

**ILO CONVENTION
ON INDIGENOUS AND TRIBAL PEOPLES,
1989 (No. 169):**

A MANUAL

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Revised edition

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Foreword

The purpose of this publication is to make it easier to understand and use ILO Convention No. 169.

In general, indigenous and tribal peoples are not effectively protected by existing laws and policies. National laws often do not address their specific situations, characteristics and needs, and they are often among the most impoverished and disadvantaged groups in any country. This situation has led to the development and adoption of ILO Convention No. 169, aimed at the protection of indigenous and tribal peoples and their rights.

Convention No.169 is the foremost international legal instrument which deals specifically with the rights of indigenous and tribal peoples, and whose influence extends beyond the number of actual ratifications.

Some indigenous and tribal peoples are already knowledgeable about ILO standards. There is still a need, especially for those who do not have a legal background, to be provided with an opportunity to become familiar with the principles of the Convention. A number of examples of real situations involving indigenous and tribal peoples have been included in this manual. It is hoped that these will help the readers to understand the articles of the Convention, and how to apply them in a practical context.

Convention No. 169 may be used as a tool to stimulate dialogue between governments and indigenous and tribal peoples, and in this way, to improve their situation. We sincerely hope that in this way, we will have been able to contribute, in a very small way, towards increased co-operation and harmony between and among governments, indigenous and tribal peoples, and others.

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How to use this manual

This is an easy-to-use manual to ILO Convention No. 169. It helps to understand the Convention, and how it can be used to gain recognition, promotion and protection of indigenous and tribal peoples' rights.

The manual does not explain each article of the Convention. It focuses on key concepts such as, for example, human rights, culture, land, development, education and health.

Nor does it strictly follow the structure of the Convention. It is divided into different sections. Each section deals with a key concept.

For easy reference, we have included the article or articles of the Convention which are being discussed.

There is a descriptive explanation of each article. Concepts are introduced by using examples and experiences from indigenous and tribal peoples. This is to demonstrate the articles of the Convention in a practical way.

We have also included diagrams and photographs which highlight and explain some important elements of the articles.

What is the ILO?

Declaration of Philadelphia (1944)

universal and lasting peace can be established only if it is based upon social justice

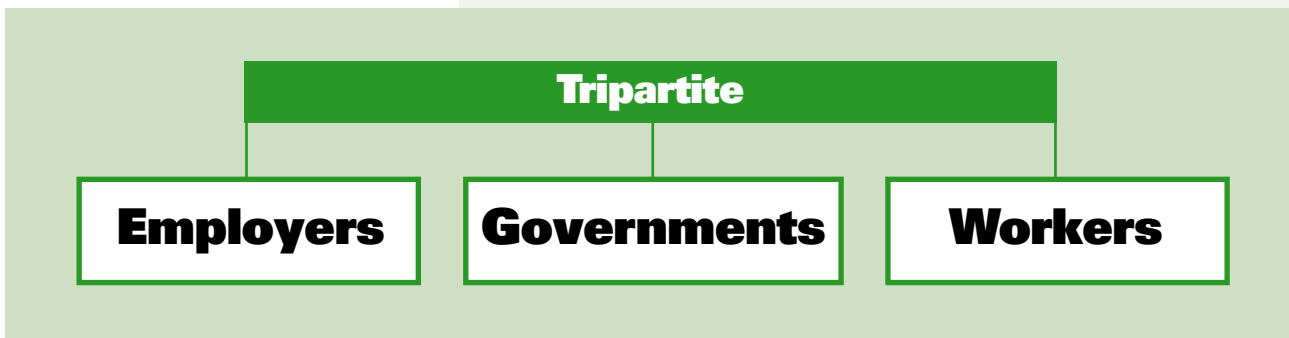
The International Labour Organization was created in 1919.

The ILO is a standard-setting specialized agency of the United Nations system which aims to improve living and working conditions for working people all over the world without discrimination as to race, gender or social origin. The ILO, which was created in 1919, believes that **poverty anywhere is a danger to prosperity everywhere.**

It adopts Conventions or treaties, and assists governments and others in putting these into practice. As of January 2003, the ILO had adopted 184 Conventions on different issues, such as working conditions, maternity protection, discrimination, freedom of association, and social security.

In 1969, the ILO was granted the Nobel Peace Prize for its work.

The ILO is unique among UN agencies because it is not composed only of governments. It has three partners : governments, employers and workers.



The ILO is built on dialogue and cooperation among these three partners, with each representative taking decisions independently.

In 1945, the United Nations was established. In 1946, the ILO was the first agency to become part of the United Nations system.

ILO organs

INTERNATIONAL LABOUR CONFERENCE

Annual Meeting: June
Member States (177)



GOVERNING BODY

Meets three times a year
56 Members



INTERNATIONAL LABOUR OFFICE

Permanent Secretariat

The ILO has three main organs. They are:

1. The International Labour Conference

The Conference provides a forum for debate and discussion on important social and labour issues. It adopts standards, and is the principal policy-making body of the Organization.

Each of the ILO's 177 member States is represented by four delegates to the annual ILO Conference. Two are from the government, and one each from the national workers' and employers' organizations.

2. The Governing Body

The ILO programme and budget are set by the Governing Body, and approved by the Conference. It also sets the Conference agenda. The Governing Body elects the Director-General of the ILO, its chief executive official, for a period of five years. And it supervises the day-to-day operations of the Office.

The Governing Body is composed of 56 members: 28 government members, 14 employer members and 14 worker members.

3. The International Labour Office

This is the focal point to carry out the activities of the Organization. It is the permanent secretariat, and a research and documentation centre. Its headquarters are in Geneva and it has 58 regional and area offices.

The ILO and indigenous and tribal peoples

How the ILO came to work with indigenous and tribal peoples

The ILO has long been engaged in protecting indigenous and tribal peoples' rights. This has involved two complementary approaches:

- 1) Standard setting**
- 2) Technical assistance**

The historical background for this working method was the following:

The issue was first looked into when the ILO focused on the situation of rural workers in the 1920s. There was a large number of indigenous and tribal workers among them. Between 1936 and 1957, the ILO adopted a number of conventions to protect workers, including some which apply to indigenous and tribal workers¹. These conventions address issues such as recruitment, work contracts and forced labour.

The ILO also provided practical assistance. Between 1952 and 1972, it administered a multi-agency programme for indigenous peoples in Latin America - the Andean Indian Programme. This programme is believed to have assisted 250,000 indigenous people.

1920s

ILO focuses attention on working conditions of rural workers

1930

Convention to prohibit forced labour (No. 29)

1952-1972

ILO leads Andean Indian Programme

1953

ILO publishes study on:
Indigenous Peoples: Living and Working Conditions of Aboriginal Populations in Independent Countries

¹ See Annexe 3



1957

ILO Indigenous and Tribal Populations Convention (No. 107) adopted.
Twenty-seven ratifications, 18 still in force

Gradually, the ILO realized that it was necessary to have a legal standard which focused solely on indigenous and tribal peoples. This was to address their distinct characteristics, which are important to indigenous and tribal peoples. In 1957, it adopted the Convention on Indigenous and Tribal Populations (No. 107), the first international legal treaty on this subject. It addresses many issues important to indigenous and tribal peoples such as land rights, labour and education.

When Convention No. 107 was adopted, indigenous and tribal peoples were seen as “backward” and temporary societies. The belief at the time was that, for them to survive, they had to be brought into the national mainstream, and that this should be done through integration and assimilation.

1980s

ILO Convention No. 107 criticized as encouraging assimilation and integration

1982

United Nations Working Group on Indigenous Populations established

As time went on, this approach came to be questioned. This was due largely to a growing consciousness, and increasing numbers of indigenous and tribal peoples participating at international fora, such as the United Nations Working Group on Indigenous Populations.

1986

Meeting of ILO Experts to revise Convention No. 107

The ILO had to respond to face this challenge. In 1985, it called a meeting of experts, who decided that Convention No. 107 should be revised. This was to bring it up to date and to make it more relevant. The Governing Body supported this recommendation.

1987-1989

Process of revision/adoption

Between 1987 and 1989, the ILO revised Convention No. 107. During this process, a large number of indigenous and tribal people were consulted and actively participated at the meetings either through their own organizations, or as representatives of employers’ and workers’ organizations, and of governments. After two years of intense discussion and drafting, the Indigenous and Tribal Peoples Convention (No. 169) was adopted in June 1989.

1989

ILO Indigenous and Tribal Peoples Convention (No. 169) adopted.

Seventeen ratifications by January 2003

Convention No. 169 revises Convention No. 107, marking a change in the ILO's approach to indigenous and tribal peoples. Protection is still the main objective but it is based on respect for indigenous and tribal peoples' cultures, their distinct ways of life, and their traditions and customs. It is also based on the belief that indigenous and tribal peoples have the right to continue to exist with their own identities and the right to determine their own way and pace of development.

Since its adoption, Convention No. 169 has gained recognition as the foremost international policy document on indigenous and tribal peoples. As of January 2003, it had been ratified by 17 countries².

Convention No. 107 is now closed for ratification. However, it remains binding on those who have already ratified it, until they ratify Convention No. 169.



Samburu woman drinking water from the river
Photo : Indigenous Information Network

² See Annexe 2

Structure of ILO Convention No.169

ILO Convention No.169 is divided into three main sections. It has 25 substantive articles.

- I. General policy** *(Articles 1 to 12)*
- II. Substantive issues**
 - 1. Land** *(Articles 13 to 19)*
 - 2. Recruitment and conditions of employment** *(Article 20)*
 - 3. Vocational training, handicrafts and Rural Industries** *(Articles 21 to 23)*
 - 4. Social security and health** *(Articles 24 and 25)*
 - 5. Education and means of communication** *(Articles 26 to 31)*
 - 6. Contacts and co-operation across borders** *(Article 32)*
- III. Administration** *(Article 33)*
- IV. Procedural provisions** *(Articles 34 to 44)*

This section deals with the procedure for the registration, ratification and adoption of the Convention.

This introductory manual provides you with an overview of the issues involved, and with an explanation of how the articles can be relevant to a given situation.

GENERAL POLICY
(articles 1-12)

SUBSTANTIVE ISSUES
(articles 13-32)

ADMINISTRATION
(article 33)

Coverage

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.

The ILO takes a practical approach. ILO Convention No. 169 does not define who are indigenous and tribal peoples. It only describes the peoples it aims to protect:

Elements of tribal peoples include:

- traditional life styles;
- culture and way of life different from the other segments of the national population, e.g. in their ways of making a living, language, customs, etc.;
- own social organization and traditional customs and laws.

Elements of indigenous peoples include:

- traditional life styles;
- culture and way of life different from the other segments of the national population, e.g. in their ways of making a living, language, customs, etc.;
- own social organization and political institutions;
- living in historical continuity in a certain area, or before others "invaded" or came to the area.

The ILO focuses on the present situation, though historical continuity is important too. The challenge is how to improve the living and working conditions of indigenous and tribal peoples so they can continue to exist as distinct peoples, if they wish to do so.

Self-identification

Article 1.2.

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.

It is important to know to whom the Convention is applicable, and who its beneficiaries are.

The Convention adopts an approach based on both objective and subjective criteria.

Objective Criterion

A specific indigenous or tribal group or people meets the requirements of Article 1.1, and recognizes and accepts a person as belonging to their group or people.

Subjective Criterion

This person identifies himself or herself as belonging to this group or people; or the group considers itself to be indigenous or tribal under the Convention.

Fundamental Criterion

Convention No. 169 is the first international instrument which recognizes self-identification of indigenous and tribal peoples as a fundamental criterion.



Akha girl in Phongsaly
Photo : Inter Mountain Peoples' Education and Culture in Thailand Association (IMPECT)

Self-determination

Article 1.3.

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.

The ILO’s mandate is social and economic rights. It is outside its competence to interpret the political concept of self-determination.

However, Convention No. 169 does not place any limitations on the right to self-determination. It is compatible with any future international instruments which may establish or define such a right.

What Convention No. 169 does provide for is self-management, and the right of indigenous and tribal peoples to decide their own priorities.

Convention No. 169 uses the term “peoples”. It was decided during the negotiations leading to the adoption of Convention No. 169 that this term was the only one which could be used to describe indigenous and tribal peoples.

“...there appears to be a general agreement that the term “peoples” better reflects the distinctive identity that a revised Convention should aim to recognise for these population groups...”³



Artwork by Amanguaq Hægh

³ International Labour Conference, 75th Session. *Partial Revision of the Indigenous and Tribal Populations Convention, 1957 (no. 107)*. Report VI(2), Geneva 1988, pp 12 - 14

Self-management

Preamble

Recognising the aspirations of these peoples to **exercise control** over their own institutions, ways of life and economic development and to maintain and develop their identities, languages, religions, within the framework of the States in which they live.

Self-management

Indigenous and tribal peoples should have the opportunity and the real possibility to manage and control their lives and to decide their own future.

One important aim of Convention No. 169 is to set up the conditions for self-management. It provides means by which indigenous and tribal peoples can take control of their own lives and destinies, and gain greater recognition of their distinct cultures, traditions and customs, as well as more control over their own economic, social and cultural development.

In Panama, the Kuna had reached a certain degree of self-management in the *Comarca* (administrative subdivision) of San Blas, through Act No. 16 of 1953, but only after 1995 did a real development of indigenous self-government take place. This was facilitated by the announcement of a series of laws for the creation of indigenous *comarcas* and of administrative constitutional bills that recognise and integrate indigenous forms of government and that transfers the right to exercise power over matters of great importance such as those related to natural resources.

One of the most developed forms of indigenous self-management is the Greenland Home Rule, established in 1979 after the passing of the Home Rule Act in 1978. The Greenlandic Inuit became the first Inuit to achieve a degree of self-government.

*" While Greenland remains part of the Kingdom of Denmark, the Greenland Home Rule Authorities have assumed control over and responsibility for a number of public institutions, and have undertaken policies that aim to develop the country in terms of its own social and economic conditions and available natural resources."*⁴

In the Northwest Territories of Canada, Bill C-132, passed in June 1993, established a territory to be known as Nunavut. This Act came into force on 1st April 1999. In Nunavut, the Inuit majority (about 90%) will exercise democratic control. Agreement has been reached on the design of the Nunavut Government, which will have at least 50% Inuit employment at all levels during the start-up period.⁵

⁴ Minority Rights Group: *Polar Peoples: Self-determination and Development*. London, 1994, p. 1-7.

⁵ IWGIA Yearbook: *The Indigenous World 1997-98*. Copenhagen, 1998, p. 25. See also: *Minority Rights Group. Polar Peoples: Self-determination and development*. London, 1994, p. 123.

Responsibility

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.

Governments have the duty to protect and promote the rights of the indigenous and tribal peoples in their countries. They also have the ultimate responsibility to make sure that the Convention is implemented fully.

