

# Tribal Laws in India and Tribal Conventions on Rights of Indigenous People Worldwide: A Critical Analysis

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**Abstract:** *India's tribal population reflects wide cultural diversity, yet a shared experience of marginalization shapes their relationship with the State and mainstream society. The constitutional framework, particularly the Fifth and Sixth Schedules, attempts to balance autonomy with integration, though the outcomes vary sharply across regions. While north eastern communities enjoy a degree of self-governance, tribal groups in peninsular India often remain under administrative control, with limited authority over land, resources, and customary systems. Legislative measures such as the Panchayat Extension to Scheduled Areas Act sought to deepen local participation, yet their implementation has been uneven and, at times, counterproductive. In many areas, traditional governance structures have been weakened rather than supported, leading to declining participation and growing dissatisfaction. Resource extraction, displacement, and administrative inertia have further intensified tensions, prompting resistance movements and renewed demands for recognition of rights. At the same time, India's stance on international frameworks concerning indigenous rights reveals a complex position, where domestic protections exist but global definitions and standards are contested. The broader global context highlights similar struggles over land, identity, and collective rights, underlining the need for meaningful consultation, respect for customary practices, and equitable governance approaches that align development with dignity.*

**Keywords:** tribal rights, indigenous communities, self governance, land and resources, customary law

India's population includes nearly one hundred million tribal people. These numbers are matched only by the remarkable diversity of India's tribes. The two main regions of tribal settlement are the country's north-eastern states bordering China and Burma, and the highlands and plains of its central and southern regions. The latter is home to more than 80 per cent of the tribes, which differ from the north-eastern tribes in ethnicity and in having experienced greater "intrusion of the Indian mainstream and of the pan-Indian model of the state, society, economy and culture." There are also differences in the extent to which the tribes interact with non-tribal communities. While the north-eastern tribes are usually isolated communities, the tribes in peninsular India may at times coexist with non-tribal people. Despite some regional variation, the tribes share many traits, including living "in relative geographical isolation," and being "relatively more homogeny" and "more self-contained than the non-tribal social groups." Consequently, several tensions (both perceptible and obscure) pervade relations between tribes and non-tribes, on the one hand, and the tribes and the State, on the other. The conventional, and largely accepted, solution is to balance the dichotomy between assimilation of tribal peoples and their independent identity, and delineate the contours of a national policy that would allow them to preserve their way of life without compromising development.

Although relatively simple to capture as a concept, India has struggled to maintain the balance in practice. The most common problems relate to recognizing that the tribes have a right to autonomy and not merely decentralized administration; that they have a right to seek justice within their own traditional or customary laws; and that they have a right to own and exploit the natural resources in their habitat. These issues are addressed in the Constitution of India and through tribal-people-specific statutes, but there are considerable differences in the way the north eastern and peninsular tribes are treated in the Indian legal system. The

distinction in the law is based on the two criteria that had guided the colonial British Indian government in determining the degree of self-government that the tribes would exercise: (a) whether the tribe had the ability to manage its own affairs, and (b) whether the tribal region in question had a significant non-tribal population. Judged by these two criteria, the north-eastern tribes—who are also isolated but seen to be more 'socially advanced'—have been given considerable autonomy under Constitution, while the tribes in the rest of the country have been placed under the aegis of provincial governors. This arrangement has been codified in the Constitution's Fifth Schedule for tribes in peninsular India, and the Sixth Schedule for the north eastern tribes. The separate systems were approved by the Constituent Assembly formed at the time of independence after receiving recommendations that the distinct 'community structures' and 'attitudes' of the tribes in the two regions could not be treated in a common law. Though an overwhelming majority of India's tribal people inhabit the fifth schedule areas, they were only recently introduced to decentralization when the Indian Parliament legislated the Panchayat (Extension to Scheduled Areas) Act, 1996 (or PESA) exclusively for these areas. PESA mandated the states to devolve certain political, administrative and fiscal powers to local governments elected by the communities (whether tribal or non-tribal). PESA did not amend the Fifth Schedule, however. Instead, it sought to secure the participation of the tribal communities through limited self government, expecting this arrangement to be better suited to their 'level of advancement'. After a decade, it is apparent that PESA is clearly not achieving that objective. On the contrary, blatant violation of tribal interests and the reluctance (in some cases, sheer procrastination) of the state administrations to cede authority have often compelled tribes in the Fifth Schedule areas to reassert their identity and rights violently. Yet, there has never been a serious debate about alternative schemes for governing the tribal regions in peninsular India, even though various

developments in the past few years—the creation of two new states, Jharkhand and Chhattisgarh, in 2000 through tribal political movements, the soon-to-be introduced revision of the National Tribal Policy, and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act passed in December 2006, which grants tribes some measure of ownership in forest lands and produce for the first time—emphasize that tribal rights are increasingly figuring as a prominent national concern.

