

CHAPTER II



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CULTURE

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Culture has been defined as “that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capacities and habits acquired by man as a member of society”.¹ In other words, culture is a patterned way of life shared by a group of people. Culture encompasses all that human beings have and do to produce, relate to each other and adapt to the physical environment. It includes agreed-upon principles of human existence (values, norms and sanctions) as well as techniques of survival (technology).² Culture is also that aspect of our existence which makes us similar to some people, yet different from the majority of the people in the world... it is the way of life common to a group of people, a collection of beliefs and attitudes, shared understandings and patterns of behaviour that allow those people to live together in relative harmony, but set them apart from other peoples.³

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Indigenous peoples have rich and diverse cultures based on a profound spiritual relationship with their land and natural resources. Dichotomies such as nature vs. culture do not exist in indigenous societies. Indigenous peoples do not see themselves as outside the realm of nature, but as part of nature, and they have their own specific attachment to their land and territory and their own specific modes of production based on a unique knowledge of their environment. Nor do indigenous peoples emphasize a radical duality between the sacred and the mundane as happens in Western culture. In many indigenous cultures, social and political institutions are part of the cosmic order,⁴ and it is on the basis of their worldview, beliefs, values and customs that indigenous peoples define their own forms of governance, as well as their customary laws and norms. Another salient characteristic of indigenous cultures is that they are based on a collective perspective. In the same way that indigenous peoples consider their lands and resources to be collective assets, they see their cultural values and activities—their identity—as a function of the group, not individuals.⁵ This also applies to the ownership and custody of their cultural heritage, which is collective.⁶

Indigenous communities have kept their cultures alive by passing on their worldview, their knowledge and know-how, their arts, rituals and performances from one generation to the next. Preserving their cultural heritage has also included speaking and teaching their own languages, protecting their sacred and significant sites and objects. It has also included defending and holding onto their lands and territories, since these are fundamental for sustaining them as peoples and cultures.

¹ Tylor (1871), 1.

² Rossi (1980).

³ Friedl and Pfeiffer (1977), 283-284.

⁴ Champagne (2007), 79.

⁵ Gomez (2007).

⁶ Daes (1995), para. 5.



It is this all-encompassing nature of indigenous cultures that makes them unique and so different from the cultures of those groups that hold the political, economic and social power in the nation-states in which they live. But because indigenous peoples have been excluded from the decision-making and policy frameworks of the nation-states in which they live, and because they have been subjected to processes of domination and discrimination, their cultures have been viewed as being inferior, primitive, irrelevant, something to be eradicated or transformed. In addition, they have continued to experience the loss of access to lands, territories and natural resources. The result has been that indigenous cultures today are threatened with extinction in many parts of the world.

In order to assess the current situation of indigenous cultures, this chapter presents a brief overview of some of the fundamental elements of indigenous cultures—such as lands and languages, spirituality, social institutions and traditional knowledge. However, it is important to bear in mind that indigenous cultures can be understood only in a holistic and comprehensive way, and that their various “elements” should be seen as essentially interconnected with and dependent on each other.

This chapter also looks at some of the threats and challenges indigenous cultures are facing today—in the form of misappropriation by outsiders, globalization, commodification and tourism—as well as some of the new openings and opportunities brought about by the broad international recognition of indigenous cultural rights as well as by a growing appreciation of indigenous peoples’ invaluable contribution to humanity’s cultural diversity and heritage.

Land, language and identity

Among the many markers of indigenous cultural identity, the attachment to land and the use of an indigenous language are two of the most significant.

Land

The importance of land and territories to indigenous cultural identity cannot be stressed enough. The survival and development of indigenous peoples’ particular ways of life, their traditional knowledge, their handicrafts and other cultural expressions have, since time immemorial, depended on their access and rights to their traditional lands, territories and natural resources. But land is not only the basis of the indigenous economy. Indigenous peoples also have a deep spiritual relationship with the land; they feel at one with their ancestral territory and feel responsible for the healthy maintenance of the land—its waters and soils, its plants and animals—for both themselves and future generations.⁷ Land is where their ancestors are buried and where sacred places are visited and revered.

Very often, people identify themselves by taking the name of the place to which they belong. In Maasailand, for example, sub-groups are named after their particular area of origin. Thus the IIKaputiei are from Kaputiei, Ilpurko are from Purko, IIMatapato are from Matapato, etc. Hence, the place is also the people. In this way, the notion of “pertaining to the land” is embedded in indigenous peoples’ cultural identities. This is also reflected in the common understanding of indigeneity as expressed in various international documents, including ILO Convention No. 169, which all reflect the special and intimate attachment of indigenous peoples to their lands and territories and its fundamental importance for their collective physical and cultural survival as peoples.⁸

⁷Young (2000), 57.

⁸These international documents include—besides ILO Convention No. 169 (1989)—the Study on the Discrimination against Indigenous Peoples (Martínez Cobo Study) from 1986/7 and the Working Group on Indigenous Populations’ Working Paper on the concept of “indigenous peoples” from 1996.



Indigenous peoples are often defined as the original peoples of the land who lost their land and were displaced and marginalized by colonizers or by a group of people who arrived at some later date. Although this pattern of displacement and marginalization of indigenous peoples is found throughout the world, given the extensive and complicated history of human migration in many part of Africa, being the “first peoples in a land” is not a necessary pre-condition for acceptance as an indigenous people. Rather, indigenous identity relates more to a set of characteristics and practices than priority of arrival. For example, several populations of nomadic peoples, such as the Tuareg of the Sahara and Sahel regions, now inhabit areas in which they arrived comparatively recently; their claim to indigenous identity status (endorsed by the African Commission on Human and Peoples’ Rights) is based on their marginalization as nomadic peoples in states and territories dominated by sedentary agricultural peoples. This does not, however, prevent them from identifying themselves through and with the land that may have sustained them for several generations, shaped their culture, and to which they have become spiritually attached, since this is where their ancestors are buried.

The centrality of land in the lives of indigenous peoples has been recognized by the Permanent Forum in the following words:

Land is the foundation of the lives and cultures of indigenous peoples all over the world. This is why the protection of their right to lands, territories and natural resources is a key demand of the international indigenous peoples’ movement and of indigenous peoples and organizations everywhere. It is also clear that most local and national indigenous peoples’ movements have emerged from struggles against policies and actions that have undermined and discriminated against their customary land tenure and resource management systems, expropriated their lands, extracted their resources without their consent and led to their displacement and dispossession from their territories. Without access to and respect for their rights over their lands, territories and natural resources, the survival of indigenous peoples’ particular distinct cultures is threatened.

Land rights, access to land and control over it and its resources are central to indigenous peoples throughout the world, and they depend on such rights and access for their material and cultural survival. In order to survive as distinct peoples, indigenous peoples and their communities need to be able to own, conserve and manage their territories, lands and resources.⁹

Land is the basis for the lives, cultures and identities of indigenous peoples. Rights over lands, territories and natural resources are among the most important and also the most contentious issues that indigenous peoples, at both the national and international level, have debated with governments. Since the colonial period, indigenous peoples have been dispossessed of their lands or faced the threat of dispossession and forced removal, leading to increased poverty, erosion of cultures and even outright extinction or complete assimilation. Although indigenous peoples today continue to face the threat of dispossession of lands, a great deal of progress has been made in recent years in terms of legislative reforms and policy making. Nevertheless, there is a persistent implementation gap between the laws passed and daily reality for indigenous peoples. This implementation gap is observed both between national legislation and international standards on the one hand, and the day-to-day reality on the other. Indigenous peoples-related legislation is sometimes inconsistent with other laws, and there is generally a lack of proper mechanisms for monitoring the effectiveness of such legislation and its application. State bureaucracies are often slow and poorly equipped to react to new legislation favouring indigenous peoples. Thus, indigenous

⁹ UNPFII (2007c), paras 5-6.

peoples have frequently looked to international instruments and international and national judicial systems to fill in the implementation gap, with some successes.