To help governments do this, **specific agencies** can be established as focal points for indigenous and tribal peoples' issues. It is also important that the necessary **resources** are provided to such agencies to allow them to carry-out their work in an effective manner.

In some countries, a large number of government agencies and institutions are engaged in working with indigenous and tribal peoples. This can lead to confusion and duplication. To avoid confusion, agencies should cooperate with each other in a co-ordinated manner. A government office, with an overview of all projects and programmes involving indigenous and tribal peoples, is often the best way to ensure coordinated action.

The Inter-Ministerial Committee for Highland Peoples' Development (IMC) was established by the Government of Cambodia in 1994 to co-ordinate activities designed for highland peoples' development. The mandate of the IMC is to formulate policy guidelines, propose development projects, to communicate with the Council for Development and to submit recommendations to the Government.⁶

In Vietnam, the Committee for Ethnic Minorities in Mountainous Areas (CEMMA) is responsible for co-ordinating the work of different agencies involved in highland peoples' development. It also acts as the advisory body to the Government. Its tasks include research, legal assistance, implementation and evaluation of policies and programmes.⁷ The ILO Project for the Promotion of ILO Policy on Indigenous and Tribal Peoples works with both these bodies to improve the situation of indigenous and tribal peoples.

There are similar bodies in other countries entrusted with responsibility for indigenous and tribal issues, for example, the National Indian Foundation (FUNAI) in Brazil, the Directorate General for Indigenous Affairs in Colombia, and the National Indian Institute in Mexico.

⁶ Inter-Ministerial Committee for Highland Peoples' Development in Northeastern Cambodia. *Report of the Regional Workshop on "Country Comparisons on Highland Peoples' Development Issues", April 8-10, 1997.* Ta Prohm Environment Ltd. p.10; Social Research Institute Chiang Mai University: *Summary Report of Training Workshop for the Inter-Ministerial Committee for Highland Peoples' Development*, Cambodia. 1996, p.1.

⁷ *Official gazette*, No. 29 (20-10-1998), p.10.

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.

However, governments and agencies cannot decide and control measures and programmes alone. They have to do so in consultation with, and with the participation of, indigenous and tribal peoples.

Transfer of Responsibility:

The Convention specifies three instances where indigenous and tribal peoples should have full management and control:

- Special vocational training programmes (*Article 22.3*),
- Community-based health services (*Article 25.1*), and
- Education programmes (*Article 27.2*).

The transfer of responsibility should take place only when indigenous and tribal peoples decide it is the right time for them to assume management and control of these issues. However, once this is done, governments cannot simply walk away and avoid any further responsibility. They have to maintain an overview of the activities to make sure that they are running smoothly, and that they are properly financed.

Government agencies and civil servants working with indigenous and tribal peoples should know about the provisions of Convention No. 169 in order to ensure its proper implementation in their areas of responsibility. This is especially important when the country has ratified the Convention.

Fundamental rights

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.

Indigenous and tribal peoples enjoy all human rights and fundamental freedoms, as does everyone else. This includes basic rights such as the right to liberty and equality, as well as rights to health, education, etc. This applies to both men and women.



Mru woman
Photo : J. Arens

Special measures

The cultures and ways of life of indigenous and tribal peoples are often different from the rest of the national population, and they may be discriminated against because of their specific cultures, traditions and values. As a result, many indigenous and tribal peoples face cultural extinction.

Article 4.1.

Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

Convention No. 169 was adopted in response to the vulnerable situation of indigenous and tribal peoples. It calls for **special measures** to be taken to protect the institutions, property, cultures and environment of these peoples.

Article 4.2.

Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.

The objective of these special measures is to bring the living conditions of indigenous and tribal peoples to the same level as the rest of the national population, and to protect their cultures and traditions. This is to be done while respecting their social and cultural identities, their customs, traditions and institutions, and according to their own wishes.



Coast Salish, British Columbia
Photo : House of Victoria Press

Consultation

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;

Consultation is a fundamental principle of the Convention.

One of the major problems facing indigenous and tribal peoples is that often, they may have little or no say in how, when or why measures which have or will have a direct effect on their lives are decided or put into practice.

While examining the application of Convention No. 169, the ILO's Committee of Experts on the Application of Conventions and Recommendations commented on the construction of the Urrá hydroelectric project in Colombia, which was set to flood much of the territory occupied by the Emberá- Katío community. This project had been initiated without prior consultation with the indigenous community concerned, and therefore contravened Article 6 of Convention No. 169.

The Convention brings into focus the **right** of indigenous and tribal peoples **to be consulted**.

This is whenever any measure which may have a direct effect on indigenous and tribal peoples is being explored, planned or implemented.

Such measures include, for example:

- Amendments to the national constitution;
- New agrarian laws;
- Land rights decrees or procedures for obtaining land titles;
- National education or health programmes and services;
- Any public policies affecting indigenous and tribal peoples.

Thus, before adopting any laws or administrative provisions which might affect them directly, governments must have open, frank and meaningful discussions with the peoples concerned.



Vietnam : women at a Participatory Rural Appraisal Workshop
Photo : Committee for Ethnic Minorities in Mountainous Areas (CEMMA)

Article 6.2.

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.

The Convention provides the framework for discussions and negotiations between governments and indigenous and tribal peoples. The **objective** of such consultation is to reach **agreement** (consensus) or full and informed consent.

What about the right to veto?

The Convention does not give indigenous and tribal peoples the right to veto.

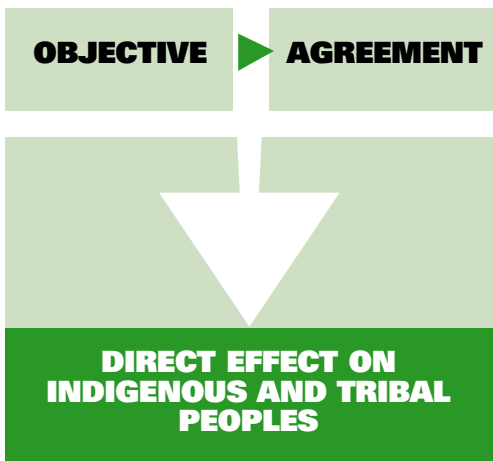
The Convention specifies that no measures should be taken against the wishes of indigenous and tribal peoples, but this does not mean that if they do not agree nothing will be done.

In 1977, five Cree communities in Manitoba, Canada, were faced with ecological damages and loss of land caused by the construction of a hydroelectric megaproject. They could not stop the project, but negotiated a compensation package with the federal government, known as the Northern Flood Agreement. It includes the provision of lands as restitution for flooding, wildlife management under Cree responsibility, as well as control and guarantee of the availability of potable water.⁸

What is important to remember is that consultation must be entered into:

- a)** In a spirit of **good faith**, with respect for each others’ interests, values and needs. The process of consultation must be specific to the circumstances and the special characteristics of the given group or community. Thus, a meeting with village elders conducted in a language they are not familiar with, e.g. the national language, English, Spanish etc, and with no interpretation, would not be a true consultation.
- b)** With respect for the principle of **representativity** which is a “vital component of consultation. [...] it could be difficult in many circumstances to determine who represents any given community. However, if an appropriate consultation 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”.⁹

⁸ Barsh, R. L. & Bastien, K. *Effective Negotiation by Indigenous Peoples. An Action Guide with Special Reference to North America*. ILO, Geneva. 1997, p.110.
⁹ Representation alleging non-observance by Ecuador of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the onfederación Ecuatoriana de Organizaciones Sindicales Libres (CEOSL). www.ilo.org/ilolex.



The Convention provides rules to follow for consultations:**Peoples Concerned:**

Those who will be affected by a specific measure. For instance, when a highway which will pass through indigenous villages is being planned, then these same villages have the right to be consulted and given an opportunity to let the authorities know what they think of this scheme. They may have alternatives to suggest.

Appropriate Procedures:

The way in which the concerned people are consulted depends on the circumstances. For consultation to be 'appropriate' it must meet the requirements of each specific situation, and must be meaningful, sincere and transparent. For instance, in the case of the proposed highway, it is not sufficient to talk to a few village members only. A closed meeting with selected persons who do not represent the majority view is not "true" consultation.

Representative Institutions:

This can include traditional institutions, e.g. councils of elders, village councils, as well as contemporary structures such as indigenous and tribal peoples' parliaments or locally-elected leaders who are recognized as true representatives by the community or people concerned. It will be different in every case.

Bargaining power

Convention No 169 gives indigenous and tribal peoples the right to be consulted, and to express their views. It offers them the opportunity to participate in decision-making processes and to influence their outcome. It provides the space for indigenous and tribal peoples to negotiate to protect their rights.

Participation

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.

Participation is another fundamental principle of the Convention.

In order to control the pace and extent of their development, indigenous and tribal peoples should be fully involved in all relevant processes. Only by participating from the beginning to the end of any initiative - be it policy-making, or implementing a project or programme - can they be responsible for it and take an active part in creating their own socio-economic self-sufficiency.

The Convention emphasizes the need for 'ownership' of any given undertaking by all the stakeholders. This is to ensure the benefits reach the peoples concerned.

In 1989, the World Wide Fund for Nature started an ethnobotany project in the area of Manongarivo, in northwest Madagascar. An integrated health care system was developed in consultation with, and with the participation of local communities, combining traditional medicines based on traditional medicinal plants with modern medicines. In this project, traditional healers, medical doctors and shamans work side by side to meet people's health needs.¹⁰ This conservation of bio-cultural diversity was combined with a development programme in a creative approach.

¹⁰ Quanaash, N. "Biocultural diversity and integrated health care in Madagascar". In: *Nature & Resources*, Vol.30, No.1. Carnforth, UK; Pearl River, USA. 1994, p. 18.

Article 6.1.

In applying the provisions of this convention, governments shall:

(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.

Elements of participation:

- Indigenous and tribal peoples have the right to be involved in a project, policy or programme at every step along the way.
- Participation must also be allowed during the design of a policy, programme or project all the way to its implementation and evaluation.
- They participate at **all levels of decision-making** - local, national and regional. This means in politically elected bodies, as well as national and local administrations.
- Participation is done through indigenous and tribal peoples' own traditional or **representative bodies** and not through structures imposed from outside the community, unless the people have accepted them.

People's Participation

In Cambodia, a people-owned local planning process was initiated with support from the Cambodia Area Rehabilitation and regeneration Project (CARERE, UNDP) and the Ratanakiri Provincial Rural Committee. It was implemented in 51 villages by the villagers themselves. Village development committees were responsible for the preparation of development plans. Through local participation, people gain experience and confidence. This ensures the continuity and sustainability of development activities (ILO/UNDP: *Regional Workshop Report: Information Exchange on Development Experiences with Highland Peoples, Chiang Mai, Thailand, 17-21 November. 1997. 1999, p.12*).

The following example highlights indigenous participation in the formulation of government policy.

The Project for the Promotion of ILO Policy on Indigenous and Tribal Peoples and the Department for Constitutional Development of the Government of South Africa held a Conference on the Constitutional Accommodation of Vulnerable Indigenous Communities in South Africa during May 1998. An important outcome of this conference was a resolution and a plan of action concerning indigenous peoples and their rights as equal citizens according to the South African Constitution.

The Khoi San Forum was established in May 1999. It consists of 20 members: 3 San, 5 Griqua, 4 Koi, 4 Korona and 4 members of the Cape Cultural Heritage Development Council. One of its tasks has been to review the contents of the Government's Status Quo Report on the role of traditional leaders in local government, providing advice on indigenous issues.

A workshop on participative methodology, held in Botswana in 1996, included indigenous participants from the Basarwa people, as well as representatives from the Government, UNICEF, and various NGOs. The aim of the workshop was to dispel the idea that research can only be performed by "experts," and to show how participation can be empowering. Basarwa (San) participants at the workshop made many links between participatory approaches and the indigenous way of identifying problems as a communal process. The workshop helped to encourage more understanding and acceptance of cultural differences, helping many participants to confront their own stereotypes of different cultures.

In Ecuador, on 19 December 2002, the Government promulgated the Regulation for Consultation and Participation for carrying out hydrocarbon activities. According to Article 1 of this regulation, its objective is the establishment of a uniform procedure within the hydrocarbon sector for the application of the constitutional right of indigenous communities to consultation in matters of prevention, mitigation, control and rehabilitation related to the negative socio-environmental impacts.

Development

Article 2.2.

Government action to apply the Convention shall include:

(c) assisting the members of the peoples concerned to **eliminate socio-economic gaps** that may exist between indigenous peoples and other members of the national community, in a manner compatible with their aspirations and ways of life.

Article 7.2.

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.

An increasing number of development projects take place on the land traditionally occupied by indigenous and tribal peoples.

With growing population pressures and ever-increasing demands for natural and mineral resources, indigenous and tribal peoples' lands, which are often relatively rich in resources, become more and more attractive to "developers". This can have serious negative effects, both on indigenous and tribal peoples, and on their lands.

The following examples demonstrate this:

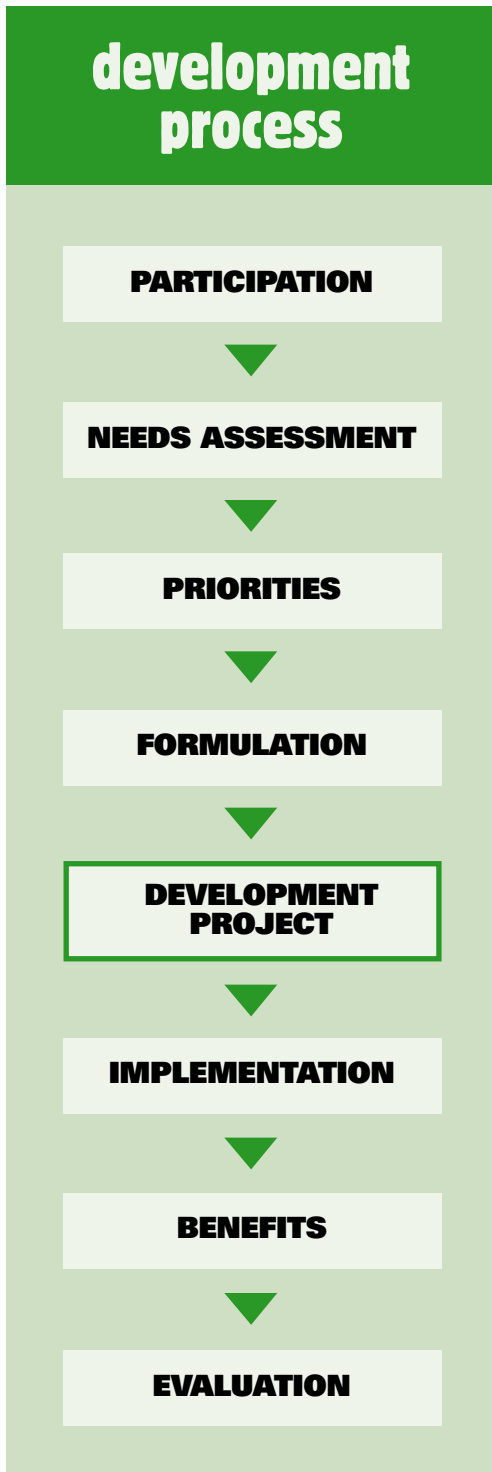
Since the early 1990s, logging companies have increased their interest in the Central African area. In Cameroon, the sixth five-year plan (1986-1991) promoted the expansion of commercial logging. This led to logging activities by European, African and Asian companies, and in turn to the displacement of indigenous and tribal peoples and the destruction of forests, which are the basis of their traditional subsistence and spiritual practices.

