

NINTH MEETING OF THE SRM TWG

(16-20 SEPTEMBER 2024)

EXAMINATION OF INSTRUMENTS CONCERNING INDIGENOUS AND TRIBAL PEOPLES

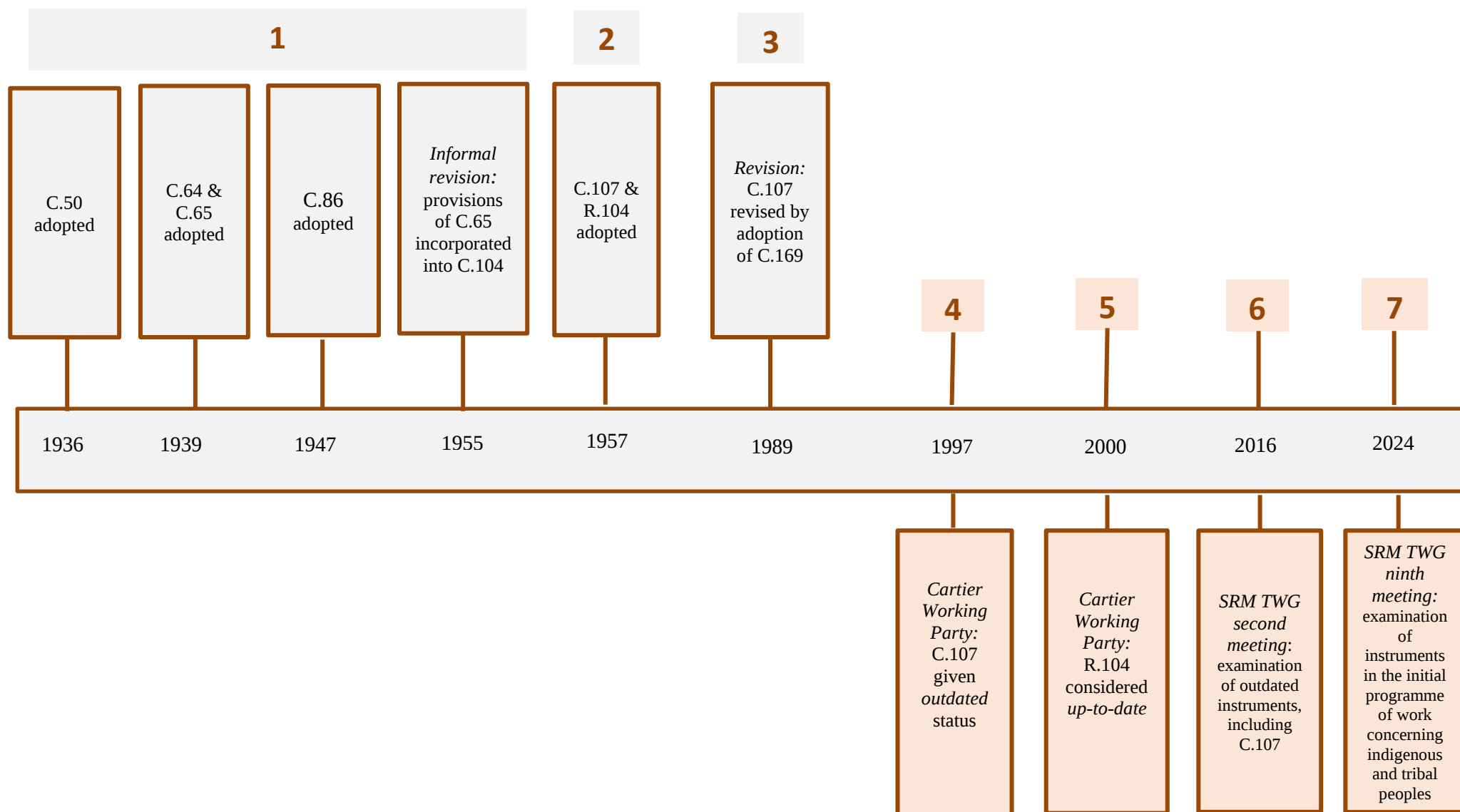
Technical Note 3.1: Instruments concerning indigenous and tribal peoples

- There are two instruments in the initial program of work concerning indigenous peoples:
 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)
 - Indigenous and Tribal Peoples Populations Convention, 1957 (No. 107)
- *Current status of instruments:* Convention No. 107 was classified as outdated by the Cartier Working Party (confirmed by the SRM TWG) and Convention No. 169 is considered up-to-date (never reviewed).
- *Action to be considered:* Classification of Convention No. 169; follow-up action to be taken for outdated Convention No. 107; identification of any gaps in coverage; and associated follow-up action

24 July 2024

ILO regulation concerning indigenous and tribal peoples

Chronology of developments



Regulatory approach to indigenous and tribal peoples

The ILO has adopted standards concerning indigenous and tribal peoples since its earliest days. The regulatory approach has changed considerably, reflecting broader changes.

From the 1930s to the 1950s, when the first five instruments¹ concerning indigenous and tribal peoples were adopted, the tripartite constituents wished to protect indigenous workers in colonial territories and to ensure the economic stability of countries dependent on the labour of indigenous workers employed by non-indigenous employers. By the end of the 1950s, the **Indigenous and Tribal Populations Convention, 1957 (No. 107)** was adopted. This Convention, the first international instrument comprehensively addressing indigenous and tribal peoples' rights, has since been described as having the “inherent assimilationist orientation” typical of its time.²

Over time, attitudes changed and indigenous and tribal peoples began to organize associations for the defence and promotion of their rights and interests. The recruitment of indigenous workers in dependent colonial territories, the subject of much of the earlier instruments, was largely discontinued. In response, a 1986 meeting of experts recommended the revision of Convention No. 107, with particular attention to its integrationist approach and provisions concerning land rights, recruitment, and conditions of work: “The Meeting of Experts was unanimous in concluding that the integrationist language of the Convention [No. 107] is outdated and that the application of this principle is destructive in the modern world”.³ The partial revision of Convention No. 107 resulted in the adoption of the **Indigenous and Tribal Peoples Convention, 1989 (No. 169)**.

ILO developments since the adoption of the instruments

1. 1936-1955: ILC adopted Conventions Nos 50, 64, 65, 86 and 104

Five early instruments concerned indigenous workers in the non-metropolitan territories of Member States: Convention No. 50 regulated certain special systems of recruiting indigenous workers, Convention No. 64 regulated their written contracts of employment, Convention No. 65 proposed the gradual abolition of penal sanctions for indigenous workers who breached their employment contracts, Convention No. 86 set out the maximum length of employment contracts of indigenous workers, and Convention No. 104 provided for the abolition of penal sanctions for indigenous workers who breached their employment contracts.

By 1985, all these Conventions were considered to have “lost their relevance” and they were placed in the category of dormant instruments on the recommendation of the Ventejol Working

¹ 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), and the Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 (No. 104).

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

³ ILO: [Partial revision of the Indigenous and Tribal Populations Convention, 1957 \(No. 107\)](#), op. at., p. 18.

Party. In 1996, following the recommendation of the Cartier Working Party, the Governing Body shelved these Conventions considering that they no longer corresponded to current needs and had become obsolete. In 2016, 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 those Conventions, as a result of which they were abrogated in 2018.

