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The ILO PRO169 programme: learning from technical cooperation in Latin America and Southern Africa

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\textbf{ABSTRACT}

Taking as a point of departure an evaluation conducted for the International Labour Organization’s Programme to Promote ILO Convention No. 169 (PRO 169) this article examines the strategic approaches of the ILO towards the promotion of indigenous peoples’ rights. Through technical assistance to a wide range of stakeholders, PRO 169 sought to work at various levels to increase awareness, build capacity, and support policy initiatives within individual countries and geographic regions. This article describes a Spanish-funded project within PRO 169 that had specific focus in Latin America and in Southern Africa. We examine the specific dynamics in each of these regions, and the impact of the programme on the ground. This project ended abruptly when the Spanish government was unable to renew funding, and the entire PRO 169 programme was folded into the restructuring of the ILO a few years later. We argue that the technical support for the promotion of indigenous peoples’ rights that the ILO has been providing is critical, and that it should receive core funding, and not be dependent upon external funding and vulnerable to economic and political vagaries.

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International Labour Organisation; indigenous peoples; ILO C 169; Latin America; Namibia

\textbf{Introduction}

Between 1996 and 2014, the International Labor Organization (ILO) operated a technical cooperation programme that was referred to as the \textit{Programme to Promote ILO Convention No. 169}, or more commonly PRO169. This programme was designed to promote the application of the principles outlined in the ILO Convention 169 on the rights of Indigenous and Tribal Peoples (C169), by providing a range of technical assistance to support representatives of the main stakeholders – including governments, employers, and employees, and indigenous peoples – in upholding the standards contained in the convention. For the duration of its existence, PRO169, like all technical cooperation programmes, was supported by extra-budgetary contributions; the donors and the budget amount varied over the almost two decades of the programme’s existence. In the later years of PRO169, from 2008-2012, a significant portion of the budget was provided by the Spanish Agency for International Development Cooperation (\textit{Agencia Española de
Cooperación Internacional para el Desarrollo; AECID). This Spanish government-funded project was evaluated at the end of 2012 by the authors of this paper. This chapter is primarily based on the findings of that evaluation, which also point to some important considerations regarding the ILO and their support for indigenous rights globally.

In general, the evaluation was positive; the Spanish-funded ILO PRO169 project built upon processes that were already underway in the various countries that it worked in, and it complemented other efforts within the PRO169 programme, and the efforts of specialists and supervisory bodies within the ILO and other institutions of the UN system. Specifically, the support of the AECID filled an important gap in technical assistance for the promotion, training and implementation of C169, and constituted a substantial part of the programme’s funding (37% of total resources from 2008-2012). Efforts to promote the ratification of C169 in countries that had not yet ratified were also central to national and regional processes. In this chapter, we first outline the PRO169 programme in general, and the aim of the AECID funding, and go on to describe each of the three components. We discuss the gains that were made during the project, and the challenges that faced. The circumstances in which the project was working varied greatly by country and by region, and we point to some important comparative aspects that are also key to the strategic promotion of indigenous rights at local levels.

When the project came to an end in 2013, there were no specific plans – or funds – to continue with these efforts, which raised the issue of dependence of donor funding and the importance of institutionalising technical assistance within core funded structures of the ILO system. In 2014, the ILO re-located the responsibilities previously associated with PRO169 to a new section of the organisation, the Gender, Equality and Diversity Branch. In the last sections of this paper, we discuss some considerations for evaluating the impact programmes like PRO169, and emphasise the importance of the kinds of activities that they undertook even if the impacts are not always easy to identify or possible to measure; we also point out ways that an over-emphasis on easily visible aspects of promoting the application of indigenous rights can take attention away from some of the more basic, central concerns of indigenous communities. We argue that core resources need to be dedicated to the kinds of activities that PRO 169 was operating. It is too early to evaluate the effects of the new placement of the application of indigenous rights at the ILO, but we argue that given the critical situation of indigenous peoples around the world, continuing and reinforcing such efforts is crucial.

PRO169

The ILO programme Promotion and Application of Indigenous Peoples’ Rights (PRO169) was initiated in 1996, as one of two major technical assistance programmes for indigenous peoples funded by the Danish International Development Assistance (DANIDA). A manual published by the ILO in 2003 describes the PRO169 programme as a response to ‘requests for assistance by countries which had ratified Convention No. 169 or were considering its ratification, as well as other requests for further information on the ILO and its work with indigenous and tribal peoples’. With the aim of working towards fulfilling these needs, the programme was developed with a multi-pronged approach that included awareness-raising among various stakeholders; capacity building of both governments and indigenous peoples organisations; supporting policy dialogue at national levels;
and the publication of materials about the C169 and the application of indigenous peoples' rights.\textsuperscript{4} Many of these materials were aimed at raising awareness among indigenous peoples' organisations about existing tools supporting indigenous peoples' rights, in particular the ILO Convention 169, and providing guidance as to how to use them.\textsuperscript{5} Notably, several of these were written, co-written and/or facilitated by indigenous peoples.

As the programme evolved, other areas of emphasis emerged, including support for the development of national policy frameworks for indigenous peoples' rights, as well as an emphasis on socio-economic aspects of these rights. The PRO169 programme established partnerships with indigenous organisations and umbrella organisations throughout Latin America, Asia and Africa, including institutions of national and regional human rights; they also worked closely with other UN bodies promoting indigenous peoples' rights. In general, the programme targeted multiple stakeholders in order to encourage the process of moving towards increasing recognition and implementation of indigenous rights; ratification of C169 itself was generally considered to be part of a process rather than a singular goal or endpoint.

The countries in which PRO169 was working to implement international standards regarding the rights of indigenous peoples had very different profiles. Factors like political will, access to natural resources, environmental conditions, economies, public investments (in fields such as education or health care), and levels of organisation of indigenous peoples themselves vary widely among states covered by the programme. The need for local adaptability is reflected in the materials they produced. For example, a major global publication of PRO169 was the book *Indigenous and Tribal Peoples’ rights in practice: A guide to ILO Convention No. 169* makes it clear that ‘The diversity of situations faced by indigenous peoples does not allow for a simplistic transfer or replication of models from one country to another’.\textsuperscript{6} Accordingly, the Guide is not presented as a ‘blueprint for implementation’ but rather a ‘catalogue of ideas’ that it is hoped will ‘inspire adaptation of good practices to national and local circumstances’.\textsuperscript{7} As we will argue towards the end of this chapter, this adaptable approach with a focus on local, national, and regional circumstances is critically important to the promotion of indigenous rights – and requires dedicated funding.