*"The Baka and Bakola could be dispossessed of their traditional lands without compensation and without consultations regarding the plans for the forest land on which they depend for subsistence."*¹¹

Since the breakup of the Soviet Union, gas and oil exploration and exploitation have increased in Western Siberia. This has caused the loss of 11 million hectares of reindeer pasture, 20,000 hectares of fish breeding grounds and over 100 rivers. This has led to the destruction of indigenous peoples' subsistence economies, unemployment, poverty and social marginalization. Large enterprises take decisions without consulting the Nenets, Khanty or Mansi peoples living in the area.¹²

¹¹ United Nations. *Discrimination Against Indigenous Peoples. Transnational investments and operations on the lands of indigenous peoples*. Report of the Centre on Transnational Corporations submitted pursuant to Sub-Commission resolution 1990/26. E/CN.4/Sub.2/1994/40. Geneva, 1994, p. 15.

¹² E/CN.4/Sub.2/1994/40. 1994, p. 21. See also 'L'auravelt' an IIC, Bulletin No. 1, 1996.



Of course, one cannot stop development, especially in today's climate of globalization.

The question therefore remains: When development takes place, how should it happen?

In an effort to encourage a more participatory approach to development, the Convention provides guidelines for development projects:

■ **Consultation:**

Indigenous and tribal peoples should be consulted about development projects and programmes.

■ **Participation:**

They should participate in the design, implementation and evaluation of such projects and programmes.

■ **Identification of needs:**

The traditions, cultural values and needs of the indigenous and tribal peoples should be taken into account in the formulation of projects.

■ **Impact assessment:**

Before any development activities are undertaken, the effects of such activities should be looked into. Studies should be undertaken to assess their potential social, cultural, spiritual and environmental impacts.

■ **Benefits:**

All developmental projects and programmes should better the socio-economic situation of indigenous and tribal peoples. They should not be harmful to their well-being.

Article 7.1.

The peoples concerned shall have the **right to decide their own 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.

Article 7.3.

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.

Prior impact assessment studies are useful tools. Their findings can contribute towards a positive outcome of a development project.

In the Vale do Ribeira region in Brazil, four hydroelectric projects are being planned, affecting Guaraní areas. Studies on the effects of these projects on indigenous and tribal peoples, as well as environmental impact studies, have to be completed before they can start. The Brazilian Institute of the Environment (IBAMA) is responsible for approving such studies. Due to legal action brought against IBAMA concerning irregularities in the granting of the licence for the Tijuco hydroelectric project, the project has been suspended.¹³ In addition, the Government has set-up a ten-year plan to monitor all construction projects for hydroelectric power plants on indigenous lands in Brazil, and to evaluate the possible impacts of these constructions on indigenous populations.¹⁴

The Convention specifies clearly that indigenous and tribal peoples have the following rights with regard to the process of development:

- **Right to impact assessment studies**, which should be undertaken, when appropriate, before any planned development can take place;
- **Right to decide the kind of development** and the way and speed at which it should take place;
- **Right to participate** in all steps of relevant plans and programmes for development at the local, national and regional level.
- **Right to control their own economic, social and cultural development** and to develop their own institutions and initiatives. Governments should facilitate this by providing the necessary resources.

¹³ ILO. *Report of the Committee of Experts on the Application of Conventions and Recommendations*. Geneva, 1996, p. 268; and *ibid.*, 1998, p. 318.

¹⁴ ILO. *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Geneva, 1999, p. 440.

Customs and traditions

Article 2.2.

(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;

Indigenous and tribal customs and traditions are central to many of their lives. They form an integral part of indigenous and tribal peoples' culture and identity, and differ from those of the national society. They may include ancestor worship, religious or spiritual ceremonies, oral tradition, and rituals, which have been passed down from generation to generation. Many ceremonies involve offerings to nature spirits, and take place in order to maintain a balance with nature.¹⁵

Exploitation of forests in Northeast Cambodia, is destroying the subsistence basis of hill tribe peoples in the area, as well as destroying their sacred trees and places, and the ceremonies and beliefs connected to them, causing an imbalance between people and the forests.¹⁶

The traditional music and dances of indigenous and tribal peoples are also important expressions of their distinctive cultural identity. In addition, indigenous and tribal languages often differ from those of national societies, in both written and spoken form. Many of these languages provide essential means by which oral histories and traditions are kept alive. They are basic elements of indigenous and tribal peoples' roots and identity. Often, as a result of assimilation policies applied since colonization, indigenous peoples involuntarily lose their languages and other cultural symbols. This is one of the reasons why Convention No. 169 does not demand that a certain language is spoken in order for them to be recognised as an indigenous people. Instead, the Convention promotes the upholding and development of their cultural values.

A visible manifestation of indigenous and tribal peoples' distinct cultures and traditions is their clothing, which is often very different from that of the rest of the population, and is made from available natural resources, e.g. the sealskin used by the Inuit, the reindeer skin and fur of the Saami, and the hand-woven cloth of the indigenous and tribal peoples in the Bolivian Andes, Laos and Thailand.



Saami family
Photo : John Oswald Gremmo

¹⁵ UN. *Human Rights of Indigenous Peoples. Indigenous Peoples and their Relationship to Land*. Preliminary working paper by Mrs. Erica-Irene Daes, Special Rapporteur. E/CN.4/Sub.2/1997/17. Geneva, 1997, p.3-6.

¹⁶ UNDP. *Highland Peoples Programme*. Background Document RAS/93/13. 1997, p. 15-18.

Preamble

[...] Calling attention to the distinctive contributions of indigenous and tribal peoples to the **cultural diversity** and social and ecological harmony of humankind and to international co-operation and understanding, [...]

Article 4.1.

Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

State-run orphanages designed for non-indigenous children who have lost their parents are sometimes thought of as an “efficient” way to take care of these children. However, growing up in an orphanage away from traditional communities without being able to learn indigenous or tribal languages and traditions, could mean a loss of cultural identity for these children.

In Australia, an estimated 70,000-100,000 ‘Stolen Children’ were forcibly taken away from their families and made to live with non-Aboriginal families as servants, etc. Generations are still suffering from the severe socio-cultural, psychological and emotional effects of the removal of indigenous children from their families.

“One principal effect of the forcible removal policies was the destruction of cultural links. [...] Culture, language, land and identity were to be stripped from the children in the hope that the traditional law and culture would die by losing their claim on them and sustenance of them.”¹⁷

The Convention states that governments shall adopt **special measures** to protect the customs and traditions of indigenous and tribal peoples. This is in order to strengthen the rich cultural diversity of this planet.



Laos : Yao children in Phongsaly
Photo : Inthasone Phetsirsiseng



Moran (young warriors)
Photo : Indigenous Information Network

¹⁷ Human Rights and Equal Opportunity Commission. *Bringing them home. Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families.* Sydney, 1997, p. 202.

Customary law

Article 8.1.

In applying national laws and regulations to the peoples concerned, **due regard** shall be had to their customs or **customary laws**.

Many indigenous and tribal peoples have their own customs and practices which form their customary law. This has evolved through the years, helping to maintain a harmonious society.

Often, in order to apply these customs and practices, indigenous and tribal peoples have their own institutional structures such as judicial and administrative bodies or councils. These bodies have rules and regulations to make sure customary laws are followed. Failure to do so is often punished and each lapse often has its own specific punishment.

Article 8.2.

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.

The Convention recognises the right of indigenous and tribal peoples to their own customs and customary law. It states that when applying national laws, these customs and customary laws should be taken into account.

This provision has been incorporated into national law in Mexico. The Mexican Federal Penal Code, for example, provides that in court cases involving indigenous peoples, their customs and traditions should be taken into account.¹⁸

In the Philippines, indigenous peoples' customary practices are recognized in Chapter 4, Sections 13 to 20 of the Indigenous Peoples Rights Act (IPRA), 1997.

*" This includes the indigenous peoples' right to use their justice systems, conflict resolution institutions, peace-building processes, and other customary laws and practices as may be compatible with the national legal system and internationally recognized human rights."*¹⁹

¹⁸ See Mexican Constitution (1991) art. 4 (b), section 52, referred to in ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*. Geneva. 1995, p. 398.

¹⁹ The IPRA is also known as Republic Act (RA) 8371. See IWGIA: *The Indigenous World 1997-98*. Copenhagen, 1998, p. 194.

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**.

In response to the growing need to include indigenous customs and customary laws in national law and practice, an International Seminar on the Administration of Justice and Indigenous Peoples for judges and other magistrates from 13 countries was held in Sucre, Bolivia (1-5 April 1997). The participants shared their experiences of legal proceedings involving indigenous peoples, within the context of constitutional reforms, new legislation and Convention No. 169. This was the first time in the country's history that magistrates and indigenous representatives had an opportunity to discuss legal issues together, and similar meetings are planned in other countries in Latin America.

Article 9.2.

The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

A specific problem indigenous and tribal peoples face, is imprisonment, which is often a traumatic experience. Many of them die in prisons. In Australia, between 1980 and 1997, at least 220 Aborigines died in custody. While Aborigines represent only 1.4 per cent of the adult population, they accounted for more than 25 per cent of all custodial deaths due, for example, to poor prison conditions, health problems and suicide.²⁰

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.

This highlights the need for efforts by judges, courts and national administrators to find alternative forms of punishment when dealing with indigenous or tribal offenders.

Article 10.2.

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

The Greenland Criminal Code is based on the customary practices of the Inuit. It is unique because it is not based on the concept of penalty but of rehabilitation. There are no prisons, and people charged with crimes have to do social work as a way to help them to reintegrate into society.²¹

²⁰ Amnesty International. *Australia. Deaths in custody: how many more?* AI Index: ASA 12/04/97, Distr: SC/CO/GR. London, 1997, p. 1-7.

²¹ *Greenland Criminal Code*, March 1954

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.

In many cases, indigenous and tribal peoples are not familiar with national laws or the national legal system. They may find courts, hearings or tribunals confusing. Often they do not speak or read the official language used in legal proceedings, and this makes the whole experience even more difficult.

To address this situation, the Convention states that, where necessary, indigenous and tribal peoples should have interpretation in courts, and at trials, or other legal proceedings. This is to make sure that they can understand what is going on, and also, that they can be understood themselves.

In Mexico, an interpreter has to be available in all cases where the plaintiff, the defendant, the witnesses or the expert do not sufficiently understand Spanish, which is the working language of the courts.²²

The Saami in Norway have taken this a step further. In the areas where they form the majority - for instance in Finnmark county in Norway - Saami is one of the official national languages together with Norwegian. Thus, when a Saami is charged with an offence, he or she may choose to speak in Saami, and it is the judge who may require interpretation.²³

²² *Mexican Federal Code of Penal Procedure, Mexican Constitution* (1991) art. 4 (b), sections 103, 104, 105, 128 and 220.

²³ See: *Sameloven (Saami Act) of 12 June 1987*, Act No. 56, art. 3-4.

The concept of 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.

Many indigenous and tribal peoples have a special relationship to the land. It is where they live, and have lived for generations.

In many cases, their traditional knowledge and oral histories are connected to the land, which may be sacred, or have a spiritual meaning.

In North America, some mountains are sacred to indigenous peoples, e.g. Mount Graham to the Apache, Big Mountain to the Dineh, the Black Hills to the Lakota, Bear Butte to the Southern Cheyenne, etc. Sometimes it is the streams and rivers which are sacred, as in Fiji, or to the Paez in Colombia; or trees, for instance to the Dogon and Bambara in West Africa.²⁴

The concept of land usually embraces the **whole territory** they use, including forests, rivers, mountains and sea, the surface as well as the sub-surface.

Land is central to many indigenous and tribal peoples' cultures and lives. It is the basis for their economic survival, their spiritual well-being and their cultural identity. Thus loss of ancestral lands threatens their very survival as a community and a people.

*"The U'wa people in Colombia, would rather commit collective suicide than see their lands desecrated and destroyed by the exploitation of natural resources. Recently, a multinational petrol company has been granted a concession to undertake prospecting of hydrocarbons. The U'wa have appealed to the Colombian Constitutional Court, citing Convention No. 169 and the Colombian Constitution (1991) to protect their land."*²⁵



Samburu women building a house
Photo : Indigenous Information Network

²⁴ Brosse, J. "The Sacred Tree". In: *UNESCO Courier*, No. XLII, Jan. Paris. 1989.
Rappaport, J. *Territory and Tradition. The Ethnohistory of the Paez of Tierradentro, Colombia*. Ph.D Dissertation. Urbana, Illinois. 1982, p. 316-329.
UNDP. *Highland Peoples Programme*. Background Document RAS/93/103. Geneva, 1997, p.16. Seithel, F. *Zur Geschichte der Action Anthropology am Beispiel ausgewaehlter Projekte aus den USA und Kanada*. Mainz. 1986, p. 232. *Coyote* 3/96, Muenchen. p. 39.
²⁵ IWGIA. *Indigenous Affairs*, No. 1, Jan-Feb-March 1998. Copenhagen, p. 56.

Article 13.2.

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.

“It is essential to know and understand the deeply spiritual special relationship between indigenous peoples and their land as basic to their existence as such and to all their beliefs, customs, traditions and culture... for such people, the land is not merely a possession and a means of production... Their land is not a commodity which can be acquired, but a material element to be enjoyed freely.”²⁶

The Karen system of rotational farming helps to increase biodiversity by leaving fields fallow for a number of years. Human relations are intimately connected with the natural surroundings and the land. Relationships between members of the community are said to have a direct impact on the community’s agricultural production. The spirits will punish the breaking of any cultural laws and the impact will be on anything which represents monetary wealth and security. Therefore, the belief in, and the fear of governing spirits, directs and controls the community’s activities and attitudes towards the land and natural environment.²⁷

The Convention recognizes both **individual and collective** aspects of the concept of land. The concept of land encompasses the land which a community or people uses and cares for as a whole. It also includes land which is used and possessed individually, e.g. for a home or dwelling.

