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# Implementing the UN Declaration on the Rights of Indigenous Peoples

Handbook for Parliamentarians N° 23

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Participants at a demonstration against a proposed constitutional amendment to the rules on the demarcation of indigenous lands in Brazil. © Reuters/Ueslei Marcelino, 2013

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# Foreword

Indigenous peoples are renowned for their rich cultures, traditional knowledge systems and unique ways of life. In many countries, however, they are dispossessed of their ancestral lands and territories, as well as deprived of their natural resources upon which they depend for their survival. This can result in the denial of their very right to life. Many indigenous peoples continue to suffer discrimination, extreme poverty and exclusion from political and economic power. Their belief systems, cultures, languages and ways of life are threatened, even to the point of extinction.

There are approximately 370 million indigenous peoples in some 90 countries throughout all regions of the world.<sup>1</sup> While they constitute 5 per cent of the world's population, they make up 15 per cent of the world's disadvantaged. Of the 7,000 languages in the world today, it is estimated that more than 4,000 are spoken by indigenous peoples. Language specialists predict that up to 90 per cent of the world's languages are likely to become extinct or threatened by the end of the century.<sup>2</sup>

Indigenous peoples are increasingly demanding greater recognition of their rights. Since 1923, when Cayuga Chief Deskaheh of the Iroquois Nation first came to the League of Nations to assert the rights of his people, indigenous peoples have continued to engage with the international community. This has resulted in a number of achievements at the institutional level (United Nations Permanent Forum on Indigenous Issues, Special Rapporteur on the Rights of Indigenous Peoples and the United Nations Expert Mechanism on the Rights of Indigenous Peoples) and at the normative level, the United Nations Declaration on the Rights of Indigenous Peoples (the UN Declaration).<sup>3</sup> The adoption of the UN Declaration in September 2007 was the culmination of more than 20 years of intense efforts and negotiations, and was realized through the solidarity and close partnerships of indigenous peoples with governments, non-government organizations, academics, parliamentarians and others.

The UN Declaration is the most advanced and comprehensive international instrument on indigenous peoples' rights. It builds on existing human rights enshrined in international human rights treaties and embodies global consensus on indigenous peoples' rights.<sup>4</sup>

The UN Declaration defines the minimum standards necessary for the survival, dignity and well-being of indigenous peoples of the world. The international community has already taken an important and positive step towards the recognition of indigenous peoples' rights through the adoption of the UN Declaration. It is now time to move towards the implementation of the UN Declaration's provisions.

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1 *State of the World's Indigenous Peoples* (United Nations publication, Sales no. 09.VI.13).

2 United Nations Educational, Scientific and Cultural Organization, *Language Vitality and Endangerment* (Paris, 2003).

3 A/RES/61/295.

4 By December 2010, Australia, Canada, New Zealand and the United States, who had earlier voted against the adoption of the UN Declaration, had all reversed their positions. Of the nine abstentions, two (Colombia and Samoa) also reversed their positions.

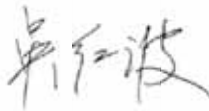
Parliaments play a central role in enacting legislation that recognizes indigenous peoples' rights and adopting budgetary measures to implement those rights, both of which are critical enablers to drive the implementation of the UN Declaration at the national level. This handbook aims to be a practical instrument to enable parliamentarians around the world to understand indigenous peoples' rights better and to provide practical ideas for the implementation of the UN Declaration. It also presents good practices in relation to the recognition and exercise of indigenous peoples' rights in different regions of the world.

This handbook is the result of cooperation between the SPFII, OHCHR, IFAD, UNDP and IPU.

The preparation of this handbook has benefited from an editorial board consisting of parliamentarians, academics and practitioners – many of whom are indigenous. We thank them for generously sharing their views and perspectives in producing this handbook.



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# Executive summary

This handbook on the UN Declaration is a practical tool to assist parliamentarians to improve their understanding of the rights of indigenous peoples. It provides a series of checklists that can be used to assess parliamentary engagement with indigenous peoples' rights and identifies areas that may require strengthening. It also contains practical examples of how the provisions of the UN Declaration have been implemented at the national and local levels.

This handbook is divided into two sections. The first section focuses on questions concerning indigenous peoples such as: why indigenous peoples' rights are important for parliamentarians; who are indigenous peoples; what are indigenous peoples' rights under international standards; what is free, prior and informed consent, and why free, prior and informed consent is important for parliamentarians.

The first section of the handbook describes the following clusters of rights:

- the right to self-determination, recognition of which is essential for the exercise of many other rights;
- the right to participate in decision-making;
- rights to lands, territories and resources, which are associated with some of the biggest challenges faced today by indigenous peoples; and
- rights to culture, which in many cases are essential for preserving indigenous peoples' identity.

The first section of this handbook also elaborates the concept of free, prior and informed consent. This includes a State duty to consult with indigenous peoples on legislative and administrative measures affecting them, such as forced relocation, culture, intellectual property, lands, territories and resources, as well as development planning within the country, with a view to obtaining indigenous peoples' free, prior and informed consent.

The second section of this handbook includes a tool for parliamentarians to assess the situation of indigenous peoples in their own countries as the starting point for effective implementation of indigenous peoples' rights. It provides a series of checklists to analyse parliament's engagement with the UN Declaration and is structured around a group of questions relating to the principal functions of parliaments:

- representation;
- legislation;
- oversight;
- the budget; and
- international cooperation.

Additional reference materials on indigenous peoples' rights are also provided, as well as an annex containing the full text of the UN Declaration.





# Section 1

## Indigenous peoples and parliaments

### Why indigenous peoples' rights are important to parliamentarians

#### Protecting indigenous peoples' rights

The preamble of the UN Declaration recognizes the urgent need to respect and promote the inherent rights of indigenous peoples, that indigenous peoples are free and equal to all other peoples, and have the right to be free from discrimination, in particular, discrimination based on their indigenous origin or identity (Article 2). When it comes to protecting and promoting the rights of indigenous peoples, parliaments and parliamentarians have a central role to play in law-making, adopting budgets, and overseeing the executive branch of government. These activities can involve a spectrum of rights that have an immediate impact and bearing on the lives of indigenous peoples. In this context it is important to address the triple discrimination faced by many indigenous women on account of their gender, their indigenous identity and their socio-economic status. Where parliamentarians and parliaments bear the responsibility of ratifying international human rights treaties, they, together with other branches of government, become the guardians of international human rights standards and their application in domestic contexts.

The rights of indigenous peoples enshrined in the UN Declaration reflect existing rights affirmed in international human rights law, now placed in the context of indigenous peoples' realities. Parliamentarians have an important role to play in ensuring the implementation of international human rights, including the UN Declaration and related legal and constitutional norms.

#### Indigenous peoples' distinct identity is integral to the fabric of a State

Indigenous peoples form an integral part of the fabric of many States and the circumstances of indigenous peoples may vary largely from region to region and from country to country. In some States indigenous peoples constitute more than 50 per cent of the population, while in others they may constitute a smaller percentage. In some States the very survival of indigenous peoples is threatened, while in others they are recognized and are able to maintain their distinct identities, spiritual traditions, cultures, and relationships with their lands, territories and resources. Many indigenous peoples have suffered historical injustices as a result of colonization and dispossession of their lands, territories and resources, as pointed out in the UN Declaration, which seeks to address this situation. Some indigenous peoples have been forcefully assimilated or coerced into national mainstream societies, often to their own detriment.

Failure to recognize their distinct identity and existence has, in many instances, resulted in a loss of language, diversity and cultural heritage.

Across many States, indigenous peoples contribute to the rich diversity of cultures and languages. Of some 7000 languages currently spoken in the world, approximately 4000 languages are spoken by indigenous peoples. In many States, these languages are lost or are on the verge of extinction. In 2011 the Secretary-General of the United Nations stated that “one indigenous language dies every two weeks, indigenous cultures are threatened with extinction.”<sup>5</sup> The loss of language often results in a loss of intangible cultural heritage such as traditions, practices and customs. Many States value and take pride in their identity as nations through their cultural distinctiveness, which is often based on language and culture. The recognition of the contribution of indigenous peoples to the unique character and cultural diversity of States may be achieved through the effective implementation of the UN Declaration.

Indigenous workers in Nepal rally for better protection of their labour rights. © Reuters/Navesh, Chitrakar, 2012

### Indigenous peoples are part of parliamentary constituencies and key actors in governance

While maintaining their distinct identities and structures, in many countries indigenous peoples are also part of parliamentary constituencies and the voter base of elected parliamentarians. Indigenous peoples’ identity, existence and participation in matters related to governance should be of central concern to States, representative democracies and elected representatives.



5 United Nations Secretary-General, “Opening Statement”, tenth session of the UN Permanent Forum on Indigenous Issues, New York, 16 May 2011. Available from <http://www.unmultimedia.org/tv/webcast/2011/05/10th-session-of-un-permanent-forum-on-indigenous-issues-opening-original-language.html>

Parliamentarians directly or indirectly represent indigenous peoples on matters of law and decision-making. In some countries indigenous peoples have their own parliaments and decision-making structures.

In many States, indigenous peoples' institutions, systems of governance and traditional knowledge often provide insight into the search for solutions to today's complex environmental, developmental and governance problems. Indigenous peoples can contribute to nation-building and to environmental sustainability. In a world plagued by the overarching challenge of climate change – which parliamentarians are confronting and will continue to confront – the traditional knowledge and systems of governance of indigenous peoples can provide guidance in the search for sustainable solutions. If indigenous communities are threatened with extinction or loss of their traditional lifestyles, much of this knowledge will be lost for future generations.

### **Parliaments need to address inequalities and disparities**

Today's world comprises increasing inequality, social conflict and unrest resulting in many challenges for States as they strive to enhance or maintain their current levels of development. While indigenous peoples contribute much needed diversity through their unique perspectives and knowledge systems, in many countries they are on the margins of national life. Socio-economic indicators in various reports demonstrate the disparities between indigenous peoples and minority populations. The Secretary-General of the United Nations recognizes that “millions of indigenous peoples continue to lose their lands, their rights, and their resources. They make up one-third of the world's one billion rural poor.”<sup>6</sup> According to IFAD, while indigenous peoples constituted some 5 per cent of the world's population, they make up 15 per cent of those in poverty and about one-third of the world's extremely poor rural people.<sup>7</sup> In 2006 a World Bank study found that even though programmes had been launched to improve access to health care and education, indigenous peoples consistently account for the highest poverty rates in Latin America.<sup>8</sup> In many countries, statistics on indigenous peoples are not available because data are not disaggregated, thereby resulting in a lacuna for analysis and evidence-based policy making by governments and legislators.

In a study presented in December 2010 at a global conference on indigenous and minority participation, organized by IPU in cooperation with UNDP and OHCHR, it was found that 25 per cent of parliamentarians consider special measures to ensure indigenous and minority participation in parliaments to be discriminatory.<sup>9</sup> This is contrary to global human rights standards, which call for positive measures and affirmative action for communities who are underrepresented and have limited or no involvement in decision-making structures. The UN Declaration is compelling in this regard: “States shall take effective measures, in consultation and cooperation with the

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6 *ibid.*

7 International Fund for Agricultural Development, *Statistics and key facts about indigenous peoples* (Rome, 2007).

8 Gillette Hall and Harry Anthony Patrinos, eds, *Indigenous Peoples, Poverty and Human Development in Latin America, 1994–2004* (Hampshire, Palgrave MacMillan, 2006).

