

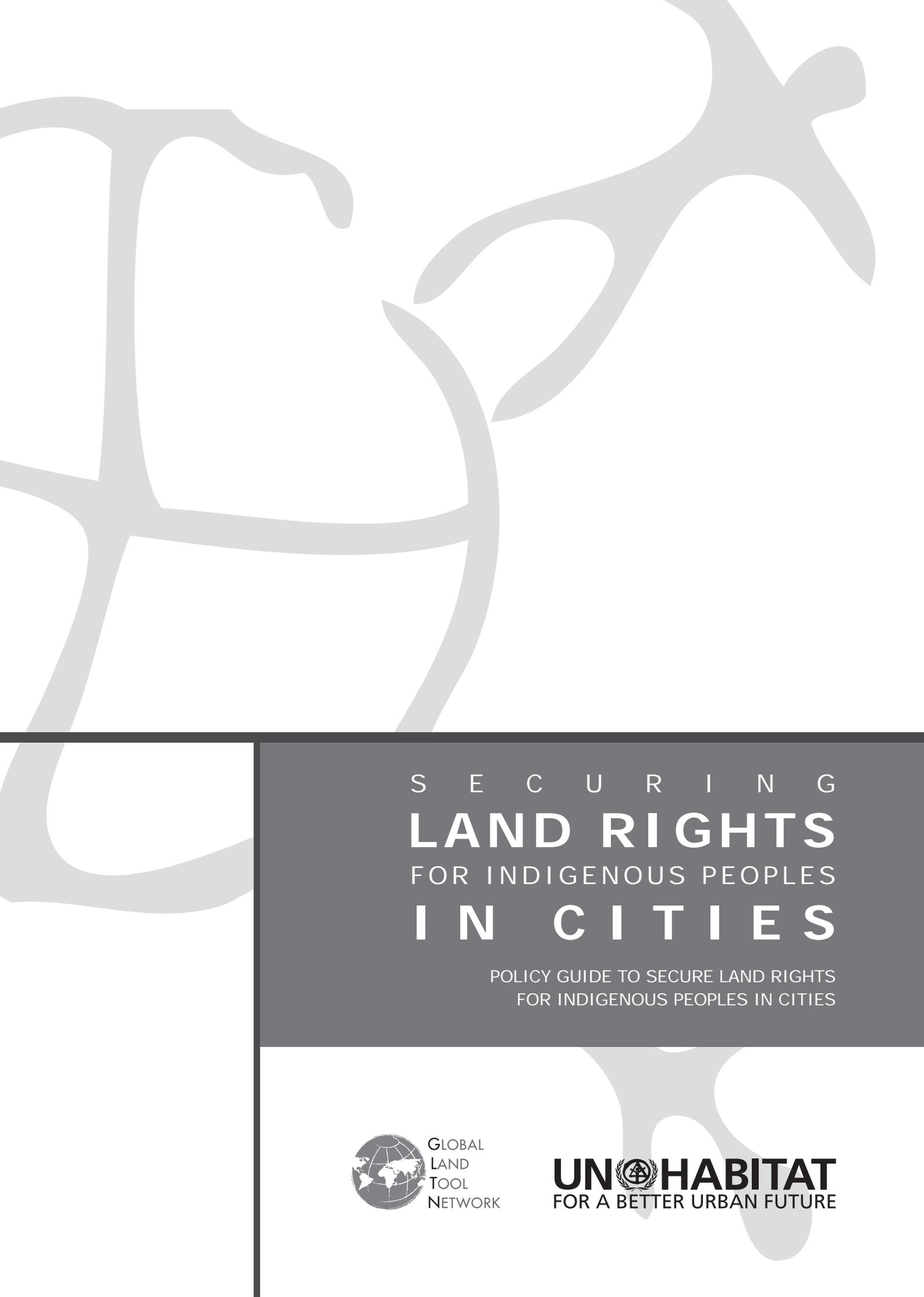


S E C U R I N G
LAND RIGHTS
FOR INDIGENOUS PEOPLES
IN CITIES

POLICY GUIDE TO SECURE LAND RIGHTS
FOR INDIGENOUS PEOPLES IN CITIES



UN  **HABITAT**
FOR A BETTER URBAN FUTURE



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ACKNOWLEDGMENTS

This publication has been made possible through financial support from the Governments of Canada, Sweden and Norway, and from the Global Land Tool Network (GLTN).

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This policy guide is the second volume of a set of urban policy guides on challenges faced by Indigenous peoples in cities.

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Photo credit: UN-HABITAT

May 2011

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HS Number: HS/066/11E

ISBN Number: (Volume 2) 978-92-1-132360-3

Printing: UNON, Publishing Services Section, Nairobi, ISO 14001:2004-certified.

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Contents

FOREWORD.....	VII
THE CHALLENGES FACING INDIGENOUS PEOPLES IN CITIES.....	1
1.1 Indigenous Women	4
1.2 Indigenous Children and Youth	5
1.3 Indigenous People with Disabilities	6
1.4 Indigenous Elders	7
1.5 Indigenous Sexual Minorities	7
URBANIZATION AND LAND AND PROPERTY RIGHTS OF INDIGENOUS PEOPLES	11
2.1 Migration and Land and Property Rights of Indigenous Peoples	14
2.2 Urban Expansion and Indigenous Peoples' Rights to Land and Property	27
HUMAN RIGHTS AND STATES OBLIGATIONS: AN OVERVIEW OF THE LAND AND PROPERTY RIGHTS OF INDIGENOUS PEOPLES IN URBAN AREAS.....	31
3.1 Self-Determination and Rights Related to Lands, Resources and Territories	33
3.2 Cultural Rights and Indigenous Legal Systems.....	35
3.3 Millennium Development Goals (MDGs)	36
3.4 The Habitat Agenda	37
3.5 Linking Land and Property Rights and Other Human Rights	38
HOW TO IMPLEMENT EFFECTIVE URBAN LAND AND PROPERTY POLICY FOR INDIGENOUS PEOPLES.....	51
4.1 Overriding Principles	53
4.2 Recommended Actions for National, Local and Indigenous Governments.....	55
POLICY CHECKLIST	65
5.1 General	65
5.2 Migration & Land and Property Rights of Indigenous Peoples.....	66
5.3 Urban Expansion and Indigenous Peoples' Rights to Land and Property	67
DO'S AND DON'TS.....	68
ANNOTATED RESOURCES.....	70

Foreword

This Policy Guide to Secure Land Rights for Indigenous Peoples in Cities will serve as a tool for policy-makers at the national, local and Indigenous government levels, who are responsible for promoting and protecting the land, security of tenure and property rights of Indigenous peoples. It begins with an overview of the challenges facing Indigenous peoples in cities, with particular attention to the unique challenges facing Indigenous women, children and youth, people with disabilities, elders and sexual minorities.

Land and property rights of Indigenous peoples are reviewed in the context of urbanization, including migration and urban expansion. In terms of migration, the key areas of concern explored are: dispossession of lands, resources and territories by States, forced eviction and displacement caused by development, lack of recognition of Indigenous land tenure systems, environmental concerns (including climate change and natural disasters), economic factors and armed conflict.

Related human rights and states' obligations related to land and property rights of Indigenous peoples in urban areas are set out. These include self-determination and rights related to land, resources and territories; cultural rights and Indigenous legal systems; property rights; non-discrimination and equality; and economic, social and cultural rights; and those related to natural disasters and Indigenous land rights. The specific rights of Indigenous women, children and persons with disabilities are set out. Specific obligations are identified under the UN Declaration on the Rights of Indigenous Peoples, the Millennium Development Goals and the Habitat Agenda.

This is followed by an examination of how policy-makers can implement effective land and property policy for, and/or by, Indigenous peoples in urban areas. Overriding principles are provided along with recommended actions for national, local and Indigenous governments. This is followed by a list of annotated resources, a policy checklist, and a list of "do's and don'ts" for easy reference.

It is hoped that this Guide will provide adequate guidance to policy-makers to take a rights-based approach to securing land and property rights of Indigenous peoples in urban areas.





ONE

THE CHALLENGES FACING
INDIGENOUS PEOPLES IN CITIES





THE CHALLENGES FACING INDIGENOUS PEOPLES IN CITIES

The assumption that large proportions of Indigenous peoples live in rural and remote areas is erroneous. The urbanization of Indigenous peoples is the result of two main influences: i) migration by members of Indigenous peoples to towns and cities¹; and ii) cities growing to engulf Indigenous settlements, making their ancestral lands part of the urban setting.² Indigenous peoples have long resided in areas that are now urban and an increasing number of Indigenous peoples living in rural areas are now migrating to cities.

In terms of defining who is “Indigenous,” the most accepted definition of Indigenous peoples is set out by Special Rapporteur José R. Martínez Cobo in his report on discrimination against Indigenous peoples. He states that “Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existences as peoples, in accordance with their own cultural patterns, social institutions and legal systems.” Special Rapporteur Martínez Cobo notes that on an individual basis, an Indigenous person must self-identify as well as receive acceptance from the Indigenous group to which they belong in order to be considered Indigenous.³ Indigenous peoples use land in diverse ways – for example, as pastoralists, hunters and gatherers and farmers, but also to build their home and sustain their livelihoods in cities.

Insufficient demographic and statistical information has made it difficult to reach an overall figure that captures the rate and percentage of Indigenous peoples residing in urban areas (either temporarily or permanently) and migrating to urban cities.⁴ It is generally understood, however, that more than half of the Indigenous population in many countries resides in urban areas.⁵ This rate is on the increase

¹ UN-HABITAT, 2009a: p. 1.

² UN-HABITAT, 2009a: p. 1.

³ Special Rapporteur Martínez Cobo, 1981: para. 379-382.

⁴ UN-HABITAT and OHCHR, 2010: p. 9.

⁵ See, for example, UN-HABITAT and OHCHR, 2010.



due to a variety of factors that have led to movement – forced or voluntary – of Indigenous peoples from rural to urban areas, many of which constitute human rights violations. For example, Indigenous peoples are often compelled to migrate because of: dispossession of their lands,⁶ including due to privatization of lands, or large scale development projects, (e.g.: hydro dams, mining and logging) by governments, or private corporations and international financial institutions; natural disasters such as droughts or flooding; physical and economic insecurity in conflict zones; and because of poverty⁷ and the absence of health services, childcare, schools, or other facilities that would lead to economic development.⁸ In some instances, movement to the city is regarded as an opportunity to find improved employment, housing, health, education, political participation, social recognition or other benefits they are not experiencing in their territories.⁹

Lands, territories and resources are of spiritual, social, cultural, economic, and political significance to Indigenous peoples and are inextricably linked to their identity and continued survival.¹⁰ Indigenous peoples have advocated for recognition of the right to self-determination and rights to own, conserve and manage their territories, lands and resources.¹¹ While rural-urban migrants typically try to maintain close ties with their communities of origin, relocation away from their lands to an urban setting has fundamental and significant ramifications on all fronts.

The situation of Indigenous peoples in urban areas varies. Some Indigenous peoples find ways to adapt and even improve their living conditions in the urban context while still maintaining their cultural identity. Most often, this is possible in places where the State in which they are living has adopted policies and programs that are supportive and inclusive of Indigenous peoples and their cultures. Unfortunately, more commonly, Indigenous peoples suffer extreme poverty, disadvantage and discrimination in the urban context.¹² As the population of cities explodes, available land is becoming increasingly scarce and thus unaffordable especially for those who are at the lowest end of the economic spectrum, including many Indigenous peoples.¹³ As a result, Indigenous peoples in cities, particularly in the developing countries, tend not to own, access, use and inherit land and property. Rather, they live where they can: in informal slums and settlements and without security of tenure. Economic marginalization far too often leads to higher incidences among urban Indigenous peoples of inadequate access to urban housing, infrastructure and services thus are prone to homelessness.¹⁴

⁶ UNPFII, 2007: paragraph 2 which states, "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."

⁷ Note the definition of poverty in UN-HABITAT, 2009a: p. 23: "Poverty" must be defined in accordance with indigenous definitions, which reflect the centrality of indigenous peoples' relationship to their lands and territories and sustainable development as opposed to State-based definitions of poverty, which relate strictly to access and monetary gains."

⁸ UN-HABITAT and OHCHR, 2010: p. 29; Burger, 2007.

⁹ UN-HABITAT and OHCHR, 2010: p. 16.

¹⁰ UN Doc E/CN.4/Sub.2/2001/21: paragraph 12.

¹¹ UNPFII, 2007: p. 2-3.

¹² UN-HABITAT and OHCHR, 2010.

¹³ UN-HABITAT, n.d: p. 18.

¹⁴ UN-HABITAT and OHCHR, 2009a: p. 22. For example, in Toronto, Canada, urban Aboriginal people make up 25 percent of the homeless population, although they are only 2% of the city's population. Systemic factors include the effects from the residential school system, the Indian Act, the Sixties Scoop and education, employment and housing barriers. See: Wente, 2000.



Whether they are living in cities and towns as a result of urban expansion, forced or voluntary migration, or because that is where their ancestral lands lie, urban Indigenous peoples generally suffer the same economic and social conditions. Indeed, often, Indigenous peoples general lack of employment and income-generating activities, or employment opportunities that are exploitative of their culture and identity, lower wages than non-Indigenous peoples, lack of job security, limited access to services including health, education, grossly inadequate housing, violence, marginalisation, exclusion and discrimination by employers, landlords, and government officials. Ole Kaunga (2000) captures the experience of pastoralists in urban areas of Kenya as follows:

“Maasai men migrating to urban areas are proving to be a source of cheap and unskilled labour. Their rights cannot be upheld because urban authorities also discriminate and despise them.... They are not protected against unscrupulous employers and the entire urban environment harbors anti-Maasai hatred, bias and prejudice.”¹⁵

These conditions create a vicious circle. The more poverty and disadvantage Indigenous peoples are subjected to, the more social discrimination they experience.

There are also particular and significant impacts of migration to cities on Indigenous families and communities. For instance, under some government policies, Indigenous peoples lose their Indigenous status once they emigrate from their traditional lands. Integration into urban communities can also be difficult as their skills and lifestyles are not always compatible with urban life. Government policies do not always assist in this integration process. In some circumstances, urban Indigenous peoples are seen as an economic and political liability to local and governmental authorities, a further strain on existing services, facilities and infrastructure, especially in overpopulated cities. Thus, some Indigenous migrants feel compelled to conceal their identities and cut ties with their Indigenous languages and traditions to avoid marginalization and discrimination.¹⁶

Migration to urban areas also threatens food security for Indigenous peoples, particularly in relation to traditional forms of sustenance. Without access to land and property to cultivate their own traditional foods, Indigenous peoples are compelled to adopt foreign diets that can undermine their health. Women are particularly affected:

“The growing number of indigenous peoples migrating to urban centres has also led to a growing demand for traditional foods. This is not surprising given that indigenous peoples often affirm that ‘their overall health, well-being and cultural continuity is directly related to their ability to eat their traditional foods and continue their traditional food practices.’”¹⁷

¹⁵ UN-HABITAT and OHCHR, 2010: p. 42.

¹⁶ UN-HABITAT and OHCHR, 2010: pp. 21-22.

¹⁷ UN-HABITAT and OHCHR, 2010: p. 59.



The need for a rights-based approach to transition and settlement services has been identified, underscoring the importance of reaching particular populations of urban Indigenous migrants:

“...transition and settlement services should not just cater to indigenous peoples based on their needs but also from a rights approach whereby all indigenous migrants, irrespective of age, gender, ethnicity, regional background and disability, have the right to a good quality of life without discrimination.”¹⁸

1.1 Indigenous Women

Indigenous women who migrate to cities experience particular barriers to secure tenure because of land tenure systems and Indigenous women's socio-economic conditions. In cities, Indigenous women are often subject to discrimination, sexual harassment and exploitation, including trafficking.¹⁹ They are often perceived as “outsiders”, and experience high levels of poverty, lack of access to services, housing or security of tenure, placing their well-being and quality of life and that of their children at risk.²⁰ Because of the lack of employment particularly for Indigenous women in cities, they are more prone to out-migration – seeking work in other countries - usually as domestic helps.²¹ Out-migration leads inevitably to the breakdown of families and makes Indigenous women and girls more vulnerable to trafficking and child abuse.²² In urban areas, some Indigenous women can access the labour market as domestic help, in the hotel sector, or by offering services from their homes as a means of earning money independently from their husbands.²³ This employment is unstable and sometimes exploitive.

Gender-based violence has particular effects on Indigenous women – escaping an abusive partner often requires an Indigenous woman to leave her entire community, migrating to an urban area where cultural and spiritual ties are lost and gender-based discrimination is rampant.²⁴ Poor and inadequate housing conditions (as characterized by overcrowding, lack of privacy, lack of sanitation and basic services) exacerbate women's vulnerability to violence, including gender violence perpetuated by partners.²⁵ Further, Indigenous women often face challenges to property rights, whether as a result of colonial legislation that has led to inequalities or as a result of inequalities arising from Indigenous systems “in the name of tradition.”²⁶ When assessing Indigenous women's equality rights in the context of traditional communal property regimes, it is important not to take an overly-simplistic view of “traditions” :

¹⁸ UN-HABITAT and OHCHR, 2010: p. 44.

¹⁹ UN-HABITAT and OHCHR, 2010: p. 30. See also: UN-HABITAT and OHCHR, 2010: pp. 44-45, including: “That is, ‘indigenous migrant women are particularly vulnerable to rape and other forms of sexual exploitation.’ In addition, discrimination and marginalisation have forced some indigenous migrants to hide their identity in order to be accepted. This ‘feminisation of poverty’, coupled with the reality of homelessness, should encourage indigenous women and young people and the disabled to turn to transition and settlement services for assistance.” However, these services are sometimes inaccessible due to cultural barriers.

²⁰ UN-HABITAT and OHCHR, 2010: pp. 21-22.

²¹ Burger, 2007.

²² UN Doc. A/60/358, par. 38.

²³ UN-HABITAT and OHCHR, 2010: p. 176.

²⁴ International Indigenous Women's Forum, 2006: p. 17.

²⁵ UN-HABITAT, 2009a: p. 29.

²⁶ International Indigenous Women's Forum, 2006: p. 28.



“FIMI [International Indigenous Women’s Forum] understands cultural practices as fluid, contested, and connected to relations of power. Culture is not defined in terms of tradition; rather, it is a product of historical influences... Cultures are never homogeneous and are shaped by people’s actions and struggles over meaning... cultural practices and beliefs can and do change over time. While culture needs to be understood as part of the context in which human rights abuses occur, it does not necessitate or justify these abuses... Equally crucial for Indigenous women is the fact that culture can be used as a source of resistance to violence...”²⁷

In the context of land and property rights, all human rights challenges facing Indigenous women need to be considered. Further, non-Indigenous policy-makers often view culture as a source of oppression without assessing the ways in which historical forms of oppression against Indigenous peoples have been more oppressive.²⁸ FIMI underscores the need to avoid this approach and to instead assess the impact of historical, economic, social, political civil and cultural influences on a case-by-case basis.

Indigenous women in cities have one of the most precarious levels of security of tenure. Most tenure systems in cities are inaccessible to women. Indigenous women also experience discrimination in the granting of secure tenure whether through rental or ownership options. Many tenure regimes - statutory, customary and informal - discriminate against women either formally or in practice.²⁹ Cultural traditions often compel women to be dependent on men for tenure security. Property rights are often vested in men, which results in women being denied legal protection.³⁰ For example, individual land titling systems are difficult for poor Indigenous women to access both because of their economic status, but also because of their sex.³¹ Many Indigenous women in the urban context live alone, with little money and without being attached to a man or male relative who can secure tenure for them.³²

1.2 Indigenous Children and Youth

The property and land rights of Indigenous children are intricately tied to their cultural rights related to the use of traditional territory and use of its resources.³³ Indigenous children and youth may be negatively affected by inheritance practices – for example, in Uganda inheritance is passed down from father to son, leaving daughters with insecure tenure and property rights.³⁴ Cultural practices may enhance the position of Indigenous children with disabilities in some contexts, such as in Guatemala

²⁷ International Indigenous Women’s Forum, 2006: p. 29.

²⁸ The Gender Equality Action Plan by UN-HABITAT focuses on inequalities between men and women but does not specifically analyze the multiple forms of oppression facing Indigenous women. See: UN-HABITAT, *Gender Equality for a Better Urban Future: An overview of UN-HABITAT’s Gender Equality Action Plan (2008-2013)*, Nairobi: UN-HABITAT, 2007, p. 7. However, at the recent World Urban Forum V, the Gender Equality Action Assembly noted the need for “improved sensitivity to the diverse needs among women which could be influenced by disability, race, religion, ethnic or indigenous background and culture and sexual orientation.” World Urban Forum 2010: p. 69.

²⁹ UN-HABITAT 2004: p. 9.

³⁰ UN-HABITAT 2004: p. 9.

³¹ UN-HABITAT, 2008: p. 7.

³² ILO 2009: p. 133 where it is noted that the Special Rapporteur on the human rights and fundamental freedoms of Indigenous peoples called on States to review discriminatory laws related to property rights facing Indigenous women, particularly those who are divorced or widowed.

