INTERNATIONAL LABOUR OFFICE

Governing Body

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Policy Development Section
Employment and Social Protection Segment

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SECOND ITEM ON THE AGENDA

Follow-up to the Strategy for indigenous peoples' rights for inclusive and sustainable development

Purpose of the document

At its 325th Session (October–November 2015), the Governing Body held a discussion on indigenous peoples' rights for inclusive and sustainable development and endorsed a strategy for action concerning indigenous and tribal peoples. The present paper provides an update on Office follow-up to the Strategy and proposes a number of points for the way forward (see the draft decision in paragraph 28).

Relevant strategic objective: All.

Main relevant outcome/cross-cutting policy driver: Outcome 2: Ratification and application of international labour standards.

Policy implications: The proposed way forward is expected to strengthen the ILO's capacity to promote indigenous and tribal peoples' rights for inclusive and sustainable development, in line with ILO standards and policies.

Legal implications: None.

Financial implications: None.

Follow-up action required: See draft decision.

Author unit: Conditions of Work and Equality Department (WORKQUALITY).

Related documents: GB.325/POL/2; GB.325/PV; GB.328/LILS/2/1(Rev.); Indigenous and Tribal Peoples Convention, 1989 (No. 169); International Labour Conference resolution concerning ILO action concerning indigenous and tribal peoples; Programme and Budget for the biennium 2018–19.

I. Background

- 1. At its 325th Session (November 2015), the Governing Body held a discussion on indigenous peoples' rights for inclusive and sustainable development against the backdrop of the 25th anniversary of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the adoption of the 2030 Agenda for Sustainable Development. Having considered a strategy for action concerning indigenous and tribal peoples, the Governing Body requested the Director-General to take into consideration the strategy and the guidance given in the discussion in the implementation of the programme and budget, the preparation of future programme and budget proposals, and in facilitating extra-budgetary resources. ¹
- 2. The present paper recalls the main aspects of the Strategy (Section II); provides updates on ILO action since 2015 (Section III) and on partnerships and engagement with the United Nations (UN) system (Section IV); and proposes a number of points concerning the way forward for guidance and decision (Section V).

II. The ILO strategy for action concerning indigenous and tribal peoples: thrust and main features

- **3.** Indigenous and tribal peoples around the world face continuing marginalization and exclusion, as is evidenced by persistently low socio-economic indicators, where such data exist. ² Persisting discrimination, lack of respect for their cultures, traditions and identities, absence of mechanisms for consultation and participation, but also gaps in ensuring protection for land rights, are contributing to this reality. The 2030 Agenda for Sustainable Development provides a historic opportunity to tackle these challenges
- **4.** The ILO strategy for action is grounded in Convention No. 169, other relevant ILO standards, the 1989 International Labour Conference (ILC) resolution concerning ILO action concerning indigenous and tribal peoples, as well as the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.
- 5. Convention No. 169 is the only international treaty open for ratification that specifically and exclusively addresses the rights of indigenous and tribal peoples. The Convention recognizes "the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live". ³
- **6.** By emphasizing equality, consultation and participation, as well as land rights, the Convention offers a framework for social justice and peace, participatory democracy and inclusive and sustainable development for all. Its effective implementation contributes to good governance, conflict resolution and reconciliation of diverse interests. Indeed, where

¹ For the strategy, see GB.325/POL/2, paras 11–24, as well as the guidance given in the discussion (GB.325/PV, paras 457–470).

² ILO, *Preparing the future of work we want in the Americas through social dialogue*, Report of the Director-General, 19th American Regional Meeting, 2018, paras 128–129.

³ Convention No. 169, preamble.

indigenous and tribal peoples' rights and aspirations are recognized, they can become full partners in the development process.