The United Nations Declaration on the Rights of Indigenous Peoples addresses lands, territories and natural resources thoroughly, including the right to maintain spiritual relationships with the land, the right not to be forcibly removed or dispossessed, the right for indigenous peoples to have their own land tenure systems, the right to redress for land that has been taken or damaged and the right to conservation and protection of the environment. Article 26 contains some of the most important language on land:

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.*

In addition to the Declaration, some significant progress has been made at the national level. This holds particularly true regarding legislative reforms, respecting indigenous peoples' collective rights to land. In Northern Canada, for example the Nunavut land claim agreement grants approximately 25,000 Inuit title to around 350,000 square kilometres of lands and resources. In South America, some of the most advanced legal frameworks for indigenous land tenure are in Bolivia, Brazil, Colombia, Costa Rica, Ecuador, Nicaragua, Panama, Paraguay and Peru, enshrined in legislation and often in constitutions as well. Indigenous peoples' collective rights to land are also recognized in Australia, New Zealand, Northern Europe and the Russian Federation. The situation in Asia varies greatly. Cambodia and the Philippines have enacted legislation that recognizes communal land rights, while in India, there is constitutional protection of indigenous lands in areas of Northeast India. In Africa, very few countries recognize indigenous peoples' rights to land, although in South Africa and Botswana, some peoples have had success in having their land claims recognized.¹⁰

In many cases, these legislative reforms are a direct consequence of court decisions in favour of indigenous peoples and their demand for the recognition of their ancestral lands, while in other cases, these reforms correspond with changing international standards. In all cases, these reforms are a direct consequence of indigenous peoples' resistance and demands that their rights be respected, protected and fulfilled.

Landmark cases

Calder v. British Columbia (1973) Canada

The Calder case reviewed the existence of "aboriginal title" claimed by the Nisga'a people of British Columbia, Canada. The Nisga'a argued that they possessed land rights over their traditional territories and had never surrendered or lost their rights to the land. Chief Frank Arthur Calder lost the case, based on a procedural point, but the lasting result of the Supreme Court decision was that the Court recognized that Aboriginal title to land existed prior to the colonization of the continent and was not

¹⁰ IWGIA (2004), 4-7.



merely derived from statutory law. This resulted in the Government of Canada's overhauling its land claim negotiation processes.

Source: University of Saskatchewan online library (2008)

Mabo v. Queensland (1992) Australia

In 1992, the High Court of Australia held that the common law of Australia recognizes native title to land, rejecting the doctrine that Australia was terra nullius (land belonging to no-one) at the time of European settlement. The decision stated that native title can continue to exist where Aboriginal and Torres Strait Islander people have maintained their connection with the land through the years of European settlement and that the content of native title is to be determined according to the traditional laws and customs of the Aboriginal and Torres Strait Islander people involved. The case had been led by Eddie Mabo of the Meriam people from the Mer (Murray) Islands of the Torres Strait. Mr. Mabo died before the decision was rendered by the High Court.

Source: Aboriginal Law Bulletin (1993)

Mayagna Awas Tingni v. Nicaragua (2001) Nicaragua

When a private company was granted logging concessions over their traditional lands, the Sumu people of the village of Awas Tingni brought their case to the Inter-American Court of Human Rights. The Court concluded that Nicaragua had violated the right to judicial protection and to property and that the American Convention of Human Rights protected indigenous peoples' collective rights to their traditional territories. This was the first time that the Inter-American Court had issued a judgment in favour of the rights of indigenous peoples to their ancestral land, and as such, is a key precedent for defending indigenous rights in the Americas.

Source: Anaya & Grossman (2002)

Alexkor Limited v. The Richtersveld Community (2003) South Africa

On 14 October 2003, the Constitutional Court of South Africa decided that the Nama people who had been dispossessed of their diamond-rich land in the 1920s had exclusive rights to their traditional territories and its resources. The Court found that a change in sovereignty does not destroy pre-existing property rights and that the Nama people had unlawfully been dispossessed of their lands based on racial discrimination.

Source: Agreements, treaties and negotiated settlements project (2007)

Sagong Bin Tasi v. Keajaan Negeri Selangor (2005) Malaysia

The plaintiffs, seven indigenous Temuans of the Bukit Tampoi village, charged that their eviction and dispossession of land for the construction of a highway was illegal and that they deserved compensation for the loss of 38 acres of land that had been taken from them. The High Court of Malaysia ruled that the Temuans had native title under common law over their lands and that the defendants must pay the Temuans substantial compensation. This ruling affirmed that Malaysian law does indeed recognize customary proprietary rights of indigenous peoples over their lands and territories.

Source: Current Law Journal (2005)

Sesana v. Botswana (2006) Botswana

In December 2006, the Botswana High Court ruled that the 2002 eviction and displacement of indigenous San peoples from their ancestral lands in the Central Kalahari Game Reserve (CKGR) was unlawful and unconstitutional, as was the government's decision to terminate the provision of basic services to the San peoples within the CKGR. The court recognized that the San, as indigenous peoples, have the right to live, hunt and gather on their ancestral land inside the CKGR and that they should not have to apply for permits to enter it.

Source: South African Legal Information Institute (2006)

Land thus plays a crucial role in the culture of indigenous peoples. Even indigenous city dwellers—whether they are indigenous Australians or Mapuche in Chile—remain determined to retain their links to the land.¹¹ Losing access to their lands and territories, on the other hand, makes indigenous peoples feel deprived of their material and spiritual sustenance. Traditional livelihoods are discontinued, traditional knowledge lost, rituals linked to the land or ancestral spirits can no longer take place,¹² and social disintegration is often a result.¹³

Indigenous languages

Maintaining distinct languages, at least in part, has also been seen as an essential part of being indigenous.¹⁴ Language is a system of symbols, or words arranged to convey meaning, and enables people to communicate either verbally or in writing. Language is an important component of one's identity. It is fundamental to understanding values, beliefs, ideology and other intangible aspects of culture. It enables people to communicate as specific peoples and determines participation, access to knowledge, leadership and depth of understanding.¹⁵

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It is usually estimated that there are between 6,000 and 7,000 oral languages in the world today. Most of these languages are spoken by very few people, while a handful of them are spoken by an overwhelming majority of the world. About 97 per cent of the world's population speaks 4 per cent of its languages, while only 3 per cent speaks 96 per cent of them.¹⁶ A great majority of these languages are spoken by indigenous peoples, and many (if not most) of them are in danger of becoming extinct. These are languages that are spoken by only a handful of elders and are not being acquired by children and, as the remaining native

¹¹ Young (2000), 58; Bello (2007), 14.

¹² Kenrick (2000), 10.

¹³ Wesley-Esquimaux (2007), 7.

¹⁴ See, among other documents, ILO Convention No.169 and WGIP (1996).

¹⁵ See UNESCO (2008), 2. UNESCO also underlines the key role languages play in the various pillars of sustainable development and in achieving the Millennium Goals.

¹⁶ See, for example, Skutnabb Kangas (2000) and UNESCO (2003).



speakers die, one by one, the languages are dying with them. In fact, it has been estimated that roughly 90 per cent of all existing languages may become extinct within the next 100 years.¹⁷

The extinction of a language is a great loss for humanity; it constitutes the invaluable loss of traditional knowledge and cultural diversity. But for the indigenous peoples themselves, the loss is even greater, especially since many of the indigenous languages exist only orally and cannot, therefore, be retrieved once they are no longer spoken. The loss of a language is thus “a cause of intense grief and disorientation to hundreds of thousands of indigenous men and women who struggle to be themselves without the words to say what that means.”¹⁸ Language, furthermore, is not only a communication tool, it is often linked to the land or region traditionally occupied by indigenous peoples; it is an essential component of one’s collective and individual identity and therefore provides a sense of belonging and community. When the language dies, that sense of community is damaged.