9 Oleh Protsyk, *The representation of minorities and indigenous peoples in parliament: A global overview* (Mexico, IPU and UNDP, 2010).

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 15).

Perceptions that indigenous peoples do not require unique or distinct measures can further aggravate the situation of many indigenous peoples. Failure to design culturally appropriate and sensitive legislation, policies and programmes may lead to an imbalance and inequality in society, as is evident from socio-economic and human disparities in many countries. These disparities result in both social and financial costs, and undermine the overall development and progress of a State. Inequalities are also drivers for social and armed conflict in many countries, and instances of internal armed conflicts and social unrest about development and natural resource extraction projects are common. The recognition and implementation of indigenous peoples’ rights can help to create conditions of peaceful coexistence in many of these contexts.

In many States there are violations of indigenous peoples’ rights, such as forced evictions, adverse health effects due to toxic contamination of indigenous peoples’ lands, abductions, disappearances, ill treatment, torture, extrajudicial killings, loss of identity and culture, as well as violations of the right to an adequate standard of living (health, food and water). These and other human rights violations are a cause for concern and demand the attention of elected parliamentarians. Since parliamentarians have oversight of government’s implementation of laws and budgets, they are well positioned to require corrective action by the executive branch of the State.

Causes of violations of indigenous peoples’ rights are wide-ranging and may differ according to the region, the context and the indigenous communities concerned. The underlying reasons include widespread, systematic discrimination against indigenous communities and their members, as well as exclusion from decision-making and effective participation in matters that directly affect them. Many indigenous communities are either underrepresented or not represented in parliaments or local bodies. As a result of this lack of representation, their views are often not included, and laws, policies or decisions are often ill-designed or disconnected from the reality of indigenous people’s daily lives. This directly affects their rights. When indigenous peoples assert or claim their rights publicly, using national or international institutions or public media, they are in many cases victims of intimidation, threats and further exclusion. Many violations of indigenous peoples’ rights are a result of the failure of States to adequately consult indigenous communities.

The United Nations High Commissioner for Human Rights has noted that indigenous peoples are often alienated from their lands due to natural resource and development projects. These large-scale development projects are often the cause of human rights violations involving forced evictions, displacement and even loss of life when social unrest and conflict occur over such natural resources.<sup>10</sup> The High Commissioner further recognizes “that many States maintain contradictory or antiquated laws on mining and

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10 Navi Pillay, United Nations High Commissioner for Human Rights, “Let us ensure that development for some is not to the detriment of the human rights of others,” media statement, 5 August 2011. Available from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11284&LangID=E>

land acquisition for development, which must be reassessed to determine if they are consistent with international human rights standards and principles. Reviews of such laws have to be conducted in consultation and good faith with indigenous peoples at all stages of the planning and development cycle.”

Parliaments must address these wide-ranging issues to ensure the effective and sustainable functioning of democratic States, which are based on the principles of human rights, equality, non-discrimination, participation, accountability, inclusion, transparency and the rule of law. In its General Comment 31, the Human Rights Committee clarified State responsibility for human rights: “All branches of government (executive, legislative and judicial), and other public or government authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State Party.”<sup>11</sup>

## Who are indigenous peoples?

The United Nations does not define ‘indigenous peoples’, as it is impossible to capture the full range and diversity of indigenous peoples around the world. The United Nations identifies certain criteria that can be used to identify indigenous peoples, with ‘self-identification’ as a key criterion. The criteria formulated by Jose Martínez Cobo in his study on indigenous peoples, along with the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples (ILO Convention no. 169), are often used as guiding principles for identifying indigenous peoples.<sup>12</sup> These include:

- self-identification as belonging to an indigenous people, nation or community;
- a common ancestry and historical continuity with pre-colonial or pre-settler societies;
- a special relationship with ancestral lands, which often forms the basis of the cultural distinctiveness of indigenous peoples;
- distinct social, economic and political systems, as well as a distinct language, culture, beliefs and customary law;
- formation of non-dominant groups within society;<sup>13</sup> and

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11 UN Human Rights Committee, *General Comment no. 31 Nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004 (CCPR/C/21/Rev.1/add.13, para. 4).

12 *Study of the problem of discrimination against indigenous populations*, volume 1, Cobo, J. M. E/CN.4/Sub.2/476 (1981); successive volumes E/CN.4/Sub.2/1986/7 and Add. 1-4. Available from <http://undesadspd.org/IndigenousPeoples/LibraryDocuments/Mart%C3%ADnezCoboStudy.aspx> and Article 1 of the ILO Convention no. 169. Available from [http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0:NO:P12100\\_ILO\\_CODE:C169](http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0:NO:P12100_ILO_CODE:C169)

13 In the 2005 *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, the African Commission studied the term indigenous in the African context. According to the African Commission, the term indigenous peoples did not mean ‘first inhabitants’ as opposed to non-African communities or those who came from elsewhere. The Commission argued that Africa was different from other continents since all Africans were native to the continent and therefore laid out the following elements to be taken into account when identifying Africa’s indigenous communities: a) self-identification; b) a special attachment to and use of their traditional land whereby their ancestral land and territory have a fundamental importance for their collective physical and cultural survival as peoples; and c) a state 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. African Commission on Human and Peoples’ Rights and International Work Group for Indigenous Affairs, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities* (New Jersey, 2005).



Ashaninka Indians along the Envira River in Brazil's north-western Acre state. © Reuters/Lunae Parracho, 2014

- determination 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 systems.<sup>14</sup>

In the early stages of negotiations on the UN Declaration, the concept of 'indigenous peoples' was a significant hurdle for many governments to overcome. Some governments generally held the view that a definition of 'indigenous peoples' should be included in the text to identify the beneficiaries. It was frequently stated by a number of States that they did not have any indigenous peoples in their countries or that everyone was indigenous. Eventually, governments dropped their insistence on a definition and no such definition was included when the UN Declaration was adopted by the United Nations General Assembly.

<sup>14</sup> See *Study of the problem of discrimination against indigenous populations*, volume 1, Cobo, J. M. E/CN.4/Sub.2/476 (1981); successive volumes E/CN.4/Sub.2/1986/7 and Add. 1-4. Available from <http://undesadspd.org/IndigenousPeoples/LibraryDocuments/Mart%C3%ADnezCoboStudy.aspx>

The concept of 'indigenous peoples' was also problematic for many governments due to the fact that international law acknowledges that 'all peoples' have the right to self-determination. In an attempt to avoid identifying indigenous peoples as 'peoples', various other terms were proposed to describe them, including 'indigenous populations', 'indigenous groups', 'indigenous communities' and 'persons belonging to indigenous populations'. Many States wanted to either replace the term 'peoples' or to explicitly clarify that the use of the term 'peoples' in the text should not be construed as having any application as regards to collective rights that might be attached to the term under international law. Indigenous peoples strongly opposed all such attempts.

The text as adopted by the United Nations General Assembly uses the term 'indigenous peoples' without defining the concept, nor does it contain any reservation as far the legal implications of the term are concerned.<sup>15</sup>

## What are indigenous peoples' rights?

The rights of indigenous peoples are rooted in human rights enshrined in the United Nations Charter and various international human rights treaties and instruments. They are often expressed as fundamental rights in the constitutions of States, and rights under the domestic laws of many countries.

The most comprehensive international human rights instrument on indigenous peoples is the UN Declaration. The UN Declaration was adopted by an overwhelming majority vote at the United Nations General Assembly on 13 September 2007 after more than 20 years of negotiations. The UN Declaration does not create new rights but elaborates on existing ones that are enshrined in various international human rights treaties and instruments, placing them in the context of indigenous peoples' realities.<sup>16</sup> The rights in

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15 John B. Henriksen, "The UN Declaration on the Rights of Indigenous Peoples: some key issues and events in the process" in *Making the Declaration Work, the United Nations Declaration on the Rights of Indigenous Peoples*, Claire Charters and Rodolfo Stavenhagen, eds. (Copenhagen, IWGIA, 2009).

16 See in particular the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Discrimination, the Convention on the Elimination of Discrimination against Women and the Convention on the Rights of the Child. The UN human rights treaty bodies to the conventions have interpreted the scope of a number of Articles as they relate to indigenous peoples and developed human rights jurisprudence to advance the understanding of indigenous peoples' rights. These include General Comment no. 23 of the Human Rights Committee, General Comment no. 21 of the Committee on Economic, Social and Cultural Rights, General Recommendation no. 23 of the Committee on Racial Discrimination, and General Comment no. 11 of the Committee on the Rights of the Child. General Comment no. 23 of the Human Rights Committee on Article 27 of the International Covenant on Civil and Political Rights states that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples, while General Comment no. 21 elaborates the content of Article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights on the right of everyone to take part in cultural life, including indigenous peoples with references to the UN Declaration. Furthermore, in its General Recommendation 23 on Indigenous Peoples, the Committee on the Elimination of All Forms of Discrimination calls upon State parties, inter alia, to recognize and respect distinct cultures, history, language and ways of life of indigenous peoples, and to protect the rights of indigenous peoples to own, develop, control and use their communal lands. The Committee on the Rights of the Child has elaborated the content of Articles 17, 29 and 30 under the Convention on the Rights of the Child, which are specific to indigenous children, including special measures for their protection, enjoyment of their own culture, and appropriate forms of language and education. General comments and recommendations of human rights treaty bodies are also supplemented by case law from some of the committees who have ruled on individual complaints, such as the Human Rights Committee under Article 27.

the UN Declaration are recognized as minimum standards “for the survival, dignity and well-being of the indigenous peoples of the world” (Article 43).

Indigenous peoples’ rights as set out in the UN Declaration reflect the distinct nature and existence of indigenous peoples, and reject previous approaches aimed at ‘assimilating’ indigenous peoples into the mainstream, a policy that is now recognized as a major contributor to the loss of indigenous identity. There is an explicit recognition of collective rights in the preamble of the UN Declaration, as well as in the operative Articles, reflecting the paramount importance of collective rights to protect the culture, identity and existence of indigenous peoples.<sup>17</sup>

In addition to the prohibition of discrimination and other key individual human rights principles, the UN Declaration elaborates on collective rights, including the right to self-determination; rights to lands, territories and resources; and cultural rights. While the UN Declaration covers a wide range of rights,<sup>18</sup> this handbook focuses on these clusters of collective rights because these rights are of particular concern for many indigenous peoples.

## The right to self-determination

The right to self-determination is affirmed in Article 3 of the UN Declaration, which states that “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” This Article is connected to Article 4, which states that 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.” This is interconnected with many other rights of indigenous peoples under the UN Declaration. The right to self-determination is not a new right and has been recognized in a number of existing international human rights treaties.<sup>19</sup> Article 3 of the UN Declaration mirrors that of other international texts that uphold the right for ‘all peoples’, including the widely ratified International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and General Assembly Resolution 1514, which refers to decolonization.<sup>20</sup> The UN Declaration has to be read in the context of preambular paragraphs two and four, which refer to the historical injustices suffered by indigenous peoples due to doctrines of domination, conquest, discovery, *terra nullius* and the Regalian doctrine, as well as colonization and dispossession from their lands, territories and resources.

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17 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, well-being and integral development as people (preambular paragraph 21, UN Declaration).

18 For example, the right to education, public information, employment, economic and social rights, and development and international cooperation amongst others.

19 Common Article 1 of the ICCPR and ICESCR.

20 S. James Anaya, “The Right of Indigenous Peoples to Self-Determination in the Post-Declaration Era”, in *Making the Declaration Work, the United Nations Declaration on the Rights of Indigenous Peoples*, Claire Charters and Rodolfo Stavenhagen, eds. (Copenhagen, IWGIA, 2009).