DANIDA remained the primary donor throughout the life of the project; over the second decade the European Instrument for Democracy and Human Rights (EIDHR) also became a major donor and additional funds for a number of projects were provided by the governments of Norway, Sweden and Finland. In 2006, the Spanish government committed a substantial amount to the programme; this contribution is discussed in greater detail below. Initially, Africa and Asia were identified as the priority global regions, following a needs assessment;\textsuperscript{8} few countries in Asia had ratified and none (at the time) in Africa. Latin America (where 15 of the current 22 signatories are located) became a major focus later, in particular with the Spanish funding. The PRO169 programme focused both on assisting ratifying states to comply with the Convention (as was the case in most Latin American countries), and also worked in states deemed to have the potential to ratify (as was the case with Namibia).

At the time of the evaluation conducted in 2012, the PRO169 was one of the largest programmes addressing indigenous rights within the UN system. It was housed directly under the division of the ILO responsible for overseeing the International Labour Standards, often referred to by the NORMES, a high-level division included specialists familiar
with the supervisory system. The placement of PRO169 in this department supplemented the focus on technical cooperation with access to specialised legal advisory services from the permanent staff of the NORMES Department. This location also contributed to its unique profile and relatively high visibility; during the evaluation some interviewees argued that this corresponded with the growing emphasis placed on indigenous rights throughout the 1990s, when PRO169 was created. The evaluation highlighted, however, that this seemed to be at odds with the fact that the programme did not have core funding from the ILO and thus was entirely dependent upon donor funding, and suffered from a general lack of human and financial resources. This was a great concern, considering the broad scope of the convention, and the fact that its target group was composed of some of the most vulnerable people on the planet.

In fact, at that time, external funding for the programme was tapering off. Feiring et al connect this decrease to a combination of changes in the Danish government’s donor policy, and a lack of internal prioritisation of the programme within the ILO at the time:

PRO169 was entirely funded by extrabudgetary resources through earmarked donor contributions, particularly from the Danish government, and faced progressive decrease of funds since 2009, when the Danish government lifted the earmarking of its contributions to ILO, and the ILO subsequently did not allocate funds to fill the gap.9

Commitment of significant funding from the Spanish government starting in 2008 coincided with this overall decrease, and thus became a significant part of the programme budget; this is described in the section below. The Spanish funding ended in 2013, and in 2014 the PRO169 as such was ended. Activities of the programme were taken over by the new Gender, Equality and Diversity Branch, and since 2015, core funding has been allotted to these activities. We will return to the placement and funding of indigenous issues within the new structure at the end of the paper. This chapter focuses on the evaluation of the Spanish-funded component as a case study, but the main findings are of broader relevance to efforts to support the application of ILO C169, and for the implementation of indigenous peoples’ rights globally.

The Spanish funded PRO169 project

In February of 2007, Spain became the 18th country to ratify C169, marking an increase in attention within the country to indigenous rights issues globally. One expression of this interest was funding to promote indigenous rights. The AECID committed 4.5 million Euro to the PRO169 programme, through the AECID-ILO partnership project (2008-2012) – see Table 1. This partnership consisted of three components: the Latin American Project, which accounted for half of the funding and targeted 14 countries; the Africa and Asia Regional Project, which was primarily networking and training; and the only single-country component, Promoting & Implementing the Rights of the San Peoples of the Table 1. AECID PRO169 Resources spent by end of project (USD).

<table>
<thead>
<tr>
<th>Component</th>
<th>Spent</th>
<th>Percentage distribution</th>
</tr>
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<tbody>
<tr>
<td>Component 1 – Latin America</td>
<td>2,636,607</td>
<td>48</td>
</tr>
<tr>
<td>Component 2 – Global and Asia/Africa</td>
<td>1,970,140</td>
<td>36</td>
</tr>
<tr>
<td>Component 3 – Namibia</td>
<td>919,704</td>
<td>17</td>
</tr>
<tr>
<td>Total accumulated</td>
<td>5,527,051</td>
<td>100</td>
</tr>
</tbody>
</table>
Republic of Namibia. Each of these will be described in the sections below. The aim of the project was broad and ambitious, and the relative weight of AECID funds was significant; during its period of operation, the Spanish funding made up 37% of the total budget of the PRO169 programme. The project was initially conceived as a 5-year cycle (beginning at the start of 2008 through the end of 2012), and was considered likely to be renewed for another 5-year period. However, the global economic crisis of 2008 hit Spain hard, and the country was not able to renew funding in 2013 – we will return to the implications of this at the end of the paper.

Latin America

The largest part of the Spanish-funded project was the focus on Latin America. Out of the 22 countries that have ratified ILO C169 by 2018, 15 are in the Americas (14 with Spanish or Portuguese as an official language, plus the Caribbean country of Dominica with English as official language). Furthermore, these countries include most of the approximately 40 million indigenous individuals of Latin America as well as most of the more than 600 indigenous peoples present. In countries like Bolivia, Peru, Ecuador and Guatemala, indigenous people represent close to half of the national population, and have engaged intensely in issues related to territorial rights and the exploitation of natural resources. During the period that the Spanish-funded project was active in Latin America, there were numerous cases of serious conflict over access to and use of natural resources in indigenous territories. Conflicts around mining were particularly violent, with high numbers of injuries, rights violations and deaths. Due to a number of coinciding factors, the issue of indigenous rights has at times come high on the political agenda. These factors include: combinations of high market prices for minerals and hydrocarbons at the time; the high dependence of national economies on income from the extraction; and export of these resources to finance infrastructure development and social reforms; the presence of powerful regional and international extractive companies; and an increasing presence of indigenous peoples’ organisations at different levels. In many Latin American countries, this confluence of circumstances has increased the pressure on environmental and human rights defenders working on the area.

Three factors leading to the regionalisation of the issue of indigenous rights in relation to extractive industries in the first decade of this millennium stand out. First, the economic growth in the so-called BRICS countries led to an increase in the search for minerals and other natural resources, raising the incidence of conflicts over land. Secondly, reports and recommendations on compliance with ILO C169, issued to states by the supervisory bodies of the ILO, contributed to an increased awareness of and attention to indigenous rights in Latin America. Thirdly, judgments of the Inter-American Court of Human Rights in favour of indigenous land rights and the right to free prior and informed consultation for indigenous peoples in highly publicised cases including the Awas Tingni, Saramaka, and Sarayacu, among others – have led to an increased awareness of the potential use of indigenous rights mechanisms. In Latin America, this awareness justified the relevance of the regional focus of the technical cooperation funded through the PRO169 project, and provided a burning platform from which to engage in dialogue with both rights-holders and duty-bearers.
The 2012 evaluation noted several important results of the project in Latin America, though these were not uniform across the continent and some countries reported much greater advances than others. The project set out to promote the necessary public debate and preparatory actions, with the aim of eventually leading to the ratification of more countries in the region. Non-ratifying countries were in the minority in Latin America. By the beginning of the Spanish funded activities in Nicaragua, Panama, El Salvador and Belize were the only countries in the isthmus of Mesoamerica that had not ratified, while the only non-ratifying countries in South America were Guyana, Suriname and Uruguay. During the first two years (2008–2009) the project focused on Nicaragua and Panamá with the aim of moving towards ratification, and planned to promote that goal in remaining countries during the second half of the project.

