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ECONOMIC COMMISSION FOR EUROPE
COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Working Group on Indigenous Populations
(Third session, 30 July - 3 August 1984)
(Items 4 and 5 of the provisional agenda)

REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND
PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF
INDIGENOUS POPULATIONS

CONSIDERATION OF THE EVOLUTION OF STANDARDS CONCERNING
THE RIGHTS OF INDIGENOUS POPULATIONS

Report of the Secretary-General

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Introduction

1. In its resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous peoples, to analyse such materials, and to submit its conclusions to the Sub-Commission. It further decided that the Working Group should give special attention to the evolution of standards concerning the rights of indigenous populations.
2. Accordingly, appropriate communications requesting such information were addressed by the Secretary-General to Governments and to the organizations referred to in the resolution.
3. The present document contains the replies received from the specialized agencies up to 14 May 1984. Additional replies, if any, will be published in addenda to this document.

INFORMATION SUBMITTED BY THE SPECIALIZED AGENCIES

World Health Organization

[Original: English]

[2 May 1984]

Although WHO programmes are not addressed to specific population groups, such as indigenous populations, the main thrusts of the Global Strategy for Health for All by the Year 2000 are the development of the health system infrastructure, starting with primary health care for the delivery of countrywide programmes that reach the whole population. The Strategy is based on the following basic policies which are relevant to the question of human rights of indigenous populations:

Health is a fundamental human right and a worldwide social goal;

An equitable distribution of health resources, both among countries and within countries, leading to universal accessibility to primary health care is fundamental to the Strategy;

People have the right and the duty to participate individually and collectively in the planning and implementation of their health care;

Governments have a responsibility for the health of their people which can be fulfilled only by the provision of adequate health and other social measures.

Food and Agriculture Organization of the United Nations

[Original: English/Spanish]

[14 May 1984]

The Organization submitted the following documents:

A copy of a letter dated 20 February 1984, addressed to ILO, containing information relating to the implementation of ILO conventions in particular countries and their indigenous populations;

Four studies on the situation of the Mapuche Indians in Chile provided by the Grupo de Investigaciones Agrarias (Santiago, Chile);

A survey on the situation of Indians in South America entitled "What future for the Amerindians of South America?" provided by the Minority Rights Group.

The information contained in the letter addressed to ILO concerning the implementation of ILO conventions reads as follows:

Convention No. 107

Bolivia

The Technical Co-operation Programme (TCP) of FAO has just finalized a project agreement (TCP/BOL/2311) which provides the framework for FAO assistance to Bolivia in the development of agricultural census. This project should help to generate the required information on land-holding patterns among indigenous rural populations.

FAO, in the context of its Freedom from Hunger Campaign, is assisting the Government in a programme of education and agricultural training in the rural area of Potosí, a project which is worth mentioning in relation to articles 17 and 21 of the Convention. Within the same context, FAO is currently beginning execution of a project of three years' duration, which aims at the training of indigenous artisan fishermen, and nutritional education (articles 17, 18 and 20 of the Convention), and one project of a duration of two years, to assist in the rediscovery of all traditional productive activities which are disappearing with the impact of modern technologies (articles 17.2 and 18.2 of the Convention).

Colombia

FAO has formulated a project proposal, in need of a donor, on a demonstration of agricultural systems for the development of indigenous communities in the eastern savannas.

In addition to the laws mentioned in Colombia's report to ILO, our files disclose the existence of the following decrees and regulations which appear to be relevant to Convention No. 107:

1. Decree No. 2,117 of the Ministry of Agriculture providing partial enabling regulations for Act No.135 of 1961, for the allocation of land, division and distribution of reservations and the integration of indigenous settlements into the scheme of benefits under the Social Land Reform Act - Diario Oficial No. 32967, 14 January 1970, page 19;
2. Decree No. 810 of the Ministry of Agriculture providing enabling regulations for article 42 bis of Act No. 135 of 1961 and article 10 of Decree 1415 of 1940. Diario Oficial No. 32803, 10 June 1969, page 660;
3. Resolution No. 150 reorganizing the Planning Bureau of the Agricultural Sector (OPSAO), of 27 February 1981;
4. Resolution No. 478 of the Ministry of Agriculture setting up the El Pato (Caquetá) Inter-Institutional Committee for Agricultural Development, of 30 September 1980;
5. Resolution No. 491 of the Ministry of Agriculture, of 8 October 1980, setting up the Inter-Institutional Committee for Agricultural Development for the South of the Department of Atlántico.

