



# SUMMARY OF DISCUSSIONS

## Seminar on Enabling rights-based development for indigenous and tribal peoples: Learning from 25 years' experience of ILO Convention No. 169

Geneva, 27-28 November 2014

### Background and context

The **Convention concerning Indigenous and Tribal Peoples in Independent Countries** (ILO Convention No. 169), adopted 25 years ago in 1989, is an unprecedented and visionary instrument seeking to ensure that indigenous peoples enjoy human rights without discrimination, exercise control over their own development and participate in decision-making processes that affect their lives. Today, the Convention, along with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), represents a cornerstone of the international legal framework protecting indigenous peoples' rights.

Despite substantial progress since its adoption 25 years ago, the UN General Assembly, the UN Human Rights Council and other international bodies have repeatedly underlined the need for advancing the implementation of indigenous peoples' rights, as enshrined in ILO Convention No. 169.

Most recently, on 22 September 2014, the UN General Assembly adopted the outcome document of the high-level plenary meeting known as the **World Conference on Indigenous Peoples** (WCIP). In this landmark document, UN Member States reiterate their commitment to respect, promote and advance the rights of indigenous peoples, to uphold the principles of UNDRIP, and encourage those States that have not yet ratified the ILO Convention No. 169 to consider doing so. They furthermore recall the obligation of ratifying States under ILO Convention No. 169 to develop coordinated and systematic action to protect the rights of indigenous peoples.

### Rationale and objectives of the seminar

Building on the outcome document of the World Conference, the Governments of Denmark and Mexico, the International Labour Office (ILO), the International Working Group on Indigenous Affairs (IWGIA) and the University of Lucerne (Switzerland) organized a two-day seminar on 27-28 November 2014 **to take stock of Convention No. 169** as an enabling tool for indigenous peoples' rights-based development and to **develop recommendations** to promote implementation and ratification of the Convention.

The seminar brought together, for the first time ever, representatives of ratifying and non-ratifying States, indigenous peoples' representatives, employers' and workers' organizations, independent experts and researchers, UN agencies, regional organizations and other stakeholders, and thereby served as an **interactive multi-stakeholder platform** for **sharing lessons learned** and country-level experiences on the practical implementation of the Convention.

More than a hundred participants from the Americas, Europe, Asia-Pacific and Africa attended the seminar, which aimed to:

- **Take stock of Convention No. 169** as an enabling tool for indigenous peoples' rights-based and self-determined development;
- **Provide a platform for sharing lessons** learned and identifying key challenges and possible future actions for the effective implementation of indigenous peoples' rights as enshrined in ILO Convention No. 169;
- **Develop concrete recommendations** for enhanced implementation and ratification of the Convention, as a contribution to the follow-up to the outcome document of the World Conference on Indigenous Peoples.

## **Taking stock: Key lessons drawn from 25 years' experience of Convention No.169**

Participants highlighted the relevance of the Convention and how it has informed constitutional reforms in Latin America, as well as decisions by domestic and international courts. The Convention has moreover provided a framework for peaceful resolution of conflicts and influenced the design and adoption of numerous national policies and programmes in both ratifying and non-ratifying countries in different regions. Examples were given of steps taken at country-level to put in place national laws and institutions to safeguard the rights of indigenous peoples, often as a result of the ratification of Convention No. 169.

25 years since its adoption, the Convention is, however, not widely ratified and in many ratifying States, it is yet to yield the rights-based and inclusive development for which it was devised.

To date, only **22 countries have ratified the Convention**. With almost two-thirds of ratifying States found in Latin America, the Convention currently covers less than 15 per cent of the world's indigenous peoples (or about 50 million of the estimated total of 370 million). Against this background, participants highlighted the need for renewed efforts to increase the number of ratifications across all regions of the world. In this context, it was recalled that the ILO has invited countries for which ILO Convention No. 107 remains in force to consider ratifying Convention No. 169. Participants also stressed that ratification is not an end in itself but an important step towards the full realization of indigenous peoples' rights, promoting respect for diversity and achieving truly inclusive and sustainable development.

In addition to ratification, the seminar highlighted how **full and effective implementation** of the Convention remains a challenge. Participants noted remaining implementation gaps in many countries with serious negative consequences for indigenous peoples. Participants pointed out that indigenous peoples continue to suffer disproportionately from poverty, rights infringements and inadequate access to basic services. Racial discrimination and social exclusion remain a reality in many countries, with indigenous peoples being disproportionately affected by forced labour, child labour and lack of social protection when compared to other parts of the population.

Moreover, challenges were highlighted in relation to indigenous peoples' collective rights, in particular their rights to land, territories and natural resources in the context of development activities. Whereas protective measures are in place in some countries, participants stressed the urgent need for the full identification and demarcation of indigenous lands in order to ensure effective consultation with - and participation of - indigenous peoples in decision-making processes as well as benefit-sharing arrangements. In this connection, lack of trust between indigenous peoples and state authorities was identified as a key obstacle for effective participation and consultation.

