



# GUIDELINES ON INDIGENOUS PEOPLES' ISSUES

UNITED NATIONS DEVELOPMENT GROUP



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## **NOTE**

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### **HR/P/PT/16**

The United Nations Development Group's Guidelines on Indigenous Peoples' Issues were prepared by a task team of the Inter-Agency Support Group on Indigenous Issues (IASG) composed of the International Labour Organization (ILO), the Food and Agriculture Organization of the United Nations (FAO), the International Fund for Agricultural Development (IFAD), the secretariat of the Permanent Forum on Indigenous Issues, the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Children's Fund (UNICEF), the United Nations Development Fund for Women (UNIFEM), the United Nations Human Settlements Programme (UN-HABITAT), the United Nations Institute for Training and Research (UNITAR), the United Nations Population Fund (UNFPA), and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

IASG is composed of 31 United Nations agencies, funds and programmes and other intergovernmental organizations.

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## OBJECTIVES

- **The purpose of the Guidelines is to assist the United Nations system to mainstream and integrate indigenous peoples' issues in processes for operational activities and programmes at the country level.**
  - › The Guidelines set out the broad normative, policy and operational framework for implementing a human rights-based and culturally sensitive approach to development for and with indigenous peoples.
  - › The Guidelines provide lines of action for planning, implementation and evaluation of programmes involving indigenous peoples.
  - › The Guidelines provide a framework for duly integrating the principles of cultural diversity into United Nations country programmes.

## STRUCTURE

- **The Guidelines are divided into three main sections:**
  - › Section I provides an overview of the situation of indigenous peoples and the existing international norms and standards adopted to ensure the realization of their rights and resolve some of the crucial issues that they face.
  - › Section II presents a practical table and checklist of key issues and related rights.
  - › Section III discusses specific programmatic implications for UNCTs for addressing and mainstreaming indigenous peoples' issues.

## SUMMARY

### ***Section I - Overview of current realities confronting indigenous peoples and the international norms and standards established to address indigenous peoples' issues***

- **Summary of international developments over the last two decades:**
  - › Approval of ILO Convention No. 169
  - › First and Second International Decades of the World's Indigenous People
  - › Establishment of the UNPFII
  - › Appointment of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people
  - › Establishment of the Inter-Agency Support Group on Indigenous Issues
  - › Adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the General Assembly in September 2007

- **Who are indigenous peoples? – Overview of major attempts to outline the characteristics of indigenous peoples**
  - › ILO Convention No. 169
  - › Martínez Cobo Study
  - › Working Group on Indigenous Populations *Working paper on the concept of “indigenous people”*
  - › Concept of self-identification
  
- **Overview of existing international norms and standards**
  - › ILO Convention No. 169
  - › United Nations Declaration on the Rights of Indigenous Peoples
  - › Other international standard-setting instruments that provide for the protection of indigenous peoples (i.e., Convention on the Rights of the Child, Convention on Biological Diversity, UNESCO instruments, etc.)
  
- **Basic human rights and principles**
  - › Non-discrimination
  - › Equality
  - › Gender equality
  - › Self-determination
  - › Collective rights
  - › The right to development

## **Section II - Practical table and checklist of key issues and related human rights**

- **This section is composed of a table that seeks to synthesize some of the key issues relating to indigenous peoples and the guiding human rights principles that address them. For each key issue, the table includes one or two paragraphs that provide basic information, as well as a list of the main guiding principles and the international instruments on which they are based. The issues addressed include:**
  - › Self-determination
  - › Lands, territories and natural resources
  - › Traditional knowledge
  - › Health
  - › Education
  - › Indigenous women
  - › Indigenous children and youth
  - › Capacity development and employment

### **Section III - Specific programmatic implications for addressing and mainstreaming indigenous peoples' issues**

- This section provides guidelines for adopting a human rights-based and culturally sensitive approach to programming when addressing the specific situation of indigenous peoples.
- The elements of the United Nations Common Understanding on the Human Rights Based Approach to Development Cooperation are presented and linked with indigenous peoples' issues.
- The section then provides an overview of the culturally sensitive approach to programming, including the following elements:
  - › The use of positive practices of indigenous cultures to promote and advance gender equality and human rights
  - › Mobilization of indigenous networks to assist in identifying and promoting the cultural and social values that help preserve their identities and that are also in conformity with international human rights standards
  - › Encouraging the development of human capabilities and the participation of indigenous peoples in community and social contexts, policy design and implementation at local, national, regional and global levels, creating strategies that can help them escape poverty.
- The Guidelines then address some of the specific programmatic implications for UNCTs to mainstream and integrate indigenous peoples' issues during the following stages of the programming process:
  - › Plan of engagement
  - › Country analysis
  - › Strategic planning
  - › Monitoring and evaluation
  - › Organizing and managing results
- Some of the main issues that are addressed in this section are:
  - › Participation
  - › Free, prior and informed consent
  - › Analysis of disparities
  - › Data disaggregation and indicators of well-being
  - › Creating an enabling environment



## INTRODUCTION AND PURPOSE

In many parts of the world, indigenous peoples suffer from a history of discrimination and exclusion that has left them on the margins of the larger societies in which they exist. For this reason, they face great difficulties in maintaining and developing their own models of development and well-being and are consequently disproportionately affected by poverty and exclusion.<sup>1</sup> Under the basic principles of universality, equality and non-discrimination, indigenous peoples are entitled to the full range of rights established under international law. However, indigenous peoples, as collectivities, have distinct and unique cultures and world views, and their current needs and aspirations for the future may differ from those of the mainstream population. Their equal worth and dignity can only be assured through the recognition and protection of not only their individual rights, but also their collective rights as distinct groups. It is when these rights are asserted collectively that they can be realized in a meaningful way. This has led to the development of a separate body of international instruments for the recognition and protection of the rights of indigenous peoples.

The programmatic interventions of United Nations Country Teams (UNCTs) should recognize the specificity of indigenous peoples' situations and cultures in implementing the rights-based approach to programming taking into consideration the special needs of indigenous women, children and youth. In particular, the proposals of indigenous communities to integrate their social, political, cultural and economic rights and their aspirations into future development strategies must be considered so that the challenges they are facing are fully addressed, respect for their rights and cultures is ensured, and their survival and well-being is protected. In this context, participation of indigenous peoples, including indigenous women, must be an overarching principle. It is expected that UNCTs will rise to the challenge of integrating and being open and respectful to these world views and understandings of well-being, including the significance of the natural world and the need to be in harmony with it.

Furthermore, these programmatic interventions must address the fact that some indigenous people, such as indigenous women and children and indigenous persons with disabilities, often suffer from multiple sources of discrimination within their communities and the larger societies in which they live. Also, UNCTs should be aware of the diversity that exists among indigenous peoples and the fact that conflicting interests may exist among different indigenous groups.

The purpose of the present guidelines is to assist the United Nations system to mainstream and integrate indigenous peoples' issues in processes for operational activities and programmes at the country level. The guidelines set out the broad normative, policy and

operational framework for implementing a human rights-based and culturally sensitive approach to development<sup>2</sup> for and with indigenous peoples, provide lines of action for planning, implementation and evaluation of programmes involving indigenous peoples and duly integrating the principles of cultural diversity<sup>3</sup> into United Nations country programmes. The guidelines are intended as a live document, which is to be revised and periodically modified as necessary.

These Guidelines contain three sections. Section I provides an overview of the situation of indigenous peoples and the existing international norms and standards adopted to ensure the realization of their rights and resolve some of the crucial issues that they face. Section II presents a practical table and checklist of key issues and related rights. Section III discusses specific programmatic implications for UNCTs for addressing and mainstreaming indigenous peoples' issues.

### **OVERVIEW OF CURRENT REALITIES CONFRONTING INDIGENOUS PEOPLES AND THE INTERNATIONAL NORMS AND STANDARDS ESTABLISHED TO ADDRESS INDIGENOUS PEOPLES' ISSUES**

International developments over the last two decades provide opportunities for UNCTs to strengthen partnerships with States, indigenous peoples, and civil society as a whole. These developments provide a framework for strengthened engagement on indigenous peoples' issues at the country level. These include the adoption of ILO Convention No. 169 on Indigenous and Tribal Peoples in 1989,<sup>4</sup> the 2005 Heads of State World Summit, in which Governments committed to making progress in advancing the human rights of indigenous peoples, the proclamation by the General Assembly of the Second International Decade of the World's Indigenous People (2005 - 2014)<sup>5</sup> and, most recently, the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the General Assembly in September 2007.<sup>6</sup>

Within the United Nations system, two important mechanisms on indigenous peoples' issues have been created. The United Nations Permanent Forum on Indigenous Issues (UNPFII), composed of 16 independent experts, many of whom are indigenous persons, is mandated to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights and make recommendations to the United Nations system through the Economic and Social Council. The UNPFII mandate also includes raising awareness and promoting the integration and coordination of activities related to indigenous issues within the United Nations system, as well as producing relevant material. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people was established by the Commission on Human Rights (now the Human Rights Council) and has the mandate to undertake country visits, report on trends and take up cases directly with Governments in relation to human rights violations.

The United Nations system has responded to these calls for action by consolidating and formalizing its long-standing cooperation on indigenous peoples' issues through the establishment of the Inter-Agency Support Group on Indigenous Issues (IASG).<sup>7</sup> In July 2006, within the framework of promoting the Second International Decade of the World's Indigenous Peoples, the United Nations Development Group recommended that the IASG provide support and guidance for mainstreaming and integrating indigenous peoples' issues in United Nations operational activities by working as a Task Team of the UNDG. The UNDG Task Team on Indigenous Issues was thus established in order to develop guidelines for mainstreaming and integrating indigenous peoples' issues in mechanisms and processes of the United Nations system at country level and to develop a plan of action for their implementation.

