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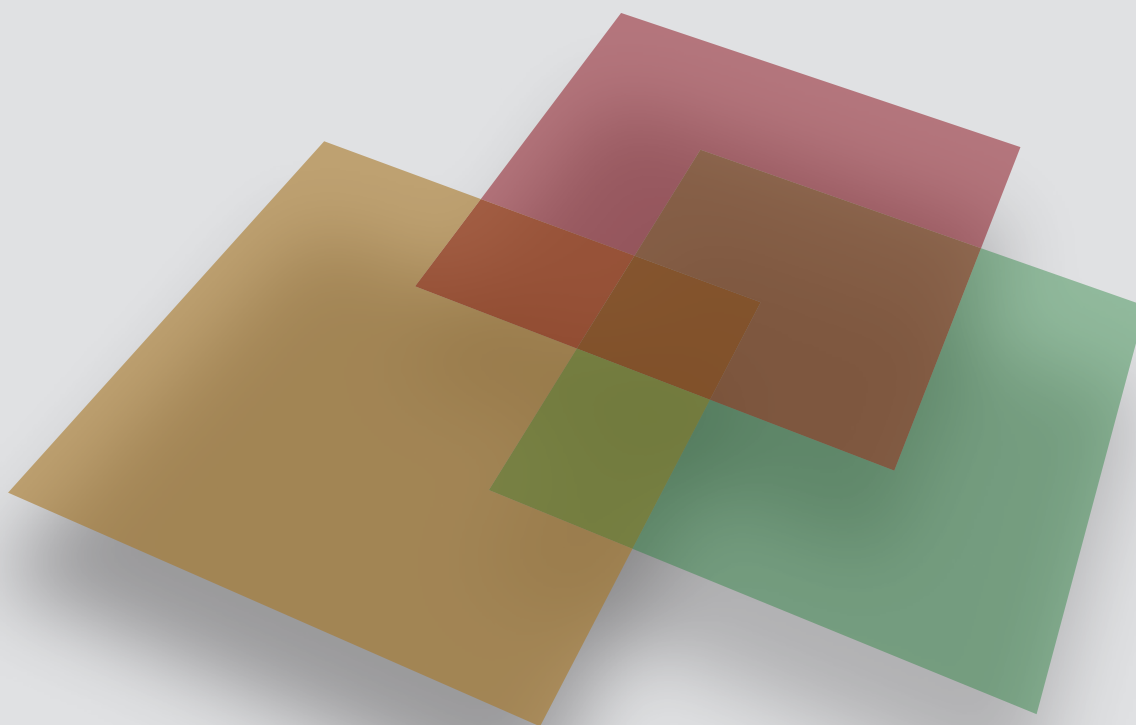


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Convention 169

## Excerpts from reports and comments of the ILO Supervisory Bodies

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



International Labour  
Standards Department



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

Excerpts from reports and comments of the ILO Supervisory Bodies

International Labour Office  
2019

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## I. Introduction

Three decades ago, the International Labour Conference adopted the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the only international treaty open for ratification specifically addressing the rights of indigenous and tribal peoples. The guidance provided by the ILO supervisory bodies with regard to its application is an important resource for promoting awareness and understanding of the Convention's provisions and requirements, and the international obligations of ratifying Members under the Convention.

On the occasion of the 30th anniversary of the adoption of the Convention, the International Labour Office has prepared the present document which intends to facilitate the dissemination of the work of the ILO supervisory bodies relating to the application of Convention No. 169.<sup>1</sup> This publication is also part of the communication efforts to assist in raising awareness of the Convention among constituents, in the framework of the ILO Strategy for indigenous peoples' rights for inclusive and sustainable development adopted in 2015.

The document is intended for use by public authorities, indigenous and tribal peoples and their organizations, employers' and workers' organizations, civil society organizations addressing indigenous and tribal peoples' rights and concerns, judges and lawyers as well as parliamentarians and the academia. Given that the Convention is unique in the multilateral system, the document is also intended as a tool to disseminate the work of the supervisory bodies to the United Nations system and relevant regional organizations and their respective bodies and mechanisms addressing indigenous and tribal peoples' rights and issues.

The document presents a compilation of extracts from comments and reports of the ILO supervisory bodies in the context of supervising the Convention's application since its entry into force in 1991. The extracts presented relate to different subject matters, including the identification of indigenous and tribal peoples, consultation and participation, land rights, use of natural resources, education, customary law and labour conditions, among others. Although non exhaustive, the extracts provide illustrative insights into broader notions and principles in this regard.

## II. The ILO supervisory bodies in a nutshell

The regular supervision of the application of ILO Conventions is based on the ILO Constitution. Article 22 of the ILO Constitution provides for the obligation of member States to submit reports to the International Labour Office on the measures taken to give effect to ratified Conventions. These reports are examined by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) which is composed of twenty independent legal experts. The CEACR

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1 The document has been prepared jointly by the ILO's International Labour Standards Department, the Gender, Equality and Diversity Branch, and the Decent Work Country Team and Country Office for Central American Haiti, Panama and the Dominican Republic.

undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by member States, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions.<sup>2</sup> The CEACR adopts comments in the form of either “observations” or “direct requests.” Observations “point to important discrepancies between the obligations under a Convention and the related law and/ practice of member States”, whereas direct requests allow the CEACR to “be engaged in a continuing dialogue with governments often when the questions raised are primarily of a technical nature”.<sup>3</sup> In addition to observations and direct request addressed to specific countries, the CEACR may decide to publish “general observations” on issues relevant to the application of the Convention. In the case of Convention No. 169, the CEACR has issued three general observations, which are reproduced in their entirety in this document as well.

The CEACR’s opinions and recommendations are non-binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the CEACR’s work based on its impartiality, experience and expertise. The CEACR’s technical role and moral authority are well recognized, particularly as it has been engaged in its supervisory task for more than 90 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers’ and workers’ organizations.<sup>4</sup> The observations are reproduced in the CEACR’s annual report. The report is submitted to the International Labour Conference, where it is examined by a tripartite standing committee: the Conference Committee on the Application of Standards (CAS). The CAS examines selected cases based on the CEACR’s observations.<sup>5</sup>

In parallel to the regular supervisory system described above, the ILO Constitution also provides for specific ad hoc procedures, in the form of representations and complaints<sup>6</sup>. Article 24 of the ILO Constitution grants any industrial association of employers or workers the opportunity to submit representations against any ILO Member which has allegedly failed to secure the effective observance of ratified Conventions. A representation is examined by a tripartite committee (composed of one representative of governments, one of workers’ organizations and one of employers’ organizations)

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2 International Labour Conference, 108th Session, 2019, Report of the Committee of Experts on the Application of Conventions and Recommendations. Report III (Part A) para. 32.

3 Ibid, para 70.

4 Ibid, para. 32.

5 The conclusion of the CAS regarding cases concerning the application of the Convention, though not included in this document, are also available through NORMLEX.

6 Under article 26 of the ILO Constitution, a complaint may be filed against a member state for not complying with a ratified convention by another member state which ratified the same convention, a delegate to the International Labour Conference or the Governing Body in its own capacity. Upon receipt of a complaint, the Governing Body may form a Commission of Inquiry. Until now, no complaints have been filed concerning the application of Convention No. 169.

set out by the Governing Body. The Governing Body has to approve the reports of the tripartite committees before communicating them to the State concerned.<sup>7</sup>

### **III. A note on methodology**

Reproduction of selected extracts in this document is for illustrative purposes. Some extracts refer to measures taken by countries which were noted by the CEACR with interest with the objective of sharing such positive developments. The text has been arranged under thematic sections and chronological order within sections. The years of adoption of the cited observations and direct requests of the CEACR and the reports of tripartite committees are referenced beneath each citation.

The full text of the CEACR comments, from which excerpts are reproduced in the present thematic compilation document, can be found on the ILO's website through the NORMLEX database<sup>8</sup>. The reports of tripartite committees that have examined representations under article 24 of the Constitution are also available online.<sup>9</sup> Readers are encouraged to explore the full depth of the work of the supervisory bodies, including the most recent ("pending") comments of the CEACR.

## **IV. Extracts from comments of the CEACR and reports of tripartite committees set up to examine representations**

### **1. Identification of indigenous and tribal peoples (Article 1)**

[W]hile self-identification is a fundamental criterion for defining the groups to which the Convention shall apply, this relates specifically to self-identification as indigenous or tribal, and not necessarily to a feeling that those concerned are a "people" different from other members of the indigenous or tribal population of the country, which together may form a people.

Representation, Denmark, 2001 (GB.280/18/5) para. 33

[The Committee] notes that [in the census], there are six categories in answer to the questions on language and membership of an indigenous group, the fourth of which is "Do not speak an indigenous language and belong to an indigenous group". The Committee further notes that, since formal censuses were first introduced in 1895, language has been the main criterion used for identifying the indigenous population. Since, [...], "de-indianization" has led to many indigenous people losing their language, the Committee would be grateful if the Government would state whether the persons in the fourth

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7 Please refer to the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization.

8 <http://www.ilo.org/dyn/normlex/en/f?p=1000:20010:0::NO:20010::>

9 [http://www.ilo.org/dyn/normlex/en/f?p=1000:50010::NO:50010:P50010\\_ARTICLE\\_NO:24](http://www.ilo.org/dyn/normlex/en/f?p=1000:50010::NO:50010:P50010_ARTICLE_NO:24)



category [of the census] (“Do not speak an indigenous language and belong to an indigenous group”) enjoy the protection afforded by the Convention, so that the application of Article 1 is not limited, as it does not include language as a criterion for defining the peoples protected by the Convention.

Direct Request, Mexico, 2005

The Committee notes that to obtain recognition, indigenous communities may apply to the National Registrar of Indigenous Communities [...] for legal personality [...]. The Committee hopes that the Government will pursue its efforts to ensure that in the near future, a high proportion of communities obtain recognition and hence full enjoyment of all the rights deriving from it.

Observation, Argentina, 2006

The Committee requests the Government to take steps to ensure that the communities are recognized as indigenous communities since a civil association seems to imply the formation of something new, which is not fully consistent with the Convention’s principle of recognition of a pre-existing reality.

Direct Request, Argentina, 2006

The Committee requests the Government to provide information on [...] the measures adopted to harmonize the various provinces’ treatment of the recognition of indigenous communities, and ensure that the effect of registration is declaratory rather than executory.

Direct Request, Argentina, 2006

The Committee, recalling that under paragraph 2 of [...] Article [1] of the Convention, 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, requests the Government to incorporate this criterion in its next report and to give legislative expression to it in consultation with indigenous people.

Direct Request, Paraguay, 2006

[T]he Convention’s concept of “indigenous peoples” is broader than the community of which such peoples are part.

Observation, Peru, 2007

The report indicates that indigenous persons currently have identification documents designed specifically for them, including information on their respective indigenous communities, their names and their languages, if they so wish. The Committee would be grateful if the Government would indicate whether self-identification was respected in the process of issuing identity cards [...].

Direct Request, Venezuela, 2009

Recalling the need to ensure that the criteria for identification of the indigenous peoples are unified, in consultation with the indigenous peoples themselves, the Committee requests the Government to ensure that the Bill on the rights of indigenous and original peoples to prior consultation ensures that these peoples fully enjoy the protection established in the Convention, regardless of their designation [...].

Observation, Peru, 2010

The Committee requests the Government to continue providing up-to-date information on the number of persons belonging to indigenous peoples, indicating the peoples concerned and their geographical distribution, taking into account that these data are an important tool for formulating and targeting measures that implement the Convention.

Direct Request, Chile, 2018

## **2. Co-ordinated and systematic action (Articles 2 and 33)**

The Committee believes that full and effective application of Article 2 is key to overcoming the deep-seated and enduring inequality that affects indigenous peoples. Therefore, it requests the Government that, when establishing the various development plans and programmes for the peoples concerned, it ensures that these fall within a framework of coordinated and systematic action, with the full participation of the indigenous peoples [...].