Participants stressed that implementation efforts should not only focus on some key provisions but on the Convention in its entirety, including its provisions concerning education, health, employment and social protection which are essential for indigenous peoples' rights-based development.

One key message was that while implementation is a long-term process requiring continuing attention and support, there is also a need for immediate steps. In particular, several participants highlighted that the Convention, its provisions and potential often remain relatively unknown to government officials, indigenous peoples and other stakeholders, even in ratifying countries.

Throughout the seminar, participants underscored the need to further strengthen the visibility of Convention No. 169 as well as supporting its implementation. In this regard, participants underlined the key role of the ILO, including its supervisory mecha-

nisms, technical advisory services and cooperation, and called for an intensification of ILO action in support of the Convention. Several indigenous peoples' representatives and experts called for greater access of indigenous peoples to the ILO, and in particular to the supervisory mechanisms.

## **Looking ahead: Recommendations for action to promote ratification and implementation**

The World Conference on Indigenous Peoples created an historic momentum for the promotion and protection of indigenous peoples' rights. The seminar highlighted the urgent need to seize this unique opportunity for renewed efforts to – through concrete action – promote enhanced ratification and implementation of the Convention.

### **1. Concerted efforts to promote and support ratification**

Many participants called for renewed efforts to promote actively ratification of Convention No. 169, including through a ratification campaign. Such a campaign could identify and address key ratification obstacles as well as provide information on national implications of ratification for the countries concerned. While concerted efforts by all stakeholders are needed, the ILO was highlighted as being well placed to lead such a campaign in cooperation with the broader United Nations system. Along with the relevant UN bodies and indigenous peoples' representatives, several participants suggested that ratifying States could play a leadership role in promoting enhanced ratification, including through international cooperation, high-level dialogues and exchanges of experiences.

### **2. Closing the implementation gaps**

All stakeholders highlighted the importance of ratifying States taking the necessary measures to ensure the full and effective implementation of Convention No. 169. In this regard, the need for States to put in place a clear and effective regulatory framework and related practical guidance was emphasized. The role of research and assessments of existing law and practices as well as actual impact at the country level was also highlighted by some as an important tool to identify and address implementation gaps.

### **3. Stepping-up awareness raising and capacity building**

All stakeholders emphasized the need for increased awareness-raising on Convention No. 169. In this regard, many participants highlighted the ILO as potentially playing a more active role in the dissemination of information as regards the Convention at national, regional and international levels. Participants similarly highlighted the need to strengthen capacity building for - and technical cooperation with - all relevant stakeholders, including government officials, indigenous peoples, private actors as well as employers' and workers' organizations and their members. Capacity-building could, among other things, focus on the effective application of key provisions, including those related to the right to consultation and participation, and their importance for implementing the Convention as a whole. The importance of human rights education more generally was also mentioned.

### **4. Building trust through institutionalized dialogue and consultation**

Numerous participants called for the strengthening of mechanisms and institutions at national level to ensure a continuous and inclusive dialogue between indigenous peoples and other stakeholders. An ongoing dialogue was considered as essential for building long-term trust and cooperation between, in particular, indigenous peoples and State actors, and for ensuring the right of indigenous peoples to decide their own priorities for the process of development. Some participants highlighted the need for increased assistance to indigenous peoples' representative institutions with regard to their engagement in consultation processes as well as the importance of ensuring the full involvement of indigenous women in this regard.

## 5. Forging new alliances and partnerships

Several participants highlighted the potential role of ratifying countries in championing the Convention through dissemination of good practices and experiences to other ratifying as well as non-ratifying states. Partnerships could be created among states through twinning initiatives or knowledge sharing fora involving concerned stakeholders. Participants also emphasized how alliances and partnerships between the social partners and indigenous peoples could provide an important avenue for promoting the Convention and its effective implementation. Moreover, the UN-system wide action plan envisaged by the outcome document of the World Conference for Indigenous Peoples was highlighted as an opportunity to strengthen partnerships among UN agencies, states and indigenous peoples to support ratification and implementation of the Convention.

## 6. Facilitating access of indigenous peoples to the ILO supervisory mechanisms

Several participants called for greater access of indigenous peoples to the ILO supervisory mechanisms. In this regard, good practices for facilitating such access were highlighted, including examples of cooperation between governments and indigenous peoples. Among others, the cooperation between the Government of Norway and the Sami Parliament as well as partnerships between indigenous peoples and workers' organizations were highlighted as having enabled indigenous peoples to make submissions to the ILO's supervisory mechanisms. Some participants suggested that these practices could be replicated in other countries, as appropriate, and could serve as a source of inspiration for achieving greater access of indigenous peoples to the ILO supervisory bodies.

There was a broad consensus among participants that the seminar - bringing together representatives of governments, indigenous peoples, workers' and employers' organizations, UN agencies and independent experts - had been an important platform for dialogue and a call for renewed action by all stakeholders for the enhanced ratification and implementation of the Convention. Co-organizers will distribute the summary of discussions to their respective constituents. ○

The seminar was organized with the financial support of:

