



## Appendices





## Appendix 1

### Identifying Indigenous Peoples<sup>1</sup>

#### The concept of Indigenous Peoples

In the forty-year history of indigenous issues at the United Nations, and its even longer history at the ILO, considerable thinking and debate have been devoted to the question of the definition or understanding of “indigenous peoples”. But no such definition has ever been adopted by any United Nations-system body.

One of the most cited descriptions of the concept of “indigenous” was outlined in the José R. Martínez Cobo’s Study on the Problem of Discrimination against Indigenous Populations. After long consideration of the issues involved, Martínez Cobo offered a working definition of “indigenous communities, peoples and nations”. In doing so, he expressed a number of basic ideas forming the intellectual framework for this effort, including the right of indigenous peoples themselves to define what and who indigenous peoples are. The working definition reads as follows:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.

This historical continuity may consist of the continuation, for an extended period reaching into the present of one or more of the following factors:

- a. Occupation of ancestral lands, or at least of part of them
- b. Common ancestry with the original occupants of these lands
- c. Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.)
- d. Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language)
- e. Residence in certain parts of the country, or in certain regions of the world
- f. Other relevant factors.

On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group).

This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference.<sup>2</sup>

During the many years of debate at the meetings of the Working Group on Indigenous Populations, observers from indigenous organizations developed

<sup>1</sup> United Nations Secretariat of the Permanent Forum on Indigenous Issues. 2009. *The State of the World's Indigenous Peoples*. New York. [www.un.org/esa/socdev/unpfii/documents/SOWIP\\_web.pdf](http://www.un.org/esa/socdev/unpfii/documents/SOWIP_web.pdf)

<sup>2</sup> Martínez Cobo, J. 1986/7. *Study of the Problems of Discrimination against Indigenous Populations*. UN Doc. E/CN.4/Sub.2/1986/7 and Add. 1–4. paras 379–383.

a common position that rejected the idea of a formal definition of indigenous peoples at the international level to be adopted by states. Similarly, government delegations expressed the view that it was neither desirable nor necessary to elaborate a universal definition of indigenous peoples. Finally, at its fifteenth session, in 1997, the Working Group concluded that a definition of indigenous peoples at the global level was not possible at that time, and this did not prove necessary for the adoption of the Declaration on the Rights of Indigenous Peoples.<sup>3</sup> Instead of offering a definition, Article 33 of the United Nations Declaration on the Rights of Indigenous Peoples underlines the importance of self-identification, that indigenous peoples themselves define their own identity as indigenous.

#### *Article 33*

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

ILO Convention No. 169 also enshrines the importance of self-identification. Article 1 indicates that 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.

Furthermore, this same Article 1 contains a statement of coverage rather than a definition, indicating that the 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

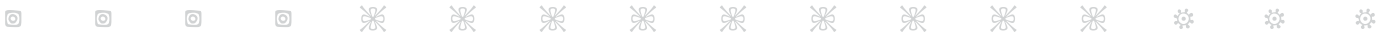
customs or traditions or by special laws or regulations;

- 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 colonization 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.

The concept of indigenous peoples emerged from the colonial experience, whereby the aboriginal peoples of a given land were marginalized after being invaded by colonial powers, whose peoples are now dominant over the earlier occupants. These earlier definitions of indigeness make sense when looking at the Americas, Russia, the Arctic and many parts of the Pacific. However, this definition makes less sense in most parts of Asia and Africa, where the colonial powers did not displace whole populations of peoples and replace them with settlers of European descent. Domination and displacement of peoples have, of course, not been exclusively practised by white settlers and colonialists; in many parts of Africa and Asia, dominant groups have suppressed marginalized groups and it is in response to this experience that the indigenous movement in these regions has reacted.

It is sometimes argued that all Africans are indigenous to Africa and that by separating Africans into indigenous and non-indigenous groups, separate classes of citizens are being created with different rights. The same argument is made in many parts of Asia or, alternatively, that there can be no indigenous peoples within a given country since there has been no large-scale Western settler colonialism and therefore there can be no distinction between the original inhabitants and newcomers. It is certainly true that Africans are indigenous to Africa and Asians are indigenous to Asia, in the context of European colonization. Nevertheless, indigenous identity is not exclusively determined by European colonization.