**Box 1 – Articles of the United Nations Declaration on the Rights of Indigenous Peoples addressed at the United Nations system**

**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.

## WHO ARE INDIGENOUS PEOPLES?

The international community has not adopted a definition of indigenous peoples and the prevailing view today is that no formal universal definition is necessary for the recognition and protection of their rights. However, this should by no means constitute an obstacle to United Nations agencies in addressing the substantial issues affecting indigenous peoples. What follows is a brief overview of some of the existing attempts to outline the characteristics of indigenous peoples:

- **The ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) applies to:**
  - › Tribal peoples whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.
  - › Peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.<sup>8</sup>
  - › The Convention also states that self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.<sup>9</sup>
- **The *Study on the discrimination against indigenous peoples* (Martínez Cobo Study) puts forward the following “working definition”: Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.<sup>10</sup>**
- **The Working Group on Indigenous Populations *Working paper on the concept of “indigenous people”* lists the following factors that have been considered relevant to the understanding of the concept of “indigenous” by international organizations and legal experts:**
  - › Priority in time, with respect to the occupation and use of a specific territory;
  - › The voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions;

- › Self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and
- › An experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist.<sup>11</sup>
  
- **Self-identification as indigenous or tribal is considered as a fundamental criterion and this is the practice followed in the United Nations and its specialized agencies, as well as in certain regional intergovernmental organizations.**<sup>12</sup>
  
- **Article 33 of the United Nations Declaration on the Rights of Indigenous Peoples (UN-DECRIPS) refers to the rights of indigenous peoples to decide their own identities and procedures of belonging.**

## EXISTING INTERNATIONAL NORMS AND STANDARDS

International human rights instruments are not enough to guarantee the survival, well-being and dignity of indigenous peoples, even if they have a great importance for the protection of their rights. Most international human rights instruments (with the exception of the UN-DECRIPS) protect the rights of the individual. Indigenous peoples need the recognition of specific collective rights for their survival as human groups. These rights include indigenous peoples' rights to their lands, territories and resources, to maintain their cultures, to recognition of their distinct identities, to self-government and self-determination, and to be asked for their free, prior and informed consent in decisions that may affect them. Such rights are considered the minimum standards for the protection of their survival as distinct peoples and are intended to address the challenges most indigenous peoples face around the world.

For the last 20 years, the international community has recognized that special attention needs to be paid to the individual and collective rights of indigenous peoples.<sup>13</sup> As a result, a number of international instruments address indigenous peoples' rights or include provisions relevant to them. The main legally binding document entirely focused on the rights of indigenous peoples is ILO Convention No. 169 on Indigenous and Tribal Peoples.<sup>14</sup>

In a historic decision, the General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (UN-DECRIPS) on 13 September 2007.<sup>15</sup> This document recognizes the rights of indigenous peoples on a wide range of issues and provides a universal framework for the international community and States. The Declaration sets out the rights that countries should aspire to recognize, guarantee and implement. In that sense, the Declaration establishes a framework for discussions and dialogue between indigenous peoples and States. Other international standard-setting instruments provide for the protection of indigenous peoples, and some do so specifically for indigenous women and children.<sup>16</sup> These include:

- **The Convention on the Rights of the Child (1989)**<sup>17</sup>
- **The Convention on Biological Diversity (1992)**<sup>18</sup>
- **Agenda 21 (1992)**<sup>19</sup>
- **The International Convention on the Elimination of All Forms of Racial Discrimination (1965)**
- **The International Covenant on Civil and Political Rights (1966)**<sup>20</sup>
- **The International Covenant on Economic, Social and Cultural Rights (1966)**
- **The International Conference on Population and Development (1994)**
- **The UNEP Malmoe Ministerial Declaration (2000)**<sup>21</sup>

- **The Beijing Declaration and Platform for Action (1995)**<sup>22</sup>
- **From UNESCO:**<sup>23</sup>
  - › The Universal Declaration on Cultural Diversity<sup>24</sup> and its programme of action (2001)<sup>25</sup>
  - › The Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)<sup>26</sup>
  - › The Convention for the Safeguarding of the Intangible Cultural Heritage (2003)<sup>27</sup>
  - › The Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)<sup>28</sup>

Furthermore, jurisprudence regarding the rights of indigenous peoples is being provided by the human rights treaty bodies, namely the committees that monitor implementation of human rights covenants and conventions.<sup>29</sup>



## BASIC HUMAN RIGHTS NORMS AND PRINCIPLES

Indigenous peoples are entitled to the full range of rights established under international law. They should not be subject to any form of discrimination, should receive equal treatment, should be able to participate fully in public life, and have a right to maintain their distinctive identities, cultures, languages and ways of life. These rights are established in the Charter of the United Nations and the subsequent human rights treaties. The right of indigenous peoples to self-determination is increasingly expressed through self-governing or autonomous arrangements. Both ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples recognize indigenous peoples' right to own and control their lands and, to differing degrees, recognize their rights to own, use and manage the natural resources on those lands. According to the Declaration, States should establish mechanisms to guarantee these rights. Finally, the right to development is understood to imply for indigenous peoples their right to decide the kind of development that takes place on their lands and territories in accordance with their own priorities and cultures. The United Nations Declaration on the Rights of Indigenous Peoples calls upon States to consult with indigenous peoples to obtain their free, prior and informed consent prior to approval of any project affecting their lands and resources. ILO Convention No. 169 underlines the right of indigenous peoples to be consulted in relation to developments that may affect them. The Declaration on the Rights of Indigenous Peoples and the Beijing Declaration and Platform for Action stress the need to consider the valuable contribution and rights of indigenous women. This includes addressing the vulnerable situation of indigenous women.

**Non-discrimination:** Several countries have undertaken constitutional reforms and adopted laws recognizing distinct indigenous identities and the multicultural character of the State. However, in most cases, those reforms have not been able to eliminate the legacy of historical discrimination against indigenous peoples and against indigenous women based on their gender.<sup>30</sup> In some cases the very existence of indigenous peoples is not recognized in constitutions and laws and they are even denied citizenship.<sup>31</sup> Where data exists, it points to disparities between the indigenous population and society as a whole and confirms that indigenous peoples, and in particular indigenous women and children, have less access to health services, adequate housing and education, dispose of lower incomes and have fewer employment and vocational training opportunities.<sup>32</sup> Disaggregated data on the conditions of indigenous peoples is limited and policies to address discrimination are consequently difficult to develop and implement. The United Nations Permanent Forum on Indigenous Issues and several United Nations agencies have recommended that data be disaggregated specifically for indigenous peoples and by sex.<sup>33</sup>

Indigenous peoples are often not able to participate fully in public life and are rarely present in decision-making bodies of the State or in senior levels of the administration. While there are some exceptions, indigenous peoples have far less political leverage than other groups of society.

In order to address the issue of discrimination and promote social inclusion and political participation, Governments are increasingly revising laws and introducing special measures to combat prevailing discrimination and improve opportunities for indigenous peoples. These measures include targeted programming, special grants for education, consultative mechanisms and reserved seats in decision-making bodies, including national parliaments. In addition, non-discrimination also implies addressing specific needs within indigenous communities, including those of women, children and youth.

**Equality:** According to international human rights standards, indigenous peoples, as all human beings, are entitled to enjoy all human rights and fundamental freedoms including both civil and political rights and economic, social and cultural rights, such as the rights to health and education. They have the right to equal treatment and to benefit, as any other citizen of the State in which they live, from economic development and other progress. These rights apply to men and women, children and adults alike.

In practice, however, indigenous peoples have often not been treated equally and face social exclusion. Under certain circumstances, providing the same opportunities that are provided to others may not be enough to ensure that indigenous peoples' situations improve to the level of other groups. Ensuring that indigenous peoples have equal opportunities may require that States take special or positive measures to compensate for historic injustices and disadvantages, including the double discrimination faced by indigenous women, a principle that also constitutes one of the objectives of the Second International Decade on the World's Indigenous People.<sup>34</sup> The purpose of special positive measures is to bring the living conditions of indigenous peoples to the same level as those of others in society. They should also reflect the aspirations of the peoples concerned to protect, maintain and develop their cultures and identities, customs, traditions and institutions.

**Gender equality:** Programmes should work towards gender equality, indigenous women's empowerment and the protection of indigenous women's human rights. This implies taking into account indigenous women's perspectives, needs, opportunities and challenges while developing, implementing, monitoring and evaluating policies and programmes.

A gender equality perspective centres on understanding the causes and consequences of gender discrimination and the unequal power relations between men and women in a specific context, whether rooted in prevailing social attitudes and customary practices or discriminatory laws and policies, among other factors. Compounded forms of discrimination need to be taken into account based on age, race, ethnicity, educational and income level, residence, religion, marital, HIV or other status. These factors serve as critical inputs to inform what the best programme strategies are for working towards gender equality and to protect indigenous women's human rights. In essence, applying a gender equality perspective implies looking at ways to change gender relations by questioning and responding to the underlying values and factors for unequal status and treatment.<sup>35</sup>

**Self-determination:** Indigenous peoples have the right to self-determination.<sup>36</sup> The United Nations Declaration on the Rights of Indigenous Peoples states in its third article 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 based on common article one of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Indigenous peoples' representatives and States have discussed the implications of the right to self-determination at length. States have expressed concerns about their territorial integrity with regard to possible demands for independence of indigenous peoples.<sup>37</sup> Indigenous peoples have underlined their desire to determine their own development, well-being and future in accordance with their ways of life and cultures. A balanced understanding has been found in UN-DECRIPS.

The right to self-determination may be expressed through:

- **Autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. In other cases, indigenous peoples seek the conditions for self-management.**
- **Respect for the principle of free, prior and informed consent. This principle implies that there is an absence of coercion, intimidation or manipulation, that consent has been sought sufficiently in advance of any authorization or commencement of activities, that respect is shown for time requirements of indigenous consultation/consensus processes and that full and understandable information on the likely impact is provided.**<sup>38</sup>

- Full and effective participation of indigenous peoples at every stage of any action that may affect them direct or indirectly. The participation of indigenous peoples may be through their traditional authorities or a representative organization. This participation may also take the form of co-management.
- Consultation with the indigenous peoples concerned prior to any action that may affect them, direct or indirectly. Consultation ensures that their concerns and interests match the objectives of the activity or action that is planned.
- Formal recognition of indigenous peoples' traditional institutions, internal justice and conflict-resolution systems, and ways of socio-political organization.
- Recognition of the right of indigenous peoples to freely define and pursue their economic, social and cultural development.

**Collective rights:** The core international human rights instruments protect the rights of the individual and establish obligations by States to guarantee, protect and respect such rights.<sup>39</sup> The rights related to indigenous peoples seek to protect, in addition to individual rights, their collective rights, because recognition of such rights is necessary to ensure the continuing existence, development and well-being of indigenous peoples as distinct collectivities. Past experience has shown that unless the collective rights of indigenous peoples are respected, there is a risk that such cultures may disappear through forced assimilation into the dominant society. Through international declarations, and in some cases national laws and regulations, all States are committed to the promotion of cultural diversity.

The collective rights of indigenous peoples include recognition of their distinctive histories, languages, identities and cultures but also of their collective right to the lands, territories and natural resources they have traditionally occupied and used, as well as the right to their collectively held traditional knowledge. In establishing and fulfilling collective rights for indigenous peoples, the international community has affirmed that such rights should not conflict with existing international human rights norms but complement them. That is to say, the implementation of collective human rights should not adversely affect the implementation of individual rights.