³³ CRC, General Comment 11: para. 16

³⁴ ILO 2009: p. 133.



where the Special Rapporteur on Disability found that due to Indigenous cultural norms, Indigenous children in Guatemala were less likely to be abandoned due to economic reasons than their non-Indigenous counterparts.³⁵ In other cases, the denial of Indigenous peoples' rights result in the denial of particular attention to the rights of Indigenous children.³⁶

Better engagement of Indigenous youth, including youth with disabilities, is required in order to support their inclusion in advancing the rights through key international fora, such as the UN-HABITAT's World Urban Youth Assembly. Particular attention must be paid to Indigenous children who face multiple forms of discrimination, including Indigenous girls and Indigenous children with disabilities.³⁷ Like Indigenous women, Indigenous children fall prey to the commodification of their traditional knowledge in relation to medicines, cultures, arts and skills for the tourism industry in urban areas. This often occurs in the context of urban expansion. Often this form of labour results in unfair returns for Indigenous women and children, who may be further separated from their communities to provide greater accessibility to tourists, or are separated from traditional forms of sustenance in order to meet the tourism needs.³⁸ The long term result for pastoralists, for example, who are selling herbs and traditional medicine in this context, is the loss of their property, intellectual and cultural rights.³⁹

Indigenous youth, as future custodians of Indigenous cultures, traditions, skills and languages, are confronted with a multitude of issues that affect their standing in their Indigenous communities and society in general. Some young Indigenous peoples find themselves in "a 'no man's land between the urban societies that do not fully accept them and their indigenous communities that often fail to offer them the opportunities they need and desire."⁴⁰ There is, however, a generation of Indigenous youth in urban areas who, despite adversity, have developed strategies to sustain cultural and linguistic continuity and develop social and cultural cohesion between rural and urban communities through technology and multi-media. By generating a popular embracing of Indigenous identities (via youth and popular culture), these young people illustrate the possibility of preserving "indigenous identities while maximizing the benefits of urban society."⁴¹

1.3 Indigenous People with Disabilities

Indigenous people with disabilities face unique reasons for migrating to urban areas and unique challenges once residing there. For example, in Canada, Indigenous parents of children with disabilities face unique forms of discrimination, including forced urban migration and removal of their children from the home. Indigenous parents may be forced to move to a city to access services for their

³⁵ United Nations Special Rapporteur on Disability (2004).

³⁶ ILO 2009: p. 145.

³⁷ CRC, General Comment 11: para 29.

³⁸ See for example, UN-HABITAT and OHCHR, 2010: p 25 where it states, "Faced with poverty, some indigenous peoples, in particular women and children, rely on their traditional cultures, arts and skills to generate income in urban centres. Although this is seen as a positive way of promoting indigenous cultures to the general society and of generating employment amongst indigenous communities, the reality is different. Very often, in urban cities, indigenous peoples rely on the informal sector to market their wares which often amounts to the 'commodification of indigenous culture and skills as demanded by the tourism industry.'" [Emphasis in the original, reference omitted.]

³⁹ UN-HABITAT and OHCHR, 2010: p. 25.

⁴⁰ UN-HABITAT and OHCHR, 2010: p. 22.

⁴¹ UN-HABITAT and OHCHR, 2010: p. 22.

⁴² Council of Canadians with Disabilities, 1996; UN-HABITAT, 2009a: p. 27.



children simply because comparable on-reserve services are not available. Removal of children with disabilities into foster care, as a means of receiving adequate healthcare and other services is also a barrier for Indigenous parents to maintaining care of their children.⁴² When these families migrate to urban areas for increased services, they are faced with discrimination and lack of adequate access to land and property rights, increasing their marginalization in society. Further, the operation of the free market will produce negative results for Indigenous people with disabilities, and this must be mitigated by State measures.

1.4 Indigenous Elders

One commonly overlooked impact of colonization and dispossession of land, territories and resources of Indigenous peoples is the disintegration of respect for the contribution of elders in Indigenous society as “purveyors of cultural knowledge.” In the context of urban migration and expansion, this often results in leaving elders at greater risk of abuse.⁴⁴ In urban areas, elders frequently lack access to essential services in indigenous languages and to affordable housing that is culturally appropriate.⁴⁵

When elders are forced into urban migration due to loss of land and property rights, they are disconnected from the land and from the ability to pass on traditional practices to their descendants, such as the use of medicinal plants, sustenance and ceremonial practices and other forms of traditional knowledge. In turn, a link between increased inter-generational abuse (or abuse and neglect of elders) and displacement and migration has been established. This degradation of status of elders is linked to the disregard for the wisdom held by elders, often pronounced for Indigenous families who have been displaced or forced to migrate due to economic globalization.⁴⁶

1.5 Indigenous Sexual Minorities

Indigenous sexual minorities commonly experience multiple forms of discrimination that leave them at heightened risk of discrimination in relation to their land and property rights, in both their own Indigenous communities and in urban areas to which they migrate. For example, in Toronto, Canada, the following portrayal is provided of Indigenous sexual minority youth:

“...Two-spirit youth spoke of escaping abusive, oppressive and homophobic home communities, and their dreams of a better life in Toronto. Once they arrived in Toronto, racism, poverty, unemployment, unstable housing, inaccessible services and sexual exploitation were commonly experienced by two-spirit youth. Many coped with their new situations by engaging in survival sex to pay the bills or by using substances to cope with isolation, loss, and emotional pain. These factors can lead to potentially heightened risk situations for HIV among migrant two-spirit youth.”⁴⁷

⁴³ CESCR, *General Comment 5*: para. 12.

⁴⁴ *International Indigenous Women's Forum, 2006*: p. 22.

⁴⁵ UN-HABITAT, 2009a: p. 31.

⁴⁶ *International Indigenous Women's Forum, 2006*: p. 22.

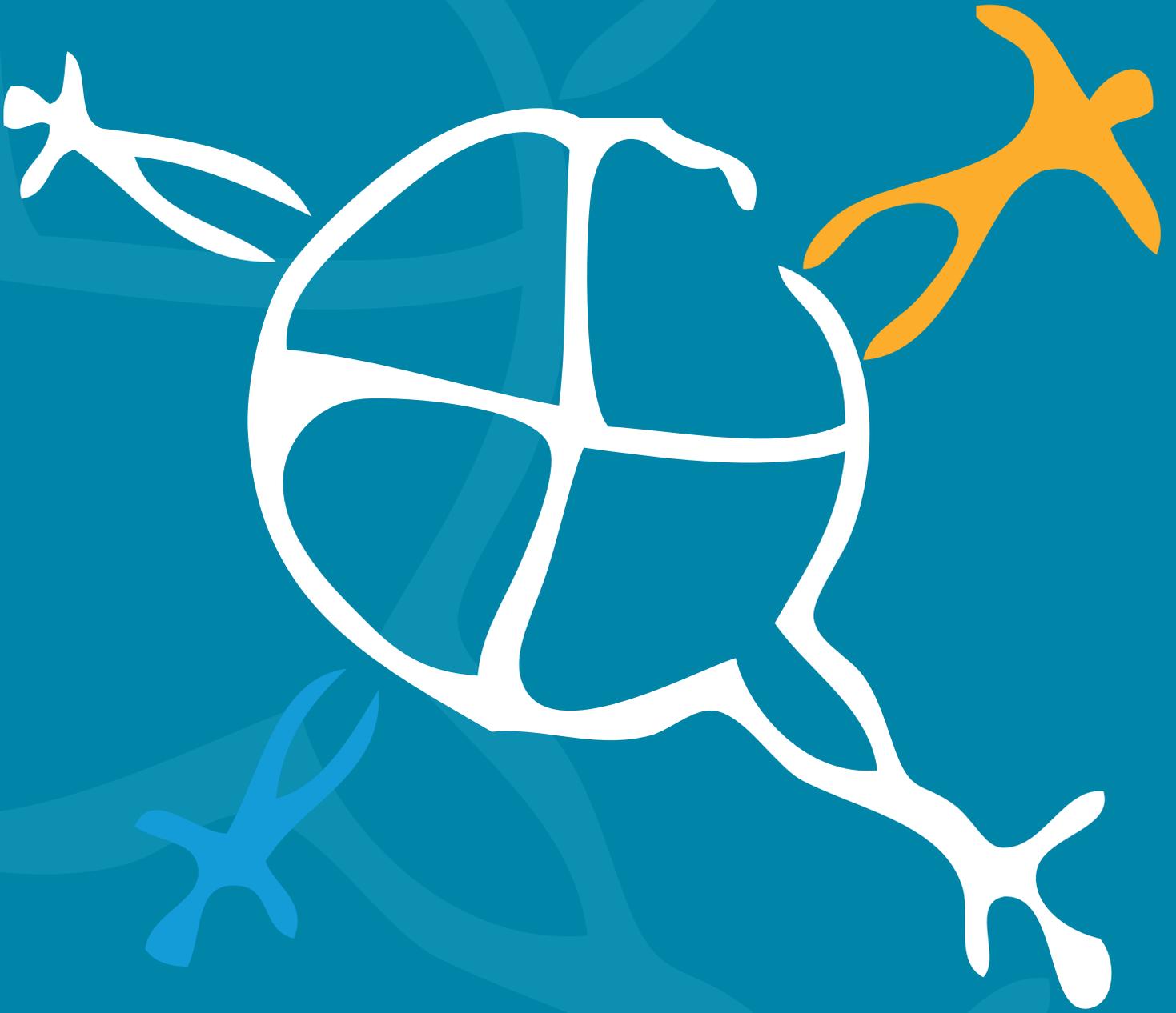
⁴⁷ O'Brien Tenngs, 2006: p. 17.



What this project highlights is the importance of assessing the specific needs of sexual minorities in the context of urban migration – the reasons and impacts on sexual minorities are distinct and may require distinct policy and legislative reforms.

Discrimination facing Indigenous sexual minorities can lead to a denial of inheritance rights to land and property. In order to address this inequality, special measures must be taken.







Himba woman selling jewelry in the urban markets of Swakopmund, Namibia.
© PIN-HABITAT / Adrian Perez

TWO

URBANIZATION AND LAND AND PROPERTY RIGHTS OF INDIGENOUS PEOPLES





URBANIZATION AND LAND AND PROPERTY RIGHTS OF INDIGENOUS PEOPLES

As a starting point to both understanding and addressing urban Indigenous land and property rights is recognition of the right of self-determination, the fundamental right of importance to Indigenous peoples. The quest for recognition and respect of the right of self-determination has spanned colonial and post-colonial times.⁴⁸ Linked to this right are rights related to lands, resources and territories of Indigenous peoples. This is because Indigenous peoples' cultural and spiritual identity relates strongly to their connection to land, where property rights are often viewed as communally held for the greater good.⁴⁹ Both the rights and responsibilities held by Indigenous peoples are rooted in their cultural and spiritual practices and beliefs. The process of colonization has often resulted in Indigenous peoples being relegated to specific pieces of land, forcing a separation from the traditional territories of Indigenous peoples that can span urban and rural or northern areas. This has resulted in violations to their human rights, including economic, social, cultural, spiritual, political and civil rights.⁵⁰ An examination of the impacts of urbanization and migration must be understood in this context.⁵¹ Given the unique historical relationship of Indigenous peoples to the land and to states, the rights related to lands, resources and territories and to self-determination must figure centrally in the analysis.

⁴⁸ Rodríguez-Piñero, 2005: pp. 261-262: "The political discourse of the international indigenous movement was founded on a critical reformulation of the bases of international law that did not recognize the legal personality of indigenous peoples and relegated them to a predicament of internal colonialism within their own territories. Indigenous peoples reminded the world that the consequences of colonialism persisted after formal decolonization, and pleaded for recognition of their right to a full measure of self-determination as the cornerstone of their aspirations to cultural preservation and development, the exercise of full-government and jurisdiction, and control over their traditional lands and natural resources. The indigenous movement was successful in articulating those aspirations in human rights terms, contributing to the generation of new normative understandings concerning the specific catalogue of rights pertaining to these peoples qua peoples." [references from original source omitted.]

⁴⁹ This link has been aptly described in United Nations Department of Economic and Social Affairs Division for Social Policy and Development, 2009: p. 30: "Because indigenous peoples define happiness as closely linked with the state of nature and their environment, indigenous peoples' well-being necessarily encompasses their access, management and control over lands, territories and resources under customary use and management, all of which are critical for their own sustainable development."

⁵⁰ Malezer, 2010: p. 46: "Self-determination, a pre-requisite to the exercise and enjoyment of all other human rights, is now reaffirmed as a right of Indigenous peoples throughout the world"; United Nations Department of Economic and Social Affairs Division for Social Policy and Development, 2009: p. 192: "Human rights and fundamental freedoms can only exist truly and fully when self-determination also exists. Such is the fundamental importance of self-determination as a human right and a prerequisite for the enjoyment of all other rights and freedoms." [reference from original source omitted.]

⁵¹ UN-HABITAT and OHCHR, 2010: p. 43: "The lack of full respect for human rights for Indigenous peoples continues to be one of the most serious obstacles to the improvement of their living conditions, forcing them into escalating levels of migration. Their rights are often times violated when in transit and after arrival to host countries. For that reason it is essential that there be a human rights focus for the entire migratory process." [reference from original source omitted.]



There is a need for an increased focus on the right to the city and specifically to protecting and promoting cultural identities and sustainable urban development in relation to Indigenous peoples. This will have a positive impact on land and property rights in the context of urbanization. It will mitigate against the trend of forced movements and migrations too often resulting in Indigenous peoples being pushed into urban peripheral slum areas.⁵²

Approaching development with culture and identity means recognizing holistic perspectives of Indigenous peoples that build on collective rights, security and greater control and self-governance of lands, territories and resources, based on traditional and cultural practices and "a restorative philosophy underpinned by values of reciprocity, solidarity, equilibrium, sustainability, sharing and collectivity".⁵³ The Inter-Agency Support Group on Indigenous Issues (the IASG) has highlighted some best practices in the area, as well as identifying the need to use the UN Declaration as a framework for development with culture and identity and to mainstream the UN Declaration into all UN policies and programmes to ensure this new approach is put into practice. Furthermore, the IASG recommends implementing the UN Development Group Guidelines on Indigenous Peoples' Issues and related action plan,⁵⁴ to promote the implementation of development with culture and identity throughout the UN and, indeed, at the country level. Resources need to be allocated to human rights-based approach to development cooperation, as contained in the UN Declaration and ongoing assessments must be made to ensure that this normative framework is being respected at the level of implementation.⁵⁵

The following sections of the Guide will discuss the influences and impact of urban migration and urban expansion on Indigenous land and property rights.

2.1 Migration and Land and Property Rights of Indigenous Peoples

The vast majority of Indigenous peoples who live in urban settings do so because they were compelled to migrate from their lands and territories. The root causes of migration in these cases are related to human rights violations on their home territories, dispossession of their lands, resources and territories (often due to colonization or in modern times, large scale land acquisition), environmental considerations (including climate change and natural disasters) and physical insecurity in conflict areas (which often involves military violence against Indigenous people, including women, such as sexual harassment and rape). Economic, social and cultural factors must be considered that cause, or are affected by urban migration of Indigenous peoples.⁵⁶

There is a danger of over-simplifying the nature of Indigenous urban migration as uni-dimensional from rural to urban areas whereas there are greater complexities to be considered:

⁵² These were identified as emerging issues in the Indigenous Peoples and Sustainable Urban Development with Culture and Identity Roundtable held at the World Urban Forum V. World Urban Forum 2010: p. 57.

⁵³ UNPFII 2010: p. 2.

⁵⁴ As adopted by the UN Development Group in 2008: See: IASG, 2010: p. 16.

⁵⁵ IASG, 2010: p. 21

⁵⁶ UN-HABITAT, 2009a: p.7.

"...[the literature needs to] expand the interpretation of urban migration to reflect an increasing movement by indigenous peoples from their local urban cities to global urban areas as well as a growing tendency to move from local rural villages to cosmopolitan cities in developed countries...there is still more work needed to investigate in greater depth some of the international movement that is taking place..."⁵⁷

An assessment and understanding of actual migration patterns of Indigenous peoples will assist in developing policy that responds to real experiences and needs. In turn, the major causes of rural-urban migration that need to be understood and addressed to improve the human rights of Indigenous peoples, are thus discussed in greater detail below, include: dispossession of lands, resources and territories, including expropriation, forced eviction and displacement of rural communities by large scale development and extractive industries, climate change, natural disasters, economic factors, social and cultural factors and armed conflict. Each of these raises particular land and property rights issues for Indigenous peoples.

The following section sets out the key issues related to (1) dispossession of lands, resources and territories by states; (2) forced eviction and displacement as a result of development; (3) lack of recognition of Indigenous Land Tenure Systems, (4) environmental considerations and concerns (including climate change and natural disasters); (5) economic factors and (6) armed conflict.

2.1.1. Dispossession of Lands, Resources and Territories by States

Indigenous peoples' permanent sovereignty over their lands, territories and natural resources has been affirmed in treaties, agreements and other constructive arrangements between states and Indigenous peoples and in international law (including decisions and recommendations of international and regional human rights bodies).⁵⁸ States must be called upon to live up to Treaty obligations related to the right of self-determination and rights related to lands, resources and territories.⁵⁹

Addressing the rights of Indigenous peoples to their lands, resources and territories is linked to their very survival, rendering security of tenure and ownership, control, management and use of their traditional territories of critical importance:

"5. 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.

...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."⁶⁰

⁵⁷ Tupuola, 2007: pp. 139-140.

⁵⁸ See: UN Doc. E/CN.4/Sub.2/2004/30 and Add. 1 and UN Doc E/CN.4/Sub.2/2001/21. See also: UN Doc. E/CN.4/Sub.2/AC.4/2006/3: p. 14.

⁵⁹ Littlechild 2010: pp. 117-118.

⁶⁰ UNPFII, 2007: p. 3.



Thus, advancing the effective protection of land, resource and territorial rights of Indigenous peoples is critical to their very survival as Indigenous peoples. The Permanent Forum underscores the importance of the *UN Declaration on the Rights of Indigenous Peoples* (the *UN Declaration*) as well as Indigenous peoples' security of land use and access as intricately linked to broader processes of poverty reduction, good governance and conflict prevention and resolution.⁶¹

An Extractive Industries Review prepared for the World Bank highlights the importance of securing land and property rights as a means to promote the cultural integrity and overall subsistence of Indigenous peoples:

"For indigenous peoples, secure, effective, collective ownership rights over the lands, territories, and resources they have traditionally owned or otherwise occupied and used are fundamental to economic and social development, to physical and cultural integrity, to livelihoods and sustenance. Secure rights to own and control lands, territories, and resources are also essential for the maintenance of the worldviews and spirituality of indigenous peoples - in short, to their very survival as viable territorial communities.

Without secure and enforceable property rights, indigenous peoples' means of subsistence are permanently threatened. Loss or degradation of land and resources results in deprivation of the basics required to sustain life and to maintain an adequate standard of living. Failure to recognize and respect these rights undermines efforts to alleviate indigenous peoples' poverty and to achieve sustainable development."⁶²

Oftentimes, expropriation by states leads to the undermining of these rights, a practice that continues to be widespread, in violation of international legal principles and rights designed to preclude such practices. This has a particularly negative impact on Indigenous women:

"Around the world, Indigenous territories have, for centuries, been defined as 'empty land,' allowing colonial powers – and now corporations – to expropriate and exploit them. In fact, many Indigenous Peoples identify neoliberalism as a Second Conquest, which has renewed corporations' and States' justification for the piracy of Indigenous crops, knowledge, and lands. Today, Indigenous lands continue to be designated as 'unused' or 'wilderness' in wilful ignorance of Indigenous women's long-standing and highly developed techniques for managing and maintaining these lands. Ironically, the very success of Indigenous women's knowledge systems in preserving the health and abundance of their territories has caused these lands to be classified as 'unused' (and therefore available for exploitation) in the neoliberal paradigm."⁶³

⁶¹ UNPFII, 2007: p. 3.

⁶² UN Doc. E/CN.4/Sub.2/2004/30: pp.11-12.

⁶³ International Indigenous Women's Forum, 2006: p. 24.

Frequently, this pattern of expropriation and exploitation leads to forced eviction and displacement of Indigenous peoples to urban areas, resulting in loss of cultural and traditional knowledge, of women and Elders, in particular. Thus, reforms in the area of forced eviction and displacement need to consider the extent to which women and Elders, and other vulnerable groups, have been particularly impacted in order to provide adequate redress.

2.1.2 Forced Eviction and Displacement as a result of Development

One of the most common causes of Indigenous rural-urban migration is large scale development projects leading to forced eviction and displacement. In rural contexts, forced eviction and displacement is often legally feasible because many Indigenous peoples do not have formal titles or deeds or even registration of their ancestral lands.

For example, in the Philippines, Indigenous peoples in both the Mindanao and Caraga regions have been forcibly evicted from their lands because of Government approved logging or other development contracts or because their lands were destroyed by open-pit mining.⁶⁴ Similarly, Indigenous peoples in Kenya, Canada, Mexico and elsewhere have been subject to forced eviction and displacement as a result of large scale development projects including game reserves, hydroelectric dams, and natural resource exploitation.⁶⁵

Large scale land acquisition and foreign investments in lands are increasingly common means by which states, private investors and third party actors access land for their projects. Land acquisition often involves the use of force and intimidation by the State or private developers to coerce Indigenous land owners into accepting compensation (if any) well below the market price for their property. The land is then converted into a private development. Most often the communities affected who live off the land are not consulted about the sale of the land and find themselves without a place to live or land upon which to sustain their livelihood. Migration becomes inevitable.

From the Americas, to the Pacific to India and Africa, there is a pattern of large-scale development projects over-taking Indigenous peoples' small-scale subsistence practices, leading to lack of environmental sustainability and to the marginalization of Indigenous livelihoods. The result is that agri-corporations and landlords have control over the land, forcing community members to be uprooted from rural to urban areas:

“Once you sell land, it means hunger for your family. There is nowhere to go to clear land anymore.”

– former indigenous landowner, Vietnam⁶⁶

⁶⁴ UN-HABITAT and OHCHR, 2005: p. 149.

⁶⁵ See case studies of Canada, Kenya and Mexico in: UN-HABITAT and OHCHR, 2005.

⁶⁶ United Nations Department of Economic and Social Affairs Division for Social Policy and Development, Secretariat of the Permanent Forum on Indigenous Issues, 2009: p. 19. [reference omitted.]



In this context, it is often the case that World Trade Organization (WTO) agreements and national legislation related to trade and investment liberalization override existing Treaties with Indigenous peoples⁶⁷ as well as national legislation aimed at protecting the environment and Indigenous peoples' rights.⁶⁸ Mechanisms must be in place to prevent these violations from occurring.

