



Tasmanian Aboriginal Legal Service (“TALS”) Written Submission:
Inquiry into Australia’s Human Rights Framework
June 2023

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Recommendations

Recommendation 1: The inquiry should recommend that the Federal Government legislate an Australian Human Rights Act or Charter.

Recommendation 2: That an Australian Human Rights Act or Charter include the full list of rights proposed by the Australian Human Rights Commission, but also include extensive consultation with Aboriginal and Torres Strait Islander people in its drafting to ensure that all rights are included.

Recommendation 3: A Human Rights Act or Charter should provide a cause of action, a complaints pathway, and enforceable remedies in the case where breaches of human rights have occurred.

Introduction

Thank you for seeking submissions in relation to the need for an Australian Human Rights Act or Charter.

The Tasmanian Aboriginal Legal Service (TALS) is a member-based, independent, not-for-profit community legal centre that specialises in the provision of criminal, civil and family law legal information, advice and representation for Aboriginal and Torres Strait Islander peoples across Tasmania. We are an Aboriginal Community Controlled Organisation incorporated under the Office of the Registrar of Aboriginal Corporations.

In this submission, any reference to Aboriginal people is understood to also encompass Torres Strait Islander people.

TALS provides culturally safe, holistic and appropriate services that are inclusive and open to all Aboriginal Tasmanians. We understand that the most vulnerable people needing access to legal assistance are often also those who face the most difficulties asking for help, and we work hard to ensure everyone can access our services within and outside of traditional legal settings.

We also are an advocate for law reform and for justice, equality and human rights for all First Peoples in Tasmania. Our goal is to halve Aboriginal Tasmanians' rate of negative contact with the justice system in a decade.

What do we need?

It is TALS position that Australia should adopt a legislated Human Rights Act or Charter in order to:

- Help to prevent human rights violations from occurring and ensure that people have the power to take action and obtain justice if they do occur.
- Require governments and public servants to consider and respect people's human rights when creating new laws and policies and when delivering services.
- Create consistency in human rights across Australian jurisdictions.
- Facilitate all Australians' awareness of their human rights and freedoms, and communicate fundamental Australian values to all, by creating a single reference point.

We note that a legislated Act or Charter will benefit the whole Australian community. However, we will focus on the benefit to Aboriginal Australians, including Aboriginal people living with intersectional disadvantage (disability, LGBTI+, children and older people, people in remote and regional areas).

Why is it needed?

Australia currently does not adequately protect the human rights of First Nations Australians.

In Australia as a whole, the *Racial Discrimination Act 1975* and *Racial Hatred Act 1995* are manifestly not achieving the end of racial discrimination against Aboriginal people. We note, for example:

The 2017 report of the UN Special Rapporteur on the rights on Indigenous peoples, who found that the policies of the Australian Government “do not duly respect the rights to self-determination and effective participation; contribute to the failure to deliver on the targets in the areas of health, education and employment; and fuel the escalating and critical incarceration and child removal rates of Aboriginal and

Torres Strait Islanders.”¹ These findings, with particular reference to the criminal justice system, have been reiterated in 2021 by the UN High Commission for Human Rights.²

The 2017 report of the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, who noted that there is a 60% likelihood of Indigenous Australians experiencing discrimination and recommended that the Australian Government amend the Constitution to adopt a fundamental bill of rights, as well as to recognise and protect the inherent rights and culture of First Nations Australians.³

Survey findings show that discrimination against Aboriginal Australians is widespread and widely tolerated:

- In 2022, 60% of Aboriginal people said that they had experienced at least one form of racial prejudice in the last six months, up from 52% in 2020.⁴
- At the end of 2021, 47% of Aboriginal people said that they experienced everyday discrimination (other people acting as if they were better, other people acting as if the respondent were not smart, being treated with less respect and with less courtesy than other people) on a weekly basis, up from 30% in 2017.⁵
- Racism was the most raised issue among First Nations young Australians in the 2019 UN Youth Representative Listening Tour, with 64 percent of respondents selecting it compared with 58 percent of non-Indigenous respondents.⁶
- A 2022 ANU study found that that Australia-wide, everyday discrimination could be contributing to up to half of the burden of psychological distress among Indigenous Australians, and that 74,000 Aboriginal people were experiencing high psychological distress entirely attributable to racism.⁷

TALS has regularly received reports from clients about being targeted because of their race. This includes being asked to show the contents of bags within a retail store with no reason as to why.