Indigenous languages have been dying, not only as a result of unintended consequences of colonization and globalization, but also because of deliberate assimilation policies that sought to deny indigenous peoples their own identities and cultures. Indigenous languages were dismissed as the “gibbering of monkeys” or “barbaric tongues” that were to be eradicated to make way for an English (or French or Spanish, etc.) that “all who are civilized can understand”.¹⁹ These assimilation policies lead to the destruction of languages and can thus be considered a form of ethnocide or linguistic genocide.²⁰

Recovering their land and their lost language

Elsie Vaalboi was born in the early 1900s in the Southern Kalahari, South Africa. Her people, the †Khomani, are the last San society of South Africa. In the 1970s, both the apartheid government and experts on Bushman* cultures decreed that the †Khomani had ceased to exist. Linguists announced that the language had died out.

Elsie Vaalboi knew the †Khomani language. But her children did not, nor did her neighbours. She believed she was the last †Khomani speaker on earth.

In the late 1990s, one of Elsie Vaalboi’s sons, Petrus, began to work with the South African San Institute (SASI). They met with †Khomani families who were squatters at Welkom, a community at the edge of the Kalahari Gemsbok National Park, their former traditional lands. SASI decided to claim the †Khomani lands and made Elsie record a message in the †Khomani language addressed to the Mandela government. Perhaps there was no one in the world who would understand her words but, in Afrikaans, she explained: “The time has come for the Bushmen to recover their lands and their lost language. The Boers have to move aside and let the Bushmen live again in their real home.”

SASI began a search for †Khomani survivors, looking also for speakers of the language and, in 1998, they found a †Khomani family consisting of four women—three sisters and their cousin—in their late sixties and early seventies. They were Bushmen, they said, and they spoke their language.

¹⁷ UNESCO (2003).

¹⁸ Brody (2000), 5.

¹⁹ Brody (2000), 5.

²⁰ Brody (2000), 5.

They listened to Elsie's tape. They were amazed and delighted and recorded a message in reply. Yes, they said, they too spoke "Boesmantal". And yes, they said, the time had come to fight to get back their lands and to save their language.

The search for the #Khomani diaspora continued and 15 speakers of the language were eventually found. They met, they talked, they shared hopes. And they became the centre of the land claim. In early 1999, then Deputy President Thabo Mbeki met with them and, at a formal ceremony, an agreement was signed, giving the #Khomani rights to some 50,000 hectares of land within the Kalahari Gemsbok Park and 40,000 hectares outside the park.

Source: Brody (2000), 8-9.

* The term "Bushman" has today been replaced by the term San. Both are generic terms and each San group has its own distinct name.

In the face of language extinction, some efforts are being made by governments, the international community, civil society organizations, academics and, of course, indigenous peoples themselves, to protect, revitalize and record dying languages. UNESCO, for instance, has a programme on safeguarding endangered languages and, following a recommendation from the Permanent Forum, an expert group met in 2008—the International Year of Languages—to look inter alia at how to eliminate the discrimination against the current use of indigenous languages and develop and support the revitalization and recovery of threatened languages. A Convention for the Protection of Indigenous and Endangered Languages is currently being drafted.²¹

While some indigenous peoples are successfully revitalising languages, many others are fighting a losing battle, where languages are simply no longer passed from one generation to the next. Most governments are aware of this language crisis but funding is often provided only for the recording of languages, while limited funds are diverted to language revitalization programmes.

Although the recording of a language is a valuable effort, it is no substitute for revitalization programmes that produce new speakers and keep a language alive. This is an important distinction to make, given that funds are often diverted from indigenous peoples' efforts at revitalization to academic recording projects. While there are hundreds of languages that face impending extinction, there are thousands of other languages that are not in immediate danger of being lost but may well be in danger of extinction within a generation or two if policies and actions that facilitate the use of minority languages within states are not put into place.²²

Spirituality and belief systems

Spirituality is the relationship human beings create with the spirit world in order to manage forces that seem overpowering. Indigenous spirituality is intimately linked to the environment in which the people live. For indigenous peoples, the land is the core of all spirituality and this relationship to the spirit of the earth is central to all the issues that are important to indigenous peoples today.

²¹ See UNESCO (2008), 6 and UNPFII (2008), 12.

²² For further information, see for example the Report of the International Expert Group Meeting on Indigenous Languages organized by UNPFII (2008).



spirituality defines the relationships of indigenous peoples with their environment as custodians of the land; it helps construct social relationships, gives meaning, purpose and hope to life

Spirituality is a term that requires special care in its definition. It is important to recognize the difference between spirituality and religion. Spirituality can be seen as an internal connection to the universe, which includes a sense of meaning or purpose in life, a cosmology or way of explaining one's personal universe and personal moral code. Religion, on the other hand, could be defined as a specific practice and ritual that are the external expression of some people's spirituality.

What is important here is that spirituality is the relationship to the universe. Indigenous spirituality could thus be defined as indigenous peoples' unique relationship with the universe around them.²³ Put another way, spirituality defines the relationships of indigenous peoples with their environment as custodians of the land; it helps construct social relationships, gives meaning, purpose and hope to life. It is not separated but is an integral, infused part of the whole in the indigenous worldview.²⁴

Religion, from the Latin *religare*, meaning "to bind fast", has been defined as an institution with a recognized body of communicants who gather together regularly for worship and accept a set of doctrines offering some means of relating the individual to what is taken to be the ultimate nature of reality.²⁵

Religion or belief systems have been a feature of cultures throughout human history. Belief systems are also integral to indigenous cultures. They often codify behavior; they also inspire and stimulate the development of artistic expressions, including different kinds of artifacts, paintings, songs, attires, music, dances, etc., used in rituals and sacred ceremonies. But foremost, they respond to human needs for reassurance in times of trouble and for averting misfortune; they also provide rituals that bring spiritual healing and address the major passages and transitions in human life. Hence, the preservation of indigenous communities and their cultures is tightly related to their spirituality and belief systems, which require that the earth, land and natural resources be preserved, and that harmonious relationships with other humans and other beings of the universe be maintained.

Indigenous spirituality and belief systems have often been dismissed as being mere expressions of superstitious and irrational thinking. They have in many cases been violently repressed or forbidden and are under constant assault from the large, dominant religions: Christianity, Islam, Hinduism, etc. In the face of strong pressures for social, cultural and religious assimilation, indigenous peoples have struggled hard to retain not only their lands and natural resources and their institutions and ways of life, but also their spirituality and belief systems. This struggle is on-going, although some advances have been made. These efforts are not necessarily a rejection of Western or world cultures, but rather an affirmation of their own cultures. Indigenous peoples continue

²³ Wilson (1999).

²⁴ Wilson (1999).

²⁵ See Reese (1980).

to explicitly and informally defend their worldviews as they not only want to survive as legal and political entities, but wish to do so within the spiritual and philosophical understandings of their forebears. In other words, indigenous peoples want to continue to be informed by indigenous peoples' worldviews, values and philosophies.²⁶

Recognising the role of indigenous spirituality

For many indigenous people, having a healthy sense of spirituality is just as important as other aspects of mental, emotional and physical health. It is important to realize that a healthy spirit is essential for indigenous people to live a healthy life. Mainstream society is beginning to realize that spirituality is an element that must be taken into serious consideration when dealing with indigenous communities. The importance of integrating spirituality into health care, for instance, has been recognized by WHO. Other areas, for example, within rehabilitation and re-education of indigenous prison inmates, have also begun to accept that spirituality is an integral part of indigenous peoples and therefore an important issue that cannot be overlooked.