During the drafting of the UN Declaration the concerns of States regarding sovereignty, territorial integrity and the threat of secession were resolved by the inclusion of Article 46(1), which states that “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 or construed as authorizing or encouraging any action which would dismember or impair totally or in part, the territorial integrity or political unity of sovereign and independent States.”

Indigenous peoples’ autonomous governance structures are one form of expression of the right to self-determination. Other expressions of self-determination are treaties, agreements and other constructive arrangements, which have been historically entered into between indigenous peoples, States and/or other non-indigenous parties. These range from the numerous treaties signed between North American Indian nations, the British Crown, Canada and the US government, and the Chittagong Hill Tracts Peace Accord signed in Bangladesh and the peace accords of Guatemala. The importance of such treaties and their implementation is stressed in Article 37(1) of the UN Declaration. It states that “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.”

### **The right to self-determination in Greenland<sup>21</sup>**

On 25 November 2008, 75.5 per cent of the voters of the world’s largest island voted in favour of greater autonomy. On 21 June 2009, the Greenland Self-Government Act came into force. This self-government arrangement for Greenland replaces the Greenland Home Rule Arrangement established in 1979.

Together with the Danish Constitution, the Act sets out Greenland’s constitutional position in the Kingdom of Denmark.

In the preamble to the Act, it is recognized that the people of Greenland are people with the right to self-determination under international law. Accordingly, the Act is based on an agreement between the Greenland government and the Danish government as equal partners.

A principal objective of introducing self-government to Greenland has been to facilitate the transfer of additional authority and thus responsibility to Greenlandic authorities in fields where this is constitutionally possible and where it is based on the principle of accordance between rights and obligations.

The Greenland self-government authorities comprise a democratically elected assembly – Inatsisartut (Greenland Parliament) – as well as an administration led by Naalakkersuisut (Greenland government). The Act does

21 Statministeriet, “The Greenland Self-Government Arrangement”. Available from [http://www.stm.dk/\\_p\\_13090.html](http://www.stm.dk/_p_13090.html) (date accessed 14 April 2014).

not contain specific rules and regulations regarding the composition of these bodies, but has left it up to the self-government authorities to lay down provisions in this regard. In the Act, the Greenlandic terms for parliament and government are used.

The Act recognizes the Greenlandic language as the official language in Greenland and that the Danish language may still be used in official matters. The question of educational instruction in Danish is not governed by the Act, but it is assumed that the self-government authorities must ensure provision of education in Danish and other relevant languages that would enable Greenlandic youth to pursue further education in Denmark and other countries.

On 7 October 2009, Denmark submitted a notification of the Act to the Secretary-General of the United Nations.

Pursuant to the Greenland Home Rule Act, Greenland had already assumed legislative and administrative responsibility in a substantial number of fields that affected the daily lives of Greenlandic citizens, including public finances.

The Act provides for the self-government authorities to assume a number of new fields of responsibility, such as the administration of justice, including the establishment of courts of law; the prison and probation service; the police; company law, accounting and auditing; mineral resource activities; aviation; law of legal capacity; family law and succession law; aliens and border controls; the working environment; and financial regulations and supervision.

With respect to the Kingdom of Denmark and special provisions in the Danish Constitution, responsibility for the following fields may not be transferred: the Constitution, nationality, the Supreme Court, foreign policy, security policy, the exchange rate and monetary policy.

However, as regards foreign policy, the Act incorporates an authorization arrangement originally established by Act no. 577 of 24 June 2005 pertaining to the conclusion of agreements under international law by the government of Greenland.

The authorization arrangement stipulates that Naalakkersuisut (Government of Greenland) may, on behalf of the Kingdom of Denmark, negotiate and conclude international agreements with foreign States and international organizations, including administrative agreements, which exclusively concern Greenland in relation to the fields of responsibility (competences) taken over by Greenland. The arrangement does not cover agreements under international law affecting defence and security policy, as well as agreements under international law that apply to Denmark or that are negotiated within an international organization of which the Kingdom of Denmark is a member.

According to the Act, the government of Denmark and the government of Greenland shall cooperate in international affairs with a view to safeguarding the interests of Greenland as well as the general interests of the Kingdom of Denmark.

Where international organizations allow membership of entities other than States and associations of States (typically associated membership) the Danish government may, subject to a request by the government of Greenland decide to submit or support such applications, where this is consistent with Greenland's constitutional status. The Danish Ministry of Foreign Affairs has issued guidelines for cooperation between the Danish government and the Greenland government regarding the authorization arrangement.<sup>22</sup>

As illustrated in the above example, some indigenous peoples exercise autonomy on a wide range of matters. In other States autonomy may be exercised in a limited form of local self-government. In some cases specific laws and policies apply to indigenous peoples, where they have decision-making authority at the grassroots and district/provincial levels. Yet in other cases, autonomous governance is subject to negotiation between indigenous peoples, the executive and lawmakers. Within each context it is imperative to understand what the internationally recognized right to self-determination means for indigenous peoples, as provided for in the UN Declaration.

### **The right to participate in decision-making**

A major concern of indigenous peoples is that governments continue to make decisions that affect them while not involving them. The UN Declaration therefore clarifies international standards on the right to participate in decision-making on a wide range of matters that affect the lives of indigenous peoples.

Article 18 of the UN Declaration states that "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." The distinction between internal and external spheres of decision-making are also reflected in Article 5 of the UN Declaration, which states "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State."<sup>23</sup> This is especially important since indigenous peoples can also be decision makers in affairs of the State.

The right to participate in decision-making in State-wide processes, where non-indigenous populations make decisions, has also been elaborated upon by the UN Expert Mechanism on the Rights of Indigenous Peoples. In its Advice no. 2<sup>24</sup> and no. 4<sup>25</sup> to the UN Human Rights Council, the UN Expert Mechanism on the

<sup>22</sup> *ibid.*

<sup>23</sup> Affirmed in Articles 5, 18, 36 and 37 of the UN Declaration.

<sup>24</sup> A/HRC/18/42, annex.

<sup>25</sup> A/HRC/21/55, annex.



Reang refugees wait to cast their votes at Thamsapara relief camp in the north-eastern Indian state of Tripura.  
© Reuters, 2014

Rights of Indigenous Peoples refers to participatory rights enshrined in international instruments.<sup>26</sup>

It notes that participation in public affairs, such as electoral affairs, is only one specific expression of participation. Participation includes civil, cultural and social activities of a public nature. With respect to indigenous peoples, this right takes on a collective aspect, implying a right of the group as a people to exercise decision-making authority.<sup>27</sup>

Adequate representation of indigenous peoples in policy and decision-making is instrumental in breaking the cycle of discrimination and exclusion suffered by indigenous peoples in a number of countries. Voices of diversity with different perspectives and world views must be included to enable better law-making and improve governance that affects indigenous peoples.

<sup>26</sup> Article 25 of the ICCPR, and Articles 2, 5-7, 15-17, 20, 22, 23, 25, 27, 28, 33 and 35 of ILO Convention no. 169.

<sup>27</sup> The right to full and effective participation in external decision-making is of fundamental importance to indigenous peoples' enjoyment of other human rights, such as in the identification of their educational priorities. It is also of crucial importance to good governance. Expert Mechanism advice no.2, found in *Final report of the study on indigenous peoples and the right to participate in decision-making*, A/HRC/18/42, para. 13.

A report by IPU highlights the importance of representation of indigenous peoples in parliament to ensure their effective participation in decision-making and to take into account the interests and voices of indigenous peoples in a country. According to the report, such participation can “help to strengthen democracy, greatly improve the quality of political life, facilitate societal integration and prevent conflict.” The report goes on to state that parliamentary representation is shaped by rules and regulations adopted at the national level on: 1) electoral rules and procedures; 2) political party laws and internal rules; 3) general parliamentary rules; and 4) special parliamentary bodies and procedures for dealing with minority/indigenous issues.<sup>28</sup>

One aspect through which the right to participate in decision-making can be addressed is by establishing parliamentary committees on indigenous peoples’ rights to ensure that indigenous peoples’ rights are duly taken into consideration in parliamentary work. Parliamentary bodies on indigenous peoples’ rights may be assigned various tasks, including the representation of indigenous peoples’ rights when discussing proposed legislation.

### **Right to participate in decision-making in South Africa<sup>29</sup>**

The Traditional Leadership and Governance Framework Act of 2003 aligns traditional institutions with the Constitution of the State of South Africa. The significance of this Act is that it restores the dignity of traditional leadership institutions within a national governance framework.

The Act provides that any parliamentary bill pertaining to customary law or customs of traditional communities must, before it is passed by the House of Parliament, be referred to the National House of Traditional Leaders for comment. The National House of Traditional Leaders must, within 30 days from the date of such referral, submit any comments it wishes to make.<sup>30</sup>

The above example illustrates how participation and consultation may take place in parliaments. There are other examples where the right to participate in decision-making may involve a reserved quota of seats provided to indigenous peoples to contest elections through existing political party structures.<sup>31</sup> In other contexts, there are independent indigenous political parties that can register and contest elections for national parliaments, while in other contexts, an indigenous parliamentary structure may be completely separate.

While there is no one model of participation that can take into account the historical, political and cultural context of each State, it is important for parliamentarians to be aware of international standards in relation to the right of indigenous peoples to

28 Oleh Protsyk, *The representation of minorities and indigenous peoples in Parliament: A global overview* (Mexico, IPU and UNDP, 2010), p. 3.

29 For more information see <http://www.gov.za/aboutgovt/tradlead.htm> (date accessed 14 April 2014).

30 *ibid.*, p. 13.

31 *ibid.*, p. 6.

participate in decision-making as enshrined in the UN Declaration. This understanding enables parliamentarians to debate and discuss laws and budgets in a more informed manner, as well as ensures that indigenous peoples not only have numerical representation (as parliamentary representatives) but actual substantive representation (voice in parliamentary committees) with the ability to influence, own and take part in decision-making). Indigenous representation and input should be valued, encouraged and actively form part of the collective decision-making process in parliaments. Indigenous peoples own representative institutions should also be consulted and their views incorporated into the decisions taken.

### **Rights to lands, territories and resources**

As indicated earlier, there are an increasing number of situations involving social unrest and conflict about the use of lands, territories and natural resources. Some social unrest between indigenous peoples, the State and corporations is a result of mining for iron ore, bauxite, gold and other precious minerals. In other instances the logging of forest areas in which indigenous peoples reside has also created serious disturbances and indigenous peoples often face violence from State and non-State actors. Many indigenous peoples are also displaced from their lands and territories as a result of the

Issues relating to indigenous land rights are common among the global population of indigenous peoples.  
© Reuters/WB/JIR/WS, 1998



activities of extractive industries, development and infrastructure projects involving dams, roads and the acquisition of land for special economic zones. In many situations, indigenous peoples are neither consulted nor informed until the final stage of a project or process. If not informed from the outset, these consultations may be inadequate, coercive or without representation from the broader community. Further, social and environmental impact assessments may not involve indigenous peoples or adequately reflect the human rights impact of potential projects.

According to Article 32(2) of the UN Declaration it is imperative that:

*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 mineral, water or other resources.*

This is a key Article for parliamentarians when considering central and/or provincial level legislation or measures that will affect indigenous peoples' rights to their lands, territories and natural resources. The UN Declaration sets out minimum standards on land rights for indigenous peoples that must be considered when making decisions that affect their communities and their lands.