<sup>3</sup> Working Group on Indigenous Populations (WGIP). 1996a. Working Paper by the Chairperson-Rapporteur, Mrs. Erica-Irene A. Daes, on the concept of "indigenous people". UN Doc. E/CN.4/Sub.2/AC.4/1996/2, 10 June 1996; Working Group on Indigenous Populations (WGIP). 1996b. Report of the WGIP on its fourteenth session. UN Doc. E/CN.4/Sub.2/1996/21, 16 August 1996.



The Report of the Working Group of Experts on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights therefore emphasizes that the concept of indigenous must be understood in a wider context than only the colonial experience.

The focus should be on more recent approaches focusing on self-definition as indigenous and distinctly different from other groups within a state; on a special attachment to and use of their traditional land whereby ancestral land and territory has a fundamental importance for their collective physical and cultural survival as peoples; on an experience of subjugation, marginalization, dispossession, exclusion or discrimination because these peoples have different cultures, ways of life or modes of production than the national hegemonic and dominant model.<sup>4</sup>

In the sixty-year historical development of international law within the United Nations system, it is not uncommon that various terms have not been formally defined, the most vivid examples being the

notions of “peoples” and “minorities”. Yet the United Nations has recognized the right of peoples to self-determination and has adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The lack of formal definition of “peoples” or “minorities” has not been crucial to the Organization’s successes or failures in those domains nor to the promotion, protection or monitoring of the rights accorded to these groups. Nor have other terms, such as “the family” or “terrorism” been defined, and yet the United Nations and Member States devote considerable action and efforts to these areas.

In conclusion, in the case of the concept of “indigenous peoples”, the prevailing view today is that no formal universal definition of the term is necessary, given that a single definition will inevitably be either over- or under-inclusive, making sense in some societies but not in others. For practical purposes, the commonly accepted understanding of the term is that provided in the Martínez Cobo study mentioned above.

<sup>4</sup> African Commission on Human and Peoples' Rights (ACHPR). 2005. *Report of the African Commission's Working Group of Experts on Indigenous Populations/communities*. Banjul and Copenhagen: ACHPR and IWGIA.

## Appendix 2

# United Nations Declaration on the Rights of Indigenous Peoples

## Annex to Human Rights Council Resolution 2006/2

*Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

*affirming also* that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

*affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

*reaffirming* also that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

*concerned* that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

*recognizing* the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

*Further recognizing* the urgent need to respect and promote the rights of indigenous peoples affirmed

in treaties, agreements and other constructive arrangements with States,

*Welcoming* the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring an end to all forms of discrimination and oppression wherever they occur,

*Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

*Recognizing also* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

*Emphasizing* the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

*Recognizing in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

*Recognizing also* that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect,



*Considering* that the rights affirmed in treaties, agreements and constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

*Also considering* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

*Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right of self-determination, exercised in conformity with international law,

*Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

*Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

*Recognizing and reaffirming* that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, wellbeing and integral development as peoples,

*Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect,

#### **Article 1**

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

#### **Article 2**

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

#### **Article 3**

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

#### **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights

to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

#### **Article 6**

Every indigenous individual has the right to a nationality.

#### **Article 7**

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

#### **Article 8**

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
  - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
  - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
  - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
  - (d) Any form of forced assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;
  - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

#### **Article 9**

Indigenous peoples and individuals have the right to

belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

#### **Article 10**

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

#### **Article 11**

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

#### **Article 12**

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent



and effective mechanisms developed in conjunction with indigenous peoples concerned.

#### **Article 13**

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

#### **Article 14**

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

#### **Article 15**

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance,

understanding and good relations among indigenous peoples and all other segments of society.

#### **Article 16**

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately-owned media to adequately reflect indigenous cultural diversity.

