LAW No. 234

APPROVING CONVENTION No. 169 CONCERNING INDIGENOUS AND TRIBAL PEOPLES IN INDEPENDENT COUNTRIES, ADOPTED DURING THE 76th INTERNATIONAL LABOUR CONFERENCE, HELD IN GENEVA ON 7 June 1989

THE NATIONAL CONGRESS APPROVES WITH THE FORCE OF LAW

LAW

Article 1.- Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, adopted during the 76th International Labour Conference, held in Geneva on 7 June 1989, is hereby approved, the text of which is as follows:

CONVENTION No. 169

CONVENTION ON INDIGENOUS AND TRIBAL PEOPLES

IN INDEPENDENT COUNTRIES

The General Conference of the International Labour Organisation:

Convened in Geneva by the Governing Body of the International Labour Office, and assembled in that city on 7 June 1989, at its 76th session;

Noting the international standards set forth in the Convention and Recommendation concerning Indigenous and Tribal Populations, 1957;

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the numerous international instruments on the prevention of discrimination;

Considering that developments in international law since 1957 and changes in the situation of indigenous and tribal peoples in all regions of the world make it advisable to adopt new international standards in this field, in order to eliminate the orientation towards assimilation in the previous standards;

Recognising the aspirations of these peoples to take control of their own institutions and ways of life and their economic development, and to maintain and strengthen their identities, languages and religions within the framework of the States in which they live;

Noting that in many parts of the world these peoples are unable to enjoy fundamental human rights to the same extent as the rest of the population of the States in which they live and that their laws, values, customs and perspectives have often been eroded;

Recalling the particular contribution of indigenous and tribal peoples to cultural diversity, to the social and ecological harmony of humankind and to international cooperation and understanding;

Noting that the following provisions have been established in collaboration with the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation, and the World Health Organisation, as well as the Inter-American Indian Institute, at the appropriate levels and in their respective fields, and that the intention is to continue this collaboration in order to achieve the objectives set out in the present Declaration. Science and Culture and the World Health Organisation, as well as the Inter-American Indian Institute, at the appropriate levels and in their respective fields, and that it is intended to continue this collaboration in order to promote and ensure the implementation of these provisions;

Having decided to adopt various proposals on the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the meeting; and,

Having decided that these proposals shall take the form of an international convention revising the Indigenous and Tribal Populations Convention, 1957, adopts, on the twenty-seventh day of June, one thousand nine hundred and eighty-nine, the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989:

PART I. General Policy

Article 1

1. This Convention applies:

(a) To tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sectors of the national community and who are governed wholly or partly by their own customs or traditions or by special legislation; and

(b) To peoples in independent countries who are considered indigenous because they are descended from populations inhabiting the country or a geographical region to which the country belongs at the time of conquest or colonisation or the establishment of present-day state borders and who, whatever their legal status, retain all or part of their own social, economic, cultural and political institutions.

2. Awareness of their indigenous or tribal identity shall be considered a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term "peoples" in this Convention shall not be interpreted as having any implication with regard to the rights that may be conferred on that term in international law.

Article 2

1. Governments shall assume responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of those peoples and to ensure respect for their integrity.

2.- This action shall include measures:

a) To ensure that members of these peoples enjoy, on an equal footing, the rights and opportunities that national legislation grants to other members of the population;

b) Promoting the full effectiveness of the social, economic and cultural rights of these peoples, respecting their social and cultural identity, their customs and traditions, and their institutions; and

c) That assist members of the peoples concerned in eliminating any socio-economic disparities that may exist between indigenous members and other members of the national community, in a manner consistent with their aspirations and ways of life.

Article 3

1. Indigenous and tribal peoples shall enjoy fully their human rights and fundamental freedoms, without hindrance or discrimination. The provisions of this Convention shall apply without discrimination to men and women of these peoples.

2. No form of force or coercion that violates the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention, shall be used.

Article 4

1. Special measures shall be taken to safeguard the persons, institutions, property, work, cultures and environment of the peoples concerned.

2. Such special measures shall not be contrary to the freely expressed wishes of the peoples concerned.

3. The enjoyment without discrimination of general citizenship rights shall not be impaired as a result of such special measures.

Article 5

In applying the provisions of this Convention:

(a) The social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due consideration shall be given to the nature of the problems they face both collectively and individually;

(b) The integrity of the values, practices and institutions of these peoples shall be respected; and

(c) Measures shall be taken, with the participation and cooperation of the peoples concerned, to alleviate the difficulties they experience in coping with new living and working conditions.