Indigenous peoples' rights to lands, territories and resources are outlined in a number of Articles in the UN Declaration, of which Article 26 is one of the most important.<sup>32</sup> It expresses the general right of indigenous peoples to lands, territories and resources that they have occupied or otherwise used or acquired in the past, as well as land that they currently possess. Supported by developing and authoritative interpretations of existing human rights law,<sup>33</sup> this Article also requires States to give legal recognition and protection to the lands, territories and resources of indigenous peoples, with due respect to their customs, traditions and land tenure systems.

<sup>32</sup> See also Articles 25, 27, 29(1), 30, and 32(1), UN Declaration.

<sup>33</sup> The following examples of international case law illustrate how indigenous peoples' rights in relation to land have been interpreted. The Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v Nicaragua* IACHR Series C no. 79, 31 August 2001; *Sawhoyamaya Indigenous Community v Paraguay* IACHR Series C no. 146, 29 March 2006; *Yakye Axa Indigenous Community v Paraguay* IACHR Series C no. 125, 17 June 2005; *Saramaka People v Suriname* IACHR Series C no. 172, 28 November 2007; the African Commission on Human and Peoples' Rights *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* ACHPR 75/92 (1995); the UN Human Rights Committee see especially, *Chief Bernard Ominayak and Lubicon Lake Band v Canada*, CCPR/C/38/D/167/1984 (1990) and Concluding Observations of the Human Rights Committee: United States of America CCPR/C/USA/CO/3 (2006); the UN Committee on the Elimination of Racial Discrimination in particular, General Recommendation no. 23 on the Rights of Indigenous Peoples, *Official Records of the General Assembly, Fifty-second Session, Supplement no. 18 (A/52/18)*; see also Decision 1(53) on Australia, *Official Records of the General Assembly, Fifty-third Session, Supplement no. 18 (A/53/18)*; *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Lebanon* CERD/C/64/CO/3 (2004); Decision 1(66) on *New Zealand Foreshore and Seabed Act 2004*, CERD/C/DEC/NZL/1 (2005); and Decision 1(69) on Suriname, *Official Records of the General Assembly, Sixty-first session, Supplement no. 18 (A/61/18)*; UN reports, see *Report on the Expert Seminar on indigenous peoples' permanent sovereignty over natural resources and their relationship to land*, Geneva, 25–27 January 2006 (E/CN.4/Sub.2/AC.4/2006/3) and the UN Special Rapporteur on the Rights of Indigenous Peoples, for example, his country report on Guatemala, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples*, Rodolfo Stavenhagen submitted in accordance with Resolution 2001/57: Mission to Guatemala, 24 February 2003 (E/CN.4/2003/90/Add.2).

In order to understand the land-related provisions of the UN Declaration, it is important to be familiar with indigenous peoples' own understanding of land and their distinct relationship to it. According to many indigenous peoples, land should not be interpreted in narrow terms of 'property' as defined by some provisions of international and domestic law. It requires an interpretation that is broader and more consistent with indigenous peoples' own understanding of "the symbolic space in which a particular indigenous culture has developed, including not only the land but also the 'sacred landscape' that corresponds to their world view."<sup>34</sup>

Indigenous peoples' rights to traditional lands, territories and resources from which they have been alienated, often as a result of State and other non-indigenous laws, are often more difficult to recognize, given competing claims to those lands, territories and resources. Article 27 of the UN Declaration requires that States establish processes to adjudicate disputes over indigenous peoples' lands, territories and resources, including those traditionally owned, occupied and used. The right to redress in Article 28 of the UN Declaration covers lands, territories and resources "which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent."

For States that have ratified international human rights treaties, provisions on land rights are legally binding.<sup>35</sup> The right to enjoy culture is closely associated with the use of traditional territories and its resources. In General Recommendation XXIII,<sup>36</sup> the Committee on the Elimination of Racial Discrimination calls upon States "to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should, to the closest extent possible, take the form of lands and territories."

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34 A. Regino Montes and G. Torres Cisneros, "The United Nations Declaration on the Rights of Indigenous Peoples: the Foundation of a New Relationship between Indigenous Peoples, State and Societies", in *Making the Declaration Work: the United Nations Declaration on the Rights of Indigenous Peoples*, Claire Charters and Rodolfo Stavenhagen eds, (Copenhagen, IWGIA, 2009). See also *Mayagna (Sumo) Awas Tingni Community v Nicaragua* IACHR Series C no. 79, 31 August 2001, para. 49 in which the Inter-American Court expressed that "the close ties of indigenous peoples with their land must be recognized and understood as the fundamental basis for their cultures, their spiritual life, their integrity and their economic survival. For indigenous communities (their relationship with their lands) the land is not merely a matter of possession and production but a material and spiritual element, which they must fully enjoy (...) to preserve their cultural legacy and transmit it to future generations."

35 The Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child, the ICCPR, the ICESCR and the International Convention on the Elimination of all Forms of Racial Discrimination.

36 General Recommendation no. 23 on the Rights of Indigenous Peoples, *Official Records of the General Assembly, Fifty-second Session, Supplement no. 18 (A/52/18)*.



## Forest Rights Act 2006 of India

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006,<sup>37</sup> vests forest rights and occupation of forest land in forest-dwelling Scheduled Tribes and other traditional forest dwellers in India. It was approved by parliament to address the long-standing uncertainty of land tenure and the absence of rights of tribal and other forest dwellers to access forests. The rights secure individual or community tenure or both, and include, inter alia, four key areas: Land rights – the right to occupy both individually or collectively for the purpose of habitation or self-cultivation for those who occupied forest land before 13 December 2005; the right to convert leases or grants by local authorities and State government into titles; User rights – ownership and access to collect, use and dispose of minor forest produce; community rights over fish and other water resources, grazing and traditional seasonal rights of nomadic/pastoralist communities; Customary rights – customary law and traditions of concerned tribes; Right to protect and conserve any community forest resource and the corollary duty to protect wildlife, forests, biodiversity and to ensure that destructive practices are not carried out. The Act also provides the right to rehabilitation and alternative land in cases of illegal eviction or displacement. The ‘free informed consent’ of the *Gram Sabha* (full village assembly) has to be obtained in writing for any proposed resettlement activity. The *Gram Sabha* is the authority that initiates the process for determining the nature and extent of individual or community forest rights within the limits of its jurisdiction. Where the *Gram Sabha* does not exist, other village institutions can also play a role. Final decisions are made by the District Level Committee. The Act sets out a mechanism for submitting claims and a grievance/appeal procedure.

The Act makes significant advances in India for the recognition of forest dwellers’ rights and involves the *Gram Sabha* (community members themselves) as the initial decision-making institution. The key to the success of this Act lies in its implementation by the Executive through the State governments.

## Use and management of land and resources in Finnmark County, Norway

In January 1997, the Norwegian Sami Rights Commission submitted its second report to the Ministry of Justice. This report addressed issues such as the protection of natural resources of the Sami people, use and management of lands and resources in Finnmark County, and protection against encroachments onto Sami areas.

The government then started to work on its proposal for an Act relating to the legal management of land and natural resources in the county of Finnmark. In

37 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, was passed on December 15, 2006, in the Lok Sabha, and December 18, 2006, in the Rajya Sabha. It was signed by the president on December 29, 2006, and notified into force on December 31, 2007. Available at <http://www.ielrc.org/content/e0618.pdf>

April 2003, the government submitted a draft Finnmark Act to the Norwegian National Parliament (the Storting). The proposal was strongly criticized by Sami institutions, legal experts and international entities for not meeting international legal standards for the recognition and protection of Sami rights. This forced the national parliament to enter into direct dialogue with the Sami Parliament regarding the content of the Act.

Under the Norwegian constitutional system, the national parliament normally does not undertake major revisions of governmental proposals. However, in the case of the Finnmark Act, from the outset of the parliamentary process there were serious concerns about whether the proposed legislation met requirements established by international law for the identification and protection of Sami land rights, as well as whether the absence of consultation at the governmental level was compatible with Norway's international obligations. In this situation, the national parliament had two options: either to send the proposal back to the government or to start a process at the parliamentary level. The national parliament followed the latter and decided to amend the draft legislation, in cooperation with the Sami Parliament. This was very significant indeed due to the fact that this was the first time that the national parliament had established direct contact with the Sami Parliament on legislative measures.<sup>38</sup>

Legislation on land rights, mining and land acquisition is often subject to the most contentious debates where legislators must consider arguments from different constituents, including industry, developers, local government, political parties and non-indigenous groups. Legislators have the responsibility to consider policy issues such as the public interest and development for all. In many countries the debate about eminent domain or expropriation by the State to acquire and utilize land in the public interest is framed as incompatible and therefore in opposition to the rights of indigenous peoples and other specific communities, who live on that land.

While parliamentarians must consider their constituencies and varying views, it is important to be aware of international standards on indigenous peoples' rights to lands, territories and resources, and the need to respect these rights when considering legislation. The right of free, prior and informed consent, and the right of those affected to actively participate in decision-making that affects them is essential to ensure that indigenous peoples are not forcibly displaced or dispossessed of their lands, territories and natural resources. Development and land acquisition should not be at the cost of the rights and identity of indigenous peoples.

In 2011 the UN Human Rights Council endorsed a new set of Guiding Principles on Business and Human Rights, which lays out a "Protect, Respect, and Remedy"

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38 John B. Henriksen, *Research on Best Practices for the Implementation of ILO Convention no. 169. The Finnmark Act (Norway). Case study 3*, (International Labour Organization, 2008). Available from [http://www.ilo.org/wcmsp5/groups/public/--ed\\_norm/--normes/documents/publication/wcms\\_118116.pdf](http://www.ilo.org/wcmsp5/groups/public/--ed_norm/--normes/documents/publication/wcms_118116.pdf)

framework.<sup>39</sup> The Guiding Principles specifically refer to the State's duty to protect human rights, and the corporate sector's responsibility to respect human rights. The Guiding Principles also refer to the need for greater access to effective remedies, both judicial and non-judicial.<sup>40</sup> In addition, the Organization for Economic Co-operation and Development (OECD) published its Guidelines for Multinational Enterprise, which lists recommendations relating to the conduct of responsible business for the 44 adhering governments representing all regions of the world and accounting for 85 per cent of foreign direct investment. The guidelines recommend that governments encourage their business enterprises to observe these recommendations in their operations.<sup>41</sup>

It is important that parliamentarians consider the Guiding Principles on Business and Human Rights along with the UN Declaration when reviewing legislation regulating corporate behaviour, foreign investment and related matters that have a direct impact on indigenous peoples' lands, territories and resources.<sup>42</sup>

## Rights to culture

Cultural rights are essential to the identity and existence of indigenous peoples, and are invaluable to common humanity. As set out in preambular paragraph three of the UN Declaration, "all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind." Cultural rights permeate the UN Declaration, and are interrelated with and indivisible from other rights, such as the right to self-determination and rights to lands, territories and resources, as outlined above. For example, the UN Declaration clearly supports indigenous peoples' autonomy over their cultural affairs.

The range of rights that relate to culture in the UN Declaration is very broad. The importance of culture for indigenous peoples is further affirmed in Article 8(1) that sets out the right of indigenous peoples and individuals "not to be subjected to forced assimilation or destruction of their culture."