### **A Review of PESA: Tribal Laws and the Impairment of Tribal Rights in a Decentralized Government**

Even though PESA is projected as legislation transforming tribal representation in Fifth Schedule areas, the tribes feel as much “culturally deprived and economically robbed” as under colonial rule. Neither PESA in the last decade, nor the Fifth Schedule before it, has helped the tribal communities “acquire the status and dignity of viable and responsive people’s bodies,” as Parliament had intended. Tribal local governments are often ignored in development plans and the benefits of any actual development “rarely percolate down to the local tribes,” which are “subordinated to outsiders, both economically and culturally.” PESA and the Fifth Schedule have also not prevented large corporations from gaining “control over the natural resources which constituted the life-support systems of the tribal communities;” neither have they made the tribes prosperous from the mineral-rich land on which they live. In fact, the tribes have “gradually lost control over community resources such as forests” to both settlers and the State; and one author would go so far as to equate non-tribal acquisitions with tribal displacement. Deceit and the active connivance of state employees with non-tribal communities is another debilitating factor reversing, in this case, the benefits of land reform legislation. Shankar’s study of tribal lands in the northern state of Uttar Pradesh revealed a nexus between traditionally influential nontribal landowners and corrupt government officials. The latter exercised their discretionary powers to favour non-tribes by transferring lands over which tribal communities may have had a valid claim. Even in a tribal majority state like Jharkhand in the north, the tribes are the worst affected in the population since the state government’s mining operations and hydroelectric power projects exploit natural resources in the resource-rich tribal areas, thus making the tribes “outsiders in their own land.” Faced with this onslaught, many tribes have resisted settlers, the government and private enterprises, and sought to reassert their identity. For instance, in the Bengal region The Kamatapur tribal movement has cited neglect, exploitation, and discrimination, and demanded a separate state. Tribes in the neighbouring state of Orissa have demanded a prohibition on private consortiums that intend to mine bauxite from one of the most richly endowed regions in India. Similarly, in the south, Kerala’s tribal population has recently begun to defend its rights by banding together in various political groups at the state and local community levels in order to compel the administration to review land alienation, poverty, and exploitation by private enterprises. It is far too easy to dismiss these incidents as mere consequences of “misplaced development strategies” and lack of interest among state administrations. The critics of tribal governance in India see the dangers in an extremely narrow compass, criticizing provisions in PESA as

“impracticable” or the states as legislatively ignorant. In sum, they believe that good civil administration alone will assuage tribal woes. To begin with, PESA only marginally altered the power balance between state governments and the tribes because of ineffectual participation by the former, and the “general tendency at the state level to monopolize power rather than share power with people at large.” This apathetic attitude has manifested itself in two forms. First, the majority of the states with tribal populations procrastinated in their decentralization programs. Although all states with Scheduled Areas have now enforced PESA, their past dilatory performance has led to the risk of delays in future amendments necessary to reflect changed circumstances. Second, when they did legislate, the states either ignored tribal “customary law, social and religious practices and traditional management practices of community resources” or enacted incomplete laws.

### **The Tribal Struggle to Cope with Imposed Laws**

Contrary to PESA’s guarantees that state laws would respect tribal customs and traditions, the Act has debased the tribal traditions of self-governance. The propensity to violate tribal norms is not only a product of sub national apathy, but also the outcome of a statutory scheme that compels the tribes to adopt non-tribal concepts. By promoting the system of local government prescribed for non-tribal communities in Part IX of the Constitution, the Indian Parliament has instantly abolished centuries-old systems of Indigenous governance.

