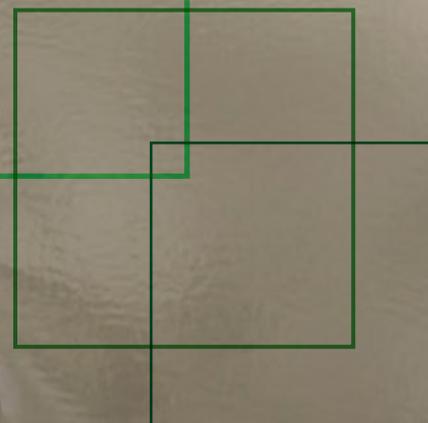




International  
labour  
organization

# INDIGENOUS & TRIBAL PEOPLES' RIGHTS IN PRACTICE

A GUIDE TO  
ILO CONVENTION No. 169



PROGRAMME TO PROMOTE ILO CONVENTION NO. 169 (PRO 169)  
International Labour Standards Department, 2009



INDIGENOUS & TRIBAL PEOPLES' RIGHTS IN PRACTICE



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## INTRODUCTION

In 1989, the International Labour Organisation (ILO) adopted the Indigenous and Tribal Peoples Convention (ILO Convention No. 169). Since then, the Convention has been ratified by 20 countries. In these countries, the ILO supervisory bodies have monitored and guided the implementation process through regular examination of reports and provision of comments to the concerned governments. In this context, workers' organizations have also assisted indigenous and tribal<sup>1)</sup> peoples' organizations to bring specific issues to the attention of the ILO supervisory bodies. Moreover, the Convention has inspired governments and indigenous peoples far beyond the ratifying countries, in their work to promote and protect indigenous peoples' rights. The 20 years that have passed since the adoption of the Convention thus represent 20 years of efforts, dialogue and achievements in the challenging process of gradually deepening the understanding and implementation of indigenous peoples' rights.

In 2007, the United Nations General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (A/RES/61/295). The adoption was the culmination of years of discussions and negotiations between governments and indigenous peoples and is a landmark achievement, which provides the international community with a common framework for the realization of indigenous peoples' rights.

Following the adoption of the UN Declaration, there is now a general consensus that there must be a focus on implementation of indigenous peoples' rights at the country-level to ensure that international instruments bring the necessary changes for the millions of indigenous peoples around the world, who are still living in marginalized and disadvantaged situations.

Convention No. 169 and the UN Declaration are compatible and mutually reinforcing (see section

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1) Convention No. 169 uses the terminology of 'indigenous and tribal peoples' (see section 1 for a more detailed discussion of the term). The Convention does not differentiate between the rights ascribed to the two groups. However, for practical reasons, this Guide uses the term 'indigenous peoples', which is also the most commonly used term and the one that is used by international instruments such as the UN Declaration on the Rights of Indigenous Peoples.

2), although these instruments were negotiated at different time periods by different bodies and therefore diverge in some respects. However, the implementation process of the two instruments is largely the same, and experiences generated so far in the context of Convention No. 169 can thus to a certain degree serve to inspire the further efforts to implement the Declaration.

The main purpose of this Guide is to provide governments, indigenous and tribal peoples and workers' and employers' organizations with a practical tool for the implementation of indigenous peoples' rights, based on the experiences, good practices and lessons learned that have been generated so far.

The Guide does not attempt to provide a blueprint for implementation. The diversity of situations faced by indigenous peoples does not allow for a simplistic transfer or replication of models from one country to another. Rather, the Guide is a catalogue of ideas that hopefully will be assessed, discussed and, eventually, will inspire adaptation of good practices to national and local circumstances.

The Guide has been developed through collaborative efforts, thereby reflecting the multi-party and collective nature of the implementation process. The main sources of information and input for the Guide are:

- Analysis and comments provided by the ILO supervisory bodies in order to guide the implementation of Convention No. 169 in ratifying countries.
- A series of case studies, conducted by indigenous peoples' organizations and researchers that document key positive experiences, achievements and impacts of the implementation of indigenous peoples' rights.
- A series of short examples of key experiences, which the reader can further study by following the links and references included in the Guide.