**Indigenous peoples and the right to development:** Indigenous peoples have the right to define and decide on their own development priorities. This means they have the right to participate in the formulation, implementation and evaluation of plans and programmes for national and regional development that may affect them. This principle is reaffirmed as one of the objectives of the Second International Decade on the World's Indigenous People. The principle requires that United Nations programmes and projects also take measures to involve indigenous peoples in all stages of the development process.

Indigenous peoples' lands have been disproportionately affected by development activities because they often contain valuable natural resources including timber, minerals, biodiversity resources, water and oil among others.<sup>40</sup> Land and resource issues are often at the heart of the tensions between indigenous communities and States and are often the source of human rights violations.<sup>41</sup> Some of the issues that confront many indigenous communities worldwide are ownership rights, the right to adequate housing<sup>42</sup> and protection from forced evictions,<sup>43</sup> natural resource management questions, management and use of protected areas and/or nature reserves, benefit-sharing, protection from environmental impacts and guarantees for sacred or cultural sites. These issues may be resolved through dialogue and negotiation where national laws are in line with the individual and collective human rights of indigenous peoples.

The development goals of indigenous peoples are closely linked to their ability to exercise decision-making in their communities (including the participation of women in this decision-making), maintain rights over their lands and resources, protect the rights of groups within indigenous communities, such as women and children, and live according to their cultures and traditions. Cooperation between the United Nations and indigenous peoples in development requires respect for these socio-cultural and economic factors.

The seventh Conference of the Parties of the Convention on Biological Diversity adopted the Akwé: Kon guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities.<sup>44</sup> It is expected that the impact assessment (embodied in the guidelines) will help prevent the potential adverse impacts of proposed developments on the livelihoods of indigenous and local communities concerned.

## PRACTICAL TABLE AND CHECKLIST OF KEY ISSUES AND RELATED HUMAN RIGHTS

The following table seeks to synthesize some of the key issues relating to indigenous peoples and the guiding human rights principles that address them.

Table 1: Key issues and related rights		
Issue	Basic information	Guiding principles <sup>45</sup>
<i>Self-determination, self-government, autonomy, self-management</i> <sup>46</sup>	The long traditions of indigenous self-government have been interrupted, limited or denied by colonial or post-colonial States. The re-establishment of mutually agreed upon relations between the State and indigenous peoples in which the people or community determines its own future in accordance with its own processes is the key principle in the United Nations Declaration on the Rights of Indigenous Peoples. Self-determination expressed in this form is vital for the continuing existence of indigenous peoples as distinct peoples.	<ul style="list-style-type: none"> <li>• The principle of self-determination can be implemented in practice through a range of mechanisms including the following:                             <ul style="list-style-type: none"> <li>› Autonomy arrangements</li> <li>› Self-government</li> <li>› Self-management</li> <li>› Control over or input into basic services such as education and health</li> <li>› Recognition and maintenance of traditional political decision-making bodies and legal systems</li> <li>› Full and effective participation in public life</li> </ul> </li> <li>• These arrangements require that States and indigenous peoples agree on appropriate terms, and increasingly, such negotiated settlements are the basis for reconciling past relationships between States and indigenous peoples.</li> <li>• The United Nations Declaration on the Rights of Indigenous Peoples calls upon States to consult with indigenous peoples to obtain their free and informed consent prior to approval of any project affecting their lands and resources.</li> <li>• <b>Sources:</b> United Nations Declaration on the Rights of Indigenous Peoples, articles 3, 4, 18, 19, 23 and 32;<sup>47</sup> International Covenant on Economic, Social and Cultural Rights, article 1.</li> </ul>

Issue	Basic information	Guiding principles <sup>45</sup>
<i>Lands and territories</i> <sup>48</sup>	<p>Lands and territories have material, cultural and spiritual dimensions for indigenous peoples. They are required for their survival and economic sustainability and are intrinsically linked to the identity and existence of a people. Indigenous peoples call for inalienable and collective ownership of their lands and territories. Traditional occupations such as pastoralism on drylands, hunting and gathering, fishing, rotation agriculture in tropical forests, and reindeer herding in the Arctic, among others, have co-evolved in balance with specific ecosystems.</p> <p>Indigenous peoples are threatened by any invasion of their lands and territories, and this vulnerability is especially acute for peoples living in voluntary isolation. Living in isolation is the expression of their right to self-determination and to decide their own present and future.</p>	<ul style="list-style-type: none"> <li>• Indigenous peoples' lands and territories should be legally recognized, demarcated and protected from outside pressures.</li> <li>• States should recognize the traditional management systems of indigenous peoples.</li> <li>• Indigenous peoples also have rights to lands used traditionally (e.g., nomadic peoples, shifting cultivators, etc.).</li> <li>• Where lands have been lost for the purposes of national development, restitution or redress is recognized.</li> <li>• All efforts should be made to ensure that indigenous peoples determine the activities that take place on their lands and in particular that impacts on the environment and sacred and cultural sites are avoided.</li> <li>• Indigenous peoples in voluntary isolation have the right to live freely in that condition and States should adopt adequate measures to protect their territories, environment, and cultures.</li> <li>• <b>Sources:</b> Declaration on the Rights of Indigenous Peoples, articles 10, 25-32; ILO Convention No. 169, articles 6, 13-19.</li> </ul>
<i>Natural resources</i> <sup>49</sup>	<p>Indigenous peoples' natural resources are vital and integral components of their lands and territories. The concept includes the entire environment: surface and sub-surface, waters, forests, ice and air. Indigenous peoples have been guardians of these natural environments and play a key role, through their traditions, in respectfully maintaining them for future generations. They have managed these resources sustainably for millennia and in many places have created unique bio-cultural landscapes. Many of these indigenous management systems, even though altered or perturbed by recent processes of change, continue to contribute to the conservation of natural resources to this day.</p>	<ul style="list-style-type: none"> <li>• Indigenous peoples have rights to the natural resources on their lands although in some countries sub-surface and natural resource rights legally belong to the State. However, these rights are often expressed through legal agreements that define how resources will be used, ensuring protection of indigenous heritage, benefit-sharing and compensation.</li> <li>• Indigenous peoples' rights to resources that are necessary for their subsistence and development should be respected.</li> <li>• In the case of State-owned sub-surface resources on indigenous peoples' lands, indigenous peoples still have the right to free, prior and informed consent for the exploration and exploitation of those resources and have a right to any benefit-sharing arrangements.</li> </ul>

Issue	Basic information	Guiding principles <sup>45</sup>
		<ul style="list-style-type: none"> <li>• Permits for extraction and even prospecting of natural resources on indigenous land should not be granted if the activity hinders indigenous peoples to continue to use and/or benefit from these areas or where the free, prior and informed consent of indigenous peoples concerned has not been obtained.</li> <li>• <b>Sources:</b> United Nations Declaration on the Rights of Indigenous Peoples, articles 20, 25-32; ILO Convention No. 169, articles 15-19; Convention on Biological Diversity, article 8j.</li> </ul>
<p><i>Environmental issues</i><sup>50</sup></p>	<p>Many indigenous peoples are highly dependent on their lands and natural resources and any changes to the ecosystem may impact on their way of life and survival. Environmental degradation contributes to continued poverty in indigenous communities due to their strong reliance on the environment for their livelihoods. Indigenous peoples may live in areas that are rich in biodiversity and particularly vulnerable to modifications in the environment, including those due to climate change. The direct and indirect impacts of climate change may threaten the very existence of the peoples of the Arctic, of small islands, high altitude areas, drylands and other vulnerable environments. Indigenous laws, beliefs and customs provide the framework for harmonious relations between indigenous peoples and their environment. In some cases, conservation programmes may have negative impacts on indigenous peoples and their capacity to use and protect their environment. Transboundary environmental contaminants often reach indigenous areas by means of air and water currents.</p>	<ul style="list-style-type: none"> <li>• Indigenous peoples have the right to the conservation and productive capacity of the environment.</li> <li>• The spiritual relationship of indigenous peoples to their lands and territories and environmentally sustainable practices have been recognized and conservation efforts on indigenous lands, including the establishment of new and management of existing protected areas, have to take place with the free, prior and informed consent and full participation of the communities concerned.</li> <li>• Indigenous peoples have traditional lifestyles relevant for the conservation and sustainable use of biodiversity and their knowledge and practices should be recognized and respected, including their rights to benefit-sharing.</li> <li>• In the case of climate change, indigenous communities have contributed the least to the emission of carbon dioxide and other greenhouse gases because of their traditional practices, yet they are among the first to face direct adverse environmental, social and human consequences of climate change. Consequently, indigenous peoples must fully participate in the definition and implementation of policies and plans related to climate change impact mitigation.</li> </ul>



Issue	Basic information	Guiding principles <sup>45</sup>
	<p>Indigenous peoples are also severely affected by locally produced environmental contaminants, including from alien settlements, transportation routes, industry, forestry, military activities, prospecting, mining and oil production. Exposed indigenous communities may in some cases be forced to shift from traditional to non-traditional diets in order to minimize future risk of contamination.</p>	<ul style="list-style-type: none"> <li>• Based on their long-term relationship with their dwell-in environments, indigenous peoples often possess sophisticated traditional ecological knowledge of weather patterns, including complex adaptive responses towards cycles of climatic variability. In this context, indigenous peoples' knowledge should be considered an important element within the international debate regarding adaptation to climate change.</li> <li>• <b>Sources:</b> United Nations Declaration on the Rights of Indigenous Peoples, article 29; ILO Convention No. 169, articles 7 and 15; Convention on Biological Diversity, article 8j.</li> </ul>
<p><i>Traditional knowledge, intellectual property, intangible heritage and cultural expressions</i><sup>51</sup></p>	<p>Indigenous peoples have, over the course of generations, developed rich sets of knowledge about the natural world, health, technologies and techniques, rites and rituals and other cultural expressions. Unfortunately, their traditional knowledge, practices and creativity continue to be exploited by others without their consent, and/or an equitable sharing of benefits. Often sacred objects, symbols or knowledge are placed in the public domain and threatened, used or patented for commercial purposes. Moreover, indigenous peoples' intangible heritage and cultural expressions are threatened because the important role of indigenous peoples in the production, safeguarding, maintenance and recreation of the intangible cultural heritage is neither recognized nor sufficiently considered and valued in policies for a sustainable future. Efforts are under way to ensure protection of indigenous knowledge, intangible heritage, and promotion of their cultural expressions that are generally collectively maintained and intergenerational in nature. It is also potentially a source of wealth to the wider community that is yet to be fully realized, and part of the cultural heritage of humanity.</p>	<ul style="list-style-type: none"> <li>• Indigenous peoples' rights to control, own and manage their traditional knowledge and creativity are recognized, although in practice they remain difficult to implement.</li> <li>• Indigenous peoples have the right to use and preserve their languages and States should respect this right.</li> <li>• Specific legal regimes need to be established to ensure that indigenous peoples are able to benefit from their own knowledge, prevent its unlawful use by others and obtain the rightful recognition by the international community.</li> <li>• States are called upon to create an environment that encourages individuals and social groups, to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the specific circumstances and needs of indigenous peoples.</li> <li>• They are furthermore called upon to ensure the widest possible participation of communities to maintain and transmit their intangible heritage, if so wished by the peoples involved, and involve them in a meaningful way in its management.</li> <li>• <b>Sources:</b> United Nations Declaration on the Rights of Indigenous Peoples, article 31; Convention on the Protection and Promotion of the Diversity of Cultural Expressions, article 7; Convention for the Safeguarding of the Intangible Cultural Heritage, article 15; Convention on Biological Diversity, articles 8j, 10c, 15; International Covenant on Civil and Political Rights, article 27.</li> </ul>