Panama

Our files list the following laws and decrees which appear relevant to Convention No. 107:

1. Decree No. 2 setting up the National System of Integrated Rural Development - Gaceta Oficial No. 19,449, 4 February 1982, page 1;
2. Cabinet Decree No. 50 on rural settlements, Gaceta Oficial No. 17,056, 13 March 1972, page 7;
3. Executive Decree No. 64 regulating the functioning of rural settlements, Gaceta Oficial No. 17,086, 18 April 1972, page 3.

Convention No. 117

Nicaragua

Our files disclose the following laws, decrees and regulations which appear relevant to Convention No. 117:

1. Agreement No. 1 of the Ministry of Agricultural Development and Agrarian Reform, containing the General Regulations Relating to the Law on Agrarian Reform Undertakings, La Gaceta No. 42, 21 February 1981, page 402;
2. Decree No. 696 amending the Act on the Ministries of State and setting up the Ministry of Agricultural Development and Agrarian Reform - La Gaceta No. 80, 7 April 1981, p. 775;
3. Decree No. 697: Act Organizing the Ministry of Agricultural Development and Agrarian Reform, La Gaceta No. 80, 7 April 1981, p. 778;
4. Agreement No. 8 of the Ministry of Agricultural Development and Agrarian Reform setting out the Regulations Relating to the Agrarian Reform Act, La Gaceta No. 247, 31 October 1981, p. 3,046;

Convention No. 141

Philippines

Our files disclose the following Presidential Decrees that appear relevant to Convention No. 141.

1. Presidential Decree No. 584 establishing a procedure for acquisition by small farmers of equity in Rural Banks - O.G. No. 50, 16 December 1974, p. 10.397.
2. Presidential Decree No. 501, amending certain provisions of Presidential Decree No. 175 entitled "Strengthening the Co-operative Movement", relating to the regulatory powers of the Department of Local Government and Community Development over co-operatives - O.G. No. 31, 5 August 1974, p. 6408.

Zambia

In addition to the Acts cited in Zambia's report under Convention No. 141, our files disclose the existence of the Registration and Development of Villages Act, 1971 which provides for the registration of villages and their inhabitants, the establishment of Village Productivity Committees, of Ward Councils and Ward Development Committees O.G. No. 127, 22 October 1971, Supplement p. 527.

The titles and contents of the studies on the situation of the Mapuche Indians in Chile are as follows: 1/

(1) "Emergency situations, ideologies and programmes in Mapuche organizations" by Rolf Foerster.

Presentation; emergency situations and differences in organization; ideologies and currents of opinion within indigenous organizations; list of references;

(2) "Mapuche rural economies" by Jose Bengoa.

Introduction; the hacienda/indigenous community complex; Mapuche rural economy; internal differences and social characteristics; migrations to the north; conclusions: poverty, subsistence living and migration;

Statistical tables.

(3) "The division of Mapuche lands" by Jose Bengoa.

The basis of the strategy of division of Mapuche lands; the division of the land; conclusion; bibliography;

(4) "Mapuches and Italians in Malleco: inter-ethnic relations over 80 years of history (discussion outline)", by Cecilia Díaz;

Introduction, presentation of the problem; methodology, description of the location; theoretical framework; the Mapuche territory and colonization; arrival of the Italians; birth of the Mapuche co-operative; 10 years later, final conclusions; statistical annex No. 1; statistical annex No. 2; bibliography.

1/ The full text of the studies is available in the original language for

The contents of the survey entitled "What future for the Amerindians of South America?" 1/ are as follows:

Part one: Introduction; Part two: The dimensions of the problem;
Part three: Church, Army and State; Part four: The theories and reality of
the problem in Amazonia; Part five: Future policy;

Declaration of Barbados;
Select bibliography and film list;
Photographs; Maps of Amerindians in South America.