More broadly, cultural rights in the UN Declaration include: indigenous peoples' rights to maintenance of their cultural institutions (Article 5); determining their own membership in accordance with their traditions (Article 9); practising and revitalizing their cultural traditions and customs (Article 11(1)); redress 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 11(2)); manifesting, practising, developing and teaching their spiritual and religious traditions, customs, and ceremonies and maintaining their religious and cultural sites together with repatriation of their human remains (Article 12); culturally appropriate education

39 Human Rights Council resolution 17/4 of 6 July 2011 (A/HRC/RES/17/4).

40 *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, John Ruggie, 21 March 2011 (A/HRC/17/31).

41 Organization for Economic Co-operation and Development, *OECD Guidelines for Multinational Enterprises* (OECD Publishing, 2011). Available from [http://www.oecd.org/document/18/0,3343,en\\_2649\\_34889\\_2397532\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/18/0,3343,en_2649_34889_2397532_1_1_1_1,00.html) (date accessed 14 April 2014).

42 See *Follow up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries*, 30 April 2012 (A/HRC/21/55).



Cultural expression is key to indigenous peoples identity, including for these Batwa pygmies from Uganda performing a traditional dance after a hunt in the forest. © Reuters/ J. Akena, 2006

(Article 14), and maintaining their own traditional medicines and health practices (Article 24).

Furthermore, Article 13 focuses on indigenous intangible heritage, stressing that indigenous peoples have the right to “revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures.” Article 31 affirms the right of indigenous peoples “to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions.”

### Right to culture in Ethiopia

In the early 1990s the Ethiopian government introduced a federal democratic system that recognized the rights and existence of all of Ethiopia’s communities (some 80 language groups). This system created new opportunities for nation-building based upon unity in diversity, including the contributions of the country’s marginalized indigenous peoples. Since 2000, this has enabled parliament and institutions of each regional state, as well as those of the federation as a whole to launch many institutions and activities that documented, valued and celebrated diversity and heritage. This has transformed the pride and unity of Ethiopia’s many communities, has brought

international recognition, and has led to the development of approaches that better reflect and promote the country's enormous cultural heritage.

The government encouraged the organizing of festivals of music, dance and food as a way of supporting local identity and of building positive self-image, to help indigenous peoples move away from a past that had denigrated their traditions and ways of life. The Ethiopian government has reinforced this recognition of cultural rights through creating federal, regional and local institutions that manage cultural affairs. One such institution is the Academy of Ethiopian Languages, recently established to develop the country's languages for use in education and to save them from extinction. Similar endeavours in relation to writing, culture and local history are also encouraged, including nominating sites of cultural and biological significance in indigenous territories.

Parliamentarians, especially those from indigenous communities, have played a key role in making this happen and in strengthening healthy relationships between indigenous peoples and government.<sup>43</sup>

As with a number of rights in the UN Declaration, many of the Articles that relate to culture are derived from and are consistent with the right to culture enshrined in other international, regional and domestic human rights instruments, including United Nations human rights treaties and ILO Convention no. 169.

## What is free, prior and informed consent and why is it important for parliamentarians?

The duty of States to obtain, or in some cases seek to obtain, indigenous peoples' free, prior and informed consent is clearly expressed in the UN Declaration, especially in relation to indigenous peoples' interests in lands, territories and resources (Articles 10, 11, 19, 28, 29(2) and 32(2)).<sup>44</sup> The *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent* provides the following guidance on the application of free, prior and informed consent:

*Free, should imply that there is no coercion, intimidation or manipulation, and Prior should imply consent being sought sufficiently in advance of any authorization or commencement of activities and respective requirements of indigenous consultation/consensus processes. Informed should imply that information is provided that covers a range of aspects, [including, inter alia]... the nature, size, pace, reversibility and scope of any proposed project or activity; the reason/s or purpose of the project and its duration; locality or areas*

43 Wolde Gossa Tadesse, Programme Officer, Christensen Fund and member of the Editorial Board, personal communication, 26 June 2012.

44 For example, Article 19 of the UN Declaration establishes that "States shall consult and cooperate in good faith with indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent."

*affected; a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks; personnel likely to be involved in the execution of the project; and procedures the project may entail.*<sup>45</sup>

Consultation and participation are seen as integral components of a consent process. These consultations have to be in good faith, and allow parties to establish dialogue in an atmosphere of respect and openness, with participation from men and women, and youth and children. This process of consultation should enable indigenous peoples to participate through their own chosen representatives and customary or other institutions, which is also reflected in Article 6 of ILO Convention no. 169. Indigenous peoples should be given the authority to control the process by which 'representativeness' is determined, in accordance with human rights standards.<sup>46</sup>

Numerous international bodies have engaged in elaborating the meaning of free, prior and informed consent, and especially the circumstances in which consent is necessary. These include the Inter-American Court and Commission of Human Rights, the African Commission on Human and Peoples' Rights,<sup>47</sup> the UN Expert Mechanism on the Rights of Indigenous Peoples,<sup>48</sup> the Special Rapporteur on the Rights of Indigenous Peoples, and the UN Permanent Forum on Indigenous Issues.

The Special Rapporteur on the Rights of Indigenous Peoples provides a framework for the application of the duty of the State with respect to free, prior and informed consent. In particular, States have a duty to carry out consultation and make use of representative mechanisms that will be open to all when considering constitutional or legislative reform measures. However, when considering measures that affect particular indigenous peoples or communities, such as initiatives for natural resource extraction, consultation procedures have to focus on the particular community concerned, given the specificities of how they may be affected.<sup>49</sup>

Consultation processes with the objective of obtaining the free, prior and informed consent of indigenous peoples must be undertaken in relation to resource development projects, legislation affecting indigenous peoples, and administrative measures related to indigenous lands, territories, natural resources and sacred sites in accordance with the UN Declaration and the jurisprudence of international human rights treaty bodies. Treaties, agreements and other constructive arrangements

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45 *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples*, New York, 17–19 January 2005 (E/C.19/2005/3).

46 Birgette Feiring, *Indigenous and Tribal Peoples Rights in Practice: A Guide to ILO Convention no. 169*, (Nepal, ILO, 2009), p. 59. Available from [http://www.ilo.int/indigenous/Resources/Guidelinesandmanuals/WCMS\\_106474/lang-en/index.htm](http://www.ilo.int/indigenous/Resources/Guidelinesandmanuals/WCMS_106474/lang-en/index.htm) and Expert Mechanism advice no. 2, found in *Final report of the study on indigenous peoples and the right to participate in decision-making*, A/HRC/18/42, annex.

47 *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* ACHPR 75/92 (1995).

48 See *Final report of the study on indigenous peoples and the right to participate in decision-making*, 17 August 2001 (A/HRC/18/42).

49 See *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, 15 July 2009, (A/HRC/12/34) and *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples*, 17–19 January 2005, (E/C.19/2005/3).



Assembly of First Nations National Chief Phil Fontaine at the Canadian House of Commons. Consultation and participation are integral components of a consent process on many issues including legislation concerning indigenous peoples. © Reuters/Chris Wattie, 2008

between indigenous peoples and States must also be respected and upheld during consultation processes.

Obtaining consent becomes a requirement in some situations, including when indigenous peoples are subject to relocation, and in cases of storage or disposal of toxic waste on indigenous lands or territories. Furthermore, the UN Expert Mechanism on the Rights of Indigenous Peoples has stressed that the right of free, prior and informed consent constitutes an 'integral element' of the right to self-determination, and that pursuant to the Declaration obtaining such consent is required in matters of fundamental importance for the rights, survival, dignity and well-being of indigenous peoples.<sup>50</sup>

The United Nations High Commissioner for Human Rights has highlighted the need for full and effective consultation with indigenous peoples at all stages of development and natural resource extraction. Furthermore, the High Commissioner notes that indigenous peoples are entitled to full disclosure of environmental, social and human

<sup>50</sup> Expert Mechanism advice no. 2, found in *Final report of the study on indigenous peoples and the right to participate in decision-making*, 17 August 2001 (A/HRC/18/42, annex).

rights impact assessments in a language of their choice. The High Commissioner has called upon States to provide financial and technical support to enable indigenous peoples to consult with corporations. “When indigenous peoples consent to such projects, they should have a right to a fair share of benefits from activities on their lands. Indigenous peoples should also have the right to reject a project/initiative should they not agree to the terms of agreement. And where projects proceed without consent, mechanisms for redress are required. International and national institutions financing such projects must ensure their operational policies and guidelines are consistent with international human rights standards and principles.”<sup>51</sup>

### **Free, prior and informed consent in Colombia**

On 10 June 2011, President Santos signed the Victims and Land Restitution Law in the presence of the United Nations Secretary-General. This law is considered to be one of the most important laws enacted in recent years for the peace and reconciliation process in Colombia because it facilitates an approach based on recognition, promotion, protection and respect for victim’s rights.

The original draft did not apply to indigenous peoples and Afro-Colombian communities, on the grounds that their rights as victims should be set out in another piece of legislation. However, throughout the democratic debate and as a result of the advocacy strategy and technical assistance of OHCHR Colombia, jointly with other United Nations agencies, it was recognized that ethnic groups should indeed be part of the framework provided for in the Victims and Restitution Law, upholding their right to be consulted and to give their consent on how provisions of the law may be applicable to them to better protect and guarantee their autonomy and integrity. OHCHR Colombia supported this position, on the understanding that inclusive mechanisms, which respect cultural identity, are good tools for facilitating the right of indigenous peoples and Afro-Colombian communities to participate in decision-making processes.

In this context, Article 205 of the Victims and Restitution Law requires the government of Colombia to hold consultations with indigenous peoples and Afro-Colombian communities to determine how the law is to apply to these groups, as victims of gross human rights and international humanitarian law violations. Accordingly, the government of Colombia, in agreement with indigenous organizations, adopted Decree 4633 of 2011, by which integral reparation (including compensation) and restitution of land are made subject to a process of consultations. Moreover, the government adopted Decree 4635 of 2011 for the same purposes with Black, Afro-Colombian, Raizales and Palenqueras communities; this process, however, did not enjoy the

51 Navi Pillay, United Nations High Commissioner for Human Rights, “Let us ensure that development for some is not to the detriment of the human rights of others”, media statement, 5 August 2011. Available from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11284&LangID=E>.



same degree of consensus, as there are fundamental differences about the representation mechanisms of these communities vis-à-vis the government.

The overall process reflects a progressive understanding by parliamentarians of the need to include indigenous peoples and Afro-Colombian communities in their work by respecting their particular characteristics as autonomous groups, with different cultural patterns, history, practices and vision.<sup>52</sup>

Parliaments represent the citizens of their country, including indigenous peoples. When parliamentarians consider draft legislation on matters that directly or indirectly affect indigenous peoples, it is important for them to understand and carry out their duty to obtain indigenous peoples' consent, to ensure that such laws not only reflect the views of the non-indigenous communities concerned, but can also be implemented without detrimentally affecting the rights of indigenous communities. This is particularly relevant to development processes that should be informed by the rights and priorities of indigenous peoples to ensure adherence to international human rights standards.

In this regard, it is necessary for parliaments to:

- include and strengthen participation of indigenous peoples in hearings and committees, while respecting the principle of free, prior and informed consent in relation to legislative and administrative matters affecting them;
- respect indigenous peoples' internal decision-making processes and associated institutions, considering that these facilitate the participation of indigenous peoples in public affairs in a manner that is philosophically and culturally consistent with indigenous peoples' own understanding of governance;<sup>53</sup> and
- allocate sufficient resources to parliamentary committees on indigenous peoples' rights to guarantee the involvement and participation by indigenous peoples in public hearings and other activities.