The non-sustainable nature of many development projects results in further economic marginalization of Indigenous peoples, typically in violation of their right to free, prior and informed consent. This leads to destructive impacts on their cultural integrity as well, such as mining activities that destroy sacred sites in southern Mexico, New Mexico and Guatemala.⁶⁹

Indigenous women play a unique role as protectors of Indigenous lands, due to their role as traditional knowledge holders. It is important to recognize their unique contributions when seeking solutions to problems created by mega development projects that create forced displacement, ecological degradation of their territories and armed conflicts.⁷⁰

2.1.3 Lack of Recognition of Indigenous Land Tenure Systems

A distinctive feature of Indigenous land tenure systems is their collective nature. Often times, even if these rights are recognized in a State Constitution they are not protected, but rather are violated by State policy and practice.⁷¹ In the *Awás Tingni Case* the Inter-American Commission on Human Rights found that Nicaragua failed to take the necessary steps to secure the land rights of the Mayagna Coast region. In this case, the Awás Tingni and other Indigenous peoples in the region petitioned Nicaragua to compel State support of the demarcation of their traditional lands and to prevent logging in their territories by a Korean company permitted by a government-granted concession. The Commission took the case to the Inter-American Court of Human Rights, alleging that "both the logging concession and the ongoing failure of Nicaragua to demarcate indigenous land constitute violations of the right to property affirmed in article 21 of the American Convention on Human Rights and of the correlative duties of articles 1 and 2 of the Convention to guarantee the rights of the Convention."⁷²

Demarcation and other forms of legal recognition of Indigenous collective interests in land are important to addressing historic land and property rights violations. For example, in Gabon, national legislation has been enacted to recognize customary use and possession rights to land, leading to the possibility of registering their lands under customary law. While demarcation can be protective it also has limits. In some instances of demarcation, Indigenous peoples have lost almost all of their lands to the State and the State is considered the sole owner of the lands. This leads to expropriation and further land and property rights violations.⁷³

⁶⁷ *Indigenous Peoples Caucus, 1999.*

⁶⁸ *United Nations Department of Economic and Social Affairs Division for Social Policy and Development, Secretariat of the Permanent Forum on Indigenous Issues, 2009: p. 19.*

⁶⁹ *United Nations Department of Economic and Social Affairs Division for Social Policy and Development: p. 19.*

⁷⁰ *International Indigenous Women's Forum, 2006: pp. 22-23.*

⁷¹ *See, for example, International Labour Office (ILO) and the African Commission on Human and Peoples' Rights, 2009: pp. 91-92.*

⁷² *Anaya and Williams, 2008: p. 3.*

⁷³ *ILO and the African Commission on Human and Peoples' Rights 2009: p. 94.*

These practices are contrary to international law which requires that the free, prior and informed consent of Indigenous peoples be obtained. This observation has led the Permanent Forum to recommend that:

*"...States take effective measures to halt land alienation in indigenous territories, for example, through a moratorium on the sale and registration of land, including the granting of land and other concessions in areas occupied by indigenous peoples, and also to assist indigenous communities, where appropriate, to register as legal entities."*⁷⁴

Where expropriation has already taken place, often leading to urban migration, compensation of losses suffered by Indigenous peoples must be provided.

Even where development does not require eviction of Indigenous peoples from their lands, such as in the case of the extraction of sub-surface natural resources, it often undermines Indigenous livelihoods and cultural survival. For example, international nuclear and power industries have had a disproportionately negative impact on Indigenous peoples' cultural, physical and spiritual well-being.⁷⁵ The models of development based on market value are at odds with Indigenous models which are based in an understanding of responsibilities owed to future generations.

The Extraction of Natural Resources and Indigenous Land Rights: Ecuador

Ecuadorean law provides that all subsurface minerals are the property of the State. Consequently, the State exploits oil and mineral deposits, either directly through the state-owned oil company PetroEcuador, or indirectly, through concessions and service contracts with foreign oil companies.

The Huaorani people filed a petition with the Inter American Commission on Human Rights in 1997 alleging violations of their human rights as a result of oil exploration and extraction on their lands. The Commission investigated the allegations and excerpts from their report follow:

These inhabitants ... claim that oil exploitation activities taking place in or near their communities have contaminated the water they use for drinking, cooking and bathing, the soil they cultivate to produce their food, and the air they breathe. Residents of affected sectors indicated that their rivers, streams and groundwater were contaminated with crude oil and toxic production wastes released into the environment due to improper treatment and disposal of toxic wastes, collapsed or leaching waste pits, and oil spills. These are, in most cases, the only water sources available for drinking, cooking and bathing, as well as for the watering of livestock, domestic animals and wildlife. Residents of a number of communities complained that the air they breathe is contaminated when waste oil and gas are burned off without any kind of emission controls.

⁷⁴ UNPFII, 2007: p. 5.

⁷⁵ UNPFII, 2007: p. 5: "The nuclear fuel chain, which has poisoned indigenous peoples and their lands and waters, threatens the existence of future generations, and nuclear energy development and international agreements often violate indigenous peoples' rights and endanger their cultures and physical and spiritual well-being."



Numerous people live and walk along roads which have been sprayed with waste crude, and complain that they are constantly exposed to this oil and oil-coated dust particles in the air.

The Commission was advised by representatives of communities near oil development sites that, as a result of exposure to contaminated water, soil and air, some of their members suffered from skin diseases, rashes, chronic infections and fevers, gastrointestinal problems, and that the children particularly suffered frequent bouts of diarrhoea.

In addition, a number of people told the delegation that contamination of the physical environment was hindering their ability to feed their families. The Commission has received reports that the pollution of local rivers, streams and lakes has contaminated the fish residents depend on as a dietary staple, and that development activities and contamination have driven away the wildlife they hunt as an important source of protein...

Oil development and exploitation do, in fact, alter the physical environment and generate a substantial quantity of toxic by products and waste.⁷⁶

While this sort of development activity does not mandate the eviction of communities from their homes and lands, this may be the long-term effect.

Inter-related to these issues are environmental considerations and concerns, particularly climate change and natural disasters that lead to migration.

2.1.4 Environmental Considerations & Concerns

Environmental considerations related to Indigenous peoples' rights to self-determination, lands, resources and territories are of significant importance in contemporary times, where the effects of climate change, including natural disasters, are being experienced globally. Understanding and recognizing Indigenous peoples' approach to environmental protection, through sustainable development, and specifically to climate change and natural disasters can have a positive impact on humanity as a whole.

Recognition of customary law in relation to ownership and control over land and resources and traditional knowledge is critical in the area of sustainable development:

"The biggest challenge faced by indigenous peoples and communities in relation to sustainable development is to ensure territorial security, legal recognition of ownership and control over customary land and resources, and the sustainable utilization of lands and other renewable resources for the cultural, economic and physical health and well-being of indigenous peoples..."

Indigenous peoples carry millennial knowledge founded in generations of hunting and agricultural practices, land management and sustainable water use, and agriculture-related engineering and architecture...

⁷⁶ *The Inter-American Commission on Human Rights, 2007.*

The maintenance of these cultural and spiritual relationships is also vital to the conservation of biodiversity...Many traditional practitioners are experts at reading indicator species that provide very early warning signals of impending environmental or food catastrophes and changes such as global warming."⁷⁷

In order for this approach to be effectively incorporated, relationships structured under colonial practices must be replaced by ones that respect the rights of Indigenous peoples, including self-determination and rights related to lands, resources and territories. This is intricately tied to promoting biodiversity and protection of traditional knowledge that, if adequately recognized, will have a positive impact on the environment as well.

Indigenous women play a significant role in environmental conservation and protection as described in the Malukan Declaration⁷⁸ as guardians of environmental knowledge and systems of traditional knowledge, particularly in the context of protecting and conserving biodiversity in ecosystems.

2.1.4.1 Climate Change

It is often said that Indigenous peoples are the least contributors to the effects of climate change due to their small carbon footprint outputs but they are the most affected by climate change due to their lifestyles which are built on their relationship to land and resources and because of the discriminatory practices of dispossession and marginalization.⁷⁹ The Pacific Island nations and Indigenous peoples of Kiribati and Tuvalu stand as good examples. Both face eventual annihilation – they will be submerged under water – as a result of climate change taking place far from their shores.⁸⁰ The nexus of urbanization and climate change is exacerbating matters in both countries. In-migration from outer islands to the urban settlements is putting pressure on already strained infrastructure, putting extraordinary pressure on sanitation systems, leaving few resources to overcome the threats at their shorelines.⁸¹ Residents of Tuvalu are having to make tough decisions – remain on their own territories and fight for survival and existence or migrate to neighbouring nations like Australia and New Zealand and risk losing their culture and identity.

There are also examples of forced evictions in the context of climate change initiatives. For example, the Benet people who inhabit the area around the Mount Elgon National Park in Uganda were forcibly evicted without compensation because of a Forests Absorbing Carbon Dioxide Emissions (or FACE Foundation) carbon offsetting project involving planting eucalyptus trees in the forest. As a result, there was significant loss of traditional livelihood and access to forests and resources such as potable water from springs; destruction of houses, crops and livestock; a lack of employment opportunities; and denial of basic services in education and health. The Benet people took the government to court

⁷⁷ United Nations Department of Economic and Social Affairs Division for Social Policy and Development, *Secretariat of the Permanent Forum on Indigenous Issues 2009*, pp. 42-43.

⁷⁸ UN-HABITAT and OHCHR, 2010: p.53.

⁷⁹ UN Doc. No E/2008/43/E/C.19/2008/13 at para. 6; Tebtebba, 2008: p.11; *Indigenous Peoples Caucus, 2010; Indigenous Peoples' Global Summit on Climate Change, 2009.*

⁸⁰ Leckie, S., 2010.

⁸¹ Leckie, S., 2010.



where Justice J.B. Katutsi ruled that the Benet people are 'historical and indigenous inhabitants of the said areas which were declared as a Wildlife Protected Area or National Park', ruling that the Benet should be allowed to live on their land and continue farming it.⁸²

Studies have demonstrated that some pastoralist practices have a positive environmental impact when compared to government and privatization of lands for sedentary agriculture, resource extraction, infrastructure development or national parks or nature reserves.⁸³ Yet, forced displacement of pastoralists continues to occur, whether it is from actions by states, development or environmentalists, with a negative impact on climate change:

"Despite the crucial contribution of nomadic and transhumant pastoralism to livelihoods and to national economies... In some countries, we are subject to dispossession of natural resources, forced or induced sedentarization and displacement, ethnic cleansing and ethnocide, in direct violation of human rights, and as a consequence of conflicts and adverse and ill-designed policies, legislation and development programmes. Both privatization and government confiscation ('nationalization') of common resources usually lead to land use change having dramatic effects on the overall viability of pastoral systems and on the environment – both in terms of land degradation and pollution. These policies and changes exacerbate poverty of people and erosion of biological diversity, force people into migration, and deprive our peoples of their subsistence base, cultural values, spirituality and dignity" [reference omitted].

Consideration must be paid to Indigenous livelihoods in the context of privatization of land and property. The way in which climate change should be addressed has been summarized as follows:

"It is also important to note that enhancing and supporting the adaptive capacity of indigenous peoples will only be successful if it is integrated with other strategies such as disaster preparation, land-use planning, environmental conservation and national plans for sustainable development.

Some mitigation measures may have undesirable direct and indirect consequences for indigenous communities. For instance, biofuel initiatives (sic) may lead to an increase in monoculture crops and plantations and an associated decline in biodiversity and food security. The full and effective participation of indigenous communities is crucial to the elaboration of State-developed mitigation measures to ensure that such schemes do not negatively affect vulnerable communities.⁸⁵

⁸² Tebtebba, 2008: p. 29.

⁸³ United Nations Department of Economic and Social Affairs Division for Social Policy and Development, Secretariat of the Permanent Forum on Indigenous Issues, 2009: p. 31.

⁸⁴ United Nations Department of Economic and Social Affairs Division for Social Policy and Development, Secretariat of the Permanent Forum on Indigenous Issues 2009: p.32.

⁸⁵ UN Permanent Forum on Indigenous Issues.

The impacts of climate change on urban Indigenous peoples vary, depending on the region and the nature of the particular Indigenous peoples' culture and lifestyle. An in-depth discussion is beyond the scope of this document. However, policy recommendations aimed at addressing climate change at a broad level are outlined below.

2.1.4.2 Natural Disasters

Land and property rights issues facing urban Indigenous peoples are important in the context of natural disasters. Natural disasters such as earthquakes, landslides and flooding can result in significant loss of land. In addition to the physical impacts, the social and economic impacts of natural disasters can be catastrophic. Scarcity of useable land can create insecurity and conflict within and between communities. Natural disasters disproportionately affect vulnerable groups particularly those living in precarious housing, such as Indigenous peoples, women, persons with disabilities and youth.⁸⁶

The impact of a natural disaster on individuals and communities can be mitigated depending on how land issues such as security of tenure, land use, land access and land administration, are dealt with in the aftermath of a natural disaster. Access to land is essential for livelihoods, particularly for marginalized communities. In urban areas, security of tenure in the post natural disaster period is critical for relocation, reconstruction, social and economic recovery, and for restoring urban livelihoods especially since, for many, economic livelihood is based in the home or the informal economy. Addressing land issues facilitates the transition from emergency relief to sustainable development. Security of land tenure is essential for adequate housing and sustainable livelihood solutions.

Indigenous knowledge can be used to prevent natural disasters from destroying communities and livelihoods by predicting when a natural disaster is likely to strike and enabling communities to determine where best to situate themselves to avoid the threat of natural disasters. The United Nations Environmental Programme (UNEP) initiated a project in Kenya, Tanzania, South Africa and Swaziland to harness and promote the use of Indigenous knowledge in environmental conservation and natural disaster management through training and access to and exchange of information.⁸⁷ The study has exposed the ways in which Indigenous knowledge is used in local communities to predict and then react to natural disasters. For example, in Swaziland, floods are predicted from the height of birds' nests near rivers. Moth numbers predict drought. The position of the sun and the cry of a specific bird on trees near rivers may predict the onset of the rainy season for farming. The presence of certain plant species indicates a low water table. UNEP's study suggests the importance of harnessing Indigenous knowledge as a vital element in natural disaster prevention, preparedness and response.⁸⁸

Natural disasters which strike in rural areas and destroy land and livelihoods can result in an increase in rural-urban migration. To curb this, the State must resettle Indigenous communities as efficiently

⁸⁶ UN-HABITAT, 2010b.

⁸⁷ United Nations Environment Programme.

⁸⁸ United Nations Environment Programme.



as possible. The resettlement process, however, must be based in and reflect the relevant rights, discussed below, most particularly the free, prior and informed consent of Indigenous communities. A resettlement approach that incorporates these rights will have a greater likelihood of success, will respond directly to the needs of those affected by the disaster and will help to maintain ties to traditional territories, an inherent right of Indigenous peoples.

2.1.5. Economic Factors

Economic factors are a central cause of rural-urban migration. Some Indigenous peoples, for example, are motivated to migrate believing that the urban setting will provide “improved job employment, health, housing, education, political participation, social recognition and visibility or other benefits that they may lack in their territories”⁸⁹ and in some instances, this is in fact the case. Others are compelled to leave their lands because of poverty, lack of water supplies and the deterioration of traditional livelihoods and environmental degradation.⁹⁰

The shift toward the market economy in rural areas has also led to large numbers of Indigenous peoples migrating to urban areas:

“The integration and assimilation of indigenous peoples into the market economy and the dominant society has been the solution adopted by most Governments.’ As such, some of the indigenous land has been converted into (but not excluded to) cash crop economies and ‘dumping sites for nuclear waste’ at the expense of the indigenous labour market. For example, the pastoralist economy of the Maasai peoples in Tanzania and Kenya has been destroyed ‘with the full complicity of the state and the market.’”⁹¹

As a result of these shifts, there is often a transfer of poverty from rural areas to urban areas.⁹²

In some circumstances, youth and other members of Indigenous peoples migrate to urban centres in order to find increased economic and educational or training opportunities. In some regions, initiatives are in place to encourage returning to Indigenous communities upon completion of educational programs.⁹³

In other circumstances, migration to urban areas does not provide additional economic opportunities and Indigenous peoples experience further discrimination, marginalization and exploitation without access to adequate, affordable housing. Faced with this circumstance, many youth are vulnerable to sexual trafficking, sexual exploitation through the sex trade, gang activities and labour market exploitation.

⁸⁹ UNPFII, 2006.

⁹⁰ UNPFII, 2008.

⁹¹ UNPFII, 2005.

⁹² UN-HABITAT and OHCHR, 2010: p. 30.

⁹³ See for example, a nursing program in the Caribbean region that encourages students to remain in the region. UN-HABITAT and OHCHR, 2010: p. 30.

Youth are overrepresented in the homeless population in some states, including Canada. It has been noted by the Royal Commission on Aboriginal Peoples that Aboriginal youth's "...cultural background, history, structural conditions and experience on the street were different from other street youth...The youth spoke of identity confusion and self-hatred, dislocation from home, difficulty in reunification and ignorance of Aboriginal rights, history and culture." [Reference omitted, emphasis added.]⁹⁴ The legacy of the residential school system in Canada has been a contributing factor to these structural inequalities that have made Indigenous peoples, particularly youth, susceptible to homelessness.⁹⁵

2.1.6. Armed Conflicts

In some regions of the world, armed conflict and militarization on Indigenous territories leads to forced migration and to exploitation of Indigenous lands, territories and the people themselves. Often times, armed conflicts are really " 'resource wars' or contests over land, water, precious minerals, and energy sources located on Indigenous lands" in "places as diverse as the Philippines, Guatemala, Colombia, and Nigeria..."⁹⁶

In Colombia, Indigenous peoples face threats to their personal security and this is heightened through their displacement, often to urban areas. Illegal armed groups commit rape against Indigenous women, recruit Indigenous children and target human rights defenders and their families.⁹⁷ The Constitutional Court of Colombia has criticized Colombia for its inadequate response to these problems facing Indigenous peoples.⁹⁸

Indigenous women's access to land and property rights post-conflict is extremely limited. During conflict they are often required to leave their homes and lands. As refugees or internally displaced persons they lose access to their land and property. Post conflict, Indigenous women are often unable to return to their homes and lands because of discriminatory inheritance laws or customary law which prohibits them from inheriting land or property.⁹⁹

⁹⁴ UN-HABITAT and OHCHR, 2010: p. 38.

⁹⁵ See: Royal Commission on Aboriginal Peoples. 1996b: pp. 62-63.

⁹⁶ International Indigenous Women's Forum, 2006: p. 33.

⁹⁷ Amnesty International, 2010.

⁹⁸ Amnesty International, 2010.

⁹⁹ UNCHS, 1999: p. 33-35.



The protection of Bambuti lands rights in Northern Kivu, Democratic Republic of Congo

The Bambuti ('Pygmy') have lived in the equatorial rainforests of Africa for thousands of years. They are recognized as the Indigenous peoples of these lands. Many of the 'Pygmy' peoples in the Democratic Republic of Congo "...have been forced to abandon their traditional way of life and culture based on hunting and gathering and become landless squatters living on the fringes of settled society" and suffer from discrimination and lower socio-economic and political conditions.¹⁰⁰

Like other 'Pygmy' peoples, the Bambuti in the area of Masisi, Nyiragongo and Rutshuru in Northern Kivu face intense threats to their culture, health and survival. Uprooted from their traditional lands, by the creation of a national park and by the impacts of armed conflict, the Bambuti face a number of barriers to enjoying secure access to land to live on, including legal biases against the recognition of the land rights of nomadic peoples and discrimination against Pygmies in the legal system of the Democratic Republic of Congo. UN-HABITAT is working alongside Indigenous rights organizations and other humanitarian groups to help Bambuti establish secure land, infrastructure and legal title.

Through mediation by UN-HABITAT, some 104 Bambuti households were able to establish a settlement on the outskirts of Kitshanga, in the Masisi region. These families had been forcibly uprooted from their traditional territory by the creation of Virunga National Park, a refuge created to protect the highly endangered mountain gorilla [This is added to explain why they may not be able to get their original land back]. Their new community has been established on land that had been bought by an American missionary M. Bruce MacDonald of the local Holy International Pentecostal Church. After being displaced by the civil war, the dedicated land was occupied by the neighbor who refused to release back the land upon their return while many of the Bambuti community remain in displacement camps around Kithsanga. Mediation conducted by UN-HABITAT allowed them to recover their land and to reconcile with the contending party.

The Bambuti of Hewa Bora, on the outskirts of the city of Goma, have also been uprooted from their traditional lands. Forced from their lands by the armed conflict, they had lived in the displacement camps of Bulengo, Muganga and Buhuma. When these camps closed, the Bambuti were unable to return to their own lands because of security reasons. Also the city attraction led many of them to settle to land reported to belong to Bantu communities. This generated conflict on the occupied lands. UN-HABITAT advocated for the allocation of plots in a new subdivision in Goma working with provincial and local authorities with the involvement of the Land Administration Department. At the end and with the collaboration of traditional authorities, UN-HABITAT was able to obtain the allocation of plots to 148 Bambuti households and 170 non-Pygmy households.

¹⁰⁰ International Work Group for Indigenous Affairs, *The Indigenous World 2010 at*.

2.2 Urban Expansion and Indigenous Peoples' Rights to Land and Property

Forced eviction is commonly used in urban development and expansion schemes. In its Global Survey 11 on forced evictions, the Centre on Housing Rights and Evictions (COHRE) reports that 42% of all recorded evictions between 2007 and 2008 were urban. In Asia, the proportion of urban forced evictions averages at 61% while in Africa the average is 55%.¹⁰¹ "In an attempt to contain this rapid and unplanned growth and address increasing pressure on urban infrastructure, cities worldwide have responded with a variety of urban regeneration strategies. ... This inevitably results in forced eviction of those living in slums and other squatter settlements or in somewhat slower processes of gentrification where poorer segments of society are pushed out of up and coming areas."¹⁰² Those evicted in these circumstances are rarely consulted and almost never compensated and are often left homeless and more destitute than before.¹⁰³ Because Indigenous peoples in the urban context often lack secure tenure, living in informal settlements, they are at greater risk of being forcibly evicted than landowners and those with secure tenure.