International Labour Organisation

[Original: ENGLISH]
[23 May 1984]

The ILO suggests that care should be taken to avoid an unduly narrow definition of the term "indigenous populations". While this term may prove a convenient shorthand, it should be made clear that the Working Group's mandate, and the international standards which cover the subject, are not limited only to those populations which are narrowly defined as "indigenous".

Arriving at a definition is an extremely complex issue. The same difficulties were encountered by the authors of the 1953 ILO book Indigenous Peoples. To quote the opening words of this book:

"Before any practical study can be made of the problems of life and work of indigenous populations in independent countries, and of how these problems could be solved, the groups which should be considered as making up these populations must obviously be defined. Unfortunately, this is very difficult, since there is no standard which will apply in all cases for defining groups as "indigenous" (or "Indian", or "aboriginal", according to the prevailing terminology). The notions with reference to which such groups are classified are so flexible and varied that there are often discrepancies in statistical data or estimates within a single country, and useful comparisons between one country and another are impossible. Different and often contradictory criteria tend to be used by administrators, lawyers and sociologists as a basis for their definitions, such as the colour of the skin, language, customs, tribal conditions and living standards. Every country has tackled the problem of definition in its own way, according to its own traditions, history, social organization and policies".

1/ The full text of the survey is available in the original language for consultation in the Secretariat.

In practice, characterization of certain population groups as "indigenous" has proved more complex in some parts of the world than in others. In the Americas, or in Australasia, the effects of European colonization tended to be a marked segregation, in which political and economic power was monopolized by the colonizers, whereas the populations who inhabited the country at the time of colonization retained much of their pre-colonial social, economic and cultural institutions. In many Asian countries, on the other hand, any attempt to distinguish between "indigenous" and "non-indigenous" population groups raises a number of complex questions. To quote again from Indigenous Peoples:

"In Asian countries the same factors of social mixture and cultural blending present, in varying degrees, difficulties in providing a precise definition of such terms as "aboriginal" or "indigenous". Historically speaking the aboriginal inhabitants or autochthons which were not subjugated by or assimilated with the subsequent settlers and maintained, in most cases, by moving to forests, mountains, or inaccessible areas, a distinct culture and way of life. Subsequently, however, under the growing pressure of the social and economic system of the main body of the population, the social and cultural isolation of the aborigines has gradually but definitely altered. As this process of integration, absorption and assimilation has not reached the same stage in all countries or areas, it has become increasingly difficult to find a reliable and generally applicable test to distinguish between the aborigines and the rest of the population. Hence different and, to some extent, conflicting standards are at present suggested for this purpose".

A. The Present Definition in the ILO Convention and Recommendation.

In drafting its Convention and Recommendation, the ILO was concerned with practical action by Governments on behalf of those vulnerable groups in independent countries who were relegated to the fringe of national society, and could be considered to be in need of special protective measures. The Convention is thus applicable to all tribal and semi-tribal peoples, whether or not they are considered to be "indigenous". Ratifying States are left to define more precisely those groups which fall within the provisions of the Convention. Article 1 of Convention No. 107 provides in its paragraph 1 that the Convention applies to:

- (a) Members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or in part by their own customs or traditions or by special laws or regulations;
- (b) Members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong.

Paragraph 2 of Article 1 provides:

For the purposes of this Convention, the term "semi-tribal" includes groups and persons who, although they are in the process of losing their tribal characteristics, are not yet integrated into the national community.

The definition has therefore been left somewhat flexible, and allows ratifying States a degree of discretion in deciding which population groups are covered by the Convention. For instance, in their reports to the ILO, the Government of Brazil has stated that only isolated, forest-dwelling groups are included; the Government of Bolivia, that the Convention covers all persons of indigenous descent who retain some kind of ties to their traditional culture; and the Government of Mexico, that it applies to all persons who speak indigenous languages.

In the Asian continent, the Governments of Bangladesh, India and Pakistan, which have ratified the Convention, have accepted that it applies to tribal peoples - such as the scheduled tribes in India - who had previously enjoyed a separate status and administration under the colonial Government, and have continued to have this separate status since independence. 1/

A third definitional problem arose in Middle Eastern countries, following the ratification by Egypt and the Syrian Arab Republic of Convention No. 107. Both States indicated that the bedouin populations were at that time covered by the Convention, although they were of the same race, nationality, language, religion and culture as most of the rest of national population; the distinguishing characteristic was their tribal organization and life style. When these populations became sedentary, the Governments in question considered that there were no longer any groups in their countries which fell within the Convention.

