that have ratified it but have not ratified Convention No. 169. As of 1 January 2001, 14 Member States had ratified Convention No. 169, and it is under active consideration in a number of other countries. These two Conventions establish minimum standards with respect to the civil, political, social and economic rights of indigenous and tribal peoples. They create binding obligations on the Member States that have ratified them.

ILO Convention No.107, adopted in 1957, was the first comprehensive international instrument setting forth the rights of indigenous and tribal populations and the obligations of ratifying States toward them. While Convention No. 107 broke new ground, it used patronizing language, referring in its Article 1(1)(a) to these populations as "less advanced" and promoting an assimilationist approach. By the 1980s, the United Nations had completed the study by Martinez Cobo (see Leaflet No. 2 on "Indigenous Peoples, the UN and Human Rights") and the Working Group on Indigenous Populations had been established to provide a forum for indigenous peoples to express their views. In the years following its adoption, the limitations of Convention No. 107 became evident and indigenous groups themselves began to call for new international standards.

ILO Convention No. 169

By 1986, concern with the integrationist approach of Convention No. 107 prompted the ILO to begin work on revising the Convention. In 1988 and 1989, the ILO drafted a new Convention, the Indigenous and Tribal Peoples Convention (No. 169). As does its predecessor, Convention No. 169 outlines the rights of indigenous and tribal peoples and the duties of ratifying States toward them. Convention No. 169 takes the approach that the cultures and institutions of indigenous and tribal peoples must be respected, and presumes their right to continued existence within their national societies, to establish their own institutions and to determine the path of their own development. ILO Convention No. 169 also calls for governments to consult with the peoples concerned with regard to legislative or administrative measures that may directly affect them, and establishes the right of these

peoples to participate in decision-making processes regarding policies and programmes that concern them.

The full text of the of ILO Convention No. 169 can be found on the ILO web site: www.ilo.org. Some of its most important provisions include:

Article 4: requires ratifying States to adopt special measures for safeguarding the persons, institutions, property, labour, cultures and environment of indigenous and tribal peoples

Article 5: establishes that, in applying the Convention, ratifying States must recognize and protect the social, cultural, religious and spiritual values of indigenous and tribal peoples, and respect the integrity of their values, practices and institutions

Article 6: requires, among other things, that ratifying States consult indigenous and tribal peoples through appropriate procedures, particularly through their representative institutions when legislative or administrative measures that may directly affect them are being considered, and provides that States should establish means for the peoples concerned to develop their own institutions

Article 7: establishes, among other things, the right of indigenous and tribal peoples to decide their own priorities for the process of development and to exercise control over their own economic, social and cultural development, and establishes the obligation of ratifying States to take measures to protect and preserve the environment of the territories inhabited by these peoples

Article 8: requires States to take indigenous and tribal custom and customary law into account when applying national laws and regulations to the peoples concerned

Article 13: requires governments to respect the special importance to the cultures and spiritual values of indigenous and tribal peoples of their relationship with the lands or territories that they occupy

Article 14: establishes that ratifying States shall recognize the rights of ownership and possession of the peoples concerned over the lands that they traditionally occupy, and that States shall establish adequate procedures within the national legal system to resolve land claims brought by indigenous and tribal peoples

The standards contained in ILO Convention No. 169 establish a basic framework for the protection of indigenous and tribal peoples under international law. Many international organizations, such as the United Nations Development Programme (UNDP) and The World Bank, refer to Convention No. 169 when developing their own policies or programmes affecting indigenous peoples. While ILO Convention No. 169 establishes the basic rights of indigenous and tribal peoples, in many respects, it sets out fundamental obligations, allowing each ratifying State to determine what specific measures it will take and, in keeping with the language of other ILO Conventions, setting minimum international standards. Many of the provisions in the Convention are qualified by terms such as “as appropriate”, “as necessary”, “wherever practicable” or “to the extent possible”. These terms give the Convention flexibility, although some critics say that they may also have the effect of limiting or making vague the obligations of ratifying governments.