Land can also be **shared** among different communities or even different peoples. This means that a community or people lives in a certain area and also has access to, or is allowed to use another. This is especially the case with grazing lands, hunting and gathering areas and forests.²⁸



Karen spirit house
Photo: Inter Mountain Peoples' Education and Culture in Thailand Association (IMPECT)

²⁶ Report by Jose R. Martinez Cobo, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities: *Study on the Problem of Discrimination Against Indigenous Populations*. UN Document No.E/CN.4/Sub.2/1986/7/Add.1, paras. 196 and 197.

²⁷ Trakansuphakon, Prasert. “Adaptation and Cultural Heritage Through Traditional Agriculture: A Case Study of the Karen of Norrthern Thailand.” In: Thomas, V. (ed.). *Traditional Occupations of Indigenous and Tribal Peoples: Emerging Trends*. Project to Promote ILO Policy on Indigenous and Tribal Peoples, Geneva 2000.

²⁸ Roy, C.K. *Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts, Bangladesh*. Distr. by Jumma Peoples Network in Europe (JUPNET). 1996, p. 26-28.

Land rights

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 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.

Article 17.1.

Procedures established by the peoples concerned for the **transmission of land** rights among members of these peoples shall be respected.

The Convention clearly states that indigenous and tribal peoples have rights to the land they traditionally occupy.

What are “lands which they traditionally occupy”?

These are lands where indigenous and tribal peoples have lived over time, and which they have used and managed according to their traditional practices. These are the lands of their ancestors, and which they hope to pass on to future generations. It might in some cases include lands which have been recently lost.

In Australia, for example, indigenous peoples’ traditional rights to land were recognized as part of the common law of Australia in the *Mabo Decision* (No. 2) of the High Court of Australia on 3 June 1992. The Court stated that “*native title can continue to exist:*

- *where Aboriginal and Torres Strait Islander people have maintained their connection with the land through the years of European settlement; and*
- *where their title has not been extinguished by valid acts of Imperial, Colonial, State, Territory or Commonwealth Governments.”²⁹*

In response to the Mabo decision, the *Native Title Act* was adopted in 1993 and became law on 1 January 1994. It recognizes and protects native title rights, and includes the right to negotiate land and title claims with other stakeholders such as pastoralists, farmers and miners. The High Court’s *Wik* decision of June 1996 established that pastoral leases and native title can co-exist. However, recent developments are diminishing these achievements. The Native Title Amendment Act (1998) which came into force on 30 September 1998 severely reduces Aboriginal land rights.³⁰

²⁹ Commonwealth of Australia. *Mabo. The High Court Decision on Native Title*. Discussion Paper June 1993. Canberra. 1993, p. 1.

³⁰ See ATSIC. *The Wik Decision and the Future of Native Title Rights in Australia*. Paper prepared by the Aboriginal and Torres Strait Islander Commission (ATSIC) for the 15th Session of the UN Working Group on Indigenous Populations, Geneva, 1997. *Program*, No.201, 1998, p. 18-22.

Article 14.2.

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.

In order to protect indigenous and tribal peoples' rights to the lands they traditionally occupy, it is necessary to know which these are. Therefore, the identification of indigenous and tribal peoples' lands is important. This is currently happening in Bolivia, Brazil, Colombia, Ecuador and Paraguay, as well as in other countries.

Brazil, for example, adopted *Decree No. 1775* of January 1996 on the administrative procedure for the demarcation of indigenous lands. It includes a provision for appeal against decisions on the demarcation of indigenous lands which had not yet been regularized.³¹

Article 14.3.

Adequate procedures shall be established within the national legal system to **resolve land claims** by the peoples concerned.

In some situations, problems may arise out of land claims. These can be with other indigenous communities, or with outside settlers or other stakeholders.

Again in Brazil, the demarcation of the area known as Raposa do Sol gave rise to disputes. Indigenous peoples have objected to Ministerial Resolution No. 80, which reduces the area by approximately 300,000 hectares, makes access possible to non-indigenous persons, and excludes more than twenty indigenous villages from the area to be demarcated.³² In 2003, the Committee of Experts noted that this resolution had been revoked. Nonetheless, to this date, the disputes have yet to be resolved and the indigenous peoples have not yet obtained an official recognition of their lands, for which reason they continue their struggle.³³



Logging in Bangladesh
Photo : J. Arens



³¹ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*. Geneva. 1997, p. 302; and *ibid.* 1998, pp.316-317.

³² *Ibid.*

³³ www.cimi.org.br

The 1997 Indigenous Peoples Rights Act (IPRA), came about through strong indigenous peoples' movement in the Philippines. However, lobby groups, including mining companies, which were active in areas occupied by indigenous peoples, acted to water down the legal provisions in the Act. The IPRA claims to recognise indigenous peoples' rights to ancestral lands and domains, but in reality, indigenous peoples first have to agree that the state has a prior right to these lands. Even if indigenous peoples are able to acquire a Certificate of Ancestral Domain Title over their lands, the State reserves the right to use the area for the "greater good of national interest".³⁴

The Convention also requires governments to make sure that there are procedures and mechanisms in place to resolve any land disputes.

In the Chittagong Hill Tracts in Bangladesh, there are conflicting land claims between the tribal peoples and families from the plains who have been settled on the traditional lands of tribal people, resulting in the displacement of the original landowners. A peace accord agreed on 2 December 1997 between the Government of Bangladesh and the Jana Samhati Samiti (JSS - People's United Party) calls for the establishment of a national land commission to resolve these claims.³⁵



Swidden field, Chittagong Hill Tracts
Photo : Phillip Gain

³⁴ Degawan, Hermina, "Small-Scale Gold Mining as a Traditional Occupation in the Cordillera, Philippines". In: Thomas, V. (ed.). *Traditional Occupations of Indigenous and Tribal Peoples: Emerging Trends*. Project to Promote ILO Policy on Indigenous and Tribal Peoples, Geneva 2000.

³⁵ ILO. *Report of the Committee of Experts on the Application of Conventions and Recommendations*. Geneva, 1998, p.313. See also IWGIA. *Indigenous Affairs*, No. 1, 1998, p. 50.

Article 17.3.

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.

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.

In recognition of the vital nature of land in indigenous and tribal peoples' lives, the Convention calls for **special measures of protection** of their land rights. This includes the following elements:

- the need to respect the special relationship of indigenous and tribal peoples to their lands;
- recognition of their traditional rights of ownership and possession of their lands, including both the individual and the collective aspects;
- the need to identify the areas belonging to indigenous and tribal peoples;
- the need to protect indigenous and tribal peoples' lands from:
 - a) others coming into these lands for their own personal gain without permission from the relevant authorities, as in Brazil, where unregistered gold miners (garimpeiros) invade Yanomami territory;³⁶
 - b) outsiders trying to take the lands of indigenous and tribal peoples away from them through fraud or other dishonest means.

The Convention also states that indigenous and tribal peoples have the right to pass lands on from one generation to another, according to the customs of their own community.



Laos : Lue village in Phongsaly
Photo : Inthasone Phetsirseng

³⁶ ILO. *Report of the Committee of Experts on the Application of Conventions and Recommendations*. Geneva, 1995, p. 288; and *ibid.*, 1996, p. 267; and *ibid.*, 1998, p. 316.

Natural resources

Article 7.4.

Governments shall take measures, in co-operation with the peoples concerned, to **protect and preserve the environment** of the territories they inhabit.

Indigenous knowledge systems have enabled indigenous and tribal peoples to use, manage and protect the natural resources on their lands.

In many countries, indigenous and tribal areas are rich in biodiversity. The Amazonian rainforest is one such example.

In Ghana, ecologists have discovered some rare species in sacred forest groves. A UNESCO project was started in 1995, where ecologists and indigenous and tribal peoples work together to expand the protection and conservation of these forest groves to the surrounding areas.³⁷

The Nunavut agreement in Canada gives Inuit the right to participate in the management of land, water and wildlife in Nunavut and to evaluate the impact of resource development throughout the whole territory.³⁸

In Hawai'i, a decision known as the *Public Access Shoreline Hawai'i (PASH)* states that if indigenous people from Hawai'i

*"[...] can show that an area has been used traditionally for gathering or religious practices, they have the right to challenge any development upon that land that may damage or endanger their traditional practices."*³⁹

³⁷ Schaaf, T. "Sacred Groves. Environmental Conservation Based on Traditional Beliefs". In: UNESCO, *World Decade for Cultural Development 1988-1997. Culture and Agriculture Orientation Texts*, CLT/DEC/PRO-1995. Paris, 1995, p. 43.

³⁸ Assies, W.J. & Hoekema, A.J. *Indigenous Experiences with Self-Government*. IWGIA Doc. 76, Copenhagen, 1994, p. 181.

³⁹ IWGIA. *Indigenous Affairs*. No.1, 1998, p.21.

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.

Paiute-speaking peoples have inhabited the deserts of Nevada and California for thousands of years. Pyramid Lake has been a vital resource for the Paiute, who have traditionally relied on it for fishing and subsistence activities. Over a period of time, federal government schemes to attract non-indigenous farmers to the area, as well as the use of land surrounding the lake for tourism and industry, resulted in increases in water usage and pollution, and a rapid decline in the number of fish in the lake.

Use of and access to natural resources form the basis of indigenous and tribal peoples' subsistence economies. In order to ensure the survival of indigenous and tribal peoples, it is therefore necessary to protect:

- 1)** their natural resources, and
- 2)** their traditional practices for using, managing and conserving these resources.

The Paiute Tribal Council took the federal government to court, arguing that officials had allowed the destruction of the lake. The judge agreed, and ordered the government to take steps to protect Paiute waters and their related ecosystem. By the time further negotiations took place between those groups with stakes in the Truckee River watershed, there was an increasing perception that, due to their ecological outlook, the Paiute were against any "progress" in the region. However, during these negotiations, there was a severe drought, and the public was forced to rethink its attitudes towards conservation and ecology. These negotiations led to legislation requiring state and municipal authorities to adopt water management plans to protect ecosystems. The law also states that the water of the lake is to be managed "*in consultation with*" the Pyramid Lake Tribe.



Saami fishing
Photo : John Oswald Granmo



Community of Split lake, Northern Manitoba : loss of natural resources due to flooding
Photo : Rubina Kirkness

What does Convention No. 169 say? It specifies that indigenous and tribal peoples have **rights to the natural resources** of their territories, including the following:

- the right to participate in the use, management, protection and conservation of these resources;
- the right to be consulted before natural resources on their lands are explored or exploited;
- the right to studies on the effects of such exploration and exploitation;
- the right to benefit in the profits made from any exploitation and use of natural resources; and
- the right to be compensated by the government for any damages caused by such activities.



Kuna workers celebrating the rice harvest
Photo : Association Nappuagama



Going to market in the Chittagong Hill Tracts
Photo : Phillip Gain

Mineral or other resources

Article 15.2.

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.

There are many cases in which the State Constitution provides that the State alone owns mineral and other resources. Thus, the State has the legal right under its own laws to displace anyone necessary in order to exploit these resources. This Article recognizes this situation while also allowing indigenous and tribal peoples to have a say in how these resources are exploited.

When mineral or other resources on indigenous and tribal peoples' territories are exploited, it often causes severe environmental imbalances, pollution and health problems, in addition to economic hardship.

In the Philippines for example, large scale open-pit mining has caused health hazards, displacement, changes in the water table and the deposit of hazardous wastes on the lands of the indigenous Igorot people.⁴⁰

In Nigeria, the commercial exploitation of oil in the Niger Delta has had severe ecological and social consequences for the Ogoni people. Oil leaking from pipelines and tanks has polluted rivers, streams and fields, and killed animals and vegetation. Forests have been cut down to make way for roads and pipelines, destroying the subsistence economy of the Ogoni people. Environmental pollution has led to severe health problems such as tuberculosis, and respiratory and stomach diseases. The Ogoni were not consulted and have not received any benefit from the profits made.⁴¹

⁴⁰ United Nations. *Discrimination Against Indigenous Peoples. Transnational investments and operations on the lands of indigenous peoples. Report of the Centre on Transnational Corporations submitted pursuant to Sub-Commission resolution 1990/26.* E/CN.4/Sub.2/1994/40. 1994, p. 25.

⁴¹ Society for Threatened Peoples. *Arbeitsdokumentation: Ogoni in Nigeria.* Göttingen, 1995. See also IWGIA: *The Indigenous World 1996-97*, Copenhagen. 1997, p. 259.

What should happen if a company wishes to extract mineral or other resources from indigenous and tribal peoples' lands?

The first principle is that of consultation.

In most cases, the government has the exclusive right to sub-surface resources. In cases in which the government has sold to a company the right to exploit these resources, the government still has the primary responsibility to make sure the principles of the Convention are applied. This consultation should take place even before a company undertakes exploration for resources, which in itself can be damaging.



During consultation, the indigenous and tribal peoples concerned should be able to state their concerns.

If they do not want any extraction to take place, they can give reasons why there should be no extraction or exploration, e.g. environmental destruction, pollution, health problems, loss of basis of subsistence economy, etc.



According to ILO Convention No. 169, indigenous and tribal peoples have the right to participate in the benefits of exploration and exploitation as well as the right to be compensated.

Although indigenous and tribal peoples do not have the right under the Convention to veto exploitation, they can use their rights as bargaining tools in negotiations with the company. Through these negotiations, indigenous and tribal peoples can persuade companies to adapt their techniques to minimize environmental damage, and to restore the environment afterwards. In some cases, arrangements are not worked out to mutual benefit, and projects are abandoned, but this can mean that the communities receive no benefit either.

The Convention specifies that indigenous and tribal peoples have the right to be consulted before mineral or other resources on their lands are explored or exploited, as well as the right to participate in the benefits and to be compensated for any damages.

In 1993, the Norwegian Government gave permission to a multinational company, Rio Tinto-Zinc, to explore minerals in Saami areas. The Saami Parliament (elected national Saami body) and the Saami people were not consulted or informed of this. As a first step, the Saami Parliament and different Saami interest groups asked the Norwegian Government to withdraw the permission, but without success. The Saami Council and Saami Parliament then entered into direct negotiations with the company itself. They reached an unwritten agreement with the company that no mining will take place without the consent of the Saami Parliament.⁴²

In Colombia, the Embera-Katío have successfully taken legal action against the Urrá S.A. company constructing a hydroelectric project on the Río Sinú. The Constitutional Court of Colombia has temporarily denied the permit for operation until compensation for the losses, caused by dam construction, of resources which will not be available anymore in the future, has been regulated.⁴³

In a representation, a Government stated that it did not consider it appropriate to enter into consultations in relation to activities involving oil exploration and exploitation. It indicated that the rights to subsurface resources belong to the State. A tripartite committee in charge of examining the representation pointed out that the rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded and that these rights include the right of these peoples to participate in the use, management and conservation of these resources.