See: [Convention No. 50](#); [Convention No. 64](#); [Convention No. 65](#); [Convention No. 86](#); [Convention No. 104](#); [GB.229/10/19](#), para. 22(b); [GB.265/LILS/WP/PRS/1](#), pp 18-20, 31-32, 33-35 (Office background paper for Working Party, March 1996); [GB.265/LILS/5](#), paras 43-46 (discussion by Working Party, March 1996); [GB.265/8/2](#), para. 24(d)(ii) (discussion by LILS Committee, March 1996); [GB.328/LILS/2/1\(Rev.\)](#), para.26.

2. 1957: ILC adopted Convention No. 107 and Recommendation No. 104

Convention No. 107 was the first comprehensive international treaty dealing with the rights of indigenous peoples, although previous ILO instruments had impacted on those rights. As stated in its Preamble, it concerned “the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries”, rather than the focus on colonial territories of the earlier instruments. At the time of its adoption, the prevailing belief was that for the survival of these populations, incorporation into the national mainstream was necessary, with integration and assimilation deemed as the appropriate means to achieve this.⁴

Convention No. 107 was revised by Convention No. 169, which closed it to further ratifications. A ratification of Convention No. 169 by a State party to Convention No. 107 entails the automatic denunciation of the latter.⁵

Recommendation No. 104 is linked to Convention No. 107 and supplements it. This instrument aims at the protection and integration of indigenous and tribal populations, in particular with regard to the regulation of the use of land, the regulation of recruitment and conditions of employment, including the protection of wages and the guarantee of personal liberty, vocational training, promotion of handicrafts and rural industries, social security, health, education and means of communication.

See: [Convention No. 107](#); [Recommendation No. 104](#)

3. 1989: ILC adopted Convention No. 169

Convention No. 169 concerns indigenous and tribal peoples in independent countries and revises Convention No. 107. It is the most up-to-date ILO instrument concerning indigenous and tribal peoples and is based on a regulatory approach that differs considerably from the earlier instruments.

⁴ ILO: [ILO Convention on Indigenous and Tribal Peoples, 1989 \(No. 169\): A Manual](#) (2003) (revised), p.4.

⁵ The Ventejol Working Parties of 1979 and 1987 both classified Convention No. 107 in the category of Conventions to be promoted on a priority basis. See [GB.270/LILS/WP/PRS/2](#), para. VI.

At the time of its adoption, it was described as removing “the assumption in Convention No. 107 that these peoples should disappear; it is the replacement of this assumption by the principle of respect for their cultures and ways of life and the improvement of many of the already positive protections offered in the old Convention”.⁶ Convention No. 169 is based on the belief that indigenous and tribal peoples have the right to continue to exist with their own identities and the right to determine their way and pace of development.⁷ A Committee of Experts general observation concerning Convention No. 107, adopted in 1992, noted that “Convention No. 169 is more oriented towards respect for and protection of indigenous and tribal peoples' cultures, ways of life and traditional institutions than is Convention No. 107” and encouraged governments which had ratified Convention No. 107 to “give serious consideration to ratifying Convention No. 169”.⁸ Unlike Convention No. 107, Convention No. 169 uses the term “peoples” instead of “populations” as a recognition of indigenous and tribal peoples as holders of collective rights.

See: [Convention No. 169](#)

4. 1997: Governing Body classified Convention No. 107 as outdated

The Cartier Working Party examined Convention No. 107 in 1997 and recommended that it be considered outdated, given its revision by Convention No. 169.⁹

The Cartier Working Party noted that Convention No. 169 was the most up-to-date standard in the area and that its ratification should be promoted. In view of the level of ratification of Convention No. 107, the Cartier Working Party considered that it seemed premature to consider the shelving of the Convention, and therefore proposed to re-examine this question at a later stage when the ratification level of Convention No. 107 had substantially decreased.

On that basis, the Governing Body invited the States parties to Convention No. 107 to contemplate ratifying Convention No. 169, which would, ipso jure, involve the immediate denunciation of Convention No. 107.

See: [GB.270/LILS/WP/PRS/2](#); [GB.270/LILS/3\(Rev.1\)](#), paras 80-85; [GB.270/9/2](#), para.23.

5. 2000: Governing Body classified Recommendation No. 104 as up-to-date

The Cartier Working Party examined Recommendation No. 104 in 2000. The Cartier Working Party noted that the revision of Convention No. 107 by Convention No. 169 was not extended to Recommendation No. 104 and that the latter remains valid and contains useful elements which are not covered by Convention No. 169.¹⁰ Such elements include, for example, the regulation of the conditions, both de facto or de jure, in which the populations concerned use the land, the elimination of indebtedness, the adaptation of modern cooperative methods to the

⁶ ILO: [Record of Proceedings](#), ILC, 76th Session, 1989, p. 31/2.

⁷ ILO: [ILO Convention on Indigenous and Tribal Peoples, 1989 \(No. 169\): A Manual](#) (2003) (revised), p.5.

⁸ [General Observation \(CEACR\)](#), adopted in 1992, published 79th ILC session (1992).

⁹ The category of outdated instruments includes Conventions which the Governing Body has invited States parties to denounce while inviting them at the same time to ratify more recent Conventions on the same subject matter. See [GB.283/LILS/WP/PRS/1/2](#), Appendix II, p. 32, para. 7

¹⁰ [GB.279/LILS/WP/PRS/4](#), pp 23-24.

traditional forms of ownership and traditional systems of community service and mutual aid, and details on recruitment and employment.

On that basis, the Governing Body considered Recommendation No. 104 to be up-to-date.

See: [GB.279/LILS/WP/PRS/4](#), pp 23-24; [GB.279/LILS/3\(Rev.1\)](#), para. 92; [GB.279/11/2](#), para.92

6. 2016: SRM TWG examined the follow-up taken to outdated Convention No.107

The SRM TWG examined Convention No. 107 within the context of its 2016 examination of the follow-up to be taken to outdated instruments. In light of its recommendations, the Governing Body requested that:

(1) the Office commences follow-up within the next 12 months with the member States currently bound by the Convention (a) encouraging them to ratify Convention No. 169, as the most up-to-date instrument in this subject area, which would result in the automatic denunciation of Convention No. 107 and (b) collecting information from those Member States with the aim of better understanding the reasons for their non-ratification of Convention No. 169;

(2) based on the Office's report concerning the information obtained through that follow-up, the SRM TWG will undertake a full consideration of the situation with regard to Convention No. 107, during its later examination of an instrument concerning indigenous and tribal peoples.

See: [GB.328/LILS/2/1\(Rev.\)](#), para. 26.

Analysis of Convention No. 169

The following table provides a provision-by-provision analysis of Convention No. 169 that is to be reviewed. Convention No. 169 is the most up-to-date instrument in respect of indigenous and tribal peoples. Convention No. 107, the other international labour Convention on indigenous and tribal peoples, was classified as outdated by the Governing Body in 1997.