Article 6

1. In applying the provisions of this Convention, governments shall:

a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever legislative or administrative measures are envisaged that may affect them directly;

b) Establish the means by which the peoples concerned can participate freely, at least to the same extent as other sectors of the population, and at all levels in the adoption of decisions in elective institutions and administrative and other bodies responsible for policies and programmes that concern them; and

c) Establish the means for the full development of the institutions and initiatives of these peoples, and in appropriate cases provide the necessary resources for this purpose.

2. Consultations carried out in application of this Convention shall be conducted in good faith and in a manner appropriate to the circumstances, with the aim of reaching agreement or consent on the proposed measures.

Article 7

1. The peoples concerned shall have the right to determine their own priorities for development as regards the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. Furthermore, these peoples shall participate in the formulation, implementation and evaluation of national and regional development plans and programmes that may affect them directly.

2. The improvement of the living and working conditions and the level of health and education of the peoples concerned, with their participation and cooperation, shall be a priority in the overall economic development plans of the regions where

they live. Special development projects for these regions shall also be designed to promote such improvement.

3. Governments shall ensure that, where appropriate, studies are carried out in cooperation with the peoples concerned to assess the social, spiritual, cultural and environmental impact that planned development activities may have on those peoples. The results of these studies shall be considered as fundamental criteria for the implementation of the aforementioned activities.

4. Governments shall take measures, in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

Article 8

1. In applying national legislation to the peoples concerned, due consideration shall be given to their customs or customary law.

2. These peoples shall have the right to retain their own customs and institutions, provided that these are not incompatible with the fundamental rights defined by the national legal system or with internationally recognised human rights. Where necessary, procedures shall be established to resolve conflicts that may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this article shall not prevent members of such peoples from exercising the rights recognised for all citizens of the country and from assuming the corresponding obligations.

Article 9

1. To the extent that it is compatible with the national legal system and internationally recognised human rights, the methods traditionally used by the peoples concerned to punish offences committed by their members shall be respected.

2. The authorities and courts called upon to rule on criminal matters shall take into account the customs of such peoples in this regard.

Article 10

1. When imposing criminal penalties provided for by general legislation on members of such peoples, their economic, social and cultural characteristics shall be taken into account.

2. Preference shall be given to types of punishment other than imprisonment.

Article 11

The law shall prohibit and penalise the imposition on members of the peoples concerned of compulsory personal services of

any kind, whether remunerated or not, except in cases provided for by law for all citizens.

Article 12

The peoples concerned shall have protection against the violation of their rights and shall be able to initiate legal proceedings, either personally or through their representative bodies, to ensure effective respect for such rights. Measures shall be taken to ensure that members of these peoples can understand and make themselves understood in legal proceedings, providing them, if necessary, with interpreters or other effective means.

PART II. Land

Article 13

1. In applying the provisions of this part of the Convention, governments shall respect the special importance to the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both, as the case may be, which they occupy or otherwise use, and in particular the collective aspects of that relationship.

2. The use of the term "lands" in Articles 15 and 16 shall include the concept of territories, which covers the entire habitat of the regions that the peoples concerned occupy or otherwise use.

Article 14

1. The peoples concerned shall be recognised as having the right to ownership and possession of the lands they traditionally occupy.

Furthermore, in appropriate cases, measures shall be taken to safeguard the right of the peoples concerned to use lands that are not exclusively occupied by them but to which they have traditionally had access for their traditional and subsistence activities. In this regard, particular attention shall be paid to the situation of nomadic peoples and shifting cultivators.

2. Governments shall take the necessary measures to determine the lands traditionally occupied by the peoples concerned and to ensure the effective protection of their rights of ownership and possession.

3. Appropriate procedures shall be established within the national legal system to resolve land claims made by the peoples concerned.

Article 15

1. The rights of the peoples concerned to the natural resources on their lands shall be specially protected. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. Where the State owns the minerals or subsoil resources, or has rights over other resources existing on the lands, governments shall establish or maintain procedures to consult with the peoples concerned to determine whether and to what extent the interests of those peoples would be affected before undertaking or authorising any programme of exploration or exploitation of the resources existing on their lands. The peoples concerned shall, wherever possible, share in the benefits of such activities and receive fair compensation for any damage they may suffer as a result of such activities.

Article 16

1. Subject to the provisions of the following paragraphs of this article, the peoples concerned shall not be removed from the lands they occupy.

2. Where, in exceptional circumstances, the removal and resettlement of such peoples is deemed necessary, it shall only be undertaken with their free, prior and informed consent. Where their consent cannot be obtained, removal and resettlement shall only take place after appropriate procedures established by national law, including public inquiries where appropriate, in which the peoples concerned have the opportunity to be effectively represented.

3. Whenever possible, these peoples shall have the right to return to their traditional lands once the reasons for their transfer and relocation no longer exist.