- 7. The ILO seeks to respond, upon request and within available resources, to the demands and needs of constituents and member States, both where Convention No. 169 has been ratified and where this is not yet the case. Interventions are designed to build national capacity at the individual, organizational and institutional levels, tailored to the prevailing national conditions, and to include indigenous and tribal peoples as partners and beneficiaries. Interventions mainstream gender issues and pay attention to the concerns and needs of indigenous youth and persons with disabilities. The ILO engages in South–South and triangular cooperation in support of the Convention's strengthened application.
- **8.** The strategy is articulated in seven main blocks:
 - (a) Promoting Convention No. 169 and its implementation. The ILO is promoting knowledge and understanding of the Convention's scope and content among constituents, indigenous and tribal peoples, civil society, media and within the UN system, including through dedicated training programmes at various levels, including at the International Training Centre of the ILO in Turin (ITC–ILO). In addition to training, interventions combine various and complementary types of action, such as public information and awareness raising, standards-related technical assistance, including follow-up to the recommendations of supervisory bodies, networking, and the making available of tools for the sharing of experiences and lessons learned. The ILO promotes ratification and effective implementation of Convention No. 169, including by countries for which the Indigenous and Tribal Populations Convention, 1957 (No. 107) remains in force. 4
 - (b) Strengthening institutionalized dialogue, consultation and participation. The ILO supports efforts to overcome existing gaps and shortcomings with regard to establishing effective and functioning legal and institutional frameworks for consultations with and participation of indigenous and tribal peoples, in line with Convention No. 169. In this regard, particular attention is given to the active involvement of indigenous women, youth and persons with disabilities.
 - (c) Fundamental principles and rights at work, working conditions and livelihoods. The ILO supports efforts to secure livelihoods and improve working conditions of indigenous women and men. This includes interventions to strengthen the protection of indigenous workers from unacceptable forms of work, including through ensuring respect for fundamental principles and rights at work. Such interventions cover both urban and rural areas, where the majority of indigenous peoples live, while particularly addressing the challenges faced by indigenous workers in the informal economy. The ILO supports traditional livelihood activities, which are largely based on a unique relationship with their lands and natural resources, as well as new forms of income

⁴ At its second meeting, the Standards Review Mechanism Tripartite Working Group recommended that member States for which Convention No. 107 remains in force should be encouraged to ratify Convention No. 169 as the most up-to-date instrument in this subject area, see GB.328/LILS/2/1(Rev.), Appendix, Annex I, para. 26. It will, at a later stage, decide whether or not to recommend abrogation of Convention No. 107, as appropriate. It is recalled that the Recruiting of Indigenous Workers Convention, 1936 (No. 50), the Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64), the Penal Sanctions (Indigenous Workers) Convention, 1947 (No. 86), the Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 (No. 104), were abrogated at the 107th Session of the International Labour Conference in 2018.

- generation, if so chosen by the communities, including through supporting community contracting mechanisms, entrepreneurship, small businesses and cooperatives.
- (d) Extending social protection. As a part of its efforts to support the creation and extension of social protection floors, the ILO promotes attention to the conditions, needs and aspirations of indigenous and tribal peoples, barriers faced by them in accessing social protection, and their participation in the process of design and implementation of related benefits and schemes.
- (e) Indigenous and tribal women. The ILO seeks to develop context-specific interventions to address discrimination, barriers and challenges faced especially by indigenous and tribal women in the world of work. This includes supporting indigenous women's voices in decision-making; building knowledge and raising awareness of their economic contributions; and tackling gender-based violence which particularly affects indigenous and tribal women.
- (f) Closing the knowledge gap. The ILO supports constituents to enhance knowledge of the socio-economic conditions of indigenous women and men though qualitative and quantitative research, surveys and support for disaggregated data collection.
- (g) Partnerships. The ILO is an active member of the Inter-Agency Support Group on Indigenous Issues and the United Nations Indigenous Peoples' Partnership (UNIPP). ILO interventions contribute to the implementation of the UN system-wide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples, in particular through promoting Convention No. 169 and highlighting the role of social dialogue and tripartism.

