

International Instruments for the Protection of the Rights of Indigenous Women: Specialized Institutions

In addition to the many bodies under its Economic and Social Council, the UN has a number of specialized institutions responsible for technical issues such as health, working conditions and education.

The following institutions have taken a particular interest in the future of indigenous peoples:

International Labour Organization (ILO)

The ILO is an institution dedicated to the establishment of international labour standards in order to improve living and working conditions. Adopted in 1989, the ILO Convention on Indigenous and Tribal Peoples (No.169) was ratified by 17 States.

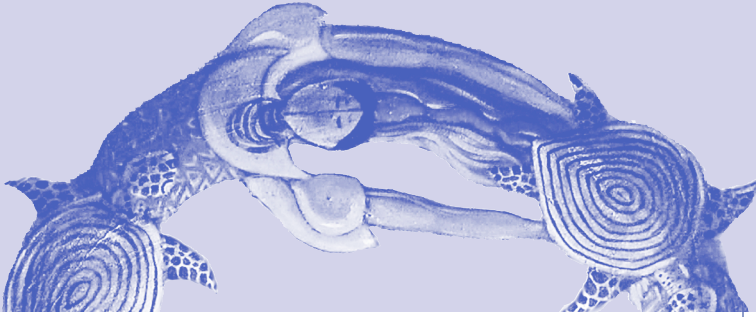
Indigenous organizations can take advantage of presentations made by State parties of their periodic reports to the ILO Committee of Experts to have their grievances heard. The Committee, composed of independent experts, works behind closed doors. This is the standard procedure. If the State is in agreement, indigenous peoples can participate in the internal evaluation of the implementation of the Convention, and their observations may be taken into consideration and appended to the government report. Otherwise, since States are required to communicate their reports to national employer and labour organizations, indigenous peoples can reach an agreement with these organizations and, through them, communicate observations to the committee responsible for examining the report. Following its examination, the Committee publishes its conclusions and may, if needed, present additional demands to States. The International Labour Office is

another avenue that indigenous peoples can use to respond to State reports. Unlike the Committee of Experts, the International Labour Office can deal directly with indigenous organizations and add the information it receives from them to the State's file.

In addition, there are two types of special ILO procedures. The first is a procedure that allows a union or employer organization to take a claim alleging a member State has not respected the obligations contained in Convention No. 169 before the International Labour Office. This was the case in Mexico (claim by the Radical Union of Metal Workers), Bolivia (Bolivian Central of Workers) and Peru (General Confederation of Workers of Peru). While concrete actions arising from a conclusion that does not favour the State party are limited, their publication can constitute a form of pressure which can lead to change in government policy.

The other type of special procedure is the complaints procedure that can only be used by one Member State against another, by delegates of the International Labour Conference or by the ILO Governing Body. This means that indigenous organizations hoping to use this mechanism must do so with the support of one of these entities. Upon receipt of the complaint, the Governing Body determines its admissibility and has the power to set up a Commission of Inquiry to examine the content. If the Commission decides that a convention has been violated, it can require the non-conforming State to adopt specific legislative reforms or significant changes in its practices. If the State does not





comply with these recommendations, it may be sanctioned by the International Labour Conference.

Since the States that ratify Convention No. 169 render it effective by changing their domestic legislation as needed, indigenous peoples may have recourse in national tribunals – or, in some countries, in national human rights institutions or ombudspersons offices – to ensure that the laws and regulations intended to reflect the letter and spirit of the Convention are respected.

HOW DO YOU KNOW IF YOUR STATE HAS RATIFIED A TREATY?

To bring a matter before a monitoring body, you must first find out which treaties and conventions your country has signed.

To find out about the status of ratifications worldwide, visit www.unhchr.ch/pdf/report.pdf.

To find out about the status of American Convention for Human Rights, visit www.cidh.org/basic

Mechanisms Derived from the *Convention on Biological Diversity (CBD)*

The Earth Summit, held in Rio, Brazil, in 1992, was an opportunity to remind participants that indigenous peoples have an intimate relationship with the environment and that their survival is closely linked to the protection of the biological diversity of their communal lands. The Rio Declaration adopted at the end of the Summit recommends that States protect the identity and culture of indigenous peoples. The adoption of the Convention on Biological Diversity (CBD) translated this reality into binding legal standards.

The adoption of the CBD led to the creation of various bodies responsible for ensuring its implementation, such as the Secretariat of the Convention on Biological Diversity (www.biodiv.org/programmes/socio-eco/traditional/). This structure falls under the United Nations Environment Programme. The CBD, which entered into force in 1993, pursues three objectives: the conservation of biological diversity, the promotion of sustainable use of its components, and the fair and equitable sharing of the benefits arising from the utilization of genetic resources. Several of its provisions deal directly with the rights and interests of indigenous peoples: first and foremost, Article 8(j), which requires States to preserve, respect and maintain knowledge, innovation and practices of indigenous and local communities that are relevant to the sustainable use of biological diversity. In fact, this legal standard is considered so important that a working group devoted exclusively to its implementation was created.