Contrary to more recent instruments, which use gender neutral language, Convention No. 169 uses outmoded gendered language by assuming a male ILO Director-General (Articles 40 and 41).¹¹

ANALYSIS OF SUBSTANTIVE PROVISIONS OF CONVENTION NO. 169	
Part I. General policy	
Art. 1	<i>Objective:</i> Defines the scope of application of C.169. C.169 applies to (a) tribal peoples, regardless of when they arrived in a certain region, whose conditions distinguish them from other sections of the national society, and

¹¹ See ILC, [Resolution concerning gender equality and the use of language in legal texts of the ILO](#), p. 18. The Conference resolved that “gender equality should be reflected through the use of appropriate language in official legal texts of the Organization...” and “that in the ILO Constitution and other legal texts of the Organization, in accordance with applicable rules of interpretation, the use of one gender includes in its meaning a reference to the other gender unless the context otherwise requires.”

	whose status is regulated by their own customs, traditions, or by special laws; (b) indigenous peoples, namely those peoples who retain partially or totally their traditional cultures, values, and institutions and who used to live in a territory prior to conquest or colonization, or the creation of the State. Self-identification as indigenous or tribal is considered a fundamental criterion for determining the groups covered by the Convention. The use of the term 'peoples' in the Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law. • <i>Comparison with other relevant instruments:</i> Other than in the related provisions in R.104, no similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 1 adopts a comprehensive and modern approach by explicitly recognizing self-identification as a fundamental criterion and emphasizing the retention of traditional cultures, values, and institutions of indigenous and tribal peoples.
Art. 2	• <i>Objective:</i> Governments are responsible for developing coordinated and systematic action, with the participation of the peoples concerned, to protect their rights and ensure respect for their integrity. Measures should include; (a) ensuring that their members have equal access to the rights and opportunities granted by national laws to the rest of the population; (b) promoting the full realization of their social, economic and cultural rights with respect for their social and cultural identity, customs, traditions and institutions; (c) assisting them to eliminate socio-economic gaps between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 2 sets the principle of coordinated and systematic action as the basis for the realization of the rights enshrined in the Convention.
Art. 3	• <i>Objective:</i> Entitle indigenous and tribal peoples to the full measure of human rights and fundamental freedoms without hindrance or discrimination. Coercion in violation of these rights and freedoms is expressly prohibited. • <i>Comparison with other relevant instruments:</i> No similar provisions in up-to-date instruments. • <i>Current relevance:</i> Art. 3 acknowledges that indigenous and tribal peoples, as individuals and as a group, are entitled to enjoy all human rights and fundamental freedoms without discrimination, as well as protection from coercion and violence.
Art. 4	• <i>Objective:</i> Special measures shall be adopted for safeguarding the persons, institutions, property, labour, cultures, and environment of these peoples. Such measures must not prejudice their enjoyment of the general rights of citizenship without discrimination. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 4 aligns with contemporary views on the need to protect the integrity of indigenous and tribal peoples through special measures.
Art. 5	• <i>Objective:</i> In applying the provisions of the Convention, the State has to recognize and protect the values and practices of these peoples, respect their

	integrity and take into account the nature of the problems which face them; adopt policies, with the participation and cooperation of the peoples affected, aimed at mitigating the difficulties that they experience in facing new conditions of life and work. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 5 aligns with contemporary views on the need to protect the values and practices of indigenous and tribal peoples.
Art. 6	• <i>Objective:</i> Requires governments to consult the peoples concerned whenever consideration is being given to legislative or administrative measures which may affect them directly; 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 programs which concern them; establish means for the full development of these peoples' institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose. The consultations have to be undertaken in good faith and in a form appropriate to the circumstances to achieve agreement. • <i>Comparison with other relevant instruments:</i> Recommendation No. 205 provides that in responding to discrimination arising from or exacerbated by conflicts or disasters and when taking measures for promoting peace, preventing crises, enabling recovery and building resilience, Members should ensure that indigenous and tribal peoples are consulted, in particular through their representative institutions, where they exist, and participate directly in the decision-making process, especially if the territories inhabited or used by indigenous and tribal peoples and their environment are affected by a crisis and related recovery and stability measures. • <i>Current relevance:</i> Art. 6 enshrines an obligation for governments to consult indigenous and tribal peoples in order to ensure their full participation in decisions that affect them. It is consistent with other international labour standards of general application, including Recommendation No. 205 on employment and decent work for peace and resilience.
Art. 7	• <i>Objective:</i> Indigenous and tribal peoples have the right to determine their own development priorities and exercise control over their economic, social, and cultural development; They are entitled to participate in the formulation, implementation, and evaluation of plans and programs for national and regional development that directly affect them. The improvement of living and working conditions, as well as health and education levels, in the areas inhabited by these peoples should be a priority in overall economic development plans, with their active participation and cooperation. Special projects for development of these areas must be designed to promote such improvement. Governments are responsible for ensuring appropriate studies, in collaboration with the concerned peoples, to assess the social, spiritual, cultural, and environmental impacts of planned development activities. Results of these studies shall be considered as fundamental criteria for implementing such activities. Governments, in cooperation with the peoples concerned, must take measures to protect and preserve the environment of the territories inhabited by them.

	• <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art.7 adopts a comprehensive and modern approach by recognizing the right of indigenous and tribal peoples to decide their own priorities for the process of development and by establishing the responsibility of States to undertake, in collaboration with indigenous and tribal peoples, studies to assess the social, spiritual, cultural and environmental impact of development activities that could affect these peoples directly.
Art. 8	• <i>Objective:</i> When applying national laws to indigenous and tribal peoples, due regard should be given to their customs or customary laws. These peoples have the right to preserve their customs and institutions, provided they are not incompatible with nationally and internationally recognized human rights. Procedures should be established as needed to resolve conflicts that may arise in this respect. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 8 adopts a comprehensive and modern approach by ensuring that national laws consider the customs and customary laws of indigenous and tribal peoples, and recognizing their right to preserve their customs and institutions within the framework of internationally recognized human rights.
Art. 9	• <i>Objective:</i> 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. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 9 adopts a comprehensive and modern approach by advocating for the preservation of indigenous and tribal customs and institutions in addressing offenses.
Art. 10	• <i>Objective:</i> In imposing penalties laid down by general law on members of indigenous and tribal peoples, their economic, social, and cultural characteristics should be taken into account. Preference should be given to methods of punishment other than confinement in prison. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 10 calls Member States to take into account the economic, social, and cultural characteristics of indigenous peoples, aiming to ensure that justice is administered in a manner that respects their identities and values. It recognizes the unique circumstances and backgrounds of indigenous and tribal peoples, recognizing that conventional punitive measures may not be suitable or effective for these communities. In practice, this provision is applied taking into consideration the national legal system and internationally recognised human rights.¹²

¹² Some countries have adopted specific legislation for implementing this provision, e.g., Ecuador; or developed national jurisprudence e.g., Colombia.

Art. 11	• <i>Objective:</i> Prohibition and punishment of the exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, except in cases prescribed by law for all citizens. • <i>Comparison with other relevant instruments:</i> Convention No 29 and its Protocol requires Member States to take effective measures for the prevention and suppression of forced or compulsory labour in all its forms. Convention No. 29 stipulates that forced or compulsory labour must be punishable as a penal offence, with penalties that are really adequate and are strictly enforced. The Protocol also provides for the protection of victims and their access to appropriate and effective remedies, such as compensation. • <i>Current relevance:</i> Art. 11 seeks to prevent and punish any form of forced or compulsory labour, into which indigenous and tribal peoples in a vulnerable situation may be trapped. It is consistent with other international labour standards of general application, including Convention No. 29 and its Protocol on forced labour.
Art. 12	• <i>Objective:</i> Safeguard the peoples concerned against the abuse of their rights and access to legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 12 addresses ongoing challenges faced by indigenous and tribal peoples in accessing justice and protecting their rights. It recognizes their right to understand and be understood in legal proceedings, as they often encounter barriers to accessing justice, including linguistic, cultural, and economic obstacles, and they continue to face threats to their rights.
Part II. Land	
Art. 13	• <i>Objective:</i> Requires governments to respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands and/or territories, which they occupy or otherwise use, and in particular the collective aspects of this relationship. 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. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art.13 recognizes the special relationship of indigenous and tribal peoples with their lands, requiring the government to respect the collective aspects of this relationship and deepening the concept of land and territory.
Art. 14	• <i>Objective:</i> The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. Measures shall be taken 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, paying particular attention to the situation of nomadic peoples and shifting cultivators in this respect. Steps shall be taken to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and