III. The strategy in action

- **9.** The 2015 Strategy has informed the design and implementation of several new interventions concerning indigenous and tribal peoples. These have made a contribution to various outcomes of the programme and budget, including outcome 2 (Ratification and application of international labour standards), 3 (Creating and extending social protection floors), 4 (Promoting sustainable enterprises), 5 (Decent work in the rural economy), 8 (Protecting workers from unacceptable forms of work) and 10 (Strong and representative employers' and workers' organizations).
- 10. Training to build capacity for implementing Convention No. 169 has followed a multipronged approach aimed at conveying a clear understanding of the scope and content of the instrument, systematically using the 2013 Handbook ⁵ as the central resource, enabling the sharing of experiences and practices, as well as promoting dialogue among participants from constituents and indigenous peoples' organizations. Some programmes were entirely dedicated to the Convention, such as an interregional course on Convention No. 169 for constituents and indigenous representatives from Latin America, Africa and Asia, which was held at the ITC–ILO in December 2016, and a course for Latin American countries in April 2018 in Guatemala City. Others included a session on the Convention, such as the 2017 Academy on Rural Development: Towards Decent Work in the Rural Economy in the ITC–ILO. Partners in training activities on the Convention included the Spanish Agency for International Development Cooperation (AECID) and the Fund for the Development of Indigenous Peoples of Latin America and the Caribbean (FILAC).

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⁵ ILO, Handbook for ILO Tripartite Constituents. Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169), 2013.

- 11. The Office also implements dedicated capacity-building activities tailored to the specific needs of workers, employers and governments. In Latin America, employers' organizations benefited from targeted capacity-building and networking initiatives, including a new guide on Convention No. 169 and a training of trainers programme for employers, developed and implemented by the Bureau for Employers' Activities (ACTEMP). ⁶ The Bureau for Workers' Activities (ACTRAV) held workshops for trade unions on Convention No. 169, highlighting the links between indigenous peoples' rights and labour rights protected under other ILO instruments, and documented alliance-building efforts between unions and indigenous peoples' organizations. ⁷ In addition, the ILO is facilitating peer-to-peer learning among government officials responsible for indigenous peoples affairs. Also in Latin America, a tripartite forum on Convention No. 169 with participation of indigenous representatives and other international organizations was held in Lima in November 2017.
- 12. Judges play a key role in the application of the Convention. The Office is developing a dedicated line of training on Convention No. 169 for judges, lawyers and legal educators, in collaboration with the ITC–ILO. This includes a thematic module and an accompanying case book featuring summaries of judgments of national courts and of the Inter-American Court of Human Rights. Testing and publishing of these tools is envisaged for 2019. A comparative analysis of the jurisprudence of the Inter-American Court has already been made available. 8
- 13. A wide range of global, regional and country-based knowledge products, published since 2015, address thematic issues, survey the socio-economic conditions of indigenous peoples and/or document experiences in applying Convention No. 169. These tools, some of which are highlighted below, have been prepared to feed into awareness raising, capacity building, and also evidence-based policy dialogue and development.
- **14.** A series of country studies on consultations with indigenous peoples has been initiated. ⁹ A report covering Chile, Colombia, Costa Rica and Guatemala examined the functioning of prior consultations procedures from a private sector perspective. ¹⁰ A study in the Asia and the Pacific region reviewed national laws and policies relevant to indigenous and tribal peoples' rights, as well as opportunities to promote further action for their promotion in the context of the 2030 Agenda. ¹¹
- **15.** Several thematic publications highlight Convention No. 169 as a framework for promoting indigenous peoples' rights, access to decent work and inclusive and sustainable development more broadly, including a report on Indigenous Peoples and Climate Change: From Victims

⁶ http://libguides.ilo.org/ld.php?content_id=27034166.

⁷ https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms 437655.pdf.