The abrupt shift from traditional institutions to alien concepts of elected representatives and Panchayats has resulted in “very low” tribal participation and an underutilization of the institutions. Our country is home to the largest population of indigenous peoples of any country in the world. Roughly a quarter of the world’s indigenous population—around 80 million people—are scattered across India, their numbers a staggering diversity of ethnicities, cultures and socioeconomic situations. They range from some of the last uncontacted indigenous communities in the world, like the Sentinelese of the Andamans, to some of the largest, such as the Gonds and Santhals of central India. They include not only communities who live under conditions of extreme destitution, but also communities with social indicators well above the national average. But across circumstances and areas, like other indigenous communities around the world, India’s indigenous peoples do share one characteristic—social, political and economic marginalisation.

In recognition of this fact and reflecting more than a century and a half of continuous struggles by indigenous people, India has a panoply of laws, policies and Constitutional provisions aimed at protecting the rights of such communities. Yet India is also distinguished by the extreme reluctance of the government to acknowledge or accept the international framework for such protections, embodied primarily in International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples, 1989 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007. While India is a signatory to ILO Convention No. 107 on Indigenous and Tribal Populations (the predecessor to Convention 169) and voted in favour of the UNDRIP, it has adamantly insisted

that its own indigenous peoples cannot claim status or protection under these laws. The government rejects the very term 'indigenous peoples', insisting that all Indians are indigenous, and is particularly hostile to any reference to the rights of indigenous people to autonomy, self-governance or self-determination. This is despite the fact that India's own laws provide for varying degrees of such protection – in some cases, far reaching – to certain communities.

The Indian policy and legal framework on indigenous peoples' rights through the lens, values the spirit of international law. Part I of the report describes the social and political situation of indigenous communities in India, while Part II examines the policy and legal framework on specific areas of indigenous peoples' rights. The report is primarily focused on the extent to which the Indian political and legal situation conforms to the principles of equity, self-governance and justice that underlie the international instruments. We find that on all three fronts, India falls far short of international standards on indigenous peoples' rights. The seemingly impressive range of legal and policy instruments that exists in Indian law for indigenous peoples' rights is vitiated by one fundamental flaw – the Indian state's reluctance to respect the political rights of indigenous peoples and the subsequent widespread violations of these.

#### **Who Are Indigenous People And What Makes Them Different?**

There does not seem to be one definitive definition of indigenous people, but generally indigenous people are those that have historically belonged to a particular region or country, before its colonization or transformation into a nation state, and may have different- often unique- cultural, linguistic, traditional, and other characteristics to those of the dominant culture of that region or state. (For more details, see this fact sheet from the United Nations Permanent Forum on Indigenous Issues (UNPFII).)

In some parts of the world, they are very few indigenous people, while in other parts, they may number into the hundreds of thousands, even millions. Over the years, many groups of people have been wiped out, either by diseases of colonizing peoples, or through policies of extermination. Those indigenous societies that remain today are predominantly subsistence-based (i.e. farming or hunting for food for immediate use), and non-urbanized, sometimes nomadic. Some people have been critical of indigenous peoples' treatment of the environment, noting examples such as the deforestation of Easter Island or the disappearance of large animals from parts of America and Australia caused by native people.

However, others have argued that more generally, many indigenous people, for decades- even centuries- have accumulated important knowledge and traditions that allow them to work with nature rather than destroy it, because they are dependent on it and thus have a sense of interdependence.

In other parts of the world, such as India, Brazil, Thailand, and Malaysia, multinational companies have been accused of participating in "biopiracy" whereby biological resources used by communities openly for generations (decades,

centuries, or even millennia in some cases) have been patented away, leaving the local people unable to use their own local plants and other resources. For other indigenous people, logging, dam projects and other activities threaten ways of life, sometimes leading to conflict.

#### **The United Nations Permanent Forum on Indigenous Issues (UNPFII) notes:**

Indigenous peoples around the world have sought recognition of their identities, their ways of life and their right to traditional lands, territories and natural resources; yet throughout history, their rights have been violated. Indigenous peoples are arguably among the most disadvantaged and vulnerable groups of people in the world today. The international community now recognizes that special measures are required to protect the rights of the world's indigenous peoples. Indigenous people have often found their lands and cultures overridden by more dominant societies.

