

ILO Convention No. 169

ILO Convention No. 169 is a legally-binding international instrument open to ratification, which deals specifically with the rights of indigenous and tribal peoples. Today, it has been ratified by 20 countries - mainly in Latin America, Europe and the Asia-Pacific region. Once it ratifies the Convention, a country has one year to align legislation, policies and programmes to the Convention before it becomes legally binding. Countries that have ratified the Convention are subject to supervision with regards to its implementation.

Securing rights and respecting differences

The Convention recognizes that indigenous and tribal peoples' cultures and identities form an integral part of their lives - and that their way of life often differs from that of the dominant population. These differences are to be respected through the recognition of, among other things, their own customs and institutions, languages and beliefs.

The spirit of the Convention is one of non-discrimination. In recognition of the fact that indigenous peoples are likely to be discriminated against in many areas, the Convention from the outset states their right to enjoy the full measure of human rights and fundamental freedoms. It calls for the adoption of special measures to safeguard the persons, institutions, property, labour, cultures and environment of these peoples, and stipulates that these special measures should not go against the free wishes of indigenous peoples.

Convention No. 169 has 44 articles covering issues ranging from indigenous peoples right to land, to social security and health, vocational training and rights concerning recruitment and conditions of employment.

Consultation and participation

One of the major problems facing indigenous and tribal peoples is that they often have little or no say in decision-making that directly affects their lives. Therefore, the right to consultation and participation is regarded as the cornerstone of the Convention, on which all its provisions are based. The Convention requires that indigenous peoples are consulted and can freely participate at all levels of decision-making, in policy, legislative, administrative and development processes affecting them.

The Convention provides a framework for dialogue and negotiations between governments and indigenous peoples, with the objective of reaching agreement or consent.

The regular supervision of the implementation of the Convention is undertaken by the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR), which monitors the implementation of all ILO Conventions.

Supervising ILO Conventions

When ratifying an ILO Convention, countries commit themselves to make its provisions part of their national law. To ensure that this is done properly and also has an impact on a practical level, countries have to report back to the ILO on measures taken and on any problems encountered. This has to be done at intervals of one to five years, depending on which Convention is concerned. The ILO is a tripartite organization. This means that its constituents - and decision-makers - are not only governments, but also workers and employers. These all have an active role to play in the supervision of ratified Conventions and workers' and employers' organizations can submit information concerning the application of ratified Conventions to the ILO.

Dialogue between experts and governments

The ILO body examining the application of ratified Conventions is the Committee of Experts on the Application of Conventions and Recommendations (CEACR). The CEACR receives and analyses reports from governments and provides comments to guide the implementation of ILO Conventions in the concerned country. In this way, the CEACR engages in a process of ongoing dialogue with the government. This regular supervision can be very effective in identifying implementation and information gaps and suggesting measures and mechanisms for improved implementation.

The conclusions of the CEACR's examination of States' reports come in two forms: Observations, which are the CEACR's public comments on the application of ILO Conventions; and Direct requests. These are sent directly to the government in question, and generally ask for more information on specific subjects.

There are also special procedures to deal with more serious situations and alleged violations of ILO Conventions. The most commonly used form of complaint in the ILO system is called a Representation. A Representation, alleging a Government's failure to observe certain provisions of ratified ILO Conventions,

can be submitted to the ILO by a workers' or employers' organization.

How to participate in the supervision

Indigenous peoples can ensure that their concerns are taken into account in the regular supervision of ILO Conventions by the CEACR in several ways:

By sending verifiable information directly to the ILO on, for example, the text of a new policy, law, or court decision.

By making alliances with trade unions, and through them, raising issues of concern.

By asking for technical cooperation from the ILO, through which governments and indigenous peoples can get assistance in the implementation of ratified Conventions.

By drawing the attention of the ILO to relevant official information from other UN supervisory bodies, fora or agencies.

ILOLEX (www.ilo.org/ilolex), ILO's trilingual database, provides information about ratification of ILO Conventions and Recommendations, comments of the CEACR, Representations, Complaints, interpretations of ILO Conventions, and the like.

In ILOLEX, you can search for information about a specific Convention and/or about a particular country.

ILO's database APPLIS provides information on the application of International Labour Standards.