Perhaps the most obvious positive result of the Spanish-funded part of the PRO169 programme was the ratification by the Nicaraguan government of C169 in 2010 – which included a special additional clause specifying that afro-descendants were covered by this instrument in Nicaragua. This ratification was in many ways the culmination of decades of demands by indigenous peoples. As was the case in the peace processes of Nepal and Guatemala, the ratification of C169 followed decades of civil unrest and was a critical element in the negotiation process between government and minority groups. Legislation created during this period in Nicaragua paved the way for ratification: in the 1980s, the Sandinista government’s need for strategic alliances in the Eastern and Northern regions to prevent the success of the Contra armed insurgency contributed to the passing of the Autonomy Law of 1987 for the Caribbean coastal regions; public pressure and skilled legal teams contributed to achieve the Demarcation and Land Titling Law 445 of 2003, as well the titling of the Rama territory in 2009.

When the PRO169 project began in Nicaragua late 2009, therefore, the movement towards ratification was already at an advanced stage. Nonetheless, the technical assistance provided by the project as they accompanied government officials and indigenous peoples organisations in the ratification process, certainly played a key role in guiding the process to its conclusion. In a conducive environment, the Spanish project served to increase pressure on relevant actors, especially the Parliament and the government, to take the final step. This combination of targeted pressure and technical support was exercised through rapprochement and work with various stakeholders, including the legislative assembly, government entities and public servants, indigenous peoples representative organisations, and business owners. Strategies of the PRO169 approach included addressing the doubts and concerns raised by key stakeholders, bringing to the table ratifications made by other countries, and highlighting the historic importance of this step in favor of indigenous peoples and communities. Importantly, the technical guidance provided was designed to be congruent with what was already being contemplated in the national legislation, in particular in terms of recognition of territories, and autonomic processes.

In the case of Nicaragua, the ratification of C169 followed a series government actions aimed at appeasing indigenous and other groups that were active in the war of the 1980s. Ratification was seen by many as ‘the icing on the cake’, of these measures, giving the indigenous peoples rights a higher status within the country. In addition to ratification, the PRO169 project had other important effects. Notably, it raised public awareness of the very existence of groups who had been historically ‘invisible’, thus greatly facilitating their demands for the recognition of their rights. In particular the indigenous peoples
of the north central pacific appear to have been first `recognized’ during the process leading up to the ratification of C169, and they appear for the first time in the first report of Nicaragua to the ILO following the ratification. This kind of awareness-raising about indigenous peoples and their concerns was a central part of the Spanish funded project; in the case of Nicaragua, we can identify clear effects of this approach.

Efforts by the same project to promote the ratification of C169 in Panama were not successful, however, in spite of a number of other supporting efforts and circumstances, including: UN supported pressure by indigenous peoples organisations; cases by the Inter-American Human Rights Commission; a visit by the Special UN Rapporteur; and the fact that ratification was high on the indigenous peoples’ political agenda. The evaluation attributed this failure to ratify to a lack of political will, following a change of government in 2009.23 The prospects had seemed good at the outset, in particular because Panama recognised the peasant and indigenous communities in their new constitution (The National Constitution of Panama of 2004), which accords them special attention in order to promote their economic, social and political participation in national life (Article 120). The constitution also establishes the reservation of lands and their collective property for the welfare of indigenous communities, and the Landmark Law 72, signed in 2008 by the outgoing president of the republic, establishes a procedure for the free adjudication of the collective property of lands traditionally occupied by indigenous peoples and communities that are not within the Comarcas. Panama has also adopted a law on consultation, further aligning national law with the C169;24 however the country continues to shy away from ratifying. Despite these positive initiatives, the following administration succeeded installing the application of Law 72, only adjudicating 3 of the 34 territories lacking legal recognition (and these were not among the most important cases). The difference between these two cases provides a good illustration of the crucial importance of political will to the efforts of the ILO to advance indigenous rights in any country.

No other country ratified the Convention during the period evaluated, but other successful features of the project included focused plans for improving the implementation of C169 in several countries that already had ratified, and a series of workshops and training sessions to raise awareness among government officials, trade unions, business associations and indigenous communities about the rights of indigenous peoples. The evaluation found that, in several countries (including Nicaragua, described above), the Spanish-funded project facilitated processes and created spaces that allowed for governments and indigenous peoples to respond to the comments of supervisory bodies.

The case of Peru provides an example of how these processes worked. During the time that the AECID project was operating, there were cases of tense and violent conflicts between extractive industries and indigenous peoples organisations in a number of Latin American counties, primarily over rights to land and resources and the lack of consultation in line with the Convention standards. In 2009 and 2010, for example, the cases of infractions in Peru against the C169, in particular regarding the violent removal of indigenous peoples from their ancestral lands in Bagua for extractive purposes, were discussed before the Conference Committee on the Application of Standards.25 The committee noted serious concern about the use of violence and linked the violent situation to ‘the adoption of legislative decrees relating to the exploitation of natural resources on lands traditionally occupied by indigenous peoples’. The committee also made explicit
demands to the Peruvian Government; in particular, calling on the government to ‘establish mechanisms for dialogue’ in accordance with C169, and to ‘remove the ambiguities in the legislation as to the identification of the peoples covered by it, and to take the necessary steps to bring national law and practice into line with the Convention’. This included the elaboration of a plan of action, in consultation with indigenous peoples and their representative institutions. Furthermore the committee urged the government of Peru to undertake a ‘prompt and impartial inquiry into the events in Bagua (…) and to provide specific information on the matter’. This is a clear example of how, in a case of serious lack of compliance with the convention standards, the pressure by ILO supervisory bodies on the government eventually resulted in compliance. PRO169 technical staff and ILO legal specialists from NORMES provided advisory services to facilitate the mitigation and resolve, and the supervisory bodies followed up in subsequent reports.

In Latin America, the PRO169 project strengthened work in most countries to create regulatory frameworks that make the consultation and participation of indigenous peoples a permanent feature of public policy. Importantly, in addition to building the capacity of the state, it also strengthened the capacity of indigenous peoples’ representatives, and their participation in such processes. Finally, it was noted that the exchange of information about the best practices to improve the implementation of indigenous rights – including the right of consultation and participation – was perceived positively among the various social actors. In some countries, like Nicaragua and Peru described above, the project succeeded in creating spaces in which indigenous issues can be recognised, discussed and addressed, and openings for dialogue, both within the country and with international mechanisms. Sometimes these spaces allowed for demonstrable progress, and other times the impacts are more difficult to measure – but critical nonetheless.