4. Where return is not possible, as determined by agreement or, in the absence of such agreements, through appropriate procedures, these peoples shall, in all possible cases, be provided with land of at least equal quality and legal status to that which they previously occupied, enabling them to meet their needs and ensure their future development. Where the peoples concerned prefer to receive compensation in cash or in kind, such compensation shall be granted to them, with appropriate guarantees.

5. Persons who have been transferred and resettled shall be fully compensated for any loss or damage suffered as a result of their displacement.

Article 17

1. The modalities of transmission of land rights among members of the peoples concerned, as established by those peoples, shall be respected.

2. The peoples concerned shall be consulted whenever their capacity to dispose of their lands or otherwise transfer their rights over these lands outside their community is considered.

3. Persons outside these peoples shall be prevented from taking advantage of the customs of these peoples or their members' lack of knowledge of the law to assume ownership, possession or use of the lands belonging to them.

Article 18

The law shall provide for appropriate penalties for any unauthorised intrusion on the lands of the peoples concerned or any unauthorised use of those lands by persons outside those peoples, and governments shall take measures to prevent such infringements.

Article 19

National agricultural programmes shall guarantee the peoples concerned conditions equivalent to those enjoyed by other sectors of the population, for the purposes of:

a) The allocation of additional land to these peoples when the land they have is insufficient to guarantee them the elements of a normal existence or to cope with their possible numerical growth; and,

b) The provision of the necessary means for the development of the lands already owned by such peoples.

PART III. Recruitment and conditions of employment

Article 20

1. Governments shall, within the framework of their national legislation and in cooperation with the peoples concerned, take special measures to ensure that workers belonging to these peoples are effectively protected in matters of recruitment and conditions of employment, insofar as they are not effectively protected by the legislation applicable to workers in general.

2. Governments shall make every effort to avoid any discrimination between workers belonging to the peoples concerned and other workers, particularly with regard to:

(a) Access to employment, including skilled employment and promotion and advancement;

(b) Equal remuneration for work of equal value;

(c) Medical and social assistance, occupational safety and health, all social security benefits and other employment-related benefits, as well as housing; and

(d) The right of association, the right to engage freely in all trade union activities for lawful purposes, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall in particular ensure that:

a) Workers belonging to the peoples concerned, including seasonal, casual and migrant workers employed in agriculture or other activities, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other workers in these categories in the same sectors, and are fully informed of their rights under labour law and the remedies available to them;

(b) Workers belonging to these peoples are not subjected to working conditions that are hazardous to their health, in particular as a result of their exposure to pesticides or other toxic substances;

c) Workers belonging to these peoples are not subject to coercive recruitment systems, including all forms of debt bondage; and

d) Workers belonging to these peoples enjoy equal opportunities and treatment for men and women in employment and protection against sexual harassment.

4. Special attention shall be given to the establishment of adequate labour inspection services in regions wher r workers belonging to the peoples concerned are engaged in wage-earning activities, in order to ensure compliance with the provisions of this part of the Convention.

PART IV. Vocational training, crafts and rural industries

Article 21

Members of the peoples concerned shall have access to vocational training at least equal to that available to other citizens.

Article 22

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Where existing vocational training programmes of general application do not meet the special needs of the peoples concerned, governments shall ensure, with the participation of those peoples, that special training programmes and facilities are made available to them.

3. These special training programmes shall be based on the economic environment, social and cultural conditions and specific needs of the peoples concerned. Any studies in this regard shall be carried out in cooperation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where possible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

Article 23

1. Crafts, rural and community industries, and traditional and subsistence-related activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in maintaining their culture and economic self-sufficiency and development. With the participation of these peoples, and where appropriate, governments shall ensure that such activities are strengthened and promoted.

2. At the request of the peoples concerned, appropriate technical and financial assistance shall be provided to them, where possible, taking into account the traditional techniques and cultural characteristics of these peoples and the importance of sustained and equitable development.

PART V. Social security and health

Article 24

Social security schemes shall be progressively extended to the peoples concerned and applied to them without discrimination.

Article 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned or shall provide them with the means to organise and deliver such services under their own responsibility and control, so that they may enjoy the highest possible level of physical and mental health.

2. Health services shall be organised, as far as possible, at the community level. These services shall be planned and administered in cooperation with the peoples concerned and shall take into account their economic, geographical, social and cultural conditions, as well as their traditional methods of prevention, curative practices and medicines.

3. The health care system shall give preference to the training and employment of local community health personnel and shall focus on primary health care, while maintaining close links with other levels of health care.

4. The provision of such health services shall be coordinated with other social, economic and cultural measures taken in the country.

PART VI. Education and the media

Article 26

Measures shall be taken to ensure that members of the peoples concerned have access to education at all levels, at least on an equal footing with the rest of the national community.