In some instances, Indigenous peoples' lands are encroached upon as cities expand to accommodate growing populations and urban development is undertaken. For example, in Australia the cities of Darwin and Alice Springs are expanding to encompass Aboriginal camps,¹⁰⁴ in Nigeria the urban sprawl of Port Harcourt, Lagos, Kano and Ibadan has engulfed Indigenous communities,¹⁰⁵ and in Dakar, Senegal, the villages of the Lébou people have been engulfed by the city.

The phenomenon of urbanization that engulfs Indigenous communities and lands is experienced as both beneficial and disadvantageous. In a research study regarding the impacts of urbanization on the Indigenous enclaves of Port Harcourt, it was found that while about one half of the respondents felt positively about urbanization, a little over one third were displeased with it.¹⁰⁶ Those who rated urbanization favourably tended to be employed and earning middle to high incomes and were single and relatively young. Their reasons for rating urbanization favourably included: overall development of the area, better infrastructure and more economic opportunities. Those who were unhappy with urbanization tended to be the elderly. They felt that it had resulted in a higher cost of living, increased crime rates, loss of recreational spaces, destruction of local Indigenous economy and thus of traditional livelihoods, and erosion of cultural values. Many of these respondents were nostalgic for a time when they were able to freely farm and fish in Port Harcourt.¹⁰⁷ Another recent study revealed that public land acquisition has been the subject of conflict between Indigenous land owners in Port Harcourt and Government over the years. This has contributed to making access to land for the majority of urban dwellers, especially low and medium-income households, so difficult that the informal land market remains the only affordable option.

¹⁰¹ COHRE, 2009: p. 9-10.

¹⁰² COHRE, 2009: p. 9.

¹⁰³ COHRE, 2009: p.9.

¹⁰⁴ UN Doc. A/HRC/4/18/Add.2.

¹⁰⁵ Advisory Group on Forced Evictions, n.d. (on file with author): p. 27.

¹⁰⁶ Obinna, Owei, and Okwakpam, 2010: pp. 172-186.

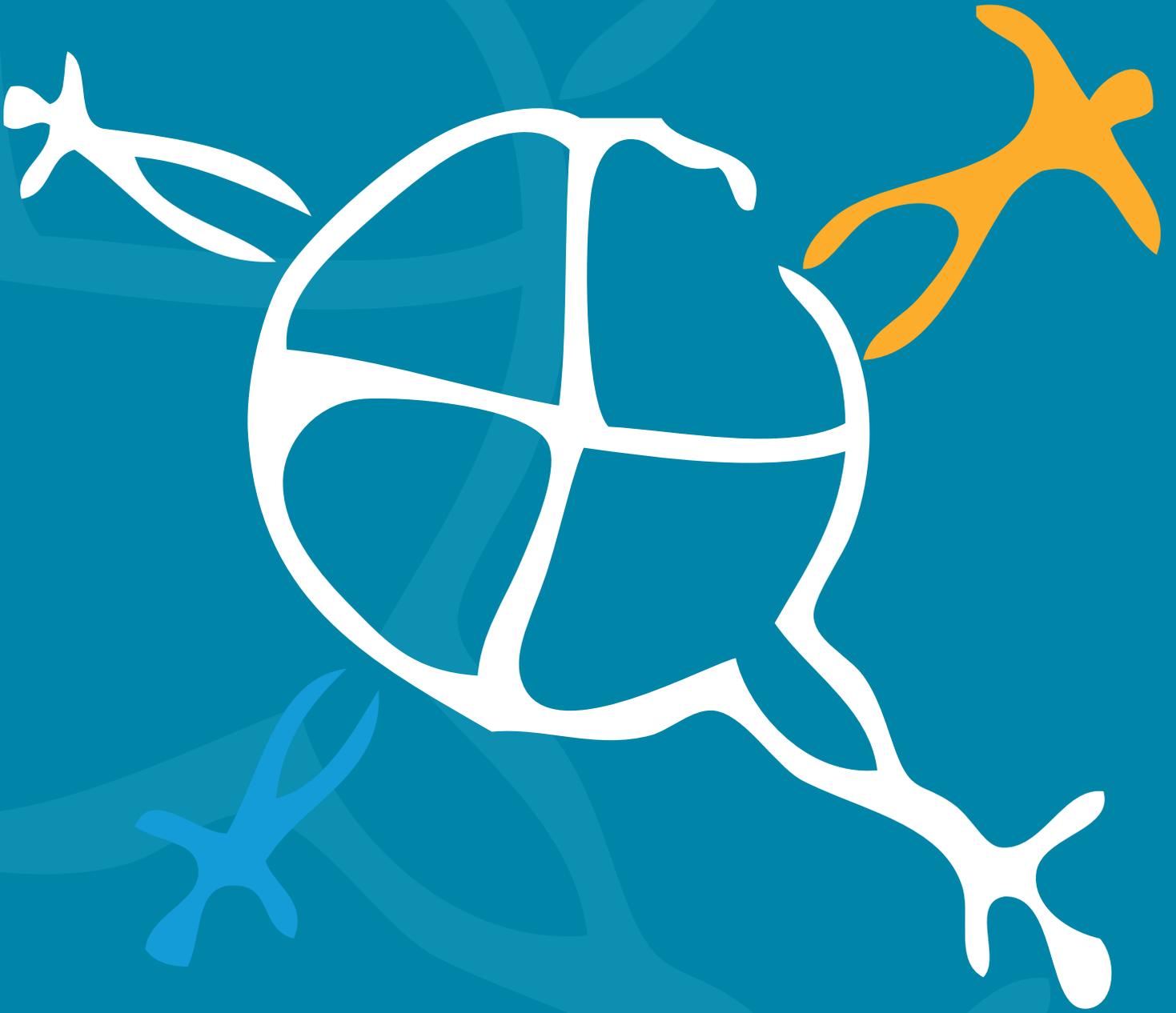
¹⁰⁷ Obinna, Owei, and Okwakpam, 2010: p. 185.



In Accra and Kumasi, major cities in Ghana, rich agricultural lands in the peri-urban areas are being converted into urban land use, resulting in loss of livelihoods for the Indigenous dwellers who experience high rates of unemployment and urban poverty.¹⁰⁸ It has been estimated that about 16,000 hectares of lands in peri-urban Accra are converted from agriculture to urban uses annually, resulting in loss of livelihoods and tension between the urban developers, custodians of the land and the Indigenous users of the land. This conversion means that land rights are increasingly individualized and privatized as opposed to promoting group or communal rights (usufruct).

¹⁰⁸ Owugu, 2008.

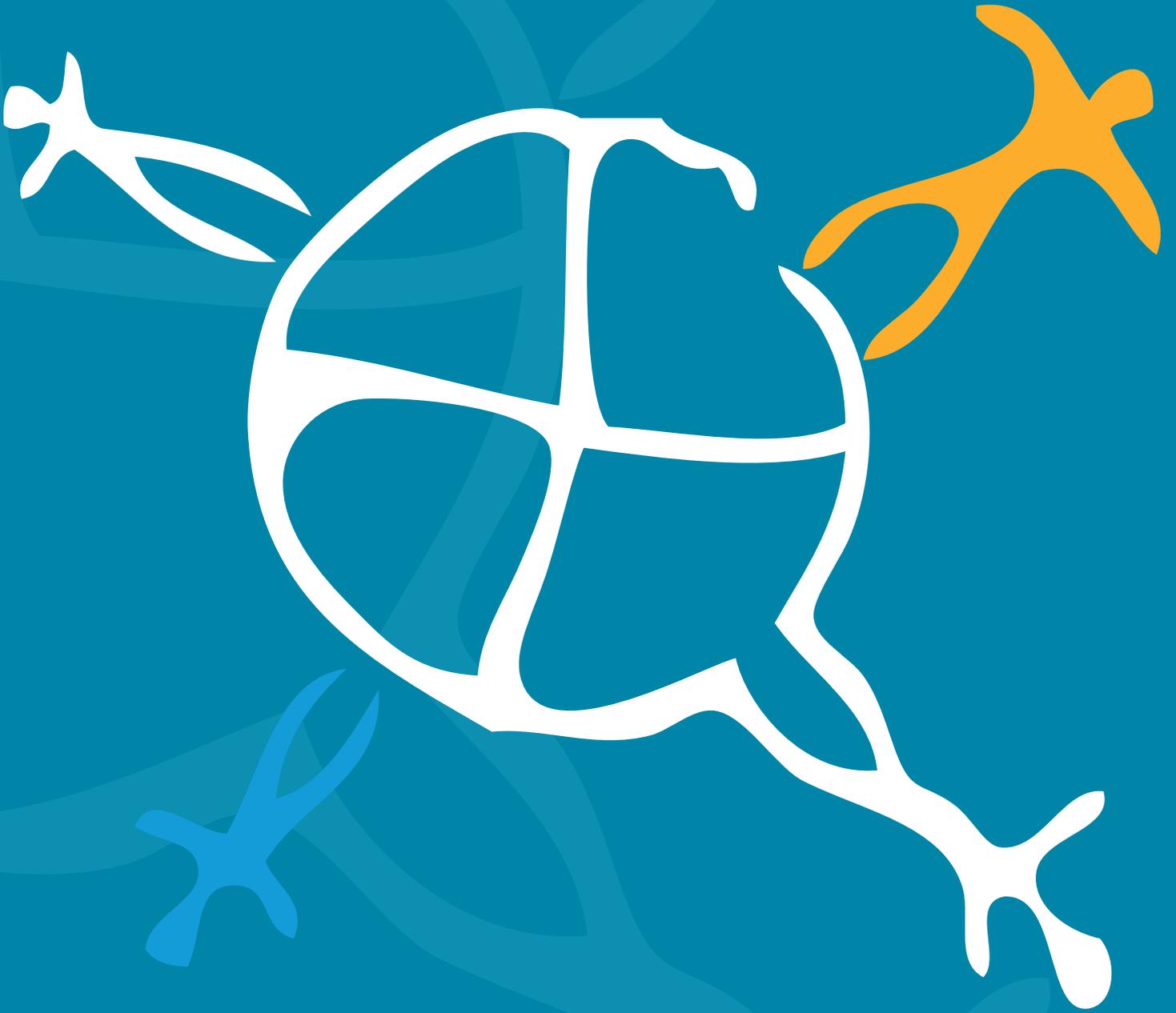






THREE

HUMAN RIGHTS AND STATES
OBLIGATIONS: AN OVERVIEW
OF THE LAND AND PROPERTY
RIGHTS OF INDIGENOUS
PEOPLES IN URBAN AREAS





HUMAN RIGHTS AND STATES OBLIGATIONS: AN OVERVIEW OF THE LAND AND PROPERTY RIGHTS OF INDIGENOUS PEOPLES IN URBAN AREAS

3.1 Self-Determination and Rights Related to Lands, Resources and Territories

Self-Determination

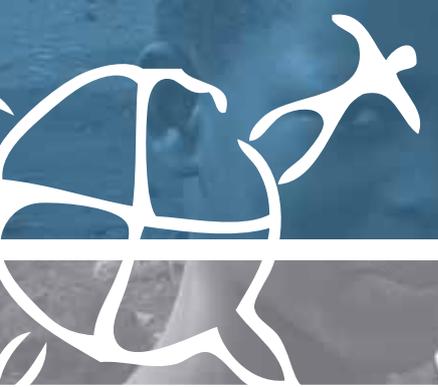
Self-determination can be viewed as the hallmark right of Indigenous peoples in relation to land and property rights. Article 3 of the UN *Declaration* states that, “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”¹⁰⁹ This right is contained in the UN Declaration, adopted by the UN General Assembly on September 13, 2007. The UN Declaration signalled global recognition of the distinct human rights of Indigenous peoples. The UN Declaration provides a comprehensive framework of human rights related to self-determination, lands, resources and territories, property rights, economic, social, cultural, spiritual, political and economic rights. It constitutes the minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world.¹¹⁰

Article 4 sets out that this right includes, “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.”¹¹¹ As well, Indigenous peoples have the right to their distinct political, legal, economic,

¹⁰⁹ UN Declaration on the Rights of Indigenous Peoples. Further, the ILO Convention 169 provides for the right to self-determination and recognizes the rights to lands, resources and territories of Indigenous peoples. For a full discussion, see Luis Rodríguez-Piñero, 2005.

¹¹⁰ UN Declaration on the Rights of Indigenous Peoples: article 43.

¹¹¹ UN Declaration on the Rights of Indigenous Peoples: article 4.



social and cultural institutions.¹¹² Indigenous peoples have the right not to be subjected to forced assimilation or destruction of their culture, requiring states to provide effective mechanisms for addressing cultural destruction, dispossession of their lands, territories or resources, forced population transfers, forced assimilation or integration and propaganda against them based on racial or ethnic discrimination.¹¹³ Indigenous peoples have the right to belong to their community.¹¹⁴

Promoting the right to self-determination serves to redress historic wrongs, preserve Indigenous cultures, traditions and identities, and improves the socio-economic status of Indigenous peoples.¹¹⁵ Such promotion is essential to the realization of other human rights as well, including the right to adequate housing, the right to health and fundamentally, rights related to lands, resources and territories.¹¹⁶

Rights related to Lands, Resources and Territories

Rights related to lands, territories and resources of Indigenous peoples are critical to exercising the right of self-determination. Article 25 states that "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard." In the context of urban migration and urban expansion, this right is often violated by states, transnational companies and non-Indigenous people. Articles 26 to 32 provide a comprehensive set of rights of Indigenous peoples to manage, own, control, use and occupy their traditional lands, territories, resources (and related cultural heritage and traditional knowledge).¹¹⁷ This includes under article 26, legal recognition and protection by states to Indigenous peoples' lands, territories and resources "with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned."¹¹⁸ Article 37 protects Treaty rights to lands, territories, resources and shelter.¹¹⁹ A jointly developed adjudication process by states and Indigenous peoples is established under article 27 and redress and restitution mechanisms are set out under article 28 that require the free, prior and informed consent of Indigenous peoples prior to their lands, territories and resources being "confiscated, taken, occupied, used or damaged."¹²⁰

¹¹² UN Declaration on the Rights of Indigenous Peoples: article 5. Note that culture is a central element of the rights of Indigenous peoples – indeed, there are 19 articles in the UN Declaration on the Rights of Indigenous Peoples that cite "culture" or "cultural" demonstrating the centrality of this right to the enjoyment of others rights for Indigenous peoples. These are pre-ambular paragraphs 3, 4, 7, 9, 10, 11, 16 and 23 as well as articles 3, 5, 8, 11, 12, 14, 15, 16, 31, 32 and 36.

¹¹³ UN Declaration on the Rights of Indigenous Peoples: article 8.

¹¹⁴ UN Declaration on the Rights of Indigenous Peoples: article 9.

¹¹⁵ UN-HABITAT, 2009a: p. 35.

¹¹⁶ UN-HABITAT, 2009a: pp. 35-36.

¹¹⁷ UN Declaration on the Rights of Indigenous Peoples: articles 26 to 32.

¹¹⁸ UN Declaration on the Rights of Indigenous Peoples: article 26.

¹¹⁹ UN Declaration on the Rights of Indigenous Peoples: article 37. See also: UN Doc. E/CN.4/Sub.2/1999/20: paragraphs 250-254 where Special Rapporteur Martinez describes the importance of land to Treaty rights as of primary importance.

¹²⁰ UN Declaration on the Rights of Indigenous Peoples: articles 27 and 28.

An important aspect of this set of rights is the right of free, prior and informed consent:

“For Indigenous peoples, the right of free, prior, and informed consent (FPIC) is a prerequisite for the exercise of their fundamental right to self-determination as defined in international law. It underpins their ability to exert sovereignty over their lands and natural resources, to redress violations, and to establish the criteria for negotiations with states on matters affecting them...Respect for Indigenous peoples’ consent is essential for the implementation and ongoing viability of treaties and agreements among Indigenous peoples and other parties.”¹²¹

The right to free, prior and informed consent is contained in several provisions of the UN *Declaration*.¹²² In the context of urban Indigenous peoples, this right if implemented would prevent violations in the context of urban expansion and migration, as it would preclude forced assimilation. Free, prior and informed consent would prevent future conflicts and would ensure Indigenous peoples’ full participation in related processes, including consultation mechanisms, environmental impact assessments and socio-cultural impact assessments.¹²³ There must be full participation in all consultative processes of Indigenous women and men as well as representation of other vulnerable groups such as, Indigenous people with disabilities and Indigenous sexual minorities.

3.2 Cultural Rights and Indigenous Legal Systems

For Indigenous peoples “...languages are the most powerful instruments of preserving and developing our tangible and intangible heritage...” Urban migration has displaced and disrupted the traditional cultural practices of some Indigenous communities (Sema, 2007), including languages.¹²⁴ Spiritual and sacred rituals and sites and the traditional lives of indigenous peoples have been compromised or lost. “This threat of cultural loss coupled with the lack of recognition for indigenous protocol and traditional practices is a concerning reality.” [Emphasis in the original, reference omitted.]¹²⁵

“Denying urban indigenous peoples the right to their indigeneity contravenes Article 8, 2 (a) (sic) of the United Nations Declaration on the Rights of Indigenous Peoples...” “Additionally, choices people make about their identity ‘must be respected, while at the same time any discrimination based on indigenous peoples’ cultures and identity must be rejected.’”¹²⁶

¹²¹ Carmen, 2010: p.120; See also UN Doc. E/CN.4/Sub.2/AC.4/2002/3: p.4 where it is recommended that the private sector respect the principle of free, prior and informed consent when consulting with Indigenous peoples, that mutually beneficial benefit sharing guide development and that mutually acceptable independent disputes mechanisms be established for resolving disputes.

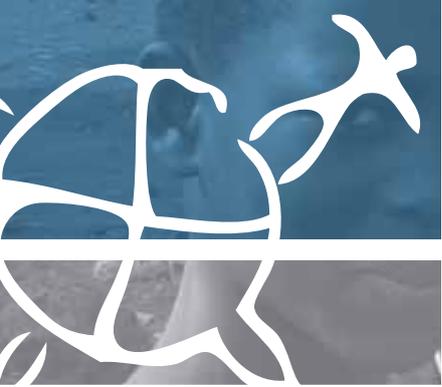
¹²² UN Declaration on the Rights of Indigenous Peoples: articles 10, 11(2), 19, 28(1), 29(2) and 32(2).

¹²³ UNPFII, 2007: paragraph 21.

¹²⁴ UN-HABITAT and OHCHR, 2010: p. 51.

¹²⁵ UN-HABITAT and OHCHR, 2010: p. 51.

¹²⁶ UN-HABITAT and OHCHR, 2010: p. 49.



3.3 Millennium Development Goals (MDGs)

Indigenous peoples' need to "provide their own definitions of poverty and development and ... there should be full and effective participation of indigenous peoples in the implementation of the [Millennium Development] Goals."¹²⁷ In implementing the MDGs in a way that will be effective for Indigenous peoples, a rights-based approach must be taken that acknowledges the importance of self-determination, and free, prior and informed consent and other key rights, needs and perspectives. There must be accountability to these principles in the development of partnerships between all states, Indigenous peoples, United Nations bodies, international development agencies, corporations and the private sector, as well as civil society.¹²⁸

The MDGs process has been criticized for its failure to adequately involve Indigenous peoples:

Reviews of MDG reports from approximately 45 countries in Africa, Latin America and Asia and the Pacific have found that, with very few exceptions, indigenous peoples' input has not been included in national MDG monitoring and reporting...Although many of the reports discuss the disparities affecting indigenous peoples, very few of them actually provide disaggregated data. Another gap identified in the reviews is the lack of mechanisms through which to ensure the input and participation of indigenous peoples themselves in the design, implementation and monitoring of policies designed to achieve the MDGs.¹²⁹

The MDGs have the potential to be a framework for addressing the key land and property rights of urban Indigenous peoples, since all eight goals are relevant to the factors negatively impacting these rights, from ending poverty and hunger to establishing global partnerships.¹³⁰ However, the mechanisms for ensuring Indigenous peoples' full and effective participation need to be established before this impact can be realized.

¹²⁷ UNPFII, 2006: p. 3.

¹²⁸ UNPFII, 2006: p. 5.

¹²⁹ United Nations Department of Economic and Social Affairs Division for Social Policy and Development, Secretariat of the Permanent Forum on Indigenous Issues, 2009: p. 40.

¹³⁰ Millennium Declaration, 2000: The MDGs are to: eradicate extreme poverty and hunger, achieve universal primary education, promote gender equality and empower women, reduce child mortality, improve maternal health, combat HIV/AIDS, Malaria and other diseases, ensure environmental sustainability and develop a global partnership for development.

Millennium Development Goals and Indigenous Peoples in Chiapas

Chiapas is one of the poorest states in Mexico, with more than 14% of its population living in extreme poverty. It was also the site of the mostly Indigenous Zapatista uprising in the 1990s. The Zapatistas were protesting massive inequality and poverty and the government's refusal to fully recognize Indigenous rights in Mexico. All of that may soon be changing as a result of the bold moves of the Governor of Chiapas who ensured that the state budget placed a high priority on programs related to poverty eradication and human development. He has dedicated the equivalent of US\$600 million to a range of social and anti-poverty programs in the coming year. To further concretize this policy commitment, the Governor with the support of the UN Development Programme and other UN agencies, amended the Constitution of Chiapas so that it now includes the Millennium Development Goals within its provisions. Changes to articles in the constitution also increase the share of public funds to municipalities with the most extreme forms of poverty which the government aims to cut by half before 2015, in accordance with the first of the MDGs.

