

1989 Indigenous Peoples Convention: A Landmark in Indigenous Rights Concerns

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1. Introduction of the Legislation:

The Indigenous and Tribal Peoples Convention, also known as ILO Convention No. 169 (C169), was developed and ratified by the International Labor Organization. The Convention consists of 44 articles, organized into 10 categories, which set out minimum standards for the rights of indigenous peoples. It aims to improve living conditions and safeguard the rights of indigenous peoples around the world.

1.1 Significance and purpose of relevant legislation:

In the mid-twentieth century, the situation of indigenous peoples changed significantly and the issue of indigenous rights and interests came to the forefront of attention. At that time, many indigenous peoples worldwide faced discrimination and lacked the same fundamental human rights as the rest of the population in their respective countries. This persistent problem of discrimination and exploitation was rooted in the intergenerational effects of colonization. Therefore, it was necessary to develop legislation to protect the rights of indigenous peoples. The Indigenous Peoples' Convention emerged as a result, with legislation aimed at guaranteeing Indigenous peoples' rights in land rights, cultural preservation, education, employment, and participation in decision-making.

1.2 Purpose of the research:

The purpose of this study is to examine the legislative purpose of the Indigenous Convention and its historical background. The impact and significance of the Convention will also be discussed. Through the study, the paper seeks to illustrate the importance of the Convention and explore possible future developments in the protection of the rights of Indigenous peoples.

2. Background Information of the Legislation:

2.1 Basic Background Information:

This legislation was approved by the General Conference of the International Labour Organization at its 76th session, organized by the Governing Body of the International Labour Office on 7 June 1989 in Geneva. The Convention was established in 1989 and entered into force on September 5, 1991. Twenty-four countries have ratified the Convention, mainly in South America. The present Convention amends Convention No. 107 of 1957 concerning Indigenous and Tribal Peoples. The Convention was drafted against growing concern for human rights in the aftermath of the Second World War. It is the first international instrument to address the human rights of indigenous peoples specifically. But, the revision of Convention C107 primarily promotes assimilationist goals. However, the Convention expands indigenous peoples' political rights, which do not exist. Many changes have occurred in the situation of indigenous peoples since 1957, necessitating the revision of the previous Convention to eliminate the assimilationist tendencies of the earlier standards.

2.2 Historical Context of the Legislation:

Before the passage of the legislation, indigenous peoples had suffered grave injustices. Their ancestral lands were taken from them, their natural resources were exploited without consent, and indigenous children were forcibly sent to residential schools to assimilate them into white culture. This dark period of history is often called the "Stolen Generation." The 1950s was a period of aggressive and harmful policies that resulted in the destruction of cultures and families. This can be seen in the Indigenous and Tribal Populations Convention of 1957, which was developed and ratified by the International Labor Organization in 1957. While the convention aimed to improve the living conditions of indigenous peoples and protect them from oppression and discrimination, it predominantly promoted assimilationist goals. It was framed from the perspective that indigenous cultures were inferior to European cultures. The Convention describes indigenous populations as being "at a less advanced stage" than the colonizers, and considers the process of loss of tribal identity by indigenous peoples to be inevitable in the historical context. Despite its shortcomings, Convention No. 107 is a first step towards ensuring equality for indigenous peoples. Fortunately, the ILO has revisited Convention No. 107 as indigenous groups struggle for their right to recognition and protection. Their review concluded that the Convention was not helpful in the current context and should be changed and amended. Therefore in 1989 the ILO revised Convention No. 107 and renamed it the 1989 Indigenous and Tribal Peoples Convention.

3. Main Provisions and Rights of the Legislation :

3.1 Protecting Indigenous Rights:

The minimum standards for the rights of indigenous peoples are outlined in 44 articles of the Convention. All of them are based on the recognition of the rights of indigenous peoples and their distinct identities, cultures, and ways of life. To guarantee the right of indigenous peoples to participate in decisions that may affect society, the Convention establishes relevant legal provisions to safeguard their rights and interests in various areas. It further recognizes that indigenous peoples should have the right to prioritize their development needs, and calls on the government to help indigenous peoples to assert that right.

The main provisions of the 1989 Indigenous Peoples Convention, are as follows:

3.2 Cultural Rights(Article 8):

Cultural rights hold significant importance within the Convention. The Convention promotes the protection of indigenous peoples' cultural heritage, including their languages, traditions, and beliefs. One of the articles states that: "The integrity of the values, practices, and institutions of these peoples shall be respected." This provision is designed to protect indigenous peoples' distinctive cultures and ensure the continuation of their traditions, giving them a sense of cultural identity and preventing them from being assimilated into other cultures.

3.3 Land and Resource Rights(Articles 13-19):

The Convention highlights Indigenous people's entitlement to their traditional territories and resources. This provision is not only a safeguard for the economic resources of indigenous peoples, but also a cultural protection for them. Indigenous peoples often have an ingrained relationship with their lands, and they live in symbiosis with nature and know how to utilize natural resources in an environmentally friendly way. It was vital for them to have guaranteed access to those resources and to ensure their participation in decisions relating to their lands.