Article 27

1. Education programmes and services for the peoples concerned shall be developed and implemented in cooperation with them in order to meet their particular needs and shall cover their history, knowledge and skills, value systems and all other social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these peoples and their participation in the formulation and implementation of education programmes, with a view to progressively transferring responsibility for the implementation of these programmes to these peoples, where appropriate.

3. Furthermore, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet the minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be made available for this purpose.

Article 28

1. Where feasible, children of the peoples concerned shall be taught to read and write in their own indigenous language or in the language most commonly spoken in the group to which they belong. Where this is not feasible, the competent authorities shall consult with these peoples with a view to adopting measures to achieve this objective.

2. Appropriate measures shall be taken to ensure that these peoples have the opportunity to become proficient in the national language or one of the official languages of the country.

3. Provisions shall be made to preserve the indigenous languages of the peoples concerned and to promote their development and use.

Article 29

One objective of the education of the children of the peoples concerned shall be to impart to them general knowledge and skills that will enable them to participate

fully and on an equal footing in the life of their own community and in that of the national community.

Article 30

1. Governments shall take measures in accordance with the traditions and cultures of the peoples concerned to make them aware of their rights and obligations, particularly with regard to work, economic opportunities, education and health issues, social services and the rights arising from this Convention.

2. To this end, written translations and the use of the mass media in the languages of these peoples shall be used, if necessary.

Article 31

Educational measures shall be taken in all sectors of the national community, and especially in those most directly in contact with the peoples concerned, in order to eliminate any prejudices they may have towards these

peoples. To this end, efforts shall be made to ensure that history books and other teaching materials provide a fair, accurate and instructive description of the societies and cultures of the peoples concerned.

PART VII. Cross-border contacts and cooperation

Article 32

Governments shall take appropriate measures, including through international agreements, to facilitate contacts and cooperation between indigenous and tribal peoples across frontiers, including activities in the economic, social, cultural, spiritual and environmental spheres.

PART VIII. Administration

Article 33

1. The governmental authority responsible for matters covered by this Convention shall ensure that appropriate institutions or other mechanisms exist to administer programmes affecting the peoples concerned, and that such institutions or mechanisms have the necessary means to carry out their functions effectively.

2. Such programmes shall include:

(a) The planning, coordination, implementation and evaluation, in cooperation with the peoples concerned, of the measures envisaged in this Convention;

(b) proposing legislative and other measures to the competent authorities and monitoring the implementation of the measures adopted in cooperation with the peoples concerned.

PART IX. General provisions

Article 34

The nature and scope of the measures to be taken to give effect to this Convention shall be determined with flexibility, taking into account the specific conditions of each country.

Article 35

The implementation of the provisions of this Convention shall not prejudice the rights and benefits guaranteed to the peoples concerned under other conventions and recommendations, international instruments, treaties, or national laws, awards, customs or agreements.

PART X. Final provisions

Article 36

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

Article 37

The formal ratifications of this Convention shall be communicated, for registration, to the Director-General of the International Labour Office.

Article 38

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered by the Director-General.

3. Thereafter, this Convention shall come into force for each Member twelve months after the date on which its ratification has been registered.

Article 39

1. Any Member which has ratified this Convention may denounce it at the expiry of a period of ten years from the date on which it first comes into force, by means of an instrument communicated to the Director-General of the International Labour Office for registration. The denunciation shall not take effect until one year after the date on which it has been registered.

2. Any Member which has ratified this Convention and which, within the year following the expiry of the ten-year period mentioned in the preceding paragraph, does not exercise the right of denunciation provided for in this Article shall be bound for another period of ten years and may thereafter denounce this Convention at the expiry of each ten-year period under the terms provided for in this Article.

Article 40

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of any ratifications, declarations and denunciations communicated to him by Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date on which this Convention will come into force.

Article 41

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration and in accordance with Article 102 of the Charter of the United Nations, full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the preceding Articles.

Article 42

Whenever it deems necessary, the Governing Body of the International Labour Office shall submit to the Conference a report on the application of the Convention and shall consider the advisability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 43

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, and unless the new Convention otherwise provides:

(a) The ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39, if the new revising Convention has come into force;

(b) From the date on which the new revising convention enters into force, this Convention shall cease to be open for ratification by Members.

2. This Convention shall in any case remain in force, in its present form and content, for those Members which have ratified it and do not ratify the revising convention.

Article 44

The English and French versions of the text of this Convention are equally authentic.

Article 2.- Communicate to the Executive Power.

Approved by the Honourable Chamber of Senators on the third of June of the year nineteen hundred and ninety-three and by the Honourable Chamber of Deputies, the Law being enacted on the twenty-fifth of June of the year nineteen hundred and ninety-three.