

Leaflet No. 1

The ILO standards and supervisory system

The ILO has a large standard-setting and supervision agenda. This leaflet explains how the ILO standards system works – to enable indigenous peoples to familiarize themselves with this system, and to highlight that this system applies not only to ILO Convention No. 169, but also to other ILO standards that are relevant to indigenous peoples and have been widely ratified by ILO Member States.

1. What are ILO standards?

ILO Standards consist primarily of Conventions and Recommendations, and Declarations. Collectively, these are known as *International Labour Standards*. The ILO is responsible for 185 Conventions, many of which have accompanying Recommendations. Of additional interest is the *ILO Declaration on Fundamental Principles and Rights at Work*.

ILO Conventions, once ratified, are binding on States. The ILO also has its own system of supervision of these Conventions to oversee states' compliance.

Recommendations are not binding, but lay down general or technical guidelines to be applied at the national level. They often provide detailed guidelines to supplement principles set out in Conventions, or they may provide guidance on subjects that are not covered by Conventions.

Declarations are not binding, but represent a set of guiding principles to which States should aspire.

2. What if my country hasn't ratified Convention No. 169? Which other ILO standards are relevant for indigenous and tribal peoples?

The ILO's Indigenous and Tribal Peoples Convention, 1989 (No. 169) is well known among indigenous peoples. Convention No. 169 is used as a point of reference by indigenous peoples throughout the world, not only in countries that have ratified it. Its predecessor, the Indigenous and Tribal Populations Convention, 1957 (No. 107), is no longer open for ratification, but remains in force for several countries in Asia and Africa.

Convention No. 169 is currently the only international legal instrument that can be ratified and is legally binding, and that addresses the rights of indigenous and tribal peoples specifically. It recognizes the individual and collective aspects of their human rights, and their right to decide their own priorities for development, and take part in the public life of the countries in which they live. Further basic information about this Convention, and the programmes of the ILO that address indigenous peoples exclusively, is in leaflet No. 2.

There are a number of other ILO Conventions that are not so well known among indigenous peoples. Many of these are directly relevant to their situation. Among these Conventions, 8 are considered fundamental rights Conventions. These are grouped into four key areas considered as fundamental rights at work. The Conventions in question are as follows:

Forced labour (see leaflet No. 3 for more information)

- The Forced Labour Convention, 1930 (No. 29)
- The Abolition of Forced Labour Convention, 1957 (No. 105)

Child Labour (see leaflet No. 4 for more information)

- The Minimum Age Convention, 1973 (No. 138)
- The Worst Forms of Child Labour Convention, 1999 (No. 182)

Discrimination (see leaflet No. 5 for more information)

- The Equal Remuneration Convention, 1951 (No. 100)
- The Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Freedom of Association and the right to collective bargaining

- The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
- The Right to Organize and Collective Bargaining Convention, 1949 (No. 98)

These Conventions are legally binding, and have been ratified by the vast majority of ILO Member States, so even if your country hasn't ratified Convention No. 169, there is a high possibility that it has ratified one of the other Conventions of the ILO that is of direct relevance to indigenous and tribal peoples. In this case, you will need to check which Conventions your country has ratified, and you can also familiarize yourself with these Conventions, and look at the way they have been implemented in your country.

The four principles outlined above are also the fundamental principles outlined in the ILO Declaration on Fundamental Principles and Rights at Work, 1998. As highlighted above, this Declaration represents a set of guiding principles to which states should aspire.

3. How is the implementation of ILO Conventions supervised?

An ILO Convention will come into force (i.e. become legally binding on the ratifying country) 12 months after the date of ratification. After this, States are required to report regularly to the ILO on the implementation of that Convention, indicating not only whether its national laws are in conformity with the Convention in question, but also informing the ILO on what has been done to make sure the Convention has had an impact on a practical level.

It is important to remember that, unlike the rest of the UN system, *the ILO is a tripartite organization*. This means that its constituents, and therefore also decision-makers, are not only governments, but workers and employers, (ILO constituents). These all have an active role to play in the standards system.

Tripartism and its role in ILO standards and supervision

“Tripartism” describes the equal participation and representation of governments and employers' and workers' organizations (ILO constituents) in the ILO.

In the context of the supervision of ILO standards, this means a number of things:

- An equal participation of ILO constituents in the drafting and adoption of labour standards;
- An equal participation in discussions on the implementation of labour standards in the main conferences and governing body of the ILO;
- The chance for ILO constituents to submit information on the implementation of ratified Conventions for official consideration by the ILO's supervisory bodies.
- ILO constituents also have a role to play in special procedures like Representations and Complaints (see section on special procedures, below).

The regular monitoring of ILO Conventions

Reporting on ILO Conventions is regulated by the Article 22 of the ILO Constitution. Reports on ratified ILO Conventions are required at intervals of *one to five years*, depending on which Convention is concerned, and on any problems in implementation. For example, reports on the ILO's fundamental Conventions (see section 2, above) are required at least every two years. For all other ILO Conventions, including Convention No. 169, reports are required every five years but can be required more often.

The ILO body examining these State reports is the *Committee of Experts on the Application of Conventions and Recommendations* (CEACR). This is a body of 20 independent experts that meets in Geneva once a year. The Committee examines States' reports and other information of relevance. This might include comments and information submitted by workers' and employers' organizations, or information from the United Nations System (including from the UN committees responsible for monitoring human rights treaties).

The CEACR engages in a process of ongoing dialogue with governments on the application of ratified Conventions, and this regular supervision can be very effective. Information concerning the CEACR's examination of States' reports comes in two forms:

- **Observations.** Observations are the CEACR's public comments on the application of ILO Conventions. They highlight areas of progress as well as areas of concern. They might also ask for further information on certain topics. Observations are published every year in book format (the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III(1A)), and on the internet (see section 4 of this leaflet for information on how to access the ILOLEX database).
- **Direct requests.** These are sent directly to the government in question, and generally ask for more information on specific subjects.

Special procedures

In addition to the regular procedures for supervising the implementation of ILO Conventions, there are also procedures to deal with more serious situations, and alleged violations of these Conventions. These procedures apply to all ILO Conventions, and not just Convention No. 169. These are complaints procedures, and there are two kinds of "complaint" in the ILO system:

- **Representations.** These are governed by article 24 of the ILO Constitution. 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. These should be submitted in writing, and invoke article 24 of the ILO Constitution, as well as outline which provisions of the Convention in question are alleged to have been violated. Once the representation has been received, the ILO's Governing Body appoints a Tripartite Committee (i.e. one government representative, one employer representative and one worker representative) to examine it. The final conclusions of these Committees are made public, and are available online (see section 4, below). A representation submitted by a workers' or employers' organization with a direct connection to the subject of the representation has the best chance of being examined.
- **Complaints.** These are less relevant for indigenous peoples, as they can only be filed by one Member State of the ILO against another, or be delegates to the annual International Labour Conference. Complaints allege failure to observe ILO Conventions that both countries involved have ratified.

4. Can I send information to the ILO about the implementation of conventions that my country has ratified? Are there any examples that can help me?

So, given the tripartite structure of the ILO, where do indigenous peoples fit in? There are several ways in which indigenous peoples can ensure that their concerns are taken into account by the ILO's supervisory bodies, in the regular supervision of ILO Conventions by the CEACR:

- If a new law, or court decision emerges, then this kind of information can be sent directly to the ILO. The texts of laws and court decisions, for example, are considered as *verifiable, objective information*.
- In order for other kinds of information to be officially taken into account by the ILO, it must be *sent by one of the ILO constituents*. Usually, it is workers' organizations who have a more direct interest in indigenous issues. Therefore, for the purposes of ensuring indigenous peoples' issues are raised in relevant contexts, it is important that they strengthen their alliances with workers' organizations (or trade unions).
- Each Convention is accompanied by a *Report Form*, which outlines the main questions that should be answered in Governments' regular reporting under ratified ILO Conventions. In the Report Form for Convention No. 169, there are suggestions that governments indicate how indigenous and tribal peoples have been consulted, and have participated in the preparation of reports on the application of this Convention.
- *Technical cooperation* is another way that indigenous peoples can access the system. Sometimes it is directly related to the supervision of ILO Conventions, and can help to overcome problems in their implementation. Sometimes technical cooperation can be used to promote certain ILO standards, as in the case of the Project to Promote ILO Policy on Indigenous and Tribal Peoples (PRO 169). For more on this project, see leaflet No. 2.
- Through *innovative approaches*, for example, through formal relations between indigenous peoples and governments. See the example below.

The role of the Saami indigenous people in the supervision of ILO Convention No. 169 in Norway

Norway was the first country to ratify Convention No. 169 in 1990. Following ratification, the Government of Norway requested that the Saami Parliament submit its own independent comments on the Government's regular reports under the Convention, and that these comments be considered by the ILO alongside the Government report. In this way, the Saami Parliament has a more formal role to play in the supervision of Convention No. 169 in the Norwegian context.

5. Where can I look for further information ?

There are several ways to find more information about any of the Conventions mentioned above.

Electronic resources

- Go to the ILO website. On this website there is a database called ILOLEX. www.ilo.org/ilolex/index.htm.

From here you can access a number of different kinds of information including:

- The texts of individual Conventions or Recommendations
- Lists of which countries have ratified which Conventions

If you click on the “query form” on the ILOLEX homepage, you can access:

- Observations of the CEACR
- Reports of Tripartite Committees established to examine Representations filed with the ILO alleging non-observance of ILO Conventions.

- The Standards Department is the department of the ILO that deals with issues concerning the supervision of ILO Conventions. The web address of the Standards Department is www.ilo.org/normes.

If the information you are looking for is not here, you can e-mail infonorm@ilo.org.

Other sources of information

- If you cannot access the internet easily, you can write to the nearest ILO office to request information. A list of regional ILO offices is contained at the back of this information package.

- You can contact the Ministry of Labour in your country.

The Ministry of Labour is usually the ILO's main government partner at the national level.