

NINTH MEETING OF THE SRM TWG

(16-20 SEPTEMBER 2024)

Overview document: Background information applicable to the examination of instruments concerning indigenous and tribal peoples

- This overview document provides background information applicable to the review by the SRM TWG of the instruments concerning indigenous and tribal peoples that it will review at its ninth meeting in September 2024.

24 July 2024

1. The regulatory approach concerning indigenous and tribal peoples

International labour standards

The situation of indigenous and tribal peoples has been a key concern for the ILO since its creation. Initially driven by the discrimination and exploitation faced by indigenous and tribal workers, the ILO was directly inspired to adopt international labour standards, including the Forced Labour Convention, 1930 (No. 29).¹ In the 1950s, it became evident that the challenges faced by these communities were rooted in profound injustices and prejudices and interconnected with broader issues such as identity, language, culture, customs and land.² Indigenous and tribal peoples became among the vulnerable groups of concern to the ILO in its mission to promote social justice, internationally recognized human and labour rights and Decent Work.³ The Indigenous and Tribal Peoples Convention, 1989 (No. 169), is the only international treaty open for ratification that deals exclusively with the rights of these peoples.

In 2007, the UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The Committee of Experts on the Application of Conventions and Recommendations noted that “Convention [No. 169] and the United Nations Declaration on the Rights of Indigenous Peoples [...] constitute two legal instruments of different nature and scopes which complement and reinforce each other.” It also considered that “the effective implementation of the Convention contributes towards achieving the objective of the Declaration as well as towards achieving the United Nations Sustainable Development Goals.”⁴ Compared to Convention No. 169, the UNDRIP addresses additional subjects such as the right to self-determination and the demilitarization of indigenous lands, subject areas that are outside the mandate of the ILO.

Evolution in ILO regulatory approach

The Indigenous and Tribal Populations Convention, 1957 (No. 107), adopted by the ILO with the collaboration of the United Nations (UN) system, was the first attempt made to address comprehensively the living and working conditions of indigenous and tribal peoples in international law.⁵ During the 1930s and 1950s, when the first instruments concerning indigenous and tribal peoples were adopted,⁶ the tripartite constituents wished to protect

¹ ILO: [Handbook for ILO tripartite constituents. Understanding the Indigenous and Tribal Peoples Convention, 1989 \(No. 169\)](#), Geneva, 2013, p. 4.

² ILO: [Handbook for ILO tripartite constituents. Understanding the Indigenous and Tribal Peoples Convention, 1989 \(No. 169\)](#), Geneva, 2013, p. 4.

³ ILO: [Handbook for ILO tripartite constituents. Understanding the Indigenous and Tribal Peoples Convention, 1989 \(No. 169\)](#), Geneva, 2013, p. xi. Although indigenous peoples constitute about 5 per cent of the world's population, they account for nearly 15 per cent of the world's poor. See ILO: [Sustainable Development Goals: Indigenous Peoples in Focus](#), Geneva, July 2016, p.3.

⁴ [General observation, publication 2019](#), p.6

⁵ ILO: [A Guide to ILO Convention No. 169 on Indigenous and Tribal Peoples](#), Geneva, 1995, p.1.

⁶ The Recruiting of Indigenous Workers Convention, 1936 (No. 50), the Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64), the Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65), the Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86), the Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 (No. 104).

indigenous workers in colonial territories and at the same time to ensure the economic stability of countries dependent on the labour of indigenous workers employed by non-indigenous employers.

Convention No. 107 is based on the underlying assumption that the future for indigenous communities lies in assimilation by the dominant culture in society and that others should make decisions on their development. In 1986, an expert committee convened by the ILO Governing Body concluded that “the integrationist approach of the Convention” was obsolete and that its application was “destructive in the modern world.”⁷ Consequently, the ILO undertook a revision of Convention No. 107 and adopted ILO Convention No. 169 in 1989.⁸ In recognition of the complexities and specificities of indigenous peoples’ situations, Convention No. 169 takes a holistic approach covering a wide range of issues that affect the lives and well-being of these peoples.⁹ Convention No. 169 is based on the recognition of the aspirations of indigenous and tribal peoples to exercise control over their own institutions, ways of life and development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live. Emphasizing the principles of equality, consultation, participation and cooperation, the Convention is a framework for participatory democracy, social peace and sustainable development.¹⁰ Convention No. 169 has become a global reference point impacting on governance and development policies beyond the countries that have ratified it.

Several more recently adopted Recommendations include provisions concerning indigenous and tribal peoples, namely the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), the Human Resources Development Recommendation, 2004 (No. 195), the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) and the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205). In 2015, the Governing Body held a discussion on indigenous peoples’ rights for inclusive and sustainable development and endorsed an ILO strategy for action concerning indigenous and tribal peoples. The ILO strategy is grounded in Convention No. 169 and its implementation has been regularly reviewed by the Governing Body.¹¹ The strategy for action identifies key areas for ILO interventions as follows: closing the data and knowledge gap, promoting Convention No. 169 and its implementation; strengthening institutionalized dialogue, consultation and participation; fundamental principles and rights at work, working conditions and livelihoods; indigenous and tribal women; extending social protection; and partnerships.¹²

⁷ ILO: [Partial revision of the Indigenous and Tribal Populations Convention, 1957 \(No. 107\)](#), International Labour Office, 75th Session, Geneva, 1988, p. 18.

⁸ ILO: [Handbook for ILO tripartite constituents. Understanding the Indigenous and Tribal Peoples Convention, 1989 \(No. 169\)](#), Geneva, 2013, p. 4.