Issue	Basic information	Guiding principles <sup>45</sup>
<p><i>Administration of justice, indigenous customary laws</i><sup>52</sup></p>	<p>Indigenous peoples are stigmatized by mainstream cultures and justice systems and discriminated against or treated in discriminatory, derogatory manners by police, military and dominant justice systems. Indigenous peoples, however, have long-standing internal systems of justice sometimes focused on rehabilitation or compensation rather than punishment. Such systems, if combined with the national justice system, can offer appropriate justice in communities where access to justice is limited or as a means of reducing high levels of incarceration. In some countries the State recognizes traditional indigenous courts and laws.</p>	<ul style="list-style-type: none"> <li>• Indigenous peoples have the right to non-discrimination and equal treatment in matters concerning justice and the right to interpretation in their own languages in courts.</li> <li>• Indigenous justice systems can also be recognized if they are compatible with internationally recognized human rights and can provide guidance on disputes between indigenous peoples and others.</li> <li>• Indigenous customary law should be taken into account in conflict resolution decisions.</li> <li>• <b>Sources:</b> United Nations Declaration on the Rights of Indigenous Peoples, articles 13, 34, and 40; ILO Convention No. 169, articles 8-12.</li> </ul>
<p><i>Health and social security</i><sup>53</sup></p>	<p>Indigenous peoples generally have lower life expectancy, higher rates of maternal and child mortality and less access to health services than the national averages. Full participation of indigenous peoples in the management of health services in their communities, better access to modern diagnostic processes and treatment, use of traditional healing and culturally appropriate reproductive health services are considered steps to improving the health of indigenous peoples. Reproductive health services for indigenous peoples also have to be improved in terms of coverage and quality, including information, pre- and post-natal care, and emergency obstetric care. A healthy indigenous community is one in which the community as a whole enjoys harmonious relations with its environment.</p>	<ul style="list-style-type: none"> <li>• Indigenous peoples have the right to the highest possible standard of health and enjoy the same access to health, including sexual and reproductive health, and social security services as others.</li> <li>• Indigenous peoples should also be able to control their own health delivery, preventive health care and use their traditional medicine or ways of healing, if they so wish.</li> <li>• Special attention should be given to ensuring that health services are culturally appropriate.</li> <li>• <b>Sources:</b> United Nations Declaration on the Rights of Indigenous Peoples, articles 7, 21, 23, 24 and 29; ILO Convention No. 169, articles 7, 20, 24 and 25; Programme of Action of the International Conference on Population and Development.</li> </ul>

Issue	Basic information	Guiding principles <sup>45</sup>
<i>Education</i> <sup>54</sup>	<p>Even though formal education has historically often been a means of assimilation, today it is also an important development tool for indigenous youth who must live in two worlds. Indigenous peoples have fewer years of schooling and less access to education and vocational training than the majority population. In addition, their own educational systems may not be recognized at the same level as the mainstream system. While indigenous women and girls are important as traditional knowledge holders, they have at the same time been particularly disadvantaged in formal education systems. Indigenous educational systems have generally been disregarded by the mainstream system. To correct this injustice, indigenous peoples are seeking to have their cultures and histories accurately portrayed in curricula, improve access to education, provide teaching in their own languages and develop their own schools and universities.</p>	<ul style="list-style-type: none"> <li>• Indigenous peoples have the right to all levels of education and to develop their own educational facilities, if they so wish.</li> <li>• Education should be culturally appropriate to indigenous children, adapted to their cultures, and bilingual when appropriate.</li> <li>• Education should also have the broader objective of eliminating prejudices against indigenous peoples.</li> <li>• In some countries special measures have been taken to improve indigenous peoples' access to education including for nomadic and semi-nomadic peoples.</li> <li>• In some countries, intercultural education is seen as the means to give recognition to indigenous cultures in the wider education system.</li> <li>• <b>Sources:</b> There are a number of international instruments and declarations, including the Convention against Discrimination in Education (1960), which together comprise a basic framework for the provision of quality education for indigenous peoples and the recognition of their rights to education.<sup>55</sup> Declaration on the Rights of Indigenous Peoples, articles 11-15; ILO Convention No. 169, articles 26-31; Convention on the Rights of the Child, articles 28-30.</li> </ul>
<i>Capacity development, vocational training, work employment and occupation</i> <sup>56</sup>	<p>Indigenous peoples are usually discriminated against in work conditions and employment and therefore are subject to higher unemployment rates than the rest of society. Indigenous peoples also live in urban areas and they usually occupy low remunerated employment or work in the informal economy and often do not have access to vocational training programmes. A much smaller number of indigenous persons exercise liberal professions, such as law. Some States have established special programmes and positive measures for the empowerment of indigenous peoples.</p>	<ul style="list-style-type: none"> <li>• States have a duty to address the disproportionately high unemployment rates of indigenous peoples.</li> <li>• Indigenous peoples have the right to the improvement of their social and economic conditions, including employment and training.</li> <li>• Indigenous peoples have the right to fully enjoy all rights pertaining to work and employment established under applicable international and domestic law.</li> <li>• They should not be subjected to any discrimination in access or admission to employment, medical and social assistance, terms and conditions of employment or labour.</li> <li>• Indigenous peoples should not be subjected to coercive forms of recruitment including bonded or forced labour.</li> </ul>

Issue	Basic information	Guiding principles <sup>45</sup>
		<ul style="list-style-type: none"> <li>• Indigenous peoples have the right to engage freely in all their traditional and other economic activities.</li> <li>• <b>Sources:</b> United Nations Declaration on the Rights of Indigenous Peoples, articles 14, 17, 20; ILO Convention No. 169, articles 20-23; ILO Convention No. 29; ILO Convention No. 111.<sup>57</sup></li> </ul>
<i>Private sector</i> <sup>58</sup>	<p>Private companies are increasingly undertaking economic activities on indigenous peoples' lands. In many cases, these activities, and in particular extractive industry activities such as mining and logging, have negative impacts on indigenous peoples and their lands. They may erode indigenous livelihoods and traditional subsistence means, cultural practices and entail land dispossession as well as the relocation of indigenous communities. Often, the same industries contribute to increasing social problems among indigenous peoples living within the boundaries of the industry activities.</p>	<ul style="list-style-type: none"> <li>• Indigenous peoples have the right to freely pursue their economic, social and cultural development, to be secure in the enjoyment of their own means of subsistence and to determine priorities and strategies for the development or use of their lands, territories and natural resources.</li> <li>• The exploitation of resources on indigenous peoples' lands should be permitted only with their full consultation, participation, and free, prior and informed consent.</li> <li>• Indigenous peoples shall not be relocated without their free and prior informed consent. In the case of forced relocation, fair and acceptable compensation and damage measures should be taken.</li> <li>• Private companies should be aware of the situation of local indigenous communities and develop cultural awareness training and other cultural programmes for their employees in partnership with local indigenous communities.</li> <li>• Under current international law, the responsibility to comply with consent is applicable to States, and not private companies. States have the responsibility to hold private companies accountable.</li> <li>• <b>Sources:</b> United Nations Declaration on the Rights of Indigenous Peoples, articles 3, 10, 16, 20, 29, 32; ILO Convention No. 169, articles 15-16.</li> </ul>

Issue	Basic information	Guiding principles <sup>45</sup>
<i>Indigenous Women</i> <sup>59</sup>	<p>In many cases, indigenous women are doubly discriminated against due to their ethnicity and gender. This results in indigenous women being worse off than indigenous men and non-indigenous women in terms of poverty levels, access to education, health and economic resources, political participation and access to land, among other issues. The rate of maternal mortality is alarmingly high among indigenous women. Indigenous women's needs are particular to their ethnic belonging and their gender, and therefore they may be different from the ones of other women and male members of indigenous communities. Within communities there may also be gender discrimination that is incompatible with human rights.</p>	<ul style="list-style-type: none"> <li>• Discrimination against women in all its forms should be condemned and appropriately addressed.</li> <li>• Indigenous women and men are equal in rights.</li> <li>• UNCTs should mainstream gender across all programme activities dealing with indigenous peoples.</li> <li>• UNCTs should emphasize explicit programme components on indigenous women's rights and empowerment of indigenous women at both formal (i.e., laws, policies) and informal (i.e., customs and cultural factors) levels.</li> <li>• <b>Sources:</b> United Nations Declaration on the Rights of Indigenous Peoples, article 44; ILO Convention No. 169, article 3, Convention on the Elimination of Discrimination against Women, article 2; Beijing Declaration, paragraph 32; Beijing Platform for Action, paragraph 34.</li> </ul>
<i>Children and youth</i> <sup>60</sup>	<p>Indigenous children and youth require special and culturally sensitive treatment. Efforts by indigenous peoples to pass on their language and culture to their children need to be supported. Given the prevalence of poverty in indigenous communities, the lack of health and education services, and sometimes the presence of violence, indigenous youth have often moved to cities or become international migrants for employment and educational opportunities. Some indigenous peoples are confronted with social problems, such as substance abuse, human trafficking, suicides or petty crimes, among children and youth. Finally, registration of births and eligible voters among indigenous youth in indigenous communities requires special support for its implementation.</p>	<ul style="list-style-type: none"> <li>• <b>Children have the right to:</b> <ul style="list-style-type: none"> <li>› Not be discriminated against</li> <li>› Enjoy their culture</li> <li>› Use their own language (read and write in their own language)</li> <li>› Profess and practise their own religion</li> <li>› Have access to education, vocational training, health and other services that are culturally sensitive</li> <li>› Be protected from all forms of violence, exploitation, abuse and abandonment, including commercial sexual exploitation, trafficking and child labour that is likely to be hazardous or to interfere with the child's education.<sup>61</sup></li> </ul> </li> <li>• <b>Sources:</b> United Nations Declaration on the Rights of Indigenous Peoples, articles 7, 17, 21, 22; Convention on the Rights of the Child, articles 28, 29, 30; ILO Convention No. 138; Convention No. 169, articles 28-29; ILO Convention No. 182.</li> </ul>