Many Europeans at that time saw native peoples from regions such as Africa, Asia and the Americas as "primitives," or "savages" to be dominated. This would help justify settlement and expansion into those lands, and even slavery. Without civilization these people could be regarded as inferior, and if seen as "non-people" then European colonialists would not be impeding on anyone else's territory. Instead, they would be settling "virgin territory" (sometimes "discovered") overcoming numerous challenges they would face with much courage. Under international law, tribal people, for example, do have some recognized rights. The two most important laws about tribal peoples are Conventions 107 and 169 under the International Labour Organization (ILO), part of the UN system.

These conventions obliges governments to identify the lands and protect these rights. It ensures recognition of tribal peoples' cultural and social practices, obliges governments to consult with tribal peoples about laws affecting them, guarantees respect for tribal peoples' customs, and calls for protection of their natural resources.

The struggle for such rights is still not over. Many governments routinely violate the rights of indigenous people. A slow process is, however, raising hope for a more comprehensive set of rights, although some major countries are still against some particular aspects.

#### **U.N. Draft on Declaration on the Rights of Indigenous Peoples.**

The Declaration emphasizes the right of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions and to pursue their development in accordance with their aspirations and needs.

Although it would not be legally binding if it were ever adopted by the General Assembly, indigenous communities around the world have pressed hard for this and have felt that the adoption of the declaration will help indigenous people in their efforts against discrimination, racism, oppression, marginalization and exploitation.

### Major Countries Opposed To Various Rights For Indigenous Peoples

The process to draft the aforementioned declaration moved very slowly, not because of some imagined slowness and inefficiencies of an over-sized bureaucracy, but because of concerns expressed by particular countries at some of the core provisions of the draft declaration, especially the right to self-determination of indigenous peoples and the control over natural resources existing on indigenous peoples' traditional lands.

Some historically and currently powerful countries have been opposed to various rights and provisions for indigenous peoples, because of the implications to their territory, or because it would tacitly recognize they have been involved in major injustices during periods of colonialism and imperialism. Giving such people's the ability to regain some lost land, for example, would be politically explosive.

Inter Press Service (IPS) notes, for example, that countries such as the United States, Australia, and New Zealand, have all been opposed to this declaration. These countries have noted in a joint statement that "No government can accept the notion of creating different classes of citizens."

Furthermore, as IPS also noted, the delegation claimed that the indigenous land claims ignore current reality "by appearing to require the recognition to lands now lawfully owned by other citizens."

The problem with the delegation's views are that they ignore historical reality. To say that "creating different classes of citizens" is objectionable does sound fair. However, in this case, different classes were created from the very beginning as indigenous people were cleared off their lands and either treated as second class citizens, or, not even considered to be citizens in the first place. Many of these laws then, were often made by a society that never recognized or accepted that such people had rights, and so the law only applied to the new dominant society, not the original people.

There are of course complications to this. For example, there is often a contentious debate about whether some European settlers colonized land that was not inhabited before, or were used by nomadic people, in which case European settlers could argue (from their perspective) that the land was not properly settled. Also, European settlers can also note that sometimes agreements were made with indigenous people to obtain certain lands, but it is also contentious as to whether all these agreements would have been made fairly, as some were made at gun point, while other agreements were achieved through deception and various forms of manipulation.

Survival International criticizes Britain and France, of being opposed to some aspects of rights for indigenous peoples, as well as the United States. These two countries, formerly commanding vast empires and colonies have also subjected native peoples to cruel denial of rights and oppression.

A key part of the declaration has been the "collective" right of indigenous peoples, for they are seen by many indigenous communities as "essential for the integrity, survival and

well-being of our distinct nations and communities. They are inseparably linked to our cultures, spirituality and worldviews. They are also critical to the exercise and enjoyment of the rights of indigenous individuals. A reason such countries may be opposed to collective rights is that it implies land and resource rights, whereas supporting only individual rights would not. Collective rights could therefore threaten access to valuable resources if they cannot be exploited, or if they are used for, and by, the indigenous communities.

As Survival International also notes, individual rights is sometimes an alien concept to some societies, and it can be easier to exploit individuals than a collective people.

Full collective rights over land and resources are essential for the survival of tribal peoples. The Yanomami of Amazonia, for example, live in large communal houses called yanos. The concept of 'individual ownership' of such a building is nonsensical. A tribe's right to decide, for example, whether a mining company should be allowed to operate on its land, also only makes sense as a collective right. The UK claims, however, that these vital collective rights should be individual rights 'exercised collectively.' In the USA, the infamous Dawes Act of 1887 demonstrated the danger of this approach. The Act turned communally-held Indian lands into individual plots; 90 million acres of Indian land were removed at a stroke, and the reservations were broken up.