Representation, Mexico, 2004 (GB.289/17/3) para. 133

The Committee requests the Government to take the necessary measures to ensure, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of indigenous peoples and to guarantee that, when adopting the relevant legislative and administrative measures, both at the level of the federal Government and of state assemblies, the rights set forth in the Convention are guaranteed as a minimum common denominator [...].

Observation, Mexico, 2004

The Committee hopes that the national Government will take the necessary steps to disseminate the rights laid down in the Convention among provincial governments and parliaments, and that it will make use of the abovementioned participation to ensure that the provincial parliaments develop legislation that meets the requirements of the Convention.

Observation, Argentina, 2006

[T]he Committee points out that Articles 2 and 33 of the Convention provide for coordinated and systematic action with the participation of indigenous peoples in applying the provisions of the Convention, and that Article 33, paragraph 2, provides for such participation from the conception through to the evaluation stage of the measures provided for in the Convention.

Observation, Guatemala, 2006

[T]he Committee has been reiterating the need to institutionalize the participation of indigenous peoples in policies which affect them, in accordance with Articles 2 and 33, as an essential framework for the proper application of the other provisions of the Convention.

Observation, Mexico, 2007

[T]he Committee hopes that the Government will take coordinated and systematic action, as envisaged in Articles 2 and 33 of the Convention, for the development of inclusive mechanisms and that the reinforcement of participation by indigenous peoples in policies and programmes which concern them will serve to increase social cohesion.

Representation, Guatemala, 2007 (GB.299/6/1) para. 59

The Committee requests the Government to institutionalize and reinforce the bodies responsible for indigenous policy and also indigenous participation in those bodies.

Observation, Ecuador, 2009

[T]he ILO supervisory bodies have repeatedly stated that Consultation, as envisaged in the Convention, extends beyond consultation on specific cases: it means that application of the provisions of the Convention must be systematic and coordinated and undertaken in cooperation with the indigenous peoples as part of a gradual process in which suitable bodies and machinery are established for the purpose.

Representation, Brazil, 2009 (GB.304/14/7) para. 43

The Committee invites the Government to specify the authorities that have responsibility at national and regional level for matters covered by the Convention and to indicate the steps taken to ensure that these authorities have the means to perform their duties properly.

Observation, Peru, 2012

[N]oting the existence of several institutions for the protection of the rights of indigenous peoples provided for in the Convention, the Committee requests the Government to ensure the effective coordination and harmonization of the activities carried out by these institutions, defining their legal framework appropriately.

Observation, Guatemala, 2018

The Committee once again requests the Government to provide information on the actions that have been taken within the competent administrative bodies to promote the effective participation of indigenous peoples in developing coordinated and systematic action to protect their rights and guarantee respect for their integrity.

Direct Request, Chile, 2018

The Committee requests the Government to indicate the manner in which the free participation of indigenous peoples is ensured in the adoption and implementation of the policies and programmes that affect them in the competent administrative bodies, at both the national level and the level of the various states [...]. In this regard, the Committee requests the Government to include information on the measures adopted to promote coordinated and systematic action between the central Government and the states, as well as between government institutions, to ensure the exercise of the rights of indigenous peoples recognized by the Convention.

Observation, Venezuela, 2018

### 3. Human rights and special measures (Articles 3 and 4)

[T]he Committee would like to express its concern about the allegations of the organization which made the representation to the effect that the Huicholes seeking the reintegration of the land at issue live in conditions which “violate the most elementary individual and collective rights”; since, being a minority compared to the other inhabitants, they have not been recognized in land censuses, with the result that they have no legal rights to the land which they occupy, and it is the majority of inhabitants who decide whether the indigenous inhabitants may plant crops and keep livestock, and their cultural practices are constantly hindered. The Committee requests the Government to examine the measures which can be taken to remedy this situation, which might include the adoption of special measures to safeguard the existence of these peoples as such and their way of life to the extent that they wish to safeguard it, which is one of the primordial objectives of this Convention.

Representation, Mexico, 1998 (GB.272/7/2) para. 42

The Committee urges the Government to take all the necessary measures without delay to guarantee the life and the physical and moral integrity of the members of the communities, to ensure that any persecution, threats or intimidation ceases and to ensure that effect can be given to the rights set out in the Convention in a climate of security.

Observation, Colombia, 2007

The Committee emphasizes that forced sterilization constitutes a serious violation of the Convention. The Committee draws the Government’s attention to its obligation under Article 2 of the Convention to guarantee respect for the integrity of indigenous peoples and their rights. This requires the immediate adoption of effective measures to investigate and punish rapidly these acts, when they occur.

Observation, Mexico, 2007

The Committee invites the Government to provide in its next report information on the effect of the measures taken to investigate the complaints filed with the competent authorities regarding environmental pollution in territories occupied by indigenous peoples. The Committee asks the Government, if environmental pollution is confirmed, to make every effort to protect the life and health of the members of the communities affected.

Observation, Peru, 2012

The Committee requests the Government to provide information on the measures adopted to prevent intrusions into the lands of indigenous communities, and particularly those inhabited by peoples in voluntary isolation.

Direct Request, Ecuador, 2014

The Committee recalls that the Convention must be implemented in its entirety and considers that Article 3 thereof is particularly important for the examination of the situation arising from the repression of indigenous people’s protest [...].

Representation, Peru, 2016 (GB.327/INS/5/3) para. 244

The Committee deplores all the deaths and acts of violence referred to in the representation and recalls that indigenous and tribal peoples “shall enjoy the full measures of human rights and fundamental freedoms without hindrance or discrimination” and that “no form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned”.

Representation, Peru, 2016 (GB.327/INS/5/3) para. 246

The Committee firmly urges the Government to continue taking all the necessary measures to provide adequate protection for members of indigenous communities and their representatives against any acts of violence or threats. The Committee requests the Government to continue taking the necessary measures to ensure that the competent authorities conduct investigations of the murders and acts of violence denounced and to provide detailed information on this subject, and on the judicial action taken and the penalties imposed on the perpetrators and instigators of such acts of violence.

Observation, Honduras, 2016

The Committee requests the Government to continue providing information on the measures taken or contemplated to combat discriminatory practices to which indigenous peoples are exposed and to overcome prejudices in which such practices are rooted.

Direct Request, Paraguay, 2017

The Committee recalls that respect for the collective rights of indigenous peoples recognized in the various parts of the Convention is an essential element in creating a climate of trust between the authorities and indigenous peoples and in guaranteeing cohesion and social peace through inclusion and dialogue.

Observation, Peru, 2017

The Committee expresses its deep concern regarding the murders, acts of violence and repression of social protests by indigenous peoples. It urges the Government to take the necessary measures to investigate the murders and all the acts of violence reported, and to initiate the relevant judicial proceedings to identify, determine the responsibilities of and penalize the perpetrators. [...] The Committee also urges the Government to take the necessary measures to promote a climate free of violence which guarantees the safety of the members, institutions, property, work, cultures and environment of indigenous peoples, and respect for their human rights and all the rights enshrined in the Convention.

Observation, Guatemala, 2018

The Committee requests the Government to intensify its efforts to prevent and combat discrimination against members of indigenous communities, with particular emphasis on indigenous women [...].

Observation, Guatemala, 2018

The Committee expresses deep concern at the information relating to the situation of insecurity affecting the various indigenous peoples in the country, [...], and it urges the Government to take the necessary measures to prevent and bring an end to the conflicts caused by mining expansion, and to safeguard persons, institutions, property, labour, culture and the environment of the Pemón indigenous people. The Committee also requests the Government to indicate the manner in which the members of the communities affected by the climate of violence participate in the formulation, implementation and evaluation of the measures adopted.

Observation, Venezuela, 2018

## **4. Consultation and participation (Articles 6, 7 and 15)**

### **a) General**

The Committee considers that the concept of prior consultation established in Article 6 must be understood within the context of the general policy set out in Article 2(1) and (2)(b) of the Convention [...].

Representation, Colombia, 2001 (GB.282/14/3) para. 70

[T]he obligation to consult the peoples concerned does not only apply to the concluding of agreements but also arises on a general level in connection with the application of the provisions of the Convention [...].

Representation, Ecuador, 2001 (GB.282/14/2) para. 30

[T]he spirit of consultation and participation constitutes the cornerstone of Convention No. 169 on which all its provisions are based.

Representation, Ecuador, 2001 (GB.282/14/2) para. 31

[T]he principles of consultation and participation established in Articles 6 and 7 should be understood in the context of the general policy set forth in Article 2(1) and (2)(b) of the Convention [...].

Representation, Ecuador, 2001 (GB.282/14/2) para. 33

[T]he obligation to ensure that consultations are held in a manner consistent with the requirements established in the Convention is an obligation to be discharged by governments, not by private persons or companies.

Observation, Bolivia, 2004

[T]he provisions on consultation, particularly Article 6, are the core provisions of the Convention and the basis for applying all the others. Consultation is the instrument that the Convention prescribes as an institutional basis for dialogue, with a view to ensuring inclusive development processes and preventing and settling disputes. The aim of consultation as prescribed by the Convention is to reconcile often conflicting interests by means of suitable procedures.

Observation, Guatemala, 2005

[T]he Committee considers that the consultation and participation machinery envisaged in the Convention contributes to the progressive implementation of the Convention on indigenous peoples. It further considers that by engaging in genuine dialogue with these peoples on issues which affect them, progress will be made in the development of inclusive instruments which will contribute to reducing tension and increasing social cohesion.

Observation, Paraguay, 2006

The Committee would like to make it clear that Article 6 must be understood within the broader context of consultation and participation.

Representation, Brazil, 2009 (GB.304/14/7) para. 43

Recalling that, with regard to development activities, the consultation and participation provided for in the Convention are closely linked and that Article 7 of the Convention provides that indigenous peoples must participate in the formulation of development plans (paragraph 1) and in studies which assess the social, spiritual, cultural and environmental impact on them of planned development activities (paragraph 3), the Committee requests the Government to ensure as soon as possible that the indigenous peoples concerned enjoy the right of participation provided for in this Article and to keep it informed in this respect.

Observation, Costa Rica, 2009

[T]he provisions of the Convention regarding consultation must be read in conjunction with Article 7, which establishes the right of indigenous peoples to decide their own priorities for the process of development and to participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

Observation, Guatemala, 2011

The Committee notes the difficulties referred to in the Alternative Report 2015 respecting effective compliance with the right of consultation related to the lack of knowledge of indigenous matters by the officials responsible for the process and the limitations of indigenous organizations (inadequacy of financial and logistical resources, lack of technical knowledge in various areas). [...] The Committee encourages the Government to continue making every effort to hold meaningful and substantive consultations with indigenous peoples on each occasion that legislative or administrative measures are planned that may affect them directly, and requests the Government to provide updated information on this subject. It also requests the Government to continue taking measures to improve the training



provided to indigenous peoples, and to the officials responsible and other actors on the objectives, stages and importance of consultation processes, and to report on any measures intended to establish appropriate mechanisms through which indigenous peoples can participate fully in the consultation process.

Observation, Peru, 2017

The Committee [...] requests the Government to supply information on the manner in which the concerns expressed by indigenous peoples have been addressed in cases where it was decided that prior consultation processes were not applicable.

Observation, Chile, 2018

The Committee requests the Government to continue providing information on the measures taken to give effect to the agreements reached with the communities consulted [...] and to give effect to other agreements with indigenous communities which have been consulted through the Environmental Evaluation Service regarding development projects which affect them directly.

Observation, Chile, 2018

## **b) Objective**

[A]lthough Article 6 does not require that consensus be reached in the consultation process, it does envisage that the peoples concerned should have an opportunity to participate freely at all levels in the formulation, application and evaluation of measures and programmes that directly affect them.

Representation, Colombia, 2001 (GB.282/14/3) para. 78

[A]rticle 6 does not stipulate that consent must be obtained in order for the consultations to be valid but it does require pursuit of the objective of achieving consent, which means setting in motion a process of dialogue and genuine exchange between the parties to be carried out in good faith.