⁸ ACT/EMP, Análisis Comparativo Convenio 169 – Convergencias y Divergencias entre OIT y Corte IDH (ACT/EMP Comparative Analysis Convention No. 169 – Points of Convergence and Divergence between the ILO and the Inter-American Court of Human Rights), 2017.

⁹ Case studies on Chile and Norway have been completed, while studies are ongoing in Colombia, Costa Rica and Peru.

¹⁰ ACT/EMP: Convenio núm. 169 de la OIT sobre Pueblos Indígenas y Tribales en Países Independientes y la consulta previa a los pueblos indígenas en proyectos de inversión ("ACT/EMP, the ILO Indigenous and Tribal Peoples' Convention, 1989 (No. 169) and prior consultation of indigenous peoples in investment projects"), 2016.

¹¹ https://www.ilo.org/global/publications/WCMS_545487/lang--en/index.htm.

to Change Agents through Decent Work, ¹² and a brief on the Sustainable Development Goals (SDGs) and Indigenous Peoples in Focus. ¹³ Several new briefs show examples of how rights, inclusion and well-being of indigenous and tribal peoples can be advanced through the Decent Work Agenda, including briefs on indigenous peoples and, respectively, the rural economy, ¹⁴ employment and investment programmes, ¹⁵ social protection, ¹⁶ cooperatives, ¹⁷ and access to training and employment for indigenous persons with disabilities. ¹⁸

- **16.** Studies into the socio-economic conditions of indigenous and tribal workers and communities included a national baseline assessment in Bangladesh implemented in collaboration with the Swiss Agency for Development and Cooperation (SDC). ¹⁹ Studies have also been published with support from the European Union on the labour situation of indigenous women in Peru, ²⁰ and on working conditions of indigenous women and men in the Central African region. ²¹ A regional status report for Asia and the Pacific surveys existing socio-economic policies and programmes addressing indigenous and tribal peoples' needs. ²² The Office has also partnered with the European Union and indigenous peoples' organizations to encourage community-based monitoring of rights and development as a means for including indigenous and tribal peoples in the follow-up to the SDGs, through the so-called Indigenous Navigator initiative.
- 17. Interventions for improving working conditions and livelihoods, including activities focusing on indigenous women, have gone hand in hand with promoting Convention No. 169 and other relevant ILO instruments. Under outcome 8, with support from the Swedish International Development Cooperation Agency (SIDA), the Office is implementing projects in Bangladesh, the Plurinational State of Bolivia and Guatemala, which focus on tackling discrimination faced by indigenous and tribal workers, with attention being devoted to women from these communities, in selected sectors such as domestic work, construction and tea plantations. The intervention models recognize the

¹² https://www.ilo.org/global/topics/indigenous-tribal/WCMS 551189/lang--en/index.htm.

https://www.ilo.org/global/topics/indigenous-tribal/publications/WCMS_503715/lang--en/index.htm.

 $^{^{14}\} https://www.ilo.org/global/topics/economic-and-social-development/rural-development/WCMS_601067/lang--en/index.htm.$

https://www.ilo.org/employment/Whatwedo/Publications/policy-briefs/WCMS_638360/lang--en/index.htm.

https://www.ilo.org/global/topics/indigenous-tribal/publications/WCMS_626564/lang--en/index.htm.

¹⁷ https://www.ilo.org/global/topics/cooperatives/publications/WCMS 496599/lang--en/index.htm

¹⁸ https://www.ilo.org/skills/pubs/WCMS 396412/lang--en/index.htm.

¹⁹ https://www.ilo.org/dhaka/Whatwedo/Publications/WCMS_618856/lang--en/index.htm.

²⁰ https://www.ilo.org/global/publications/WCMS_546285/lang--en/index.htm.