As reported by IPS, some African countries who had previously supported the declaration this time raised concerns about the phrase "right to self-determination" because much of Africa is considered indigenous and they feared unwanted rebellions by some groups within their borders. Some indigenous leaders, disappointed by this, claimed it was pressure from US, Canada, Australia, New Zealand and others opposed to the declaration, that had lobbied for this position, behind the scenes.

### Customary Law- Backward or Relevant Justice Systems?

Many indigenous cultures having developed their own societal traditions and norms naturally have ways to deal with crimes. Various anthropologists and others have noted some interesting differences between some traditional systems of justice and modern law. Indigenous law consists of a series of unwritten oral principles that are abided by and socially accepted by a specific community. Although these norms may vary from one community to another, they are all based on the idea of recommending appropriate behaviour rather than on prohibition.

Customary indigenous law aims to restore the harmony and balance in a community; it is essentially collective in nature, whereas the Western judicial system is based on individualism. Customary law is based on the principle that the wrongdoer must compensate his or her victim for the harm that has been done so that he or she can be reinserted into the community, whereas the Western system seeks punishment. In various countries in Africa, traditional systems of justice have often helped people come to term with conflict as part of a rebuilding process. Truth and

reconciliation commissions, such as the well-known one in South Africa have brought victims and perpetrators together.

Truth commissions attempt to establish what happened, why, by whom, and may even include provisions for amnesty, forgiveness, or appropriate justice, all in the hope that “never again” should such gross human rights abuses occur. Victims get the chance to be heard and perpetrators have the opportunity to reintegrate back into society without the fear of backlash. In Africa, there have been commissions in South Africa, Sierra Leone, Rwanda, the Central African Republic, Ghana, Nigeria, and Kenya. Liberia and the Democratic Republic of Congo have also hinted at the prospect of truth commissions.

These systems are not perfect, as sometimes war criminals may get off lighter than expected.

### **Indigenous Peoples’ Struggle around The World**

The International Work Group for Indigenous Affairs (IWGIA) has for years worked on these issues. Their world reports detail issues and struggles for indigenous people around the world. Human Rights are universal, and civil, political, economic, social and cultural rights belong to all human beings, including indigenous people. Every indigenous woman, man, youth and child is entitled to the realization of all human rights and fundamental freedoms on equal terms with others in society, without discrimination of any kind. Indigenous people and peoples also enjoy certain human rights specifically linked to their identity, including rights to maintain and enjoy their culture and language free from discrimination, rights of access to ancestral lands and land relied upon for subsistence, rights to decide their own patterns of development, and rights to autonomy over indigenous affairs.

### **The Human Rights at Issue**

The human rights of indigenous people and peoples are explicitly set out in the ILO Indigenous and Tribal Peoples Convention (No. 169), the Universal Declaration of Human Rights, the International Covenants, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, and other widely adhered to international human rights treaties and Declarations. They include the following indivisible, interdependent and interrelated human rights.

The human right to freedom from any distinction, exclusion, restriction or preference based on their indigenous status which has the purpose or effect of impairing the enjoyment of human rights and fundamental freedoms that are:

The human right to freedom from discrimination in access to housing, education, social services, health care or employment.

The human right to equal recognition as a person before the law, to equality before the courts, and to equal protection of the law.

The human right of indigenous peoples to exist.

The human right to freedom from genocide and ‘ethnic cleansing’.

The human right to livelihood and work which is freely chosen, and to subsistence and access to land to which they have traditionally had access and relied upon for subsistence.

The human right to maintain their distinctive spiritual and material relationship with the lands, to own land individually and in community with others, and to transfer land rights according to their own customs.

The human right to use, manage and safeguard the natural resources pertaining to their lands.

The human right to freedom of association.

The human right to enjoy and develop their own culture and language.

The human right to establish and maintain their own schools and other training and educational institutions, and to teach and receive training in their own languages.

The human right to full and effective participation in shaping decisions and policies concerning their group and community, at the local, national and international levels, including policies relating to economic and social development.

The human right to self-determination and autonomy over all matters internal to the group, including in the fields of culture, religion, and local government.