Representation, Argentina, 2008 (GB.303/19/7) para. 81

[A]rticle 6 of the Convention provides that the consultations shall be undertaken with the objective of achieving agreement or consent to the proposed measures. Although Article 6 of the Convention does not require consensus in the process of prior consultation, it does require, as the Committee underlined in its general observation of 2008 on the Convention, the form and content of consultation procedures and mechanisms to allow the full expression of the viewpoints of the peoples concerned, “so that they may be able to affect the outcome and a consensus could be achieved”.

Observation, Peru, 2009

Convention No. 169 does not give indigenous peoples a right to veto; obtaining agreement or consensus is the purpose of engaging in the consultations, not an independent requirement.

Representation, Chile, 2016 (GB.326/INS/15/5) paras. 129

The Committee understands that, by issuing a legislative or administrative measure, a government may adopt an instrument on which consultations have been held, even if the instrument promulgated



does not fully reflect agreement with the indigenous peoples concerned. However, it should be ensured that all current legislative and administrative measures are in accordance with the Convention.

Representation, Chile, 2016 (GB.326/INS/15/5) para. 130

### **c) Process of consultation**

The Committee also refers to Article 6 of the Convention, which provides that consultations shall be carried out in good faith with the peoples concerned and in a form appropriate to the circumstances, and means should be established by which these peoples can freely participate in decision-making on matters which concern them.

Representation, Mexico, 1998 (GB.272/7/2) para. 34

The Committee observes, moreover, that the Government has submitted detailed information concerning the measures taken. This information is not consistent with the observations submitted by the trade union on behalf of the indigenous peoples, which indicates a communication problem between the parties. In the Committee's opinion, consultations constitute an essential element in resolving this type of problem, as well as being one of the Convention's requirements.

Representation, Mexico, 1999 (GB.276/16/3) para. 41

The Committee notes that the right of indigenous peoples to be consulted whenever consideration is given to legislative or administrative measures which may affect them directly, as well as the obligation of the Government to carry out prior consultation with the peoples affected, is derived directly from Convention No. 169, not from the recognition of that right by national legislation.

Representation, Colombia, 2001 (GB.282/14/3) para. 72

The adoption of rapid decisions should not be to the detriment of effective consultation for which sufficient time must be given to allow the country's indigenous peoples to engage their own decision-making processes and participate effectively in decisions taken in a manner consistent with their cultural and social traditions. Although the Committee does not claim that these traditions are the only ones that can serve as a basis for consultations in accordance with the Convention, it does consider that if they are not taken into consideration, it will be impossible to meet the fundamental requirements of prior consultation and participation.

Representation, Colombia, 2001 (GB.282/14/3) para. 79

The Committee considers that the concept of consulting the indigenous communities that could be affected by the exploration or exploitation of natural resources includes establishing a genuine dialogue between both parties characterized by communication and understanding, mutual respect, good faith and the sincere wish to reach a common accord.

Representation, Ecuador, 2001 (GB.282/14/2) para. 38

A meeting conducted merely for information purposes cannot be considered as being consistent with the terms of the Convention.

Representation, Colombia, 2001 (GB.282/14/3) para. 90

A simple information meeting cannot be considered as complying with the provisions of the Convention.

Representation, Ecuador, 2001 (GB.282/14/2) para. 38

[A] simple information meeting, where indigenous peoples could be heard without having any possibility of influencing decision-making, cannot be considered as complying with the provisions of the Convention [...].

Representation, Chile, 2016 (GB.326/INS/15/5) para. 188

[A]ccording to Article 6, the consultation must be “prior” consultation, which implies that the communities affected are involved as early on as possible in the process, including in environmental impact studies.

Representation, Colombia, 2001 (GB.282/14/3) para. 90

[A]rticles 2(1), 2(2)(b), 6, 7 and 15(2) imply the obligation to develop a process of prior consultation with the indigenous peoples of the country before taking measures that might affect them directly, such as the signature of an agreement authorizing activities relating to the exploration or exploitation of hydrocarbons on their ancestral territory, or the continuation of activities initiated prior to the entry into force of the Convention.

Representation, Ecuador, 2001 (GB.282/14/2) para. 39

The Committee recalls that according to Article 6 of the Convention, “governments shall ... consult the peoples concerned ... in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly”. Such consultations must furthermore be held before the adoption of such measures.

Observation, Argentina, 2004

In the opinion of the Committee, the appropriate procedure is that which creates favourable conditions for achieving agreement or consent to the proposed measures, independent of the result obtained. That is to say, the expression “appropriate measures” should be understood with reference to the aim of the consultation, namely to achieve agreement or consent. It is not necessary, of course, for agreement or consent to be achieved.

Representation, Mexico, 2004 (GB.289/17/3) para. 89

Articles 6, 7 and 15 of the Convention, which lay down requirements for consultation, establish that consultation is not an information exercise but a process carried out for the purpose of reaching an agreement with the peoples affected, and lay down specific requirements where natural resources are involved.

Observation, Bolivia, 2004

The Committee emphasizes the need for an appropriate consultation procedure, which is the fundamental mechanism envisaged by the Convention to prevent and resolve any conflict of interests through dialogue and participation [...].

Direct Request, Bolivia, 2005

The Committee points out that a climate of mutual trust is essential to any consultations and particularly [...] where indigenous and tribal peoples mistrust state institutions and feel marginalized, due to complex realities that go back a very long way and which have yet to be overcome.

Observation, Colombia, 2006

[T]he establishment of efficient consultation and participation mechanisms contributes to the settlement of conflicts through dialogue, while reducing social tensions, and such mechanisms are prescribed by the Convention in order to ensure that development plans and programmes are truly inclusive [...].

Representation, Mexico, 2006 (GB.296/5/3) para. 44

[T]he Committee emphasizes the need to: endeavour to achieve consensus on the procedures to be followed; facilitate access to such procedures through broad information; and create a climate of confidence with indigenous peoples which favours productive dialogue.

Representation, Guatemala, 2007 (GB.299/6/1) para. 53

The Committee recalls that pursuant to Article 6(1)(a) of the Convention, the Government is required to consult the peoples concerned whenever consideration is being given to legislative or administrative measures which may affect them directly. While this provision does not establish the precise timing of the consultations, the Committee considers that mechanisms should be established to ensure that consultations on relevant legislative or administrative measures take place sufficiently early to ensure that they are effective and meaningful.

Representation, Argentina, 2008 (GB.303/19/7) para. 64

There is no single model of appropriate procedures, which should take into account national circumstances, the circumstances of the indigenous peoples concerned and the nature of the measures which are the object of the consultation process. As regards the consultation process itself, it should take into account the opinions of the various peoples involved in order to facilitate an exchange of information and ensure that the procedure used is considered appropriate by all parties.

Representation, Brazil, 2009 (GB.304/14/7) para. 42

[T]he validity of the consultative processes provided for by the Convention, as a mechanism to prevent and resolve conflicts, depends on the creation of fruitful mechanisms for dialogue. The consultation laid down in the Convention is therefore not merely a formal requirement but a genuine instrument for participation.

Representation, Brazil, 2009 (GB.304/14/7) para. 42

[T]he consultation and participation provided for in Articles 6, 7 and 15(2) of the Convention include partners, objectives and methods that require more than the inclusion of an indigenous representative on a general committee.

Representation, Brazil, 2009 (GB.304/14/7) para. 58

The Committee further observes that a climate of mutual trust is essential to any consultations if a genuine dialogue between the parties is to be established so that appropriate solutions can be sought to the problems at hand, as the Convention requires. The Committee further considers that the militarization of the area where the project is being carried out and the campaigns to discredit and deny the legitimacy of the communities, their leaders and support organizations are not consistent with the basic requirement that consultations must be genuine.

Observation, Colombia, 2009

The Committee reminds the Government that the right of indigenous and tribal peoples to be consulted, laid down in Article 6 of the Convention, must also be observed when the consultation process is being devised.

Direct Request, Colombia, 2009

With reference to its general observation of 2008, the Committee requests the Government to supply information on the measures taken with regard to the following: (i) including the requirement of prior consultation in legislation regarding the exploration and exploitation of natural resources; (ii) engaging in systematic consultation on the legislative and administrative measures referred to in Article 6 of the Convention; and (iii) establishing effective consultation mechanisms that take into account the vision of governments and indigenous and tribal peoples concerning the procedures to be followed.

Observation, Ecuador, 2009

The Committee therefore urges the Government to: [...] (ii) adopt without delay all the necessary measures to hold constructive dialogue in good faith between all the parties concerned in accordance with the requirements set out in Article 6 of the Convention to seek appropriate solutions to the situation in a climate of mutual trust and respect, taking into account the Government's obligation to safeguard the social, cultural and economic integrity of indigenous peoples in accordance with the spirit of the Convention [...].

Observation, Guatemala, 2009

The Committee stresses the need for indigenous and tribal peoples to participate and be consulted before the adoption of legislative or administrative measures likely to affect them directly, including in the drafting or provisions on consultation processes, as well as the need for provisions on consultation to reflect among other things the elements set forth in Articles 6, 7, 15 and 17(2), of the Convention.

Observation, Peru, 2009

[T]he Committee wishes to underscore that the Convention requires a genuine dialogue to be established between the parties concerned to facilitate the quest for agreed solutions, and emphasizes that, if these requirements are met, consultation can play a decisive role in the prevention and settlement of disputes

Observation, Peru, 2009

Procedures considered to be appropriate are those that generate conditions conducive to reaching an agreement or achieving consensus on the measures being proposed.

Direct Request, Guatemala, 2009

As the Committee has indicated on numerous occasions, consultation is not just the holding of mere information meetings but necessarily entails genuine dialogue between the parties concerned involving communication and understanding, mutual respect and good faith, and the sincere desire to reach a joint agreement.

Observation, Guatemala, 2011

[The Committee] recalls that the right to consultation and the right to participation are not granted solely to indigenous peoples. Consultation is a fundamental principle that is enshrined in all other ILO Conventions, which provide for consultation between governments, employers' and workers' organizations and all other parties concerned by a given Convention. In this regard, Convention No. 169 is no exception but affirms the requirement for specific consultations with indigenous peoples.

Representation, Chile, 2016, GB.326/INS/15/5, para. 131

The Committee considers that while certain circumstances, such as natural disasters, may require the taking of urgent and emergency measures, consultation procedures should be re-established as soon as possible.

Representation, Chile, 2016 (GB.326/INS/15/5) para. 137

The Committee observes that Article 6 (1) (a) of the Convention does not establish any exception with regard to the scope of "legislative and administrative measures".

Representation, Chile, 2016 (GB.326/INS/15/5) para. 149

The Committee considers that national legislation and practice may make a distinction between administrative decisions and measures, provided that this does not result in prevention or restriction of the holding of consultations, particularly through the representative institutions of the peoples concerned, whenever consideration is given to administrative measures that may affect indigenous peoples directly.

Representation, Chile, 2016 (GB.326/INS/15/5) para. 150

The consultations must be undertaken in good faith, through genuine dialogue, and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures. Furthermore, indigenous peoples must be given sufficient time to organize their own internal decision-making processes and to participate effectively in the decisions adopted. The Committee therefore expresses the firm hope that the necessary measures will be adopted to ensure that indigenous peoples are consulted, in accordance with the terms of Article 6, and are able to participate in an appropriate manner through their representative bodies in the formulation of the bill on consultation procedures with indigenous peoples, to enable them to express their opinions and have an influence on the end result of the process.

Observation, Guatemala, 2018

#### **d) Representativity**

The Committee is of the opinion that the principle of representativity is a vital component of the obligation of consultation. The Committee is aware that it could be difficult in many circumstances to determine who represents any given community. However, if an appropriate consultation process is not developed with the indigenous and tribal institutions or organizations that are truly representative of the communities affected, the resulting consultations will not comply with the requirements of the Convention.