As the number of ratifying States grows, the acceptance of the international standards contained in the Convention also increases. A number of countries are in the process of ratifying, or considering ratification of, Convention No. 169. A number of other ILO instruments are also relevant to the situation of indigenous and tribal peoples, including:

- The Forced Labour Convention, 1930 (No. 29), which prohibits the use of forced and compulsory labour
- The Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which establishes the principle of equal opportunity and treatment in employment and occupation

and prohibits discrimination on a number of grounds, including race, colour, sex, religion, political opinion, national extraction and social origin

- The Rural Workers' Organizations Convention, 1975 (No. 141), which establishes the right of rural workers to establish and join organizations of their own choosing
- The Human Resources Development Convention, 1975 (No. 142), which promotes vocational guidance and training
- The Plantations Convention, 1958 (No. 110), which regulates the employment of plantation workers and covers issues such as wages, medical care, housing and maternity protection
- The Minimum Age Convention, 1973 (No. 138), which establishes a minimum age for entry into the work force
- The Worst Forms of Child Labour Convention, 1999 (No. 182), which prohibits absolutely particularly abusive forms of child labour

ILO SUPERVISORY BODIES AND THE RIGHTS OF INDIGENOUS AND TRIBAL PEOPLES

In addition to setting international labour standards, the ILO supervises the manner in which Member States apply ratified Conventions in law and practice. Under article 22 of the ILO Constitution, each Member State must provide periodic reports to the International Labour Office on ratified conventions, describing the measures taken to implement the provisions of those Conventions it has ratified. The ILO Committee of Experts on the Application of Conventions and Recommendations then examines the reports submitted by the Member States. This Committee is comprised of 20 independent jurists from around the world and meets once a year in Geneva to examine the application of ratified Conventions. The Committee sends governments written comments based upon the Committee's findings. These comments may take the form of direct requests or observations. As the name implies, direct requests are primarily requests for information on specified points, which are sent directly to the government concerned and are not published. Observations may also contain requests for information, but are primarily used to set forth the Committee's findings and recommendations as well as the substance of comments made by employers' and workers' organizations. The Committee's observations on the application of ratified Conventions are published in its annual report, which is then considered during the annual International Labour Conference by the tripartite Committee on the Application of Standards. Ratifying States must report on the application of Conventions No. 107 and 169 every five years, but the ILO Committee of Experts may also ask States to submit interim reports, particularly if there are ongoing issues of concern.

Although not required by Convention No. 169, the ILO encourages governments to consult with organizations of indigenous and tribal peoples, both on the measures adopted by the State to give effect to Convention No. 169, and in the preparation of reports to be submitted to the ILO. To date, Norway is the only country that has directly involved indigenous peoples in this reporting process. The Norwegian Government sends its reports on the application of Convention No. 169 to the Saami Parliament as well as to the national employers' and workers' organizations for their comments, and then forwards the report with the comments to the ILO supervisory bodies. At the request of the Norwegian Government, the ILO is also engaged in an open dialogue with the Saami Parliament, enabling the parliament to take an active part in the implementation of Convention No. 169. The ILO Committee of Experts encourages ratifying States to develop appropriate mechanisms to improve the participation of indigenous peoples in the application of the Convention.

ILO Complaint Procedures

The ILO's supervisory system does not provide for the filing of complaints by individuals or general NGOs, including indigenous organizations. Nonetheless, the ILO's supervisory system includes complaint procedures that may be invoked by employers' or workers' organizations on behalf of or concerning indigenous organizations, communities or individuals.

Article 24 of the ILO Constitution provides that a national or international employers' or workers' organization may submit a "representation" to the ILO on the grounds that a Member State has failed to observe or has not satisfactorily ensured the application of a ratified Convention. If the representation meets the requirements set forth in Article 24, the Governing Body of the ILO will declare it receivable and designate a tripartite committee to examine the representation. A copy of the representation is provided to the government concerned, which is given the opportunity to reply to the allegations. After examining the matter, the tripartite committee will submit a report to the Governing Body for adoption. As a general rule, the report contains the committee's conclusions and recommendations. If the tripartite committee determines that there are problems concerning the application of a Convention, it will generally require that the government takes specific measures to resolve the problem. In addition, the Governing Body may ask the Committee of Experts to monitor the situation and follow up on it to ensure that the government takes the steps necessary to apply the recommendations of the tripartite committee. As of early 2001, Article 24 representations involving the application of Convention No. 169 had been brought against Bolivia, Colombia, Denmark, Ecuador, Mexico and Peru.

Indigenous and tribal peoples may also bring their concerns to the attention of the ILO by sending information about a Member State's compliance, or lack thereof, with a ratified Convention directly to the International Labour Office in Geneva. The information received is placed in the country file and the Committee of Experts may consider it during its annual session.