Sources: Wilson (1999); WHO (1998).

At the same time, however, indigenous peoples around the world are concerned about the on-going appropriation of their spirituality. In many countries, people who appropriate indigenous peoples' spirituality have a desire to (re)-spiritualize themselves (and possibly others) by using the sacred traditions of indigenous cultures. These people see indigenous cultures and spirituality as emphasising values that are missing from their own societies, such as environmental friendliness, solidarity and reciprocity. They also view indigenous societies as free from technology and industrialization. These attributes combine to create a fantasy of indigenous life.

Many indigenous peoples see the appropriation of their spirituality as a continuation of colonialism because it does not appreciate the political understandings that accompany and reinforce indigenous belief systems.²⁷ Important aspects that are often overlooked or not understood when appropriation takes place include, for example, the fact that spiritual leaders in indigenous communities have their own training and their own experiences; they have knowledge about aspects of spirituality and philosophical thought and often do not enter into disputes in their communities, nor do they seek disciples or converts. They also have, in general, a direct relationship with the sacred and keep their experiences and their knowledge to themselves. Indigenous peoples' spirituality and understandings, on the other hand, are imbued throughout life;

a healthy spirit is essential for indigenous people to live a healthy life

²⁶ Champagne (2007), 328-329.

²⁷ Welch (2002).



their spirituality and beliefs are not static, but are socially constructed according to changing circumstances in the world or immediate environment and do not necessarily form a set of rules maintained and enforced by a religious hierarchy.²⁸ Hence, appropriation of indigenous peoples' spirituality is generally done without respect and tends to reinforce a fixed and static colonial understanding of indigenous peoples, thereby denying them the dynamism of cultural growth.

Social institutions

Social institutions determine the way people in a given society organize themselves in order to function as distinct communities, differentiated from others by specific rules, obligations and patterns of behaviour. Relationships to the land, social relationships, kinship rights and obligations constitute some of the social institutions that enable indigenous peoples to organize and relate to each other both as individuals and as sub-categories, such as men, women, youth or elders, or as occupational groups of hunters, herders, farmers, smiths, midwives, etc., and thereby meet their needs as communities.

Indigenous social institutions reflect indigenous peoples' unique and holistic worldviews, as well as their collective perspective, and this includes, for most of them, an interactive relationship between the community, nature and ancestors. Most of the activities of daily life are accompanied by rituals and cultural practices aimed at maintaining that relationship with, for example, the ancestors or nature. Cultural practices relating to ancestors are particularly important because of the reciprocity existing between living and deceased persons. The community depends on the goodwill and help of ancestors through dreams and spiritual paths, and the ancestors need to be honoured through appropriate ceremonies and maintenance of their burial places. Other cultural practices relate to nature and intend to maintain the relationship with the forces in nature on which their success as farmers, hunters or pastoralists will depend.²⁹

Social institutions also determine relations of production, and whether those relations produce egalitarian or centralized polities. Most indigenous communities are organized around individuals who have specific roles, but the degree of specialization varies from culture to culture. In some cultures, anyone wishing to specialize in a particular task can do so, while this is not possible in others. Specialization can also be done through age or gender categories whereby women/youth/men/elders have prescribed roles within the society. This brings in the issue of sex and gender, whereby sex refers to the biological differences between male and female, while gender refers to the social classification of masculine and feminine, the attributes of which are defined and patterned by culture. In many societies, including most indigenous societies, women and men have well-differentiated roles, and women usually have a subordinate position in relation to that of men.

It is within social institutions that communities realize economic and political arrangements. In indigenous societies, there usually exists a wide range of social institutions for reciprocity and mutual aid,³⁰ sharing food and other resources, resolving conflicts and administering justice, and for managing commonly held resources. All indigenous communities traditionally also had people whom they respected and by whose suggestions they frequently chose to abide. These leaders had a significant say in civil matters and in decision-making regarding the use of local resources, and who represented the community in discussions with outsiders. Public policy was always based on extensive consultation and discussion among the group members, with all adults, and sometimes children, having the opportunity to participate. Decision-making was generally done on the basis of

²⁸ Champagne (2007), 330-331.

²⁹ Gomez (2007). See also Kenrick (2000).

³⁰ Schwab (1995); Martin (1995).

consensus. Upholding these social institutions—and thus the organization of the local community—was to adhere to a generally accepted system of customs and mores or customary law.³¹

Along with colonization and the spread of non-indigenous institutional structures, indigenous social institutions have largely been replaced and subordinated to the modern state structures. Centralized systems of governance are now the norm, and these have been replicated from the capital to the local level, leaving little power or influence to traditional leaders. Customary laws have been forbidden or subordinated to the formal mainstream legal system; social institutions related to family, education, health and economy have disappeared, changed in accordance with mainstream norms, or been weakened to the extent of losing their significance. The process of losing what has been called “the necessary frame of reference for any culture to thrive”³² has left many indigenous societies severely disrupted culturally and socially—more so in cases where the process has been accompanied by the loss of land, territories and natural resources.

The weakening of their traditional institutions has challenged indigenous peoples’ distinct identities. When indigenous peoples therefore claim the right to maintain their social organization in the face of the pressures of the wider society, they are actually appealing for the preservation of their culture.³³ This explains the importance given by indigenous organizations to the issue of self-government.

In many countries, there has been a push for de-centralization of political power to create more consensus in decision-making and for indigenous peoples to be included in policy-making and legislative reforms on issues that affect them. In numerous instances, indigenous organizations have even been able, through negotiations and treaties, constitutional reform or special legislation, to establish agreements with states regarding this right to self-government. In other cases, however, this has not yet been possible, and national or regional-level governmental units still take it upon themselves to administer the affairs of indigenous communities.³⁴

At the international level, on the other hand, the right of indigenous peoples to their own institutions has been enshrined in ILO Convention No. 169 (articles 2.2b and 8.2) and in the Declaration on the Rights of Indigenous Peoples, which, in Article 35, states

“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 they exist, juridical systems or customs, in accordance with international human rights standards.”

culture should be integrated as a prerequisite and a basis for development project design in order to build ‘development with identity’, respecting people’s way of life and building sustainable human development

³¹ Stavenhagen (2005).

³² Stavenhagen (2005).

³³ Stavenhagen (2005).

³⁴ Stavenhagen (2005).



As indigenous peoples have further strengthened their own systems, they have also given thought to what and how development should be pursued in their territories. There are various terms and concepts which they have evolved to differentiate their paradigm of development from the mainstream model. The ones currently being used are self-determined development, life projects, development with identity, autonomous development and ethno-development.³⁵ The Programme of Action for the Second International Decade of the World's Indigenous Peoples uses the term "Development with identity" when recommending "that culture should be integrated as a prerequisite and a basis for development project design in order to build 'development with identity', respecting people's way of life and building sustainable human development".³⁶

Several funding agencies and development organizations are also acknowledging the importance of respecting indigenous institutions—not only because of their value for indigenous communities, but because they are now seen as a source of inspiration and a way of ensuring sustainable results.

Development with identity

A new paradigm within development—"Development with identity"—has recently been promoted by several UN agencies, including IFAD, Inter-American Development Bank (IDB) and UNESCO. In its Operational Policy on Indigenous Peoples and Strategy for Indigenous Development adopted in 2006, IDB defines "Development with identity" as referring "to a process that includes strengthening of indigenous peoples, harmony and sustained interaction with their environment, sound management of natural resources and territories, the creation and exercise of authority, and respect for the rights and values of indigenous peoples, including cultural, economic, social and institutional rights, in accordance with their own worldview and governance."