TALS staff have reported that staff in the justice system have made derogatory comments that directly relate to the race of their clients.

A range of Royal Commissions have uncovered evidence of abuses of human rights among groups of Australians that include Aboriginal people, including:

- *Older people.* The Aged Care Royal Commission highlighted neglect and at times mistreatment of older Australians in aged care facilities. Amongst their recommendations in the Final Report are legally enforceable rights to health and dignified treatment.⁸

¹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/234/24/PDF/G1723424.pdf?OpenElement>.

² https://openresearch-repository.anu.edu.au/bitstream/1885/229826/2/WP_140_Anthony_et_al_2021.pdf.

³ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/159/89/PDF/G1715989.pdf?OpenElement>.

⁴ <https://www.reconciliation.org.au/wp-content/uploads/2022/11/Australian-Reconciliation-Barometer-2022.pdf>

⁵ <https://inclusive-australia.s3.amazonaws.com/files/2021-22-Social-Inclusion-Index-website-final.pdf> ;

<https://inclusive-australia.s3.amazonaws.com/files/Inclusive-Australia-Social-Inclusion-Index-WEB.pdf>

⁶ <https://unyouth.org.au/racism-in-the-eyes-of-young-australians/>.

⁷ <https://www.abc.net.au/news/2022-12-09/anu-study-reveals-racism-distress-amongst-first-nations-peoples/101751930>.

⁸ Volume 1 Summary and Recommendations, Final Report: Care, Dignity and Respect, Royal Commission into Aged Care Quality and Safety, pages 205-206.

- *People with disability:* The Disability Royal Commission now underway has exposed ill-treatment of people with disability in breach of their rights, and limited options for action.⁹ During the COVID-19 pandemic, there were delays in distributing vaccines to people with disability, leading to more serious illness and death than would otherwise have occurred.¹⁰
- *Rural and remote communities:* During the COVID-19 pandemic there were delays in distributing vaccines to rural and remote communities, including Aboriginal communities.¹¹

Tasmania currently does not adequately protect the human rights of Aboriginal Tasmanians.

The lack of an overarching federal instrument means that a person's access to rights protections is wholly contingent on where they live. In the Tasmanian context, a wide range of TALS clients, as we have touched on, have experienced discrimination both on the basis of their Aboriginality, including on the intersection between Aboriginality and other identities (disability, gender), and for having spoken out about discrimination.

Below is an extract from a submission that TALS made to the Disability Royal Commission as an example of the human rights violations that exist:

Ms X is an Aboriginal woman from Northern Tasmania. She has spent her life working in disability services as a support worker and is a qualified Aboriginal Health Worker. While working at an out-of-home care facility, she made complaints to the manager about the standard of care the residents were experiencing including:

- *Staff members using the same toothbrush for multiple residents.*
- *Staff members taunting residents, including by taking the batteries out of the remote control for the television to see the impact.*
- *Residents not having privacy when showering and being showered in the same room.*
- *Medication being missed.*

After making these disclosures she was labelled as a troublemaker and treated differently at her employment and had her hours reduced. After she complained about further issues, including the residents being "manhandled" the organization arranged training for all employees, but bullied her by singling her out as the reason the training had to be provided (bullying). The training was not culturally appropriate and stereotyped Aboriginal people (and by extension Ms X) as disadvantaged and disabled. The fallout from her treatment at this workplace led to significant health issues and she had to go on stress leave after suffering severe anxiety and panic attacks. She was later diagnosed with epilepsy and advised that stress was likely to bring on seizures. The workplace terminated her employment on the basis that she was not able to meet the inherent requirements of her job. After 18 months of attempting to find new employment, during which time she had to apply for hardship to access her superannuation early, she sought legal advice for unfair dismissal, but was told that she could not make an unfair dismissal claim because she

⁹ Interim Report, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

¹⁰ Auditor-General Report No.3 2022–23 Australia's COVID-19 Vaccine Rollout, Australian National Audit Office; Issue Paper - The impact of and responses to the Omicron wave of the COVID-19 pandemic for people with disability.