Although there were many positive effects, the evaluation also emphasised that in Latin America, the high level of conflict around the issues of consultation and free prior and informed consent has had the effect of subordinating other very important and interrelated issues, including rights to resources, land, justice, education, and employment. The report noted that, rather than being addressed as rights in and of themselves, these issues were addressed primarily as questions of consultation. This illustrates several critical and interrelated points that are relevant to our conclusions below. One is that regional dynamics and discourses lead to particular emphases, which, although important and necessary in their own right, can also eclipse other equally important concerns. It also illustrates how a range of aspects covered by C169 can remain unaddressed, despite their immediate relevance to indigenous communities. The ILO has the mandate and obligation to monitor all the elements of the convention and to ensure that they are addressed by national authorities.

**Improving indigenous rights in Africa and Asia**

As noted above, the geographical regions of Africa and Asia were originally the primary geographical focus of the PRO169 programme. Accordingly, the second component of the Spanish project focused on promoting and implementing the rights of indigenous peoples at the regional level in southern Africa and Asia, through the inclusion of their priorities and rights in national policies and plans. The issue of indigenous peoples has taken very different shapes in these regions than in Latin America; the approach to
technical cooperation has also differed. In both Africa and Asia, the concept of indigenous peoples is still nascent, and the population dynamics are much different. In particular, in contrast to settler states like the Americas, in post-colonial Africa and Asia, the distinction between ‘colonizer’ and ‘indigenous’ is not as clear cut; furthermore broad cultural and political values and tendencies also affect the terms of discussion. Technical cooperation at this level thus has to focus first on establishing a basic understanding of who indigenous peoples are, what is meant by indigenous rights, and how these correspond with social and legal understandings of these concepts at national and regional levels.

In this component of the Spanish funded project, emphasis was on raising awareness among public officials in Africa and Asia through training, technical assistance, and advice to key institutions, and the sharing of experiences and good practice on indigenous issues. Activities included regional workshops to which key stakeholders from governments and indigenous organisations are invited. This component was managed from Geneva in coordination with governments, regional and national offices of the ILO, and international actors within the UN system, as well as indigenous peoples’ networks. Activities included the participation in, and contribution to, the work of several key institutions and offices at the UN level, including: the Permanent Forum on Indigenous Issues (UNFPII); the sessions and work of the Expert Mechanism on the Rights of the Indigenous Peoples (EMRIP); the Special Rapporteur on Indigenous Peoples; and other agencies United Nations treaty; and, more recently, the Working Group on the issue of human rights and transnational corporations and other business enterprises.

This part of the Spanish project had the largest geographical scope and a substantial portion of the budget, however much of the funding was used towards the institutional programmes noted above and associated administrative and staff costs. In interviews with ILO staff for the evaluation, this section of the project was largely downplayed and the focus on the projects in Latin America and on the specific country focus in Namibia received much more attention in the final reports. The evaluation did find, however, that participation and assistance from the technical and legal staff of the PRO169 project contributed to advances in national, regional and global efforts to strengthen indigenous rights, including the promotion and implementation of C169. For example, in southern Africa, the office in Pretoria coordinated several workshops on indigenous rights, in collaboration with the University of Pretoria and South African government offices. These workshops were attended by key actors in Namibia, and were noted in the evaluation of that country as important platforms for raising awareness and building capacity, as well as for creating dialogue. Such workshops also provided the opportunity to address regional issues and discourses in a more productive way than can be done within an individual country – an example of this will be noted in the section on Namibia, below.

Although this component did not receive proportional attention in the evaluation, we would like to emphasise here the importance of regional and international dynamics and discourses to developing strategic approaches to indigenous rights, and central to the overall approach of the ILO. The workshops, networking, publications, and liaising with other key international and regional actors provide important spaces in which to promote indigenous rights. The evaluation argued that, to ensure sustainability and continuity, core activities like raising awareness about C169 among key stakeholders and networking should be institutionalised and anchored among permanent staff, rather than
being attached to a specific project. The activities of the Africa and Asia regional component provide good examples of ongoing activities to which core funding should be dedicated.

**Namibia**

The third component of the Spanish-funded project, *Promoting & Implementing the Rights of the San Peoples of the Republic of Namibia* was the only component that focused on a single country. The project’s immediate stated objective for Namibia was to contribute to reducing poverty and to improving the socio-economic situation of the *San* peoples through a rights-based approach. It received 16% of the Spanish budget (see Table 1). Targeted focus on a single country was a strategy the PRO169 programme had used earlier in Africa; in 2006, the ILO implemented the first field-based country project in Cameroon. In 2008 a review of that project reported that, despite numerous challenges, there had been a gradual increase of indigenous peoples in national processes in Cameroon as a result of the tools created by PRO169, among other advances (ILO 2009). One aim of the project in Cameroon had been to promote application of C169 principles throughout the central African region, by supporting a country that was likely to ratify, with the idea that this could influence surrounding countries, hopefully creating a trend.

At the time that the Spanish funding was committed, the ILO’s PRO169 Programme was expanding, and sought to increase its field presence in Africa. The extra budget would allow the ILO to reproduce their strategy in southern Africa, and Namibia was identified as the next African country in which to promote C169 principles and policy, with the idea that it could be a platform for indigenous rights in the region. Namibia was chosen for a number of reasons. In 2006, they had led the ‘Africa Group’ that delayed the signing of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Although this could be interpreted as resistance to the idea of indigenous peoples rights, it also indicated a willingness to engage with indigenous rights issues at a global level. Namibian policy allowed for the identification of ethnic groups, and traditional leadership, access to land and resources, and educational opportunities could be connected to ethnic identity and language – leaving space for the implementation of indigenous rights mechanisms. There were also strong civil society organisations engaging with indigenous rights issues, notably the Working Group of Indigenous Minorities in Southern Africa, and the Legal Assistance Centre. Perhaps most important, however, was the existence of a government office dedicated to ameliorating the poverty of Namibia’s *San* population: The *Programme for San Development*, begun in 2005 and located at the time in the Office of the Prime Minister.

*San* is the overarching term for several different language groups residing across southern Africa, primarily in Namibia, Botswana and South Africa. Formerly hunters and gatherers San today practice mixed economies that include hunting and gathering and other small-scale economic activities. Although a few other groups are also often included in the category of indigenous peoples in Namibia, the Spanish funded programme was specifically focused on the San. By all socio-economic measures the San are the most disadvantaged ethnic group in all the countries where they live. Their dispossession and marginalisation has been thoroughly described, in particular a recent large-scale socio-economic survey of San living conditions in Namibia shows that they continue
to experience severe discrimination and exploitation, ongoing aggression by dominant
groups, and marginalisation from participation in mainstream economic social and polit-
cal institutions.33 Few San have access to land or control over resources, and those
that do, find these boundaries continuously threatened by neighbouring pastoralist or
agriculturalist groups seeking land.