Representation, Ecuador, 2001(GB.282/14/2) para. 44

In view of the diversity of the indigenous peoples, the Convention does not impose a model of what a representative institution should involve, the important thing is that they should be the result of a process carried out by the indigenous peoples themselves. But it is essential to ensure that the consultations are held with the institutions that are truly representative of the peoples concerned.

Representation, Mexico, 2004 (GB.289/17/3) para. 102;

[I]t is not for the Committee to judge the manner in which a representative body functions. Nor will it determine whether or not the body's actions are lawful: such questions, where they arise, are a matter for the national and provincial mechanisms provided for in the law.

Representation, Argentina, 2008 (GB.303/19/7) para. 77

The Committee also recalls that, according to Article 6, governments shall consult the peoples concerned in particular through their representative institutions, rather than individuals.

Observation, Brazil, 2011

#### **e) Participation**

The requirement of consultation should be considered in the light of the fundamental principle of participation, set forth in Article 7(1) and (3) [...].

Representation, Ecuador, 2001 (GB.282/14/2) para. 32

The Committee recalls that, in accordance with Article 6, governments shall consult those communities likely to be affected directly, in order in accordance with Article 7 of the Convention, to allow them to participate in their own development and in particular to ensure that “studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them” (Article 7(3)) and to “take measures, in co-operation with the peoples concerned, to protect and preserve the environment”.

Representation, Mexico, 2006 (GB.296/5/3) para. 36

[I]n the absence of appropriate machinery for consultation and participation, indigenous peoples are excluded from the formulation of development projects that will have social, spiritual and cultural repercussions for their way of life and affect the environment [...].

Representation, Mexico, 2006 (GB.296/5/3) para. 37

The Committee requests the Government to indicate the manner in which it is made possible for indigenous communities themselves to decide their own priorities for the process of development and to indicate whether indigenous peoples have been able to participate in establishing their priorities in the projects referred to and the manner in which they have done.

Direct request, Paraguay, 2008

[T]he Committee requests the Government to supply the information requested in the last paragraph of the observation referring to measures adopted in relation to: (i) establishing mechanisms for participation in the formulation of development plans; (ii) including the requirement of prior consultation in legislation regarding the exploration and exploitation of natural resources; and (iii) establishing effective consultation mechanisms that take into account the vision of governments and indigenous and tribal peoples concerning the procedures to be follow.

Direct Request, Costa Rica, 2009

The Committee requests the Government to provide information on the measures taken to promote the development of areas inhabited by indigenous communities, with an indication of how the participation of these communities in the formulation, implementation and evaluation of such measures is guaranteed.

Direct Request, Nepal, 2015

Special projects for regions in which [indigenous] peoples live must be carried out in a manner that promotes improvement in their living and working conditions and their health, and with their participation and cooperation.

Representation, Chile, 2016 (GB.326/INS/15/5) para. 149

#### **f) Consultation and participation in relation to natural resources**

[B]y ratifying the Convention governments undertake to ensure that the indigenous communities concerned are consulted promptly and adequately on the extent and implications of exploration and exploitation activities, whether these are mining, petroleum or forestry activities.

Representation, Bolivia, 1999 (GB.274/16/7) para. 38

The Committee recalls that the rights of indigenous peoples to the natural resources pertaining to their lands shall be specially safeguarded. The peoples concerned shall participate in the use, management and conservation of such resources, and in the benefits accruing from any activities of exploration or exploitation of such resources.

Observation, Peru, 2000

The Committee observes that national legislation in many countries, including Ecuador, establishes that the rights to subsurface resources are part of State patrimony. Article 15(2) of the Convention recognizes this legal principle but also establishes an obligation when administering those resources: the obligation of the State to consult the indigenous and tribal peoples which could be affected prior



to authorizing activities for the exploration and exploitation of the subsurface resources situated on indigenous territories.

Representation, Ecuador, 2001 (GB.282/14/2) para. 35

The Committee wishes to stress that it is fully aware of the difficulties entailed in the settlement of disputes relating to land rights, including the rights relating to the exploration and exploitation of subsurface products, particularly when differing interests and points of view are at stake such as the economic and development interests represented by the hydrocarbon deposits and the cultural, spiritual, social and economic interests of the indigenous peoples situated in the zones where those deposits are situated. However, the spirit of consultation and participation that constitutes the essence of Convention No. 169 requires that the parties involved seek to establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect and full participation.

Representation, Ecuador, 2001 (GB.282/14/2) para. 36

[A]rticle 15, paragraph 2, governs consultations on natural resources in particular and sets the objective of consultation: “ascertaining whether and to what degree the interests of these peoples would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of (...) resources pertaining to their lands”.

Observation, Guatemala, 2005

The impact study carried out by the company is no substitute for the consultations required by Article 15, paragraph 2. [...] As the Committee has pointed out in other similar cases, responsibility for consultation lies with the Government, not the company. Furthermore, in establishing or maintaining procedures, governments must take into account the procedural requirements laid down in Article 6 of the Convention and the provisions of Article 7 of the Convention [...].

Observation, Guatemala, 2005

The Committee considers that the preparation of a general framework for the consultation and participation of indigenous peoples with regard to hydrocarbons could contribute to ensuring that hydrocarbon exploration and exploitation benefit all the parties involved by strengthening dialogue, inclusive and sustainable development, and legal security, thereby contributing to the prevention of possible future disputes.

Direct Request, Peru, 2005

While noting with interest that the courts are applying the provisions of the Convention [...] the Committee requests the Government to pursue its efforts to incorporate [...] Article [15] on consultation and natural resources in the legislation in such a way as to ensure uniform application in the various provinces.

Observation, Argentina, 2006

[T]he Convention covers not only areas occupied by indigenous peoples but also “the process of development as it effects their lives ... and the lands they occupy or otherwise use” (Article 7, paragraph 1). Accordingly, a project for exploration or exploitation in the immediate vicinity of lands occupied or



otherwise used by indigenous peoples, or which directly affects the interests of such peoples, would fall within the scope of the Convention.

Observation, Guatemala, 2006

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

Representation, Brazil, 2009 (GB.304/14/7) para. 44

The Committee recalls that the consultation provided for in *Articles 15 and 16* of the Convention is not limited to the lands constituting indigenous reserves but, pursuant to *Article 13, paragraph 2*, includes the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

Direct Request, Costa Rica, 2009

The Committee, however, considers that there is no single model for benefit sharing as envisaged under Article 15 (2) and that appropriate systems have to be established on a case by case basis, taking into account the circumstances of the particular situation of the indigenous peoples concerned.

Observation, Norway, 2009

The Committee invites the Government to include information in its next report on the results of the review of national forestry policy and of the prior consultation process relating to the relevant articles of the regulations implementing the Forestry Act.

Direct Request, Peru, 2013

The Committee recalls in this respect that appropriate regulations on consultation aimed at determining the degree to which the indigenous peoples' interests would be affected by programmes for the exploration or exploitation of resources pertaining to their lands, in conformity with Article 15 of the Convention, help to reduce social conflict surrounding those programmes and to lay the foundations for inclusive sustainable development processes.

Direct Request, Guatemala, 2018

### **g) Consultations on mining activities**

[T]he Committee notes the concerns expressed by the Office of the Human Rights Ombudsperson of Guatemala in its report of May 2005 on mining activities. The Office of the Ombudsperson [...] expresses concern of the risks of opencast mining and in particular the method used, namely leaching by cyanide. The report indicates that this type of process has had detrimental consequences on the environment and health in other countries, has been prohibited in other regions of the world and its potential impact could harm: (1) water sources; (2) air quality through the emission of particles; and (3)

the use and fertility of the soil which is permeated by cyanide compounds. The Committee draws the Government's attention to the fact that these types of risks should be the subject of consultations, as set out in Article 15, paragraph 2, in conjunction with the studies required by Article 7, paragraph 5, of the Convention.

Observation, Guatemala, 2005

The Committee requests the Government to take the necessary steps to ensure that national legislation is aligned with the Convention so that indigenous peoples are consulted on investment projects likely to affect them directly, and can participate in the benefits deriving from the exploitation of mineral resources.

Direct Request, Chile, 2010

The Government indicates in its report that licenses for mining operations are granted through judicial decisions, not through administrative measures, and that only the latter can be subject to consultation. [...] The Committee once again requests the Government to amend the national legislation so as to ensure that indigenous peoples are consulted before any programme is undertaken or authorized in relation to natural resources on their lands and are able to participate in the benefits from the exploitation of those resources.

Direct Request, Chile, 2013

The Committee requests the Government to indicate any measures taken to ensure that the legislation regulating mining and energy activities provide for consultation at all stages of projects and prescribes that the peoples concerned shall be associated with the preparation of environmental impact studies (Articles 7 and 15).

Direct Request, Peru, 2013

## **h) Social, spiritual, cultural and environmental impact assessment**

[T]he Committee considers it appropriate to recommend that the Governing Body request the Government to consider the possibility of establishing, in each particular case, especially in the case of large-scale exploitations such as those affecting large tracts of land, environmental, cultural, social and spiritual impact studies, jointly with the peoples concerned, before authorizing exploration and exploitation of natural resources in areas traditionally occupied by indigenous peoples.

Representation, Bolivia, 1999 (GB.274/16/7) para. 39

[I]n the Committee's opinion, Articles 2(1), 2(2)(b), 6, 7 and 15(2) require consultation of the peoples concerned before the finalization of any environmental study and environmental management plan [...].

Representation, Colombia, 2001 (GB.282/14/3) para. 78

[M]eetings or consultations conducted after an environmental licence has been granted do not meet the requirements of Articles 6 and 15(2) of the Convention.

Representation, Colombia, 2001 (GB.282/14/3) para. 90

With regard to the environmental impact study, the Committee recalls that, as indicated repeatedly by the supervisory bodies, the environmental impact study does not replace the consultation and participation envisaged by the Convention, particularly in Article 15, paragraph 2, and Article 7, paragraph 3.

Representation, Guatemala, 2007 (GB.299/6/1) para. 51

The Committee [...] reminds the Government that, under the terms of Article 7, it must ensure that studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

Observation, Brazil, 2008

[T]he environmental impact assessment studies laid down in the Act are not sufficient to ensure compliance with [Article 7.3] of the Convention; they must include the social, spiritual and cultural impact and be carried out in cooperation with the peoples concerned.

Representation, Brazil, 2009 (GB.304/14/7) para. 57

The Committee requests the Government to ensure that any legislative proposal relating to environmental impact assessments: (i) complies with Articles 6 and 15 of the Convention with regard to consultations with indigenous peoples on projects for the exploration or exploitation of existing resources on lands traditionally occupied by the aforementioned peoples; (ii) ensures the cooperation of the peoples concerned in the assessment of the social, spiritual, cultural and environmental impact that the development activities can have on these peoples, in accordance with Article 7 of the Convention; and (iii) addresses situations envisaged in Article 16 (2)–(5) of the Convention regarding projects that involve the removal of the peoples concerned from the lands they traditionally occupy. In this regard, the Committee recalls that the Convention establishes that the removal and relocation of indigenous peoples from their lands constitutes an exceptional measure, and shall only take place with their free and informed consent.

Observation, Chile, 2018

The Committee requests the Government to provide information on the manner in which the cooperation of indigenous communities is ensured in the evaluation of studies regarding the social, spiritual, cultural and environmental impact of mining exploration and exploitation projects other than those involving coal, oil and gas in the aforementioned communities, giving examples of consultation processes in this regard.

Direct Request, Chile, 2018

## **5. Customary laws (Articles 8 and 9)**

The Committee notes that the Government is examining the ways in which the customary legal systems of these peoples can be taken into account by the national judicial system [...]. [T]his is an extremely important element both of the application of the Convention and of the implementation of the peace agreement [...].

Direct Request, Guatemala, 1998

The Committee requests the Government to respect the methods customarily practised by the peoples concerned for dealing with offences committed by their members, to the extent compatible with the national legal system and internationally recognized human rights [...].

