



Internal CEESP NRGF Background Brief #5

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Indigenous Peoples - Who are IPs and what are their rights under international conventions? How can the process of constructing the NRGF ensure that IP issues and self-determination are integrated as crosscutting in IUCN program, not added on?

By Juanita Cabrera Lopez

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The International Union for Conservation of Nature (IUCN) is currently developing a Natural Resource Governance Framework (NRGF) which is envisioned to be a structure to assess “governance” of natural resources and provide the IUCN a standard for this assessment. Indigenous peoples’ territories have some of the largest concentrations of natural resources globally and they are rights holders of their lands, territories and natural resources. It is fundamental that the NRGF include the full and effective participation of indigenous peoples in the development, implementation, and evaluation of this framework consistent with international human rights law and the IUCN’s own resolutions. At the minimum it will be important to understand:

(1) Who are Indigenous Peoples; (2) what are their rights; and (3) how can the design of the NRGF fully include indigenous peoples, and their rights and interests?

1. Who are Indigenous Peoples?

- Though there is no set definition of who is indigenous, there are criteria developed in such instruments as the International Labor Organization Convention No. 69, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and others (WB OP 4.10).
- “Considering the diversity of indigenous peoples, an official definition of “indigenous” has not been adopted by any UN-system. Instead the system has developed a modern understanding of this term based on the following:
 - Self- identification as indigenous peoples at the individual level and accepted by the community as their member.
 - Historical continuity with pre-colonial and/or pre-settler societies
 - Strong link to territories and surrounding natural resources
 - Distinct social, economic or political systems
 - Distinct language, culture and beliefs

- Form non-dominant groups of society
- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.”¹
- In most domestic legal systems, “indigenous peoples” are distinguished from “peasant communities/campesinos, or minorities.”² The imposition of campesino identities on indigenous peoples is a product of colonization and continues to be used to strip indigenous peoples of their legal rights; this is the case in Guatemala.

2. What are the rights of indigenous peoples under International Law?

- “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”³
- During the negotiation and drafting process of the UNDRIP, indigenous peoples sought to secure **collective rights** for their people within the text. However, many countries perceived human rights as individual, and did not feel that collective rights should be included as a human right. In spite of much debate, collective rights are indeed affirmed in the Preamble of the UNDRIP “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”⁴ This is the first international human rights instrument to recognize the collective rights of a people.
- “The **right of self-determination** for indigenous peoples within states is perhaps the most important right included in the Declaration on the Rights of Indigenous Peoples adopted by the United Nations in 2007.”⁵

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.⁶
- The right of self-determination and its scope of application are found in the following articles of the UNDRIP: Art.3, Art.4, Art.5, Art.13(1), Art.13(2), Art.14(1), Art.16(1), Art.18, Art.19, Art.20, Art.23, Art.32(1), Art.32(2), Art.33(1), Art.34, Art.35⁷
- The Right of **Free Prior and Informed Consent** (FPIC) is not the only right that indigenous peoples are seeking. It is also not the same as self-determination, property

¹ See United Nations Permanent Forum on Indigenous Issues, *Indigenous Peoples Indigenous Voices Factsheet*, available at http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf

² See *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources*, para. 24, OEA/Ser.L/V/II.Doc.56/09, available at <http://www.oas.org/en/iachr/indigenous/docs/pdf/AncestralLands.pdf>

³ UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, art. 1, September 2007, A/RES/61/295, available at <http://www.un-documents.net/a61r295.htm>

⁴ UNDRIP, Preamble para 22, available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

⁵ Robert Coulter, “The law of Self-Determination and the United Nations Declaration on the Rights of Indigenous Peoples,” *UCLA Journal of international Law and Foreign Affairs* (2010):1, available at <http://www.indianlaw.org/sites/default/files/UCLA%20Self-Det.pdf>

⁶ UNDRIP, art. 3.

⁷ Indian Law Resource Center, *United Nations Declaration on the Rights of Indigenous Peoples Handbook*, 2012. Available through the DC office of the Indian Law Resource Center, dcoffice@indialaw.org

rights, etc., and should not be misunderstood or substituted for this right.⁸ Rather, FPIC is an outcome of collective rights to property and the right to self-determination because indigenous peoples have the right to determine what occurs to their lands, territories, and natural resources.

3. How can the design of the NRGF fully include indigenous peoples, their rights and interests?

- In the exercise of procedural rights (e.g., the right to be consulted, to participate in rulemaking, to have access to legal remedies),⁹ it is critical that there be widespread dissemination about the NRGF in the early stages of NRGF development. This information and outreach to indigenous peoples must be communicated in a diverse manner within and outside of IUCN. Existing indigenous peoples' mechanisms outside of the IUCN should include, but not be limited, to: The United Nations Permanent Forum on Indigenous peoples Issues (UNPFII), Global Coordinating Group of the World Conference on Indigenous Peoples, Working Group on Article 8(j) of The Convention on Biological Diversity (CBD), and the International Indigenous Women's Forum, amongst others.
- There must be a process to ensure that indigenous nations, indigenous peoples' distinct institutions, governments, etc., are fully aware of this process. They must be provided a space to create a consultation process where they can provide feedback on such a framework, its relevance, and how its application within their territories could assist in safeguarding their rights.
- Working with indigenous peoples' organizations and governments who are either not members to the IUCN or involved with the IUCN is critical. Existing indigenous peoples' membership within IUCN is small and not representative of the diversity of indigenous peoples impacted by IUCN programs, projects, and activities globally.
- It will be necessary to work with indigenous leaders (both political and spiritual), indigenous academics, lawyers, indigenous scientists, researchers etc., to ensure diversity of perspectives, backgrounds, assessments and recommendations within this process.
- Material explaining the NRGF must accessible in order for it to be translated into local languages.
- Early on in the development of the NRGF, "governance" must be defined by indigenous peoples in concrete terms not only based on their own self-government, but also pertaining to what is consistent under international law.

