Chapter 2

Article 1 of Convention No. 169 – Coverage

Article 1 of Convention No. 169 lays out the coverage of the Convention, without providing a definition in the strict sense.

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.

A Before Conventions Nos. 107 and 169

The ILO’s first use of the term “indigenous” in an international standard was in the Recruiting of Indigenous Workers Convention, 1936 (No. 50). This was the second of a series of Conventions that came to be known as the “Native Labour Code”, to regulate the conditions of native, or indigenous, workers in member States.¹ Convention No. 50 was focused on the conditions of work of indigenous

¹ The first Convention in the Native Labour Code was the Forced Labour Convention, 1930 (No. 29), which is still in force as a general instrument to prohibit forced labour – but only a few Articles of that instrument are still in use. The Convention’s provisions on regulation of...
workers, and did not attempt the much broader approach to the question used in the later Conventions Nos. 107 and 169. It contained the following provisions:

**Article 1**
Each Member of the International Labour Organisation which ratifies this Convention undertakes to regulate in accordance with the following provisions the recruiting of indigenous workers in each of its territories in which such recruiting exists or may hereafter exist.

**Article 2**
For the purposes of this Convention –

(b) the term *indigenous workers* includes workers belonging to or assimilated to the indigenous populations of the dependent territories of Members of the Organisation and workers belonging to or assimilated to the dependent indigenous populations of the home territories of Members of the Organisation.

It will be seen that this definition referred to indigenous workers in both dependent territories and in the home territories of member States, though it was actually aimed more at the dependent territories – i.e., colonies.

The short series of indigenous workers’ instruments included also the Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64), the Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65), and the Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86). These later instruments relied on the definition in C. 50. Art. 1(a) of C. 64 provided that:

For the purpose of this Convention –

(a) the term *worker* means an indigenous worker, that is to say a worker belonging to or assimilated to the indigenous population of a dependent territory of a Member of the Organisation or belonging to or assimilated to the dependent indigenous population of the home territory of a Member of the Organisation;

Convention No. 65 used almost exactly the same language in its Article 1(1), but the last in the series, C. 86, provided the following definition in Article 1(a): “the use of forced labour, at a time when it was in general use in overseas colonies of European nations, have been deemed completely outdated, and have been declared to be ‘deleted’ by Article 7 of the 2014 Protocol to Convention No. 29.