The challenge for the strategy lies in supporting and promoting development initiatives and organizational systems unique to indigenous peoples in order to improve their living conditions through their own leadership and in a manner consistent with each community's specific socio-cultural situation and vision. This means greater access, with gender equality, to socioeconomic development opportunities that strengthen identity, culture, territoriality, natural resources and social organization, and reduce material poverty and marginalization.

Source: IDB (2006).

Culture and traditional knowledge

Indigenous traditional knowledge refers to the complex bodies and systems of knowledge, know-how, practices and representations maintained and developed by indigenous peoples around the world, drawing on a wealth of experience and interaction with the natural environment and transmitted orally from one generation to the next.

Traditional knowledge tends to be collectively owned, whether taking the form of stories, songs, beliefs, customary laws and artwork or scientific, agricultural, technical and ecological knowledge and the skills to implement these technologies and knowledge. Not only does traditional knowledge provide indigenous

³⁵ Tauli-Corpuz (2008).

³⁶ See United Nations A/60/270 (2004).

peoples with tremendous possibilities for their daily life and sustainable and collective development as peoples, it also reflects indigenous peoples' holistic worldviews, which are considered as a most important source of the world's cultural and biological diversity.³⁷

Indigenous knowledge is embedded in community practices, institutions, relationships and rituals and is inextricably linked to indigenous peoples' identity, their experiences with the natural environment and hence their territorial and cultural rights. Indigenous peoples therefore place a great deal of importance on passing this knowledge on to future generations—not only for the sake of preserving the knowledge, but also for preserving their own cultures and identities.

The transmission of traditional knowledge

Tom Mexsis Happynook belongs to what he calls a hereditary whaling family that comes from Cha-cha-tsi-us, which is part of the Huu-ay-aht First Nation on the west coast of Vancouver Island, British Columbia, Canada. He recalls the following:

As a child, I was fortunate to be raised and taught by my grandfather, two great-grandmothers and two great-aunts. I am still being taught by my grandmother, who has turned 85. She was taught by her grandmother, who died in 1958 at the age of 108. I am still receiving the teachings from the mid-1800s.

What did they teach me? I was taught that there is a natural law of nature which we must live by; that we are only one component in the web of life; that we are not dominant over the environment but, in fact, related; that we take only what we need and utilize all that we take; that everything is inter-connected, and when one component in the environment or ecosystem is over-exploited and not protected, the balance is lost.

Source: Happynook (2000), 64.

traditional knowledge tends to be collectively owned

Traditional knowledge is also directly linked to the concept of self-determination in the sense that indigenous peoples have the right to manage their own heritage, knowledge and biodiversity and, in order to do so, their rights to their territories and resources must be fully recognized and protected. In other words, "the right to self-determination requires that [indigenous peoples] must be able to freely dispose of their wealth and resources, and they must not be deprived of their means of subsistence".³⁸

³⁷ SPFII (2005), 4.

³⁸ See, e.g., the UN Human Rights Committee Observations on Norway and Canada (1999).



Traditional knowledge among hunter-gatherers and pastoralists in Africa

Traditional knowledge and traditional resources have been managed by indigenous and local communities since time immemorial, using customary law embedded in spiritual cosmology. Such is the case of the Baka, Efe and Mbuti of Central Africa who spend long periods of time in the forest, hunting for meat, gathering plant foods and collecting honey. Everything they own has to be carried when they move to a new hunting camp, so there is considerable advantage in having few possessions. What they do have in abundance is an intimate knowledge of the forest: the ability to read animal tracks, to know the flowering and fruiting cycles of plants, to locate a bee's nest from the flight of a bee. They know the individual properties of thousands of plants and make use of them to eat, to make poisons, to dull pain, heal wounds and cure fever. Most of them engage in rituals which involve asserting their relationship with the forest and with the spirits of the forest. Song is central to these rituals, and may last all night with the intention of establishing a peaceful state of mind in everyone, establishing co-operation among the whole camp, and improving the hunt through re-establishing a good relationship with the forest.

Another example is that of the Maasai pastoralists from Kenya and Tanzania. For them, rainfall and drought are the most critical climatic features, as they have a significant impact on the productivity of their animals. The Maasai have a number of techniques for monitoring the onset of rains—the flowering of specific trees, the shape of the moon, special sounds from a bird, etc.—and for predicting water availability in their rangelands, looking, for example, for the presence of butterflies or certain trees. Maasai communities also assess both quality and quantity of grazing by observing plant vigour, biomass production, vegetation cover and botanical composition. They also have a wealth of indigenous knowledge in the diagnosis of animal diseases and the therapeutic nature of plants on which they depend for the everyday treatment of their animals. This indigenous knowledge has proven to be important in matters of wildlife and environmental management and conservation. Evidence in indigenous Kenya indicates that the Maasai peoples peacefully co-existed with wildlife, that there were more wild animals in their territory before national parks and game reserves were established in those areas, and that the way they managed rangelands was beneficial to the wildlife.

Sources: Kenrick (2000), 11-24; FAO/LINKS (2005).

A great deal of traditional knowledge, including customary laws and folklore, has been undermined and destroyed by colonizers and post-colonial states who imposed their own systems of law, knowledge and worldviews on indigenous people. Today, there is an increasing appreciation of the value and potential of traditional knowledge. International law, for instance, recognizes that such knowledge forms an integral part of indigenous cultures and, as a consequence, to deprive indigenous peoples of their traditional knowledge and folklore violates those peoples' human rights.³⁹ Besides the Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169, for example, includes several provisions regarding the need to respect and protect "customs and traditions" as well as "handicrafts, rural and community-based industries and traditional activities".⁴⁰ Article 8(j) of the Convention on Biological Diversity (1992) is particularly clear in its language and provides that contracting Member Parties shall "*respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such*

³⁹ Åhrén (2002), 66.

⁴⁰ See ILO Convention No.169, articles 2.2b and 23.1.

knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices”.

The Declaration on the Rights of Indigenous Peoples and traditional knowledge

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, 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.

In 2002, UNESCO launched its Local and Indigenous Knowledge Systems (LINKS) Programme, which aims at empowering local and indigenous peoples in various aspects of environmental management by advocating recognition and mobilization of their unique knowledge. It also contributes to the safeguarding of traditional knowledge within indigenous communities by reinforcing their inter-generational transmission.

UNESCO has also adopted two conventions of relevance for indigenous cultures and traditional knowledge: the Convention for the Safeguarding of Intangible Cultural Heritage (2003), and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005). However, UNESCO has been criticized for having neither consulted nor included indigenous peoples in the drafting of the two conventions. Furthermore, neither convention adequately acknowledges the fact that a large part of the “cultural heritage” and “cultural expressions” they refer to is the heritage of indigenous peoples and indigenous cultures.⁴¹

At the same time, researchers, scholars and development practitioners and other stakeholders are demanding changes in attitude and approaches on the part of governments and donor agencies, stressing the need to incorporate indigenous knowledge into development policies and projects—not only for its cultural value to indigenous communities, but because it is adapted to local

there is an increasing appreciation of the value and potential of traditional knowledge

⁴¹ See chapter VII “Emerging Issues” in this publication.

conditions and therefore more apt to give sustainable results. A case in point are indigenous agricultural practices, which reflect the store of experience and knowledge accumulated over literally thousands of years and are based on a sound understanding of soils, plants and the environment. This knowledge is revealed through various practices that are used in crop/plant diversity, mixed cropping, land fallowing, and others associated with soil and crop management. For centuries, farmers deliberately influenced the natural processes of mutation by carefully selecting seeds and, thanks to their sophisticated knowledge, developed an intricate range of crop variability. In many places, however, this knowledge was neglected and eventually lost when the Green Revolution was introduced in the late 1960s. This transfer of technology involved widespread use of new (hybrid) seeds, chemicals fertilizers, pesticides and irrigation. While it did increase food production, it is now evident that it also entailed lasting costs, such as high soil erosion and the loss of plant genetic materials that were resistant to pests and diseases.