## HOW TO USE THIS GUIDE

This Guide is not meant to be read from beginning to end, but is rather a catalogue from which the reader can choose the most relevant entry point and follow the cross-references to explore how the full range of indigenous and tribal peoples' rights relate to each other.

The guide is divided into sections covering all the main aspects of indigenous and tribal peoples' rights. Each section is divided into the following main categories:

- An **introductory part**, which explains the relevant article(s) of Convention No. 169 and their implications. This section also provides references to similar provisions of the UN Declaration on the Rights of Indigenous Peoples.
- A summary of **comments of the ILO supervisory bodies**, which have been provided to give guidance and assistance to countries regarding implementation of Convention No. 169. Such comments do not exist in relation to all areas of the Convention and are thus only available in relation to some sections of the Guide.

A series of **examples of practical application** of the concerned provisions of ILO Convention No. 169, drawn from all areas of the world. Annex D provides an index of the various cases presented in the Guide.

Convention No. 169 is an holistic instrument, which attempts to address all key aspects of indigenous peoples' rights. The range of rights contained in this instruments are inter-related and issues such as the right to consultation and participation are cross-cutting and have repercussions, for example, for the rights stipulated in sectors such as health and education.

This is reflected in the Guide, which starts with a focus on key principles of the general policy of Convention No. 169 (mainly articles 1-12) and then addresses more specific substantive issues (mainly

articles 13-32).

The Guide is divided into the following sections, covering the various areas of indigenous rights:

- 1. Identification of indigenous and tribal peoples.** This section explains the coverage of the Convention and the criteria used to identify indigenous and tribal peoples in different regions, including the right to self-identification.
- 2. The concept of indigenous peoples in the context of rights.** This section elaborates on the implications of the use of the term 'peoples' and its connotations with regard to the right to self-determination, as recognized in the UN Declaration on the Rights of Indigenous Peoples.
- 3. Government responsibilities.** This section explains the responsibility of States to undertake coordinated and systematic action to end discrimination against indigenous and tribal peoples, by respecting their fundamental rights and also developing special measures to that effect.
- 4. Indigenous institutions.** This section explains the right to maintain and develop indigenous institutions as a fundamental right, which is crucial for maintaining indigenous and tribal peoples' identity and autonomy.
- 5. Participation, consultation and consent.** This section explains the fundamental principles of participation and consultation with a view to achieving agreement or consent, which are the cornerstone of Convention No. 169.
- 6. Customary law, penal systems and access to justice.** This section explains the right to retain customs and customary law, including penal systems, as long as these are not in conflict with international human rights, as well as the need to improve indigenous and tribal peoples' access to justice.
- 7. Land and territories.** This section explains the crucial concepts of indigenous and tribal peoples' lands and territories and the related rights, including to ownership and possession.
- 8. Natural resources.** This section explains indigenous and tribal peoples general right to the natural resources in their territories as



well as the rights to consultation, participation and benefit-sharing in cases where the State retains the rights over mineral resources.

9. **Development.** This section explains indigenous and tribal peoples' rights to determine their own priorities for the process of development and how this relates to the current international development agenda.
10. **Education.** This section explains indigenous and tribal peoples' general right to education as well as the need for special educational measures to meet their needs and priorities, for example for bilingual intercultural education.
11. **Health and social security.** This section

13. **Contacts and cooperation across borders.**

This section explains the right of indigenous and tribal peoples to maintain contact in cases where they have been divided by international borders.

14. **Convention No. 169: ratification, implementation, supervision and technical assistance.**

This section explains the procedural aspects of Convention No. 169; how it can be ratified; how the supervisory and complaints mechanisms work; its legal standing in the national legal systems; and the possibility of getting technical assistance from the ILO.

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