Substantive rights or the "right to use, own, manage control, and benefit from natural resources"

⁸ Indian Law Resource Center, *Position Paper On Indigenous Peoples' Right Of Free Prior Informed Consent With Respect To Indigenous Lands*, p.1, PFII/2004/WS.2/6, January 2005, available at

<http://www.indianlaw.org/content/indigenous-peoples%E2%80%99-right-free-prior-informed-consent>

⁹ CEESP, *Building an IUCN Natural Resource Governance Framework*, p.14, May 2013.

¹⁰ needs to be central to the governance process, diagnostic, and consistent with international law.

Rights that need to be fully integrated in all aspects of the NRGF:

1. “Indigenous peoples’ property rights
 2. Collective property rights
 3. Self-Determination
 4. Understanding of Property rights as they relate to issues like protected areas
 5. Management, control, benefit sharing” ¹¹
- In such topics as protected areas there is a nexus of indigenous peoples’ human rights and international environmental law which merits further analysis and consideration.¹²
 - Study of case law with legal experts, prioritized training from indigenous lawyers to include such precedent setting cases (but not limited to these cases)
 - A: *Awas Tingni v. Nicaragua*
 - B: *Saramaka People v. Suriname*
 - C: *Maya indigenous community of the Toledo District v. Belize*
 - D: *Endorois Welfare Council v. Kenya*
 - E: African Court’s historic ruling on Ogiek tribe in Kenya
 - Legal comments and recommendations from indigenous lawyers and experts
 - Assessments of projects to include human rights assessments in addition to social and environmental impact assessments
 - Analysis of financial streams and standards for funding
 - Strong discussion of IUCN members’ own application and accountability of the NRGF framework in their own projects, programs, and activities

Recommended references:

1. Robert Coulter, “The Law of Self-determination and the United Nations Declaration on the Rights of Indigenous Peoples” *UCLA Journal of international Law and Foreign Affairs*, (2010), available at <http://www.indianlaw.org/sites/default/files/UCLA%20Self-Det.pdf>
2. Indian Law Resource Center, *Protected Areas on Indigenous Lands in Guatemala: Thematic Hearing*, 2008 (Washington, DC) Available through Indian Law Resource Center DC Office
3. UN General Assembly, *Final summary of responses to the questionnaire seeking the views of States and indigenous peoples on the best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of indigenous peoples*, 25 April 2013, A/HRC/EMRIP/2013/3, available at

¹⁰ CEESP, IUCN NRGF, p.14.

¹¹Indian Law Resource Center, *Protected Areas on Indigenous Lands in Guatemala: Thematic Hearing* (2008): 2, (Washington, DC), available through Indian Law Resource Center DC Office dcoffice@indianlaw.org

¹² Center, Protected Areas p.7.

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/134/21/PDF/G1313421.pdf?OpenElement>

4. UN General Assembly, *Access to justice in the promotion and protection of the rights of indigenous peoples*, 29 April 2013, A/HRC/EMRIP/2013/2, available at

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/134/73/PDF/G1313473.pdf?OpenElement>

5. Wiggins, Armstrong, *Indian Rights and the Environment*, 18 Yale J. Int'l L. 345, 1993, Available at http://www.indianlaw.org/sites/indianlaw.org/files/resources/AW_YaleLawReview_v18no1.pdf
6. Inter-American Commission on Human Rights, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources*, 30 December 2009, OEA/Ser.L/V/II.Doc.56/09, available at <http://www.oas.org/en/iachr/indigenous/docs/pdf/AncestralLands.pdf>
7. Indian Law Resource Center, "Indigenous Peoples' Right of Free Prior and Informed Consent With Respect to Indigenous Lands, Territories and Resources." United Nations Department of Economic and Social Affairs. Available at <http://www.indianlaw.org/content/indigenous-peoples%E2%80%99-right-free-prior-informed-consent>
8. Belize -- Aurelio Cal, et al. v. Attorney General of Belize, Supreme Court of Belize (Claims No. 171 and 172 of 2007) (18 Oct 2007) (Mayan land rights) available at <http://www.elaw.org/node/1620>
9. Corte Interamericana de Derechos Humanos Caso de la Comunidad Mayagna (Sumo) Awas Tingni Vs. Nicaragua Sentencia de 31 de agosto de 2001 (Fondo, Reparaciones y Costas) available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_79_esp.pdf
10. Inter-American Court of Human Rights Case of the Saramaka People v. Suriname Judgment of November 28, 2007 available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf

United Nations, *Information received from non-governmental organizations in consultative status with the Economic and Social Council, Indian Law Resource Center*, 11 March 2013, E/C.19/2013/22, available at <http://indianlaw.org/sites/default/files/ILRC%20Submission%20WB%20Safeguards%20UNPFII.pdf> regarding World Bank and REDD safeguards