



THE UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES

TOGETHER WE ACHIEVE

Backgrounder

Peace, justice and strong institutions: the role of indigenous peoples in implementing Sustainable Development Goal 16

The preamble of the 2030 Agenda on Sustainable Development stresses that there can be no sustainable development without peace – and no peace without sustainable development. Sustainable Development Goal 16 – Peace, Justice and Strong Institutions – aims to promote peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels.

SDG 16 ushers in a new kind of development: one where people could influence the decisions that affect their lives and create communities that thrive. It also articulates the key role that governance and the rule of law play in promoting peaceful, just, and inclusive societies and in ensuring sustainable development.¹

For sustainable Development Goal 16 to be achieved for indigenous peoples, it is critical that their rights are recognized, particularly the right to self-determination, which manifests itself in different forms, including autonomy and self-government.

Challenges

The impact on indigenous peoples due to historical injustices, often without redress or reconciliation, is a major reason for their continued marginalization.

The lack of recognition of their mere existence and legal recognition, such as issuing birth certificates or counting them in census denies indigenous peoples access to basic services such as education and healthcare, which disproportionately affects indigenous women and children. Many indigenous peoples remain stateless and often live in remote communities affected by

¹ 2016 UNDP Annual Report on The Rule of Law and Human Rights: For Sustaining Peace and Fostering Development: https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/rule-of-law-annual-report-2016.html

poverty where access to State justice is more precarious. Indigenous peoples are also sometimes denied voting rights, contributing to their already poor lack of representation in the political, economic, social and cultural life of the State. In efforts to help remedy this issue, knowledge-building on indigenous issues, legal recognition, data disaggregated by ethnicity and culturally appropriate programmes and services in indigenous languages are recommended to highlight and improve indigenous peoples' access to services, supporting their well-being.

Land rights are at the center of most conflicts involving indigenous peoples. Often, this results in the dispossession of traditional lands or appropriation for resource extraction, conservation, agribusiness, or development, without the free, prior and informed consent of indigenous peoples. As a result, criminalization of indigenous peoples and their livelihoods, threats to human rights defenders, land dispossession, violence and deaths from lawlessness is a pattern that is all-too-familiar.

International frameworks

Several articles in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) are central to the attainment of Goal 16, addressing issues of self-determination and self-governance, participation in decision-making and access to justice.

UNDRIP Article 4 states that indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5 states that indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 18 states that indigenous peoples have the right to participate in decision-making in matters that would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19 sets out that States are to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 27 addresses the obligation of States, in conjunction with indigenous peoples, to establish and implement an impartial and transparent process to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources.

According to Article 40, indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Other international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination have implicit references to indigenous peoples' rights to self-determination, birth registration, citizenship, and to freely pursue their economic, social and cultural development.

Systems of justice and the case for legal pluralism

Indigenous systems of justice have developed over time and are fully capable of resolving land and social disputes. Western-centric models of justice are characteristically capitalistic, scientific, and based on individualized rights, contradicting the world view of indigenous peoples.

Indigenous justice mechanisms are generally closer geographically, less costly and use languages understood by all in the communities they serve. The fact that the decision-maker is someone familiar to the disputants may inspire trust, or at least be less intimidating than the formal setting of a State court.

In a few countries, progress has been made in recognizing the importance of indigenous peoples' participation and inclusion in decision-making through indigenous systems of justice and in peace processes. Examples include:

- In 2015, a special Cabinet Committee for the Land Rights of Indigenous Peoples and access to customary lands was established in Malaysia that was a result of efforts to examine the root causes of the land issues facing indigenous peoples.
- In Colombia, the 2016 peace accord between the Government and the Revolutionary Armed Forces of Colombia contains a specific provision calling for respect for the jurisdictional functions of traditional authorities and for the establishment of a coordination mechanism between the Special Jurisdiction for Peace and the Indigenous Special Jurisdiction.
- In Ecuador and Colombia, the right of indigenous peoples to exercise juridical functions following their own customary laws is recognized in the Constitution, as long these do not contradict constitutional or internationally recognized human rights standards.
- In Mexico, indigenous mechanisms and the jurisdiction of indigenous authorities are officially recognized in some states.

- In a number of Asian countries, indigenous peoples are granted constitutional recognition or are the subjects of special laws.
- In Timor-Leste, indigenous customary practices were incorporated into transitional justice measures by the Commission on Reception, Truth and Reconciliation through the concept of *Nahe Biti*, community meetings held on a rolled-out mat.
- The Republic of the Congo is one of the few countries in Africa that recognizes the rights of indigenous peoples and guarantees their right to resort to their customary laws to solve internal disputes in accordance with national law.

To advance the well-being of indigenous peoples and to eliminate the discrimination that stems from the precedence of Western models of justice, the benefits of legal pluralism must be recognized and applied. Legal pluralism is the existence of multiple legal systems that supports equal access to justice for all. The SDG 16 vision of more inclusive societies requires a harmonization between State and indigenous institutions and systems to ensure that indigenous peoples have equal access to justice and equal life opportunities.

Recognizing and supporting indigenous justice systems can contribute to a more equal and effective access to justice for all – in line with Goal 16 – and result in better implementation of the United Nations Declaration on the Rights of Indigenous Peoples.