Issue	Basic information	Guiding principles <sup>45</sup>
<i>Urban indigenous peoples/migration</i> <sup>62</sup>	<p>In some countries, indigenous people living in urban areas may constitute the majority of the total indigenous population. Various factors cause migration of indigenous peoples to urban areas, both domestically and internationally. Frequent push-factors include poverty, environmental degradation, conflict, inadequate legal protection over lands and resources, and absence of services. Among the pull-factors are better employment, health, housing, education, political participation, social recognition and visibility. While Governments, the international community and human rights organizations are increasingly addressing the impact of urbanization of indigenous peoples, including their rights to health care and adequate housing, some countries do not recognize the rights of indigenous peoples when living outside their lands and territories, even though they have a strong indigenous identity and are discriminated against due to their belonging to an indigenous group.</p>	<ul style="list-style-type: none"> <li>• Indigenous peoples living in urban areas have the same rights accorded to all indigenous peoples.</li> <li>• Bilingual education, recognition of their own organizations, and respect for cultural traditions and laws are especially relevant for the survival of the cultures and identities of indigenous peoples in urban environments.</li> <li>• <b>Sources:</b> United Nations Declaration on the Rights of indigenous peoples; ILO Convention No. 169.</li> </ul>
<i>Data collection and disaggregation</i>	<p>Data is usually not disaggregated to reflect the situation and living conditions of indigenous peoples, hiding their state of discrimination among the rest of the population. The UNPFII has identified this as a major methodological challenge.</p>	<ul style="list-style-type: none"> <li>• Data should be disaggregated by sex and by each indigenous group.</li> <li>• Indigenous peoples' input should be taken into consideration for the collection and disaggregation of data. Participatory data collection methodologies should be encouraged.</li> <li>• <b>Sources:</b> various recommendations on this issue during the six sessions of the Permanent Forum on Indigenous Issues.<sup>63</sup></li> </ul>

### **SPECIFIC PROGRAMMATIC IMPLICATIONS FOR ADDRESSING AND MAINSTREAMING INDIGENOUS PEOPLES' ISSUES**

Working with indigenous peoples at country level implies adapting the programming processes and strategies to ensure their effective participation. Their human rights, aspirations, cultures and specific characteristics must be fully respected and strengthened in order for programming to be effective.

The human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights, the United Nations Declaration on the Rights of Indigenous Peoples and other international human rights instruments, as well as the recognition of indigenous peoples' collective rights, provide the framework for adopting a human rights-based and culturally sensitive approach when addressing the specific situation of indigenous peoples.

Mainstreaming and integrating indigenous peoples' issues in development implies that principles of cultural diversity and its corollary, intercultural dialogue have to be integrated in all development policies and programmes.<sup>64</sup> This concept is reflected in Recommendation 12 of the Programme of Action of the Second Decade of the World's Indigenous People,<sup>65</sup> which states that "culture should be integrated as a prerequisite for any development project design in order to build development with identity, respecting people's way of life and building sustainable human development".<sup>66</sup> It also implies the effective participation of indigenous peoples and their representatives, including indigenous women, throughout programming cycles and strategic planning processes, as well as consciously and proactively undertaking all efforts to ensure that their rights are respected, promoted and strengthened thanks to the programming and project activities.

The United Nations Common Understanding on the Human Rights Based Approach to Development Cooperation identifies key human rights principles that should guide the programming process and development cooperation. Among these human rights principles are universality and inalienability; indivisibility; interdependence and interrelatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law. In addition, ensuring fulfilment of the rights of indigenous children and youth requires that all programming processes and strategies take great account of the underlying principles of the Convention on the Rights of the Child.<sup>67</sup>

**Table 2: Principles of the United Nations Common Understanding on the Human Rights Based Approach (HRBA)<sup>68</sup>**

<p><i>Universality, inalienability and indivisibility</i></p>	<p>The principle of universality implies that it is not the proportion of indigenous peoples living in a given country, nor the difficulty to reach them that should determine UNCT intervention. Rather, it is the situation of the group(s) and the violation of their rights, including universal access to social services, that should guide UNCT action. Processes that work for the dominant population<sup>69</sup> may not be appropriate and effective for indigenous peoples, hence the need to examine every step of the programming process in order to understand how indigenous peoples' issues can be integrated for efficient programming. It is also crucial to include indigenous peoples as allies in the implementation of all programming aspects.</p>
<p><i>Interdependence and interrelatedness</i></p>	<p>All rights have equal status, and there are no rights that are more important than others. Thus fulfillment of one right cannot be achieved by compromising or violating another right. The principle of interrelatedness of rights implies, for instance, recognizing that land is an essential spiritual and economic element to indigenous communities, and deprivation thereof affects the integrity of the community, which in turn has an impact on the realization of other human rights.</p>
<p><i>Non-discrimination and equality</i></p>	<p>Discrimination against indigenous peoples is a structural problem in many parts of the world and the key to tackle it is overcoming inequalities and exclusion. The principle of non-discrimination requires that specific attention be given to the most vulnerable groups within indigenous communities. In many countries, indigenous children are more likely than any other children to suffer discrimination. This also implies paying attention to gender equality issues. Indigenous women are often considered doubly discriminated against because of their ethnicity and gender. However, as stated previously, gender discrimination may also exist within indigenous communities.</p>
<p><i>Participation and inclusion</i></p>	<p>The principle of free, prior and informed consent is an integral part of the human rights-based approach. Participation implies going further than mere consultation and should lead to concrete ownership of projects by indigenous peoples. Mechanisms for participation can vary. Indigenous peoples should participate in regular participatory mechanisms put in place by UNCTs. Indigenous peoples' representatives should be involved, for instance, with other sectors of civil society and in meetings with Government officials. Specific and culturally appropriate consultation mechanisms can also be established through the creation of consultative groups of indigenous leaders that advise UNCTs at all stages of the programming process, or through consultations at local level. The cost of participatory processes with indigenous peoples should be assessed as part of the planning process and adequate resources allocated, bearing in mind possible differences among community decision-making processes, which may be very different from mainstream decision-making based on representation, delegation of power and/or majority rule. It is recommended that agreements are made between all interested parties beforehand, on who will organize and lead such consultative processes in order to avoid unwanted influences by the organizers.</p>
<p><i>Accountability and the rule of law</i></p>	<p>States and other duty-bearers are answerable for the observance of the individual and collective human rights of indigenous peoples. This entails recognizing mechanisms set to implement indigenous peoples' right to self-determination (i.e., autonomy arrangements, self-government, self-management, traditional political decision-making bodies, etc.)</p> <p>It has to be borne in mind that indigenous peoples also bear responsibilities and are part of civil society, but may also be elected to official functions in the local or national Government. In other words, the UNCT should ensure that the status of indigenous peoples, as peoples with corresponding individual and collective rights, be recognized through a consultative process in a genuine partnership approach,<sup>70</sup> which will significantly contribute to reducing conflicts and building durable peace.</p>



Based on the above, the mainstreaming of indigenous peoples' issues should, in general, lead to key results such as:

- › **Elimination of discrimination and violence against indigenous peoples in general through, inter alia, legal instruments and their effective implementation, equitable investments and civic education;**
- › **Indigenous peoples' increased access to (culturally appropriate) services and to productive resources and opportunities;**
- › **Full participation by indigenous peoples in governance processes;**
- › **Application of the principle of free, prior and informed consent in development planning and programming;**
- › **Recognition of indigenous peoples' right to self-determination, including cultural integrity and diversity;**
- › **Strengthened accountability of duty-bearers for protection and promotion of the rights of indigenous peoples.**
- › **Improvements in the situation of indigenous women's human rights, empowerment and gender equality.**

The following section follows the structure of the CCA/UNDAF guidelines and aims at clarifying how to implement these guidelines with an approach that benefits indigenous peoples.

## A CULTURALLY SENSITIVE APPROACH TO PROGRAMMING

The norms and practices of indigenous cultures at the national, subnational and community levels need to be understood and linked to universal human rights principles in order to address inequalities and to achieve positive outcomes that respect the diversity of indigenous peoples, a precondition for the successful implementation of the MDGs.<sup>71</sup>

Cultural practices, traditions and values of indigenous peoples – as long as they are in line with human rights principles – can play a critical and positive role in advancing and promoting gender equality and human rights. UNCTs should therefore mobilize indigenous networks along with political, religious and traditional leaders and civil society groups to assist in identifying and promoting the cultural and social values that help preserve their identities and that are also in conformity with international human rights standards. Indigenous political leaders are key actors for the inclusion of multicultural values and practices in local, regional and national agendas and for addressing indigenous peoples in public policy.

UNCTs should use advocacy/communication tools or channels which are tailored to indigenous values and norms to ensure legitimate ownership. UNCTs should strengthen the positive aspects and suggest, preserve and promote acceptable culturally sensitive alternatives which conform to human rights principles.

UNCTs should identify needs based on the definitions of indigenous peoples themselves with relation to human rights. Programming should encourage the development of human capabilities and the participation of indigenous peoples in community and social contexts, policy design and implementation at local, national, regional and global levels, creating strategies that can help them escape poverty.

In CCAs and other analytical frameworks, it is important to integrate disaggregated data by ethnicity, including socioeconomic and demographic disadvantages, and an analysis of the human rights situation of indigenous communities, as well as a review of the services offered to indigenous peoples in terms of availability, quality and cultural acceptability. While responding to universal premises, United Nations programming and national development frameworks must respond to the specific needs of indigenous communities. These same issues could be introduced into the cultural frameworks and norms of indigenous peoples, producing changes that promote their empowerment and social participation at local, national, regional and international agendas.

## Box 2 – Elements of Free, Prior and Informed Consent

### What?

- **Free** should imply no coercion, intimidation or manipulation;
- **Prior** should imply consent has been sought sufficiently in advance of any authorization or commencement of activities and respect time requirements of indigenous consultation/consensus processes;
- **Informed** should imply that information is provided that covers (at least) the following aspects:
  - a. The nature, size, pace, reversibility and scope of any proposed project or activity;
  - b. The reason/s or purpose of the project and/or activity;
  - c. The duration of the above;
  - d. The locality of areas that will be affected;
  - e. A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit-sharing in a context that respects the precautionary principle;
  - f. Personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, Government employees and others);
  - g. Procedures that the project may entail.

### Consent

Consultation and participation are crucial components of a consent process. Consultation should be undertaken in good faith. The parties should establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect in good faith, and full and equitable participation. Consultation requires time and an effective system for communicating among interest holders. Indigenous peoples should be able to participate through their own freely chosen representatives and customary or other institutions. The inclusion of a gender perspective and the participation of indigenous women is essential, as well as participation of children and youth as appropriate. This process may include the option of withholding consent. Consent to any agreement should be interpreted as indigenous peoples have reasonably understood it.