	possession. Adequate procedures shall be established within the national legal system to resolve land claims. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 14 sets the principle of the recognition and effective protection of the right of ownership and possession over indigenous and tribals peoples' lands and territories
Art. 15	• <i>Objective:</i> Safeguard indigenous and tribal people's rights to natural resources within their lands or territories, including the right to participate in the use, management and conservation of these resources. 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. 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. • <i>Comparison with other relevant instruments:</i> No similar provisions exist. • <i>Current relevance:</i> Art. 15 recognizes the special relationship of indigenous and tribal peoples with their lands and natural resources and the importance of consultation in relation to programmes of exploration or exploitation of natural resources in lands traditionally occupied by them.
Art. 16	• <i>Objective:</i> Indigenous and tribal peoples must not be removed from their lands unless this is strictly necessary as an exceptional measure and only with their free and informed consent; they have the right to return to their lands once the causes for their displacement cease to exist; they must be provided, if such return is not possible, with lands of quality and legal status at least equal to the lands previously occupied or compensated in money or kind where they prefer this. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 16 recognizes that displacement should be an exceptional measure and that any relocation is conducted with their consent and in a manner that upholds their dignity, rights, and well-being. It is a crucial issue for indigenous and tribal peoples, who have often been subject to displacement.
Art. 17	• <i>Objective:</i> Respect the procedures established by the peoples concerned for the transmission of land rights among members of these peoples. 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. 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. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments.

	• <i>Current relevance:</i> Art. 17 recognizes the importance of respecting indigenous and tribal peoples' rights to their land and the procedures they have established for the transmission of these rights within their communities.
Art. 18	• <i>Objective:</i> 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. • <i>Comparison with other relevant instruments:</i> No other similar provisions exist. • <i>Current relevance:</i> Art. 18 emphasizes the need for adequate legal penalties to be established for unauthorized intrusion upon or use of the lands of indigenous and tribal peoples, as they are particularly vulnerable and have often been deceived or forced to give up their lands.
Art. 19	• <i>Objective:</i> 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 populations/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. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art.19 underscores the principle of equality in access to resources and opportunities for indigenous and tribal peoples within national agrarian programmes. Without the resource base for their traditional economies, indigenous and tribal peoples are culturally and economically vulnerable.
Part III. Recruitment and conditions of employment	
Art. 20	• <i>Objective:</i> Adoption of special measures, in co-operation with the peoples concerned, to ensure their effective protection with regard to recruitment and conditions of employment. Prevent any discrimination against indigenous and tribal workers, in particular as regards: (a) admission to employment; (b) equal remuneration; (c) medical and social assistance; (d) right of association. The measures taken shall include measures to ensure: (a) that they enjoy the protection afforded by national law and practice to other workers in the same sectors, and that they are fully informed of their rights; (b) that they are not subjected to working conditions hazardous to their health; (c) that they are not subjected to coercive recruitment systems; (d) that they enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment. Establishment of adequate labour inspection services. • <i>Comparison with other relevant instruments:</i> Convention No. 111 requires Member States to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.¹³

¹³ A number of comments of the Committee of Experts under Convention No. 111 address the situation of indigenous peoples. See for example: *Argentina*, [observation](#), adopted in 2023; *Australia*, [observation](#), adopted in 2023; *Botswana*, [direct request](#), adopted in 2023; *Cambodia*, [observation](#), adopted in 2023; *Canada*, [direct request](#), adopted in 2023; *El Salvador*, [direct request](#), adopted in 2023; *Gabon*, [direct request](#), adopted in 2023; *Kenya*, [direct request](#), adopted in 2023.

	• <i>Current relevance:</i> Art. 20 is consistent with other international labour standards of general application, including Convention No. 111 on discrimination (employment and occupation).
Part IV. Vocational training, handicrafts and rural industries	
Art. 21	• <i>Objective:</i> Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 21 takes into account that indigenous peoples face barriers and disadvantages in the labour market as they often have limited access to education and vocational training and their traditional knowledge and skills are not necessarily valued or in demand.
Art. 22	• <i>Objective:</i> Indigenous and tribal peoples must be given the same opportunities for vocational training as other citizens. Governments shall develop special training programmes, if necessary, based on the economic environment, social and cultural conditions and practical needs of the peoples concerned; and transfer to these peoples, if feasible and agreeable, responsibility for the organisation and operation of such special training programmes. 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. • <i>Comparison with other relevant instruments:</i> Recommendation No. 195 provides that Members should promote access to education, training and lifelong learning for people with nationally identified special needs, such as indigenous people. • <i>Current relevance:</i> Art. 22 emphasizes the importance of ensuring equal access to vocational training opportunities for indigenous and tribal peoples while respecting their cultural identity and promoting their active participation in the design and implementation of training programmes. It takes into account that these peoples often face economic marginalization and higher rates of unemployment. It is consistent with other international labour standards of general application, including Recommendation No. 195.
Art. 23	• <i>Objective:</i> 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 people and whenever appropriate, ensure that these activities are strengthened and promoted. 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. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 23 recognizes the traditional and subsistence activities of the peoples as important factors in the maintenance of their cultures and in their development.

Part V. Social security and health	
Art. 24	• <i>Objective:</i> Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 24 calls to the extension of social security to indigenous and tribal peoples on a non-discriminatory basis. It takes into account that these peoples often face socio-economic marginalization and lack access to basic social security measures.
Art. 25	• <i>Objective:</i> Establishes Governments' responsibility for ensuring that adequate health services are made available to the peoples concerned, or for providing them with resources to allow them to design and deliver such services under their own responsibility and control. Health services shall, to the extent possible, be community-based and planned and administered in co-operation with the peoples concerned and respectful of their traditions etc. Health care systems shall give preference to the training and employment of local community health workers and shall be co-ordinated with other social, economic and cultural measures in the country. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 25 underscores the importance of equitable access to appropriate healthcare for indigenous and tribal peoples and of their involvement in the design and delivery of health services. It takes into account historical neglect and disparities in healthcare provision for these peoples and recognizes the importance of culturally appropriate and locally accessible healthcare, respecting the traditions and preferences of these peoples.
Part VI. Education and means of communication	
Art. 26	• <i>Objective of C.169:</i> Measures shall be taken to ensure that members of the populations concerned have the opportunity to acquire education at all levels, on at least an equal footing with the rest of the national community. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 26 acknowledges the collective educational needs and rights of indigenous peoples, which should be accessed on a non-discriminatory basis. These peoples have often been marginalized and excluded from educational opportunities, leading to disparities in literacy rates and employment opportunities.
Art. 27	• <i>Objective:</i> requires Governments to develop and implement, in cooperation with the peoples concerned, education programmes and services appropriate to their needs and respectful of their traditions, cultures and history; 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 these programmes to these peoples. Art. 27 also recognizes the right of these peoples to establish their own educational institutions and facilities, provided they meet minimum standards. Art. 27 requires the provision of adequate resources for this purpose.