Direct Request, Honduras, 2008

The Committee [...] invites the Government to provide examples of rulings by courts specializing in indigenous issues and by ordinary courts which have applied indigenous customs and usages.

Direct Request, Mexico, 2013

The Committee trusts that the necessary steps will be taken to ensure that the process of identifying and recognizing rights of use and ownership [...] will be consistent with Article 14(1) and also Article 8 of the Convention which requires due regard to customs and customary law of the indigenous peoples concerned in applying national laws and regulations.

Observation, Norway, 2014

The Committee requests the Government to provide detailed information on the mechanisms implemented to ensure coordination and cooperation between community judges and local and civil judges, including examples of their application.

Direct Request, Nicaragua, 2018

## **6. Legal proceedings (Article 12)**

The Committee points out that the objective of Article 12 of the Convention, in providing for special protection for these peoples is to compensate for the disadvantages they may be under in that they may not possess the linguistic or legal knowledge required to assert or protect their rights.

Observation, Mexico, 1998

Pursuant to Article 38 of the Convention and in the light of Article 12 of the Convention concerning the legal protection of the rights recognized in the Convention, the Committee requests the Government to indicate how it ensures that indigenous peoples have been able to enjoy effective judicial protection of the right to consultation from the date of entry into force of the Convention.

Observation, Peru, 2010

The Committee invites the Government to include in its next report information on measures taken to improve the efficiency of the administration of justice [...]. Please also indicate the methods which ensure that the peoples concerned are able to take legal proceedings for the protection of their rights.

Direct Request, Denmark (Greenland), 2013

The Committee encourages the Government to continue to take measures to guarantee effective access to justice for indigenous peoples in order to ensure that they can initiate individual or collective legal proceedings to effectively protect their rights.

Direct Request, Guatemala, 2018

## **7. Land, territories and natural resources (Articles 13-19)**

[T]he provisions of the Convention dealing with land, and specifically Articles 13 and 14 [...] must be understood in the context of the general policy set forth in Article 2(1) of the Convention, namely that governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

Representation, Mexico, 1998 (GB.272/7/2) para. 34

[T]he Committee recalls that, under the terms of Article 13, paragraph 2, of the Convention, “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 accordingly necessary to engage in the consultations envisaged in Article 15, paragraph 2, even though the lands are undergoing a process of review and title has not yet been granted.

Observation, Bolivia, 2005

### **a) Special importance of relationship with lands or territories**

The Convention recognizes special rights for indigenous and tribal peoples in view of the vulnerability of their traditional way of life to the loss of land rights on which it is based, and the long occupancy that they often have practiced. The Convention does not, however, contemplate depriving other parts of the national population of the rights they have also acquired through long usage.

Observation, Norway, 2003

The Committee considers that the recognition and effective protection of the rights of these peoples to the lands that they traditionally occupy in accordance with Article 14 of the Convention is of vital importance for safeguarding the integrity of these peoples and, consequently, for respecting the other rights established in the Convention.

Observation, Brazil, 2009

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

Observation, Mexico, 2009

## **b) Collective and individual aspects of land rights**

The Committee considers that it is not for the Governing Body to determine whether individual or collective ownership is most appropriate for indigenous or tribal peoples in a given situation. The Convention recalls the special importance of the relationship of indigenous peoples with the lands or territories, and in particular the collective aspects of this relationship. The Committee notes further, from its experience acquired in the application of the Convention and its predecessor, that the loss of communal land often damages the cohesion and viability of the people concerned.

Representation, Peru, 1998 (GB.273/14/4) para. 30

[T]o favour individual ownership of the land and, in doing so, [to] rul[e] out the possible participation of community institutions in the decision-making process, [...] is not in conformity with the Convention.

Representation, Peru, 1998 (GB.273/14/4) para. 31

[W]hen communally owned indigenous lands are divided and assigned to individuals or third parties, this often weakens the exercise of their rights by the community or the indigenous peoples and in general they may end up losing all or most of the land, resulting in a general reduction of the resources that are available to indigenous peoples when they own their land communally [...].

Representation, Peru, 1998 (GB.273/14/4) para. 32(b)

[I]n view of the importance of collective ownership of the land for certain indigenous peoples, decisions involving legislative or administrative measures which may affect the landownership of these peoples must be taken in consultation with the representative institutions of the peoples concerned, as provided in Article 6 of the Convention[...].

Representation, Peru, 1998 (GB.273/14/4) para. 32(c)

**c) Ownership, possession, occupation or use**

[T]he Committee requests the Government to take the necessary measures to guarantee effective protection of the rights of ownership and possession [...], in particular to protect them from possible intrusion by third parties.

Representation, Mexico, 1998 (GB.272/7/2) para. 40

[T]he fact that land rights have originated more recently than colonial times is not a determining factor. The Convention was drafted to recognize situations in which there are rights to lands which have been traditionally occupied, but also may cover other situations in which indigenous peoples have rights to lands they occupy or otherwise use under other conditions.

Representation, Mexico, 1999 (GB.276/16/3), para. 37

[T]he Government has applied the criterion of the “regular and permanent presence of indigenous communities” in deciding whether the siting of an exploratory or operational project in a given area will affect the communities in question. In this regard, the Committee recalls that the Convention refers to the concept of “rights of ownership and possession (of the peoples concerned) over the lands which they traditionally occupy” (Article 14, paragraph 1), a concept that is not necessarily equivalent. Furthermore, the Convention does not cover merely the areas occupied by indigenous peoples, but also “the process of development as it affects their lives ... and the lands that they occupy or otherwise use” (Article 7, paragraph 1). The existence of an exploratory or operational project immediately adjacent to land that has been officially recognized as a reserve of the peoples concerned clearly falls within the scope of the Convention.

Representation, Colombia, 2001 (GB.282/14/3) para. 86

[T]he registration in the domain of the State and subsequent adjudication to the private sector of lands to which indigenous people claim ancestral rights, raises questions as to the conformity of this procedure with Articles 13 and 14 of the Convention.

Observation, Peru, 2002

[“I]ncorporation in the domain of the State” constitutes, in so far as there was traditional occupation, a denial of the rights of ownership and possession established in Articles 13 to 15 of the Convention, regardless of the procedure used.

Observation, Peru, 2002

[T]raditional occupation conferred a right to the land, whether or not such a right was recognized.

Observation, Peru, 2002

In accordance with the Convention, the Government has an obligation [...] to halt and to prevent the continual loss of indigenous lands, particularly when this is done by individuals or because of delays in judicial proceedings.

Representation, Mexico, 2004 (GB.289/17/3) para. 138



The legislation in many countries provides that rights over subsurface resources remain the property of the State. In Article 15, paragraph 2, of the Convention, in which this legal principle is recognized, the obligation of States is set forth to consult indigenous peoples who may be affected before permitting activities for the exploration or exploitation of subsurface resources located in indigenous territories. This means that the Convention contains specific provisions on the territories traditionally occupied by indigenous peoples which are the property of the State, but does not exclude them from the scope of the Convention. Indeed, Article 15, paragraph 2, of the Convention was drawn up precisely for cases in which the State retains ownership of mineral or subsurface resources.

Observation, Mexico, 2004

The Committee considers that recognition should be given to indigenous peoples who, for various reasons, did not occupy traditional lands or were nomadic but who could enjoy other rights laid down in the Convention.

Direct Request, Bolivia, 2009

The Committee [...] requests the Government to indicate the criteria used to define traditional occupation and whether the indigenous peoples were consulted with regard to these criteria.

Direct Request, Ecuador, 2009

#### **d) Identification, demarcation and regularization of lands**

The Committee points out that Article 14, paragraph 2 [...] must be interpreted in the light of the general policy set forth in Article 2(1) of the Convention, which requires governments to develop, with the participation of the peoples concerned, “coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity”.

Representation, Denmark, 2001 (GB.280/18/5) para. 36

The Committee points out that the Convention protects not only lands that the peoples concerned already own but also lands that they traditionally occupy; and that according to the Convention, governments must take the necessary steps to determine the lands which the peoples concerned occupy traditionally and to guarantee effective protection of their rights of ownership and possession (Article 14, paragraph 2). The provisions of the Convention that address land issues, more specifically Articles 13 and 14, must be construed in the context of the general policy referred to in Article 2, paragraph 1, namely that governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity. In practice, these provisions must be implemented in parallel with those on consultation set forth in Article 6.

Observation, Colombia, 2006



The Committee recognizes that the regularization of land ownership requires time, that the adoption of legislation is not sufficient in itself and that it is the outcome of a complex process. It also considers that indigenous peoples should not be prejudiced by the duration of this process. It would therefore be desirable to adopt transitional measures during the course of the process to protect the land rights of the peoples concerned.

Representation, Guatemala, 2007 (GB.299/6/1) para. 45

[A]s set out in Article 13, paragraph 2, and Article 15, paragraph 2, of the Convention, and as reaffirmed repeatedly by the supervisory bodies, the Convention does not require indigenous peoples to be in possession of ownership title for the purposes of the consultations envisaged in Article 15, paragraph 2. The consultations referred to in Article 15, paragraph 2, are required in respect of resources owned by the State pertaining to the lands that the peoples concerned occupy or otherwise use, whether or not they hold ownership title to those lands.

Representation, Guatemala, 2007 (GB.299/6/1) para. 48

The Committee requests the Government to continue providing information on the progress made and difficulties encountered with regard to the regularization of lands traditionally occupied by indigenous peoples, including information on the following: (i) lands claimed by indigenous peoples, including quantity and percentages by province; (ii) lands regularized in relation to these percentages; and (iii) lands to be regularized.

Observation, Argentina, 2009

[I]t is necessary to establish a land registry to determine clearly which lands have been legalized, which lands are in the process of legalization and which are the property of the State. The Committee considers that such information is relevant to ensuring compliance with Article 14 (2) of the Convention, which states that 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.

Direct Request, Ecuador, 2009

The Committee invites the Government to describe in its next report the forms of landholding practised by the indigenous peoples [...] and the steps that have been taken to identify the lands that they traditionally occupy and to guarantee the effective protection of their rights to these lands.

Direct Request, Nicaragua, 2013

The Committee notes with interest that effective indigenous representation and participation is demonstrated, according to the Government, by the fact that the first demarcation is a “self-demarcation”, that is the establishment of territorial boundaries by indigenous peoples themselves [...].

Observation, Venezuela, 2014

The Committee welcomes the advances made in the processes of land restitution to indigenous communities and encourages the Government to continue taking steps to ensure that indigenous peoples enjoy effective protection of the rights of ownership and possession over lands that they traditionally occupy through the processes of demarcation and titling. The Committee also requests

the Government to provide information on the procedures that exist to settle any disputes that arise in the demarcation and titling processes, and also to deal with land claims submitted by the indigenous peoples concerned.

Direct Request, Chile, 2018

#### **e) Adequate procedures to solve land claims**

[T]he Committee points out that the ILO cannot resolve individual land disputes under the Convention, including with regard to the issues of valuation of compensation. The Committee considers that its essential task in such cases is not to offer an alternative venue for parties dissatisfied with the outcome of a claim for compensation before the national administrative or judicial bodies, but rather to ensure that the appropriate procedures for resolving land disputes have been applied and that the principles of the Convention have been taken into account in dealing with the issues affecting indigenous and tribal peoples.

Representation, Denmark, 2001 (GB.280/18/5) para. 34

[O]nly full application of these Articles [13 to 15 of the Convention], including the establishment of adequate procedures within the national legal system to resolve land claims by the peoples concerned, may prevent the recurrence of violent incidents [...].

Representation, Mexico, 2004 (GB.289/17/3) para. 134

The Committee emphasizes that Article 14 of the Convention protects not only those lands to which the peoples concerned already have title of ownership, but also those lands that they traditionally occupy. Adequate procedures are required to determine the existence of traditional occupation. [...] The Committee [...] requests the Government to take the appropriate measures, in consultation with the community concerned, to identify and eliminate those obstacles, procedural or otherwise, encountered by the community [...] in asserting effectively its claim to the lands which it alleges that it has traditionally occupied, so that it may avail itself of the recourse envisaged in Article 14, paragraph 3, of the Convention and, where appropriate, obtain effective protection of its rights.