The traditional knowledge of indigenous women

The traditional knowledge of indigenous women is often not recognized or is undervalued. However, examples from many indigenous communities worldwide show that women are the repositories of knowledge and know-how that are of vital importance for the survival of their community. One example among many is that of indigenous women in Nepal and Bhutan who are known to play a crucial role in decisions regarding what to plant and which seeds to use. In other seed-related activities, women also supersede men: They select good seeds for the next season, basing their decisions on taste, colour, resistance to diseases and insect pests and adaptation to soil and agro-climatic conditions, and preserve them with a variety of traditional methods. Indigenous women also exchange seeds, and in some ethnic groups, grandmothers and mothers pass seed selection skills on to their daughters. Their special knowledge of the value and diverse uses of plants for nutrition, food security, health, and income determines which plant varieties should be conserved based on their usefulness to the family and community. Women take into consideration a plant's multiple uses, providing a balance to the market-oriented pressures that emphasize high yields and uniformity.

Source: Gurung (1998).

It is also now emerging that indigenous peoples' overall health, well-being and cultural continuity is directly related to their ability to consume their traditional foods⁴² and continue their traditional food practices.⁴³ This realization has led to calls to governments to incorporate culture into the development of sustainable agriculture, food systems and related practices, policies and programmes that respect and support the well-being of indigenous peoples.

Threats and challenges

While this increased recognition of the importance of indigenous cultures and indigenous traditional knowledge is a positive development, at the same time, indigenous peoples realize that they have to struggle ever more

⁴² During the African Regional Conference on Indicators held in November 2006, it emerged that a main element of well-being is having access to traditional foods. See UNPFII (2007a).

⁴³ In February 2006, the International Indian Treaty Council submitted a framework and summary of key issues for the development of cultural indicators for food security and sustainable development in preparation for the Second Global Consultation on the Right to Food and Food Security for Indigenous Peoples. See International Indian Treaty Council (2006).

in order to protect their cultures and traditional knowledge from a number of threats and challenges.

Misappropriation of indigenous knowledge

There is an increasing appreciation amongst academics and scientists, as well as industrial and agricultural corporations, of the value of traditional knowledge. Entrepreneurs, too, have been quick to see the market potential, and many Western companies are patenting traditional medicines without granting due recognition to the indigenous communities whose knowledge systems went into identifying the active ingredients as useful for particular ailments.⁴⁴

Traditional medicinal plants and prescription drugs

Researchers state that of the more than 130 clinically useful major prescription drugs that are derived from plants, over 70 per cent of them came to the attention of pharmaceutical companies because of their use in traditional systems of medicine. Examples include the medicinal properties of the sacred Ayahuasca plant (processed by indigenous communities in the Amazon basin for centuries), and a pesticidal extract from the neem tree used in India for its antiseptic properties since ancient times. They further noted that most of the plants from which these drugs are derived are found in tropical forests. Although tropical forests constitute only 7 per cent of the earth's surface, they contain an estimated two-thirds of its plant species.

A study in 2000 concluded that 7,000 patents had been granted for the unauthorized use of traditional knowledge or the misappropriation of medicinal plants.

Sources: Rossi (1980), 4; Human Development Report (2004).

many Western companies are patenting traditional medicines without granting due recognition to the indigenous communities

A growing number of widely used consumer products, pharmaceutical drugs, cosmetics and handicrafts are derived from traditional knowledge and indigenous cultural expressions. There are also high hopes for further advances based on traditional knowledge in the fields of biotechnology, medicine and agriculture.

For centuries, indigenous peoples have readily shared their knowledge with non-indigenous people, seeing their knowledge not as private property to be protected, but as collective goods to be shared for the benefit of all. However, in more recent times, as they have seen how their traditional knowledge is being

⁴⁴ See supra note 2, 4.



ever more used for profit, indigenous peoples increasingly demand that their traditional knowledge be protected and recognized.

The respect—or rather, the lack of respect—accorded to indigenous peoples in terms of their identity and cultural expressions is an ongoing issue. The idea that indigenous peoples “own” their own cultures as well as the spiritual and cultural meanings of their lives and surroundings is an issue that many institutions are reluctant to concede. Previously, indigenous peoples’ knowledge systems and cultural expressions were seen as the property of academics, governments, scientists, museums and art galleries. For example, many indigenous sites are today considered to have cultural and scientific as well as aesthetic and public value and therefore the potential of becoming World Heritage sites that “belong to all the peoples of the world, irrespective of the territory on which they are located”.⁴⁵ The connection and relationships between these sites and living indigenous communities who want to protect their cultural heritage and assert their custodianship is still an issue that the wider society finds difficult to understand and accept.

The impact of globalization

Cultures have never been static, constrained and homogeneous, even though this belief is still common throughout the world. Cultures do not have rigid borders. On the contrary, they are open to multiple influences, and changes are happening at an accelerated speed, with cultural information and people flowing more freely across borders than ever before.

The interaction between cultures is a complex process of negotiation. New ideas are confronted, contested, integrated or rejected within historical and cultural contexts. The telephone, internet and global media bring realities of life across the globe into people’s living rooms, making them aware of the many products available for consumption.

For indigenous peoples, globalization is a mixed blessing. It both constitutes an unprecedented opportunity for empowerment and an unprecedented threat to the autonomy of their cultures.⁴⁶ Globalization has made it easier for indigenous peoples to organize, raise funds and network with other groups around the world. It has also made it possible to alert and mobilize the international community in times of crisis, raise awareness about human rights abuses and have greater political reach and impact than before.

Globalization has also meant easier access for multinationals to exploit the lands and natural resources on which indigenous peoples depend; it has opened up markets and found new ways of commodifying indigenous cultures. Globalization makes indigenous cultures available to a wider audience and thus provides access to cultural practices to outsiders who consider that “public” property can be “borrowed” at will. At the same time, it has also allowed an influx of cheap manufactured goods that indigenous cottage industries and handicraft production find difficult to compete with.

Another major reason why indigenous peoples feel threatened by globalization is the way national governments and international institutions promote national growth through exploiting resources on indigenous peoples’ lands while at the same time talking about protecting indigenous peoples’ identities, traditions and cultural expressions. Indigenous peoples find that the two things are at odds and could potentially lead to a conflictive

⁴⁵ See World Heritage site at <http://whc.unesco.org/en/about>. See also Chapter I “Indigenous Peoples: Poverty and Well-being” in this publication.

⁴⁶ Smith et al. (2000).

situation. They believe that many issues are being overlooked, such as their spiritual connections to their lands and territories, their concerns for the impact on their cultural identity and economic livelihood, and their unfair exclusion from decision-making processes, including the process of free and informed prior consent and the lack of adequate compensation when the resources on the lands are exploited.⁴⁷

For all these reasons, indigenous peoples tend to see globalization as a threat to their territories, their traditions and cultural expressions, their cultures and identities, compelling them to fight harder on a variety of fronts to ensure their cultural survival, as well as to find a new way to assert their rights and autonomy.⁴⁸

Commodification of indigenous cultures

The commodification of indigenous cultures has taken on considerable dimensions with globalization. The exploitation of indigenous arts, designs, stories, performance and other art forms, as well as the proliferation of products on the market that imitate, misrepresent and profit from the alleged associations with indigenous cultures continue to be of major concern.