¹¹ Anger as slow vaccine rollout leaves Western NSW Aboriginal communities exposed to COVID, The Guardian, 12 August 2021.

was well past the 21 day limitation to make a claim. She went to Equal Opportunities Tasmania and was told that the complaint would not be accepted because it exceeded the 12 month period and the anti-discrimination commissioner was not satisfied that there was a satisfactory reason for the period of delay.

TALS regularly receives complaints about the treatment of young people in the Ashley Youth Detention Centre, an example is below:

Ms Y is 13 year-old Aboriginal female detained at the Ashley Youth Detention Centre in Deloraine in the north of the state. During her time there:

- *Workers have said to her that “you’re a piece of shit” and “you’re a nobody – get the fuck back in your cell.”*
- *The Centre has been put in lockdowns without reason, and workers have mocked detainees when put in cells for lockdowns with comments like “haha, good night.”*
- *Boys are often let out and girls kept in cells without reason.*

Recommendation 1: The inquiry should recommend that the Federal Government legislate an Australian Human Rights Act or Charter.

What should a Human Rights Act include and do?

A legislated Act or Charter should:

Cover the human rights Australia has already promised to uphold under international law.

In addition to overarching instruments such as the International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR); the Conventions on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Rights of the Child (CRC), and the Rights of Persons with Disabilities (CRDP); and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), we note in particular:

- The International Convention on the Elimination of All Forms of Racial Discrimination (CERD). We note that Aboriginal Australians are not the only ones who will benefit from greater attention to the elimination of racism as a human right: for example, Africans and people of African descent have been found by the UN Working Group of Experts on People of African Descent to experience “multifaceted forms of racial discrimination, xenophobia and systemic racism in all spheres.”¹²
- The UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which elaborates existing human rights as they apply to Indigenous peoples.

We also note the 2015 UN 2030 Agenda for Sustainable Development, which calls for empowerment of Indigenous peoples; inclusive and equitable quality education for all, including Indigenous peoples; and engagement of Indigenous peoples in implementing the Agenda. In regard to the latter, we particularly note the importance of Aboriginal involvement in setting and reporting against Indicators 10.3.1 (Proportion of population reporting having personally felt discriminated against or harassed within the

¹² <https://www.ohchr.org/en/press-releases/2022/12/australia-people-african-descent-living-under-siege-racism-say-un-experts>.

previous 12 months on the basis of a ground of discrimination prohibited under international human rights law)¹³ and 16.b.1 (Proportion of population reporting having personally felt discriminated against or harassed in the previous 12 months on the basis of a ground of discrimination prohibited under international human rights law).¹⁴

We note that the Australian Human Rights Commission's recommended model¹⁵ for a Human Rights Act primarily incorporates ICCPR and ICESCR rights, as these are core international treaties with general application to all people, but also incorporates overarching principles derived from the 'thematic' treaties as well as principles from UNDRIP, noting Australia's particular obligations to First Nations peoples.