⁴² Henriksen, J.B. *Betenkning om Samisk Parlamentarisk Samarbeid*. Nordisk Samisk Institutt. Kautokeino, 1995.

⁴³ *Program*, No. 201, 1998, p. 7.

Displacement

Displacement is a crucial issue for indigenous and tribal peoples, who have often been subjected to displacement, usually in the name of “progress.” This often occurs in the case of mines, roads and hydroelectric dams.

The Sardar Sarovar Dam and Power Project in India has displaced thousands of tribal peoples, without adequate measures for their resettlement and rehabilitation. These social costs were one of the reasons why the World Bank stopped funding the project.⁴⁴

In Chile, the Ralco Dam Project, the second of seven hydroelectric projects on the Biobío River, was approved by the environmental office of the Chilean Government in June 1997. This project will affect seven Pehuenche communities, forcing 700 people to move from their ancestral land. When completed, it will flood 9,000 acres of farmland and forests, and will ultimately destroy the culture of the Pehuenche by allowing the massive immigration of workers into their land.⁴⁵

Pastoralist practices in Kenya have been blamed for environmental degradation and bad land management, despite evidence to the contrary. Bias in land law tends to be towards static populations, and against nomadic peoples. Pastoralists’ land is generally seen as “empty” land waiting to be settled or developed. In the National Parks Ordinance of 1945, the State acquired huge areas of land on which to establish game parks and reserves. A number of these reserves have disrupted Maasai land use patterns, displacing them to areas which are often unsuitable to sustain their way of life. As pastoralist populations increase, the land available for them to use is decreasing rapidly, causing a decline in their traditional way of life.⁴⁶



Pastoralists in Kenya
Photo : Indigenous Information Network

⁴⁴ Out of over 40,000 affected families only one fourth had been resettled by 1997. See ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*. Geneva, 1995, p. 289. 1996, p. 268. 1997, p. 307.

⁴⁵ *Abyala News*, Vol. 10, No.4, 1997, p. 25-29.

See also web page: <http://corso.ccsu.ctstateu.edu/archives/taino/0511.html>. *Indigenous People Face Destruction of Land and Resettlement*. June 25th 1997.

⁴⁶ Abdi Umar, 2000. “Herding into the new millenium: Continuity and change in the pastoral areas of Kenya”. In: Thomas, V. (ed.). *Traditional Occupations of Indigenous and Tribal Peoples: Emerging Trends*, Project to Promote ILO Policy on Indigenous and Tribal Peoples, Geneva 2000.

In some circumstances displacement is part of an official policy, e.g. in the Chittagong Hill Tracts of Bangladesh, East Timor, Laos or Vietnam.

In many parts of Laos, hill tribe peoples from mountain areas are being resettled in the lowlands, without sufficient support or means to make the transition. The resettlement has led to many problems in terms of health and food security among the people. They lose their traditional sources of food and medicine and lack the skills required for lowland cultivation.⁴⁷ In some instances, people who have been resettled, and are not satisfied with their resettlement site, initiate negotiations for relocation themselves. It may be that they have been resettled in a remote location, with poor soil, or infrastructure. In these cases, desire to relocate can be expressed to district or provincial authorities, but on many occasions, these negotiations lead to their requests being rejected for not corresponding to pre-planned objectives and plans to co-ordinate resettlement.⁴⁸

Another example is the Kaptai Hydroelectric Project which displaced 100,000 indigenous people in the Chittagong Hill Tracts, Bangladesh between 1959 and 1961, and flooded around two-fifths of their cultivable land.⁴⁹ Many of the indigenous and tribal peoples who were displaced by the dam were forced to move again in the 1980s as a result of a government settlement policy, as non-indigenous families were brought into the Chittagong Hill Tracts. Indigenous and tribal peoples were resettled in 'cluster villages'.⁵⁰



Lake created by the Kaptai dam, Bangladesh
Photo : J. Arens

⁴⁷ UNDP. *Highland Peoples Programme*. Background Document RAS/93/103. Geneva, 1995, p. 5-12.

⁴⁸ Yves Goudineau (ed.). *Resettlement and Social Characteristics of New Villages: Basic Needs for Resettled Communities in the Lao PDR*. Vol.1., UNESCO/UNDP, Vientiane, 1997, p.19.

⁴⁹ McCully, P. *Silenced Rivers. The Ecology and Politics of Large Dams*. London, New Jersey, 1996 (Second impression 1998), p. 71.

⁵⁰ Roy, C.K. *Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts, Bangladesh*. Distr. by Jumma Peoples Network in Europe (JUPNET), 1996, p. 59-66.

Article 16.1.

Subject to the following paragraphs of this Article, the peoples concerned shall **not** be **removed** from the lands which they occupy.

Removal from traditional territory has severe impacts on the ways of life, well-being and cultural identity of many indigenous and tribal peoples. The Dineh in Arizona were removed from their lands and had to resettle in an area polluted by radioactive materials. As a result they now face severe health problems, and many of them have died as they cannot survive away from their homelands.⁵¹

As a basic principle, Convention No. 169 states that indigenous and tribal peoples should not be removed from their lands.

Article 16.2.

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.

Should relocation have to take place, it should be only as an **exceptional measure**. It should only occur in circumstances where it may be unavoidable.

To improve the way such situations are handled, Convention No. 169 lays down certain basic steps:

- The peoples concerned must be asked to **agree** to the relocation. They should do so only after they have clear and **accurate information** on all the relevant facts and figures.

What is meant by “free and informed consent”?

It means that the indigenous and tribal peoples understand fully the meaning and consequences of the displacement and that they accept and agree to it.

⁵¹ Johnson, S. & Budnik, D. *Wir werdenüberleben. Gespräche mit indianischen Stammesältesten.* München, 1996, p. 51-56.

Article 16.3.

Whenever possible, these peoples shall have the **right to return** to their traditional lands, as soon as the grounds for relocation cease to exist.

Article 16.4.

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.

Article 16.5.

Persons thus relocated shall be fully **compensated** for any resulting loss or injury.

If indigenous and tribal peoples do not agree, then the Convention outlines the following procedural steps to be taken when relocation is necessary:

■ **Possible public inquiry:** Indigenous and tribal peoples have the opportunity to express their concerns through an “appropriate procedure.” This might be a public hearing or investigation, but there may also be other ways best suited to a particular solution.

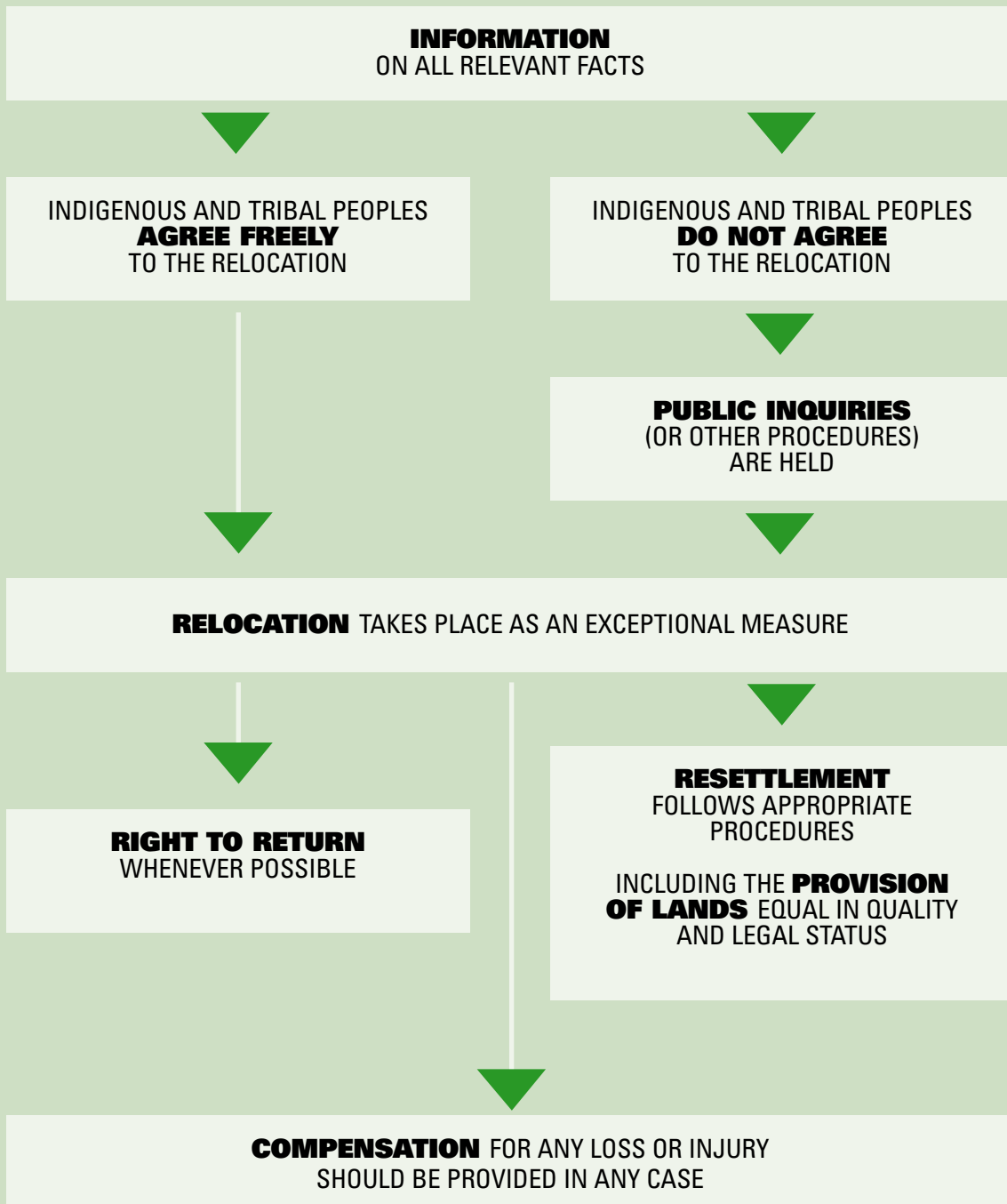
■ **Right to return:** Indigenous and tribal peoples have the right to return to their lands as soon as the reason for which they had to leave is no longer valid. For example, in the case of a war, or natural disaster, they can go back to their lands when it is over.

■ **Resettlement and rehabilitation:** If indigenous and tribal peoples cannot return to their lands, for example because they have been flooded, there must be a plan for the resettlement and rehabilitation of the displaced people.

■ **Lands of equal quality:** When indigenous and tribal peoples are resettled, they must be provided with lands of quality equal to, and with the same (or better) legal title as the lands they have lost. Therefore, if a person had agricultural lands, s/he should be provided with the same kind of land. If s/he had title to these lands, s/he should also have legal title to the lands that have been provided as a substitute. If indigenous and tribal peoples so wish, they can accept other forms of payment for their lost lands.

■ **Compensation:** Indigenous and tribal peoples have the right to receive full compensation for any loss or injury the relocation has caused, e.g. loss of house or property, adverse health impacts due to change of climate, etc.

Process of relocation



Any relocation, if deemed to be absolutely necessary, must be done in a transparent and participatory manner with the meaningful involvement of the peoples concerned.

An interesting example is the case of the Wanniyala-aetto (forest beings) of Sri Lanka. In 1983, the forest they lived in was turned into the Maduru Oya National Park and the Wanniyala-aetto were forced to move off their land and resettle in buffer zones and rehabilitation villages. As a consequence, their diet changed, and many fell sick with diabetes, obesity and high blood pressure, some dying as a result.

In June 1997, after years of lobbying and negotiation, a government delegation visited the Wanniyala-aetto to consult them and to study the impact socio-cultural changes and forced assimilation had had on them. Following this, in December 1997, the President of Sri Lanka publicly declared the Government's intention to return the forest to the Wanniyala-aetto. The Wanniyala-aetto began negotiating their return to the forest with the government. This includes rules to safeguard the forest from over-exploitation and illegal entry, and the participation of Wanniyala-aetto in the management of the park.⁵²

⁵² See *Wanniyala-Aetto Speech at UN Working Group on Indigenous Populations Fourteenth Session*. July 1996 (On file with the UN). Information received from Wiveca Stegeborn, anthropologist working for the Wanniyala-Aetto. See also UN: *Report of the Working Group on Indigenous Populations on its Fifteenth Session*. E/CN.4/Sub.2/1997/14. 1997, p. 14.

Traditional economies

Traditional economies are the basis of indigenous and tribal peoples' economic survival. They are based on detailed knowledge of the environment, and originate from generations of experience of caring for and using their traditional lands. Traditional economic activities such as hunting, gathering, trapping, fishing, grazing, shifting cultivation, weaving and carving are community-based. In many cases they are the only source of livelihood.

The rotational agriculture of the Karen in Northern Thailand is an age-old agricultural method whereby specific plots are tilled on a rotational basis. At any given time, only one plot is under cultivation, while the others are left fallow to regain their fertility. The following year, the plot which has not been used for the longest period of time is cultivated, and so-on. Plots are sown with a variety of crops, each with different harvesting times. This provides for the needs of the family throughout the whole year.

This practice of rotational or swidden cultivation is also in use in other parts of Asia, including in Cambodia, the Chittagong Hill Tracts of Bangladesh, and Laos. It has often been criticized and discouraged as being environmentally damaging. However, its proponents point out that this traditional form of agriculture is sustainable, as is demonstrated by the fact that these areas are often the only ones which remain fertile and have not yet been eroded.⁵³



Laos : Brou woman pounding rice
Photo : Inthasone Phetsirseng

⁵³ ILO/UNDP. *Regional Workshop Report: Information Exchange on Development Experiences with Highland Peoples, Chiang Mai, Thailand, 17-21 November 1997*. 1999, Annex 9.

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**.

In the light of the provisions in Article 23.1 of the Convention, in Namibia, the Project for the Promotion of ILO Policy on Indigenous and Tribal Peoples, the ILO Inter-Regional Programme to Support Self-Reliance of Indigenous and Tribal Peoples Through Co-operatives and Other Self-Help Organisations (INDISCO), Southern African Development and Consulting (CRIA) and the Working Group on Indigenous Minorities in Southern Africa (WIMSA) have collaborated on a project aimed at community-based development to strengthen and promote traditional economies.

The Sustainably Harvested Devil's Claw Project (SHDCP) uses traditional knowledge and cultivation methods for the harvesting of the Devil's Claw plant for medicinal purposes. This project also concentrates on issues of gender awareness, training for management of local income and community capacity-building to enable local management of the SHDCP Project. This is in line with the provisions of Convention No. 169, which place emphasis on the importance of economic self-reliance for indigenous and tribal peoples, taking into account their traditional technologies and cultural characteristics.