⁹ ILO: [Handbook for ILO tripartite constituents. Understanding the Indigenous and Tribal Peoples Convention, 1989 \(No. 169\)](#), Geneva, 2013, p.xi.

¹⁰ [GB.325/POL/2](#), para. 2.

¹¹ [GB.334/POL/2](#); [GB.335/POL/2](#); [GB.341/POL/1\(Rev.1\)](#).

¹² [GB.341/POL/1\(Rev.1\)](#).

Ratification of international labour standards on indigenous peoples

The following table illustrates the ratification rates of the relevant instruments concerning indigenous peoples.

RATIFICATION: INDIGENOUS AND TRIBAL PEOPLES		
Convention	Effective ratifications:	Further information
Convention No. 107	17 effective ratifications (10 denunciations)	• Indigenous and tribal populations • Current status: Outdated • Included in SRM TWG 2024 review
Convention No. 169	24 effective ratifications	• Indigenous and tribal peoples • Current status: Up-to-date • Included in SRM TWG 2024 review

2. Wider context

Indigenous and tribal peoples' rights and concerns have gained unprecedented momentum, aligning with global debates on human rights, governance, poverty reduction, economic development, social and solidarity economy, climate change, sustainable development, and environmental protection.

The United Nations established several dedicated mandates and mechanisms concerning indigenous peoples, including the UN Permanent Forum on Indigenous Issues, an expert body reporting to the Economic and Social Council, and appointed a Special Rapporteur on the rights of indigenous peoples mandated to report to the Human Rights Council. The Expert Mechanism on the Rights of Indigenous Peoples, also reporting to the Council, was set up in 2007. A World Conference on Indigenous Peoples was held in 2014. The result was an outcome document with a comprehensive set of commitments by UN Member States to advance the respect for indigenous peoples' rights and the aims of the UNDRIP, while calling for further ratifications of Convention No. 169.¹³ The World Conference also requested the development of a system-wide action plan to ensure a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples.¹⁴

The 2030 Agenda for Sustainable Development presents an opportunity to address challenges faced by indigenous peoples by recognizing that, if poverty is to be eliminated, development

¹³ ILO: [Implementing the ILO Indigenous and Tribal Peoples Convention No. 169 Towards an inclusive, sustainable and just future](#), Geneva, 2019, p.34.

¹⁴ United Nations, Economic and Social Council, Permanent Forum on Indigenous Issues: [System-wide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples, E/C.19/2016/5](#).

policies must also counter inequalities – including those that exist along ethnic lines.¹⁵ Two SDG indicators refer directly to indigenous peoples – indicator 2.3 aims to double the agricultural productivity and incomes of small scale food producers, in particular indigenous peoples, while indicator 4.5 targets the elimination of gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including indigenous peoples.

In 2020, the UN system Chief Executives Board for Coordination issued a Call to Action on building an inclusive, sustainable and resilient future with indigenous peoples aiming at further strengthening coordination and cooperation across the UN system in this regard, which makes specific reference to Convention No. 169, along with the UNDRIP.¹⁶ In its 2023 “Resolution concerning a just transition towards environmentally sustainable economies and societies for all,” the Conference emphasized that gender equality, social inclusion, and equity should be promoted, paying particular attention to indigenous and tribal peoples and called for establishing a mechanism for dialogue with indigenous and tribal peoples to acquire knowledge and develop a road map for a just transition.¹⁷

3. Review by the SRM TWG

At its ninth meeting, the SRM TWG will review the ILO instruments concerning indigenous and tribal peoples.

Consideration by previous meetings

At its second meeting in October 2016, the SRM TWG discussed the follow-up to be taken regarding 63 instruments previously identified as outdated by the Cartier Working Party, including Conventions Nos 50, 64, 65, 86, 104 and 107 concerning indigenous and tribal peoples.

Following the 2016 SRM TWG recommendations, the Governing Body placed an item on the agenda of the 107th Session of the International Labour Conference (2018) concerning the abrogation of Conventions Nos 50, 64, 65, 86, 104, as a result of which they were abrogated in 2018. The Governing Body decided that the SRM TWG would follow up Convention No. 107 at later meetings and invited the Office to follow-up with the governments and the social partners of the Member States bound by Convention No. 107, encouraging them to ratify the related up-to-date Convention No. 169.¹⁸

¹⁵ ILO: [Implementing the ILO Indigenous and Tribal Peoples Convention No. 169 Towards an inclusive, sustainable and just future](#), Geneva, 2019, p.37.

¹⁶ CEB, [Building an Inclusive, Sustainable and Resilient Future with Indigenous Peoples: A Call To Action](#), November 2020.

¹⁷ ILC, [Resolution concerning a just transition towards environmentally sustainable economies and societies for all, ILC.111/Resolution V](#), International Labour Conference, 111th Session, Geneva, 2023.

¹⁸ Governing Body, [Decision on the second item on the agenda: The Standards Initiative](#), November 2016.

Questions to consider

At its ninth meeting, the SRM TWG will review Convention No. 169 and examine the follow-up to be taken to Convention No. 107. As described in more detail in *technical note 3.1 on indigenous and tribal peoples*, this will involve determining the classification of Convention No. 169, the follow-up to be taken to outdated Convention No. 107, and the appropriate follow-up action to be taken.

Within its mandate as set out in paragraph 9(b) of its terms of reference, the SRM TWG may wish to consider whether any gaps in coverage exist in relation to instruments concerning indigenous and tribal peoples as a whole and make corresponding recommendations to the Governing Body.