The UN Special Rapporteur on Indigenous Peoples James Anaya also came to this con-
clusion, after his visit in 2012, noting that although other Namibian groups had experi-
enced ‘pervasive loss of land’ during colonialism and apartheid, by all accounts, ‘San
groups in the country have experienced the greatest loss and resultant social, economic,
and cultural disruption, the legacy of which has not been overcome since independence’.34
He also noted that representatives of the San and other indigenous groups ‘overwhel-
mingly expressed sentiments of exclusion from decision-making processes at both at
the local and national levels because of their ethnic identities’.35 In light of these significant
problems reported by Anaya and others, the fact that the Namibian government recog-
nised the special needs of this population and was willing to create a targeted programme
to address them was seen by the ILO as a promising base upon which to build a coordi-
nated approach to indigenous peoples’ rights in Namibia, and the region; it also gave the
PRO169 project a clear partner to work with. The country was also considered to have the
potential to ratify C169.

Thus, in Namibia, the PRO169 office at the ILO saw an opening into which they could
promote the concept and implementation of indigenous rights. In this environment, the
project could support national processes that were already underway – this was important.
As Alfred Barume, the PRO169 coordinator at the time, put it part of the strategy was to
‘keep the candle of political will burning, and build the capacity of key stakeholders so that
the debate becomes a national debate – not outsiders coming in and telling the country
what to do’.36 In Namibia, there seemed to be enough political will and ongoing activities
to facilitate this approach.

Accordingly, when the ILO’s Technical Cooperation agreement with Namibia was
signed in 2008, the primary relationships the project specified were government ministries
and departments, the most obvious partnership with the Programme for San Development,
in the Office of the Prime Minister (this was upgraded in 2009 and became the Division for
San Development). The PRO169 project also worked with civil society organisations focus-
ing on indigenous rights (although their close collaboration with government offices
sometimes made them suspect among these non-government organisations). The
project was designed to complement other national initiatives that focus on building the
capacity of San organisations, improving livelihoods, and promoting the rights of
San peoples in Southern Africa.37

The absence of an ILO office in Windhoek coupled with a period of changes in govern-
ment, however, delayed the activities in the PRO169 project in Namibia. The Windhoek
project office was opened in September 2010, and a month later the process kicked off with
the Sub-Regional Conference on the Rights of Marginalized/Indigenous Communities, held
in Windhoek. The delayed start meant that activities and outcomes defined for 4–5 years
were compressed into just over two years. Despite this, the overall assessment of the evalu-
ation was that the project registered some important achievements in Namibia. Successful
elements of the project included raising awareness of indigenous peoples’ rights within
government and civil society, and capacity-building for San individuals and organisations,
and for government officials, through training workshops and advanced courses about indigenous peoples’ rights. In 2010, after attending the first ILO workshop, the Office of the Ombudsman recognised the importance of indigenous rights to its mandate, and immediately began spearheading efforts to promote dialogue within the country. They initiated a workshop in 2011, and in 2012 released the *Guide to Indigenous Peoples’ Rights in Namibia*, a clear and practical booklet that government offices reported they used and referred to regularly.

Namibia seemed to offer fertile ground for the promotion of indigenous peoples’ rights in general – and in particular C169 – in the region, and indeed many advances were made. However, implementation of the project in Namibia had several challenges that were particular to the region. One major issue was – and continues to be – the term *indigenous*. While in Latin America, the term is widely accepted as a political and social category, in most African countries it is highly contested. Officially, it is usually either not accepted at all, or understood too broadly to be useful. Many African governments consider all their citizens of African descent as indigenous in relation to white colonisers. The concept of *indigenous peoples* is in turn often seen as an externally imposed category that does not match the current national situation. A major study conducted by the ILO and the African Commission on Human and Peoples’ Rights (ACHPR) emphasised that the ‘point of departure’ for the debate about indigenous peoples is not European colonisation, but instead the international framework relating to indigenous peoples (ILO and ACHPR, 2009). The current ACHPR website highlights the characteristics of indigenous communities in Africa, which include: cultural difference and cultures under threat; dependence on access to land and natural resources; discrimination; geographic isolation; experiences of domination and exploitation; and, importantly, self-identification.39

Importantly, although many indigenous peoples are generally recognised as the ‘first peoples’ of the particular area that they inhabit, aboriginality is not the key element of indigenous status in Africa.

Although in Namibia the San fit the ACHPR definition in every way (and are, in fact, widely considered to be the first inhabitants of the country), the government has often expressed a preference for the term *marginalized*.40 The official argument is that the concept of ‘indigenous’ has little meaning as it would allow all Namibians to benefit from special programmes instead of just the ‘most marginalised minorities’ – on whom they prefer to focus attention. A parallel discourse simplistically associates indigenous rights with ‘special rights’. This association is especially problematic in a post-apartheid country, where such categories are perceived as having the potential to either provide unfair advantages, or to discriminate against groups of peoples on the basis of ethnicity. This apparently superficial difference in terminology signals deeper differences in approaches to socio-economic development, which created challenges for the ILO in their efforts to promote indigenous rights in Namibia. The term *indigenous* signals elements such as specific relationships to the land and communal rights, and an approach that acknowledges structural discrimination and emphasises consultation. Approaches to *marginalization*, on the other hand, are generally based on poverty alleviation and assimilation.41 A major part of the ILO campaign was aimed at changing the perception that indigenous rights are special rights, and at emphasising the important differences between *indigenous peoples* and *marginalized communities.*
Such processes of recognition take time, however, and an important point following from the Namibian case is related to the time frame, which in turn is connected to a major conclusion of the overall evaluation – the need for ongoing funding for the support for the incorporation of indigenous rights into national policies and development approaches. As described above, the Spanish-funded project was initially conceived as potentially a 10-year project, in two 5-year cycles. The combination of delayed project start in Namibia until mid-2010 and the loss of the option for extending the project following Spain’s economic crisis meant that it was compressed into a little more than 2 years. The evaluation argued that, while the approach was appropriate, the time span was far too short for the kind of changes that the ILO was trying to nurture.

At the time of publication, several years after the evaluation, long-term impacts of the PRO169 programme can be seen in the role that the Office of the Ombudsman played in the creation of a regulatory policy framework for indigenous peoples, an effort that continued past the end of the project. The development of such a framework was a part of the original PRO169 technical cooperation agreement in 2008. In 2011, the Namibian government accepted the recommendation of the OHCHR Universal Periodic Review (UPR) of Human Rights to create a White Paper on Indigenous peoples’ rights; Feiring et al call this a ‘breakthrough’ and identify it as a key example of results from dialogue creation by PRO169 activities.

The project office in Windhoek closed in 2013, but with continued support from the ILO office in Geneva, a draft the White Paper was released for comment in 2014. Without dedicated support after that, however, the process stalled. In 2016, the UPR process again noted the commitment to a white paper; and this same year the UN Department for Economic and Social Affairs (UNDESA) began to support the White paper process. At the time of writing, an updated draft has just been released for distribution for comments, after which it will go through the channels of Namibian government. This process has been spearheaded by the Office of the Ombudsman, which consistently attributes both the process and its own role to the PRO169 programme in Namibia. At the same time, it is important to note that the Office did not have the capacity to follow this process through on its own, and after the ILO left there was a long gap until another international office was able to support it. The primary concern expressed by the evaluation in Namibia was the loss of the needed support of the PRO169 project Promoting & Implementing the Rights of the San Peoples of the Republic of Namibia at a crucial stage in a national process of dialogue around indigenous rights.