Cover human rights that are provided for in other major international instruments not yet ratified by Australia. In this regard, we note in particular the International Labour Organisation's *Indigenous and Tribal Peoples' Convention 169*,¹⁶ which establishes a basic framework for the protection of indigenous and tribal peoples under international law. As of 2018, Convention No. 169 was the only international treaty open for ratification that specifically and exclusively addresses the rights of indigenous and tribal peoples. Some of its most important provisions include (see Appendix A):

- Article 4: Requires ratifying States to adopt special measures for safeguarding the persons, institutions, property, labour, cultures and environment of indigenous and tribal peoples.
- Article 5: Establishes that, in applying the Convention, ratifying States must recognize and protect the social, cultural, religious and spiritual values of indigenous and tribal peoples, and respect the integrity of their values, practices and institutions.
- Article 6: Requires, among other things, that ratifying States consult indigenous and tribal peoples through appropriate procedures, particularly through their representative institutions when legislative or administrative measures that may directly affect them are being considered, and provides that States should establish means for the peoples concerned to develop their own institutions.
- Article 7: Establishes, among other things, the right of indigenous and tribal peoples to decide their own priorities for the process of development and to exercise control over their own economic, social and cultural development, and establishes the obligation of ratifying States to take measures to protect and preserve the environment of the territories inhabited by these peoples.
- Article 8: Requires States to take indigenous and tribal custom and customary law into account when applying national laws and regulations to the peoples concerned.
- Article 13: Requires governments to respect the special importance to the cultures and spiritual values of indigenous and tribal peoples of their relationship with the lands or territories that they occupy.
- Article 14: Establishes that ratifying States shall recognize the rights of ownership and possession of the peoples concerned over the lands that they traditionally occupy, and that States shall

¹³ <https://sdgs.un.org/goals/goal10>.

¹⁴ <https://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/Indigenous-Peoples-and-the-2030-Agenda-with-indicators.pdf>.

¹⁵ https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf.

¹⁶ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312314.

establish adequate procedures within the national legal system to resolve land claims brought by indigenous and tribal peoples.¹⁷

By emphasizing equality, consultation and participation, as well as land rights, the Convention offers a framework for social justice and peace, participatory democracy and inclusive and sustainable development for all, and the UN General Assembly and Human Rights Council have called for its further ratification.¹⁸ Australia's failure to ratify this Convention is further evidence of the need for an Australian Human Rights Charter or Act that codifies and protects the human rights of Indigenous Australians.

Include a comprehensive list of rights. We endorse the full list of rights nominated by the Australian Human Rights Commission¹⁹ for inclusion in a Charter or Act, in particular:

*The inclusion of an overarching 'participation duty' to ensure the full participation of First Nations Australians in decisions that affect them.*²⁰

The reiteration of the right to non-discrimination for all Australians, including First Nations Australians.

*The inclusion of a right to health, in particular the right to access physical and mental health services without discrimination (italics added). Across Australia, First Nations Australians have significantly higher-than-average levels of ill health, in part due to the discriminatory absence of culturally appropriate healthcare. This situation has further discriminatory flow-on effects; for example, higher levels of ill-health leave Tasmanian Aboriginal people in detention more vulnerable to inadequate provision of health care in detention, particularly in the absence of culturally appropriate healthcare – both of which have been cited as a factor in First Nations deaths in custody and a potential breach of Australia's OPCAT obligations.*²¹

The inclusion of cultural rights of First Nations peoples, which are relected in and should be interpreted in light of UNDRIP. As noted in the Australian Human Rights Commission's report:

The Commission's proposal provides that First Nations peoples, with other members of their community, should not be denied the right to enjoy, maintain, control, protect and develop their identity and cultural heritage (including traditional knowledge and distinctive spiritual practices), language and kinship ties. It would also protect rights to maintain and strengthen First Nations peoples' relationship with the land, territories, waters and seas with which they have a connection and to conserve and protect the environment and the productive capacity of these resources. This right also protects First Nations peoples from forced assimilation and the destruction of their culture. For example, this right could be utilised to ensure that a child removed from their family or held in detention is able to maintain connection with kin and culture. This right could also be used to challenge the proposed destruction of cultural heritage sites by public authorities.²²

¹⁷ <https://www.ohchr.org/sites/default/files/Documents/Publications/GuideIPleaflet8en.pdf>.

¹⁸ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_646042.pdf.

¹⁹ https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf

²⁰ *Ibid.*, p. 132.