52 Office of the High Commissioner for Human Rights in Colombia, written communication, April 2012.

53 *Final report of the study on indigenous peoples and the right to participate in decision-making*, A/HRC/18/42, para. 18.



## Section 2

# Respect for and realization of the rights of indigenous peoples: what can parliamentarians do?

It is important to remember that the UN Declaration is an international instrument adopted by States. It does not create a new set of rights, but builds upon and elaborates existing rights enshrined in international human rights treaties and standards. It is an instrument that recognizes and respects indigenous peoples' world views and their cultures, and provides a framework for partnership and reconciliation.

When undertaking measures to promote and respect indigenous peoples' rights, parliamentarians are giving effect to international commitments that have been universally adopted.

## Assessing the situation of indigenous peoples

An assessment of the situation of indigenous peoples is the first step towards parliamentary action to protect and promote their rights. Set out below are a series of suggested questions to guide the assessment.

### The status of indigenous peoples in [my country].

1. How many indigenous peoples are there in the country?
2. What proportion of the total population do indigenous peoples represent?
3. Who are the main indigenous groups?
4. Where do indigenous peoples live?
5. How well known is the culture and history of indigenous peoples among the non-indigenous population?
6. What are the economic and social conditions of indigenous peoples, in comparison with the rest of the population?
7. What is the situation of indigenous women and children?
8. Do indigenous peoples have autonomous decision-making institutions? What is the relationship between these institutions and the State?
9. What are the political challenges to realizing indigenous peoples' rights?
10. What are the main claims and demands of indigenous peoples?

11. What real power do indigenous peoples have to influence decision-making that affects them?
12. Are there treaties, laws or systems in place to protect their way of life?

### **The status of the UN Declaration in [my country].**

1. Did my country support the adoption of the UN Declaration at the United Nations General Assembly in September 2007 or has my country endorsed it since 2007?
2. To what extent is the current national legal framework in compliance with the provisions of the UN Declaration?
3. What actions have been taken to implement the UN Declaration?
4. Has my country ratified ILO Convention no. 169?
5. Are indigenous peoples' rights included in periodic reporting to international human rights treaty bodies and the ILO supervisory system in relation to conventions that have been ratified?
6. Have international human rights mechanisms (such as human rights treaty bodies, the UN Human Rights Council's Universal Periodic Review, UN Special Procedures, ILO supervisory mechanisms, the UN Permanent Forum on Indigenous Issues and the UN Expert Mechanism on the Rights of Indigenous Peoples) made specific recommendations about my country concerning indigenous peoples' rights?
7. What actions have been taken by my country on the basis of these recommendations?
8. What follow-up actions are required by my country?

## **The UN Declaration and representation**

Parliaments derive their legitimacy from the fact that they are elected by popular mandate specifically to reflect and represent the interests of the nation as a whole.

Individual parliamentarians have generally had a lot of freedom about how they choose to interpret the scope of their mandate. Parliamentarians may feel that they represent their constituents, their political party, a specific community, the nation or a combination of all of these groups at the same time.

Parliamentarians play a role in bringing national and provincial level issues to the attention of their constituents through dialogue, and with local authorities within their constituencies. They can also address and promote the concerns of their constituents in the work of parliament at the national level.



Aboriginal street graffiti in a Sydney suburb is used to communicate community feelings on issues and decisions. © Reuters/Will Burgess, 2005

As representatives of the State, all parliamentarians, whether or not their constituency specifically includes indigenous peoples, have a duty to contribute to protecting and promoting the rights of indigenous peoples as enshrined in the UN Declaration.

As a parliamentarian:	Yes	No
I am well informed about indigenous peoples' rights and concerns.	<input type="checkbox"/>	<input type="checkbox"/>
I regularly meet with representatives of indigenous peoples.	<input type="checkbox"/>	<input type="checkbox"/>
I raise issues of indigenous peoples' rights in parliament.	<input type="checkbox"/>	<input type="checkbox"/>

A democratic parliament is representative of the social diversity of the population. "A parliament that is unrepresentative [of this diversity] will leave some social groups and communities feeling disadvantaged in the political process or even excluded altogether, with consequences for the quality of public life or the stability of the political system and society in general."<sup>54</sup>

The participation of indigenous individuals serving as members of parliament is often a marker of the inclusiveness of parliament. Their presence has special symbolic value, just as the absence of indigenous parliamentarians may convey the opposite message. The limited size of the indigenous population in some countries, combined with their marginalization in mainstream political parties, means that indigenous peoples are not always elected to parliament under the general electoral system. Some countries have introduced special electoral measures, such as reserved seats, to ensure that indigenous representatives are included in the national parliament.<sup>55</sup> When considering such measures, there may be useful lessons that can be learned from the use of special electoral measures to enhance indigenous women's political participation.<sup>56</sup>

The protection of the rights of indigenous peoples is the responsibility of all parliamentarians, not only of indigenous parliamentarians (if there are any). It is important that parliament, as a whole, promotes and protects the rights of indigenous peoples when fulfilling its roles and responsibilities, including in institutional structures, national priorities and procedures.

The establishment of a parliamentary committee dedicated to indigenous peoples' rights is one way in which parliament can ensure it meets its responsibility to include indigenous peoples' rights within its roles and functions. However, this in itself is insufficient, unless such parliamentary committees (or similar bodies) have the necessary resources to carry out their work effectively. This includes the capacity to prepare and scrutinize draft legislation, hold public hearings, raise questions with ministers and senior officials, as well as technical and human resources to serve the committee. The committee may also need financial resources to enable it to consult indigenous peoples in order to bring their voices and concerns into the parliamentary process.

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54 David Beetham, ed., *Parliament and democracy in the twenty-first century: A guide to good practice*, (Geneva, Inter-Parliamentary Union, 2006). Available at <http://www.ipu.org/dem-e/guide.htm> (date accessed 14 April 2014).

55 For example, Bangladesh has specific seats allocated in the national parliament for representatives from the Chittagong Hill Tracts.

56 For example, The Quota Project <http://www.quotaproject.org/> (date accessed 14 April 2014).

Checklist: The UN Declaration and representation	Yes	No
1. Are there specific measures in the electoral system to ensure the presence of representatives of indigenous peoples in parliament?	<input type="checkbox"/>	<input type="checkbox"/>
2. Where specific measures exist, do indigenous peoples, including women and young people, consider them to be effective?	<input type="checkbox"/>	<input type="checkbox"/>
3. Have these specific measures (if they exist) been evaluated recently?	<input type="checkbox"/>	<input type="checkbox"/>
4. Is there a parliamentary committee dedicated to the rights of indigenous peoples?	<input type="checkbox"/>	<input type="checkbox"/>
5. If not, which parliamentary committee has primary responsibility for indigenous peoples' rights?	<input type="checkbox"/>	<input type="checkbox"/>
6. Does the relevant committee have the resources required to carry out its work effectively?	<input type="checkbox"/>	<input type="checkbox"/>
7. Do newly elected parliamentarians receive training on indigenous peoples' rights?	<input type="checkbox"/>	<input type="checkbox"/>
8. Does parliament play a positive and active role in mobilizing public opinion about indigenous peoples' rights through parliamentary debates, questioning, television broadcasts and dialogue with their constituencies?	<input type="checkbox"/>	<input type="checkbox"/>
9. Is the International Day of the World's Indigenous Peoples (9 August) commemorated in parliament and across the country?	<input type="checkbox"/>	<input type="checkbox"/>

### Maori representation in the New Zealand Parliament<sup>57</sup>

In New Zealand, Maori people have had guaranteed representation in parliament since 1867. Anyone of Maori descent can choose to be on either the Maori electoral roll or the general electoral roll. Since 1996, the number of Maori seats in the House of Representatives has varied according to the proportion of Maori registered on the Maori electoral roll compared to the general electoral roll. The House of Representatives also has a Maori Affairs Select Committee, to which parliament may refer any issue with implication for Maori. In 1985 the Maori language was given official recognition in parliamentary proceedings. A Member of Parliament may address the speaker in English or Maori. New Zealand's parliamentary website can also be viewed and searched in English and Maori.

<sup>57</sup> A/HRC/18/42 and A/HRC/18/35/Add.4.

# The UN Declaration and legislation

Law-making is one of the central functions of parliaments. The constitutional powers of parliaments relating to the legislative process differ from country to country. Nevertheless, in most cases draft laws must pass through parliament. Parliament is therefore in a powerful position to influence the content and potential impact of legislation on indigenous peoples' rights.

The UN Declaration places a duty on States to consult and cooperate with indigenous peoples to take appropriate measures, including legislative measures, to achieve the ends of the UN Declaration (Article 38). Furthermore, Article 19 of the UN Declaration stipulates that "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."

The role of parliament is therefore particularly important in the implementation of the UN Declaration. Experience has shown that it may be necessary to revise some or all legislation that directly or indirectly affects indigenous peoples' rights, in order to achieve greater coherence in laws and alignment with international standards.

In some countries, there are specific laws that are directly targeted at indigenous peoples. However it should be remembered that indigenous peoples are indirectly affected by many or most areas of legislation, such as health care, education, the environment, forests, development, budgets and finances. Conformity of all draft national legislation with the UN Declaration should be evaluated during the legislative process.

It is important to ensure that the legislative process is transparent and that parliamentary records are made available, to the extent possible, in indigenous peoples' languages, so that indigenous peoples are well informed of the activities of their elected representatives.

## **Adoption of legislation in the Plurinational State of Bolivia**

The government of the Plurinational State of Bolivia took a major step in 2007 when it adopted Law 3760 incorporating the UN Declaration into its national legislation. Furthermore, reforms were made to the Constitution and laws related to the environment, popular participation, education, administration, family violence, forests, hydrocarbons, land and criminal law, in order to ensure conformity with Law 3760 and the UN Declaration. In 2009, a new Constitution was adopted, incorporating a full chapter on the rights of indigenous peoples.

In 2010, the Bolivian National Congress adopted five new laws to consolidate the structure of the Plurinational State: Law 027 of the Plurinational Constitutional Tribunal, Law 025 of the Judicial Organ, Law 026 of the Electoral regime, Law of the Plurinational Electoral Organ and the Framework Law



of Autonomy and Decentralization.<sup>58</sup> All of these laws include provisions on indigenous peoples' rights. The main aim of these reforms is to strengthen the recognition of indigenous peoples' rights.

### **New legislation in the Republic of Congo**

In 2011 the President of the Republic of Congo promulgated Law no. 5-2011, which relates to the promotion and protection of the rights of the indigenous peoples of the Republic of Congo.

The law aims to protect the rights of Babongo, Baaka and other indigenous peoples in the country, and enshrines many of the provisions of the UN Declaration.

Law no. 5-2011 is the result of a participatory process that lasted almost eight years, led by the Ministry of Justice in collaboration with civil society, and with the involvement of indigenous communities. This is a historic achievement for the Republic of Congo, and for Africa.

Other legislative texts that are applicable to indigenous peoples in the Republic of Congo include the Law on Wildlife and Protected Areas, the Law on the Forest Code, the Law on Environmental Protection, the Law establishing the general principles applicable to State land and land regimes, the Law on Agricultural Land, and the Decree establishing the conditions for the management and use of forests.<sup>59</sup>

### **IPRA law on indigenous peoples in the Philippines**

In the Philippines, up to 15 per cent of the population – approximately 10 million people – belong to indigenous communities. In 1987 the Constitution was revised to include provisions for the recognition and promotion of the rights of indigenous cultural communities within the framework of national unity and development (art. II sect. 22), and the creation of autonomous regions in Mindanao and in the Cordilleras (art. Xm sect. 15-19).