Sources:

UNDP Newsroom, Mexico's poorest state tackles extreme poverty through budget shifts, 22 September 2010, available on: <http://content.undp.org/go/newsroom/2010/september/mexicos-poorest-state-tackles-extreme-poverty-through-budget-shifts.en?sessionid=axbWzt...?categoryID=349422&lang=en>; and

Bread New Mexico (online blog), Chiapas Governor recognized for work on MDGs, October 30, 2010 available on: <http://breadnm.blogspot.com/2010/10/chiapas-governor-recognized-for-work-on.html>

3.4 The Habitat Agenda

The Habitat Agenda calls for specific policies related to urban development and management for Indigenous peoples. Such policies should respect their identity and culture and aim to improve their political, social and economic life.¹³¹ The Agenda affirms a commitment to ensuring equal access to land, with particular attention to women as well as to freedom from discrimination in housing and legal security of tenure.¹³² It commits to promoting access to safe drinking water, sanitation and other basic services, facilities and amenities, particularly for women and people living in poverty or belonging to a 'vulnerable or disadvantaged group'.¹³³ It also commits to eradicating discrimination of any kind and ensuring legal protection from discrimination in access to shelter and basic services.¹³⁴ It protects all people from forced evictions through providing legal protection and redress from a human rights perspective.¹³⁵

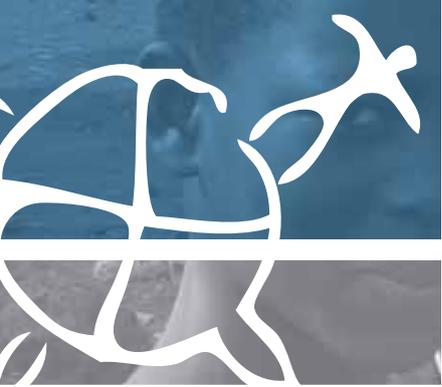
¹³¹ UN Doc. A/CONF.165/14: preambular paragraph 14.

¹³² UN Doc. A/CONF.165/14: preambular paragraph 40 (b) and 39.

¹³³ UN Doc. A/CONF.165/14: preambular paragraph 40 (c).

¹³⁴ UN Doc. A/CONF.165/14: preambular paragraph 40 (f).

¹³⁵ UN Doc. A/CONF.165/14: preambular paragraph 40 (n).



Of particular concern to the land and property rights of Indigenous peoples, the Habitat Agenda states its commitment to promoting the legal traditional land and resource rights of Indigenous peoples as well as strengthening of their land management.”¹³⁶ It also states that:

“ 122. In order to promote the continuing progress of indigenous people and to ensure their full participation in the development of the rural and urban areas in which they live, with full respect for their cultures, languages, traditions, education, social organizations and settlement patterns,

Governments and leaders of indigenous communities, within the national context, should:

- (a) Take particular actions to enhance their productive capacities, ensuring their full and equal access to social and economic services and their participation in the elaboration and implementation of policies that affect their development;
- (b) Support the economic activities of indigenous people in order to improve their conditions and development and to secure their safe interaction with larger economies;
- (c) Integrate indigenous women, their perspectives and knowledge, on an equal basis with men, in decision making regarding human settlements, including sustainable resource management and the development of policies and programmes for sustainable development, including, in particular, those designed to address and prevent environmental degradation of land;
- (d) Address the particular needs of indigenous children and their families, especially those living in poverty, thereby enabling them to benefit fully from economic and social development programmes.

167. In establishing policies for sustainable regional development and management, Governments at the appropriate levels, including local authorities, should:

- (a) Promote education and training programmes and establish procedures for the full participation of rural and indigenous people in the setting of priorities for balanced and ecologically viable regional development...”

States that use these elements of the Habitat Agenda in the development of policies related to land and property, would go some distance in advancing the rights of Indigenous peoples.

3.5 Linking Land and Property Rights and Other Human Rights

Land rights are interdependent with a number of rights including property rights, rights to equality and non-discrimination, development, culture and spirituality,¹³⁷ as well as a range of economic, social and cultural rights such as rights to employment, housing, secure tenure, water and food.

¹³⁶ UN Doc. A/CONF.165/14: preambular paragraph 40 (m).
¹³⁷ ILO Convention No. 169: article 32.

3.5.1 Property Rights

Land, property and natural resources are the primary areas of dispute between States and Indigenous peoples. A number of international human rights instruments recognize property rights and have been used to contest State expropriation and confiscation of Indigenous lands, territories and resources:

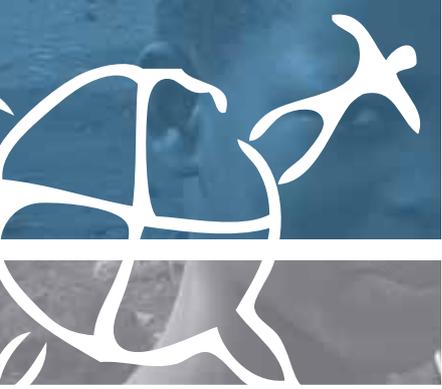
- Article 17 (1) of the **Universal Declaration on Human Rights** (UDHR) states that “[e]veryone has the right to own property alone as well as in association with others” and article 17 (2) states that no one “shall be arbitrarily deprived of his [sic] property.”
- Article 5 of the **Convention on the Elimination of All Forms of Racial Discrimination** obliges States to prohibit and eliminate racial discrimination with respect to the right to own property alone or in association with others.
- Article 17 (1) of the **International Covenant on Civil and Political Rights** (ICCPR) states that no one “shall be subjected to arbitrary or unlawful interference with his [sic] privacy, family, home or correspondence”. This same provision is found in article 11 of the American Convention on Human Rights.
- Article 14 of the **African Charter on Human and Peoples’ Rights** guarantees the right to property, indicating that it can only be encroached upon in the public interest and in accordance with law.
- Article 8 of the **European Convention on Human Rights** protects rights to private and family life, including the home, with a similar limitation clause as that found in the African Charter.

International human rights treaty monitoring bodies – responsible for reviewing State party compliance with human rights instruments – have expressed concern regarding the land and property rights of Indigenous peoples in many different country contexts. For example, in its 2003 review of Bolivia, the Committee on the Elimination of Racial Discrimination noted with concern the information it had received on the issue of Indigenous lands allegedly allotted to private companies, especially in the communities of Chiquitano, Beni and Santa Cruz. In response the Committee drew to the attention of the Government of Bolivia its General Recommendation XXIII which “calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories.”¹³⁸

Also in 2003, in its review of the Philippines, the Human Rights Committee expressed concern about the impact on Indigenous peoples of mining operations and recommended that the State party “ensure that indigenous peoples’ land and resource rights enjoy adequate protection in relation to mining and other competing usage ... [and that] ... Positive measure should be expanded to include land rights issues”.¹³⁹

¹³⁸ CERD General Recommendation XXIII: paragraph 5.

¹³⁹ CERD General Recommendation XXIII: Human Rights Committee, Concluding Observations on the Philippines.



International human rights complaint mechanisms have also been used successfully to establish and protect Indigenous land rights, particularly in the context of displacement and forced eviction of Indigenous peoples from their lands. One of the leading cases is *Mayagna (Sumo) Awas Tingni v Nicaragua*, where the Inter-American Court of Human Rights recognized that the American Convention on Human Rights protects property rights 'in a sense which includes, among others, the rights of members of the indigenous communities within the framework of communal property'. Moreover, the Inter-American Court stated that possession of the land should suffice for indigenous communities lacking real title to obtain official recognition of that property.¹⁴⁰

In another landmark case, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya* [hereinafter, the "Endorois case"], the African Commission on Human and Peoples' Rights found that the Endorois peoples of Kenya, despite not having formal title to the land under dispute, did indeed have property rights over the territory from which they had been evicted. This judgment was reached because the Commission recognized the Endorois' long association with and use of the land. In turn, the eviction was deemed a violation of their property rights.¹⁴¹ Decisions such as this recognize Indigenous peoples rights to remain on their lands and maintain a sustainable livelihood, culture and community. They also have the effect of ensuring adequate compensation for the illegal eviction. Such decisions can play an important role in stemming rural-urban migration and the concomitant strain on urban infrastructure.

The Inter-American Court on Human Rights has heard several cases where Indigenous groups allege violations of their property rights. For example, in *Yakye Axa v. Paraguay*, the Court concluded Paraguay had violated the rights to property and court protection, as well as the right to life, since it had prevented the community from access to its traditional means of livelihood. Furthermore, the Court understood that the State had failed to adopt necessary positive measures to ensure the community lived under dignified conditions during the period they had to do without their land. While they stayed on the side of a road across from the land they claimed, the community lacked adequate access to food, health services and education. Sixteen persons died due to the said living conditions. The Court concluded the State had the obligation to adopt positive measures towards a dignified life, particularly when high risk, vulnerable groups were at stake, whose protection became a priority. The Court ordered the State to demarcate the traditional land, to submit it to the community at no cost, and to provide basic goods and services necessary for the community to survive until they recovered their land.¹⁴²

¹⁴⁰ *ESCR-Net database.*

¹⁴¹ *ESCR-Net database.*

¹⁴² *ESCR-Net database.*

3.5.2 Non-Discrimination and Equality

Discrimination is a defining feature of urban life for Indigenous individuals and communities. Every international and regional human rights instrument includes provisions on non-discrimination and equality.

The UN *Declaration on the Rights of Indigenous Peoples* provides for non-discrimination and equality of Indigenous peoples qua peoples and of Indigenous individuals under article 2.¹⁴³ Further, article 21 provides for non-discrimination in the realization of Indigenous peoples' social and economic conditions, requiring effective measures to meet the needs and rights of "indigenous elders, women, youth, children and persons with disabilities."¹⁴⁴ Article 43 provides for equality between men and women in the recognition of the rights contained in the UN Declaration.¹⁴⁵

Both the ICCPR and the International Covenant on Economic, Social and Cultural Rights (the ICESCR) have broad non-discrimination and equality principles requiring State parties to the Covenants to guarantee the rights contained in the Covenants without discrimination based on, "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (Article 2 of both the ICCPR and ICESCR). Both Covenants also include provisions which specifically assert the equal right of men and women to the enjoyment of all of the rights enumerated in the Covenant" (article 3 of the ICCPR and the ICESCR).

The ICCPR also includes a broader provision on non-discrimination which reaches beyond the rights contained in the Covenant. Article 26 states:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 26 has been interpreted as a 'free standing' guarantee of non-discrimination because it prohibits discrimination with regard to all rights and benefits recognised by the law, whereas, article 2, guarantees non-discrimination only with respect to the rights guaranteed by the ICCPR. Article 26, as interpreted by subsequent case law, extends that protection by specifying that all individuals are 'equal before the law' and are entitled to 'equal protection of the law.'¹⁴⁷

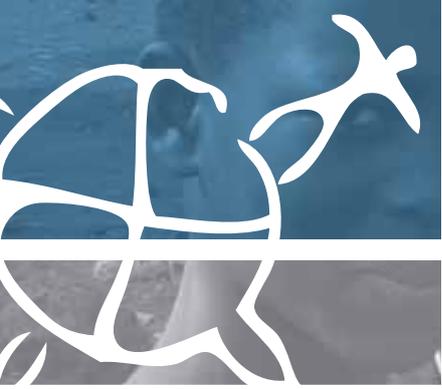
¹⁴³ UN Declaration on the Rights of Indigenous Peoples: article 2.

¹⁴⁴ UN Declaration on the Rights of Indigenous Peoples: article 21. See also article 22 which calls for special measures for these groups in addressing violence and discrimination that they may face.

¹⁴⁵ UN Declaration on the Rights of Indigenous Peoples: article 44.

¹⁴⁶ While this right may be characterized as one related to "religion" this is not the most appropriate term in the Indigenous context – "spirituality" captures the essence of the right in the indigenous context.

¹⁴⁷ *Interights*, 2005: pp. 31-32.



The **CERD**, focused on racial discrimination, contains **article 2** obliging State parties to “undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms”. It also obliges States parties to promote understanding among all races. To achieve this, the Convention requires that signatories:

- Not practice racial discrimination in public institutions (article 2.1.a);
- Not “sponsor, defend, or support” racial discrimination (article 2.1.b);
- Review existing policies, and amend or revoke those that cause or perpetuate racial discrimination (article 2.1.c);
- Prohibit “by all appropriate means, including legislation,” racial discrimination by individuals and organisations within their jurisdictions (article 2.1.d) and
- Encourage groups, movements, and other means that eliminate barriers between races, and discourage racial division (article 2.1.e).

Parties are obliged “when the circumstances so warrant” to use affirmative action policies for specific racial groups to guarantee “the full and equal enjoyment of human rights and fundamental freedoms” (article 2.2).

Article 5 expands upon on the general obligation of article 2 and creates a specific obligation to guarantee the right of everyone to equality before the law regardless of “race, colour, or national or ethnic origin” (article 5). It further lists specific rights equality must apply to: equal treatment by courts and tribunals (article 5.a), security of the person and freedom from violence (article 5.b), the civil and political rights affirmed in the ICCPR (article 5.c and d), and the economic, social and cultural rights affirmed in the ICESCR (article 5.e). This list is not exhaustive, and the obligation extends to all human rights.

Article 6 obliges parties to provide “effective protection and remedies” through the courts or other institutions for any act of racial discrimination. This includes a right to a legal remedy and damages for injury suffered due to discrimination.

Rights to non-discrimination and equality are now understood as customary law, binding on all States regardless of the treaties they have ratified. States have an immediate obligation to address discrimination whether the discrimination is as a result of State or third party action. To remedy violations of rights to non-discrimination and equality a State may be required to take positive measures or steps. In other words, States may be required to utilize its resources and/or to implement a program or a policy to address the discrimination.¹⁴⁸

A number of UN treaty monitoring bodies have expressed concern regarding discrimination against Indigenous peoples, particularly in the context of their rights to land and property. For example, in

¹⁴⁸ See for example, *HRC General Comment 18*, and *CESCR General Comment 16*, both of which indicate that in order for rights to equality and non-discrimination to be realized, the State must undertake positive obligations.

the 2006 review of Canada the UN Committee on Economic, Social and Cultural Rights (the CESCR), expressed concern regarding the discriminatory experiences of Aboriginal women with respect to matrimonial property rights and recommended that Canada, "in consultation with First Nations and including Aboriginal women's groups, adopt measures to combat discrimination against First Nations women and their children in matters relating to Indian status, band membership and matrimonial property."¹⁴⁹ In 2004, in its review of Brazil, the CERD Committee expressed its concern at the fact that "effective possession and use of indigenous lands and resources continues to be threatened and restricted by recurrent acts of aggression against indigenous peoples."¹⁵⁰ They recommended that Brazil "complete the demarcation of indigenous lands by 2007. Furthermore, the Committee recommend[ed] that the State party adopt urgent measures to recognize and protect, in practice, the right of indigenous peoples to own, develop, control and use their lands, territories and resources."

3.5.3 Economic, Social and Cultural Rights

Land and property rights are interdependent with numerous economic, social and cultural rights such as those found in the ICESCR, for example: rights to adequate housing including secure tenure, water, health, and employment.¹⁵¹

Right to Adequate Housing and Secure Tenure

For Indigenous peoples, the interaction between land and property rights and economic, social and cultural rights commonly manifests in the context of forced eviction or displacement. Forced eviction – the forced removal of individuals and communities from their homes and lands¹⁵² – is one of the central causes of rural-urban migration by Indigenous peoples. It is also a common phenomenon in cities, particularly in the context of urban development and expansion, where a government gives precedence to development interests over the rights of Indigenous peoples, causing the dispossession of the land, territories and resources of Indigenous peoples and eviction from squatter settlements or slums where they reside. Because Indigenous peoples often live in precarious housing in urban areas, they are particularly vulnerable to forced eviction.

Legal security of tenure and protection against forced eviction is included in the broad right to adequate housing found in article 11.1 of the ICESCR. The CESCR has said: "Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. The right to self-determination, and rights related to development, lands, resources and territories are relevant here too in so far as they relate to secure tenure."¹⁵³

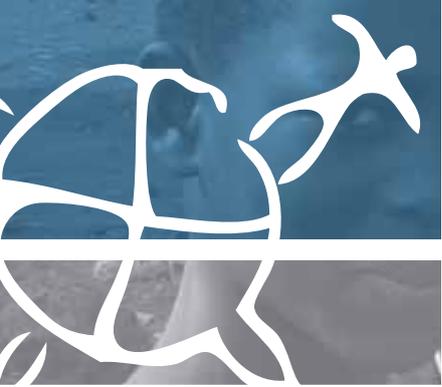
¹⁴⁹ CESCR Concluding Observations on Canada: paragraphs 11(d) and 45.

¹⁵⁰ CERD Concluding Observations on Brazil: paragraph 15.

¹⁵¹ See: ICESCR: articles 7 – 15.

¹⁵² CESCR General Comment 7.

¹⁵³ CESCR General Comment 4: para. 8.



General Comment 7 on forced evictions, adopted by the CESCR in 1997, is the most comprehensive legal pronouncement pertaining to forced evictions under international law. It recognizes that the practice of forced evictions has a disparate impact on both Indigenous peoples and women (para. 10). The comment stipulates that the State must refrain from implementing forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (para. 9). In keeping with this, the comment states that the development of legislation that protects against forced eviction will be a key instrument in preventing this practice of forced eviction (para. 10).

In 2008, the CESCR reviewed Philippines' compliance with the ICESCR and expressed concern regarding forced evictions in urban areas which undoubtedly affected urban Indigenous dwellers. The CESCR made the following concluding observations and recommendations:

30. The Committee regrets that most of its previous recommendations relating to the prevention of illegal forced evictions (E/C.12/1995/7, paras. 31 and 32) have not been acted upon by the State party, and remains deeply concerned about the large-scale forced eviction of urban families carried out for the purpose of urban renewal and beautification, which has reportedly affected over 1.2 million people in the period between 1995 and 2008. It is also concerned about the lack of effective consultation of, and legal redress for, persons affected by forced evictions, and the inadequate measures to provide sufficient compensation or adequate relocation sites to families who have been forcibly removed from their properties. (article 11) ... the Committee urges the State party, as a matter of priority, to ...
- (c) Undertake open, participatory and meaningful consultations with affected residents and communities prior to implementing development and urban renewal projects;
 - (d) Ensure that persons forcibly evicted from their properties be provided with adequate compensation and/or offered relocation, in accordance with section 28 of the UDHA and the guidelines adopted by the Committee in its general comment No. 7 (1997) on forced evictions; and
 - (e) Guarantee that relocation sites are provided with basic services (including drinking water, electricity, washing and sanitation facilities) and adequate facilities (including schools, health care centres and transportation) at the time the resettlement takes place.

Right to Water

Indigenous peoples' struggles with respect to their rights to self-determination and to land and property, extend equally to their rights to water. The Indigenous Peoples' Kyoto Water Declaration (2003) states, "Our relationship with our lands, territories and water is the fundamental physical, cultural and spiritual basis for our existence ... Self-determination includes the practice of our cultural and spiritual relationships with water, and the exercise of authority to govern, use, manage, regulate,

recover, conserve, enhance and renew our water sources, without interference.”¹⁵⁴ Of particular concern to Indigenous peoples in the urban context is the privatization of water within municipalities and the impact on their access to water once controlled privately. For example, private sector participation in the infrastructure and management of the city’s municipal water supply sparked the “Cochabamba water wars” in Cochabamba, Bolivia, the third largest city in the country. The Quecha Indigenous peoples played a major role in the movement that eventually won the Cochabamba Water Wars, and prevented them from being privatized.

At the UN Human Rights Council (HRC) Session in October 2010, the HRC made a “landmark decision to make the right to water and sanitation legally binding.”¹⁵⁵ The HRC affirmed that the right to water and sanitation is derived from the right to an adequate standard of living, which establishes the right in existing treaties (including the ICESCR) and Indigenous Treaties, including, for example, Treaty 6).¹⁵⁶ This right requires states to exercise due diligence in protecting this human right and to aim for universal coverage on a non-discriminatory basis. This represents a very significant gain for Indigenous peoples.

Land and property rights also interact directly with rights to development and culture. For example, in the Endorois case, the Commission found that by evicting the Endorois from what was deemed by the Commission to be their traditional territory in order to develop the land into a Game Reserve, Kenya had violated the Endorois’ right to freely dispose of their natural resources as well as to the right to development and its economic benefits. It was also found that the eviction precluded the Endorois community from accessing sites of worship and cultural sites and thus violated their rights to spirituality¹⁵⁷ and culture.

3.5.4 Indigenous Women’s Rights

The text of the Convention on the Elimination of Discrimination Against Women (Women’s Convention) makes no references to Indigenous women. It also does not contain any provisions prohibiting racial discrimination.¹⁵⁸ The Women’s Convention does include provisions related to land and property particularly in the rural context. For example, it requires states to ensure women’s rights to equal treatment in land and agrarian reform (article 14.2(g)) and for equal rights of spouses to own and administer property (article 16.2(h)). In the case of Indigenous peoples, women’s equal rights to enjoy adequate living conditions (article 14.2(h)), might be interpreted to include the protection of natural resource rights. In May 2002, the Committee adopted a decision with regard to gender and sustainable development, which underlines the importance of natural resources and the environment for women:

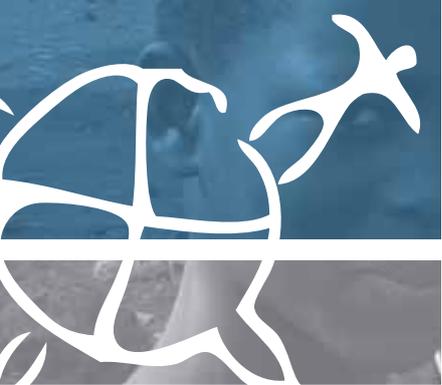
¹⁵⁴ *Indigenous Peoples Caucus, 2003: paragraphs 3 and 11.*

¹⁵⁵ *OHCHR, (n.d).*

¹⁵⁶ *IOIRD, 2007: p.1; CESCR General Comment 15, 2002: paragraph 16.*

¹⁵⁷ *Refer to footnote 127.*

¹⁵⁸ *Kambel, 2004.*



429. Convinced that sustainable development cannot be achieved without addressing the above problems or a commitment to the full realization of the human rights of women or without ensuring women's full participation in implementing the agenda for sustainable development, the Committee recommends that:

- (a) Women be considered as stakeholders with an important contribution to make to sustainable development. The empowerment of women, at all levels, in leadership and decision-making roles in government and as responsible members of civil society must be considered central to sustainable development;
- (h) Sustainable forest management systems be developed to address the concerns of rural women, recognizing in particular women's land entitlement;
- (i) Increased access to safe drinking water and adequate sanitation facilities be provided;
- (j) Priority be given in developing action plans and measures to address climate change, pollution and their adverse effects, in particular on the health of women and children [...]¹⁵⁹

Of course, the Women's Convention also includes a number of rights of relevance to all women living in the urban context and particularly Indigenous women such as rights against trafficking (article 6), non-discrimination based on sex or gender in education (article 10), employment and labour (article 11), health and health services (article 12), economic and social rights, such as social security (article 13). The Women's Convention also includes a provision allowing for the establishment of temporary measures to address systemic inequality between women and men (article 4).