²¹ <https://nit.com.au/01-02-2022/2636/justice-advocates-note-lack-of-progress-on-opcat-as-anniversary-lingers> ; https://www.researchgate.net/publication/355629131_Europe_Monitoring_Bodies_for_the_Prevention_of_III_Treatment.

²² *Ibid.*, p. 130.

We also note that the Commission's proposal for a right to a healthy environment resonates strongly with First Nations historical and present custodianship of land, sea and sky country Australia-wide.

We note, however, that as presented, the Australian Human Rights Commission's list of rights for First Nations Australians does not correspond fully to the rights laid out in the ILO's Indigenous and Tribal People's Convention 169. The process of drafting a Human Rights Act or Charter should include extensive consultation with First Nations Australians to ensure that the range of rights set out in the Act or Charter respects the spirit of the full range of rights laid out in the Indigenous and Tribal People's Convention 169.

Include pathways to justice. A Human Rights Act or Charter should provide a cause of action, a complaints pathway, and enforceable remedies in the case where breaches of human rights occur. In this regard, we concur with the recommendations and pathways laid out in Chapter 11 of the Australian Human Rights Commission's report.²³

Recommendation 2: That an Australian Human Rights Act or Charter include the full list of rights proposed by the Australian Human Rights Commission, but also include extensive consultation with First Nations Australians in its drafting to ensure that all rights relevant to First Nations Australians are included.

Recommendation 3: A Human Rights Act or Charter should provide a cause of action, a complaints pathway, and enforceable remedies in the case where breaches of human rights.

²³ https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf.

Thank you for the opportunity to provide a submission into the Inquiry into Australia's Human Rights Framework. Please do not hesitate to be in contact if any points require clarification or elaboration.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'H.P.' or similar initials, written in a cursive style.

Hannah Phillips
Acting State Manager
Tasmanian Aboriginal Legal Service

Appendix A: International Labour Organisation, Indigenous and Tribal Peoples Convention, 1989 (No. 169)²⁴

Article 1

1. This Convention applies to:

(a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as 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 construed as having any implications as regards the rights which may attach to the term under international law.

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

(a) Ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

(b) Promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

(c) Assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

Article 3

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.

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

²⁴ <https://www.ohchr.org/en/instruments-mechanisms/instruments/indigenous-and-tribal-peoples-convention-1989-no-169>

Article 4

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, 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. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by 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 account shall be taken of the nature of the problems which face them both as groups and as individuals;
- (b) The integrity of the values, practices and institutions of these peoples shall be respected;
- (c) Policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

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 consideration is being given to legislative or administrative measures which may affect them directly;
- (b) Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
- (c) Establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

Article 7

1. The peoples concerned shall have the right to decide their own priorities for 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. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall

economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

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

Article 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

Article 10

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

Article 11

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

Article 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be

understood in legal proceedings, where necessary through the provision of interpretation or by 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 for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

2. The use of the term "lands" in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

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

Article 15

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

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Article 16

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

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national

laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

Article 19

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

(a) The provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;

(b) The provision of the means required to promote the development of the lands which these peoples already possess.

Part III. Recruitment and conditions of employment

Article 20

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

(a) Admission to employment, including skilled employment, as well as measures for 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 any other occupationally related benefits, and housing;

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

3. The measures taken shall include measures to ensure:

(a) That workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;

(b) That workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

(c) That workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;

(d) That workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

Part IV. Vocational training, handicrafts and rural industries

Article 21

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

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. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be

carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these peoples and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

Part V. Social security and health

Article 24

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

Article 25

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

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

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

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

Part VI. Education and means of communication

Article 26

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least 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 co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.

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

Article 28

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

Article 29

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

Article 30

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

Article 31

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

Part VII. Contacts and co-operation across borders

Article 32

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

Part VIII. Administration

Article 33

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.

2. These programmes shall include:

(a) The planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;

(b) The proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation 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 in a flexible manner, having regard to the conditions characteristic of each country.

Article 35

The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.