Chakma woman at her loom
Photo : Philip Gain

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 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.

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.

Indigenous and tribal peoples' traditional economies are threatened by a number of factors: dispossession and loss of land rights, reduction and degradation of land available, and sometimes prohibition of the use of, and access to natural resources, as well as the demands of market economies.

Without the resource base for their traditional economies, indigenous and tribal peoples are culturally and economically vulnerable. In many parts of the world, the lands of indigenous and tribal peoples have been reduced to a size which makes sustainable traditional use of their lands impossible. They are either forced to over-exploit their resources by reducing fallow periods, to plant chemical-intensive cash crops, or to seek other sources of income in areas such as tourism.

The traditional sources of livelihood for the Ibaloi people of the Philippines are small-scale gold mining and agriculture. Mining used to be a community affair, and in hard times, richer elements of Ibaloi society were expected to feed the whole community as a means of distributing wealth. The opening of the area to various mining companies during the 1920s, and the influx of population from other areas meant that the Ibaloi were gradually integrated into the cash economy. This resulted in the loss of many egalitarian social institutions, such as the *Sagaok* system of sharing the gold, and the equal distribution of wealth.

More problems have come with the 1991 Small-Scale Mining Act and 1995 Mining Act. These acts essentially forbid the practice of small-scale mining and restrict the continuation of traditional practices. The 1995 Act opens vast tracts of land to mining companies for exploitation and exploration. It also grants water and access rights to mining firms, whereas restrictions on the same rights are imposed on small-scale miners under the 1991 act.⁵⁴

⁵⁴ Degawan, Hermina. "Small-Scale Gold Mining as a Traditional Occupation in the Cordillera, Philippines". In: Thomas, V. (ed.). *Traditional Occupations of Indigenous and Tribal Peoples: Emerging Trends*. Project to Promote ILO Policy on Indigenous and Tribal Peoples, Geneva 2000.

Article 23.2.

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.

The Convention highlights the following:

- the importance of traditional economies as important bases for the continuation of indigenous and tribal peoples' cultures and **economic self-reliance**;
- the need to recognize indigenous and tribal peoples' **specific knowledge**, skills and **traditional technologies** as basic factors in traditional economies;
- the need to strengthen and **promote these economies** with the participation of indigenous and tribal peoples;
- the need to provide indigenous and tribal peoples with **enough land** for their means of subsistence; and
- the need to provide them with the necessary **financial and technical assistance** to enable them to maintain and develop their traditional economies in a sustainable way.

Does this mean that indigenous and tribal peoples can only practice their traditional activities and are not allowed to seek other means of subsistence?

No, emphasizing the importance of traditional activities does not mean that indigenous and tribal peoples cannot seek work outside their communities, or take on new economic opportunities. It means that traditional activities are recognised as a very important part of indigenous and tribal peoples' economies and cultures, and the Convention stresses the need for their protection.



Reindeer
Photo : John Oswald Granmo

Vocational training

Indigenous and tribal children are taught traditional skills such as hunting, fishing and weaving by their parents, grand parents and elders. These skills, which are passed on from generation to generation, are the main form of livelihood for the family.

Modernization and the need to adapt to changing circumstances often places a great load on the economic independence of indigenous and tribal peoples. Traditional employments such as hunting, gathering, grazing or farming are often insufficient to provide for the family or community, due to the decline in the availability of primary natural resources, such as forests, etc., and problems of access to those which remain.

An increasing number of indigenous and tribal communities are faced with little alternative but to try to earn their living in a way different from their traditional economic base.

This is where vocational training programmes can be extremely important. The aim of vocational training programmes is to train people, both men and women, in specific skills which can be used to earn a living.

However, for these vocational training programmes to be successful in the long run, they must be specifically designed to meet the needs of the community concerned. They must include components which accommodate previous employment patterns and the specific characteristics of the community.

Any training programme aiming to provide indigenous and tribal peoples with skills for alternative income generation activities must be adapted to their specific situation and take their traditional knowledge into account. For example, a pastoral community may respond better to an agricultural training programme on how to grow and market vegetables than to a programme that teaches them to make dolls for mass production.

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.

Article 22.2.

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.

In the Chittagong Hill Tracts, the indigenous and tribal peoples displaced by the Kaptai Hydroelectric Project were encouraged to take up fruit farming - pineapples and cashews - as a ready source of income. Without adequate training in horticulture or marketing, the programme did not yield positive results, and these peoples, traditionally rice farmers, were left without a subsistence base for their economy or an alternative source of income.⁵⁵

In Bolivia, the “Cultural Recuperation and Development of Self-managed Textile Workshop Project” was implemented over a five-year period. The aim of the project was to improve the livelihood of 30 Jalq’a and Tarabuco communities in the Bolivian highlands. This was achieved through improving the quality and organization of textile production, which had once been widespread among these communities, but had gradually deteriorated. The communities participated fully in the decision-making processes involved in the project, and the knowledge of older generations was used to guide the work of the young. Eventually, the project not only helped to improve families’ economic situations, but also regenerated elements of Jalq’a and Tarabuco culture which had been in progressive deterioration.⁵⁶

Thus, for a programme to meet its objectives of gainful employment and economic self-sufficiency, it must have the support, cooperation, and agreement of the community concerned. It should also be planned and implemented on a long-term basis in consultation with the peoples concerned.



Mola : traditional dress of Kuna women
Photo : Association Napguagama

⁵⁵ Roy, C.K. *Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts, Bangladesh*. Distr. by Jumma Peoples Network in Europe (JUPNET), 1996.

⁵⁶ ILO. *Building on Culture to Face Changing Realities: The Jalq’as and Tarabucos Story*. Geneva, 1994.

Article 22.3.

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.

Any skills training programme for indigenous and tribal peoples must include the following elements:

- It must be based on their **specific characteristics**.
- It must **meet their needs**. **Studies** to assess the existing situation and to identify components for training can be used for this purpose.
- It must be productive and help indigenous and tribal peoples to become **economically self-sufficient**.
- Indigenous and tribal peoples must be **involved at all stages**, from the design of the programme to its implementation and evaluation.

The Convention emphasizes the need to **transfer responsibility gradually** to the peoples concerned, if they decide that this is what they want.

The ultimate objective is for the indigenous and tribal peoples to implement and manage the entire training programme themselves. However, until and unless they feel ready to take this on, the government retains the responsibility for vocational training.



Duodji : traditional Saami handicraft
Photo : John Oswald Grammo

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.

Traditionally, the work of indigenous and tribal peoples has been community-based and adapted to their specific surroundings. It has often had a strong collective element as well. In the rapidly changing surroundings of today, indigenous and tribal peoples are often forced to seek work outside traditional communities in order to survive.

By 1950 in Paraguay, the territory of the Enxet people had been occupied by new landowners. Large-scale cattle ranching was introduced, the wild animals were driven away, and the Enxet hunting areas were diminished. The Enxet had no choice but to become cheap labourers for businesses or farms, and take loans from moneylenders under usurious conditions. This form of debt bondage is common in other countries too.⁵⁷

Article 20.2.

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.

The Convention emphasizes the need to adopt **special measures** for the protection of indigenous and tribal workers where they are not effectively protected by existing national labour standards. The objective is to **prevent any discrimination** against indigenous and tribal workers and to ensure that they are treated the same as all other workers.

In many situations, the conditions of work and recruitment for indigenous and tribal peoples are well below national and international labour standards. For instance in Peru, the ILO's Committee of Experts has commented on forced labour practices affecting indigenous peoples. Here, Ashaninka communities living in the Alto Ucayali have been subjected to a number of forms of forced labour, the most common of which is debt bondage, through a system known as *enganche o habilitación*.⁵⁸ This forced labour has centred around agriculture, cattle raising and logging activities.

⁵⁷ IWGIA & Anti-Slavery International. *Enslaved Peoples in the 1990's. Indigenous Peoples, Debt Bondage and Human Rights*. IWGIA Doc. 83, Copenhagen, 1997, p.156.

⁵⁸ For examples of other countries see also ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*. Comments on the Forced Labour Convention, 1930 (No. 29), Geneva. 1998 (pp. 99-137), and 1999 (pp.106-154).

Article 20.3.

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.

In order to protect indigenous and tribal workers from discrimination, the Convention specifies the following conditions:

- Indigenous and tribal workers should **not be discriminated against when looking and applying for work**, which includes everything from manual labour to higher positions. Men and women should have the same opportunities.
- They should **not be paid less** than anyone else doing the work of equal value, and this should not be restricted to lower-paid kinds of work.
- They should **not work under exploitative conditions**. This is especially important when working as seasonal, casual or migrant workers, e.g. on plantations during harvest times. Men and women should be treated equally.
- They have the **right to** form or join **associations** and to participate in trade union activities.
- They should receive information about **workers' rights** and ways to seek assistance.
- They should not work under conditions causing adverse health impacts without being properly informed about the necessary precautions. In any case they should receive **medical and social services**.

Article 20.4.

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.

Inspection services to monitor the working conditions of indigenous and tribal peoples are important to make sure that these conditions are met. In Brazil, for example, Mobile Inspection Teams have been established with the objective of investigating a greater number of complaints in particular with regard to degrading forms of work.⁵⁹



Kuna workers sharing the produce of a day's work
Photo : Association Nappuagama



Industry in Greenland
Photo : Lil Photo

⁵⁹ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*. Geneva, 1997, p. 304.

Health

Article 25.2.

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**.

Indigenous concepts of health constitute more than physical and mental well-being, or being free from diseases. They incorporate a state of balance between mind, body and spirit, and of being in harmony with nature.

Health is influenced by many factors such as removal from ancestral lands, dispossession, environmental degradation, pollution, and contamination. Traditional medicines do not have any remedies for new sicknesses brought in or caused by outside factors, e.g. contamination as a result of mining, cancer, AIDS and radioactive pollution.

In Brazil, unregistered gold miners - *garimpeiros* - who have intruded onto indigenous lands have brought new diseases with them. More than 21% of the Yanomami people have died as a result of malaria, respiratory diseases, and tuberculosis, in addition to poisoning from the mercury used to extract gold, and diseases caused by the forced prostitution of indigenous women. There have also been a number of violent conflicts between the indigenous and tribal peoples and the *garimpeiros*. The Brazilian Government's own estimates indicate that if immediate measures are not taken, the Yanomami will soon become extinct.⁶⁰



Brou children in Khammouane
Photo : Inthasone Phetsirseng

⁶⁰ ILO. *Report of the Committee of Experts on the Application of Conventions and Recommendations*. Geneva, 1995, p. 289; and *ibid.*, 1997, p. 305.

The health of indigenous and tribal peoples in most countries lies well below national standards.

*"They have higher infant mortality rates, lower life expectancy and more chronic illness than the non-indigenous population in any national society."*⁶¹

In November 1997, a conference on the health of indigenous youth was held in Cooktown, northern Australia. Indigenous delegates stated that their "*communities suffer from a high incidence of social illnesses: substance abuse, sexual abuse, imprisonment, homelessness, and suicide as well as infant mortality, death, and diabetes.*"⁶²

One indigenous delegate from Hawai'i pointed out that indigenous and tribal peoples' traditional diet is important for their health. As natural resources are diminishing, there is less traditional food available. This shows that the health of indigenous and tribal peoples is closely related to their lands. In New Zealand, the Taenui have established a successful health care system based on the reclamation of traditional Taenui lands.⁶³



Samburu women washing in the river, which is the only watering point for humans, livestock and wildlife
Photo : Indigenous Information Network

⁶¹ United Nations. *Health and Indigenous Peoples*. Note by the Secretariat. Geneva. E/CN.4/Sub.2/AC.4/1997/4, p.1.

⁶² IWGIA. *Indigenous Affairs*, No.1, 1998, p.21.

⁶³ *Ibid.*

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.

Article 25.3.

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.

Article 25.4.

The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.



Vietnam : a pilot project in Thai Nguyen, constructed a system to ensure a safe water supply
Photo : Committee for Ethnic Minorities in Mountainous Areas (CEMMA)

The Convention highlights the following factors as important in providing health services to indigenous and tribal peoples:

- They must be **community-based**.
- They should be complementary to **traditional healing practices**, and should include them.
- The indigenous and tribal community must be actively **involved**.
- The local people should be **trained** to work to provide health care, and eventually to take charge themselves, if they so wish.
- Governments should provide the resources for these health care services, as they do for all citizens.

The ultimate aim is to **transfer full responsibility** and control of health services to the indigenous and tribal peoples or communities, when they are ready to assume this responsibility.

Health services should not be isolated. They should be linked to other measures such as improvement of housing facilities, water conditions, sanitation and working conditions, as all these are contributory factors influencing the health of indigenous and tribal peoples.

Social security

In many countries, indigenous and tribal peoples are not fully covered by existing social security services, such as benefit programmes for the unemployed, the elderly, the sick and the disabled. This may be because they live in less developed rural areas which are not included in government surveys. It could also mean that these programmes do not properly address the social situation of indigenous and tribal peoples, many of whom do not work in what is known as “formal employment,” but as seasonal, casual or migrant workers, or in self-employment.

Article 24.

Social security schemes shall be **extended progressively** to cover the peoples concerned, and applied without discrimination against them.

In order to ensure that indigenous and tribal peoples are properly covered by social security programmes, the Convention points out:

- the need to extend such programmes to include indigenous and tribal peoples;
- that these programmes should address their **specific situations**; and
- the need to make sure indigenous and tribal peoples have the same right of **access to social security** services as all other citizens.



Kuna woman making a mola
Photo : Asociacion Nagguagama

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.

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.



This young Samburu boy is being prepared to become a leader at an early age
Photo : Indigenous Information Network

Indigenous and tribal peoples' own educational systems are based on concepts, histories and cultural values which are different from those of other systems. They include learning skills such as hunting, trapping and weaving, which are not generally included in general school programmes. In the words of a Thailand hill tribe leader:

*"Education is not only in schools. It is out there in our surroundings. Even forests can be our teachers."*⁶⁴

The Convention states that indigenous and tribal peoples have the same right to benefit from the national education system as everyone else in the country. In addition, education programmes designed for indigenous and tribal peoples should include the following elements:

- design and implementation with the active **participation** of the peoples concerned;
- response to the **specific needs** of indigenous and tribal peoples;
- respect for their cultural values, histories and traditions;
- strengthening and promoting the use and practice of **indigenous and tribal languages**; and
- ensuring that they have the opportunity to reach the same level of education as other citizens.

⁶⁴ *Bangkok Post*, 2 July 1997. "Right in his own backyard."

Article 28.3.

Measures shall be taken to **preserve and promote** the development and practice of the indigenous **languages** of the peoples concerned.