While the ILO Committee of Experts on the Application of Conventions and Recommendations has not drawn any explicit distinction between the terms "indigenous peoples", "tribal peoples" and "semi-tribal peoples", it has tended to adopt the terminology used by Governments in their reports, thus referring, e.g., to "indigenous peoples" or "Indians" in the Latin American context, and to "tribal peoples" in the Asian context. Furthermore, in its more recent comments to the Governments of such Latin American countries as Bolivia, Ecuador and Peru - which have sizeable forest-dwelling indigenous populations as well as large numbers of highland-dwelling Indians who have experienced more de facto integration within their national economies - the Committee has made separate comments for each of these two population groups. This reflects the view of the Committee of Experts that these two categories of Latin American Indians are faced with somewhat different problems with regard to their security of land tenure, among other issues, and that the administrative and other measures required to deal with these problems may be correspondingly different in nature.

1/ It may be recalled that the Governments of Bangladesh and India have informed the Working Group that tribal populations cannot be considered as "indigenous peoples", a view which appears to be based on a narrow definition of the term.

B. The problem of who is to make the final decision on the groups to be covered in given circumstances

It is indicated above that the ILO Convention leaves a degree of discretion to ratifying States in determining which groups are covered by the Convention. This is a general tendency in ILO standards which is particularly apt in the present situation, and which the Working Group may wish to bear in mind. In many cases it is impracticable for an international instrument to define precisely all aspects of its application in countries. International instruments which are universal in character have to include standards which are adaptable to many different situations. Care must thus be taken in such subjects as the present one to avoid definitions in the instrument which are too narrow.

Putting this into practice requires, however, a dialogue between ratifying States and the supervisory agency in order to define the precise application of a Convention to a country. In the implementation of Convention No. 107, the ILO Committee of Experts has generally accepted Governments' definitions of the populations covered, though it has often raised questions designed to assist member States in making the definitions in their own national legislation more precise, or to ensure that they cover all the groups in the country which should be covered.

Another aspect of this problem, which is not dwelt upon in detail here, is that Convention No. 107 is capable of progressive application. Some of its provisions thus may cease to be applicable, or may become applicable, as the situation of these groups changes. This again requires decisions at the national level, subject to review by the supervisory bodies - in the case of Convention No. 107, by the ILO Committee of Experts - on the exact definitions to be applied in the country concerned.

For these reasons, the definition to be adopted in the present case should be both broad and capable of precise application by national Governments and an international body. If it is too narrow it may exclude many groups which should be covered; and if it is too wide it may give rise to difficulties in its application to individual situations.

C. Additional elements which should be included in a definition

From the indications given above, it will be evident that the ILO considers the definition in Convention No. 107 to be a basically useful one. Almost anything that could be added would either narrow or widen it to the point where it might be difficult to apply. It would be unwise, for instance, to add criteria concerning race, language, religion or other elements to the existing definition.

The Convention was, however, adopted nearly three decades ago, and it reflects to a certain degree the protectionist and integrationist philosophy which was the predominant one at the time with regard to indigenous and tribal populations. Since then the situation of these populations has undergone one major change in some parts of the world: the ability of these peoples to speak for themselves, which was present only in rare circumstances when the ILO instruments were adopted. Indeed, it is the establishment of national, regional and global organizations representing indigenous and tribal populations which accounts in large part for the present discussions in the Working Group.

It would therefore be appropriate, in further consideration of the question, to add to the definition in Article 1 of Convention No. 107 something along the following lines:

"In determining the populations to be covered, governments shall take into consideration, wherever possible and appropriate, whether the groups concerned consider themselves to be indigenous or tribal populations in the sense of the foregoing definition. Consultations for this purpose shall be undertaken with representatives of these populations, where they exist."

This wording is similar to that used in requiring Governments to consult with organizations of employers and workers in the implementation of ILO instruments which focus more on labour questions, and has proved workable in practice.