In its reviews of State parties, the CEDAW Committee has shown an interest in the status of Indigenous women's rights in a number of countries including Canada,¹⁶⁰ Philippines,¹⁶¹ and Brazil among others. In its 2006 review of Mexico the Committee stated:

34. While welcoming the establishment of the National Commission for the Development of Indigenous Peoples, the Committee is concerned about the higher levels of poverty and illiteracy and multiple forms of discrimination experienced by indigenous and rural women. The Committee is concerned about the large disparities between them and women in urban areas and from non-indigenous groups in access to basic social services, including education and health, and participation in decision-making processes.

35. The Committee urges the State party to ensure that all poverty eradication policies and programmes explicitly address the structural nature and various dimensions of poverty and discrimination that indigenous and rural women face. It recommends that the State party use temporary special

¹⁵⁹ CEDAW Decision 26/II, 2002: paragraphs 422-429.

¹⁶⁰ CEDAW Concluding Comments on Canada, 2008: paragraphs 19-20.

¹⁶¹ CEDAW Concluding Comments on Philippines, 2006: paragraphs 24, 29-30.

measures to address the disparities that indigenous and rural women face with regard to access to basic social services, including education and health, and participation in decision-making processes. The Committee requests the State party to include in its next periodic report comprehensive information on the measures taken and their impact, accompanied by data disaggregated by urban and rural areas, by states and by indigenous populations.¹⁶²

3.5.5 Indigenous Children's Rights

The Convention on the Rights of the Child (the CRC) contains provisions that are specifically relevant to Indigenous children. This Convention has been ratified by more countries than any other treaty within the UN system.

As is the case with all treaties, the CRC contains broad anti-discrimination provisions. Article 2.1 says that States Parties shall respect and ensure the rights in the Convention to each child within their jurisdiction without discrimination because of their race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

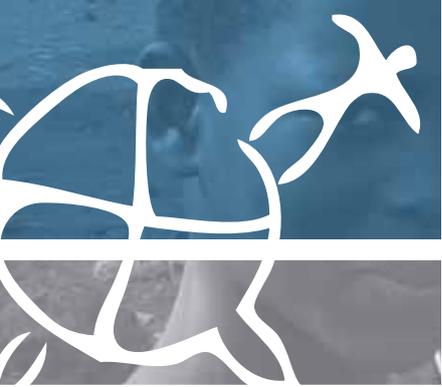
Article 30 protects cultural rights, referring specifically to Indigenous children: "... a child ... who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language". According to the Committee on the Rights of the Child's General Comment 11 on Indigenous children, article 30 "... is conceived as being both individual and collective and is an important recognition of the collective traditions and values in indigenous cultures. The Committee notes that the right to exercise cultural rights among indigenous peoples may be closely associated with the use of traditional territory and the use of its resources."¹⁶³ According to the Committee on the Rights of the Child:

"The specific references to indigenous children in the Convention are indicative of the recognition that this population requires special measures in order to fully enjoy their rights. The Committee on the Rights of the Child has consistently taken into account the situation of indigenous children in its reviews of periodic reports of State parties to the Convention. The Committee has observed that indigenous children face significant challenges in exercising their rights and has issued specific recommendations to this effect in its concluding observations. Indigenous children continue to experience serious discrimination contrary to article 2 of the Convention in a range of areas, including in their access to health care and education, which has prompted the need to adopt this general comment."¹⁶⁴

¹⁶² CEDAW Concluding Comments on Mexico, 2006: paragraphs 34-45.

¹⁶³ CRC General Comment No. 11 at paragraph 30.

¹⁶⁴ CRC General Comment No. 11 at paragraph 5.



General Comment 11 also recognized the significance of traditional land and the quality of the natural environment to a child's right to life, survival and development and that States will have to take special measures with respect to Indigenous children to ensure their right to an adequate standard of living is realized.

The General Comment also provides an analysis of the meaning and application for Indigenous children of economic and social rights contained in the CRC, for example, basic health and welfare (paras. 49-55), education (paras. 56-63) and rights to be free from economic exploitation (paras. 69-71), and sexual exploitation and trafficking (paras. 72-73). All of these provisions are relevant to Indigenous children and youth living in cities.

3.5.6 Indigenous People with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD) does not contain any Indigenous specific provisions. There is, however, recognition of Indigenous peoples in a preambular paragraph, which notes "the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination," and it includes in its list of unacceptable bases of discrimination "indigenous or social origin." Moreover, all of the CRPD's provisions are of relevance to indigenous people with disabilities, just as they are of relevance to other people with disabilities.

Article 5 is of particular relevance to the land and property rights of Indigenous people with disabilities. It states:

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

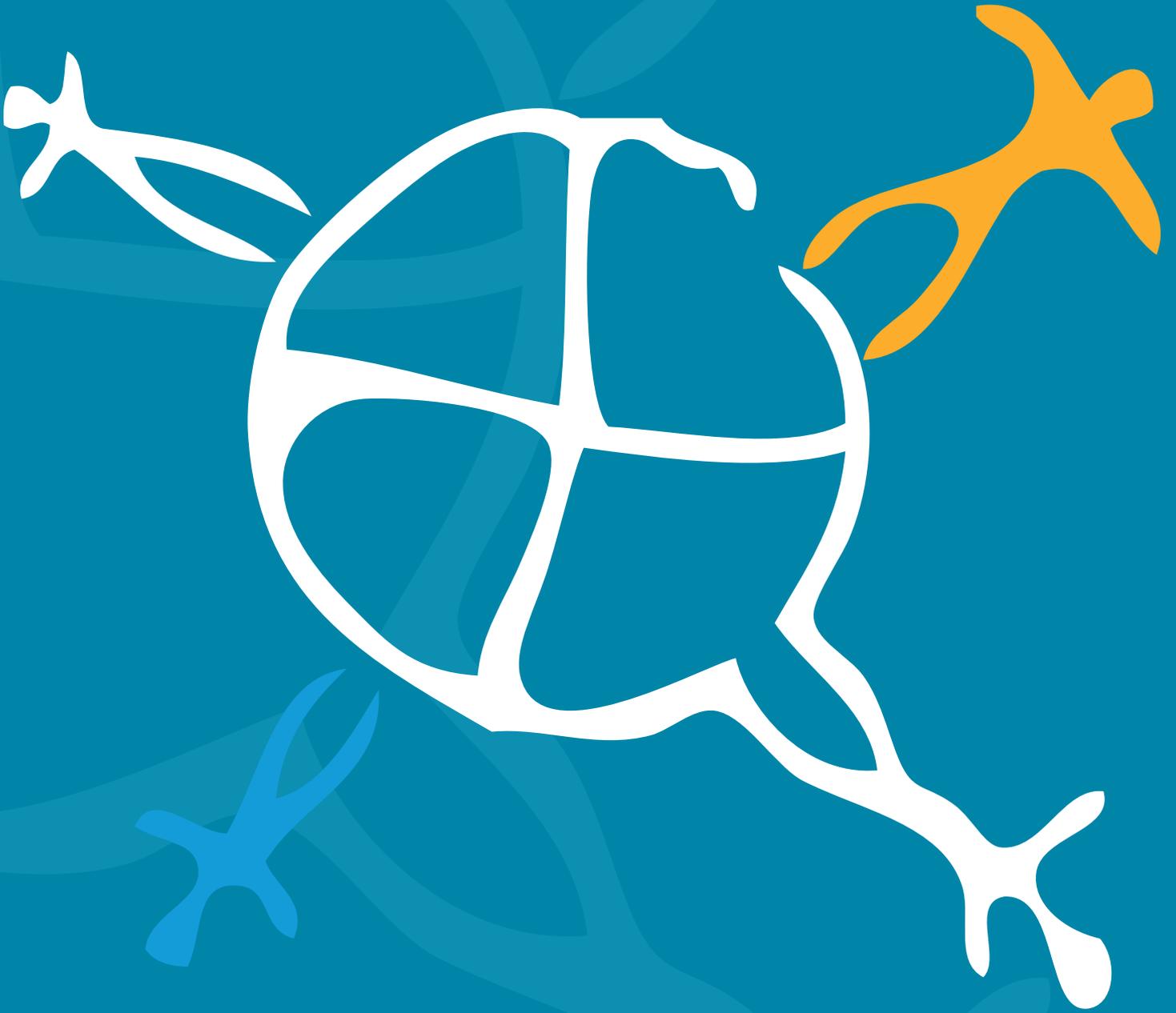
The Convention also includes important provisions protecting economic and social rights for disabled people such as rights to an adequate standard of living and social protection (article 28), education (article 24), health (article 25), and work employment (article 27) as well as accessibility rights to services such as health, education, as well to workplaces (article 9). The Convention also includes a non-discrimination and equality provision at article 5.

3.5.7 Natural Disasters and Indigenous Land Rights

Under international human rights law, Indigenous victims of disasters have the same rights and responsibilities as Indigenous peoples in other contexts. The relevant rights include:

- The right to free, prior and informed consent (articles 8, 10, 11, and 19 of the UN Declaration);
- Rights to non-discriminatory access to property (i.e.: gender equality, recognition of customary rights, etc.) (articles 2, 21, 22 & 44 of the UN Declaration);
- Rights to adequate housing, which includes security of tenure (ICESCR, article 11, UN Declaration, articles 21 and 23); and
- Rights against arbitrary deprivation of property. (UN Declaration, article 10, ICCPR, article 17).

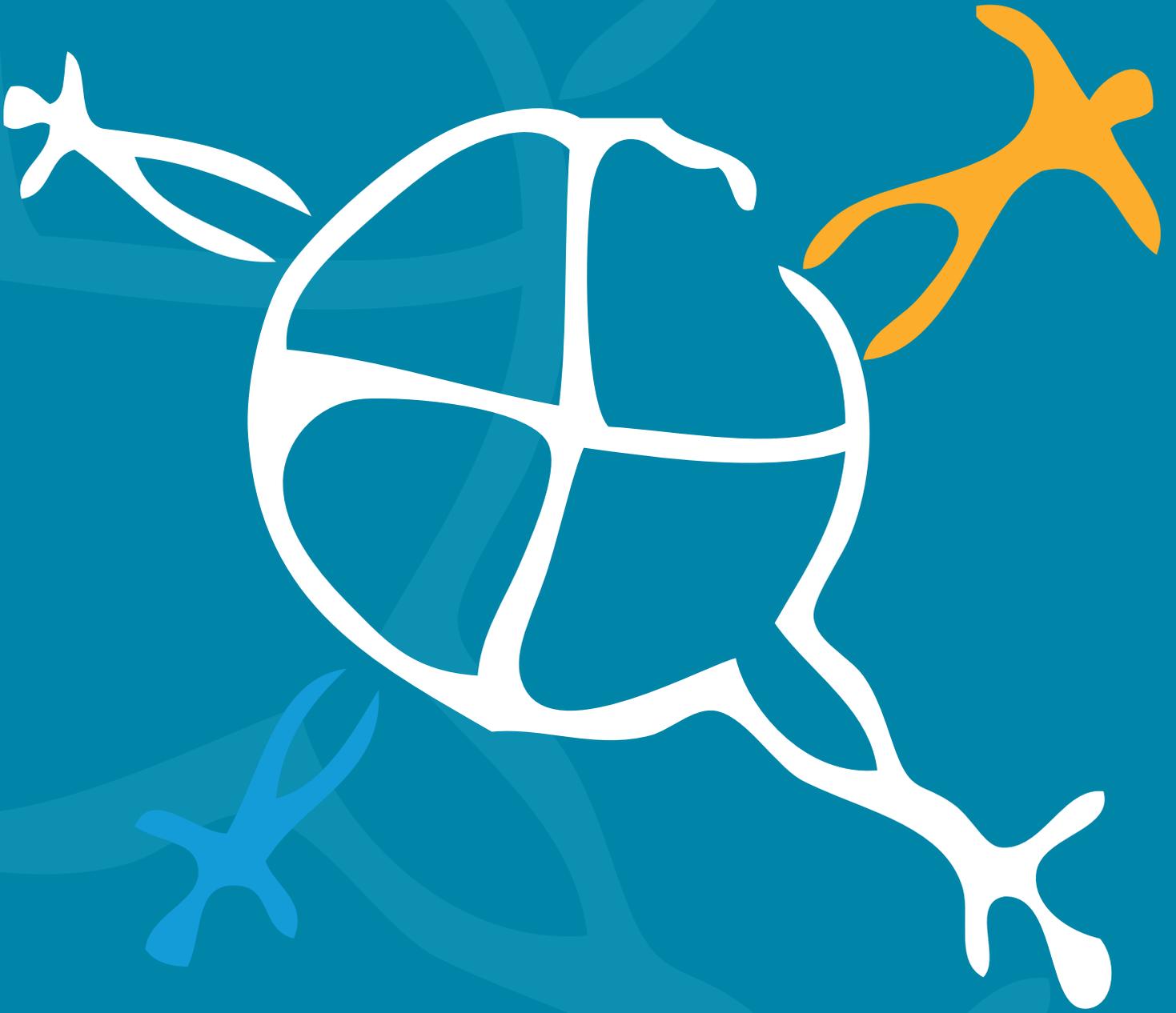
These principles must be used as the foundation of disaster relief efforts. For example, if the right to free, prior and informed consent is violated in the context of natural disasters, this can lead to the long-term dispossession of Indigenous peoples from their territories without adequate compensation from States. While natural disasters may call for immediate measures, the ways in which these measures are implemented can be subject to agreement between Indigenous peoples and states in advance.

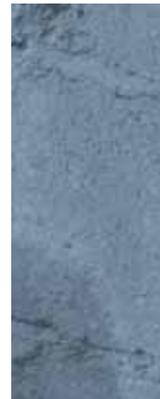




FOUR

HOW TO IMPLEMENT EFFECTIVE
URBAN LAND AND PROPERTY
POLICY FOR INDIGENOUS PEOPLES





IV

HOW TO IMPLEMENT EFFECTIVE URBAN LAND AND PROPERTY POLICY FOR INDIGENOUS PEOPLES

There are several key, overriding principles that must be employed in the development of any urban land and property policy or program involving Indigenous peoples:

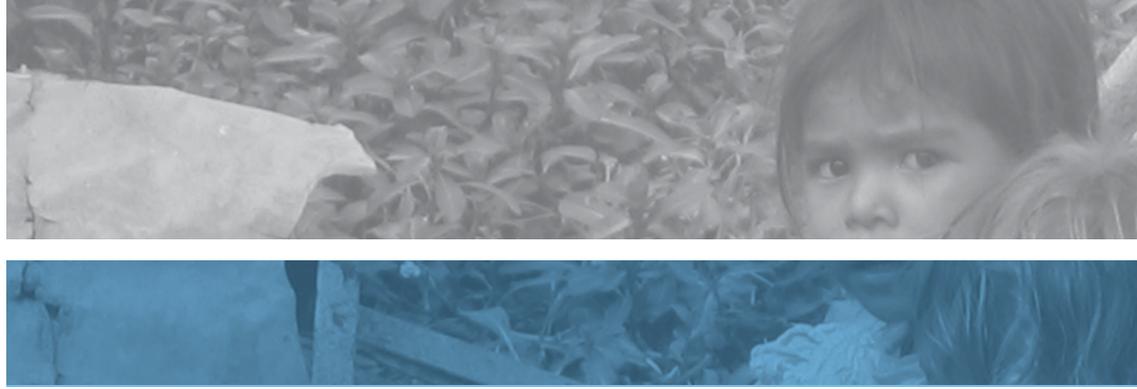
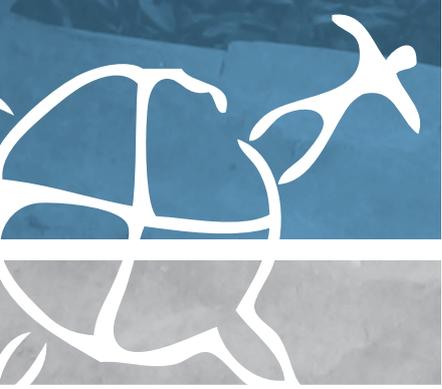
4.1 Overriding Principles

Self-Determination, Full and Effective Participation and Free, Prior and Informed Consent.

An effective urban land and property policy must be based in the recognition that Indigenous peoples have the right of self-determination and to full and effective participation in decisions which directly affect their lives. This means, Indigenous communities and their representatives must be provided with opportunities to actively participate in the development and implementation of policies related to their land and property, as well as in any dispute resolution arrangements or processes over lands, territories or natural resources. Meaningful consultation will only occur if relationships with Indigenous groups are developed over time and from a place of mutual respect.

To ensure Indigenous participation in policy development, implementation and in dispute resolution, governments and the private sector must provide information that is accurate, accessible, and in a language Indigenous peoples use and understand.

Indigenous peoples also have the right to free, prior and informed consent in relation to the development and use of their lands, resources and territories, which requires that states, the private sector, local governments and, where relevant, Indigenous peoples themselves consult and cooperate in good faith with the Indigenous peoples concerned in order to obtain their "free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them." (article 19) This is particularly relevant in the context of policies intended to remove Indigenous peoples from their traditional territories, lands or homes.



Frameworks for engagement should allow for the full and effective participation of Indigenous peoples in the design, negotiation, implementation, monitoring, evaluation and assessment of outcomes. This includes representative groups speaking on behalf of Indigenous women, youth, elders, people with disabilities and sexual minorities.

Indigenous peoples must be invited to participate in identifying and prioritising objectives, as well as in establishing targets and benchmarks (in the short and long term) of any policy or program related to land, property or housing rights.

Secure Land, Property and Housing Rights. Effective policy must be based in the recognition and understanding that full rights to secure land, property and adequate housing are integral to the full realization of all human rights, to the elimination of poverty and to preventing and addressing discrimination and inequality. Integral to this is the recognition of Indigenous cultural systems and ways of life. (For example, there are many provisions of the UN Declaration which promote Indigenous cultural, spiritual, political and legal systems that promote self-determination in all key areas.

Forced evictions must not be carried out. Where forced eviction does occur it must be in complete conformity with international human rights laws and principles, which means at a minimum: exploring every alternative to avoid the forced eviction and where the eviction is deemed unavoidable, obtaining the free, prior and informed consent of the Indigenous peoples concerned including in relation to any resettlement plans.

Studies programmes and policies must recognize the ambiguous and fluid nature of migration in combination with both overt and covert push and pull factors.¹⁶⁵

Land information management systems must be developed in a way that does not complicate effective planning, zoning and overall management of land.

Non-Discrimination and Equality. All policies and programs relating to Indigenous peoples must be based in the principles of non-discrimination and equality, which recognise the cultural distinctiveness and diversity of Indigenous peoples in relation to land and property rights. These principles must be understood flexibly to address disadvantage experienced by Indigenous peoples with multiple identities. Multiple identities can result in intersecting and particular forms of disadvantage or discrimination that must be considered in the development and implementation of policy, programs or strategies related to land and property rights. The unique cultural, spiritual and political relationship of Indigenous peoples to land must be considered in this analysis.

Effective Remedies for Violations of Rights. States have an obligation to protect the rights to lands, territories, and natural resources of Indigenous peoples from infringement by any institution, company or individual. This includes ensuring that processes for addressing these rights are based

¹⁶⁵ UN-HABITAT and OHCHR, 2010: p. 17

on transparency, accountability and the rule of law. Where Indigenous peoples' rights are violated, they must be able to claim their rights – there must be independent and accessible mechanisms and venues available for Indigenous peoples to have their rights claims heard and responded to.¹⁶⁶ This shall include mechanisms for parties to resolve disputes, including access to independent systems of arbitration and conflict resolution.

4.2 Recommended Actions for National, Local and Indigenous Governments

Specific actions must be taken at all levels of government to ensure Indigenous peoples can exercise and enjoy their land and property rights. These actions must be taken with the full and effective participation of, and cooperation with, the affected Indigenous peoples.

The following recommendations are offered as minimum requirements:

4.2.1 National Level

Ratify the main international treaties, covenants and optional protocols, where relevant, (as outlined in section 3 of this Guide), incorporating them into national law and jurisprudence, and ensure effective enforcement. These treaties and covenants contain important provisions regarding self-determination and non-discrimination.

Give legal effect to all international principles, norms and standards relevant to land and property rights of Indigenous peoples, with the full and effective participation of Indigenous peoples.¹⁶⁷ This should be done through the implementation of the UN Declaration as well as other pertinent regional and international instruments and processes, such as the UN Millennium Development Goals and the Habitat Agenda. Implementation may include Constitutional incorporation of the UN Declaration, the Millennium Development Goals and other instruments.