Considerations for evaluating technical cooperation programmes PRO169

As noted throughout this paper, the arguments presented here are based on an evaluation that was conducted by the authors for the ILO and AECID, following the OECD DAC evaluation criteria: relevance, efficiency, effectiveness, sustainability and impact. An important question for organisations and donors is whether or not their efforts (and expenditures) are effective and have the intended impact. Although not the main focus of this chapter, questions of how to measure and evaluate the effect of programmes such as the PRO169 were central to our research focus for the reports. This in turn raises some larger questions about the impact of international projects seeking to improve human rights standards in general. As Sally Engle Merry (2011) points out,
emphasis on numerical or otherwise ‘evidence based’ results produce the impression of a world ‘knowable without the detailed particulars of context and history’ (Merry 2011, S84). This focus on easily measurable or otherwise visible results can mask other areas of critical importance. In this section we briefly describe a few reasons why it is critical to recognise less visible and less easily measurable results – and to continue committing funding to the processes that support them.

**Ratification of ILO Convention no.169 as a measure of success**

In a recent volume on the ILO prepared in honour of its upcoming 100-year anniversary, the editors point to the dilemma of quantifying the impact of the ILO on a global scale in their introductory chapter:

> A simple way of measuring the ILO’s influence has often been to count the number of countries which have ratified Conventions. This accounting method is far from satisfactory since it does not take account of what ratification means in practice in the various local contexts, or of the debate generated both before and after the adoption of the Convention. Yet it is precisely these debates which have the greatest influence on national societies and politicians …

The authors emphasise that the conventions are of course important and useful – they give needed weight to the demands of actors by ‘putting them on international footing’ and through the threat of loss of international credibility if they do not comply. However, they emphasise the importance of space for critical debates, and of the dialogue between the ILO and the national stakeholders, for the development of social rights. This description matches our experience in evaluating the impact of the Spanish PRO169 project. The ILO C169 has very few ratifications internationally, and thus a focus solely on this as a measure of the ‘success’ of the convention itself or programmes to promote it would be misleading. We found that while ratification of the convention was often an important point of focus, equally important was the space for dialogue that the existence of the convention created – whether or not the country had ratified. The dynamics around this varied by region, underlining the importance of focusing on the meaning of ratification at national and regional levels.

In Latin America, where many countries have already ratified C169, and where in most countries indigenous peoples make up a much larger segment of the population than in Africa, encouraging ratification is seen as an attainable goal, and was a clear focus of the PRO169 projects in that region. Nicaragua’s ratification was an important measure of the success of the project, as described above, and the articles of the convention are being used by civil society to claim rights and as support for processes. In Panama, although goal of ratification has not yet been met, the indigenous movement continues to include it at the top of their list of demands to the government, along with the fulfilment of territorial claims. In both cases, it is notable that the dialogue around ratification has provided a public space for critical debate between government and civil society around indigenous issues – which continues to be important independent of ratification of the convention.

In Africa, the discussion on ratification takes a different shape. At the start of the project, no African country had ratified C169, and an important aspect of the choice of Namibia as a country to target was that they seemed to be open to the possibility of
taking the lead in becoming the first country in Africa to ratify. The importance of ratification in African countries is laid out in an extensive report on African Indigenous Peoples, sponsored by the ILO, in cooperation with the ACHPR and released in 2009, not long after the start of the PRO169 project in Namibia. This report recommends (among other things) that states ratify C169; this, they state, ‘would enable African States to tap into international expertise and processes on the implementation of the rights of indigenous peoples’. It would also imply regular supervision, which in turn would enable dialogue within the country and lead to a more effective implementation of indigenous rights. It is clear that, as an ideal, the ratification of the Convention is an ultimate goal.

However, the Spanish PRO169 project document for Namibia does not include the signing of the Convention in its explicitly stated objectives. It was hoped that this would be an ultimate outcome, but more important was to create a national space for dialogue around indigenous issues, and to encourage the creation of national policy – including a regulatory policy framework. As described above, this process provided crucial spaces for dialogue on indigenous rights in Namibia.

**Measuring awareness and capacity**

The ILO in general, and the PRO169 programme, explicitly recognised that the political and social circumstances and processes surrounding ratification and policy discussions are equally important to securing long-term advances in indigenous rights. As both evaluations describe, these processes are the focus of two aspects of the Spanish PRO169 project – raising awareness and building capacity – and as such they were very important aspects of activities in all three areas of the project. However, these processes can be difficult to measure, and the circumstances vary greatly by region and by country.

Challenges for evaluating advances in things like ‘awareness’ and ‘capacity’ are highlighted by the evaluation in Namibia. Two important points stand out: the difficulty of measuring these advances in quantifiable terms; and the difficulty identifying which changes are resulting from the project itself. For example, each of the two objectives noted above has a short list of indicators; the first one for each includes the figure of ‘75%’ of stakeholders participating in their activities having (respectively) raised their capacity in, and awareness of indigenous rights. Although awareness raising and capacity building were key components of the project, there was no baseline study evaluating levels of these prior to the project – so there was no way to measure the increase. However, even if there had been, trying to measure such changes in terms of ‘percentages’ distorts some crucial aspects of the kind of processes they were seeking to stimulate, making them seem isolated and unilinear, when in fact they are embedded in larger processes of social change.

Another indicator cites ‘plans of action for San development in government programs’. This is also a problematic basis for evaluation of the PRO169 activities – in particular because, as described above, such a plan of action had grown out of internal processes in Namibia. In fact, the very identification of Namibia as a country was based on the fact that a programme targeting the San in the country already existed. The ILO project was specifically designed to contribute to processes already underway, and to
create a synergistic effect. It would thus be expected – even desired – that there be some ambiguity about what is due to the influence of the ILO, and what to attribute to national actors.

A point we would like to make is that this ambiguity can be seen as a strength of the organisation. Emmanuel Reynaud\textsuperscript{52} notes that ‘the influence and impact of an international organisation like the ILO cannot be judged from the result of its own direct action alone’. He suggests that a crucial element of ILO work to promote human rights rests in its capacity to influence national debates and support national efforts, pointing out that ‘the influence of the ILO depends extensively on the capacity of national actors to make its standards and policy recommendations prevail on national stages’.\textsuperscript{53}

If trying to quantify influence is both difficult and perhaps not even advisable (for example in circumstances where the idea is for the process to be organic), equally problematic is ignoring this kind of influence. According to the evaluation, successful elements of the project in Namibia included raising awareness of Indigenous peoples’ rights within government and civil society, and capacity-building for San individuals and organisations, and for government officials, through training workshops and advanced courses about Indigenous peoples’ rights. Similarly, in Nicaragua the presence of the project was key in moving towards ratification, even though the momentum had developed within national processes.

