

THE RIGHT TO FOOD AND INDIGENOUS PEOPLES

Indigenous Peoples' Right to Food: Legal foundation

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

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

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

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

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

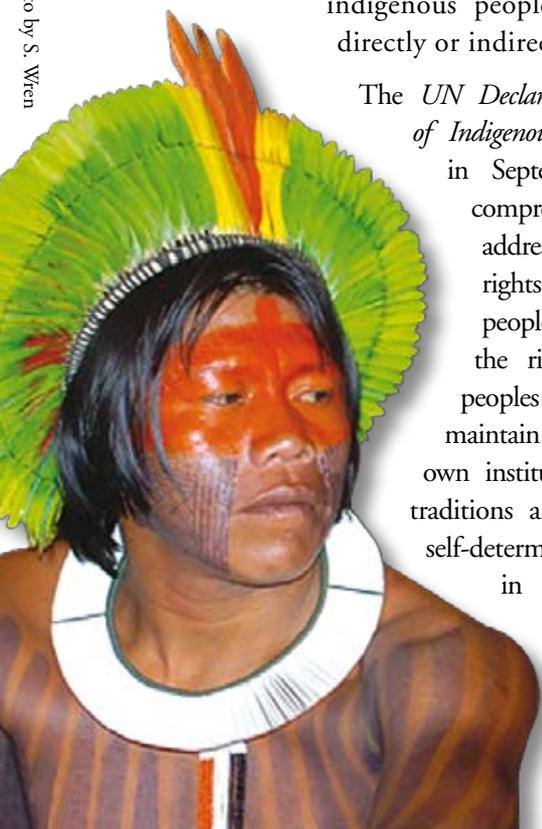
The *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Right to Food Guidelines)* provide policy orientation in a number of areas and can be used by indigenous peoples as a tool for advocacy. They refer to indigenous communities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

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

The Right to Food Guidelines are available on the FAO right to food website: www.fao.org/righttofood.

The right to food as a collective right

The UN Declaration on the Rights of Indigenous Peoples states that indigenous peoples have the right to fully enjoy as a collective or as individuals, all human rights and fundamental freedoms. With particular regard to the right to food, indigenous representatives on the occasion of the 2002 Global Consultation signed the Declaration of Atitlán³, stating that they were: "... in agreement that the



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

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

Cultural dimension of the right to food

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

aspects of nutrition and pertains to indigenous peoples in particular.

It translates this principle into a practical policy recommendation by reminding States “...of the cultural values of dietary and eating habits in different cultures...”

How can the right to food benefit indigenous peoples?

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

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

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

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



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

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

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

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

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

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

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

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

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

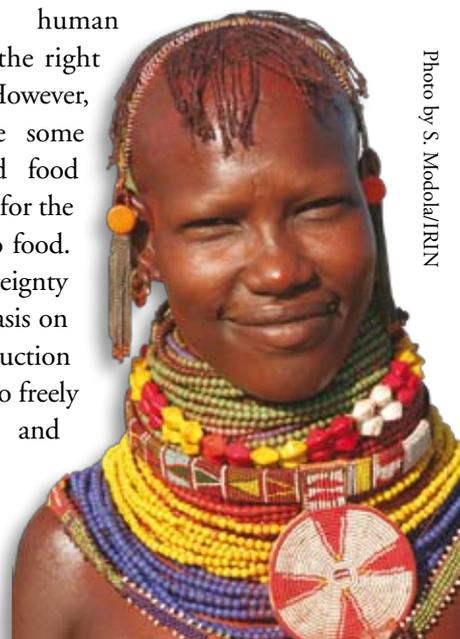


Photo by S. Modola/IRIN

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

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

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

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

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

Endnotes

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