	• <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 27 recognizes that indigenous peoples have collective educational needs and rights, based on their distinct histories, cultures, values, languages, knowledge, livelihood strategies and ways of learning – and their wish to transmit these to future generations.
Art. 28	• <i>Objective:</i> Wherever practical, indigenous and tribal peoples children shall be taught to read and write in their own indigenous language or in the language most commonly used and, when this is not practicable, consultations shall be undertaken with these peoples with a view to the adoption of measures to achieve this objective. Adequate measures shall be taken to ensure that indigenous peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 28 reflects the modern approach based on the respect for cultural and linguistic diversity, by calling on the preservation of indigenous languages, considering that the mother tongue of a people is an indispensable link to traditional cultures.
Art. 29	• <i>Objective:</i> 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. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 29 reflects the modern approach based on the respect for cultural and linguistic diversity, by calling for an education aiming children to participate fully in national life, while at the same time learning about their own culture and heritage.
Art. 30	• <i>Objective:</i> requires governments to 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. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 30 stresses that awareness-raising is crucial for strengthening the institutional capacity of indigenous peoples to develop their own societies and communities and fully participate and contribute to the broader national society.
	• <i>Objective:</i> 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

Art. 31	a fair, accurate and informative portrayal of the societies and cultures of these peoples. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 31 emphasizes the need to inform non-indigenous people about indigenous and tribal cultures, taking into account that intolerance is often based on lack of knowledge, with a view to eliminating prejudices against them.
Part VII. Contacts and co-operation across borders	
Art. 32	• <i>Objective:</i> Appropriate measures shall be taken by Governments, 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. • <i>Comparison with other relevant instruments:</i> No similar provisions exist. • <i>Current relevance:</i> Art. 32 recognizes the importance of fostering cooperation between indigenous and tribal peoples across borders. It reflects contemporary views of the need for cooperative approaches to address issues touching indigenous and tribal peoples.
Part VIII. Administration	
Art. 33	• <i>Objective:</i> The responsible governmental authority shall ensure that agencies or other mechanisms exist to administer the programmes affecting indigenous and tribal peoples, and that they have the means necessary for the proper fulfilment of the functions assigned to them. 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. • <i>Comparison with other relevant instruments:</i> No similar provisions exist in up-to-date instruments. • <i>Current relevance:</i> Art. 33 refers to the need to establish institutions that ensure coordination among competent authorities for the implementation of the Convention, in cooperation with the peoples concerned. It plays a vital role in ensuring the effective implementation of measures outlined in the Convention and addressing the specific needs and concerns of indigenous and tribal peoples.

The instruments in 2024

A. Policy context

Indigenous and tribal peoples have represented a rich diversity of cultures, traditions, and ways of life based on a close relationship with nature.¹⁴ Globally, there are an estimated 476.6 million indigenous peoples (6.2 per cent of the global population), a little over half of whom are

¹⁴ ILO: [Implementing the ILO Indigenous and Tribal Peoples Convention No. 169, Towards and inclusive, sustainable and just future](#), Geneva, 2019, p.32.

women.¹⁵ Asia and the Pacific is the region where the highest proportion of indigenous peoples live (70.5 per cent), followed by Africa (16.3 per cent), Latin America and the Caribbean (11.5 per cent), Northern America (1.6 per cent) and Europe and Central Asia (0.1 per cent).¹⁶

Across centuries, indigenous and tribal communities have faced a historical narrative marked by marginalization, disparities, and economic hardships. This narrative is rooted in a legacy of injustices that have undermined their lands, territories, cultures, and traditional ways of life.¹⁷ Historically, indigenous populations have predominantly inhabited rural regions, frequently depending on ancestral lands and natural resources to sustain their livelihoods and engage in traditional occupations. The ILO estimates indicate that a vast majority of indigenous peoples continue to live in rural areas (over 73.4 per cent of the global indigenous population).¹⁸ Globally, in 2019, the employment participation rate for indigenous peoples was 63.3 per cent, which is 4.2 percentage points higher than that of their non-indigenous counterparts.¹⁹ However, this higher rate of participation in employment for indigenous peoples at the global level can hide substantial differences in the quality of work, which is marked by poor working conditions, low pay and discrimination.²⁰

B. International labour standards context

(1) Information relating to the ratification of Conventions Nos 107 and 169

Convention No. 107 was revised by Convention No. 169, which closed Convention No. 107 to further ratifications. Ratification of Convention No. 169 results in the automatic denunciation of Convention No. 107.

Convention No. 169 is in force in 24 Member States and Convention No. 107 is in force in 17 Member States. Since the SRM TWG's examination of the follow-up taken to Convention No. 107 in 2016, no Member State bound by Convention No. 107 has ratified Convention No. 169.

In 2019, about 15 per cent of indigenous peoples globally lived in countries that have ratified Convention No. 169. According to ILO estimates, if six of the most populous countries that have ratified Convention No. 107²¹ were to ratify ILO Convention No. 169, the share of indigenous peoples protected under its provisions would rise to at least 40 per cent of

¹⁵ ILO: [Implementing the ILO Indigenous and Tribal Peoples Convention No. 169, Towards and inclusive, sustainable and just future](#), Geneva, 2019, p.52.

¹⁶ ILO: [Implementing the ILO Indigenous and Tribal Peoples Convention No. 169, Towards and inclusive, sustainable and just future](#), Geneva, 2019, p.13

¹⁷ ILO: [Implementing the ILO Indigenous and Tribal Peoples Convention No. 169, Towards and inclusive, sustainable and just future](#), Geneva, 2019, p.32.

¹⁸ ILO: [Implementing the ILO Indigenous and Tribal Peoples Convention No. 169, Towards and inclusive, sustainable and just future](#), Geneva, 2019, p. 56.

¹⁹ ILO: [Implementing the ILO Indigenous and Tribal Peoples Convention No. 169, Towards and inclusive, sustainable and just future](#), Geneva, 2019, p.14.

²⁰ ILO: [Implementing the ILO Indigenous and Tribal Peoples Convention No. 169, Towards and inclusive, sustainable and just future](#), Geneva, 2019, p.15.

²¹ Angola, Bangladesh, El Salvador, India, Pakistan and Panama. See ILO: [Implementing the ILO Indigenous and Tribal Peoples Convention No. 169, Towards and inclusive, sustainable and just future](#), Geneva, 2019, p.52.

indigenous peoples globally.²² Some comments of the Committee of Experts suggest that the law and practice of some Member States in which Convention No. 107 is in force, may already be at least partially in line with C.169.²³

Convention	Effective ratifications:	Further information
Convention No. 107	17 effective ratifications ²⁴ (10 denunciations)	• <u>Last ratification:</u> <i>Iraq</i> (1986) • <u>Ratification by region:</u> Europe and Central Asia: 2 ratifications;²⁵ Africa: 6 ratifications;²⁶ Americas: 14 ratifications;²⁷ Asia and the Pacific: 3 ratifications;²⁸ Arab States: 2 ratifications.²⁹ • <u>Declaration of application to non-metropolitan territories:</u> no declaration of application
Convention No. 169	24 effective ratifications ³⁰	• <u>Last ratification:</u> <i>Germany</i> (2021) • <u>Ratification by region:</u> Europe and Central Asia: 6 ratifications;³¹ Africa: 1 ratification;³² Americas: 15 ratifications;³³ Asia and the Pacific: 2 ratifications;³⁴ Arab States: 0 ratification. • <u>Declaration of application to non-metropolitan territories:</u> <i>Greenland</i>.