The Organization of American States (OAS)

Like the UN, the OAS has adopted human rights conventions over the years which can be invoked by indigenous peoples against ratifying States. The American Convention on Human Rights (ACHR) – a document of global scope in the same capacity as the two 1976 Covenants under the UN system – is the cornerstone of the inter-American mechanism for the protection of human rights. As in the case of UN instruments, the inter-American system includes a set of declarations and conventions that specify the general protections set out in the ACHR. In fact, the ratification of specialized treaties is linked to that of the ACHR.



The following conventions are particularly relevant to indigenous women:

- the Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para) (entered into force in 1995);
- the Inter-American Convention on Forced Disappearance of Persons (entered into force in 1996);
- the Inter-American Convention to Prevent and Punish Torture (entered into force in 1987);
- the Protocol of San Salvador on Economic, Social and Cultural Rights

The Protocol of San Salvador is particularly useful for nationals of a State party since it stipulates that citizens of this State can submit complaints to the OAS in the case of a violation, after exhausting domestic recourses.

The Inter-American system is made up of two main institutions devoted to human rights. Indigenous peoples are increasingly calling on these institutions to force States to implement the ACHR and related Inter-American treaties.

Inter-American Commission for Human Rights (IACHR)

Before addressing the IACHR, complainants must prove either that they have exhausted all other domestic recourse options, that they do not exist or are not accessible. Established in 1960, the IACHR has the authority to receive complaints, in cases of violations of the American Convention on Human Rights, from individuals, groups, and non-governmental organizations, according to the Commission's procedural rules. The complainant does not necessarily have to be the direct victim of the contested acts or legislation.

Once the Commission deems the complaint admissible, it then examines its merits. If it determines that a violation has occurred, it prepares a preliminary report and makes recommendations to the offending State. If the latter does not respond satisfactorily to the recommendations, a final report is prepared, and the Commission monitors its application.

While these procedures are underway, the Commission has the power to decree precautionary measures (paying special, urgent attention to the situation) if it anticipates serious and irreparable damage. If the State refuses to take the appropriate action following the decree, the Commission may appeal to the Inter-American Court of Human Rights and request that it issue provisional measures intended to achieve the same objective.

Before addressing the IACHR, complainants must prove that they have exhausted all other domestic recourse options, that they do not exist or that are not accessible.



The Commission must do everything in its power to settle the dispute out of court. In some cases, however, it is impossible to reach an agreement. If the complainant is in agreement, the IACHR may turn the case over to the Court once it has submitted its preliminary report.

The Inter-American Court of Human Rights

Decisions rendered by the Court are binding and may involve the payment of damages if it considers that the victim's rights have been violated. It is important to note that in order for the Court to decide a dispute, the State involved must have first accepted the authority of this body through a declaration.

In the case of the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, the Court made its first ruling involving the collective property rights of indigenous peoples. This judgment, rendered in 2001, determined the scope of indigenous peoples' rights to their land and its resources. In this case, an indigenous community on the Nicaraguan Atlantic Coast and the NGO Indian Law Resource Center accused the Republic of Nicaragua of violating Article 21 of the ACHR, which recognizes property rights, by granting logging concessions on the ancestral land of the indigenous Awas Tingni community to a South Korean company.

This decision is of fundamental importance in that it recognizes territorial rights based on how the indigenous community has traditionally occupied and used the land over time, rather than on the official recognition by colonial powers or by the States that succeeded it. In the Awas Tingni case, the Court held that indigenous customary rights constitute collective property rights under Article 21 of the American Convention on Human Rights that protects private property, and that, therefore, the indigenous title – which encompasses the right to land and resources – is included under Inter-American human rights law.

Consequently, the Court stipulated that the “property right,” which in domestic law refers to the notion of private property which an individual must be allowed to enjoy, has a broader scope under international law and can therefore be extended to include collective property.

Like the UN, the OAS created a Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples which emanates from the Committee on Judicial and Political Affairs, under the Permanent Council of the OAS. The Working Group began its work in 1999, and was mandated to examine the draft declaration, which was adopted in 1997 by the IACHR, and to refine its content.



Discussion Questions

- Which mechanisms seem the most appropriate to address your situation?
- Have you ever used national or international legal mechanisms? If so, how effective were they?
- Are there any organizations in your country that could help you if you decide to use international mechanisms?

TO FIND OUT MORE...

For the complete text of the *Awas Tingni* judgement:

www.indianlaw.org/awas_tingni_info_english.htm

For the OAS Draft American Declaration on the Rights of Indigenous Peoples:

www.cidh.oas.org/indigenous.html

For the text of the Draft Declaration:

www.cidh.org/Indigenas/chap.2g.htm