Convention No. 169 provides for the promotion and protection of indigenous and tribal languages. The Project for the Promotion of ILO Policy on Indigenous and Tribal Peoples co-operated with PINGOS Forum in Tanzania to have the Convention translated into Kiswahili, for use among indigenous peoples in eastern African States. Together with the Inter-Ministerial Committee for Highland Peoples' Development of the Government of Cambodia, the Project also had the Convention translated into Khmer, to make it more accessible for indigenous and tribal peoples. In addition, the Project has developed a number of audio tapes in the Barabraig and Hadzabe languages, in order to provide information on Convention No. 169 for people who rely on oral, as opposed to written tradition for the dissemination of knowledge.⁶⁵

A similar undertaking is underway in Morocco, where such information is being produced in Tamazight. This will enable the people concerned to be informed of their rights and of possibilities for improving their situation.

In Malaysia, the traditional indigenous education system is very different from the formal education system. In general, school curricula are not adapted to the indigenous way of life and their traditional culture. However, measures are being taken by the Government, in collaboration with various NGOs, to change thinking that portrays indigenous traditions as barriers to progress. This emphasizes the value of traditional indigenous knowledge. One example is a 1997 policy on indigenous languages called "Pupil's Own Language," which was initiated in Penampang District, Sabah, to teach the Kadazan language to indigenous pupils. This scheme acknowledges the importance of indigenous languages as a part of the overall education of indigenous children.⁶⁶

⁶⁵ So far, Convention No. 169 has been translated into Bahasa, Portugese and Thai, among other languages, in order to make it more accessible.

⁶⁶ Lasimbang, Jannie. "Participatory Arrangements and the Future of Traditional Occupations in Relation to Contemporary Framework Policy: A case study of the Kadazans, Sabah, Malaysia." In: Thomas, V. (ed.). *Traditional Occupations of Indigenous and Tribal Peoples: Emerging Trends*. Project to Promote ILO Policy on Indigenous and Tribal Peoples, Geneva 2000.

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.

Between 1982 and 1984, a special educational programme was developed by indigenous people in Oaxaca, Mexico, with the help of linguists. The main aims of this programme were to promote literacy in the Mixe language, to develop a uniform Mixe alphabet, and to help development in areas such as law and health. The courses incorporated the knowledge of the elders, Mixe mathematics and agriculture, as well as legal training to defend communal land ownership. The indigenous people were able to participate and express their opinions. The programme continued until July 1998.⁶⁷

In many countries, there were once no facilities for indigenous and tribal peoples to learn to read and write in their own languages, and sometimes they were even prevented from speaking them. In some countries such as Bangladesh and Thailand, this issue has not yet been resolved. As a result, many indigenous and tribal languages have been lost or are dying out.⁶⁸

Among indigenous and tribal peoples today there is a growing awareness of the need to preserve their languages and a demand to initiate indigenous and tribal language education. For example, in French Guyana, work to create a writing system has been initiated among the Kalina.



Kenya : Pastoralists' children in class under a tree
Photo : Indigenous Information Network

⁶⁷ Robles Hernandez, S. "Our Experience in Popular Education". In: King, L. (Ed). *Reflecting Visions. New Perspectives on Adult Education for Indigenous Peoples*. Hamburg, 1998, p. 136-139.

⁶⁸ See speeches given by indigenous and tribal representatives at the sixteenth session of the UN Working Group on Indigenous Populations in 1998. (On file with the UN). See also King, L., 1998, p. 125.

Article 28.2.

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.

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.

Recognising the central role of language in indigenous and tribal peoples' culture and identity, the Convention highlights two main elements:

- The need to protect and **promote indigenous and tribal languages**; and
- the need for indigenous and tribal children to learn to **read and write in their own languages**.

Educational programmes may include the establishment of special schools in indigenous and tribal areas, which include teaching in both national and indigenous or tribal languages. The aim of such **inter-cultural bilingual programmes** is to make sure indigenous and tribal children learn their own language, culture and tradition while at the same time learning the subjects on the national education curricula. This helps them to participate fully in national life, while at the same time learning about their own culture and heritage.

In Alaska, the language commission has introduced bilingual education. This has meant a revival of indigenous languages.⁶⁹

Since 1988, the Bilingual Intercultural Education Project has been running successfully in the Guarani region in Bolivia. The Assembly of the Guarani People was directly involved in the development and implementation of the programme to ensure that it is based on their experiences and ideas and meets their needs. One of these needs was that education take place in both Spanish and Guarani. Once the bilingual programme had begun, parents found that their children stopped being ashamed of speaking Guarani in front of a Spanish-speaker and that they liked school more. The progress of this project led to the development of a large-scale literacy campaign. The objective was not only to read and write in Guarani but also to revive the Guarani history, strengthen identity and to reach political objectives.⁷⁰

⁶⁹ Rasmussen, H. & Sjoerslev, I. "Culture and Indigenous Rights". In: UNESCO: *World Culture Report*. Paris, 1998, p. 87.

⁷⁰ Lopez, L.E. "Capacity Building: Lessons learnt from the Literacy Campaign of the Assembly of the Guarani People of Bolivia". In: King, L. (Ed): *Reflecting Visions. New Perspectives on Adult Education for Indigenous Peoples*. Hamburg, 1998, p. 149-154.

Article 27.2.

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.

Article 27.3.

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.

The Convention states that once programmes have begun, management and control should be **gradually transferred** to the indigenous and tribal peoples themselves, if they so desire, so that in the end they are the ones with full responsibility for their educational programmes and systems. To make this possible, the concerned government also needs to provide the necessary financial assistance and resources.

In New Zealand, a comprehensive Maori education strategy is being developed by Maori teachers, educational organizations, and the Government. In recognition of the Maoris' dual role as indigenous peoples and as citizens of New Zealand, the objective is to develop two parallel strategies: (1) promote independent Maori education based on Maori culture and traditions, and controlled by Maori people; and (2) integrate Maori education into the general education system so that Maori people can reach the same level of education as non-Maori.⁷¹

⁷¹ NZEI Te Rui Roa. *Report from Te Reo Areare to Hui-a-Tau 1997*. New Zealand, 1997, p.3.

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.

Eliminating prejudices:

Intolerance is often based on lack of knowledge. By learning about each others' cultures and ways of life, multi-ethnic societies can live together in peace and harmony with mutual respect and tolerance for each others' differences.

The Convention emphasizes the need to inform non-indigenous people about indigenous and tribal cultures. This can be done through such means as publications, documentation, films and exhibitions, which give a true description and information about their ways of life.

In Costa Rica, the ILO supported a radio programme in Spanish and two indigenous languages (Bribri and Cabekar) with two objectives:

- 1)** to inform indigenous peoples about relevant national laws and Convention No. 169 which Costa Rica had ratified; and
- 2)** to share with non-indigenous people information about the culture of indigenous peoples.⁷²

⁷² Chacon Castro, R. *Informe sobre el desarrollo del proyecto de promoción por radio de los derechos indígenas y del Convenio 169 de la OIT*. San Jose, Costa Rica, 1997, p. 2 (on file with ILO).

Cross-border contacts

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.

Some indigenous and tribal peoples are separated by national boundaries and now live in different countries. For example, the Saami people are spread across Finland, Norway, Sweden and Russia; the Karen live in northern Thailand and parts of Myanmar; the Kuna in Colombia and Panama; and the San live in Botswana, Namibia and South Africa.⁷³

They are the same people, they share the same cultural identity. For them, cultural, social, political and economic relations do not stop at national borders.

To cover this kind of situation, the Convention emphasizes that governments should ensure that members of the same peoples living in different countries can communicate and move freely across borders. To do this, governments can reach bilateral and international agreements.

Cross-border organizations of indigenous and tribal peoples

In addition to this, many indigenous peoples who are separated by national boundaries have their own cross-border organisations. These include the Inuit Circumpolar Conference (ICC), the Saami Council, IMPECT (the Inter-Mountain Peoples Education and Culture in Thailand Association), and COICA (Coordinadora de las Organizaciones Indígenas de la Cuenca Amazonica).

⁷³ See maps in IWGIA: *The Indigenous World*. Copenhagen, 1998.

Ratification

Article 37.

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 38.1.

This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

Ratification of an international convention (treaty) is a sovereign and voluntary act of a State. By signing an international legal document the government agrees to be bound by the contents of the treaty.

Ratification of an ILO Convention is the **beginning** of a process of dialogue and co-operation between the government and the ILO. The purpose is to work together to make sure national legislation and practice agree with the provisions of the Convention.

ILO Conventions, unlike other international treaties, cannot be ratified with reservations. They have to be accepted in their entirety. Therefore, it is important that governments, workers and employers, as well as indigenous and tribal peoples, learn about all the provisions of the Convention.

Before ratifying Convention No. 169, it is desirable that there be a dialogue among the traditional ILO partners (governments and employers' and workers' organizations), as well as with the indigenous and tribal peoples concerned. By involving these principal actors, their participation in the implementation of the Convention is better guaranteed.

The situation of indigenous and tribal peoples varies in different countries. Therefore, a uniform approach cannot be applied. Sometimes, national laws and policies affecting indigenous and tribal peoples have to be amended or revised, or new laws adopted in order to bring national laws and policies into line with the Convention. For example, after ratifying Convention No. 169, both Bolivia and Mexico revised their Constitutions to recognize the existence of indigenous peoples and the multi-ethnic and pluricultural nature of the State.⁷⁴

⁷⁴ Tomei, M. & Sweptson, L. *Indigenous and Tribal Peoples: A Guide to ILO Convention No. 169*. Geneva, 1996, p. 4.

Process of ratification

GOVERNMENT



ILO



FORMAL REGISTRATION



**COMES INTO FORCE:
1 YEAR AFTER**



OBLIGATIONS:

- **1ST REPORT DUE 1 YEAR AFTER COMING INTO FORCE**
- **2ND REPORT DUE 2 YEARS LATER**
- **PERIODIC REPORTS EVERY 5 YEARS (or more often if necessary)**

A government considers ratifying Convention No. 169 and discusses it with the relevant bodies. The legislature may have to adopt an international treaty to make it part of the national law. Therefore, the approval of the parliament or other legislative body may have to be sought. Once this is obtained, then the executive authority of the country - the government - also has to approve the instrument.

Process of Ratification:

- The government sends a letter to the **ILO** informing it of its decision to ratify and be bound by the convention.
- **Formal registration:** Once it receives this letter, the ILO registers the ratification and informs other member States.
- **One year after** the ILO receives notice of ratification, the Convention **comes into force** in the country concerned - i.e., it becomes binding.
- **One year after the registration**, the government has to send its **first report** on the implementation of the Convention to the ILO. The one-year interim period is to give the government time to make sure national law and practice are in agreement with the Convention. A second report is due two years after.
- After this, the **normal reporting period** for Convention No. 169 is **every five years**. However, if the situation is serious and needs to be followed closely, more frequent reports are requested.

Article 36.

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

However, even if a country has not ratified the Convention, it can still use its provisions as guidelines. For example, Germany has not ratified Convention No. 169 but its development policy for cooperation with indigenous and tribal peoples in Latin America is based on the Convention.⁷⁵

Again, while Finland has not yet ratified Convention No. 169, it has tried to meet many of the provisions of the Convention in the Saami Act of 1995.⁷⁶ The Convention has also influenced the World Bank's operational guidelines on indigenous peoples, OD 4.20.

The Convention can also be a useful tool for indigenous and tribal peoples to negotiate policies or projects affecting them.

In Guatemala, prior to the ratification of the Convention in 1996, the general orientation of the Convention served as a guideline during the negotiation process leading to the Agreement on Identity and Rights of Indigenous Peoples between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca, adopted in 1995.⁷⁷

⁷⁵ Deutscher Bundestag. *Antwort auf Kleine Anfrage zur Politik der Bundesregierung in bezug auf indigene Völker*. BT Drucksache Nr. 13/5173, Bonn, 1996, p.2.

⁷⁶ Act No. 974 was adopted on 17 July 1995. See Henriksen, J.B. *Betenkning om Samink Parlamentarisk Samarbeid*. Nordisk Samisk Institutt. Kautokeino, 1995.

⁷⁷ International Labour Conference. *Report of the Committee of Experts on the Application of Conventions and Recommendations*. Geneva, 1999. See also Tomei, M., and Swepston, L. *Indigenous and Tribal Peoples: A Guide to ILO Convention No. 169*. ILO, Geneva, 1996, p.32.

What happens if a country ratified the earlier ILO Convention No. 107 and now wants to ratify Convention No.169?

Convention No. 107 on Indigenous and Tribal Populations, 1957 was revised by Convention No. 169. It is no longer open for ratification. However, it remains binding on those countries which have ratified it.

Once a country ratifies Convention No. 169, it has to comply with the provisions of Convention No. 169 and Convention No. 107 is “denounced” automatically - it no longer applies to that country.

Supervision

The ILO has a number of procedures to examine how its conventions are being applied. There is thus a **process of dialogue** between the country and the ILO supervisory bodies.

Once a Convention has been ratified, **governments** are required to send regular **reports** to the ILO on how it is being implemented in their country.

These reports should include information on the situation in the relevant area, both in law and in actual practice. The reports must be sent to the most representative **employers' and workers' organizations** in the country for their comments.

The reports sent by governments and employers' and workers' organizations are reviewed by the **Committee of Experts on the Application of Conventions and Recommendations**. It is made up of 20 independent experts and meets every year.

The committee makes its comments to individual countries in two ways:

- **Observations** generally focus on serious or long-standing cases of a government's failure to fulfill its obligations, or on noting cases of progress. They are published in the annual report of the Committee of Experts.

- **Direct Requests** generally ask for more information and seek clarification on specific issues. They are not published in the annual report, but are available on the internet.⁷⁸

The **Conference Committee** on the Application of Standards, which consists of governments, employers and workers, reviews the Committee of Experts' annual report. It also discusses in detail cases of particular concern and makes its own observations.

⁷⁸ See ILO website for further information at: <http://www.ilo.org> under ILOLEX.

Process of dialogue

INFORMATION AND PERIODIC REPORTS FROM GOVERNMENTS, AND COMMENTS BY EMPLOYERS & WORKERS

COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS

DIRECT REQUESTS TO GOVERNMENTS

OBSERVATIONS PUBLISHED IN REPORT III (1 A)

TRIPARTITE CONFERENCE COMMITTEE GOVERNMENTS + EMPLOYERS + WORKERS

INTERNATIONAL LABOUR CONFERENCE

Complaints Procedures

When individual States fail to fulfill their obligations under ILO standards, complaints may be made under several special procedures. These include:

1. Representations under article 24 of the ILO Constitution

These can be made by employers' or workers' organizations who claim that a country has failed to observe a ratified convention.

The Governing Body has to decide whether the representation is valid - that is, if the formal conditions have been met to file it. If so, it sets up a tripartite committee from among its members, which is given the task of examining the matter.