(2) Information concerning the implementation of Conventions Nos 107 and 169

The Committee of Experts supervises the implementation of both Conventions Nos 107 and 169. There are currently 32 pending comments under Convention No. 169 and 19 pending comments under Convention No. 107. Article 23 observations have been received from social partners for both Conventions Nos 107 and 169. There are three pending representations submitted between 2019 and 2023 under Article 24 of the Constitution alleging non-observance

²² The figures presented are from 2019. See ILO: [Implementing the ILO Indigenous and Tribal Peoples Convention No. 169, Towards and inclusive, sustainable and just future](#), Geneva, 2019, p.52.

²³ In the case of *Panama* ([observation](#), adopted in 2021) and *Pakistan* ([direct request](#), adopted in 2022), the Committee of Experts has noted with interest the establishment of policies and mechanisms for the participation of indigenous groups in development programs. In the case of *El Salvador* ([observation](#), adopted in 2018), the Committee has noted with interest the adoption of legislation aimed at preserving the cultures and institutions of indigenous peoples, which is a principle proclaimed under Convention No. 169.

²⁴ *Angola, Bangladesh, Belgium, Cuba, Dominican Republic, Egypt, El Salvador, Ghana, Guinea-Bissau, Haiti, India, Iraq, Malawi, Pakistan, Panama, Syrian Arab Republic and Tunisia*.

²⁵ *Belgium and Portugal* (denounced in 2009).

²⁶ *Angola, Egypt, Ghana, Guinea-Bissau, Malawi and Tunisia*.

²⁷ *Argentina* (automatic denunciation in 2001), *El Salvador, Dominican Republic, Haiti, Plurinational State of Bolivia* (automatic denunciation in 1992), *Brazil* (automatic denunciation in 2003), *Colombia* (automatic denunciation in 1992), *Costa Rica* (automatic denunciation in 1994), *Cuba, Ecuador* (automatic denunciation in 1999), *Mexico* (automatic denunciation in 1991), *Panama, Paraguay* (automatic denunciation in 1994) and *Peru* (automatic denunciation in 1995).

²⁸ *India, Pakistan and Bangladesh*.

²⁹ *Syrian Arab Republic and Iraq*.

³⁰ *Argentina, Plurinational State of Bolivia, Brazil, Central African Republic, Chile, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Germany, Guatemala, Honduras, Luxembourg, Mexico, Nepal, Netherlands, Nicaragua, Norway, Paraguay, Peru, Spain and Bolivarian Republic of Venezuela*.

³¹ *Denmark, Germany, Luxembourg, Netherlands, Norway and Spain*.

³² *Central African Republic*.

³³ *Argentina, Plurinational State of Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, Bolivarian Republic of Venezuela and Dominica*.

³⁴ *Nepal and Fiji*.

by *Argentina, Brazil and Chile* of Convention No. 169.³⁵ Since the adoption of Convention No. 169, the Committee has adopted three General Observations.³⁶

Under its examination of Convention No. 107, the Committee has considered the question of the identification and protection of tribal and semi-tribal populations, by requesting Governments to specify the groups covered by the Convention or the measures taken to protect their rights and interests or to protect them from acts of violence.³⁷ For instance, as regards one ratifying country in Latin America, it noted the adoption of legislation exclusively addressing the rights of indigenous peoples – such as the right to preserve, enrich and publicize their culture, identity and cultural heritage, to fully exercise their human rights - and the obligation of the State to adopt public policies aimed at the recognition and visibility of indigenous peoples.³⁸ In another case, the Committee expressed deep concern regarding issued surrounding the protection of indigenous person and urged the government concerned to take the necessary measures to protect their physical integrity, requested the government to conduct thorough investigations of reported cases of intimidation, violence, and disappearance of persons and to ensure that perpetrators are identified, prosecuted and punished.³⁹ The Committee has largely examined the responsibility of Governments for developing coordinated and systematic action for the protection of the populations and their collaboration in applying the provisions of the Convention⁴⁰ and welcomed the establishment of institutions providing a good basis for an effective coordinated and systematic action.⁴¹ It raised the issue of the improvement of living or working conditions of indigenous workers, including indigenous women,⁴² noting in some cases that a large part of the indigenous and tribal population works in the informal economy, particularly in agriculture.⁴³ The Committee examined the opportunities of indigenous and tribal populations concerning vocational training⁴⁴ and education,⁴⁵ the extension of social security schemes and the provision of adequate health services to indigenous and tribal populations.⁴⁶ It raised the issue of the effective recognition and protection of the rights of indigenous communities over the land they have traditionally occupied, the removal of these populations from their lands, including due to climate conditions, and examined the measures adopted to ensure that the communities can be relocated

³⁵ *Chile*, [representation](#), 2023; *Argentina*, [representation](#), 2022; *Brazil*, [representation](#), 2019. Note that the report of the Committee set up to examine the representation alleging non-observance by Ecuador of C.169 (2021) was approved by the GB in March 2024, see [GB.350/INS/17/5](#), para. 69.

³⁶ [General Observation](#) on C.169, adopted in 2018; [General Observation](#) on C.169, adopted in 2010; [General Observation](#) on C.169, adopted in 2008.

³⁷ *Angola*, [direct request](#), adopted in 2022; *India*, [direct request](#), adopted in 2020; *India*, [observation](#), adopted in 2020; *Egypt*, [direct request](#), adopted in 2019; *Iraq*, [direct request](#), adopted in 2019; *Tunisia*, [direct request](#), adopted in 2019.

³⁸ *El Salvador*, [observation](#), adopted in 2018.

³⁹ *Bangladesh*, [observation](#), adopted in 2022;

⁴⁰ *Syrian Arab Republic*, [direct request](#) (repetition), adopted in 2023; *Bangladesh*, [observation](#), adopted in 2022; *Pakistan*, [direct request](#), adopted in 2022; *Panama*, [direct request](#), adopted in 2021; *India*, [direct request](#), adopted in 2020; *Egypt*, [direct request](#), adopted in 2019; *Tunisia*, [direct request](#), adopted in 2019.

⁴¹ *Angola*, [direct request](#), adopted in 2022.

⁴² *Syrian Arab Republic*, [direct request](#) (repetition), adopted in 2022; *Panama*, [direct request](#), adopted in 2023; *Angola*, [direct request](#), adopted in 2022; *El Salvador*, [observation](#), adopted in 2018; *Panama*, [direct request](#), adopted in 2021.

⁴³ *Bangladesh*, [direct request](#), adopted in 2022;

⁴⁴ *Bangladesh*, [direct request](#), adopted in 2022; *India*, [direct request](#), adopted in 2020; *Iraq*, [direct request](#), adopted in 2019; *Tunisia*, [direct request](#), adopted in 2019

⁴⁵ *Bangladesh*, [direct request](#), adopted in 2022; *Pakistan*, [direct request](#), adopted in 2022; *Panama*, [direct request](#), adopted in 2021; *India*, [direct request](#), adopted in 2020; *Tunisia*, [direct request](#), adopted in 2019

⁴⁶ *Bangladesh*, [direct request](#), adopted in 2022; *Panama*, [direct request](#), adopted in 2021; *India*, [direct request](#), adopted in 2020.

on lands of quality at least equal to those that they previously occupied and which enable them to provide for their needs.⁴⁷ The Committee referred to the prospects for the ratification of Convention No. 169,⁴⁸ noting measures taken and legislative and institutional progress in areas relating to the protection of indigenous and tribal people's rights which correspond to the principles enshrined in the Convention,⁴⁹ and welcoming consultations to review the ratification of Convention No. 169.⁵⁰

Within its supervision of Convention No. 169, the Committee has examined the scope of application of the Convention, including the collection of socio-economic statistics on indigenous peoples and whether the criterion of self-identification has been applied in the identification of indigenous peoples.⁵¹ The Committee has largely examined the Government's responsibility for developing coordinated and systematic action, with the participation of the peoples concerned, to protect the rights of indigenous and tribal peoples. It emphasized the importance of full consultation and participation of the peoples in applying the provisions of the Convention,⁵² noting particularly cases of progress in this regard.⁵³ The Committee raised the issue of the protection of human rights of indigenous and tribal peoples,⁵⁴ including urging Governments to take all the necessary measures to protect their life, physical and psychological integrity, to combat discrimination, and to ensure that those responsible for violating these rights are held accountable and punished.⁵⁵ The Committee examined the access of indigenous and tribal peoples to justice and customary laws,⁵⁶ as well as their protection in situations of isolation and against all forms of debt bondage.⁵⁷ The Committee considered the measures taken to promote the full realization of the social, economic and cultural rights of indigenous peoples,⁵⁸ including the protection of cultural values, practices and indigenous languages.⁵⁹ It has commented on the rights of ownership and possession of the indigenous and tribal peoples

⁴⁷ Panama, [direct request](#), adopted in 2021.