Ten years later, in 1997, the Philippines adopted the Indigenous Peoples Rights Act (IPRA).<sup>60</sup> Enacted in November 1997, it is considered a landmark in legislation for indigenous peoples. It recognizes indigenous peoples' collective rights to their ancestral lands and domains, and specifically sets forth the indigenous concept of land ownership.<sup>61</sup>

58 E/C.19/2011/8, para. 51.

59 International Working Group for Indigenous Affairs, *The Indigenous World 2012* (Copenhagen, IWGIA, 2012), pp. 467-470.

60 The full text of the Indigenous Peoples Rights Act is available at: <http://www.tebtebba.org/index.php/all-resources/category/71-laws-policies-and-programmes-on-indigenous-peoples> (date accessed 14 April 2014).

61 Jose M. Monlitas, "The Philippines Indigenous Peoples' Struggle for Land and Life: Challenging Legal Texts", *Arizona Journal of Comparative Law*, vol. 21, no. 1, 2004, p. 269. Available from <http://arizonajournal.org/?p=321> (date accessed 14 April 2014).

The IPRA was modelled on the provisions of the then draft United Nations Declaration on the Rights of Indigenous Peoples. It is a comprehensive piece of legislation that includes not only the rights of indigenous peoples over their ancestral domain, but also their rights to social justice, human rights, self-governance, empowerment and cultural integrity.<sup>62</sup>

Checklist: The UN Declaration and legislation	Yes	No
1. Does existing legislation comply with the international standards set out in the UN Declaration?	<input type="checkbox"/>	<input type="checkbox"/>
a. Is the right to self-determination of indigenous peoples recognized?	<input type="checkbox"/>	<input type="checkbox"/>
b. Is the right to participate in decision-making protected and provided for in national legislation?	<input type="checkbox"/>	<input type="checkbox"/>
c. Are the rights to land, territories and resources of indigenous peoples recognized and protected in national legislation?	<input type="checkbox"/>	<input type="checkbox"/>
d. Are indigenous peoples' rights to culture and identity recognized and protected in national legislation?	<input type="checkbox"/>	<input type="checkbox"/>
2. Is there any specific legislation, or legislative provisions, that need to be revised to ensure greater conformity with the UN Declaration? If so, which ones?	<input type="checkbox"/>	<input type="checkbox"/>
3. Has the compatibility of national, provincial and local laws with the UN Declaration been evaluated?	<input type="checkbox"/>	<input type="checkbox"/>
4. Do laws that directly or indirectly affect indigenous peoples' rights incorporate the gender dimensions of indigenous women's rights?	<input type="checkbox"/>	<input type="checkbox"/>
5. Has the implementation of laws that directly or indirectly affect indigenous peoples' rights been reviewed recently?	<input type="checkbox"/>	<input type="checkbox"/>
6. Are indigenous peoples systematically consulted during the adoption, implementation and review process of legislation?	<input type="checkbox"/>	<input type="checkbox"/>
7. Are indigenous women and youth systematically included in consultations?	<input type="checkbox"/>	<input type="checkbox"/>
8. Are there mechanisms in place for obtaining the free, prior and informed consent of indigenous peoples on draft legislation? If so, what types of mechanisms exist and how do they work? Are these adequate or are other mechanisms required?	<input type="checkbox"/>	<input type="checkbox"/>
9. Is draft legislation accompanied by an environmental, social and human rights assessment of its impact on indigenous peoples?	<input type="checkbox"/>	<input type="checkbox"/>
10. Is legislation (in draft and final form) made available in indigenous languages?	<input type="checkbox"/>	<input type="checkbox"/>

62 Coalition for Indigenous Peoples' Rights and Ancestral Domains (Philippines), International Labour Organization Manila office and BILANCE (Organization) Asia Department, *Guide to R.A. 8371: Indigenous Peoples' Rights Act of 1997* (Quezon City, 1999).

# The UN Declaration and oversight

Oversight means holding the executive branch of government accountable for its actions and ensuring that it implements legislation and policies in an effective manner. Parliamentary oversight is one of the checks and balances among the three branches of the State and is a fundamental part of the legislative–executive relationship. This can be known as “supervision, watchfulness or review of executive actions and activities.”<sup>63</sup>

Effective oversight requires that parliaments/parliamentary committees are able to set their own agenda and have the power to summon ministers and civil servants to appear and answer questions. These committees should also seek information from indigenous representatives in order to have a broader view on any particular issue.

Checklist: The UN Declaration and oversight	Yes	No
1. Does parliament regularly scrutinize government policy on indigenous peoples’ rights?	<input type="checkbox"/>	<input type="checkbox"/>
2. Does parliament receive regular reports from governmental agencies on the implementation of policies and programmes targeted at indigenous peoples?	<input type="checkbox"/>	<input type="checkbox"/>
3. Does parliament evaluate the impact of policies and programmes on indigenous women?	<input type="checkbox"/>	<input type="checkbox"/>
4. Do parliamentary committees regularly question ministers on issues regarding indigenous peoples?	<input type="checkbox"/>	<input type="checkbox"/>
5. Do parliamentary committees systematically seek input to their work from indigenous peoples?	<input type="checkbox"/>	<input type="checkbox"/>
6. Does parliament and/or parliamentary committees regularly hold public hearings on issues regarding indigenous peoples’ rights?	<input type="checkbox"/>	<input type="checkbox"/>
7. Has parliament established special commissions of enquiry to investigate major public concerns related to indigenous peoples’ rights?	<input type="checkbox"/>	<input type="checkbox"/>
8. Does parliament participate in the preparation of national reports to international human rights mechanisms?	<input type="checkbox"/>	<input type="checkbox"/>
9. Does parliament oversee government’s follow-up to recommendations and judgements of international human rights mechanisms?	<input type="checkbox"/>	<input type="checkbox"/>
10. Does parliament support the appointment of indigenous peoples in general, and of indigenous women in particular, to senior positions (such as ombudsman, human rights commissioners, heads of indigenous offices, cabinet members, judges of the Supreme Court and other high level officials)? <sup>64</sup>	<input type="checkbox"/>	<input type="checkbox"/>

63 Walter Oleszek, *Congressional Procedures and Policy Process*, 7<sup>th</sup> ed. (California, CQ Press, 2007), p. 289.

64 Office of the High Commissioner for Human Rights and Inter-Parliamentary Union, *From exclusion to equality. Realizing the rights of persons with disabilities. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol*. (Geneva, 2007), pp. 106 and 107.

## Mayagna Awas Tingni community of Nicaragua

On 31 August 2001, the Inter-American Court of Human Rights rendered its judgement on the Mayagna Awas Tingni community of Nicaragua.<sup>65</sup> In this case the Court held that the international human right to property includes the right of indigenous peoples to the protection of their customary lands and resources. The Court held that the State of Nicaragua violated the property rights of the Awas Tingni community by granting a concession to a foreign company to conduct logging activities within the community's traditional lands, and by failing to provide adequate recognition and protection of the community's customary land tenure rights.

The Court required Nicaragua to secure the effective enjoyment of these rights. Similar to Awas Tingni, most of the indigenous communities of the Atlantic Coast lacked specific government recognition of their traditional lands in the form of a land title or other official documentation. The Nicaraguan authorities categorized the untitled traditional indigenous lands - or substantial parts of them - as State lands, when granting concessions for logging in the Awas Tingni area.

The Court ordered Nicaragua to demarcate and title the Awas Tingni community's traditional lands in accordance with its customary land and resource tenure patterns, to refrain from any action that might undermine the community's interests in those lands, and to establish an adequate mechanism to secure the land rights of all the indigenous communities of the country.<sup>66</sup>

Following on from this, indigenous peoples' organizations asked the National Assembly of Nicaragua to ensure the implementation of the decision of the Inter-American Court of Human Rights. As a result, in January 2003 the National Assembly adopted Law 445 on the demarcation and provision of land titles to indigenous communities.<sup>67</sup> Awas Tingni was the first community to obtain title to their ancestral lands.

## The UN Declaration and the budget

Budget scrutiny provides an important entry point for parliaments to engage with the UN Declaration and assess whether the proposed budget before parliament is likely to improve the economic and social conditions of indigenous peoples.

65 *Mayagna (Sumo) Awas Tingni Community v Nicaragua*, IACHR Series C no. 79, August 31, 2001.

66 S. James Anaya and Claudio Grossman, "The case of Awas Tingni v Nicaragua: A New Step in the International Law of Indigenous Peoples", *Arizona Journal of International and Comparative Law*, vol. 19, no. 1, 2002, pp. 1 and 2. Available from <http://arizonajournal.org/?p=319>

67 Nicaragua, Ley no. 445 - Ley del régimen de propiedad comunal de los pueblos indígenas y comunidades étnicas de las regiones autónomas de la costa atlántica de Nicaragua y de los ríos bocay, coco, indio y maíz, La Gaceta Diario Oficial, no. 16 del 23 de enero de 2003, Asamblea Nacional.



According to the UN Declaration, States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of indigenous peoples' 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 21(2)). The UN Declaration further states that indigenous peoples have the right to access financial and technical assistance from the State, and through international cooperation for the enjoyment of their rights.

Access to health care is a major issue for indigenous peoples worldwide.  
© Reuters/Ricardo Moraes, 2011

When allocating or considering the budget, it is important for parliament and the executive to include indigenous peoples in the budget consideration process at an early stage, since this is directly linked to the design and implementation of governmental policies and programmes. Inappropriate or underresourced allocations, without consultation, may result in non-implementation of well-intentioned and well-designed policies.

Parliaments should ensure that consultation and cooperation with indigenous peoples takes place, in order to obtain their free prior and informed consent for budgetary allocations linked to specific legislative and administrative measures that may affect indigenous peoples. The participation of indigenous women and youth should be central to this process.

In some countries, parliamentarians receive special budget allocations for developing their constituencies, which may also be directed towards promoting the rights and development of indigenous peoples.

Checklist: The UN Declaration and the budget	Yes	No
1. Are statistical data on the economic and social conditions of indigenous peoples available, including ethnicity and gender-disaggregated data?	<input type="checkbox"/>	<input type="checkbox"/>
2. Does parliament receive sufficient and timely information from the government in order to be able to scrutinize the budget effectively, with regard to its potential impact on indigenous peoples?	<input type="checkbox"/>	<input type="checkbox"/>
3. Are financial and human resources allocated for the promotion of indigenous peoples' rights in the State budget?	<input type="checkbox"/>	<input type="checkbox"/>
4. Are indigenous peoples consulted in the budgeting process?	<input type="checkbox"/>	<input type="checkbox"/>
5. Do provincial and local budgets also involve consultation with and specific allocations for indigenous peoples?	<input type="checkbox"/>	<input type="checkbox"/>
6. Are specific financial and human resources allocated to autonomous decision-making institutions, where they exist, of indigenous peoples?	<input type="checkbox"/>	<input type="checkbox"/>
7. Are specific financial and human resources allocated to mechanisms and processes for obtaining the free, prior and informed consent of indigenous peoples on administrative and legislative matters that affect them?	<input type="checkbox"/>	<input type="checkbox"/>
8. Does parliament receive reports from government agencies about how allocated funds have been spent on indigenous peoples?	<input type="checkbox"/>	<input type="checkbox"/>
9. Does parliament receive reports from the national audit body about the use of budget allocations targeted at indigenous peoples?	<input type="checkbox"/>	<input type="checkbox"/>

### **Funding autonomous indigenous parliaments: The Sami Parliament of Norway<sup>68</sup>**

The Sami Parliament of Norway was established in October 1989. It is an elected assembly that represents the Sami people of Norway. Thirty-nine members of parliament are elected from seven constituencies every four years. The purpose of the Sami Parliament is to strengthen the Sami's political position and promote Sami interests in Norway, contributing to the equal and equitable treatment of Sami people, and paving the way for Sami efforts to safeguard and develop their language, culture, and society.