The importance of these less visible aspects of the project are highlighted in a quote of the chair of the Namibian San Council during the evaluation. Asked whether he thought the PRO169 project in Namibia had advanced indigenous rights in the country, he replied, ‘sometimes you will not really see what people have done, but the ILO has put a bit of light into our minds – they help us know how to speak for ourselves with the conventions that are there’.\textsuperscript{54} This quote points to the difficulty of measuring things like capacity building, and also the importance of things that are not easy to ‘see’.

**Emphasis on highly visible aspects of indigenous rights.**

Another critical point about measuring the impact of projects like PRO169 stands out in the Latin America evaluation, which highlighted the strong emphasis placed on consultation, sometimes at the expense of other issues that were equally important to people on the ground. The concept of Free Prior and Informed Consent (FPIC) gained a high profile in international discourse, and consultation towards this ideal is seen as extremely important, especially regarding the implementation of mining and other resource extraction projects, as well as development projects. As the evaluation points out, however, this emphasis on consultation tended to obscure other, equally important demands on the part of indigenous communities.

Historical processes, high-profile conflicts, and powerful actors can pull attention away from important elements regarding the implementation of indigenous rights. This is a crucial point, because of the particular situation of indigenous peoples, who are often small groups and can be extremely marginalised. Even where there is institutional and political will at the national level – and especially where this support is being negotiated – ensuring that local issues of critical importance are not lost or disregarded requires awareness and focused attention. This is one area in which UN bodies, including the ILO, can
contribute with concrete technical cooperation, including legal assistance. This requires very careful attention to the dynamics of situations on the ground, and an acknowledgement that not all advances towards securing human rights will be quantifiable, or immediately visible.

Conclusions of the evaluation and the end of PRO169

At the time of the evaluation, the authors interpreted the shortening of the time frame, and other issues related to funding, as a signal of a larger problem within the ILO – dependency of the PRO169 programme on donors (Kronik and Hays 2013). This was described as a serious shortcoming, particularly given the lack of priority placed on the issue of indigenous rights globally, and the seriousness of the challenges that indigenous peoples are facing around the globe. Of particular concern was the decline in funding by governments designated for indigenous activities, including those due to changes in funding policies as described above regarding Denmark.55 As other international crises began to mount, indigenous peoples’ rights have had to compete with issues that seem to be more pressing, such as ongoing refugee crises, that often affect greater numbers of people. At the same time, powerful international and national actors whose interests are directly challenged by the enforcement of indigenous rights pose an enormous threat to indigenous lands and other interests. For example, in both Guatemala and Peru, we find cases of large extractive industries linked with a national political class, and the network of employers who convened in Latin America during PRO169 pushed hard to diminish the effect of the C169 on their ability to continue production.56 The evaluation argued strongly that, in this context, the ILO itself did not prioritise indigenous issues sufficiently within its budget.

It was strongly recommended in both evaluation reports that the ILO allot core funding to the activities of PRO169, and dedicate core staff to the promotion of indigenous rights at regional and international levels. Given the precarious situation found in many countries, the evaluation warned that without the specific focused attention that the PRO169 was giving, the gains of that project, and other efforts, could be lost. The evaluation emphasised that it was ‘of great importance to strengthen the presence and participation of PRO169 in the inter-agency work of indigenous peoples in the countries included in the project’ and specified in the main recommendations that:

Institutionalization and mainstreaming of issues of indigenous peoples’ rights in the ILO is recommended. Given the clear mandate through ILO Convention No. 169, an institutional framework for technical assistance that can respond efficiently and effectively to the demands is required. Convention No. 169 covers some of the most critical issues for the economy and politics in countries with populations of indigenous peoples, including the rights to development and justice, land and territory, natural resources, to education, health and labor and traditional occupations. The current ad hoc PRO169 situation, with its dependence on donor funding, does not match the demand for technical services to governments and other stakeholders to address the political aspects and social and economic rights of the Indigenous Peoples.57

Shortly after the evaluation was completed in 2013, the technical cooperation programme PRO169 was moved out of NORMES, and the Indigenous and Tribal Peoples Unit was created and placed in to the Gender, Equality and Diversity Branch, under the Conditions of Work and Equality Department of the International Labour Office.58 There it became one of three programmes (the other two are Gender Equality and Disability). Under this
Department, the ILO established for the first time a technical unit with core funding focusing on indigenous issues.

There were clear reasons for moving PRO169 from its special placement under NORMES into a department that concentrates on technical support to support the rights of vulnerable segments of the population. In an interview in 2018, Martin Oelz pointed out that the focus on integrating indigenous peoples issues into the overall work of the office has allowed for collaboration with other departments, including social protection; it has allowed for connecting specific ILO priority areas such as ‘Green Jobs’ and ‘Decent Work’ with climate change and other environmental issues that are heavily impacting indigenous peoples everywhere. It also includes a clear focus on supporting indigenous peoples as economic actors. The general approach taken by the ILO in general and the Gender Equality and Diversity Branch appears promising and progressive, and the new projects being undertaken by the Indigenous and Tribal Peoples Unit have a strong emphasis on grassroots work with indigenous communities (this strategy was also the basis of the INDISCO Programme run by the ILO from 1994-2007).

Oelz connected the current approach of the ILO to indigenous issues with previous experiences of PRO169, noting that ‘one of the lessons learned… was that there is a need to address Indigenous peoples’ issues and institutionalise them in a more integrated manner across the ILO’. This extension of work on indigenous peoples is also reflected in the ILO Strategy for Action concerning indigenous and tribal peoples, which lays out a clear rationale and context for ‘strengthening ILO action concerning indigenous and tribal peoples’. In addition to promoting C169, the strategy includes a number of other points: strengthening institutionalised dialogue, consultation and participation, improving livelihoods and working conditions, extending social protection, Indigenous and tribal women, closing the knowledge gap, and partnerships. The last point on the document notes that ‘ILO interventions on indigenous and tribal peoples will rely on regular budget funds as well as extra-budgetary resources’. This new structure has yet to be evaluated, and we will not comment on the effectiveness, level of funding, and reach here. We will conclude, however, with some points for consideration.

**Concluding remarks**

The protection of indigenous peoples’ rights is a recent and urgent human rights field. The beneficiaries are among the most vulnerable peoples on the planet, and often located in the most marginal environments on the planet – geographically, politically and socially. Increasing demand for resources located in their territories and the development of new technologies for resource extraction, climate change and environmental catastrophes, mass migration, and other threats to indigenous peoples are rapidly increasing. Although it is the responsibility of governments to implement C169 (where they have ratified it) and in general for upholding indigenous peoples’ rights (as human rights), the legislative frameworks are in many countries weak and vulnerable to political shifts. Despite recent, highly visible advances in indigenous peoples rights at the global level, there are serious limitations in creating substantial changes in the relationships between States and indigenous peoples. There is an urgent need to establish, strengthen and nurture opportunities for dialogue between these main actors. Through its unique mandate, and its emphasis on
technical cooperation, the ILO is well-positioned to play a leading role in such efforts within the UN System to mediate from an objective and impartial position.