 $^{^{21} \}quad https://www.ilo.org/global/topics/indigenous-tribal/publications/WCMS_613855/lang--en/index. \\ htm.$

 $^{^{22}} https://www.ilo.org/global/topics/indigenous-tribal/publications/WCMS_438853/lang--en/index. htm.\\$

linkages between recognition of indigenous peoples' rights, gender equality, access to decent work, and economic empowerment, while leveraging the role of workers' and employers' organizations. In addition, in Guatemala, the Office is providing tailored capacity building support under outcome 2 for the application of Convention No. 169 through a Regular Budget Supplementary Account-funded project. The Office is also developing an online learning platform on the Convention for Peru and Colombia with the support of AECID and provided one-off technical assistance in several other countries. Under outcome 5 a tripartite workshop on decent work in the rural economy that took place in Suriname in December 2017 adopted a set of conclusions which focus on the role of indigenous peoples as critical agents of change and underscore Convention No. 169 as a useful framework for engaging on these issues.

IV. Engagement with the UN system

- 18. The launch of the UN-system wide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples ²³ in 2016 in response to a request from the General Assembly, coincides with a deepening interest by UN-system entities in addressing indigenous and tribal peoples' issues. ²⁴ In this context, the important role of Convention No. 169 is recognized, with the General Assembly and the Human Rights Council calling for its further ratification.
- 19. These developments along with the UN reform have translated into an increased need for the ILO to engage with the UN system both through contributing expertise and its institutional role in relation to the Convention. For example, in Colombia, the ILO is working closely with the UN Resident Coordinator with the aim of building a UN country strategy on indigenous peoples consistent with and contributing to the Convention's implementation.
- 20. The Office also engages with the bodies or mandates established under the Economic and Social Council and the Human Rights Council addressing indigenous peoples' rights, including the UN Permanent Forum on Indigenous Issues (UNPFII), the UN Special Rapporteur on the Rights of Indigenous Peoples, the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), and the Working Group on Business and Human Rights. This includes statements, side events and technical comments aimed at promoting Convention No. 169 and clarifying its provisions, sharing results and experiences from the ILO's work, and disseminating recommendations made by the supervisory bodies. The UNPFII recommended that the ILO could consider elaborating a Recommendation supplementing Convention No. 169. ²⁵
- 21. Building on the focus on indigenous peoples in the Paris Agreement on Climate Change and highlighting the Guidelines for a just transition towards environmentally sustainable economies and societies for all, in the process under the UN Framework Convention on Climate Change, the ILO has stressed the importance of green jobs and a just transition to environmental sustainability for empowering indigenous women and men as critical change agents for effective climate change mitigation and adaptation. The Green Climate Fund has adopted an indigenous peoples' policy, which refers to both Convention No. 169 and the

²³ UN Economic and Social Council document (E/C.19/2016/5), 19 February 2016.

²⁴ Article 41 of the United Nations Declaration on the Rights of Indigenous People calls on UN agencies to contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance.

²⁵ Permanent Forum on Indigenous Issues, Report on the sixteenth session (24 April–5 May 2017), E/2017/43-E/C.19/2017/11, para. 17.

UN Declaration. ²⁶ Such developments point to a role for the ILO in providing related assistance, including with regard to building capacity for consultation and participation, and promoting green jobs.

V. The way forward

22. The ILO has addressed indigenous and tribal peoples' issues over almost a century, continuously adapting its efforts to the evolving circumstances. Taking into account its responsibility for Convention No. 169 including its supervision, its tripartite structure and experience in partnering with indigenous and tribal peoples, the ILO is well placed to play a leading role in addressing rights and decent work deficits of such peoples, as a part of the UN system. ILO contributions in this regard are indeed essential in order to seize opportunities and tackle challenges in achieving the SDGs and ensuring that no one is left behind.