### When?

FPIC should be sought sufficiently in advance of commencement or authorization of activities, taking into account indigenous peoples' own decision-making processes, in phases of assessment, planning, implementation, monitoring, evaluation and closure of a project.

### Who?

Indigenous peoples should specify which representative institutions are entitled to express consent on behalf of the affected peoples or communities. In FPIC processes, indigenous peoples, United Nations agencies and Governments should ensure a gender balance and take into account the views of children and youth as relevant.

### How?

Information should be accurate and in a form that is accessible and understandable, including in a language that the indigenous peoples will fully understand. The format in which information is distributed should take into account the oral traditions of indigenous peoples and their languages.

*Source:* Excerpt from the Report of the International Workshop on Methodologies Regarding Free, Prior and Informed Consent and Indigenous Peoples (E/C.19/2005/3), endorsed by the UNPFII at its fourth session in 2005.

## PLAN OF ENGAGEMENT

The plan of engagement developed by UNCTs maps the national planning process in consultation with partners. Indigenous peoples should be involved as such (not just as civil society actors) from the first step of the process. This means, among other things:

- Providing in a timely manner all relevant information to indigenous groups or representatives participating in CCA/UNDAF process;
- Providing in a culturally sensitive manner, comprehensive briefings on the process to those participating. Choosing the appropriate partners among indigenous peoples can sometimes be difficult. While traditional leaders are recognized as the higher authorities in their communities, representatives of indigenous organizations may have the skills and knowledge to interact with the dominant system and are able to articulate the views of traditional leaders;
- Being open and inclusive to a wide range of indigenous peoples' organizations and community-based representatives;
- Paying attention to tensions that may exist among various indigenous groups is important. The choice of partners should also take into account groups that are often marginalized within their own indigenous communities, in particular women and youth, who should also participate in the programming process. To that end, UNCTs should also promote intergenerational dialogues within indigenous communities;
- Avoiding bias in choosing partners, as it can result in breaching indigenous peoples' right to freely determine their own representatives or representational processes;
- Assessing the situation in order to make the most appropriate choice and avoid misrepresentations, such as blindly following recommendations on 'Government-approved' organizations that may not be representative of the people at large.

## COUNTRY ANALYSIS

The analysis of the situation in the country should pay special and frank attention to the realization of the individual and collective rights of indigenous peoples.

- UNCTs should make all efforts to uncover and highlight trends and disparities among indigenous and non-indigenous people, between various indigenous groups in the country, and among indigenous peoples based on various factors such as gender, geographic location, age, etc.;
- UNCTs should support the disaggregation of data by indigenous origin and language as well as promote alternative methodologies on data collection, and the elaboration of indicators that reflect indigenous peoples' perspectives and help understand their situation. UNCTs should ensure that this data properly feeds into programme design and implementation and that it is widely disseminated. Data disaggregation by gender is also essential to assess the situation of women and men within their communities;
- Analysis should be supported by capacity assessment of indigenous peoples as claimholders and responsibility bearers, with the participation of indigenous peoples themselves. Based on quantitative and qualitative evidence, the country analysis should focus on, and clearly communicate, the root causes of disparities, which often lie in discrimination, marginalization and social exclusion, including an analysis of the particular situation of groups in a vulnerable situation within indigenous communities, such as indigenous women and children;
- Should relevant data not exist or remain insufficient, the UNDAF matrix should clearly address the need for the production and analysis of such information as an expected output.

## STRATEGIC PLANNING

Based on the situation in each country, UNCTs should carefully consider different options to engage with indigenous peoples' issues. Cultural diversity in society should be understood and promoted as an element of richness and a resource for development. However, indigenous cultures must not be understood as static. They are constantly changing and capable of incorporating and adapting to new development concepts that complement ancestral traditions, providing the adaptation is not forced but results from the aspirations of the community itself.

Strategic planning can focus on the following areas:

- **Identifying strategic entry points towards incorporating indigenous peoples' issues into existing work programmes;**
- **Enhancing the quality and accessibility of social services for indigenous peoples, in particular in the areas of health and education. Techniques promoted should take into account indigenous cultures and lifestyles, including for nomadic people, and United Nations staff should be trained to avoid derogatory or prejudiced attitudes. UNCTs should advocate for simplified administrative procedures, especially with respect to users without birth certificates;**
- **Paying particular attention to the needs and rights of indigenous women and girls and designing programmes to empower them within and outside their communities;**
- **Capacity development of indigenous peoples, indigenous peoples' organizations (IPOs) and indigenous peoples' leaders and representatives etc. UNCTs should build the capacities of indigenous peoples as rights holders, through leadership skills training, the promotion of legal training and legal aid to be able to defend their rights in courts, as well as literacy skills, especially for women who have not attended school. In many cases, indigenous persons are given management responsibilities without being trained in the management skills necessary to perform well, further feeding discriminatory prejudices. Furthermore, indigenous peoples also bear responsibilities and should receive information and training with respect to their duties towards the realization of the rights of women and children in particular;**
- **Promoting an enabling environment: The legal, institutional and policy environment in which UNCT action takes place is critical for the effectiveness of all its activities related to indigenous peoples. UNCT efforts at the policy level should focus on advocating for public policies which are culturally and gender-sensitive, and in particular through the recognition of indigenous peoples' rights in legislation through legal and institutional reform, as well as adequate allocation of resources in the national budget. This includes promoting a legal and policy framework favourable to civic engagement and participation of indigenous peoples in policymaking. This effort may entail creating public and permanent spaces**

for indigenous peoples' participation and, among others: (1) supporting the creation of indigenous bodies or councils at the national, regional and local level; (2) promoting and/or supporting the creation of indigenous peoples' organizations and/or networks; or (3) reviewing the national legal framework regulating the activities of NGOs (including indigenous peoples' organizations) and the non-profit sector;

- Promoting or reinforcing sustainable development, areas such as cultural tourism, and/or cultural and creative industries, where desired by the community;
- Enabling indigenous peoples' access to information and communication technologies (ICTs) by identifying policies to facilitate equitable access, use and knowledge of ICTs based on the preservation of their heritage and cultural legacy;<sup>72</sup>
- The United Nations has a unique position in countries where indigenous peoples do not have opportunities to interact with Governments, and may play a role in creating spaces for dialogue between indigenous peoples and State authorities;
- Enabling the environment of the United Nations at country level. For instance:
  - › Proposing/supporting the creation of indigenous peoples' advisory groups/committees to the UNCT so that there is a continuous engagement of indigenous peoples in policy issues and the implementation of programmes<sup>73</sup> (this is an essential part of HRBA); this committee/group should be composed of indigenous women and indigenous men selected on an equal basis, and can also serve as sounding board for the UNCT in pre-screening other partnerships (e.g., private sector) or projects that may have a detrimental effect on the rights of indigenous peoples. This committee/group will help reinforce the notion that indigenous peoples should be regarded as partners on an equal footing with the United Nations towards the promotion of inclusive human development at the country, regional and global level;
  - › Involving indigenous peoples in the Small Grants Programme (SGP) National Steering Committees. The presence of indigenous representatives in a multi-stakeholder group in which no stakeholder is overrepresented and which is chaired by a United Nations official has been considered a good example of achieving meaningful and direct indigenous participation in decision-making at programme level. For example, see participatory video produced by SGP, the UNIPACK concept in Kenya in connection with GEF SGP National Steering Committees;<sup>74</sup>
  - › Ensuring that there is at least one indigenous peoples' representative in existing or future CSO advisory committees to UNCTs. These committees have been formed or are in the process of formation in a number of countries.<sup>75</sup> For example, the UNDP Global CSO Advisory Committee includes a representative who is a current member of the UNPFII and the ILO has steering committees for national programmes on indigenous peoples' issues;
  - › Appointing a United Nations Indigenous Peoples focal point who will advise the UNCT. Specific criteria should be established for nominating focal points, on the basis

primarily of knowledge of indigenous peoples' issues, cultures and human rights. Certain agencies, including UNICEF, ILO, UNESCO and OHCHR, have staff specialized in indigenous peoples' issues who are occupied solely with programme implementation in this area;

- › Encouraging the formation of United Nations working groups on indigenous peoples' issues or including the theme of indigenous peoples' issues in the work plan of other United Nations working groups/task forces such as human rights task forces or gender task forces;<sup>76</sup>
- › Enriching the diversity of United Nations staff by favouring the hiring of indigenous persons (this should also entail minorities); the UNCT should support the participation of indigenous United Nations staff members in international forums (particularly the UNPFII sessions) when possible;
- › Establishing indigenous fellowship programmes in country offices;
- › Ensuring that United Nations staff members have sufficient knowledge on basic principles and key indigenous peoples' issues in the country. This should be reflected in staff members' learning plans and their performance assessment tools;
- › Ensuring that UNCT members or indigenous peoples focal points in country offices engage in knowledge networks or future workspaces created in the UNDG website to exchange experiences with other UNCTs. Examples include the experiences of the United Nations Indigenous Peoples' Advisory Committee of Kenya (UNIPACK) and of Bolivia UNCT's Advisory Committee on indigenous peoples' issues.



## MONITORING AND EVALUATION

Monitoring and evaluation should:

- Assess how all programmes, even those which are not specifically targeting indigenous peoples, affect them. The impact may be negative by threatening their survival and identity. It can be positive by helping realize their rights. It can also be neutral, which should not be satisfactory in countries where indigenous peoples are marginalized and/or disadvantaged.
- Assess effectiveness of the programmes. One measurement of the effectiveness of a programme lies precisely in its effects on the most marginalized and excluded, including possible collateral effects of programmes. Therefore, sound monitoring and evaluation should be participatory and be adapted to capture indigenous perceptions through their own analytical perspective. This can be achieved through studies and polls among indigenous peoples on their opinions on the progress of plans and programmes.
- Use effective indicators. Thus, UNCT should in particular use HRBA indicators that make it possible to monitor and evaluate programmes with respect to indigenous peoples.<sup>77</sup>

## ORGANIZING AND MANAGING RESULTS

The UNDAF results matrix is an important tool for ensuring achievement of key results with particular attention to the participation of indigenous peoples. To achieve this, the results matrix should include specific outputs related to the improvement of the situation of indigenous peoples as a major UNDAF outcome.

- Indigenous peoples should participate in the Joint Strategic Meeting. If the Government does not accept their participation, it is important to remind national authorities of their obligations under international instruments.
- Inter-agency coordination on indigenous peoples' issues can significantly enhance UNCT activities on indigenous peoples' issues, through the implementation of comprehensive and holistic joint programmes, building on agencies' experiences and giving visibility to indigenous peoples, in particular women and children, for advocacy with the Government.
- Furthermore, United Nations agencies benefit from hiring indigenous staff, not only in line with their commitment to ending discrimination, but also because indigenous staff not only provide the expertise, cultural knowledge, and communication skills, including in terms of language, needed, but also open doors for further partnerships and programmes in the future.