3.4 Fair employment opportunities (Articles 20-23):

Indigenous peoples have experienced a long history of colonization, dispossession, and marginalization. These histories have resulted in significant socio-economic disparities, lack of access to education, and past discriminatory policies that have led to unfair

treatment of their employment. To ensure equal opportunities and fair treatment of indigenous individuals in the workplace, Part III of the Convention states that, the conditions of recruitment and employment of indigenous persons: "Governments shall, within the framework of national laws and regulations, and in cooperation with the peoples concerned, adopt special measures to ensure the effective protection about recruitment and conditions of employment of workers belonging to these peoples"

3.5 Education right (Article 27):

Education is vital to the upbringing of children. Educational programs for indigenous children should be more specific and respectful of their cultural background. The Convention, therefore, recommends the development and implementation of educational programs that address their unique needs. To improve the transmission of indigenous cultures, the education of indigenous children should incorporate their history and teach them their indigenous languages. In addition to the transmission of culture, indigenous children should also be trained in the skills necessary to ensure their success in the workforce in the future, to make up for the educational gap that makes employment difficult.

These articles represent a compromise between indigenous groups and the Government. The development of the conventions ensures that Indigenous peoples have equal rights with other races, systematically addresses racism and prejudice, and creates an environment for Indigenous peoples that is inclusive of cultural diversity.

4. Implementation and Enforcement of Legislation :

4.1 Current Role of the Convention

After ratification of the Convention, signatory countries have one year to take action to implement ILO 169, during which time they are required to resolve issues of conflict with the Convention and then, after investigation and feedback, submit a report to the ILO for review. Once everything is in place, the Convention requires governments to consult and cooperate with indigenous peoples and involve them in decision-making processes that affect their rights. ILO encourages governments to engage in dialogue with indigenous representatives to address policy gaps. However, only 21 States have ratified Convention No. 169, a significant decrease from the number of signatories to Convention No. 107, in part because Convention No. 169 incorporates the right of indigenous peoples to self-determination, which has led many States to believe that self-governance for

indigenous peoples would undermine their sovereignty and governance. Most of the signatories are located in developing countries in Latin America. In contrast, most developed countries, such as the United States and Canada, have refused to sign the Convention, citing the inability of the international community to implement these international instruments as the reason for their refusal.

4.2 ILO's Supervisory System

In Article 22 of Convention No.169, the legislation requires Member States to submit reports on the implementation of the conventions they have ratified. The ILO Committee of Experts will consider these reports according to time. The interval between the considerations must be less than five years. Under this system of review, employers' and workers' organizations can submit reports on the Convention at any time to demonstrate the recent implementation of the Convention. Indigenous organizations, however, do not have the same opportunities as other organizations to submit reports under the Convention, and they can only send information on violations of Convention No. 169 to ILO through other agencies (Governments, employers' and workers' organizations), which means that they do not have the opportunity to submit reports directly. This is not a good outcome for indigenous peoples, who do not have the right to report directly to ILO but are dependent on other bodies whose interests often conflict with theirs. The development of a unique supervisory procedure allowing indigenous and tribal peoples' organizations to report violations of Convention No. 169 directly is therefore essential to strengthen the supervisory capacity of ILO and to provide timely assistance to groups in distress.

5. Impact and Significance of the Legislation:

‘169 is our second bible’——Ashaninka representative, Peru

Since its ratification in 1989, the Indigenous and Tribal Peoples Convention, as the only international treaty that specifically protects the rights of indigenous communities, should have a major impact and significance for indigenous peoples worldwide. However, the implementation of Convention No. 169 has suffered for many years from policies of neglect and "under-regulation". During this period, civil society has been struggling for the proper implementation of the Convention. On June 5, 2009, in Peru, thousands of indigenous protesters gathered to protest against the injustice of the new governmental policy towards indigenous peoples. This protest culminated in an escalation of violence that left some 34 people dead and many others injured. Following the incident, the Government of Peru accused domestic and foreign conspirators of manipulating

indigenous peoples to start the violence, while the indigenous side challenged the Government's reforms and the violence, claiming that they violated the principles of Convention No. 169. At a subsequent meeting of the International Labor Conference, the issue of the violence in Peru was raised and a call was made for the establishment of truly effective institutions and the resolution of "serious conflicts arising from the escalation of natural resource exploitation in areas traditionally inhabited by indigenous peoples". As a result of that meeting, ILO called on the Government to send a mission and take protective measures, and to emphasize the principles of Convention No. 169. The importance of Convention No. 169 can be seen in this event, which has enabled the State to move from neglect to involvement in the area of indigenous rights. In conclusion, more important than the significance of Convention 169 itself is the regulation of the government's implementation of the Convention. There is no point in having a convention if it is ignored and not implemented.

6. Conclusion:

This is the thirty-fourth year since the legislation was ratified, and over the years a number of indigenous peoples have enjoyed equal and fair rights with citizens of other races as a result of the legislation. In addition to their basic rights, many indigenous representatives believed that the Convention would in the future lead to respect for the human rights of indigenous peoples, improvement of their standard of living, and recognition of their right to self-determination. However, only twenty-one countries have ratified the Convention to date. The number of those countries that have actually implemented the Act in accordance with the Convention remains a mystery. Indigenous peoples in some regions today have no legal protection for their basic rights and still have no direct access to the ILO. As there are loopholes that allow certain governments and institutions to evade the Guild's oversight, it is important that the Convention be revised in a timely manner to strengthen oversight measures and focus on indigenous groups.

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