#### **Article 17**

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

#### **Article 18**

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

#### **Article 19**

States shall consult and cooperate in good faith with

the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

#### **Article 20**

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

#### **Article 21**

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

#### **Article 22**

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

#### **Article 23**

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

#### **Article 24**

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

#### **Article 25**

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

#### **Article 26**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such

recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

#### **Article 27**

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

#### **Article 28**

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

#### **Article 29**

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous

peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

#### **Article 30**

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a significant threat to relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

#### **Article 31**

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

#### **Article 32**

1. Indigenous peoples have the right to determine and develop priorities and strategies for the

development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of their mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

#### **Article 33**

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

#### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

#### **Article 35**

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

#### **Article 36**

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation,

including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

#### **Article 37**

1. Indigenous peoples have the right to the recognition, observance and enforcement of Treaties, Agreements and Other Constructive Arrangements concluded with States or their successors and to have States honour and respect such Treaties, Agreements and other Constructive Arrangements.
2. Nothing in this Declaration may be interpreted as to diminish or eliminate the rights of Indigenous Peoples contained in Treaties, Agreements and Constructive Arrangements.

#### **Article 38**

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

#### **Article 39**

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

#### **Article 40**

Indigenous peoples have the right to have access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.



#### **Article 41**

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

#### **Article 42**

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States, shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

#### **Article 43**

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

#### **Article 44**

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

#### **Article 45**

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

#### **Article 46**

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law, in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.
3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.



## THE RIGHT TO FOOD AND INDIGENOUS PEOPLES

### Indigenous Peoples' Right to Food: Legal foundation

Indigenous peoples, like everyone else, have a right to adequate food and a fundamental right to be free from hunger. This is stipulated in Article 11 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) of 1966 and constitutes binding international law. This means States Parties to the ICESCR are obliged to implement the right to food domestically, ensuring that it becomes part of their national legal system.

The right to food entitles every person to an economic, political, and social environment that will allow them to achieve food security in dignity through their own means. Individuals or groups who do not have the capacity to meet their food needs for reasons beyond their control, such as illness, discrimination, age, unemployment, economic downturn, or natural disaster, are entitled to be provided with food directly. The obligation to ensure a minimum level necessary to be free from hunger is one of immediate effect.

Various other binding and non-binding international legal instruments protect indigenous peoples' right to food, directly or indirectly.

The *UN Declaration on the Rights of Indigenous Peoples*<sup>2</sup>, adopted in September 2007, is a comprehensive statement addressing the human rights of indigenous peoples. It emphasizes the rights of indigenous peoples to live in dignity, to maintain and strengthen their own institutions, cultures and traditions and to pursue their self-determined development, in keeping with their own needs and aspirations.

The Declaration contains provisions on land, natural resources and subsistence activities, which are highly relevant for the realization of the right to food, recognizes indigenous peoples' collective rights and stresses cultural rights.

The *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Right to Food Guidelines)* provide policy orientation in a number of areas and can be used by indigenous peoples as a tool for advocacy. They refer to indigenous communities in the context of access to resources and assets. In addition, provisions relating to vulnerable groups and disaggregation of data, among others (3.3 on strategies; 7.2 on legal framework; 8.2 and 8.3 on access to resources and assets; 12.3 on national financial resources; 13 on support for vulnerable groups; 14.4 on safety nets; 15.1 on international food aid; 17.2 and 17.5 on monitoring, indicators and benchmarks) are of particular relevance to indigenous peoples.

### *The Right to Food Guidelines, adopted by the FAO Council in November 2004, are a practical tool reflecting the consensus among FAO members on what needs to be done in all of the most relevant policy areas to promote food security using a human rights based approach.*

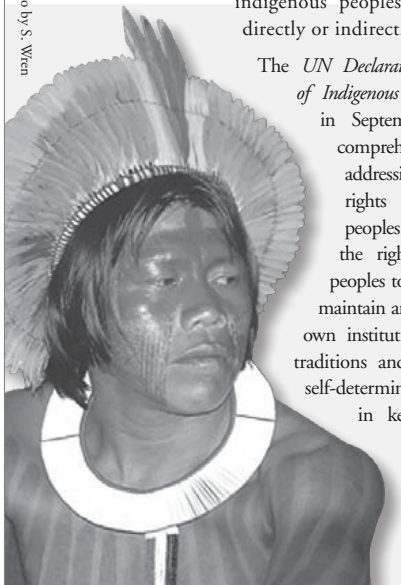
*The Right to Food Guidelines are available on the FAO right to food website: [www.fao.org/righttofood](http://www.fao.org/righttofood).*

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### The right to food as a collective right

The UN Declaration on the Rights of Indigenous Peoples states that indigenous peoples have the right to fully enjoy as a collective or as individuals, all human rights and fundamental freedoms. With particular regard to the right to food, indigenous representatives on the occasion of the 2002 Global Consultation signed the Declaration of Atitlán<sup>3</sup>, stating that they were: "... in agreement that the

Photo by S. Wien





## THE RIGHT TO FOOD AND INDIGENOUS PEOPLES

content of the right to food of indigenous peoples is a collective right”.