## NOTES

<sup>1</sup> The *Study of the problem of discrimination against indigenous populations* (E/CN.4/Sub.2/1986/7, known informally as the Martínez-Cobo Study) clearly describes this situation of historical discrimination in a contemporary context. The United Nations Permanent Forum on Indigenous Issues (UNPFII), at its fifth and sixth sessions, addressed the theme “The Millennium Development Goals and Indigenous Peoples”, reaching the same conclusions.

<sup>2</sup> Of special interest are the OHCHR publication *Human Rights: A Basic Handbook for United Nations Staff* (available at <http://www.ohchr.org/english/about/publications/docs/handbook.pdf>) and *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among United Nations Agencies* (available at [http://www.undp.org/governance/docs/HR\\_Guides\\_CommonUnderstanding.pdf](http://www.undp.org/governance/docs/HR_Guides_CommonUnderstanding.pdf)).

<sup>3</sup> These principles of cultural diversity are spelled out in the UNESCO Universal Declaration on Cultural Diversity (2001). Cultural diversity is a driving force of development, not only in terms of economic growth, but also as a means of leading a more fulfilling intellectual, emotional, moral and spiritual life. This is captured in the seven culture conventions, which provide a solid basis for the promotion of cultural diversity : Protection and Promotion of the Diversity of Cultural Expressions (2005), Safeguarding of the Intangible Cultural Heritage (2003), Protection of the Underwater Cultural Heritage (2001), Protection of the World Cultural and Natural Heritage (1972), Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), Protection of Cultural Property in the Event of Armed Conflict (1954) and Universal Copyright Convention (1952 and 1971).

<sup>4</sup> ILO Convention No. 169 has been ratified by 19 countries. For more information, please refer to the ILO Manual on Convention No. 169 (available at <http://www.ilo.org/public/english/standards/norm/legalite/itpp/convention/index.htm>).

<sup>5</sup> The five objectives of the Second Decade are: the promotion of non-discrimination and inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, resources, programmes and projects; the promotion of the full and effective participation of indigenous peoples in decisions which directly or indirectly affect them; the redefinition of development policies that depart from a vision of equity and that are culturally appropriate; adoption of targeted policies, programmes, projects and budgets for the development of indigenous peoples; and development of strong monitoring mechanisms and enhancing accountability for the protection of indigenous peoples and the improvement of their lives.

<sup>6</sup> The Human Rights Council adopted the Declaration on 29 June 2006 (resolution 1/2). See the Report of the first session of the Human Rights Council (A/61/53). The General Assembly adopted the Declaration on 13 September 2007 (resolution 61/295).

<sup>7</sup> The IASG is now composed of 30 agencies. For more information see <http://www.un.org/esa/socdev/unpfii/en/iasg.html>.

<sup>8</sup> ILO Convention No. 169, article 1, subsection 1.

<sup>9</sup> ILO Convention No. 169, article 1, subsection 2.

<sup>10</sup> *Study of the problem of discrimination against indigenous populations* (E/CN.4/Sub.2/1986/7).

<sup>11</sup> *Working paper on the concept of "indigenous people"* of the Working Group on Indigenous Populations (E/CN.4/Sub.2/AC.4/1996/2).

<sup>12</sup> There are two additional resources that are particularly relevant in the specific, and often problematic, context of Africa: the definition included in the Report of the African Commission on Human and Peoples' Rights Working Group on Indigenous Populations/Communities, adopted by the African Commission at its twenty-eighth session (available at <http://www.iwgia.org/sw2186.asp>) and the *Response note to the Draft aide memoire of the African States on the United Nations Declaration on the Rights of Indigenous Peoples*, prepared by the African Group of Experts (available at: <http://www.ipacc.org.za/uploads/docs/AideMemoireResponse.pdf>).

<sup>13</sup> In addition to this legal framework, several United Nations agencies and international financial institutions, including UNDP, WHO, the Inter-American Development Bank, the Asian Development Bank and the World Bank, have developed specific policies for guiding their actions with indigenous peoples. Since 1993, the World Summits have made references to indigenous peoples in their final declarations or programmes of action. Also, United Nations agencies have been working on the fulfilment of the programmes of action of the first and second International Decades of the World's Indigenous People.

<sup>14</sup> Only 19 countries, mostly in Latin America, Europe and Asia and the Pacific, have ratified ILO Convention No. 169. For an updated list of ratifications, see <http://www.ilo.org/ilolex/cgi-lex/ratificc.pl?C169>. It is worth noting that Convention No. 107, its predecessor, is still in force in a number of countries, including several in South East Asia. While the integrationist approach reflected in this Convention is outdated, the instrument contains several provisions that remain important where it is in force (on land and forced labour, for example).

<sup>15</sup> See note 6 above.

<sup>16</sup> In addition to these international instruments, there are some regional initiatives of note. In the Americas, the Organizations of American States has established a Working Group to analyse the Draft American Declaration on the Rights of Indigenous Peoples and a Special Rapporteur. In Africa, the Working Group

on Indigenous Populations/Communities of the African Commission of Human and Peoples' Rights has developed a series of reports and country visits that have clarified the situation of indigenous peoples in Africa.

<sup>17</sup> See article 30.

<sup>18</sup> See article 8j and related articles.

<sup>19</sup> See chapter 26, <http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21chapter26.htm>.

<sup>20</sup> See article 27.

<sup>21</sup> See preamble: [http://www.unep.org/malmo/malmo\\_ministerial.htm](http://www.unep.org/malmo/malmo_ministerial.htm).

<sup>22</sup> See paragraph 32 of the Declaration and paragraph 34 of the Plan of Action.

<sup>23</sup> Texts and lists of States Parties of UNESCO standard-setting instruments are available at [http://portal.unesco.org/en/ev.php-URL\\_ID=12024&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=12024&URL_DO=DO_TOPIC&URL_SECTION=201.html).

<sup>24</sup> The UNESCO Universal Declaration on Cultural Diversity, adopted in 2001, specifically refers to the rights of indigenous peoples (article 4), and its action plan calls for “respecting and protecting traditional knowledge, in particular that of indigenous peoples”; and “recognizing [its] contribution, particularly with regard to environmental protection and the management of natural resources, and fostering synergies between modern science and local knowledge.”

<sup>25</sup> See paragraph 14.

<sup>26</sup> See preamble (paragraphs 8 and 15), article 2.3 and article 7. The Convention makes explicit reference to the importance of the knowledge systems of indigenous peoples (preamble, paragraph 8) and takes into account the importance of the vitality of cultures, including for persons belonging to minorities and indigenous peoples (preamble, paragraph 15). The Convention is based on a number of guiding principles such as the equal dignity of and respect for all cultures, which specifically mentions indigenous peoples (article 2.3). The Convention encourages Parties to undertake a number of measures to promote cultural expressions and “to create an environment that encourages individuals and social groups to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the specific circumstances and needs of... various social groups, including persons belonging to minorities and indigenous peoples” (article 7).

<sup>27</sup> See preamble and article 15: The Convention’s preamble not only states that intangible cultural heritage

is a mainspring of cultural diversity and a guarantee of sustainable development, but specifically refers to the important role of the world's indigenous peoples in the production, safeguarding, maintenance and re-creation of intangible cultural heritage. Article 15 of the Convention stresses the need to involve communities and groups, including indigenous peoples, in the implementation of best practices for safeguarding intangible heritage: "Within the framework of its safeguarding activities of the intangible cultural heritage, each State Party shall endeavour to ensure the widest possible participation of communities, groups and, in some cases, individuals that create, maintain, and transmit such heritage, and to involve them actively in its management."

<sup>28</sup> See article 5. While this Convention and its Guidelines for Implementation do not specifically refer to indigenous peoples, the implementation of these instruments has broadened to accommodate indigenous perspectives, rights and interests. Among the World Heritage Sites bearing significance for indigenous peoples are Machu Picchu (Peru), Taos Pueblo (United States of America), Tongariro National Park (New Zealand), Uluru-Kata Tjuta National Park (Australia), Tsodilo (Botswana), Tiwanaku (Bolivia). See in particular the report of the twenty-fifth session of the World Heritage Committee, 2001 (available at [http://whc.unesco.org/archive/repcom\(\)1.htm](http://whc.unesco.org/archive/repcom()1.htm)).

<sup>29</sup> Especially relevant are the general comments and recommendations of the Committee on the Elimination of Racial Discrimination and the Human Rights Committee.

<sup>30</sup> The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people collects information regarding human rights violations. In addition, studies undertaken by the World Bank and ECLAC, among others, highlight this situation of discrimination.

<sup>31</sup> See the report of the Special Rapporteur for 2006 (E/CN.4/2006/78) on the question of constitutional reforms, legislation and implementation of laws regarding the promotion and protection of rights of indigenous people and the effectiveness of their application, as well as on the implementation of international norms and decisions of bodies in charge of overseeing the respect of relevant international treaties and conventions.

<sup>32</sup> See for example World Bank (2005), *Indigenous Peoples, Poverty and Human Development in Latin America: 1994-2004*.

<sup>33</sup> For more information regarding data disaggregation, see the Report of the UNPFII Workshop on Data Collection and Disaggregation for Indigenous Peoples (E/C.19/2004/2).

<sup>34</sup> In that sense, General Recommendation No. 23 on Indigenous Peoples of the Committee on the Elimination of Racial Discrimination stressed this situation and proposes several measures for its improvement. [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/73984290dfea022b802565160056fe1c?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/73984290dfea022b802565160056fe1c?Opendocument).

<sup>35</sup> Adapted from the 2007 UNFPA gender mainstreaming strategy.

<sup>36</sup> The Committee on the Elimination of Racial Discrimination's General Recommendation No. 21: *The right to self-determination* makes special references to the self-determination of indigenous peoples (available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/dc598941c9e68a1a8025651e004d31d0?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/dc598941c9e68a1a8025651e004d31d0?Opendocument)).

<sup>37</sup> Article 46, paragraph 1, of the Declaration on the Rights of Indigenous Peoples states: "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."

<sup>38</sup> See the Report of the UNPFII workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples (E/C.19/2005/3). This report provides the elements of a common understanding of FPIC which are reproduced in Box 2 of these Guidelines.

<sup>39</sup> The human rights treaty bodies have adopted several general comments and recommendations interpreting the contents of the covenants and treaties. In some of them they have made specific references to indigenous peoples. All general comments are available in the document HRI/GEN/1/Rev.7 and further revisions.