The use of indigenous peoples' names and images on sports mascots, commercial products, ventures or enterprises is an ongoing issue because it is most often designed to profit non-indigenous people. Further, the images are often derogatory, offensive and disrespectful to indigenous peoples. Owners of products explain their choice of mascot, name or logo by contending that their choice is motivated by a desire to show respect for indigenous peoples. However, it appears the real motive is profit, as there is little, if any, concern for the harm and suffering it has caused indigenous peoples. One example is the use of Native American names and mascots as symbols for college and school sports teams in the United States. Native American rituals, too, have been used for entertainment purposes at half-time during games. Native Americans have held protests for many years to eliminate the use of names and mascots from sporting teams, and in 1993, the National Congress of American Indians denounced "the use of any American Indian name or Artifice associated with Indian mascots" and called "upon all reasonable individuals in decision making positions to voluntarily change racist and dehumanising mascots".⁴⁹ Similar positions were expressed by the National Coalition on Racism in Sports and the Media, KOLA, the American Indian Movement and the Institute of American Indian Arts.

indigenous peoples tend to see globalization as a threat to their territories, their traditions and cultural expressions, their cultures and identities

⁴⁷ Human Development Report (2004).

⁴⁸ Human Development Report (2004).

⁴⁹ See National Congress of American Indians (1993), Resolution MID-GB-93-58.



Governmental support for discontinuing the use of stereotypical American Indian images

In 2001, the United States Civil Rights Commission issued a statement that said, in part

The use of stereotypical images of Native Americans by educational institutions has the potential to create a racially hostile educational environment that may be intimidating to Indian students. American Indians have the lowest high school graduation rates. The perpetuation of harmful stereotypes may exacerbate these problems.⁵⁰

Source: Wisconsin Indian Education Association "Indian" Mascot and Logo Taskforce at <http://www.indianmascots.com>



Stereotyping indigenous cultures as static “voices from the past” lies at the heart of cultural appropriation. The misuse of indigenous peoples’ images, designs, music, etc., denies the complex realities of indigenous societies whereby rights to lands, stories, music and designs connects peoples to places and cannot be separated from indigenous peoples’ identity. The selective borrowing of indigenous spiritual belief systems by outsiders is a corruption of the truths of indigenous peoples and their connection to their lands and to the laws that govern the use and transmission of their spiritual and cultural systems.

Tourism

As indigenous peoples and their cultures and territories are increasingly seen as desirable tourist attractions, tourism has opened the further commodification of indigenous cultures—something that affects many indigenous communities.

Tourism is undeniably an immensely important industry, with almost 900 million visitors generating US\$856 billion in 2007. Understandably, governments have recognized tourism as an important opportunity for income generation.⁵¹ But as a profit-driven industry, tourism tends to view landscapes and people as consumer products to be bought and sold. Particularly when imposed from outside the community, the negative impacts of tourism may include disrupted lifestyles and ecosystems, poorly distributed or inconsistent profits, the pressure to turn cultural traditions into products, greenwashing,⁵² and unequal participation in the planning of projects dominated by foreign or government interests. Many critics have pointed out that the tourist industry is dominated by outsider interests, which retain most of the benefits and leave the host destinations to suffer the costs.⁵³

The rise of ecotourism has particularly been promoted as a viable development model for indigenous peoples. Tourism, including ecotourism, is frequently not environmentally friendly. It takes vast amounts of fossil fuel to transport 900 million individuals to their destinations, and the expansion of tourism in the relatively pristine areas where indigenous peoples live brings a great deal of waste and disruption to local environments, economies and cultures. With ecotourism, indigenous peoples have experienced eviction from traditional lands, overuse of habitat related to increased tourist demand and the destruction of habitat to create tourism infrastructure.⁵⁴

⁵⁰ Kraatz (n.d.).

⁵¹ Hinch and Butler (1996). 4.

⁵² Greenwashing is the unjustified appropriation of environmental virtue by a company, an industry, a government, a politician or even a non-governmental organization.—Ed.

⁵³ Hinch and Butler (1996), 4.

⁵⁴ Tourism Concern (2002).



In fact, the driving forces of ecotourism—clean untouched nature and authentic indigenous cultures—are often severely compromised by the influx of tourism.

Tourism has been both a contributor and a motivating force when it comes to exposure to and renewal of indigenous cultures. But like most other local populations, indigenous peoples frequently do not benefit from tourism-related activities, but they do bear the costs, which can and often are devastating, economically as well as culturally. The urge to see “real, genuine and authentic indigenous peoples” is a strong motive for many tourists. But this can be problematic, as the tourists may not be looking for in-depth exposure. Hence, the cultural practices and activities of indigenous peoples are often transformed into demonstrations, souvenirs and experiences for the consumption of the visitors. Indigenous heritage is reduced to trinkets and spectacles devoid of their original spiritual meaning and valued only as commodities to be sold. At the same time, traditional modes of sustenance are abandoned, leaving indigenous peoples dependent on outside visitors as a fickle and unreliable source of livelihood.

Indigenous peoples involved in the tourist industry and who incorporate cultural elements in their tourist products are constantly faced with the challenge of sharing their culture without compromising its integrity. This situation often results in indigenous peoples and their communities having to face difficult decisions and potential dissent. The issue of whether outsiders can participate in ceremonies and other spiritual activities, for example, varies from place to place. However, in most instances, indigenous elders are unequivocal in their belief that indigenous peoples’ spirituality is not for sale, and that there is no place for spiritual ceremonies in tourism products.⁵⁵

the tourist industry is dominated by outsider interests, which retain most of the benefits and leave the host destinations to suffer the costs.

At the same time, tourism is not inherently negative for indigenous peoples and can certainly be an important source of revenue and job creation, provided that indigenous peoples themselves are directly involved in all decision-making processes regarding tourism on their lands. Over the past two decades, community-based approaches to tourism have gained popularity. This form of ecotourism is often presented as an important contribution to sustainable development that generates employment and revenues, improves local infrastructure and generally contributes to a positive interaction between visitor and local communities, thereby promoting increased cultural awareness and respect. In this context, it is crucial to adhere to the principle of free, prior and informed consent, ensuring that indigenous peoples are fully aware of planned tourism activities on their lands, that they themselves authorize and approve these activities and benefit from them.

⁵⁵ Notzke (2004).



Intellectual property rights and indigenous peoples

Many indigenous peoples feel they should be able to stop the commodification of some aspects of their culture, especially of objects that are sacred to their communities.

The international property rights regime, however, often fails to recognize indigenous customary law

The dominant model for recognising and protecting knowledge and cultural expressions is the intellectual property rights regime. This regime, which is based on Western legal and economic parameters as well as on Western property law, emphasizes exclusivity and private ownership, reducing knowledge and cultural expressions to commodities that can be privately owned by an individual or a corporation. The intellectual property rights regime is widely recognized as the primary mechanism for determining ownership and property rights over knowledge, processes, innovations, inventions, and even naturally occurring phenomena such as plants, animals and genetic material. This form of ownership is protected by states and promoted by the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO).

The intellectual property rights (IPRs) regime and the worldview it is based on stand in stark contrast to indigenous worldviews, whereby knowledge is created and owned collectively, and the responsibility for the use and transfer of the knowledge is guided by traditional laws and customs.⁵⁶ What is often overlooked by the wider society is the fact that, within indigenous societies, there are already laws governing the use and transmission of their knowledge systems that often do not have any formal recognition in the wider legal system. These internal regimes have operated within indigenous communities since time immemorial and have been developed from repeated practices, which are monitored and enforced by the elders, spiritual and community leaders. The international property rights regime, however, often fails to recognize indigenous customary law.