The adoption of the *UN Declaration on the Rights of Indigenous Peoples* brought the universal recognition of the right to food as a collective right one step forward. This is already reflected in the preamble of the Declaration which states that “... Indigenous Peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples.” The right to food is one such indispensable right.

### Cultural dimension of the right to food

Indigenous peoples’ right to food has a particular cultural dimension which is relevant in terms of food choices, food preparation and acquisition. Culturally appropriate foods and the activities to obtain them, such as agriculture, hunting and fishing, form an important part of cultural identity.<sup>4</sup> Furthermore, cultural acceptability of food is an element of the normative content of the right to food, and is of particular relevance to indigenous peoples. Right to Food Guideline 10.10 on

nutrition highlights the cultural aspects of nutrition and pertains to indigenous peoples in particular. It translates this principle into a practical policy recommendation by reminding States “...of the cultural values of dietary and eating habits in different cultures...”

### How can the right to food benefit indigenous peoples?

The right to food may be violated in case of denial of access to land, fishing or hunting grounds, deprivation of access to adequate and culturally acceptable food and contamination of food sources. Some court cases, in which indigenous peoples have been involved, have already illustrated and proven that the right to food provides indigenous peoples with an additional legal argument when claiming their rights or challenging decisions or omissions before administrative authorities or courts.

Indeed, States have particular obligations concerning the right to food of indigenous peoples. These include respecting indigenous peoples’ traditional ways of living, strengthening traditional food systems and protecting subsistence activities such as hunting, fishing and gathering.

The respect, protection and fulfilment of the right to food as a collective right has an additional value in comparison to individual rights. This additional value is related to the fact that some property rights to lands, territories and resources are held collectively, and subsistence based activities carried out collectively are not only part of indigenous peoples’ cultural identity, but are often essential for their very existence. The right to food, in its collective dimension, is clearly supplementary to the individual one. A collective right to food may imply, for example:

- An obligation by the State to respect collective property rights over lands, territories and resources, the right to culture and the right to self determination (including the right to pursue own economic, cultural and social development)
- An obligation by the State to protect certain activities that are essential to obtaining food (e.g. agriculture, hunting, fishing); and
- An obligation by the State to provide or ensure a minimum level of essential food that is culturally appropriate.

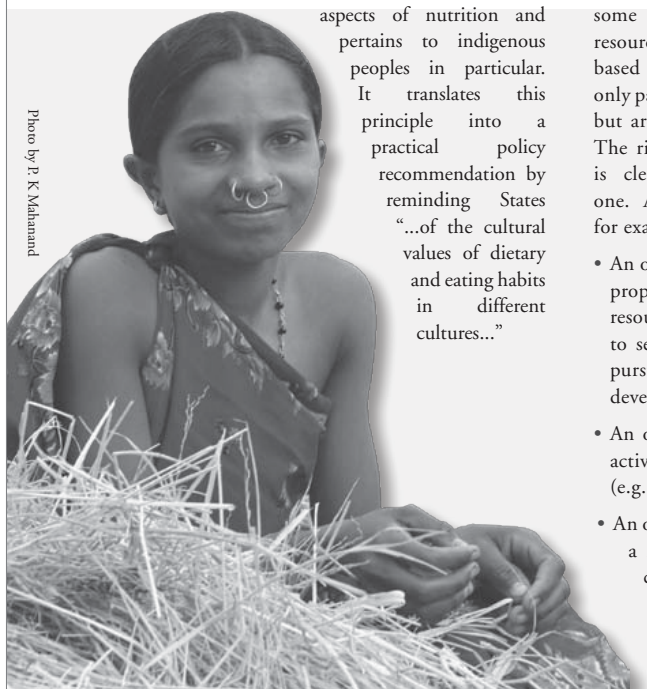


Photo by P. K. Mahanand

Under the right to food, States are also responsible for ensuring the application of general human rights principles to indigenous peoples, both in their food and nutrition security policies and other policies that may affect their access to food. The right to food does not only address the final outcome of eliminating hunger and ensuring food security, but provides a holistic tool and approach for indigenous peoples to improve their food security situation. The rights based approach, normatively based on international human rights standards, determines