<sup>40</sup> The Special Rapporteur's main report of 2003 (E/CN.4/2003/90) focused on the impact of large-scale development projects on human rights and fundamental freedoms of indigenous peoples and communities.

<sup>41</sup> Land administration and governance tools should be based on a continuum of land rights including for minority groups such as indigenous peoples, particularly indigenous collective landownership systems, rather than on individual ownership alone (Core Value of the UN-HABITAT Global Land Tool Network, <http://www.gln.net>).

<sup>42</sup> The United Housing Rights Programme (UNHRP), a joint initiative of UN-HABITAT and OHCHR, recommended in its report *Indigenous peoples' right to adequate housing: A global overview (2005)* that Governments and housing providers must take steps, to the maximum of their available resources, to achieve the full and progressive realization of the right of indigenous peoples to adequate housing, particularly the elimination of homelessness. The report is available at <http://hq.unhabitat.org/pmss/getPage.asp?page=bookView&book=1799>.

<sup>43</sup> The UN-HABITAT Advisory Group on Forced Evictions (AGFE) promotes alternatives to forced evictions that are often targeted at indigenous communities. In cases where eviction cannot be avoided, AGFE recommends resettlement through community participation with provision of alternative land with long-term

tenure security, in line with international human rights standards as contained in CESCR General Comment No. 7 and the United Nations comprehensive human rights guidelines on development-based displacement. AGFE reports may be found at <http://www.unhabitat.org>.

<sup>44</sup> The Akwe: Kon guidelines may be found at <http://www.biodiv.org/doc/publications/akwe-brochure-en.pdf>.

<sup>45</sup> These guiding principles are based on the legal instruments available internationally. Most of them are drawn from the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169.

<sup>46</sup> General Recommendation No. 21 of the Committee on the Elimination of Racial Discrimination on self-determination recognizes the exercise of these rights by indigenous peoples and ethnic minorities.

<sup>47</sup> While ILO Convention No. 169 does not explicitly address free, prior and informed consent, articles 6-8 deal with the right of indigenous peoples to decide their own priorities of development, self-management, recognition of indigenous institutions, etc.

<sup>48</sup> The issue of lands and territories has been widely analysed at international forums. The Human Rights Committee adopted General Comment number 27 on Freedom of Movements and number 23 on the rights of minorities. The Committee on the Elimination of Racial Discrimination's General Recommendation No. 23 refers to indigenous peoples' rights. The Permanent Forum on Indigenous Issues dedicated its sixth session to the theme "indigenous peoples' lands, territories and resources" (E/2007/43). The Working Group on Indigenous Populations has published a number of reports.

<sup>49</sup> See previous note. In addition, the Permanent Forum on Indigenous Issues organized the "International Expert Group Meeting on the Convention on Biological Diversity's International Regime on Access and Benefit-Sharing and Indigenous Peoples' Human Rights" (E/C.19/2007/8).

<sup>50</sup> Environmental protection is closely related to the protection of indigenous peoples, their lands and territories. See notes related to lands and territories, natural resources and development projects.

<sup>51</sup> Article 8j and related dispositions of the Convention on Biological Diversity are, jointly with UNESCO instruments, the main instrument for the protection of traditional knowledge. See <http://www.biodiv.org/programmes/socio-eco/traditional/default.aspx>. The recent UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), see <http://unesdoc.unesco.org/images/0014/001429/142919e.pdf> which entered into force in 2007, and the Convention for the Safeguarding of Intangible Cultural Heritage (2003) (see <http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>) contain important provisions for the protection and promotion of indigenous cultures and their transmission to future generations. An Interagency workshop was held under the UNPFII in 2005. WIPO also has a working group on the issue. For more information,

see <http://www.wipo.int/tk/en/index.html>. In addition, the Working Group on Indigenous Populations published two more important documents, reports E/CN.4/Sub.2/1993/28 and E/CN.4/Sub.2/AC.4/2006/5.

<sup>52</sup> The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people dedicated his third thematic report to the question of access to the administration of justice by indigenous peoples and indigenous customary law (E/CN.4/2004/80).

<sup>53</sup> The World Health Organization has a programme focused on this issue. For more information, see <http://www.who.int/hhr/activities/indigenous/en/>. The Permanent Forum on Indigenous Issues, in its fifth and sixth sessions, also adopted recommendations regarding the health of indigenous peoples (E/2006/43 and E/2007/43).

<sup>54</sup> The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people dedicated his fourth thematic report to the Commission on Human Rights to “Indigenous peoples and education systems: human rights challenges” (E/CN.4/2005/88). During its fourth session, under MDG 2, UNPFII adopted a series of important recommendations on education (E/2005/43).

<sup>55</sup> See UNESCO: *The Challenge of Indigenous Education: Practice and Perspectives*, 2004. Other instruments may be found in the report of the fifth session of the Permanent Forum on Indigenous Issues.

<sup>56</sup> ILO has adopted several instruments dealing with indigenous peoples. For more information, see <http://www.ilo.org/public/english/indigenous/>.

<sup>57</sup> See also ILO, *Eliminating discrimination against indigenous and tribal peoples in employment and occupation - A Guide to ILO Convention No. 111*, 2007.

<sup>58</sup> In July 2007 the UNPFII held an international meeting in Salekhard, Russian Federation, on “Perspectives of Relationships between Indigenous Peoples and Industrial Companies” which provided important directions to policy work in this field. The report will be considered at the seventh session on the UNPFII (2008). The advanced unedited version of the report is available at: [http://www.un.org/esa/socdev/unpfii/documents/workshop\\_PRIPIC\\_Report.pdf](http://www.un.org/esa/socdev/unpfii/documents/workshop_PRIPIC_Report.pdf)

<sup>59</sup> The Permanent Forum on Indigenous Issues dedicated its third session to indigenous women. For more information see <http://www.un.org/esa/socdev/unpfii/en/women.html> and all annual reports since then. UNIFEM and INSTRAW have also analysed this issue. The Inter-Agency Network on Women and Gender Equality (IANWGE) has established a task force on indigenous women, see <http://www.un.org/womenwatch/ianwge/taskforces/tfIndigenousWomen2005.htm>.



<sup>60</sup> The Permanent Forum's second session focused on "indigenous children and youth", and decided that this will be an ongoing priority for years to come. For more information, see <http://www.un.org/esa/socdev/unpfii/en/children.html>.

<sup>61</sup> The ILO has produced a *Handbook on Combating Child Labour among indigenous and tribal peoples*, available at: <http://www.ilo.org/public/english/standards/norm/legalite/itpp/publication/childlabour.pdf>.

<sup>62</sup> Following a recommendation of the UNPFII, an international expert workshop on urban indigenous peoples was held in Santiago, Chile, in March 2007. Its report was considered and acted upon by the UNPFII at its sixth session (for the recommendation of the UNPFII, see E/2007/43).

<sup>63</sup> See also note 33 above.

<sup>64</sup> See note 3.

<sup>65</sup> For more information on the Second Decade, see <http://www.un.org/esa/socdev/unpfii/en/second.html>.

<sup>66</sup> In this perspective, UNESCO has developed the so-called "Cultural Diversity Programming Lens" to help integrate the principles of cultural diversity in development policy and programming. The Lens is an interdisciplinary tool to systematically analyse and evaluate whether programmes, policies and practices do in fact incorporate and promote the principles enshrined in the adopted declarations and conventions. For more information on this tool, please see [http://www.unescobkk.org/index.php?id=3202&tx\\_mininews\\_pi1\[showUid\]=215&cHash=4c610f09c3](http://www.unescobkk.org/index.php?id=3202&tx_mininews_pi1[showUid]=215&cHash=4c610f09c3).

<sup>67</sup> These are: non-discrimination, best interests of the child, right to life, survival and development, and respect for the views of the child.

<sup>68</sup> *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among United Nations Agencies* (available at [http://www.undp.org/governance/docs/HR\\_Guides\\_CommonUnderstanding.pdf](http://www.undp.org/governance/docs/HR_Guides_CommonUnderstanding.pdf)).

<sup>69</sup> The term "dominant population" is used in terms of power relations and not necessarily in terms of population.

<sup>70</sup> For further reading on partnerships with indigenous peoples see the report of the UNPFII Workshop on partnership visions for the Second Decade, available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N06/266/83/PDF/N0626683.pdf?OpenElement>.

<sup>71</sup> For further reading on indigenous peoples and the MDGs and CCAs/UNDAFs, see the annual Desk

Reviews of National MDG Reports and CCAs/UNDAFs produced by the Secretariat of the Permanent Forum on Indigenous Issues (available at: <http://www.un.org/esa/socdev/unpfii/en/publications.html>) as well as the ILO publication *Indigenous Peoples and the Millennium Development Goals*, available at: <http://www.ilo.org/public/english/standards/norm/egalite/itpp/publication/perspectives.pdf>.

<sup>72</sup> See resolution 46 of the International Telecommunication Union, available at: <http://www.itu.int/ITU-D/indigenous/documents/D06-DAP1.1.1-C-0106!R2!MSW-E.pdf>.

<sup>73</sup> This is, for example, the case of the UNCT in Bolivia.

<sup>74</sup> The UNDP/GEF Small Grants Programme (SGP) has many examples of partnerships with indigenous organizations and authorities, including their participation in the National Steering Committees (NSCs). For example, see participatory video produced by SGP (available at: [http://www.insightshare.org/training\\_book.html](http://www.insightshare.org/training_book.html)), and the United Nations Indigenous Peoples' Advisory Committee of Kenya (UNIPACK) experience in connection with GEF SGP National Steering Committees.

<sup>75</sup> A UNDG workspace has been set up to facilitate learning and exchange among UNCT civil society focal points and other country-level staff on setting up advisory committees: <http://www.undg.org/?P=514>.

<sup>76</sup> This is for example the case in UNCTs in Bolivia and Ecuador.

<sup>77</sup> See *The User's Guide: Indicators for Human Rights-Based Approaches to Development* (available at [http://www.undp.org/oslocentre/docs/HR\\_guides\\_HRBA\\_Indicators.pdf](http://www.undp.org/oslocentre/docs/HR_guides_HRBA_Indicators.pdf)). The UNPFII has been carrying out ongoing work on the issue of indicators of development and well-being for indigenous peoples. See also the Reports on the Meeting on Indigenous Peoples and Indicators of Well-Being (available at [http://www.un.org/esa/socdev/unpfii/en/session\\_fifth.html](http://www.un.org/esa/socdev/unpfii/en/session_fifth.html) and [http://www.un.org/esa/socdev/unpfii/en/session\\_sixth.html](http://www.un.org/esa/socdev/unpfii/en/session_sixth.html)).

### UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (General Assembly resolution 61/295)

#### 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.

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