Observation, Peru, 2005

[T]he Committee requests the Government to continue taking steps to ensure the smooth functioning of the mechanism for the regularization of lands and the related dispute settlement procedure in order to guarantee effective protection of indigenous peoples' rights of ownership and possession over the lands which they traditionally occupy, in accordance with Articles 13 and 14 of the Convention.

Observation, Chile, 2016

[T]he Committee [...] requests information on the mechanisms that exist to resolve disputes which arise between indigenous peoples and third parties, as well as between indigenous peoples, in the context of demarcation and titling processes, providing examples of cases that have been resolved through such mechanisms [...].

Direct Request, Venezuela, 2018

## **f) Removal and relocation**

[A]rticle 16 of the Convention provides for various mechanisms to ensure the security of indigenous peoples within their territories and provides that where the relocation of indigenous 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 through following appropriate procedures, established by national laws and regulations, including public hearings where appropriate, which provide the opportunity for effective representation of the peoples concerned.

Observation, Costa Rica, 2000

The Committee hopes that [...] the Government will be in a position to provide [...] an indication of the consultations held with the peoples concerned before their relocation, on the quality and quantity of lands available to them before and after the relocation and on the implementation of any mechanisms for the payment of compensation for the damages caused.

Direct Request, Paraguay, 2008

The Committee also refers the Government to Article 16 of the Convention, should the need arise to transfer indigenous peoples from the lands they occupy. The Committee requests the Government to send information on the following: [...] the decisions that imply relocation of the communities and the measures taken pursuant to Article 16 of the Convention.

Observation, Brazil, 2011

## **8. Recruitment and conditions of employment (Article 20)**

The Convention [...] states that governments must do everything possible to prevent any discrimination between workers that are members of indigenous peoples and other workers, in particular with regard to equal pay for work of equal value, medical care and health at work, and to ensure that workers belonging to the peoples in question are not required to work in conditions that are hazardous to health, in particular as a result of their exposure to pesticides or other toxic substances.

Observation, Mexico, 1998

[O]ne of the most important means for ensuring effective protection of fundamental labour rights is frequent and effective inspections of workplaces where indigenous workers are employed.

Observation, Mexico, 1998

The Committee encourages the Government to continue its efforts to eliminate forced labour involving indigenous persons and to provide information in this respect, particularly as regards indigenous participation in the formulation, application and monitoring of measures adopted to eliminate indigenous forced labour.

Observation, Bolivia, 2009

The Committee requests the Government to continue to provide information [...] on the measures adopted to ensure that indigenous workers, including seasonal, temporary and migrant workers employed in agriculture, are not subject to hiring and working conditions that are exploitative and abusive.

Direct Request, Guatemala, 2009

The Committee notes with *interest* the addition of a special obligation upon employers concerning the use of the services of an interpreter when workers do not speak Spanish [...].

Direct Request, Mexico, 2013

The Committee requests the Government to continue providing information on the action taken, in cooperation with indigenous peoples, to promote access to employment and ensure the effective protection of conditions of employment for persons belonging to indigenous peoples and peoples of African descent. It also requests the Government to provide information on the adoption of measures aimed specifically at facilitating the access of indigenous women to decent work and ensuring the effective protection of their rights.

Direct Request, Nicaragua, 2018

## 9. Vocational training (Articles 21-23)

The Committee notes with interest the Government's statements that [...] it entered into an agreement with the indigenous peoples [...] to implement vocational training programmes in specific areas, taking into account the present circumstances of those peoples. The Committee would be grateful if the Government would attach a copy of this agreement with its next report and provide additional information regarding any training given during the reporting period, specifying the areas in which training was provided and the manner in which the needs of the peoples concerned were ascertained in order to determine the type of training offered.

Direct Request, Honduras, 1999

The Government states that several vocational training programmes are being implemented [...]. Please provide more detailed information on these vocational training programmes, including the level of participation by the communities concerned and whether they are assuming responsibility for the organization and operation of these programmes; whether studies have been conducted to determine any special needs in regard to training of the peoples concerned; and how the peoples concerned were involved in such studies.

Direct Request, Costa Rica, 2000

The Committee [...] invites the Government to include in its next report [...] information on the steps taken to enable indigenous peoples to participate in the organization and operation of vocational training programmes affecting them, taking into consideration their cultural conditions and practical needs, and to assume responsibility for such programmes, if they so decide.

Direct Request, Fiji, 2014

The Committee requests the Government to provide information on the impact of the measures taken to promote the voluntary participation of members of indigenous peoples in vocational training programmes of general application, as well as on any special training programmes implemented based on the economic, environmental, social and cultural conditions of indigenous peoples.

Direct Request, Nepal, 2015

## 10. Health and Social Security (Articles 24 and 25)

The Committee [...] requests the Government to [...] include information on the modalities for cooperation of the people concerned in devising health programmes plans of action, including the extent to which traditional preventive medicine is taken into account.

Direct Request, Bolivia, 1994

The Committee [...] urges the Government to take measures rapidly to reactivate the health system for indigenous peoples [...]. It would be grateful if the Government would provide information on this matter, and particularly on measures taken or planned [...] to deal with the above problems of death from malnutrition and infant deaths which, although public health issues, are also related, inter alia, to the maintenance of lands traditionally occupied by indigenous peoples which are essential to their survival and contact with the dominant society.

Direct Request, Brazil, 2005

The Committee invites the Government to include up-to-date information in its next report on the implementation of inter-cultural health models and the interaction between health centres or health posts and ancestral traditional medicine.

Direct Request, Nicaragua, 2013

The Committee requests the Government to include updated information on the social security schemes that protect the peoples concerned and the health services that exist in the regions inhabited by these peoples.

Direct Request, Guatemala, 2014

The Committee requests the Government to continue providing information on the impact of programmes and policies to promote the ancestral traditional medicine of indigenous and tribal peoples. It also requests the Government to provide updated statistical information on the access of persons belonging to indigenous and tribal peoples to health services [...].

Direct Request, Nicaragua, 2018

The Committee notes with *interest* that the development of the [national] policy [on midwives] included the participation of midwives belonging to the Maya, Xinka, Garifuna and Mestizo communities in the dialogues that were part of this process, taking into account their socio-cultural and linguistic backgrounds.

Direct Request, Guatemala, 2018

## 11. Education (Articles 26 and 27)

The Committee invites the Government to [...] indicate how it is ensured that education programmes and services also meet the particular needs of the indigenous peoples [...]. The Committee also invites the Government to indicate what measures have been taken for the training of members of the peoples concerned and for their involvement in the formulation and implementation of education programmes. The Government is also invited to include information on the measures taken to recognize the right of indigenous peoples to establish their own education institutions, services and facilities.

Direct Request, Nicaragua, 2013

The Committee also requests the Government to provide information on the results achieved in tackling illiteracy, with special emphasis on girls and women, and in teaching the languages most commonly spoken in the indigenous communities.

Direct Request, Paraguay, 2017

The Committee requests the Government to provide information on the consultations held with indigenous peoples regarding the content of the curricula concerning the language and culture of indigenous peoples in basic education.

Direct Request, Chile, 2018

The Committee encourages the Government to continue taking measures to increase the participation of indigenous peoples in and improve their training on the formulation and implementation of education programmes within the framework of the regional autonomous education subsystem [...]. It also requests the Government to provide examples of the manner in which the educational programmes implemented address the knowledge, techniques and value systems of indigenous populations, and information on the school attendance of members of indigenous communities.

Direct Request, Nicaragua, 2018

The Committee requests the Government to provide information on the measures adopted to facilitate the access to education of members of indigenous peoples, including updated information on the number of education centres, teachers and students in the regions inhabited by these peoples.

Direct Request, Venezuela, 2018

## **V. General Observations of the CEACR concerning Convention No. 169**

In addition to the comments directly addressed to governments, the CEACR may decide to publish the so-called “general observations” on certain issues concerning the application of a Convention. This section reproduces the full text of the three general observations adopted by the CEACR concerning the application of Convention No. 169.

### **1. General Observation 2008**

On the eve of the 20th anniversary of the adoption of the Convention, the Committee notes that the establishment of appropriate and effective mechanisms for the consultation and participation of indigenous and tribal peoples regarding matters that concern them is the cornerstone of the Convention, yet remains one of the main challenges in fully implementing the Convention in a number of countries. Given the enormous challenges facing indigenous and tribal peoples today, including regularization of land titles, health and education, and the increased exploitation of natural resources, the involvement of the indigenous and tribal peoples in these and other areas which affect them directly, is an essential element in ensuring equity and guaranteeing social peace through inclusion and dialogue.

The Committee notes that the Convention refers to three interrelated processes: coordinated and systematic government action, participation and consultation. It notes that *Articles 2 and 33 of the Convention*, read together, provide that governments are under an obligation to develop, with the participation of indigenous and tribal peoples, coordinated and systematic action to protect the rights and to guarantee the integrity of these peoples. Agencies and other appropriate mechanisms are to be established to administer programmes, in cooperation with indigenous and tribal peoples, covering all stages from planning to evaluation of measures proposed in the Convention. The Committee recalls that pursuant to *Article 7* of the Convention, indigenous and tribal peoples have the right to decide their own development priorities and to participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly. *Article 6* sets out the Convention’s requirements regarding consultation.

The Committee notes that in many countries genuine efforts have been made regarding consultation and participation with the aim of implementing the Convention. However, these efforts have not always met the expectations and aspirations of indigenous and tribal peoples, and also fell short of complying with the requirements of the Convention. In certain cases agencies have been established with responsibility for indigenous or tribal peoples’ rights, however, with little or no participation of these peoples, or with insufficient resources or influence. For example, the key decisions affecting indigenous or tribal peoples are in many cases made by ministries responsible for mining or finance, without any coordination with the agency responsible for indigenous or tribal peoples’ rights. As a result, these peoples do not have a real voice in the policies likely to affect them. While the Convention does not impose a specific model of participation, it does require the existence or establishment of



agencies or other appropriate mechanisms, with the means necessary for the proper fulfilment of their functions, and the effective participation of indigenous and tribal peoples. Such agencies or mechanisms are yet to be established in a number of countries that have ratified the Convention.

The Committee cannot over-emphasize the importance of ensuring the right of indigenous and tribal peoples to decide their development priorities through meaningful and effective consultation and participation of these peoples at all stages of the development process, and particularly when development models and priorities are discussed and decided. Disregard for such consultation and participation has serious repercussions for the implementation and success of specific development programmes and projects, as they are unlikely to reflect the aspirations and needs of indigenous and tribal peoples. Even where there is some degree of general participation at the national level, and ad hoc consultation on certain measures, this may not be sufficient to meet the Convention's requirements concerning participation in the formulation and implementation of development processes, for example, where the peoples concerned consider agriculture to be the priority, but are only consulted regarding mining exploitation after a development model for the region, giving priority to mining, has been developed.

With regard to consultation, the Committee notes two main challenges: (i) ensuring that appropriate consultations are held prior to the adoption of all legislative and administrative measures which are likely to affect indigenous and tribal peoples directly; and (ii) including provisions in legislation requiring prior consultation as part of the process of determining if concessions for the exploitation and exploration of natural resources are to be granted. The form and content of consultation procedures and mechanisms need to allow the full expression of the viewpoints of the peoples concerned, in a timely manner and based on their full understanding of the issues involved, so that they may be able to affect the outcome and a consensus could be achieved, and be undertaken in a manner that is acceptable to all parties. If these requirements are met, consultation can be an instrument of genuine dialogue, social cohesion and be instrumental in the prevention and resolution of conflict. The Committee, therefore, considers it important that governments, with the participation of indigenous and tribal peoples, as a matter of priority, establish appropriate consultation mechanisms with the representative institutions of those peoples. Periodic evaluation of the operation of the consultation mechanisms, with the participation of the peoples concerned, should be undertaken to continue to improve their effectiveness.