ILO TECHNICAL COOPERATION PROGRAMMES AND INDIGENOUS AND TRIBAL PEOPLES

The ILO carries out a number of technical cooperation activities that focus on indigenous and tribal peoples. These include the Project to Promote ILO Policy on Indigenous and Tribal Peoples and the ILO-INDISCO Programme, as well as a number of country and regional programme activities. These projects, programmes and activities promote the active participation of indigenous and tribal peoples at all levels of project implementation and decision-making, from project design to project implementation and evaluation.

Project to Promote ILO Policy on Indigenous and Tribal Peoples

The Project to Promote ILO Policy on Indigenous and Tribal Peoples ("the Project") began in 1996 and is funded by Danish International Development Assistance (DANIDA). The primary objectives of this project are to: promote awareness of ILO standards regarding indigenous and tribal peoples; encourage the application of relevant principles in this respect; and strengthen the capacity of indigenous and tribal peoples to participate in the development processes that affect them. These objectives are achieved by providing policy advice, training workshops, seminars, and training through an indigenous fellowship programme, disseminating information through publications and other media, and offering an indigenous-to-indigenous exchange programme. The Project, which places particular emphasis on South and Southeast Asia and Africa, is managed by indigenous persons, and involves governments, UN agencies, NGOs, and indigenous and tribal peoples' organizations. The Project is entering a new phase of activities for the period 2000–2003, during which it will build on the strong foundation that has already been established through previous project activities to promote and protect the rights of indigenous and tribal peoples.

In **South and Southeast Asia**, the Project has been involved in a number of policy-related activities, including providing policy advice to the Lao National Front for Construction: the focal point for indigenous and tribal peoples' issues in **Laos**. Here, the Project supervised a *Policy Study on Ethnic Minorities in Rural Development*, forming part of an UNDP-supported *National Rural Development Programme*. In a similar vein, the Project has been asked to provide policy advice to the Government of **Thailand** in relation to provisions in the Thai Constitution that are of relevance to indigenous and tribal peoples. The Project has also provided policy advice to the Government of **Cambodia** in connection with a *National Policy on Highland Peoples Development*. The Project provided capacity-building assistance to foster dialogue between the Government of Cambodia and indigenous and tribal peoples, a crucial element of the national policy.

In India and Vietnam, Project activities have been on a smaller scale, concentrating on capacity-building assistance for indigenous and tribal peoples' organizations, and organizations that deal with

related issues. In **India**, the strategy has been twofold: to enhance the capacity of tribal women to address issues that affect their lives, such as health, natural resource management, education and legal rights; and to improve coordination among local women's organizations and networks, helping them to articulate their concerns more effectively. In **Vietnam**, the Project has addressed the sustainable management of natural resources and problems of food security. The *Natural Resource Management and Women's Workload in Ethnic Communities* project is intended to be one step in the development of a more coordinated approach to indigenous and tribal peoples' issues in Vietnam. Assistance in policy development is envisaged for the future.

In **Africa**, Project activities have focused on promoting the principles of Convention No. 169, as well as drawing attention to issues concerning indigenous and tribal peoples. In **Morocco**, the Project has launched a number of awareness-raising activities in collaboration with TAMAYNUT, an Amazigh organization active in rights-based activities. These include a *National Seminar on ILO Convention No. 169 and the Rights of Indigenous Peoples*. In **South Africa**, a *Conference on the Constitutional Accommodation of Vulnerable Indigenous Communities* was organized in collaboration with the Department of Constitutional Development. In addition, a *needs assessment study*, commissioned by the Project, will form the basis for a national project aimed at improving the socio-economic situation of indigenous and tribal peoples.

The Project has also provided capacity-building assistance, focusing on networking and fostering dialogue. In this respect, the Project has collaborated with the African Indigenous Women's Organization in **Eastern Africa** to implement an *Eastern African Women's Conference*. Aside from informing participants about ILO standards and the principles of Convention No. 169, the aim of this conference was to improve coordination between indigenous peoples' and women's organizations in Eastern Africa, giving them a stronger platform from which to express issues of concern to them. In **Cameroon** and the **Central African Republic**, the Project has been assessing the situation of Batwa workers. The aim is to promote application of the principles of Convention No. 169 and to lay the foundations for future capacity-building activities.