⁴⁸ Angola, [direct request](#), adopted in 2022; Bangladesh, [observation](#), adopted in 2022; Panama, [direct request](#), adopted in 2021; Ghana, [direct request](#), adopted in 2020; Egypt, [direct request](#), adopted in 2019; Tunisia, [direct request](#), adopted in 2019; El Salvador, [observation](#), adopted in 2018.

⁴⁹ Panama, [direct request](#), adopted in 2021.

⁵⁰ Ghana, [direct request](#), adopted in 2020; El Salvador, [observation](#), adopted in 2018.

⁵¹ Dominica, [direct request](#), adopted in 2021; Honduras, [direct request](#), adopted in 2021; Peru, [direct request](#), adopted in 2021; Guatemala, [direct request](#), adopted in 2020; Colombia, [direct request](#), adopted in 2019; Mexico, [direct request](#), adopted in 2019; Central African Republic, [direct request](#), adopted in 2018; Chile, [direct request](#), adopted in 2018; Ecuador, [direct request](#), adopted in 2014.

⁵² Brazil, [direct request](#), adopted in 2022; Brazil, [observation](#), adopted in 2022; Dominica, [direct request](#), adopted in 2021; Honduras, [observation](#), adopted in 2021; Honduras, [direct request](#), adopted in 2021; Peru, [observation](#), adopted in 2021; Peru, [direct request](#), adopted in 2021; Guatemala, [observation](#), adopted in 2020; Guatemala, [direct request](#), adopted in 2020; Colombia, [direct request](#), adopted in 2019; Chile, [observation](#), adopted in 2018; Central African Republic, [direct request](#), adopted in 2018; Nicaragua, [direct request](#), adopted in 2018; Venezuela, [observation](#), adopted in 2018; Costa Rica, [observation](#), adopted in 2015; Ecuador, [direct request](#), adopted in 2014; Ecuador, [observation](#), adopted in 2014; Fiji, [observation](#), adopted in 2014; Norway, [observation](#), adopted in 2014.

⁵³ Paraguay, [observation](#), adopted in 2022; Mexico, [observation](#), adopted in 2019; Chile, [direct request](#), adopted in 2018;

⁵⁴ Paraguay, [direct request](#), adopted in 2022; Chile, [direct request](#), adopted in 2018.

⁵⁵ Brazil, [observation](#), adopted in 2022; Honduras, [observation](#), adopted in 2021; Peru, [observation](#), adopted in 2021; Guatemala, [observation](#), adopted in 2020; Central African Republic, [observation](#), adopted in 2018; Nicaragua, [observation](#), adopted in 2018; Venezuela, [observation](#), adopted in 2018.

⁵⁶ Honduras, [direct request](#), adopted in 2021; Peru, [direct request](#), adopted in 2021; Guatemala, [direct request](#), adopted in 2020; Mexico, [direct request](#), adopted in 2019; Costa Rica, [direct request](#), adopted in 2015; Ecuador, [direct request](#), adopted in 2014.

⁵⁷ Peru, [direct request](#), adopted in 2021; Colombia, [direct request](#), adopted in 2019.

⁵⁸ Brazil, [direct request](#), adopted in 2022.

⁵⁹ Colombia, [direct request](#), adopted in 2019; Central African Republic, [direct request](#), adopted in 2018; Costa Rica, [direct request](#), adopted in 2015; Norway, [direct request](#), adopted in 2014.

over the lands which they traditionally occupy,⁶⁰ the protection against intrusion,⁶¹ and the rights to the natural resources pertaining to their lands.⁶² The Committee examined how indigenous peoples have participated in the formulation, implementation and evaluation of development plans and programmes,⁶³ and considered the improvement of their living conditions,⁶⁴ the conditions and access to health and social security,⁶⁵ employment, recruitment and vocational training,⁶⁶ and education.⁶⁷ The Committee also reviewed the measures taken to facilitate contacts and cooperation between indigenous and tribal peoples across borders.⁶⁸

Key considerations

In examining Convention No. 169, for the purpose of determining its status, and Convention No. 107, for the purpose of determining the follow-up to be taken to this outdated instrument, the following considerations are particularly relevant:

- Convention No. 107 was revised by Convention No. 169, which closed Convention No. 107 to further ratification.
- The regulatory approach to indigenous workers has changed significantly since the adoption of Convention No. 107. Convention No. 107 focuses on assimilating indigenous and tribal peoples into the dominant culture in society without necessarily recognizing their distinct cultural identities. In comparison, Convention No. 169 reflects a broader international recognition of the rights of indigenous and tribal peoples to their own social, economic, and cultural development and provides a framework for their inclusion and

⁶⁰ Argentina, [direct request](#), adopted in 2022; Brazil, [observation](#), adopted in 2022; Paraguay, [observation](#), adopted in 2022; Dominica, [direct request](#), adopted in 2021; Honduras, [direct request](#), adopted in 2021; Peru, [observation](#), adopted in 2021; Guatemala, [observation](#), adopted in 2020; Colombia, [direct request](#), adopted in 2019; Mexico, [direct request](#), adopted in 2019; Central African Republic, [direct request](#), adopted in 2018; Chile, [direct request](#), adopted in 2018; Nicaragua, [observation](#), adopted in 2018; Nicaragua, [direct request](#), adopted in 2018; Costa Rica, [observation](#), adopted in 2015; Ecuador, [direct request](#), adopted in 2014; Norway, [direct request](#), adopted in 2014

⁶¹ Paraguay, [direct request](#), adopted in 2022; Mexico, [observation](#), adopted in 2019; Ecuador, [direct request](#), adopted in 2014

⁶² Dominica, [direct request](#), adopted in 2021; Central African Republic, [direct request](#), adopted in 2018; Chile, [direct request](#), adopted in 2018; Venezuela, [observation](#), adopted in 2018; Costa Rica, [direct request](#), adopted in 2015; Fiji, [observation](#), adopted in 2014; Greenland, [direct request](#), adopted in 2013.

⁶³ Dominica, [direct request](#), adopted in 2021; Colombia, [direct request](#), adopted in 2019; Mexico, [observation](#), adopted in 2019; Chile, [direct request](#), adopted in 2018; Nicaragua, [direct request](#), adopted in 2018; Nicaragua, [direct request](#), adopted in 2018; Nicaragua, [direct request](#), adopted in 2018; Fiji, [observation](#), adopted in 2014; Norway, [direct request](#), adopted in 2014.