This body may make recommendations based on the representation. The issue is then sent on to the Committee of Experts on the Application of Conventions and Recommendations for follow-up. Representations have been received since 1997 on the application of Convention No. 169 by Bolivia, Colombia, Denmark, Ecuador, Mexico and Peru.

2. Complaints under article 26 of the ILO Constitution

These can be filed by: (i) one member State against another regarding the way a Convention is being applied. Both States must have ratified the Convention in question; (ii) by a delegate to the International Labour Conference on the observance of a ratified Convention by a State; and (iii) by the Governing Body on its own initiative. The Convention must, once again, have been ratified by the State in question.

The Governing Body may appoint a Commission of Inquiry, composed of three independent persons, to examine the complaint.

Recent examples concern forced labour in Myanmar, and abuses of trade union rights in Nigeria. No article 26 complaints have been filed under Convention No. 169.

3. Complaints to the Committee on Freedom of Association.

These can be made regarding the failure of individual states to fulfill their obligations under the ILO Constitution as related to the rights to organize and bargain collectively. The Committee on Freedom of Association is a tripartite body, composed of nine regular members from the government, employer and worker groups of the Governing Body, and meets 3 times each year.

Complaints to the Committee regarding violation of freedom of association must be made by organizations of workers or employers.

This can be done even if a country has not ratified the relevant ILO Conventions - The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Access to the ILO

Indigenous and tribal peoples as such do not have a formal position within the ILO tripartite structure. However, they can participate in ILO meetings and other activities in the following manner:

- 1.** As representatives of **governments, or of workers' and employers' organizations.**
- 2.** As representatives of a non-governmental organization (NGO) on the **ILO Special List of Non-Governmental International Organizations.**

The ILO's Special List is a list of NGOs whose aims and activities are in harmony with the spirit, aims and principles of the ILO. NGOs should work internationally and cover a number of countries in their work. NGOs wishing to be on the list can send a request to the Director-General of the ILO.

For an NGO on the special list to participate in a meeting, a written request must be submitted to the Director-General of the ILO at least one month before that meeting or conference is scheduled to start.

The Four Directions Council, Indigenous World Association, and the Saami Council are among the NGOs on the Special List, as well as several other NGOs which take an active interest in questions affecting indigenous and tribal peoples, for example, Amnesty International and the International Work Group for Indigenous Affairs (IWGIA).

Indigenous and tribal peoples can also **send information directly** to the ILO. This can be done in the following way:

- 1.** Through any workers' or employers' organization - including those made up of indigenous and tribal peoples.
- 2.** They can send information themselves.

The Committee of Experts and the Conference Committee have emphasized the value of such comments for their work if the comments contain **verifiable information** such as laws, regulations or other official documents such as land titles and judicial decisions.

There is also a suggestion that governments consult with indigenous and tribal peoples' traditional organizations in preparing their reports on Convention No. 169.

An **innovative approach** was taken by Norway. Based on an agreement between the Government and the Saami Parliament, the Saami people take an active part in the supervision of Convention No. 169. The **Norwegian Government's** report on the application of the Convention, is sent together with independent comments from the Saami Parliament to the ILO. The ILO is also engaged in an open dialogue with the Saami Parliament, at the request of the Norwegian Government.

The ILO Committee of Experts is urging other countries to follow this example.⁷⁹

Innovative Approach

SAAMI PARLIAMENT

NORWEGIAN GOVERNMENT

**COMMENTS TO THE ILO
COMMITTEE OF EXPERTS**

⁷⁹ ILO. *Report of the Committee of Experts on the Application of Conventions and Recommendations*. Geneva, 1995, p. 399. See also Tomei, M., and Swepston, L. *Indigenous and Tribal Peoples: A Guide to ILO Convention No. 169*. Geneva, 1996, p. 30.

Technical cooperation

The ILO offers practical help in technical matters which are within its mandate and for which it has the capacity.

The ILO's technical assistance is a way of helping its partners meet their needs.

This can be done in many ways, for example, through an employment-generated programme which helps a government meet the requirements of a ratified Convention.

The basic principles of ILO technical assistance are the following:

- 1.** All forms of technical assistance are developed in close and constant dialogue with the ILO's partners to make sure the ILO's activities meet their needs and priorities.
- 2.** It is based on needs assessment and formulated and implemented with the active cooperation of the ILO's partners.
- 3.** All work undertaken by the ILO must be in accordance with ILO standards.

All technical assistance for indigenous and tribal peoples must be in conformity with Convention No. 169.

If the country where technical cooperation is to take place has ratified the earlier Indigenous and Tribal Populations Convention, 1957 (No. 107), then this Convention provides guidance.

Technical assistance activities for indigenous and tribal peoples are specifically designed to meet the following criteria:

- 1.** to respond to local conditions;
- 2.** to be formulated and implemented with the participation of the peoples concerned; and
- 3.** to be culturally appropriate.

Project to Promote ILO Policy on Indigenous and Tribal Peoples

OBJECTIVES:

- INCREASE AWARENESS OF ILO'S WORK ON INDIGENOUS AND TRIBAL PEOPLES
- PROMOTE APPLICATION OF ILO STANDARDS

MEANS:

- CAPACITY BUILDING
- POLICY ADVICE
- TRAINING WORKSHOPS

FOCUS:

- INTER-REGIONAL
- EMPHASIS ON AFRICA AND SOUTH AND SOUTH-EAST ASIA

Currently, the ILO has two main technical assistance programmes for indigenous and tribal peoples:

1. Project to Promote ILO Policy on Indigenous and Tribal Peoples (since 1996)

This project aims to increase awareness of ILO standards relating to indigenous and tribal peoples. It was formulated in response to requests for assistance by countries which had ratified Convention No. 169 or were considering its ratification, as well as other requests for further information on the ILO and its work with indigenous and tribal peoples. The Project began work in 1996 and continues operations, based on support provided by the Danish International Development Agency (DANIDA).

The main components of the work of this project are:

1. Awareness-raising activities;
2. Strengthening the capacity of both governments and indigenous and tribal peoples to better address their needs; and
3. Publication of materials on the ILO, its work on indigenous and tribal peoples and ILO Convention No. 169, such as this manual.

The Project has been working with the traditional ILO partners (governments, and employers' and workers' organizations) as well as with indigenous and tribal peoples' organizations and NGOs in a number of countries. Africa and Asia were identified as priority areas following an extensive needs assessment during the initial period of the Project's implementation.

The following is a list of the main activities undertaken by the Project to Promote ILO Policy on indigenous and Tribal Peoples between 2000 and 2003, and ongoing activities at the date of publication:

Asia

In **India**, the project proposes to undertake a national seminar and a study to compare the relevant national and state legislation in India with ILO Conventions of relevance to indigenous and tribal peoples, and has consulted with the Ministry of Tribal Affairs (MoTA) and the Ministry of Labour on a number of relevant issues.

In the **Philippines**, the project has undertaken a one-year research project aimed at analysing the current state of legal protection for indigenous peoples in the Philippines and how it can be implemented more effectively or strengthened. This involved extensive consultations with indigenous peoples' organizations, and relevant Government bodies and officials, as well as other legislative research.

To date, the project has implemented a national workshop on the rights of indigenous peoples in Sarawak, **Malaysia**, in collaboration with an indigenous NGO (Borneo Resources Institute Malaysia, or BRIMAS). Participants included representatives of the Human Rights Commission of Malaysia.

In **Thailand**, the project has been working with indigenous peoples' organizations to strengthen their capacity to engage in a national workshop on Thai legislation of relevance to indigenous and tribal peoples, and ILO Convention No. 169. The national workshop will be held with the support of the project.

In **Cambodia**, the project has been working with the Inter-Ministerial Committee for Highland Peoples Development since 1998. Aside from providing technical advice on the drafting of a policy paper on highland peoples development, the project has ongoing capacity building and training activities for the IMC.



Cambodia : workshops on development management
Photo : IMC



Hill Tribe Village in Thailand
Photo : Project to Promote ILO Policy on Indigenous and Tribal Peoples

Africa

The support of the Project in **Kenya** has been within the framework of the Constitutional Review Process. The Government has presented to the population possibilities of participation in this process. In Kenya, during 2001 and 2002, this project embarked on a nationwide consultation and education process, aimed at ensuring the informed participation of the indigenous and tribal peoples of Kenya in the Constitutional review process. This culminated in the presentation of a position paper to the Constitution Review Commission in July 2002, which represented the collective views of over 15 different indigenous and tribal peoples in Kenya, comprising hundreds of communities across the nation. Many important elements of their position paper have been incorporated into the new Draft Constitution. Parallel to this process, the project has supported training of Kenyan MPs on Convention No. 169.

In collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR), and UNESCO, the ILO implemented a human rights training for "Pygmies" from five different countries in Central Africa in the Dja reserve, **Cameroon**. The training formed part of the ILO's, and of other UN agencies' capacity-building for indigenous peoples, and constitutes the first step of the project's continued activities in the region.

In **South Africa** and **Tanzania**, the Project has been working to raise awareness of indigenous issues, and plans to continue its activities to this end.



Kenyan Constitutional Review Workshop
Photo : Project to Promote ILO Policy on Indigenous and Tribal Peoples

Fellowship programme

The project implemented its first fellowship programme for indigenous and tribal peoples in 2003. The objective of the programme is to strengthen the capacity of indigenous and tribal peoples; to engage in meaningful and informed participation; to be consulted at all levels of development and policy processes affecting them; and to articulate their concerns within the context of these processes. The programme involves training in Geneva, both at the ILO and other UN agencies. It also involves practical work, with travel to the field included as a component.

Publications and Promotional Materials

The following publications are available on request from the project:

Translations of Convention No. 169 are available in English, French, Spanish, Amazight, Bahasa, Dutch, German, Hindi, Khmer, Kiswahili, Lao, Portuguese, Russian, and Thai.

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ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169): A Manual has been developed by the Project to Promote ILO Policy on Indigenous and Tribal Peoples.

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Thomas, V. (ed.). *Traditional Occupations of Indigenous and Tribal Peoples: Emerging Trends*. Project to Promote ILO Policy on Indigenous and Tribal Peoples, International Labour Office, Geneva, 2001.

2. Inter-Regional Programme to Support self-Reliance of Indigenous and Tribal Communities through Co-operatives and Self-Help (INDISCO)

The Interregional Programme to Support Self-Reliance of Indigenous and Tribal Peoples through Cooperatives and Self-Help Organizations (INDISCO) was launched in 1993 under a DANIDA/ILO Framework Agreement. The objective of the programme is to contribute to the improvement of the socio-economic conditions of indigenous and tribal peoples through demonstrative pilot projects and dissemination of best practices for policy improvement.

Global activities include participation in relevant UN meetings on indigenous issues and the development of partnerships for technical cooperation activities with other relevant programmes both within and outside the ILO. From Geneva, case studies, tools and guidelines are finalized and disseminated and technical support is provided to field activities. Some of the issues addressed by INDISCO are: cooperative development, poverty alleviation, indigenous child labour, natural disaster mitigation, sustainable ancestral land and resource management, traditional knowledge, environmental protection, HIV/AIDS, and conflict resolution. The various projects in Asia and Africa are being funded by a group of donors including DANIDA, The Netherlands, CIDA, AGFUND, UNDP, UNV, WFP, Rabobank, the Philippine International Association, AUSAID, INWENT and GTZ.

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Annexes

Annexe 1: ILO convention No 169

Indigenous and Tribal Peoples Convention, 1989

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

Recognising the aspirations of these peoples 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, and

Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded, and

Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

Noting that the following provisions have been framed with the co-operation of the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organisation, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this co-operation in promoting and securing the application of these provisions, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957;

adopts the twenty-seventh day of June of the year one thousand nine hundred and eighty-nine, the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989;

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.

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.

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.

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.

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.

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 circumstances, with the objective of achieving agreement or consent to the proposed measures.

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.

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.

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.

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.

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.

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.

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 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.

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 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Part VI. Education and Means of Communication

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.

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.

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.

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.

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.

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.

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.

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.

2. 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.

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.

PART X. Provisions

Article 36

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

Article 37

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 38

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 39

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes

into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 40

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 41

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 42

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 43

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 44

The English and French versions of the text of this Convention are equally authoritative.

Annexe 2:

ILO convention No. 107 Ratifications

RATIFICATIONS	YEAR
BELGIUM	1958
CUBA	1958
DOMINICAN REPUBLIC	1958
EL SALVADOR	1958
GHANA	1958
HAITI	1958
INDIA	1958
EGYPT	1959
SYRIAN ARAB REPUBLIC	1959
PAKISTAN	1960
PORTUGAL	1960
TUNISIA	1962
MALAWI	1965
PANAMA	1971
BANGLADESH	1972
ANGOLA	1976
GUINEA-BISSAU	1977
IRAQ	1986

ILO convention No. 169 Ratifications (As of January 2003)

RATIFICATIONS	YEAR
NORWAY	1990
MEXICO	1990
COLOMBIA	1991
BOLIVIA	1991
COSTA RICA	1993
PARAGUAY	1993
PERU	1994
HONDURAS	1995
DENMARK	1996
GUATEMALA	1996
NETHERLANDS	1998
FIJI	1998
ECUADOR	1998
ARGENTINA	2000
VENEZUELA	2002
DOMINICA	2002
BRAZIL	2002

DENUNCIATION

(as a result of the ratification of convention No. 169)

ARGENTINA

BOLIVIA

BRAZIL

COLOMBIA

COSTA RICA

ECUADOR

MEXICO

PARAGUAY

PERU

Annexe 3:

Other Relevant ILO Conventions

- Forced Labour Convention,
1930 (No. 29)

 - Abolition of Forced Labour Convention,
1957 (No. 105)
-
- Equal Remuneration Convention,
1951 (No. 100)

 - Discrimination (Employment and
Occupation) Convention,
1958 (No. 111)
-
- Minimum Age Convention,
1972 (No. 138)

 - Worst Forms of Child Labour Convention,
1999 (No. 182)
-
- Freedom of Association and Protection
of the Right to Organise Convention,
1948 (No. 87)

 - Right to Organise and Collective
Bargaining Convention,
1949 (No.98)

Annexe 4:

Useful Addresses

International Labour Office:

<http://www.ilo.org/indigenous/>

Project to Promote ILO Policy
on Indigenous and Tribal Peoples
Equality and Employment Branch
International Labour Standards Department
4, Route des Morillons
CH - 1211 Geneva 22
Switzerland

INDISCO Programme
Co-Operatives Department
4, Route des Morillons
CH - 1211 Geneva 22
Switzerland

International Labour Office
Apartado Postal 10170
San José 1000
Costa Rica

For more information,
see San José area Office web page
on indigenous and tribal peoples:
<http://www.oit.or.cr/mdtsanjo/indig/>