There are therefore concerns that the IPRs regime, grounded in Western concepts of individualism and innovation, does not have the ability to protect the collective or perpetual interests of indigenous forms of cultural expression.

How indigenous peoples' rights to their knowledge differ from conventional IPRs

- ◆ Indigenous peoples have collective rights, often vested in clan, family or other socio-political groups
- ◆ Indigenous peoples' cultural heritage and expressions often cannot be associated with a single, identifiable individual creator, author or producer

⁵⁶ The United Nations Permanent Forum on Indigenous Issues, at its Fifth Session, appointed Mick Dodson, Member of the Forum, to prepare a study on customary laws pertaining to indigenous traditional knowledge. This study was presented to the Permanent Forum at its Sixth Session. See UNPFII (2007b).

- ◆ Cultural heritage, objects and expressions are managed and owned in accordance with customary rules and codes of practice, and are usually not sold or alienated in ways that conventional IPRs can be
- ◆ Indigenous rights include all forms of traditional knowledge, such as intangible cultural products and expressions, none of which are protected under conventional IPRs laws
- ◆ Indigenous peoples' knowledge is transmitted orally, and is therefore not subject to the same requirements regarding material forms that pertain to conventional IPRs laws
- ◆ Indigenous traditional knowledge is usually held by the owners and their descendants in perpetuity, rather than for a limited period

Source: Davis (1997).

Yet, in many instances, indigenous peoples are compelled to turn to the (IPRs) regime to find ways to clarify and protect their rights. Some indigenous peoples, typically artists and craftsmen, have used IPR legal systems to achieve copyright protection for tangible arts and crafts objects such as wood carvings, silver jewellery and sculptures, or have used trademarks to identify traditional art, food products and clothing. But on the whole, indigenous traditional knowledge and folklore usually do not meet the criteria of novelty and originality generally required for work to be protected under IPRs legal systems. Intellectual property protection is of limited time duration and does not apply to "old" creations already in the public domain (i.e., the indigenous community); moreover, it is normally impossible to identify individual creators behind traditional knowledge.⁵⁷ The IPRs regime therefore leaves most indigenous traditional knowledge and folklore vulnerable to appropriation, privatization, monopolization and even biopiracy by outsiders.

The Hoodia case

A celebrated case regarding the appropriation of indigenous traditional knowledge involves the San of southern Africa. In 1937, an anthropologist noticed that the San ate the Hoodia cactus to stave off hunger and thirst. Based on this knowledge, in 1995, the South African Council for Scientific and Industrial Research (CSIR) patented the Hoodia cactus's appetite-suppressing element (P57). By 1998, revenues from the licensing fee for developing and marketing P57 as a slimming drug had risen to US\$32 million. When the San alleged biopiracy and threatened legal action in 2002, the CSIR agreed to share future royalties with the San.

Source: Human Rights Report 2004.

This has prompted organizations such as WIPO to identify the needs and expectations of traditional knowledge holders and explore current and future possibilities of protecting traditional knowledge (TK), genetic resources (GR) and traditional cultural expressions (TCEs), or folklore.

In 2000, an Intergovernmental Committee (IGC) on Intellectual Property, TK, GR and TCEs was established. Indigenous representatives participate in its meetings,⁵⁸ and the IGC is currently considering the protection

⁵⁷ Åhrén (2002), 65.

⁵⁸ WIPO created, in 2005, a fund that supports the participation of indigenous representatives.



of TK and TCEs through several related and complementary processes, including a draft set of Objectives and Principles.⁵⁹

Indigenous peoples have emphasized that such protection must ensure that their heritage is safeguarded for the use of future generations, and that it is not to be misappropriated or commercialized “without the free, prior and informed consent of the custodians of the culture, knowledge and biodiversity.”⁶⁰ Indigenous peoples also feel that there are still arguments for a new legal regime specifically designed for indigenous peoples enabling them to protect and benefit from their cultural expressions and traditional knowledge, and that support should be given to develop systems and standards that allow them to fully negotiate terms in relation to the commercial use of their cultural expressions.⁶¹

The issue, then, is to find ways to reconcile the provisions of different international intellectual property regimes in order to protect traditional knowledge for the benefit of the indigenous community and promote its appropriate use within wider society.

Concluding Remarks

All over the world, there are clashes between state and indigenous peoples’ cultures and systems of livelihood (pastoralism, hunting and gathering, and shifting cultivation). It is a clash between the desire of many indigenous peoples to live on traditional lands, and the general thrust of government policies aimed at using indigenous peoples’ lands for other purposes. Whether this is the establishment of natural reserves or mega-projects such as hydro-electric dams or infrastructure development, indigenous peoples are frequently portrayed as an obstacle to national development plans.

Governments and developers have employed the dominant development paradigms to manufacture stereotypes that are negative and that depict indigenous peoples as “backward”, “uncivilized” and “uncultured”. While the Western culture and way of life is presented as modern and “civilized”, that of the indigenous peoples is depicted as an embarrassment to modern states. As a result, indigenous peoples have been discriminated against and marginalized by the processes of economic modernization and development.

Although indigenous peoples are often portrayed as a hindrance to development, their cultures and traditional knowledge are also increasingly seen as assets. It is argued that it is important for the human species as a whole to preserve as wide a range of cultural diversity as possible, and that the protection of indigenous cultures is vital to this enterprise. The twenty-first century is already witnessing growing recognition of the right of indigenous peoples to decide for themselves what should happen to their ancient cultures and their ancestral lands.

In recent years, the world has become more aware of the role of indigenous cultures in development processes. Many United Nations agencies and countless civil society organizations continue to make the case for the central role that indigenous peoples play in the preservation of cultural diversity. For development to be socially and economically sustainable, it must take into account and draw upon the values, traditions and cultures of the people in the countries and societies it serves. Indigenous peoples, perhaps more than any others, are aware of these relationships between culture and development.⁶²

⁵⁹ Åhrén (2002); Traditional Knowledge Bulletin (2008).

⁶⁰ Tauli Corpuz (2005).

⁶¹ Janke (1999).

⁶² Supra note 2, p.4

Such campaigns are bringing influence to bear on policy makers, development practitioners and the public, who have become increasingly aware of the important role that indigenous peoples' traditional knowledge systems (TKS) can play in promoting sustainable development in the economic and spatial spheres they occupy.⁶³

However, much remains to be seen in the practical world of development because indigenous peoples' cultures have not yet had the desired influence on development institutions, which are located far from the often remote areas in which indigenous people live.⁶⁴

In the face of increasing losses through globalization, discrimination or pressures to assimilate, there is also evidence indicating the resurgence of indigenous cultures, knowledge and languages. The increasing number of people acknowledging their indigenous status is contributing to the increased numbers and expansion of indigenous peoples and to the recovery of languages and indigenous knowledge systems. Efforts are being made toward recovering some of the endangered languages and cultures. This change is largely attributed to an increased knowledge of indigenous cultures and their potential. It is now an established fact that indigenous peoples' cultures are self-sustaining and can guarantee indigenous peoples a sense of well-being.⁶⁵

This resurgence is particularly evident at the international level, where the global indigenous movement grows ever stronger while indigenous peoples' organizations keep growing in size and sophistication. The indigenous peoples' movement has made significant strides in fighting for the recognition and protection of the collective rights of indigenous peoples, as highlighted by the adoption of the United Nations Declaration on the Rights of Indigenous Peoples on the part of the United Nations General Assembly in 2007, and indigenous peoples are increasingly present and visible at various international fora. These new achievements are heralding a new era in promoting the protection and development of indigenous cultures around the world.

⁶³ Supra note 2, p.4

⁶⁴ Supra note 2, p.4

⁶⁵ Peterson (1996).



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