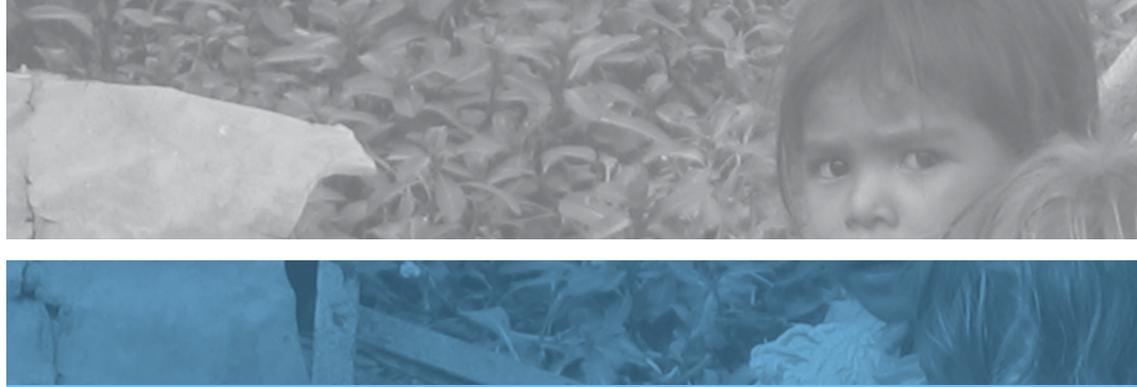
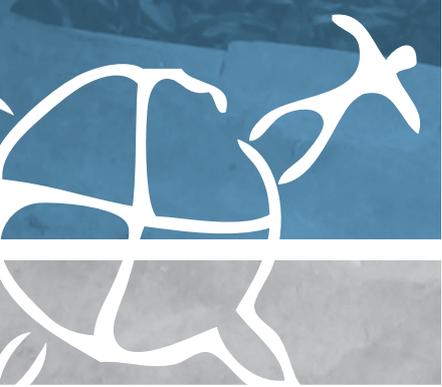
Adequately recognize the right to self-determination, rights to land, resources and territories, related cultural and legal traditional institutions as well as related spiritual, economic, cultural, social, political and civil rights. This is needed to address historic and contemporary inequalities facing all Indigenous peoples.

Identify the lands Indigenous peoples traditionally use(d) and occupy(ied) and provide specific legal protection for the rights of ownership over those lands in accordance with Indigenous customs and laws (article 26, para. 3).¹⁶⁸ This may involve developing appropriate standards for registration, including surveying and mapping to make the process affordable and dependable. It may also involve developing decentralized institutions for land administration. This will require the development of effective land tools. This may assist in curbing rural-urban migration.

¹⁶⁶ UNPFII, 2007: paragraph 9. (d).

¹⁶⁷ See for example, the draft American Declaration on the Rights of Indigenous Peoples.

¹⁶⁸ UNPFII, 2007: paragraph 9. (e).



Effective Land Tools

Land tools are mechanisms that can assist in the implementation of specific land related policies and programs necessary for the enjoyment of rights to land and property. The Global Land Tool Network, for example, focuses on the following areas where pro-poor land tools are needed: land registration and administration, land use planning, estates administration, and regulatory frameworks for the private sector. Effective land tools can contribute to security of tenure.

To ensure land tools are effective for particularly disadvantaged groups, such as Indigenous peoples or Indigenous women, they must be developed in a targeted manner that considers their particular circumstances and barriers to security of tenure.

A whole range of interconnected gender responsive tools are required to protect women's secure tenure, from intra-household and community tools to those that impact specifically on women's access to land and their interaction with the State land systems. It requires gendering spatial information, land use, planning, registration, administration, management and dispute resolution. For example, a number of tools are involved in securing inheritance rights for women. Tools linking land registry to the civil registry and tools on gender-accessible dispute settlement mechanisms must correlate to tools on gender sensitive administration of estates in inheritance cases in order to be effective. (Gender Land Tool, 2009).

Effective land tools must be developed that respond to particular circumstances such as post conflict, natural disasters and climate change.

Repeal colonial and neo-colonial laws and policies that do not respect the human rights of Indigenous peoples related to self-determination, Treaties, lands, resources and territories and Indigenous legal systems, including property regimes.

Take effective measures to halt land alienation in Indigenous territories, for example, through a moratorium on the sale and registration of land, including the granting of land and other concessions in areas occupied by Indigenous peoples. Take effective measures to support Indigenous peoples to legally register their lands.¹⁶⁹ Provide financial and technical assistance for Indigenous peoples to map the boundaries of their communal lands, finalize legal and policy frameworks for the registration of collective titles, as a matter of urgency, and support Indigenous peoples in preparing their claims for collective title.¹⁷⁰

Support sustainable development models employed by Indigenous peoples that will effectively address environmental concerns, including climate change and natural disasters.

¹⁶⁹ UNPFII, 2007: paragraph 22.

¹⁷⁰ UNPFII, 2007: paragraph 23: pp. 4-5.



Based on recognition of Indigenous peoples' right to free, prior and informed consent, provide support mechanisms for involuntarily displaced Indigenous peoples to be able to return to their original communities, including appropriate forms of repatriation, compensation and restitution and provision for the sustainable livelihoods of those peoples.¹⁷¹

Recognize Indigenous peoples' customary laws on genetic resources and traditional knowledge and consider the development of sui generis systems based on such customary laws, as appropriate, for the protection of traditional knowledge and access and benefit-sharing of genetic resources and associated traditional knowledge."¹⁷²

Establish codes of conduct and guidelines based on the rights to self-determination, free, prior and informed consent and other relevant human rights for private sector actors involved in development that affects Indigenous peoples' land and property. Corporate social responsibility models should be established in conjunction with Indigenous peoples, leading to partnerships where private sector activities provide a sustainable source of employment, training and investment opportunities for Indigenous peoples rather than the cause of displacement and human rights violations.¹⁷³

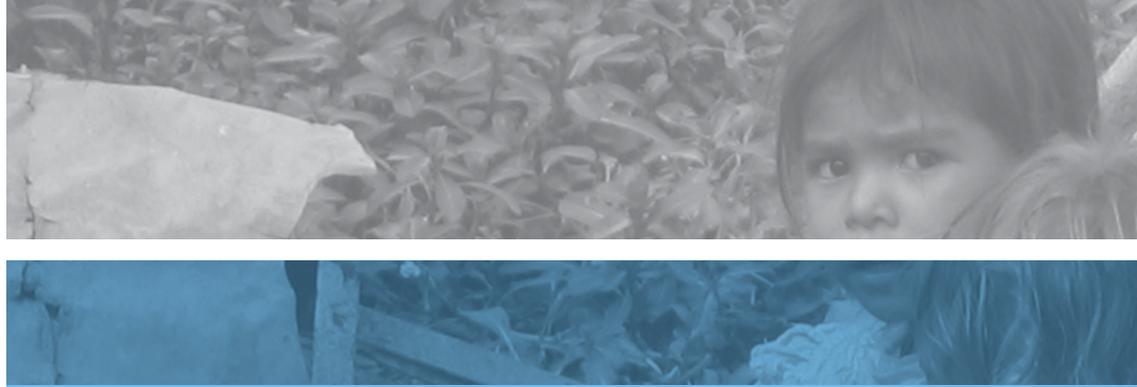
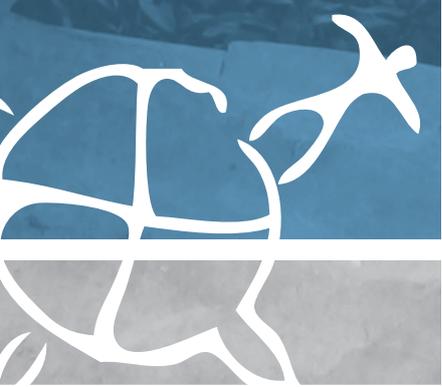
Develop and implement innovative land tenure schemes that address lack of security of tenure as experienced by urban Indigenous peoples. Legislative and policy measures must be adopted against forced eviction and displacement. These measures should also ensure all households are entitled to receive essential services regardless of their tenure status or income level.¹⁷⁴ These essential services include potable water, electricity, sanitation services, and medical/health services.

¹⁷¹ UNPFII, 2007: paragraph 116.

¹⁷² UNPFII, 2007: paragraph 51.

¹⁷³ Burger, 2007.

¹⁷⁴ UN-HABITAT, 2004: p. 16.



Secure Tenure: Land Titling Not the Only Option

Individual land titling is not the only way to ensure that the poor have land tenure security. An alternative is an incremental approach where tenure rights are gradually formalized or upgraded over time, to the extent that this is consistent with affected Indigenous peoples' legal traditions.¹⁷⁵ For example, in Colombia, a range of intermediate tenure systems such as "Declarations of Possession", "buying and selling rights for future use" and "communal tenancy" "all provide stepping stones with increasing rights and levels of protection from eviction, enabling poor households to obtain secure housing at affordable costs. In such conditions, land tenure is not even a concern to the majority of poor households since they are protected by legislation from forced evictions without due legal process and are entitled to receive all essential services irrespective of their tenure status."¹⁷⁶

One of the best ways to ensure that low-income settlements are sustained is to make tenure collective, through long-term collective leases or through land titles to community cooperatives, provided that the community is organized¹⁷⁷ and to the extent that this is consistent with the affected Indigenous peoples' legal traditions. Collective tenure rights can act as a powerful buffer against market forces, bind communities together and provide a structural reason to remain united, where the collectivity of community life can be an important survival mechanism.¹⁷⁸

A number of creative land titling schemes have emerged in southern cities across the world. In Kenya, for example, Temporary Occupation Licences were introduced by the Nairobi city council to promote efficient use of idle public land in strategic locations. Though intended for commercial use, the temporary licenses are sometimes also used for residential purposes.¹⁷⁹ In Bolivia, the "anticretico" system enables a land owner to receive a lump sum payment in dollars from the occupant in return for the right to use the property, normally for a contractual period of two years. At the end of the contract period the owner returns the full amount deposited by the occupant. For the owner this is an effective way of raising capital sums without incurring high interest rates, and for the user it provides an effective way to live at low cost for those able to raise the initial deposit.¹⁸⁰

Before the implementation of any land or property policy that will have an impact on informal settlements of Indigenous peoples, an enumeration should be conducted. Participatory enumerations are a way of gathering information about informal settlements by involving residents in the data gathering process. This will be particularly important where the policy could result in the displacement of Indigenous peoples from their traditional territories, lands or homes. Participatory enumerations have been used successfully to prevent forced evictions, and develop parallel community plans. For

¹⁷⁵ UN-HABITAT, n.d.
¹⁷⁶ UN-HABITAT, 2004: p. 15.
¹⁷⁷ UN-HABITAT, n.d.
¹⁷⁸ UN-HABITAT, n.d.
¹⁷⁹ UN-HABITAT, 2004: p. 15.
¹⁸⁰ UN-HABITAT, 2004: p. 15.

example, in Kibera – the largest informal settlement in Nairobi, Kenya – rapid enumeration was used to support a legal case challenging a decision by the Railway company to demolish all structures within 100 metres of the railway line. The rapid enumeration, undertaken by a local NGO, counted the number of residential structures, traders, schools, health centres, churches and mosques in the area. From the exercise it was estimated that 20,000 structures would be demolished and 108,000 people rendered homeless. This information supported the legal claim. An injunction was granted.¹⁸¹

Take effective measures to combat discrimination experienced by Indigenous peoples and individuals in the urban context be it through affirmative action, targeted national housing programmes and policies, targeted micro-credit lending schemes, or assistance for employment and vocational training. Programs, policies and laws must be developed and administered in conjunction with Indigenous peoples, in a culturally sensitive manner¹⁸² that is also sensitive to the unique needs, perspectives and rights of Indigenous women, children, youth and elders, Indigenous people with disabilities and Indigenous sexual minorities. This includes addressing the problems that exacerbate inequality between the urban and rural areas, with the aim of making the rural areas more attractive in order to retain Indigenous youth as well as addressing imbalances in access and control of land that lead to the feminisation of rural poverty. It must also build the capacity of municipal and national authorities to be able to plan and cope with the rapid rate of urbanisation so as to derive the maximum socio-economic benefit from the movement of all Indigenous peoples.¹⁸³

4.2.2 Local Level

Establish jurisdictional agreements with state and Indigenous governments to overcome barriers to the provision of essential services, including health, employment, housing and property rights. This includes respecting citizenship governance structures of Indigenous peoples, particularly where this may require harmonization with existing local structures.

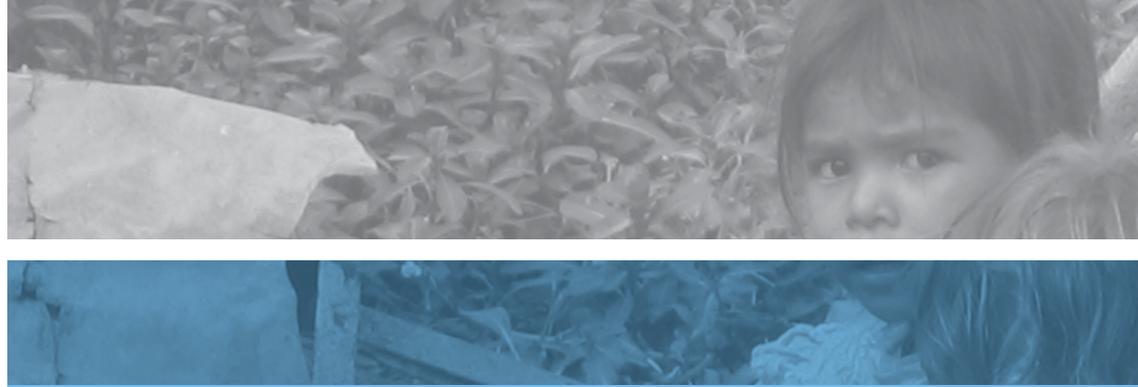
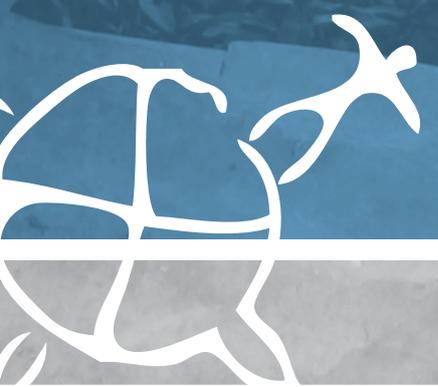
Establish procedures to ensure the full and effective participation of Indigenous peoples in the urban governance structures that exist. This should include adequate funding for the participation of Indigenous peoples, and participatory representative models to ensure Indigenous people hold leadership positions.

Support capacity building efforts of Indigenous peoples to establish culturally relevant programmes and services in urban areas, including those specific to vulnerable Indigenous populations (women, children, youth, elders, people with disabilities and sexual minorities). This includes, for example, proactively addressing human security issues facing Indigenous women and youth in terms of sexual trafficking and exploitation when migrating to urban areas through legislative and policy reforms.

¹⁸¹ UN-HABITAT, 2010: p. 46-48 [Count Me In]

¹⁸² Burger, 2007.

¹⁸³ Kandine, Koné, and Larbi, 2008.



Establish a committee to develop and implement participatory enumeration of Indigenous peoples and households in urban areas to obtain a clear assessment of their status and land and property rights.

Promote land information systems that facilitate accurate classification and mapping of land claimed by Indigenous peoples.

Ensure Indigenous peoples have access to culturally appropriate legal and other remedies for violations of their land and property rights, designed by Indigenous peoples.

4.2.3 Indigenous Government Level

Work in collaboration with local and national governments to ensure the recognition and promotion of the rights of urban Indigenous peoples, particularly related to land and property rights.

Establish citizenship and governance structures, including alternative dispute resolution systems, that meet the needs of urban Indigenous peoples in the context of urban migration and urban expansion. This should include alternative dispute resolution systems, particularly with respect to land and property issues where conflicting claims may arise.

Establish land and property regimes that are based on Indigenous knowledge in land management, resources utilization, land administration, land transfer and inheritance and management of communal land.

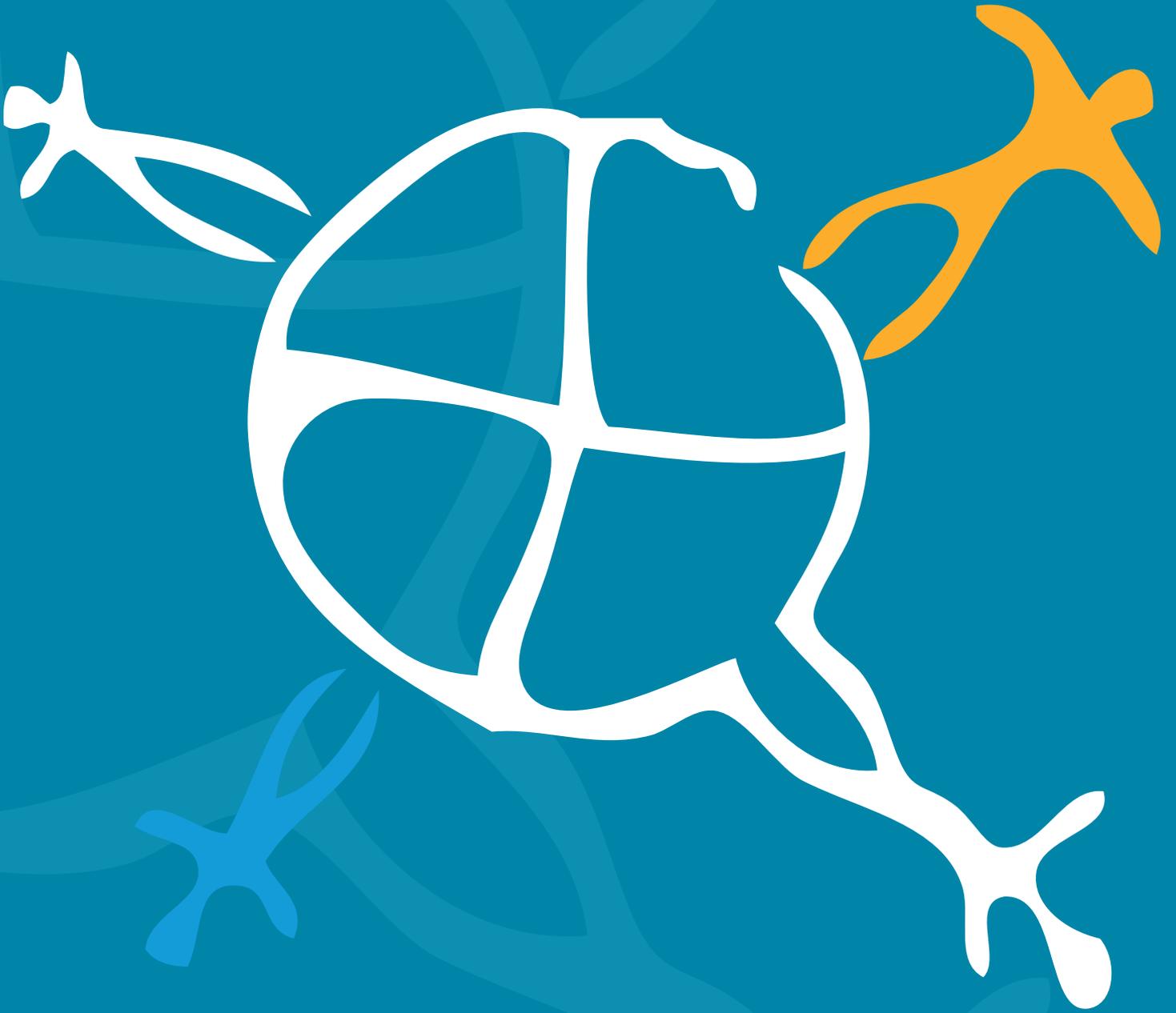






FIVE

POLICY CHECKLIST





V

POLICY CHECKLIST

This policy checklist is aimed at ensuring that decision-makers develop policies that are designed and implemented in a way that upholds the land and property rights of Indigenous peoples.

5.1 General

How can the policy, program or project be reviewed, revised and developed in conjunction with Indigenous peoples, and particular groups of Indigenous peoples, such as Indigenous women, elders, youth/children, people with disabilities and sexual minorities?

Has the policy, program or project been reviewed, revised and/or developed in light of international human rights law, including the human rights to self-determination for Indigenous peoples, rights related to land, resources and territories, and the human rights to be free from discrimination and to equality? Does the policy, program or project comply with international human rights norms and obligations?

Does the urban policy, program or project recognize and respect Indigenous peoples' land tenure systems? If not, how could the policy, program or project be revised to do so?

Have rights and responsibilities as defined by Indigenous peoples been upheld – to future generations, to others and to the environment?

If the policy, program or project relates to Indigenous peoples' lands, territories or resources, has the right to free, prior and informed consent been upheld?

Has a social, economic or environmental impact assessment been conducted with respect to the



policy? Does the policy protect and promote the land and property rights of Indigenous peoples in urban areas, in the short, medium and long term? Are there evaluative measures in place to determine this?

Does the policy, program or project ensure greater security of tenure for Indigenous peoples in cities?

Has the policy, program or project been reviewed, revised and/or developed in light of best practices, including from other jurisdictions?

5.2 Migration & Land and Property Rights of Indigenous Peoples

Does the policy undermine security of tenure for Indigenous peoples, by forcing Indigenous peoples to leave their land, territories, resources and/or homes? If so, in keeping with international norms and standards related to Indigenous peoples, was every alternative pursued to avoid the development and implementation of a policy that undermines security of tenure for Indigenous peoples?

If a displacement is deemed necessary and complies with international human rights law and standards, what provisions have been made to ensure that the most vulnerable – Indigenous women, elders, youth/children, people with disabilities and sexual minorities – are not disproportionately affected by the eviction?

Is the policy, program or project likely to have the effect of displacing Indigenous peoples, forcing them to migrate to the city? If this occurs, have mitigation measures been taken, consistent with the standards contained in the UN Declaration on the Rights of Indigenous Peoples and other international norms and standards? Has every effort been made, in cooperation with Indigenous peoples, for Indigenous peoples to remain on their traditional lands and territories?

Are benefit-sharing agreements in place wherever development projects are initiated that conform to international norms and principles? Is the development project initiated and implemented in such a way that Indigenous peoples can sustain a livelihood, without disproportionately suffering any negative economic, social, cultural, spiritual, political, or civil consequences?

Does the policy, program or project recognize and respect Indigenous peoples' traditional knowledge in such a way as to help mitigate the potential repercussions of natural disasters and climate change in urban areas?

Does the policy, program or project, in the aftermath of a natural disaster or conflicts, include measures to ensure access to land for Indigenous peoples so that they can sustain a livelihood, in accordance with the right to free, prior and informed consent and all other human rights of Indigenous peoples?

Do anti-discrimination laws and policies in place to protect Indigenous peoples from discrimination with respect to employment, housing and services?