A. Building ILO capacity

23. The 2015 Strategy for action has encouraged integrated approaches for addressing the rights and well-being of indigenous and tribal peoples through the Decent Work Agenda as a timely and strategic contribution by the ILO to implementing the 2030 Agenda and global efforts to tackle climate change. Indeed, specific attention to indigenous women and men is indispensable for achieving the SDGs, particularly Goals 1, 2, 3, 4, 5, 8, 13 and 16. As highlighted in the ILO Guidebook on Decent Work Country Programmes, specific attention to indigenous and ethnic minority communities in all relevant interventions – across programme and budget outcomes – is essential for ensuring that the ILO's contributions to achieving the SDGs live up to the ambition of leaving no one behind. ²⁷ The Office will develop dedicated guidance for ILO staff and constituents in this regard.

B. Scaling-up training

24. There is growing demand for training on Convention No. 169 and for facilitating the development of new and innovative approaches to implementing it. Training since 2015 has shown that face-to-face courses allowing participants to engage in dialogue and exchange experiences and perspectives are useful and have been assessed positively. Yet, there is a need to scale up training through tools that can be easily accessed and used by larger audiences, including but not limited to labour ministries and other government entities concerned, employers' and workers' organizations, indigenous and tribal peoples and the UN system. Building on ongoing work to develop an online learning platform in Latin America, the Office is exploring options for building a global multilingual platform using state of the art online methodologies, tools and design.

C. The 30th anniversary of Convention No. 169

25. The Convention's anniversary provides an opportunity to highlight its impact and added value as a framework for public policies for inclusive, sustainable and rights-based development. Communication efforts throughout 2019 could assist in raising awareness of the Convention among constituents, indigenous and tribal peoples, the UN system and civil

https://www.greenclimate.fund/documents/20182/574763/GCF_policy_-_Indigenous_Peoples_Policy.pdf/6af04791-f88e-4c8a-8115-32315a3e4042.

²⁷ ILO: *ILO Decent Work Country Programme: a practical guidebook*, version 4, 2016.

society. By drawing on a policy-oriented stocktaking report on the Convention currently being prepared, such activities could assist in moving forward implementation and ratification efforts. To date, Convention No. 169 has been ratified by 23 countries, including 15 countries from Latin America and the Caribbean, five from Europe, two from the Asia and the Pacific region, and one from Africa.

D. Developing guidance

26. Achieving inclusion and respect for indigenous and tribal peoples' rights involves complex social, cultural, political and economic dynamics that are challenging for any country concerned. Indeed, addressing these issues is a concern of policy- and decision-makers as they relate directly to the ability of countries to ensure social justice, prosperity and sustainability. While Convention No. 169 does not provide ready-made solutions, it offers principles and measures that countries can and do rely upon in tackling these challenges. As the Office is documenting experiences and practices, consideration could be given to developing practical ILO guidance on key issues addressed in the Convention. Such guidance could take the form of ILO guidelines or a code of practice prepared by a tripartite technical meeting of experts. The desirability of a Recommendation to supplement Convention No. 169 could be considered at a later stage. Based on the Governing Body's discussion, as well as additional consultations with constituents as required, the Office could elaborate terms of reference for a technical meeting, including arrangements for appropriate participation of indigenous and tribal peoples' representatives.

E. Strengthening partnerships

27. No doubt the full potential of the ILO's role in promoting indigenous and tribal peoples' rights, inclusion and empowerment, in partnership with constituents, indigenous and tribal peoples themselves, the UN system and development partners, has not yet been fully mobilized. Yet, activities since 2015 have shown that by joining forces, leveraging expertise and synergies and by relying on the ILO's convening capacity, the Organization's work in this area can develop into a significant contribution towards achieving the SDGs. The Office will therefore strive, in consultation with constituents, to build new partnerships and alliances to this end, including for the mobilization of resources.

Draft decision

28. The Governing Body:

- (a) advised the Office with regard to the way forward in implementing the strategy for action concerning indigenous and tribal peoples;
- (b) requested the Director-General to take into consideration the strategy and the guidance given in the discussion in the preparation of future programme and budget proposals and in facilitating extra-budgetary resources.