The Committee encourages governments to continue their efforts, with the participation of indigenous and tribal peoples, in the following areas, and to provide information in future reports on the measures taken in this regard:

- developing the measures and mechanisms envisaged in Articles 2 and 33 of the Convention;
- establishing mechanisms for participation in the formulation of development plans;
- including the requirement of prior consultation in legislation regarding the exploration and exploitation of natural resources;
- engaging in systematic consultation on the legislative and administrative measures referred to in Article 6 of the Convention; and



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

## 1. General Observation 2010

The Committee has been examining detailed Reports on Convention No. 169 since the Convention came into force in 1991. The Committee notes that to date 22 countries have ratified the Convention. It also notes that one of the issues that it has most often examined since the Convention has been adopted relates to the “obligation to consult”.

The Committee has taken note of the comments made in June 2010 during the 99th Session of the International Labour Conference (ILC) in the Committee on the Application of Standards concerning the comments made in respect of the application of Convention No. 169 by a number of member States and the Employer members and, in particular, the comments made on the meaning and scope of “consultation” as provided for by the Convention. The Committee considers that it is important, in view of the significance of this concept under the Convention for the indigenous and tribal peoples, for governments and the social partners to further clarify its understanding of the concept.

The Committee of Experts has, on a number of occasions, stated that, although its mandate does not require it to give definitive interpretation of ILO Conventions, in order to carry out its function of determining whether the requirements of Conventions are being respected, it has to consider and express its views on the legal scope and meaning of the provisions of Conventions, where appropriate.<sup>1</sup> In doing so, the Committee has always paid due regard to the textual meaning of the words in light of the Convention’s purpose and object as provided for by Article 31 of the Vienna Convention on the Law of Treaties, giving equal consideration to the two authoritative texts of ILO Conventions, namely the English and French versions (Article 33 of the Vienna Convention). In addition and in accordance with Articles 5 and 32 of the Vienna Convention, the Committee takes into account the Organization’s practice of examining the preparatory work leading to the adoption of the Convention. This is especially important for ILO Conventions in view of the tripartite nature of the Organization and the role the tripartite constituents play in standard setting.

In examining this question, the Committee has taken special note of the comments made by the Employer members of the Conference Committee on the Application of Standards that it had interpreted the right to consultation in such a way as to impose a more exacting requirement upon the government beyond that envisaged by the Convention.<sup>2</sup> This comment was made in the context of the

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1 See ILC, 63rd Session, 1977, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 32; ILC, 73rd Session, 1987, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 21; ILC, 77th Session, 1990, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 7; ILC, 78th Session, 1991, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, paras 11 and 12.

2 See ILC, 99th Session, 2010, Provisional Record No. 16, Part One, para. 54; Part Two, pp. 103–107.

request made by the Committee of Experts in a case concerning the application by the Government of Peru of Convention No. 169 and which was discussed by the Conference Committee in June 2010.<sup>3</sup>

In light of the above, the Committee makes this general observation in order to clarify its understanding of the concept of “consultation” in the hope that this will result in an improved application of the Convention particularly as it concerns this right. This would be a follow-up to the general observation made by this Committee in 2008. It notes the statement made by the Employer spokesperson during the general discussion of the Conference Committee in June 2009 that “the general observations on social security and indigenous and tribal peoples did not raise any particular issues and were an illustration of the correct approach to making general observations that were useful and contributed to the implementation of the Conventions concerned”.<sup>4</sup>

As a general matter the Committee notes that, in view of the tripartite nature of the ILO, most of its Conventions make specific provision for consultation between governments and representatives of employers and workers or their organizations and of those concerned by the issues involved on the matters covered by the Conventions. Convention No. 169 is no exception. However, the provisions relating to “consultation” in Convention No. 169 specifically address consultation with indigenous and tribal peoples. The relevant provisions of the Convention are Articles 6, 7, 15 and 17.<sup>5</sup> Articles 27 and 28 also refer to consultation specifically regarding education.

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3 *ibid.*, Part Two, p. 106.

4 See ILC, 98th Session, 2009, *Provisional Record* No. 16, Part One, para. 50.

5 *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.

The presence of consultation in the abovementioned provisions signifies a comprehensive approach. These provisions on consultation were among the fundamental principles included in the revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), as a necessary requirement to eliminate the integrationist approach of that Convention. In order to properly understand the scope of this new principle inserted in Convention No. 169, the Committee undertook an exhaustive review of the preparatory work leading up to the inclusion of this principle and right in Convention No. 169.

The Committee notes that *Articles 6 and 15* were the subject of extensive debate and amendments during the two years of preparatory discussions leading to the adoption of Convention No. 169.

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- 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 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 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.

Concerning *Article 6*, the extensive preparatory work on this provision suggests that the tripartite constituents sought to recognize:

- (a) that indigenous and tribal peoples have a right to participate in the decision-making process in the countries in which they live for all issues covered by the revised Convention and which affect them directly;
- (b) that this right of participation should be an effective one, offering them an opportunity to be heard and to have an impact on the decisions taken;
- (c) that in order for this right to be effective it must be backed up by appropriate procedural mechanisms to be established at the national level in accordance with national conditions; and
- (d) that the implementation of this right should be adapted to the situation of the indigenous and tribal peoples concerned in order to grant them as much control as is possible in each case over their own economic, social and cultural development.<sup>6</sup>

The Committee notes the evolution of the text of Article 6 during the course of the two discussions by the Conference and the wording in Article 6(a). The text proposed by the Office prior to the first discussion stated that governments should “seek the consent of the peoples concerned ...”. This wording was amended by the Conference during the first discussion to read that governments should “consult fully the (peoples/population) concerned”. Based on comments received from constituents between the first and second discussions by the Conference, the Office deleted the word “fully”. In its place, the Office proposed an additional paragraph 2 to Article 6 as follows:

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) ...
  - (c) ...
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.<sup>7</sup>

The Office explained that paragraph 2 sought to clarify the meaning and scope of paragraph 1(a). This was the final version of the text as adopted by the Conference during the second discussion. A number of amendments proposed during that discussion were not retained. Reference was made to the consensus reached that the term “consult” meant to consult in good faith.<sup>8</sup> The Committee also noted

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<sup>6</sup> See ILC, 75th Session, 1988, Report VI(1), p. 30.

<sup>7</sup> See ILC, 76th Session, 1989, Report IV(2B), p. 10.

<sup>8</sup> *ibid.*, para. 68.

the statement by a representative of the Office during the second discussion that in drafting the text of paragraph 2 it “had not intended to suggest that the consultations referred to would have to result in the obtaining of agreement or consent of those being consulted, but rather to express an objective for the consultations”.<sup>9</sup>

*Article 15(2)* states that “... governments shall establish and 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”.

During the second stage of the preparatory work, the Office explained that, while the original proposal that had been contained in the proposed Conclusions concerning this provision had included the phrase “seek the consent”, which would have required that consent be obtained, it was clear from the first discussion that this phrase was not acceptable to a sufficiently large proportion of the membership and it could therefore not include it in the proposed text being submitted to the Conference for a second discussion. The Office had instead proposed alternative wording intended to convey that an attempt should be made in good faith to obtain the consent of the peoples concerned before undertaking exploration and exploitation activities in their territories, without indicating that they should have a veto over government decisions.<sup>10</sup> The text of the Office had referred to *Article 6* of the proposed Convention, which used the words “seek to obtain the agreement of these peoples”. The final text adopted by the Conference was the result of a negotiated solution concerning a number of provisions.<sup>11</sup> As a result, the text of *Article 15(2)* was modified to read “they shall consult these peoples”.

It is only in Article 16, concerning removal, relocation and the right of return to their traditional lands, that a very precise formulation of consent exists.<sup>12</sup> Article 16(2) expressly provides for the “free

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9 *ibid.*, para. 74.

10 See ILC, 76th Session, 1989, Report IV(2A), pp. 40–41.

11 Most of these provisions were referred to a working group and the proposals were submitted to the Committee for adoption as a package. They were adopted by consensus.

12 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

and informed consent” of indigenous and tribal peoples where their relocation from lands they occupy is considered necessary as an exceptional measure.

Concerning *Article 17(2)* dealing with the transmission of land rights, the Office had modified its original proposal which would have required the consent of the peoples concerned. In the text prepared by it for the second discussion, it proposed instead the wording “[t]he peoples concerned shall be consulted ...”, which was adopted by the Conference unchanged.

Finally, the Committee notes that the Conference adopted a resolution, at the same time as the Convention, in which it specifically called upon governments to establish appropriate consultative machinery enabling indigenous and tribal peoples to express their views on all aspects of the Convention.<sup>13</sup>

The Committee of Experts in reviewing countries’ compliance with the Convention has remained true to the above understanding of the Convention. It has consistently indicated that “consultation and participation” constitute the cornerstone of Convention No. 169 on which all its provisions are based. Its general observation of 2008, published in 2009, reflected the above understanding of the relevant provisions of the Convention concerning the concept of consultation. The Committee stated:

With regard to consultation, the Committee notes two main challenges: (i) ensuring that appropriate consultations are held prior to the adoption of all legislative and administrative measures which are likely to affect indigenous and tribal peoples directly; and (ii) including provisions in legislation requiring prior consultation as part of the process of determining if concessions for the exploitation and exploration of natural resources are to be granted. The form and content of consultation procedures and mechanisms need to allow the full expression of the viewpoints of the peoples concerned, in a timely manner and based on their full understanding of the issues involved, so that they may be able to affect the outcome and a consensus could be achieved, and be undertaken in a manner that is acceptable to all parties. If these requirements are met, consultation can be an instrument of genuine dialogue, social cohesion and be instrumental in the prevention and resolution of conflict. The Committee, therefore, considers it important that governments, with the participation of indigenous and tribal peoples, as a matter of priority, establish appropriate consultation mechanisms with the representative institutions of those peoples. Periodic evaluation of the operation of the consultation mechanisms, with the participation of the peoples concerned, should be undertaken to continue to improve their effectiveness.

The Committee encourages governments to continue their efforts, with the participation of indigenous and tribal peoples, in the following areas, and to provide information in future reports on the measures taken in this regard:

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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.

13 See resolution on ILO action concerning indigenous and tribal peoples, ILC, 76th Session, 1989, *Provisional Record* No. 25, pp. 32–33.



- developing the measures and mechanisms envisaged in Articles 2 and 33 of the Convention;
- establishing mechanisms for participation in the formulation of development plans;
- including the requirement of prior consultation in legislation regarding the exploration and exploitation of natural resources;
- engaging in systematic consultation on the legislative and administrative measures referred to in Article 6 of the Convention; and
- establishing effective consultation mechanisms that take into account the vision of governments and indigenous and tribal peoples concerning the procedures to be followed.<sup>14</sup>

The Committee notes the positive statement made by the Employer members concerning its general observation of 2008 on the Convention and referred to above. It also notes that the above understanding of the relevant provisions of Convention No. 169 has also been endorsed by a number of tripartite committees examining representations against governments for failure to comply with the provisions of the Convention.<sup>15</sup>

In the case of Ecuador, the tripartite committee, in its report approved by the Governing Body in 2001, referred to the preparatory work of the Convention and stated that it considered that the “concept of consulting the indigenous communities ... includes establishing a genuine dialogue between both parties characterized by communication and understanding, mutual respect, good faith and the sincere wish to reach a common accord”.<sup>16</sup> It indicated that a simple information meeting cannot be considered as complying with the provisions of the Convention and that the consultation should occur beforehand, which implies that the communities affected should participate as early as possible in the process, including in the preparation of environmental impact studies. Taking into account the preparatory work, the tripartite committee in that case concluded that, while *Article 6* did not require consensus to have been reached in the process of prior consultation, it does stipulate that the peoples involved should have the opportunity to participate freely at all levels in the formulation, implementation and evaluation of measures and programmes that affect them directly, as from the date on which the Convention comes into force in the country.<sup>17</sup>

In the representation filed against Colombia under the Convention, the tripartite committee, in its report approved by the Governing Body in 2001, considered that the concept of consultation under the Convention must encompass genuine dialogue between the parties, involving communication and understanding, mutual respect and good faith and the sincere desire to reach consensus. The tripartite

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14 See ILC, 98th Session, 2009, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), pp. 672–673.