In recognition of the fact that indigenous and tribal peoples are likely to be discriminated against in many areas, the first general, fundamental principle of The Tribal People’s Convention No. 169 is non-discrimination. Article 3 of the Convention states that indigenous peoples have the right to enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. In Article 4, the Convention also guarantees enjoyment of the general rights of citizenship without discrimination. Another principle in the Convention concerns the application of all its provisions to male and female indigenous persons without discrimination (Article 3). Article 20 provides for prevention of discrimination against indigenous workers.

In response to the vulnerable situation of indigenous and tribal peoples, Article 4 of the Convention calls for special measures to be adopted to safeguard the persons, institutions, property, labour, cultures and environment of these peoples. In addition, the Convention stipulates that these special measures should not go against the free wishes of indigenous peoples.

Recognition of the cultural and other specificities of indigenous and tribal peoples and consultation of the Tribal People’s convention No. 169

Indigenous and tribal peoples’ cultures and identities form an integral part of their lives. Their ways of life, customs and traditions, institutions, customary laws, forms of land use and forms of social organization are usually different

from those of the dominant population. The Convention recognizes these differences, and aims to ensure that they are protected and taken into account when any measures are being undertaken that are likely to have an impact on these peoples. The spirit of consultation and participation constitutes the cornerstone of Convention No. 169 on which all its provisions are based. The Convention requires that indigenous and tribal peoples are consulted on issues that affect them. It also requires that these peoples are able to engage in free, prior and informed participation in policy and development processes that affect them. The principles of consultation and participation in Convention No. 169 relate not only to specific development projects, but also to broader questions of governance, and the participation of indigenous and tribal peoples in public life.

In Article 6, the Convention provides a guideline as to how consultation with indigenous and tribal peoples should be conducted:

Consultation with indigenous peoples should be undertaken through appropriate procedures, in good faith, and through the representative institutions of these peoples;

The peoples involved should have the opportunity to participate freely at all levels in the formulation, implementation and evaluation of measures and programmes that affect them directly;

Another important component of the concept of consultation is that of representativity. If an appropriate consultation process is not developed with the indigenous and tribal institutions or organizations that are truly representative of the peoples in question, then the resulting consultations would not comply with the requirements of the Convention.

The Convention also specifies individual circumstances in which consultation with indigenous and tribal peoples is an obligation.

Consultation should be undertaken in good faith, with the objective of achieving agreement. The parties involved should seek to establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect and full participation. Effective consultation is consultation in which those concerned have an opportunity to influence the decision taken. This means real and timely consultation. For example, a simple information meeting does not constitute real consultation, nor does a meeting that is conducted in a language that the indigenous peoples present do not understand.

The challenges of implementing an appropriate process of consultation with indigenous peoples have been the subject of a number of observations of the ILO's Committee of Experts, as well as other supervisory procedures of the ILO, which the ILO has now compiled in a Digest. Adequate consultation is fundamental for achieving a constructive dialogue and for the effective resolution of the various challenges associated with the implementation of the rights of indigenous and tribal peoples.

### **Implementation of Convention No. 169**

Since its adoption, Convention No. 169 has gained recognition well beyond the number of actual ratifications. Its provisions have influenced numerous policy documents, debates and legal decisions at the regional and international levels, as well as national legislation and policies.

The Provisions of Convention No. 169 are compatible with the provisions of the United Nations Declaration on the Rights of Indigenous Peoples, and the adoption of the Declaration illustrates the broader acceptance of the principles of Convention No. 169 well beyond the number of ratifications.

The Convention stipulates that governments shall have the responsibility for developing co-ordinated and systematic action to protect the rights of indigenous and tribal peoples (Article 3) and ensure that appropriate mechanisms and means are available (Article 33). With its focus on consultation and participation, Convention No. 169 is a tool to stimulate dialogue between governments and indigenous and tribal peoples and has been used as a tool for development processes, as well as conflict prevention and resolutions.

Indigenous peoples around the world have sought recognition of their identities, their ways of life and their right to traditional lands, territories and natural resources; yet throughout history, their rights have been violated. Indigenous peoples are arguably among the most disadvantaged and vulnerable groups of people in the world today. The international community now recognizes that special measures are required to protect the rights of the world's indigenous peoples.