**“Ogoni Case”: SERAC (The Social and Economic Rights Action Centre) and CESR (The Center for Economic and Social Rights) v. Nigeria**

One illustrative case for the significance of the right to food for empowerment, advocacy and litigation is a decision by the African Commission on Human and Peoples’ Rights regarding a complaint brought by *SERAC and CESR against Nigeria*.<sup>5</sup>

The complaint alleged the military Government of Nigeria of violating human rights of the Ogoni people. The Nigerian National Petroleum Company (NNPC), the State oil company, formed a joint venture with Shell Petroleum Development Corporation (SPDC) whose activities in the Ogoni region allegedly caused environmental degradation, health problems among the Ogoni people and a destruction of food sources, resulting from the contamination of soil, water and air. In its decision, the African Commission found several violations of the African Charter, including a violation of the right to food, which is implicit in the right to life, the right to health and the right to economic, social and cultural development. The African Commission argued that the minimum core of the right to food requires the Nigerian Government to not destroy or contaminate food sources. Furthermore it found that the Government has a duty to protect its citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties and by preventing peoples’ efforts to feed themselves.

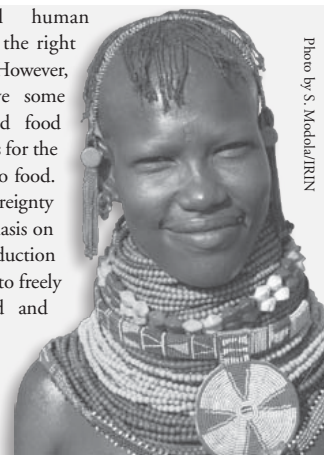
in the food security context the relationship between indigenous groups and individuals as rights holders and the State with correlative obligations as a duty bearer. These human rights principles include participation, accountability, non-discrimination, transparency, human dignity, empowerment and the rule of law. A rights based approach requires particular attention to indigenous peoples’ specific circumstances and concerns. Applied to the right to food in practice, this means that indigenous peoples must be engaged and particularly supported in processes that determine food security and related policies, legislation and decisions. States should provide space for participation in the setting of verifiable targets and benchmarks for subsequent monitoring and accountability of food security.

With regards to non-discrimination, governments should also ensure that data is disaggregated by age, sex and ethnicity. This information should then be used for the development, design, implementation and monitoring of more appropriate food and nutrition policies, which address the needs of all groups, including indigenous peoples.

**What is the relation between the right to food and food sovereignty?**

The concepts of the right to food and food sovereignty are related. The clarification of their content is particularly necessary in the context of indigenous peoples because these terms are often mentioned together and interchangeably in different statements and documents.<sup>6</sup>

The right to food is a legal concept a human right and in the case of its violation, remedies can be claimed where available. Food sovereignty is a political concept; there is no existing international human right corresponding to the right to food sovereignty. However, the two concepts have some common elements, and food sovereignty includes calls for the realization of the right to food. The claim of food sovereignty campaigners is for emphasis on local and national production and the right of peoples to freely define their own food and agricultural policies.





# JOINT BRIEF

Food sovereignty and the right to food are often complementary. For example, the right to food as a human right implies the application of the participatory approach to food security on the basis of the human rights principle of participation. This signifies that participating population groups and individuals, including indigenous peoples, can shape strategies, policies and programmes promoting the realisation of right to food. Thus right to food mechanisms can be used for the promotion of food sovereignty claims when this contributes to regular, permanent and unrestricted access to quantitatively and qualitatively adequate and sufficient food.

The right to food has both a cultural and a sustainability dimension. While it can be argued that local production is more sustainable, the right to food does not otherwise prescribe methods of production or of trade.