What we would like to emphasise here, based both on our evaluation of this particular project and on our own and others’ subsequent research, is the crucial importance of the kind of technical support that the ILO was providing through PRO169, and that is described in the 2015 strategy – both for States and for indigenous organisations. In the countries that were reviewed for the evaluation of the Spanish-funded project, some countries have ratified (or moved towards it), and others indicate that they are opening up to that possibility. In many countries, key actors directly attribute their heightened awareness and capacity in indigenous issues to ILO workshops and other activities. Publications on topics central to the application of the C169 provide important information to governments, indigenous peoples organisations, and their support organisations in civil society, and responded to an important need for unbiased information.

Other advances are harder to measure, both because they are difficult to quantify and because the ILO activities sought to promote processes already underway within countries and regions. These less visible activities are central to the overall promotion of indigenous rights, especially when they provide openings through which indigenous peoples’ concerns can be articulated and addressed. In particular, we have emphasised the opening up of spaces for dialogue around indigenous rights as one of the less visible and harder to measure – but very important – advances that the PRO169 activities had made. It is critical that these efforts not be overshadowed by high-profile campaigns and by projects with easily identifiable and measurable goals.

It is the attention to technical support and capacity building – including the less visible aspects – in combination with standard setting and supervision that gives the ILO the potential to be highly effective as a human rights institution. As the ILO continues to implement its strategy on indigenous peoples, these lessons from the PRO169 activities should serve as a guide. In particular, core resources devoted to these technical cooperation activities should be clearly earmarked and expanded, and core staff with responsibility for indigenous issues should be in place, to allow for the continuity of local and international expertise, activities, networks, and key dialogues, as described in this chapter. When these important aspects of technical support are dependent upon external funding and vulnerable to economic and political vagaries, advances that have been made in indigenous peoples’ rights can easily slip away in the face of enormous global pressure by more powerful institutions and actors. It is exactly this kind of vulnerability that C169 is meant to safeguard against.

Notes

2. The other was the Interregional Programme to Support Self-Reliance of Indigenous and Tribal Peoples through Cooperatives and Self-Help Organizations (INDISCO), also launched in 1993 with the objective of contributing to ‘the improvement of the socio-economic conditions of indigenous and tribal peoples through demonstrative pilot projects and dissemination of best practices for policy improvement’. (ILO 2003, 87)


7. Ibid.


13. It must be emphasised that indigenous peoples are not necessarily in principle against extractive industries; there are many cases of their active engagement in mining or other extractive activities, or willingness to negotiate ways in which they can take place, while securing their long-term social, cultural and environmental conditions to sustained livelihoods; in fact research suggests that in situations where the conditions to peoples livelihoods are not endangered, people are more likely to welcome extraction of resources (Arellano–Yanguas 2012).


20. **Burning platform** is a term commonly used in change management literature to indicate that a situation has evolved to such a state that actors will be more willing to engage, and seek new solutions (Kotter 1996). Burning platforms are crises that can be either natural or engineered to force change.


22. Ley No. 445, Ley del Régimen de Propiedad Comunal de los Pueblos Indígenas y Comunidades Étnicas de las Regiones Autonomas de la Costa Atlántica y de los Ríos, Bocay, Coco, Índio y Maíz.

23. This information came from interviews with the Coordinadora Nacional De Pueblos Indígenas De Panamá (COONAPIP), and Forests of the World advisor H. López; Kronik and Hays, *Evaluación Externa e Independiente del programa global de apoyo de la OIT ‘Promoción y aplicación de los derechos de los pueblos indígenas’* [Promoting and Implementing the Rights of indigenous peoples – external and independent global evaluation for the ILO Programme PRO169].


27. Ibid.

28. See Larsen 2016 for further discussion on this committee and its recommendations.

29. See, for example, the ILO Report III (1A) – Report of the Committee of Experts on the Application of Conventions and Recommendations (ILO 2010) and the 2012 report in which ‘... The Committee recalls that the Conference Committee, at its 2010 session, welcomed the adoption by the Congress of the Republic of the Act concerning prior consultation and expressed its confidence that the Act would be promulgated by the President in the very near future. However, the Committee noted at its last meeting that the President had not promulgated the Act... In this regard, the Committee notes with satisfaction the adoption by the Congress of the Republic on 23 August 2011 of the Act regulating the right of indigenous and original peoples to prior consultation as recognized by ILO Convention No. 169, which was promulgated by the President of the Nation on 7 September 2011. Under section 1, the new Act must be interpreted in conformity with the Convention. Noting that the aforementioned Act requires the adoption of implementing regulations within a period of 180 days, the Committee requests the Government to take the necessary steps to ensure that any regulations adopted take full account of the provisions of the Convention’. (ILO 2012, 995)

30. Interview with Brigitte Feiring, the Chief Technical Adviser of the PRO169 program during the initialisation of the Spanish project; see also Gilbert this volume.


32. These include the Ovahimba, Ovatue, Ovatjimba, and Ovazemba, and some Nama and Damara groups (see Hays 2019).


35. Ibid., 13.


40. In March 2015, the Division for San Development was renamed the Division for Marginalized Communities and moved to the Office of the Vice President.

41. See Hays, 2019, for a description of the use and implications of the terms indigenous and marginalized in Namibia.


43. Feiring and others, *United Nations and Indigenous Peoples in Developing Countries*, 57.


47. See also Gilbert, this volume.


51. Ibid.

52. Director of the ILO Century Project 2009–2011.


55. Feiring and others, *United Nations and Indigenous Peoples in Developing Countries*.

56. For example, the 2010 ILO *Report of the Committee of Experts on the Application of Conventions and Recommendations* describes several problematic situations in ratifying countries, including ‘serious problems in relation to consultation, participation and oil exploitation’ especially for the Sarayacu community in Ecuador (767); a ‘state of emergency’ in Guatemala when a mining project was implemented by force despite rejection of the proposal by Sactepequez community in Guatemala (768) and ‘persistent problems in applying the Convention in a number of areas’ in Peru (781), among other concerns. https://www.ilo.org/public/libdoc/ilo/P/09661/09661(2010-99-1A).pdf

57. From Kronik and Hays *Promoting and Implementing the Rights of indigenous peoples*.

58. This department is responsible for promoting equality and respect for diversity in the world of work http://www.ilo.org/gender/lang--en/index.htm

59. Senior Specialist on Equality and Non-Discrimination at the ILOs Department on Gender Equality and Diversity.


63. ILO, Indigenous Peoples’ Rights for Inclusive and Sustainable Development, 1.
64. Ibid., 6.

Disclosure statement

No potential conflict of interest was reported by the authors.

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