5.3 Urban Expansion and Indigenous Peoples' Rights to Land and Property

Will the policy, program or project encroach on the lands and property of Indigenous peoples? Specifically:

- Has the right to free, prior and informed consent been upheld?
- Does the policy, program or project incorporate a secure tenure option (e.g. land-titling, certification or recording program) or other relevant measures that recognize Indigenous peoples' right to self-determination and rights related to property, lands, resources and territories and ensure they are able to maintain security of tenure?

Does the policy, program, or project enhance the economic, social, cultural, spiritual, political and civil conditions of Indigenous peoples, for example, ensuring access to adequate housing, food, electricity, potable water, education, employment opportunities and health services?



DO'S AND DON'TS

DO	DON'T
Adequately recognize the right of self-determination to address the historic and contemporary inequality experienced by Indigenous peoples.	Exclude Indigenous peoples and their leaders from meaningful consultations and consent regarding development projects, the extraction of natural resources from Indigenous lands, the privatization of lands or any other project that may have an impact on Indigenous livelihoods and lives.
Develop creative land tenure schemes to ensure Indigenous peoples in cities have secure tenure, using best practices from other cities to inform such schemes.	Forcibly evict Indigenous peoples from their rural or urban lands unless every alternative to the eviction has been fully explored and unless the eviction can be carried out in full compliance with international human rights law, including free, prior and informed consent.
Ensure access to basic services – potable water, sanitation, education, health care – and an adequate standard of living for all Indigenous peoples living in urban areas.	Assume that policies with respect to land and property that benefit the general population will benefit Indigenous peoples.
Implement the UN <i>Declaration on the Rights of Indigenous Peoples</i> as well as other international human rights instruments relevant to Indigenous peoples' land and property rights.	Assume that the obligation to address the land and property rights of Indigenous peoples is fulfilled upon the ratification of a treaty or adoption of the UN <i>Declaration on the Rights of Indigenous Peoples</i> .
Identify the lands Indigenous peoples traditionally use(d), access(ed), occupie(d), own(ed) and provide specific legal protection for the tenure over those lands in accordance with Indigenous customs, practices and laws.	Assume that States and Indigenous peoples have adequately sought the participation and perspective of vulnerable populations, including Indigenous women, youth, people with disabilities, elders and sexual minorities.
Develop effective land tools, drawing on the good practices of those developed and used in other cities and countries to protect the land and property rights of those Indigenous people(s) most at risk of losing their land.	Assume that Indigenous traditional models of land and property rights are discriminatory against vulnerable populations, including Indigenous women, youth, people with disabilities, elders and sexual minorities. This needs to be assessed on a case-by-case basis.



<p>Establish codes of conduct and guidelines based on the rights to self-determination, free, prior and informed consent and other relevant human rights for private sector actors involved in development that affects Indigenous peoples' land and property.</p>	<p>Enter into new bilateral or multilateral Treaties with other states that override existing Treaties with Indigenous peoples.</p>
<p>Take proactive measures immediately to address discrimination against Indigenous peoples in all areas of economic, social, cultural, spiritual, political and civil life.</p>	<p>Create governance and administrative structures in urban environments without ensuring the full and effective participation of Indigenous peoples.</p>
<p>Make use of Indigenous knowledge in land and property use, management and administration</p>	<p>Create governance and administrative structures in urban environments without ensuring the full and effective participation of Indigenous peoples. Assume that Indigenous land use, management and administration are not efficient or effective.</p>



ANNOTATED RESOURCES:

UN Documents with Global Scope

United Nations Department of Economic and Social Affairs Division for Social Policy and Development, Secretariat of the Permanent Forum on Indigenous Issues (2009), *State of the World's Indigenous Peoples*, Doc. No. ST/ESA/328, New York.

This document provides a comprehensive review of critical human rights issues facing Indigenous peoples, including poverty and well-being, culture, the environment, contemporary education, health, human rights and emerging issues with substantive analysis on how these rights inter-related with the right to self-determination and rights related to lands, resources and territories.

UN-HABITAT, (2010a), *Count Me In: Surveying for tenure security and urban land management*, Nairobi.

This publication provides an in-depth examination of participatory enumerations. Participatory enumerations are a way of gathering information about informal settlements by involving residents in the data gathering process. The publication is divided into four principle sections: i) background to participatory enumerations; ii) existing uses of participatory enumerations; iii) novel uses of participatory enumerations; and iv) analysis and conclusions. The publication explains in some detail the methodologies used to implement participatory enumeration in different community contexts, as well as the obstacles that have been encountered in carrying out these methodologies. Where relevant, the report focuses on women's participation in participatory enumeration and the benefits of this approach to women and other disadvantaged groups, outlining the benefits of such an approach as a tool in a variety of different land and housing related struggles. Though the publication does not reflect on the benefits of such an approach for Indigenous peoples – in rural or urban contexts – Indigenous communities in different regions may find it a useful strategy in their struggle for land and property rights, particularly when facing insecure tenure.

UN-HABITAT, (2009a), *Housing Indigenous Peoples in Cities: Policy guide to housing for indigenous peoples in cities*, Nairobi.

This is an urban policy guide to housing for Indigenous peoples. It provides an overview of the urban housing conditions of Indigenous peoples, outlining the seven elements of the right to housing, including legal security of tenure and forced evictions, affordability, habitability, availability of services, materials, facilities and infrastructure, accessibility, location and cultural adequacy. The guide pays specific attention to the unique conditions facing Indigenous women, elders, children and youth and people with disabilities. It outlines how to implement effective urban housing policy for Indigenous peoples.

UN-HABITAT and OHCHR, (2010), *Urban Indigenous Peoples and Migration: A Review of Policies, Programmes and Practices: United Nations Housing Rights Programme, Report No. 8, Nairobi.*

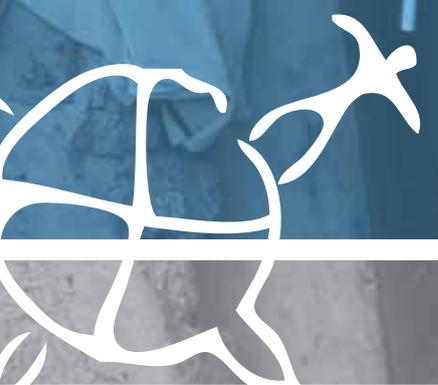
This guide provides a summary of the outcomes from the Expert Workshop on Indigenous Peoples and Migration: Challenges and Opportunities held in 2006 in Geneva as well as the follow-up Expert Group Meeting on Urban Indigenous Peoples and Migration (the EGM) held in Santiago, Chile in 2007. This document provides an update on key concerns of Indigenous peoples in relation to urban migration, pertinent case studies, unique perspectives on the causes and consequences of urban migration (particularly those related to land and property rights), as well as solutions and recommendations, with reference to key international instruments including the ILO Convention (No. 169) and the UN Declaration on the Rights of Indigenous Peoples.

UN-HABITAT and Global Land Tool Network, (2008), *Secure Land Rights for All, Nairobi.*

This publication outlines the importance of secure land tenure, particularly for vulnerable populations such as women and Indigenous peoples, noting that Indigenous peoples worldwide lack secure land rights. It also provides a thorough overview of the strengths and weaknesses of different types of land tenure. The study identifies why land rights matter in the lives of the most disadvantaged, highlighting the close relationship between the realization of secure land rights and the realization of all other human rights. The authors assert, for example, that Indigenous peoples will never escape discrimination, marginalization and poverty if their rights to land, property and housing remain unrealized. The report links the realization of secure land rights to positive economic and social development, addressing women's experiences of economic inequality and discrimination, and to poverty reduction. The report also provides examples of good practices that have resulted in increased land security and some very useful strategies that can be employed to ensure access to secure land for vulnerable groups, particularly women and Indigenous peoples.

UN-HABITAT, (2009b), *Not About Us Without Us: Working with Grassroots Organizations in the Land Field, Nairobi.*

This report provides a detailed analysis of the ways in which grassroots organizations can be meaningfully involved in the development and implementation of land tools. The report suggests that a human rights based approach to participation should be employed as a means of ensuring that pro-poor land tools are inclusive of those most in need. It pays particular attention to the ways in which women are excluded from land tools and the processes used to develop and implement land tools, often rendering them irrelevant and detrimental to women's lives and livelihoods.



UN-HABITAT and OHCHR, (2005), *Indigenous peoples' right to adequate housing: A global overview*, United Nations Housing Rights Programme, Report No. 7, available from <http://www.unhabitat.org/unhrp>

This is a preliminary study on the housing and related living conditions of Indigenous peoples globally. It assesses the extent to which Indigenous peoples' housing rights are recognized and implemented, focusing on 7 case studies: Australia, Canada, Ecuador, Kenya, Mexico, Philippines, and the Saami of Finland, Norway, the Russian Federation and Sweden. The study provides a synthesis of the patterns or trends that emerge from the 7 case studies. The case studies also revealed that most Indigenous peoples do not enjoy the right to adequate housing. It highlights the prevalence of economic marginalization of Indigenous peoples and its interconnections with violations to the right to self-determination and housing rights and the dispossession of Indigenous peoples from their lands.

UN-HABITAT, (2004), *Urban Land for All*, Nairobi.

This report provides basic information on the meaning of land tenure, land tenure systems including religious and non-formal tenure systems, and how land and property rights interact with culture and gender. The report focuses on the different types of policy instruments that could be used by government officials and policy makers who are interested in developing more flexible tenure systems that are based on security of tenure, rather than land or property ownership per se. The report outlines the benefits and limitations of different tenure policy options, such as titling options, intermediate tenure options (e.g. temporary occupation licenses) and increasing rights of use. A number of useful case examples are provided demonstrating the benefits of different tenure options.

UN-HABITAT; Office of the High Commissioner for Human Rights (OHCHR); Secretariat of the United Nations Permanent Forum on Indigenous Issues (UNPFII); Latin America and the Caribbean Demographic Centre (CELADE) – ECLAC; International Organization for Migration (IOM), (2007), *Urban Indigenous Peoples and Migration: Report and full account of the International Expert Group Meeting 27 – 29 March 2007, Santiago*, available from <http://www.unhabitat.org/unhrp>

This report documents the dialogue that took place at the first international expert meeting on the challenges of improving the lives of urban Indigenous peoples in the context of the ongoing rural-urban migration process. Given the diverse group of participants, with Indigenous representatives from Africa, the Arctic, Asia, Eastern Europe, the Russian Federation, Central Asia and Transcaucasia, Latin America and the Caribbean, North America and the Pacific, this source provides a rich overview of the issues. It provides recommendations for governments and local authorities, the international community (including the UN) and for Indigenous peoples and their organizations.

“UN Declaration on the Rights of Indigenous Peoples,” adopted by General Assembly resolution 61/295 of 13 September 2007. (UN-Doc: A/RES/61/295), available from <http://daccessdds.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>.

The UN Declaration on the Rights of Indigenous Peoples is an international human rights instrument that elaborates and codifies the human rights of Indigenous peoples, adopted by the UN General Assembly on September 13, 2007. It constitutes the minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world (article 43). Several provisions are relevant to the land and property rights of Indigenous peoples, including the following: right to self-determination (article 3), right to self-government (article 4), rights related to maintaining political, economic, legal, social and cultural systems (article 5), right to free, prior and informed consent (including article 19), rights related to culturally adequate housing (including articles 8, 9, 11, 12, 13 and 15), rights related to lands, resources and territories, (including articles 25 to 32), Treaties (article 37), as well as rights related to non-discrimination and equality (articles 2, 9, 21, 22, 44 and 46(2)). This Declaration is key to framing the unique set of rights that should inform policy, practice and legislative reforms in the area of land and property rights for urban Indigenous peoples.

UN-HABITAT and Cities Alliance, (2011), *“Land: A Crucial Element in Housing the Urban Poor,” Housing the Poor in African Cities, Quick Guide No. 3, Nairobi.*

This guide provides insight into the inter-relationship between provision of land and housing rights in the African context. It provides an overview of customary and common law tenure in African cities as well as other forms of tenure systems. This guide provides strategies to make land more accessible to the poor as well as policy tools and guidelines for achieving these strategies.

UN-HABITAT, (2010 c), *Medium-Term Strategic and Institutional Plan: Focus Area Policy and Strategy Paper: Focus Area 3: Access to Land and Housing for All, Nairobi.*

This source examines how systemic policy, practices, land tools and other reforms can address the issue of slum development through improved access to land and housing for all, consistent with the Millennium Development Goals. This includes a review of how to promote land rights and how to increase the UN system’s capacity to address housing, land and property issues in the post-conflict and post-natural disaster contexts. This guide looks at sustainable solutions that address Climate Change. These solutions are gender-responsive and can be adapted to be Indigenous-responsive.



“Indigenous and Tribal Peoples Convention, 1989 (No. 169)” (“International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries”) 72 ILO Official Bull. 59, entered into force, 5 September 1991, available from

<http://www.ilo.org/ilolex/english/convdisp1.htm>

This legally binding instrument is the first comprehensive UN instrument that specifically protects the rights of Indigenous peoples in relation to self-determination, lands, resources and territories and cultural and spiritual rights.

“Habitat Agenda and Istanbul Declaration”, adopted at the Second United Nations Conference on Human Settlements (Habitat II) (Istanbul, 3-14 June 1996), endorsed by General Assembly resolution 51/177 of 16 December 1996. (UN-Doc: A/CONF.165/14).

<http://www.unhabitat.org/unchs/english/hagenda/index.htm>

The Habitat Agenda provides direction to states in relation to shelter and urban development and management policies in relation to Indigenous peoples. It notes the importance of respecting the identities and cultures of Indigenous peoples, to implement the right to adequate housing and related rights in an equitable manner fully consistent with international human rights law and standards. It sets out the need for legislative and administrative reforms to ensure that land and property rights are equitable and provide for legal security of tenure for all, with particular attention to vulnerable populations, including Indigenous peoples and women.

UN Permanent Forum on Indigenous Issues

<http://www.un.org/esa/socdev/unpfii/>

The UN Permanent Forum on Indigenous Issues is an advisory body to the Economic and Social Council, with a double mandate: providing expert advice and recommendations, and raising awareness throughout the UN system on Indigenous issues related to economic and social development, culture, the environment, education, health and human rights. See in particular, the Sixth Session report which addresses the special theme of “Territories, lands and natural resources.”

The UN Special Rapporteur on the Rights of Indigenous Peoples

<http://www.ohchr.org/english/issues/indigenous/rapporteur/#country>

The Special Rapporteur collects and exchanges information and reports on violations of human rights and fundamental freedoms from Governments, Indigenous peoples and their communities and organizations, as well as other relevant sources. The Special Rapporteur is also responsible for developing recommendations and proposals on appropriate measures and activities to prevent



and remedy violations of the human rights and fundamental freedoms of Indigenous peoples, including discrimination against Indigenous women. A dedicated website features recent reports and comments from the Special Rapporteur, including links and documents regarding the human rights and fundamental freedoms of Indigenous peoples.

The UN Special Rapporteur on Violence against Women

<http://www.ohchr.org/english/issues/women/rapporteur/>

The Special Rapporteur on Violence Against Women collects information on the causes and consequences of violence against women emanating from Governments, UN bodies, and NGOs including women's organizations. The Special Rapporteur develops recommendations, policies, etc. at all levels to eradicate the causes of violence against women and to remedy its consequences. In addition to reports, the website includes links to other relevant documents and resources.

The UN Special Rapporteur on Adequate Housing

<http://www.ohchr.org/english/issues/housing/index.htm>

The Special Rapporteur's mandate includes reporting on the status of effective rights to adequate housing, gender mainstreaming and Government efforts to secure these rights. On top of official reports, the website features links to further relevant documents and resources.

OHCHR Website for Human Rights Treaty Bodies

<http://www.ohchr.org/english/bodies/treaty/index.htm>

This website features all UN bodies' monitoring of the implementation of international human rights treaties. Of particular interest are the following fact sheets and general comments:

Office of the High Commissioner of Human Rights (OHCHR), (2007), *Fact Sheet 21. The Human Right to Adequate Housing.*

<http://www.ohchr.org/english/about/publications/docs/fs21.htm>

This fact sheet provides a comprehensive description of the right to adequate housing as outlined in the 1966 International Covenant on Economic, Social and Cultural Rights. Additionally, it outlines Indigenous peoples' seven major entitlements under their Right to Adequate Housing, with information on the resources, systems, and organizations dedicated to upholding this specific right.



Office of the High Commissioner of Human Rights (OHCHR), (2007), *Fact Sheet 25. Forced Evictions.*

<http://www.ohchr.org/english/about/publications/docs/fs25.htm>

This fact sheet focuses on forced evictions based on an international human rights framework, outlining the specific connections between forced evictions and human rights, together with relevant international, regional, national and local level and other developments regarding forced evictions.

“General Comment 7, The right to adequate housing (Art. 11 (1) of the Covenant): Forced evictions”, adopted 20 May 1997 (UN Doc. E/C.12/1997/4), <http://www.unhcr.ch/tbs/doc.nsf/MasterFrameView/959f71e476284596802564c3005d8d50?Opendocument>

The leading legal interpretation of the right to protection against forced eviction is General Comment 7 from the Committee on Economic, Social and Cultural Rights (1997). This is, to date, the most far-reaching decision under international law on forced evictions and human rights, specifying what governments, landlords and institutions must do to prevent forced evictions.

“General Comment 4, The right to adequate housing (Art. 11 (1) of the Covenant)”, adopted 13 December 1991. (UN Doc. E/1992/23, Annex III), available from

<http://www.unhcr.ch/tbs/doc.nsf/MasterFrameView/469f4d91a9378221c12563ed0053547e?Opendocument>

General Comment No. 4 is recognized as the most authoritative legal interpretation of the right to adequate housing under international human rights law. The Comment defines the right to adequate housing broadly, as a place to live in ‘peace, security and dignity.’ It also identifies seven elements that are required for adequate housing: legal security of tenure, availability of services, affordability, habitability, accessibility, location, and cultural adequacy.

“General Comment 11, Indigenous children and their rights under the Convention”, adopted on 12 February 2009. (UN Doc CRC/C/GC/11), available from

http://www2.ohchr.org/english/bodies/crc/docs/GC.11_indigenous_New.pdf

This General Comment provides an authoritative legal interpretation of the human rights of Indigenous children under the Convention on the Rights of the Child, highlighting the importance of cultural practices, languages and other collective traditions of Indigenous children. The importance of traditional land and the natural environment to the survival, life and development of Indigenous children is emphasized.

“General Recommendation XXIII on the rights of indigenous peoples”, adopted on 18 August 1997.

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/73984290dfea022b802565160056fe1c?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/73984290dfea022b802565160056fe1c?Opendocument)

This General Recommendation calls upon states to address discriminatory effects of the loss of land and resources of Indigenous peoples to “colonists, commercial companies and State enterprises” through recognizing and respecting Indigenous cultures, histories, languages, ways of life and ensuring their equal rights in relation to economic and social development. The Committee “especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free, prior and informed consent, to take steps to return those lands and resources.” Where this is not possible, the right to restitution and compensation is required (paragraph 5).

Other Documents with Global or Regional Scope

International Indigenous Women’s Forum, (2006), *Mairin Iwanka Raya: Indigenous Women Stand Against Violence: A Companion Report to the UN Secretary-General’s Study on Violence against Women*, New York, available from <http://www.indigenouswomensforum.org/vaiwreport06.pdf>

This document conceptualizes Indigenous gender-based violence, highlighting the multiple forms of violence that are experienced by Indigenous women, from a systemic to an individual level. This includes spiritual and economic violence, violence in the name of tradition, government violence, gender violence and violence in the context of armed conflict and militarization. From an Indigenous



women's perspective, this report reflects on neo-liberal policies, manipulation of traditional norms, unsustainable development, acts of State oppression, war, displacement and HIV/AIDS as they impact Indigenous women and their right to be free from violence. The report also highlights valuable practices in research, political mobilization, and community organizing, mapping out future challenges for Indigenous women's pursuit of a life free from all forms of violence.

International Labour Office (ILO) and the African Commission on Human and Peoples' Rights, (2009), "Overview Report of the Research Project on the Constitutional and Legislative Protection of the Rights of Indigenous Peoples in 24 African Countries." Geneva, available from [http://www.ilo.org/indigenous/ Resources/Publications/lang--en/docName--WCMS_115929/index.htm](http://www.ilo.org/indigenous/Resources/Publications/lang--en/docName--WCMS_115929/index.htm)

This is an excellent resource on Indigenous peoples' human rights related to non-discrimination, participation of Indigenous peoples, access to justice, culture and language, lands, natural resources and the environment and other related rights, including gender equality in the African context. It provides useful and insightful case studies and best practices of relevance to other regions of the world.

Tebtebba: Indigenous Peoples' International Centre for Policy Research and Education, (2008), *Guide on Climate Change & Indigenous Peoples*, Baguio City.

This guide provides an overview of climate change concerns from the perspectives of Indigenous peoples, including the impacts of climate change, mitigation and adaptation measures, REDDs (Reducing Emissions from Deforestation and Forest Degradation), Indigenous women's concerns, international negotiations and the need for an ecosystem and human rights based approach that recognizes the UN Declaration on the Rights of Indigenous Peoples.

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About this publication

This Policy Guide provides policy-makers with the necessary knowledge about the challenges and rights of Indigenous peoples in relation to land and property in the urban context. The Guide sets out how to secure land rights of Indigenous peoples in cities through a human rights framework in the context of urbanization, including migration and urban expansion.

This Policy Guide to Secure Land Rights for Indigenous Peoples in Cities builds on earlier guides and is part of a series of UN-HABITAT handbooks focused on the rights of Indigenous peoples. The first policy guide entitled, "Housing Indigenous Peoples in Cities: Urban Policy Guides for Indigenous Peoples" was published in 2009, followed by a report entitled, Urban Indigenous Peoples and Migration: A review of Policies, Programmes and Practices, published in 2010 and launched at the Fifth Session of the World Urban Forum in Rio de Janeiro.

HS/066/11E
ISBN (Volume 2) 978-92-1-132360-3



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