The **Indigenous-to-Indigenous Exchange** programme aims to foster networking and information exchange among indigenous peoples. The first exchange was undertaken in August 1999, when San and Jumma delegates travelled to Norway to visit the Norwegian Saami Parliament, the Nordic Saami Institute and various Saami media organizations. They then travelled to Denmark, where they visited the Greenland Home Rule Government and the Danish Foreign Ministry. Given the success of this initial exchange, it is anticipated that similar study tours will form an important component of future Project activities.

The INDISCO Programme

The Inter-regional Programme to Support Self-Reliance of Indigenous and Tribal Communities through Cooperatives and other Self-Help Organizations (INDISCO Programme) assists indigenous and tribal peoples in designing and implementing their own development projects. ILO-INDISCO staff participate as facilitators in the process of project development and implementation. The main project themes of the INDISCO Programme include employment and income generation, advancing the status of indigenous women, managing the environment and natural resources, preserving indigenous culture, and strengthening local organizations.

The INDISCO Programme encourages the creation of indigenous cooperatives and other forms of self-help associations that are culturally appropriate and adapted to each particular community. In Asia, some 20 INDISCO projects are operational, funded by a group of donors included Danish Aid, the Netherlands, Canadian International Development Agency, UNDP, Arab Gulf Programme for UN development organisations, the World Food Programme and Rabobank. The projects aim to strengthen indigenous peoples' capacities in areas such as rural employment, traditional handicrafts, literacy training and curriculum development in tribal languages, land and natural resource management, including ancestral domain management, setting up micro-finance institutions, conducting environmental impact assessments, and promoting traditional knowledge systems. These projects target indigenous and tribal peoples in India, the Philippines, Thailand and Vietnam, and will later be expanded to cover Bangladesh, Cambodia and Laos. In Africa, two new projects became operational in 2000: one for and with the Pygmies in Cameroon, and one for and with the Maasai in Tanzania.

Other Technical Cooperation Activities

The ILO also carries out a number of other technical cooperation activities that address the living and working conditions of indigenous and tribal peoples. For example, in **Venezuela**, the ILO has been providing policy advice to the *Commission on Indigenous Peoples' Rights* of the National Constitutional Assembly (NCA) regarding proposals to guarantee the collective rights of indigenous peoples in the new Constitution. In **Ecuador**, technical assistance has been provided to train indigenous leaders on the content and scope of Convention No. 169, and on its application. In **Peru**, the ILO has helped organize a seminar on the protection of collective knowledge and access to genetic resources. In addition, the ILO entered into an agreement with the Peruvian Human Rights Ombudsman (*Defensoria del Pueblo*) to: evaluate public policies that have an effect on indigenous peoples; develop annual training courses for indigenous peoples on relevant topics; organize training workshops on the application of Convention No. 169; and prepare and publish documents of common interest. In **Bolivia, Ecuador and Peru**, the ILO has supported feasibility studies for a programme of sustainable eco-tourism among indigenous communities.

Within the framework of the peace negotiation and peace-building process in **Guatemala**, the ILO Area Office in Costa Rica has developed a number of projects. Two of these: *Indigenous Peoples: Poverty Alleviation and Democratization* and *The Rights of Indigenous Peoples and Development of Legislation in Guatemala* were based on the need to build and contribute to inter-cultural dialogue and understanding. A third project, entitled *Legal Empowerment of Indigenous Peoples in Central America*, is supporting the continuation of a *Mesa Jurídica* (legal roundtable), that brings together indigenous and non-indigenous lawyers, indigenous leaders and others to discuss legal issues of concern to indigenous peoples.

In addition to these activities, ILO technical cooperation has been provided in a number of other Latin American countries including: **Belize, Costa Rica, Honduras, El Salvador, Nicaragua** and **Panama**.

There are also a number of ILO programmes and activities that do not focus on indigenous and tribal peoples but that address issues that are of particular relevance to indigenous and tribal peoples. These include the In-Focus Programme on Child Labour (IPEC) and activities undertaken by the Employment Intensive Investment Branch that address marginalized sections of society, including indigenous and tribal peoples, in several countries in Africa and Asia.

How to contact the ILO

If you would like more information on any of ILO's activities related to indigenous peoples, such as ILO's work in setting international standards to protect the rights of indigenous and tribal peoples, you can contact the following ILO staff:

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