<sup>68</sup> <http://www.samediggi.no/> (date accessed 14 April 2014).

The Sami Parliament receives funds from the central government budget. In principle, it is free to allocate the funds in accordance with its policy priorities. Each year the Sami Parliament adopts its own budget with its own proposals for new initiatives and allocations for Sami priorities for the following year's government budget. The national government determines the extent to which it will take into account the Sami Parliament's submissions when preparing proposals for the government budget.

The parliament's budget comprises less than half of the funds allocated for Sami purposes over the national budget. Since 1989 the budget of the Sami Parliament has increased every year.

## The UN Declaration and international cooperation

According to Article 41 of the UN Declaration:

*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.*

According to 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.*

At its 10<sup>th</sup> session in 2011, the UN Permanent Forum on Indigenous Issues made the following recommendation:

*The Permanent Forum ... encourage(s) the parliamentarians and other elected indigenous representatives from national, regional and local decision-making bodies to establish an international network or organization in order to share common experiences, including those related to the implementation of the UN Declaration in legislative and other democratic bodies. It further encourages the Inter-Parliamentary Union to install a liaising body with indigenous parliamentarians to strengthen awareness of the UN Declaration. The Forum calls upon indigenous parliamentarians to promote the necessary legislative reforms for the implementation of the UN Declaration.<sup>69</sup>*

Regional indigenous parliaments such as the Indigenous Parliament of the Americas provide an opportunity for indigenous representatives to discuss issues of mutual concern and push for transnational cooperation on indigenous peoples' rights.

<sup>69</sup> Report of the tenth session of the Permanent Forum on Indigenous Issues, New York, 16-27 May 2011 (E/2011/43-E/C.19/2011/14), para. 50.

Events organized by international organizations such as IPU, the Commonwealth Parliamentary Association (CPA) and regional networks such as the Southern Africa Development Community (SADC) and the Asia Pacific Parliamentary Forum can be useful forums for parliamentarians to discuss the UN Declaration and share good practices about ways in which national parliaments have effectively engaged with the UN Declaration.

Parliaments have the opportunity to create alliances with indigenous peoples' organizations, human rights organizations, and institutions at local, national, regional and global levels, as well as with the United Nations to support the promotion and dissemination of information on indigenous peoples' rights.

Checklist: The UN Declaration and international cooperation	Yes	No
1. Does your parliament cooperate with other parliaments on indigenous issues?	<input type="checkbox"/>	<input type="checkbox"/>
2. Does your parliament have partnerships with international organizations to promote the rights of indigenous peoples?	<input type="checkbox"/>	<input type="checkbox"/>
3. Does your parliament participate in regional parliamentary bodies dedicated to indigenous peoples?	<input type="checkbox"/>	<input type="checkbox"/>
4. Has parliament taken action to follow up on the Chiapas Declaration (see box below)?	<input type="checkbox"/>	<input type="checkbox"/>

### Forming alliances to promote the respect of indigenous peoples' rights

An example of the creation of alliances to promote respect for indigenous peoples' rights was the 2010 international parliamentary conference "Parliaments, minorities and indigenous peoples: Effective participation in politics". The conference was organized by the IPU, the Mexican Congress, the government of the State of Chiapas in partnership with UNDP, the United Nations High Commissioner for Human Rights, the United Nations Independent Expert on Minority Issues, and Minority Rights Group International. As an outcome of the conference, the Chiapas Declaration was adopted.<sup>70</sup>

The Chiapas Declaration urges every parliament to:

- hold a special debate on the situation of minorities and indigenous peoples in their country, recognize diversity in society, and adopt a Plan of Action to make the right to equal participation and non-discrimination a reality for minorities and indigenous peoples;

70 The Chiapas Declaration is available at <http://www.ipu.org/splz-e/chiapas10/declaration.pdf>.



- adopt and implement laws to end discrimination and provide for the effective participation of minorities and indigenous peoples in decision-making, including in parliament, while taking care to secure the effective participation of minorities and indigenous women. Where such laws already exist, evaluate their effectiveness and make adjustments where necessary;
- ensure that the legislative process is transparent and that parliamentary records are made available immediately so that minority populations / indigenous peoples can monitor the activity of their representatives and in doing so, hold them to account for their actions and omissions.



Indigenous women celebrate 'World Indigenous Day' in Bangladesh. © Reuters/SAZ/PB, 2001



# Conclusion

A democratic parliament is one that is representative of the social diversity of the population. In this context, indigenous peoples remain the most marginalized from key governing bodies and processes that determine political and legislative priorities.

Indigenous peoples' institutions, systems of governance and traditional knowledge often provide insights into the search for solutions to today's complex environmental, developmental and governance problems. Indigenous peoples' perspective, and their full and effective participation in policy and decision-making must be seen as instrumental in breaking the cycle of discrimination and exclusion. Guaranteeing their participation also enriches discussions in parliament and re-evaluates the cultural mores of society.

While there is no one model of participation, since the historical, political and cultural context of each State is unique, it is important for parliamentarians to be aware of international standards in decision-making as enshrined in the UN Declaration. Failure to design culturally appropriate and sensitive legislation, policies and programmes may lead to an imbalance and inequality in society, and further marginalization of indigenous peoples.

The parties to this project hope that this handbook enables parliaments around the world to better understand indigenous peoples' rights and provides practical ideas for their implementation. We remain open to support the efforts of parliamentarians to promote the full recognition and respect of indigenous peoples' rights.

Nenets woman and girl at their settlement just south of the Arctic circle, live in one of the most challenging environments as they try and stay true to their reindeer herding traditions. © Reuters/Vasily Fedosenko, 2008





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# United Nations mechanisms on indigenous peoples' rights

## UN Expert Mechanism on the Rights of Indigenous Peoples

The UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) was established by the UN Human Rights Council, the United Nation's main human rights body, in 2007 as a subsidiary body of the Council.

The UN Expert Mechanism provides the Council with thematic advice, in the form of studies and research, on the rights of indigenous peoples as directed by the Council. The UN Expert Mechanism may also suggest proposals to the Council for its consideration and approval.

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## UN Permanent Forum on Indigenous Issues

The UN Permanent Forum on Indigenous Issues is an advisory body to the Economic and Social Council, with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights. According to its mandate, the UN Permanent Forum on Indigenous Issues will:

- provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations through the Council;
- raise awareness and promote the integration and coordination of activities related to indigenous issues within the UN system; and
- prepare and disseminate information on indigenous issues.

The UN Permanent Forum on Indigenous Issues holds annual two-week sessions. The first meeting was held in May 2002, and yearly sessions take place in New York.

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## Special Rapporteur on the Rights of Indigenous Peoples

In 2001, the [Commission on Human Rights](#) decided to appoint a Special Rapporteur on the Rights of Indigenous Peoples, as part of the system of thematic [Special Procedures](#). The Special Rapporteur's mandate was renewed by the Commission in 2004, and by its predecessor body, the UN [Human Rights Council](#) in 2007.

In the fulfilment of her/his mandate, the Special Rapporteur:

- promotes good practices, including new laws, government programmes and constructive agreements between indigenous peoples and States, to implement international standards concerning the rights of indigenous peoples;
- reports on the overall human rights situations of indigenous peoples in selected countries;
- addresses specific cases of alleged violations of the rights of indigenous peoples through communications with governments and others; and
- conducts or contributes to thematic studies on topics of special importance regarding the promotion and protection of the rights of indigenous peoples.

The Special Rapporteur on the Rights of Indigenous Peoples undertakes efforts to follow-up on the recommendations included in her or his predecessor's reports. Additionally, she/he reports annually on their activities to the UN Human Rights Council.

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# Annex 1

## United Nations Declaration on the Rights of Indigenous Peoples

**Adopted by General Assembly Resolution 61/295 on 13 September 2007**

*The General Assembly,*

*Guided* by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

*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 or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

*Reaffirming* 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,

*Recognizing also* 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 to an end 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* 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,

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

*Considering also* 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, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to 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 to 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, well-being and integral development as peoples,

*Recognizing* that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

*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 to 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 right 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;
  - 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 practise 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, practise, 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 that 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, 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 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 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 diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other 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 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 or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
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 and 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.

# About the publishers

## International Fund for Agricultural Development

The International Fund for Agricultural Development (IFAD) is a specialized agency of the United Nations. Its goal is to empower poor rural women and men in developing countries to achieve higher incomes and improved food security. IFAD has more than 30 years of experience working with indigenous peoples. Since 2003, an average of about 22 per cent of IFAD's annual lending has supported initiatives for indigenous peoples, mainly in Asia and Latin America. IFAD empowers communities to participate fully in determining strategies for their development and to pursue their own goals and visions by strengthening grass-roots organizations and local governance.

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## Inter-Parliamentary Union

The Inter-Parliamentary Union (IPU) is the world organization of parliaments. It facilitates political dialogue among members of parliament and mobilizes parliamentary cooperation and action on a wide range of subjects that are priorities on the international agenda. It aims to ensure that parliaments and their members can freely, safely and effectively do the job they were elected to do: express the will of the people, adopt laws and hold governments accountable for their actions. To this end, IPU implements programmes to strengthen parliaments as democratic institutions. It audits parliaments, provides technical assistance and advice, undertakes research, and develops standards and guidelines. It places special emphasis on promoting and defending human rights and facilitating women's participation in politics.

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## Office of the High Commissioner for Human Rights

The Office of the High Commissioner for Human Rights (OHCHR) is the principal United Nations Office with responsibilities for human rights. The Office promotes and protects human rights through international cooperation and the coordination of human rights activities in the United Nations system. The Office supports the implementation of the Declaration on the Right of Indigenous Peoples as part of its core mandate, in particular through its field offices and through technical cooperation and partnership with States, civil society, national human rights institutions and intergovernmental organizations.

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## Secretariat of the Permanent Forum on Indigenous Issues of the Department of Economic and Social Affairs

The Secretariat of the Permanent Forum on Indigenous Issues (SPFII) was established by the United Nations General Assembly in 2002. It is based at UN Headquarters in New York in the [Division for Social Policy and Development](#) of the [Department of Economic and Social Affairs](#) (DESA). SPFII works year-round to a) prepare for annual sessions of the Permanent Forum and support to the members of the UN Permanent Forum on Indigenous Issues throughout the year; b) advocate for, facilitate and promote the coordination of the implementation of the recommendations within the UN system that emerge from each annual session, and promote awareness of indigenous issues within the UN system, with governments and the broad public; and c) serve as a source of information and a coordination point for advocacy efforts that relate to the Permanent Forum's mandate and the ongoing issues that arise concerning indigenous peoples.

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## United Nations Development Programme

The United Nations Development Programme (UNDP) is the United Nations global development network, an organization advocating for change and connecting countries to knowledge, experience and resources to help people build a better life. It is on the ground in 177 countries, working with them on their own solutions to global and national development challenges. As they develop [local capacity](#), they draw on the people of UNDP and their wide range of partners.

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