## What are some of the challenges that need to be addressed?

The process of clarifying the implications of the right of indigenous peoples to adequate food has just started. Laws and policies need to be put into practice to ensure that indigenous peoples fully enjoy the right to food. Indigenous peoples must assert their human rights, including the right to food and exert pressure on States and their officials to meet human rights obligations and commitments. States on the other hand are required to respect and protect indigenous peoples' unique cultural identities and special concerns when realising their right to food. Increased awareness and capacity of both rights holders and duty bearers is necessary for rights to be realized.

## *The right to food is an important tool for indigenous peoples to bring about real change in their lives and to negotiate power structures.*

### Endnotes

- <sup>1</sup> See also definition of right to adequate food in General Comment 12. Committee on Economic, Social and Cultural Rights (twentieth session 1999). 12 May 1999. UN doc. E/C.12/1999/5, para. 8. The definition of the right to food builds on the now commonly used definition of food security of the World Food Summit 1996 and its four main pillars (availability, access, utilization and stability).
- <sup>2</sup> General Assembly resolution A/RES/61/295, 13 September 2007.
- <sup>3</sup> Indigenous Peoples' Consultation on the Right to Food. A Global Consultation. Atitlán, Sololá, Guatemala April 17-19 2002.
- <sup>4</sup> In 2004, the International Indian Treaty Council conducted a survey amongst indigenous peoples to ascertain cultural indicators for sustainable agricultural development. The survey showed the importance of traditional foods to indigenous peoples cultures and identities.
- <sup>5</sup> Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria. Cited as: Communication No. 155/96.
- <sup>6</sup> See Declaration of the Forum for Food Sovereignty, Nyéléni 2007, available at <http://www.nyeleni2007.org/spip.php?article290>. It states that food sovereignty means defending and recovering the territories of Indigenous Peoples and ensuring fishing communities' access to and control over their fishing area and ecosystems. The declaration defines food sovereignty as the peoples', countries' or state unions' "right" to define their agricultural and food policy, without any dumping vis-à-vis third countries.

Layout by Tommaso Lorenz

Food and Agriculture Organization  
of the United Nations, Right to Food Unit  
Economic and Social Development Department  
viale delle Terme di Caracalla, 00153 Rome, Italy  
Tel: +39 06 57055149 Fax: +39 06 57053712  
[www.fao.org/righttofood](http://www.fao.org/righttofood) Email: [righttofood@fao.org](mailto:righttofood@fao.org)

Secretariat of the Permanent Forum on Indigenous Issues  
United Nations, 2 UN Plaza  
Room DC2-1454, New York, NY, 10017  
Tel: 1 917 367 5100 Fax: 1 917 367 5102  
<http://un.org/esa/socdev/unpfii/> Email:  
[indigenouspermanentforum@un.org](mailto:indigenouspermanentforum@un.org)

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AFROFOODS

## CALL FOR ACTION FROM THE DOOR OF RETURN FOR FOOD RENAISSANCE IN AFRICA

Dakar - 10th December 2009.  
Human Rights Day



We, the participants at the 5th AFROFOODS Sub-regional Data Center Coordinators Meeting held in Dakar, Senegal, on 9 –11 December 2009,

- **Note** that the degradation of ecosystems and the loss of food biodiversity is contributing greatly to the increases in poverty and malnutrition in Africa;
- **Recognize** that returning to local crops and traditional food systems is a prerequisite for conservation and sustainable use of biodiversity for food and nutrition;
- **Acknowledge** that local foods are the basis for African sustainable diets;
- **Urge** that food composition data be emphasized as the fundamental information underpinning almost all activities in the field of nutrition;
- **Call upon** the sectors of public health, agriculture, and environment and food trade to help reinforce and assist with the improvement of food composition data, particularly on local foods;
- **Request** that the contribution of food composition be credited as one of the most important components for action in nutrition and food quality, food safety, and food and nutrition security;

We **invite** all sectors to place AFROFOODS on the national, regional and international agenda for all food and nutrition activities in Africa through interdisciplinary strategic plans for achieving the relevant MDGs; and therefore, from the **Door of Return** of the House of the Slaves of Gorée-Dakar, we accept the challenge ourselves and send this **call for action** to our colleagues, as well as to governments, the private sector and financial entities, to strengthen AFROFOODS activities in a renewed commitment to an African food renaissance.