⁶⁴ Paraguay, [observation](#), adopted in 2022

⁶⁵ Paraguay, [direct request](#), adopted in 2022; Dominica, [direct request](#), adopted in 2021; Peru, [direct request](#), adopted in 2021; Guatemala, [direct request](#), adopted in 2020; Colombia, [direct request](#), adopted in 2019; Mexico, [direct request](#), adopted in 2019; Chile, [direct request](#), adopted in 2018; Nicaragua, [direct request](#), adopted in 2018; Costa Rica, [observation](#), adopted in 2015

⁶⁶ Paraguay, [direct request](#), adopted in 2022; Paraguay, [observation](#), adopted in 2022; Dominica, [direct request](#), adopted in 2021; Honduras, [direct request](#), adopted in 2021; Guatemala, [direct request](#), adopted in 2020; Colombia, [direct request](#), adopted in 2019; Mexico, [direct request](#), adopted in 2019; Central African Republic, [direct request](#), adopted in 2018; Nicaragua, [direct request](#), adopted in 2018; Costa Rica, [direct request](#), adopted in 2015; Ecuador, [direct request](#), adopted in 2014; Costa Rica, [direct request](#), adopted in 2015.

⁶⁷ Brazil, [direct request](#), adopted in 2022; Guatemala, [direct request](#), adopted in 2020; Colombia, [direct request](#), adopted in 2019; Mexico, [direct request](#), adopted in 2019; Central African Republic, [direct request](#), adopted in 2018; Chile, [direct request](#), adopted in 2018; Nicaragua, [direct request](#), adopted in 2018; Nicaragua, [direct request](#), adopted in 2018; Norway, [direct request](#), adopted in 2014

⁶⁸ Central African Republic, [direct request](#), adopted in 2018; Nicaragua, [direct request](#), adopted in 2018; Costa Rica, [direct request](#), adopted in 2015; Ecuador, [direct request](#), adopted in 2014; Norway, [direct request](#), adopted in 2014

participation in decisions that affect them. It is so far considered to be the most up-to-date international treaty on the rights of indigenous peoples.

- The Cartier Working Party examined Convention No. 107 in 1997 and recommended that it be considered outdated, given its revision by Convention No. 169. It noted that Convention No. 169 was the most up-to-date standard in the area and that its ratification should be promoted.
- In 2015, the Governing Body endorsed the ILO Strategy for Action concerning indigenous and tribal peoples, in the context of which the promotion of ratification and effective implementation of Convention No. 169 is on-going.⁶⁹
- Convention No. 169 is included in the SRM TWG's initial programme of work as it has never been reviewed. In 2016, the SRM TWG examined the follow up to be given to the outdated Convention No. 107 and, among other things, encouraged States bound by this Convention to ratify Convention No. 169. Since then, no Member State bound by Convention No. 107 has ratified Convention No. 169.
- Convention No. 169 is in force in 24 Member States and Convention No. 107 is in force in 17 Member States.
- Both Conventions Nos 107 and 169 are fully supervised by the Committee of Experts. There are 35 pending comments on Convention No. 169 and 20 pending comments on Convention No. 107.

Possible action to be considered in relation to Conventions Nos 107 and 169

The subject matter regulated by Conventions Nos 107 and 169 on indigenous and tribal peoples remains as relevant now as it was when the instruments were adopted. The regulatory approach has, however, changed significantly, confirming the Governing Body's earlier decision to consider Convention No. 107 to be outdated. Convention No. 169, which is oriented towards respect for and protection of indigenous and tribal peoples, is the most up-to-date international treaty on the subject matter.

Following its review of Convention No. 169, and consideration of the follow up to be taken to outdated Convention No. 107, the SRM TWG will tailor lessons learnt through the SRM TWG process to the specificities of this review.

Based on the preceding information, and ensuring consistency with past SRM TWG recommendations, **the Office proposes consideration of:**

- the classification of Convention No. 169 as an *up-to-date* instrument, while acknowledging the status of Convention No. 107 as an *outdated* instrument;
- the identification of *no regulatory gap in coverage* in relation to international regulation concerning indigenous and tribal peoples; and

⁶⁹ [GB.341/POL/1\(Rev.1\)](#). para. 36.

- *practical and time-bound follow-up action* composed of the non-normative measures set out below.

In this regard, the Office has taken particular account of the existence of the up-to-date Convention No. 169, which is considered an international reference point and takes a new regulatory approach.

The SRM TWG will take decisions concerning the three elements within its mandate and make corresponding recommendations to the Governing Body concerning Conventions Nos 107 and 169.

1. STATUS OF INSTRUMENTS UNDER REVIEW:

The SRM TWG will consider whether, within their current legal status as active instruments, Convention No. 169 should be classified as an *up-to-date* instrument, an instrument *requiring further action to ensure its continued and future relevance*, or an *outdated* instrument, while acknowledging the status of Convention No. 107 as an *outdated* instrument. In deciding the status of Convention No. 169, the SRM TWG will consider whether it is fit for purpose.

2. IDENTIFICATION OF GAPS IN COVERAGE:

In determining whether or not a regulatory gap in coverage exists in relation to indigenous and tribal peoples, the SRM TWG should consider all relevant elements, including that the subject matter is regulated by two instruments currently considered to be up-to-date: Convention No. 169 and Recommendation No. 104.

3. FOLLOW-UP ACTION AS APPROPRIATE:

Considering past practices of the SRM TWG and the specificities of the instruments under review, the SRM TWG will consider what follow-up action should be taken:

- i. **If the SRM TWG considers that Convention No. 169 is an up-to-date instrument**, it could recognize that the aim of avoiding gaps in legal protection in Member States, as well as ensuring the ratification and application of the most up-to-date international standards on indigenous and tribal peoples, requires the *promotion of its ratification generally and in the 17 countries in which the related outdated Convention No. 107 is still in force*. Accordingly, the SRM TWG could stress that this involves concerted and committed attention by governments and the social partners, supported by the Office in line with the ILO strategy for action concerning indigenous and tribal peoples. The SRM TWG could recommend that:
 - (a) The tripartite constituents should collaborate to take active steps towards ratification and effective implementation of Convention No. 169 by Member States in which Convention No. 107 is currently in force; and
 - (b) The Office should support the tripartite constituents in taking steps towards ratification and effective implementation of Convention No. 169 by Member States in which Convention No. 107 is currently in force by

implementing a proactive plan of action tailored to the 17 Member States concerned.

- ii. **Alternatively, if the SRM TWG considers that Convention No. 169 has the status of an instrument requiring further action to ensure its continuing and future relevance,** it could then recommend that the Office take necessary further actions that could include:
 - (a) Continuing to provide guidance and technical support to Member States on its application;
 - (b) Developing tools for the provision of Office advice to Member States considering ratification and implementation of Convention No. 169 to ensure application in law and practice;
 - (c) Conducting research to identify the key challenges and opportunities in relation to the application of Convention No. 169, with a view to assessing with tripartite involvement options for possible follow-up action.
- iii. **If the SRM TWG considers that the outdated status of Convention No. 107 warrants a decision to abrogate the Convention by the Conference,** it could decide to recommend that abrogation by the Conference be considered either:
 - (a) As soon as possible;
 - (b) At a particular session of the Conference as it determines; or
 - (c) At a time when all or a certain number of Member States currently bound by the outdated Convention No. 107 have ratified the related up-to-date Convention No. 169; or
 - (d) At a time when the majority of indigenous and tribal peoples globally are estimated to be covered by the related up-to-date Convention.