



Seventh Session of the Expert Mechanism on the Rights of Indigenous Peoples

Statement by the International Labour Organization

Agenda Item 5: Continuation of the study on access to justice in the promotion and protection of the rights of indigenous peoples

Mr Chair

The ILO welcomes the study on Access to justice in the promotion and protection of the rights of indigenous peoples and the emphasis that it puts on the specific situation of indigenous women, children, youth and persons with disabilities. The study highlights the challenges that these specific groups face in accessing justice and mentions a number of remedies that can improve the situation. It also highlights the issue of lack of formal recognition of customary legal systems. The study provides examples of the dynamic nature of indigenous judicial systems in dealing with issues of gender discrimination.

This year we celebrate the 25th anniversary of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), which contains a number of provisions pertinent to the theme of the study. The Convention provides that in applying national laws to the peoples concerned, due regard shall be had to their customs and customary law and that they have the right to retain their own customs and institutions, while also recognizing that customs cannot be justified if they are in violation of fundamental human rights. As regards access to justice, the Convention requires that indigenous peoples shall be able to take legal proceedings for the effective protection of the rights and calls for measures to ensure that indigenous peoples can understand and be understood in legal proceedings.

The Convention has served as a tool for the strengthening of the relation between customary and national legal systems. In Nicaragua for example, a project implemented under the UN Indigenous Peoples Partnership framework, of which ILO is a member, has provided support to the implementation of Convention No. 169 and access to justice with emphasis on indigenous women. So far, the project has conducted 38 workshops with indigenous peoples and afro-descendants on Convention No. 169 and the national legislation on the prevention of violence against women. The project has also supported the Supreme Court of Justice in designing and implementing a first of its kind specialised course on indigenous peoples and afro-descendants' rights carried out by the Institute of Higher Judicial Studies, allowing for fruitful dialogue between indigenous traditional leaders, including communal judges, and judges of the national legal system. As a result, members of the judiciary have increased their knowledge on indigenous peoples' rights and customary law and

institutions, and traditional leaders have increased their capacity as regards the national legal system.

In Bangladesh, a country that has not yet ratified Convention No. 169 but which is still bound by the ILO's previous instrument on indigenous peoples, Convention No. 107, the ILO has provided support to the strengthening of customary institutions in the Chittagong Hill Tracts and the access to justice for indigenous peoples in the country, with special focus on indigenous women. The National Human Rights Commission, in partnership with the ILO, conducted for the first time training of police and border guards on indigenous peoples' rights in northern Bangladesh and in the Chittagong Hill Tracts. Moreover, the ILO project has supported the capacity building of government officials on the traditional administrative system of the Chittagong Hill Tracts and strengthened the knowledge of traditional leaders in national and international human rights instruments including how to deal with severe human rights' violations and gender based discrimination and violence. The project has also provided human rights training to indigenous women leaders with emphasis on the documentation of human rights violations and access to legal aid.

Thank you for your attention.