15 Four tripartite committees established by the Governing Body under article 24 of the ILO Constitution to examine representations have examined this obligation in the context of Convention No. 169: the cases of Colombia and Ecuador in 2001, Argentina in 2008 and Brazil in 2009.

16 See GB.282/14/2, paras 36–39.

17 *ibid.*, para. 36.



committee concluded that a meeting conducted merely for information purposes or meetings or consultations conducted after the granting of an environmental licence did not meet the requirements of *Articles 6 and 15(2)* of the Convention.<sup>18</sup>

In the case of the representation filed against Argentina, the tripartite committee, in its report approved by the Governing Body in 2008, pointed out that Article 6 of the Convention does not stipulate that consent must be obtained in order for the consultation to be valid, but that it does require pursuit of the objective of achieving consent, which means setting in motion a process of dialogue and genuine exchange between the parties to be carried out in good faith.<sup>19</sup>

Finally, in the representation filed against Brazil, the tripartite committee, in its report approved by the Governing Body in 2009, gave an extensive explanation of the consultation process provided for under Article 6 of the Convention.<sup>20</sup> The tripartite committee in that case recalled that consultation and participation are the cornerstone of the Convention and that such mechanisms are not merely a formal requirement, but are intended to enable indigenous peoples to participate effectively in their own development.<sup>21</sup> It stated that consultation must take place in accordance with procedures that are appropriate to the circumstances, through indigenous peoples' representative institutions, in good faith and with the objective of achieving agreement or consent to the proposed measures. Concerning "appropriate procedures", the tripartite committee stated that there is no single model, which should take into account national circumstances, the circumstances of the indigenous peoples concerned and the nature of the measures which are the object of the consultation process.<sup>22</sup> The tripartite committee also made it clear that Article 6 must be understood within the broader context of consultation and participation, particularly within the framework of Article 2(1) and Article 33, which require the development, with the participation of the peoples concerned, of coordinated and systematic action to protect their rights and guarantee their integrity,<sup>23</sup> and to ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned.<sup>24</sup> The tripartite committee noted that "consultation, as envisaged in the Convention, extends beyond consultation on specific cases: it means that application of the provisions of the Convention must be systematic and coordinated, and undertaken with indigenous peoples ...".<sup>25</sup>

Taking into account all the elements indicated above, the Committee wishes thus to restate its understanding of the concept of consultation as concerns: the subject matter of consultation or participation; who should be responsible for such consultation; and the characteristics of consultation.

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18 See GB.282/14/3, para. 90.

19 See GB.303/19/7, para. 81.

20 See GB.304/14/7, paras 42–44.

21 *ibid.*, para. 44.

22 *ibid.*, para. 42.

23 *Article 2(1)*.

24 *Article 33(1)*.

25 See GB.304/14/7, para. 43.

Concerning the subject matter, the Committee considers that consultation of indigenous and tribal peoples is specifically required in respect of the following: legislative or administrative matters which may affect them directly (*Article 6(1)(a)*); undertaking or permitting any programmes for the exploration or exploitation of mineral or sub-surface resources pertaining to their lands (*Article 15(2)*); whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community (*Article 17(2)*); and specific matters related to education (*Articles 27(3) and 28(1)*).

Free and informed consent of indigenous and tribal peoples is required where relocation of these peoples from lands which they occupy is considered necessary as an exceptional measure (*Article 16(2)*).

The participation of indigenous and tribal peoples is required in respect of the following: the development of coordinated and systematic action to protect the rights of indigenous and tribal peoples and to guarantee respect for their integrity (*Article 2(1)*); the adoption of policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work (*Article 5(c)*); decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them (*Article 6(1)(b)*); the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly (*Article 7(1)*); the improvement of the conditions of life and work and levels of health and education (*Article 7(2)*); the use, management and conservation of the natural resources pertaining to their lands (*Article 15(1)*); and ensuring that traditional activities are strengthened and promoted (*Article 23(1)*).

With respect to the authority responsible for consultation, *Articles 2 and 6* put that responsibility on governments. Governments are required under *Article 6* to “consult the peoples concerned, through appropriate procedures ...” and to “establish means by which these peoples can freely participate ...”.

Concerning the nature of consultation, from the review of the preparatory work concerning Convention No. 169 and from the review of the wording of the two authoritative texts of the Convention, the Committee concludes that it was the intention of the drafters of the Convention that the obligation to consult under the Convention was intended to mean that:

- 1) consultations must be formal, full and exercised in good faith;<sup>26</sup> there must be a genuine dialogue between governments and indigenous and tribal peoples characterized by communication and understanding, mutual respect, good faith and the sincere wish to reach a common accord;
- 2) appropriate procedural mechanisms have to be put in place at the national level and they have to be in a form appropriate to the circumstances;
- 3) consultations have to be undertaken through indigenous and tribal peoples’ representative institutions as regards legislative and administrative measures;
- 4) consultations have to be undertaken with the objective of reaching agreement or consent to the proposed measures.

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26 See ILC, 76th Session, 1989, Report IV(2A), pp. 19–21.

It is clear from the above that pro forma consultations or mere information would not meet the requirements of the Convention. At the same time, such consultations do not imply a right to veto,<sup>27</sup> nor is the result of such consultations necessarily the reaching of agreement or consent.<sup>28</sup>

The Committee hopes that the above clarifications will assist governments to effectively implement the Convention and the indigenous and tribal peoples to be able to enjoy the protection and benefits of the Convention. It also hopes that it will strengthen the dialogue between governments, employers' and workers' organizations concerning the objectives and content of the Convention, with the active participation of organizations and institutions of indigenous and tribal peoples as called for by the resolution adopted by the Conference in 1989.

The Committee considers that its understanding of the meaning of consultation has remained faithful to both the letter and the spirit of the relevant provisions of Convention No. 169, the preparatory work leading to its adoption and the findings of the tripartite committees that the Governing Body has established to examine representations filed against certain member States concerning non-compliance with Convention No. 169.

In its functions, the Committee makes recommendations to promote the effective implementation of the Convention. Concerning the issue as to whether the Committee can make recommendations regarding the suspension of activities pending consultation, the Committee wishes to state that it is clearly not a court of law and as a result cannot issue injunctions or provisional measures. It notes that, in the cases in which it made a recommendation that has been interpreted as such, it had been communicating with the countries concerned for a number of years requesting them to take the necessary measures to consult the indigenous and tribal peoples concerned in accordance with the provisions of the Convention.

The Committee therefore concludes that the Convention requires that there should first be real in-depth consultations with the representative institutions of indigenous and tribal peoples and that sufficient efforts should be made, in so far as possible, to reach joint solutions, since this is the cornerstone of dialogue. It is also an important tool in achieving the goals of sustainable development.

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27 *ibid.*, para. 74.

28 *ibid.*

## 2. General Observation 2018

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

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

With regard to the identification of indigenous and tribal peoples, the Committee has underscored the importance of guaranteeing that all peoples who meet the criteria provided for in the Convention, independent of their legal recognition in national legislation, enjoy the rights recognized in this instrument. The Convention enumerates a set of objective criteria to identify indigenous and tribal peoples. It provides that self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply. Thus self-identification constitutes the subjective criterion which complements the objective criteria. The Committee has noted that many countries sent detailed statistical information in relation to the number and geographical location of indigenous and tribal peoples. In addition, it should be noted that when conducting population census, some countries applied the criteria of self-identification. In this respect, the Committee reiterates that having reliable statistical data on the indigenous population, their location and socio-economic conditions constitutes an essential tool for effectively guiding and defining policies relating to indigenous peoples, as well as for monitoring the impact of the action carried out. All this is also crucial to enable governments to take appropriate measures to recognize, protect and value the cultural and social identity, customs and traditions of indigenous peoples.

The Committee notes that the fundamental concept of the Convention is the right of indigenous peoples to participate effectively in decisions that may affect them, as well as in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly. In order to ensure effective participation, the Committee considers it key to develop and strengthen institutions with the participation of indigenous peoples. Several countries have established bodies tasked with formulating and coordinating national policy on indigenous

matters, whether these be ministries or vice-ministries responsible for foreign affairs, advisory councils, coordinating bodies or independent institutions. In some countries, a cross-cutting approach has been adopted through the establishment of specifically dedicated areas in most ministries and public institutions. Furthermore, other countries have created permanent dialogue and participation forums. Irrespective of the type of structure established, the Committee has noted on various occasions that the body responsible for indigenous affairs must have adequate staff and financial resources, a well-defined legal framework and decision-making power. Additionally, indigenous peoples must be represented and participate in those institutions.

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

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

The Committee wishes to highlight that consultation should be seen as an essential instrument for the promotion of effective and meaningful social dialogue, mutual understanding as well as legal certainty. Consultation also constitutes an important step towards guaranteeing the free, effective and permanent participation of indigenous and tribal peoples in decision-making processes that affect them. The Committee recalls that, from a joint reading of the provisions of the Convention, it follows that consultation goes beyond one particular measure. Consultation aims also at promoting the application of all the provisions of the Convention in a systematic and coordinated manner, in cooperation with the indigenous peoples, which entails a gradual process of establishing adequate bodies and mechanisms for this purpose.

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

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



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

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

The Committee highlights the fact that, despite the progress made in the implementation of policies and programmes for recognizing and implementing the rights of indigenous peoples provided for in the Convention, the human rights situation of indigenous peoples in a number of countries remains a source of concern. The Committee has urged governments on several occasions to take measures to prevent acts of violence suffered by indigenous peoples and their representatives, including murder and intimidation, in the context of their action to defend their rights. The Committee is also concerned at the complaints submitted by the social partners relating to the criminalization of social protest. The Committee recalls the obligation of States which have ratified the Convention to ensure that indigenous peoples fully enjoy all their human rights. In this regard, the Committee underlines the importance of taking appropriate measures to ensure that all acts of violence against indigenous persons or peoples are investigated and that the personal integrity and safety of members of indigenous peoples are guaranteed. The Committee recalls the importance of ensuring that indigenous peoples are aware of their rights and have access to justice in order to assert their rights. The Convention specifically provides that measures shall be taken to ensure that indigenous or tribal peoples can understand and be understood in legal proceedings.

The Committee notes that, as part of the implementation of the Strategy for indigenous peoples' rights for inclusive and sustainable development, adopted by the Governing Body in 2015, the Office will need to continue with awareness-raising and training activities relating to the Convention and devise and disseminate tools encompassing experiences and good practices to provide guidance for constituents when adopting policies and programmes relating to indigenous peoples. The Committee welcomes the adoption of this Strategy which demonstrates the importance of the Convention for the fulfilment of the ILO's mandate, and hopes that in this context the Office can provide appropriate technical assistance to countries which request it. The Committee notes that the Strategy provides for reinforcing collaboration within the United Nations system with respect to promoting the rights of



indigenous peoples. In this regard, the Committee notes that the Convention and the United Nations Declaration on the Rights of Indigenous Peoples, adopted in 2007, constitute two legal instruments of different nature and scopes which complement and reinforce each other. The Committee considers that the effective implementation of the Convention contributes towards achieving the objective of the Declaration as well as towards achieving the United Nations Sustainable Development Goals.

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

### **CONVENTION CONCERNING INDIGENOUS AND TRIBAL PEOPLES IN INDEPENDENT COUNTRIES <sup>29</sup>**

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

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<sup>29</sup> Ed.: This Convention came into force on 5 September 1991.

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 this 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. FINAL 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. sWhen 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.

## For more information

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