# POST 2015 DEVELOPMENT PROCESS:
GOVERNANCE

The post-2015 development framework poses a unique opportunity to address the critical governance issues that are affecting indigenous peoples. This note has been prepared by the International Work Group for Indigenous Affairs (IWGIA)[1] in collaboration with Tebtebba. The note is intended as a discussion paper for stakeholders in the post-2015 development process and focuses on indigenous peoples' distinct status and human rights and how these must be taken into consideration in the post-2015 development agenda.
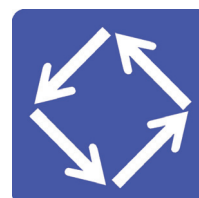
Governance from an indigenous peoples' perspective

Governance is fundamentally about power, relationships and accountability: who has influence, who decides, and how decision makers are held accountable.[2] Good governance could be defined as a mode or model of governance that results in the conditions or outcomes that are sought by citizens. Determining what constitutes "good governance" thus entails a debate on values and cultural norms, and on desired social and economic outcomes.[3] Indigenous peoples worldwide have long experience of poor governance, characterized by discriminatory, exclusionary and unjust power relationships and policy decisions. As a consequence, they have been subjected to land dispossession, forced evictions, environmental degradation, loss of livelihoods, cultural deterioration and poverty, and their traditional governance systems have been undermined.

Many indigenous peoples' ways of life had, for several decades, been aimed at maintaining the balance, sustainability and integrity not only of their communities and peoples but also of their relationship with the natural and spiritual world around them. In this way, they were self-determining—they had developed the necessary institutions, structures and communications to ensure this balance while respecting their past, their present and safeguarding their customs and practices for the future. Their respective forms of governance were highly developed and inter-related, inter-connected and indivisible from their culture, lands, territories and resources. Colonialism, capitalism and the development of modern states disrupted this balance and, over time, governing systems were developed according to the goals and values of the majority population.

Customary governance systems of indigenous peoples were discriminated against by the colonizers and those who developed the post-colonial modern nation-states. This was done, generally, through the imposition of the colonial and modern state governance systems and handpicking of indigenous leaders who can be used to support the agenda of the new rulers over the indigenous territories. In many cases, people from the lowlands or areas which fell under the colonial rule were brought to the indigenous territories to be the civil servants and also to become the politicians. Aside from this, the colonizers and modern nation-states undertook transmigration programs which brought settlers from other countries and other territories which led to the minoritization of the indigenous peoples. Other indigenous peoples were displaced from their original territories and dispersed in several areas outside of their own lands. This is how indigenous peoples lost their self-determining status and became the ruled and also the minority or squatters in their own lands. Where indigenous peoples still asserted and sustained their own governance systems and customary laws, their systems existed in parallel with the modern state system. Since there are major differences between these two governance systems, in both form and sub-

stance, tensions and conflicts emerged which often resulted into the erosion of the indigenous systems. Racism, exclusion and discrimination of indigenous peoples became institutionalized in modern laws and governance institutions.

Even when modern governance systems were based on democratic and good governance principles professing to be inclusive of indigenous peoples, these peoples continued to be marginalized. Even today, and despite an increasing trend towards promoting participatory governance, which involves the meaningful participation of civil society in policymaking and administration processes, indigenous peoples and their organizations keep finding themselves excluded from policymaking, budget discussions, program design, implementation and evaluation processes. This adversely affects many indigenous communities, as their distinct visions of development, their concerns and ways of life are all too often ignored by national or local-level policymakers and administrators.

Involvement in international processes

Because of their marginalization, indigenous peoples have not fully and effectively participated in the international processes related to development, for instance, the Millennium Development Goals (MDGs), where they were absent both from the deliberations and the goals. Indigenous peoples have therefore welcomed the more inclusive nature of the post-2015 development process and the SDGs, which offers a unique opportunity to acknowledge the importance of governance and human rights for sustainable human development. The thematic consultation on Governance stressed the need to place particular focus on the participation of marginalized populations,[4] and the importance of transparency and accountability, including corporate accountability, underpinned by a human rights-based approach.

Since the late 1970s, indigenous peoples have used international forums to demand their recognition as "peoples" with the right to "self-determination" or, in other words, to "freely determine their political status and freely pursue their economic, social and cultural development" (UNDRIP Article 3).[5] This demand is closely linked with indigenous peoples' claims to collective rights to land and control over natural resources as a *sine qua non* for their cultural and social survival.[6] Indigenous governance therefore refers to their habitat (land, territory or ancestral domain) and focuses on how their societies or communities should function. Its aim is essentially concerned with creating the conditions for legitimate and capable rule and for collective action[7] in a way that is consistent with indigenous beliefs, values, practices and worldviews.[8-9] This will gradually improve indigenous communities' capacity to take control of decisions related to the collective resources within their territories. It will also improve indigenous peoples' interactions with other societies, nations, peoples and corporate business.

The right to indigenous self-governance at the international and national levels

The promotion and protection of these fundamental human rights of indigenous peoples have made headway during the past three decades. At the international level, examples include the Working Group on Indigenous Populations (WGIP, 1982), the adoption of ILO Convention No. 169 (1989), the establishment of the First and Second International Decade for Indigenous Peoples (1994, 2004), the creation of several UN bodies dedicated to indigenous rights and issues[10] and the work of the UN treaty bodies. The adoption by the UN General Assembly of the UN Declaration on the Rights of Indigenous Peoples in 2007 laid the main foundation for the recognition of indigenous peoples as subjects of international law and the affirmation of their inherent right to self-determination. The four states (USA, New Zealand, Australia, Canada) which voted no against the UNDRIP eventually passed resolutions endorsing the Declaration.

Examples of Regional standard-setting processes and mechanisms are the Inter-American Commission on Human Rights, the Working Group of the Organization of American States (OAS) to prepare the Draft American Declaration on the Rights of Indigenous Peoples (2001) and the African Commission on Human and Peoples' Rights, which established the Working Group on Indigenous Populations/Communities in Africa. These mechanisms have made more visible the need to protect, respect and fulfil the rights of indigenous peoples in America and Africa, respectively. At the national and local levels worldwide, policy and legal developments have been more uneven. However, several countries now have constitutions that recognize the rights of indigenous peoples and 22 countries have adopted ILO Convention No. 169;[11] in a number of countries, comprehensive land claims agreements, treaties or local government legislation have opened up the possibility of self-government based on indigenous values and traditions.[12] After the adoption of the UNDRIP, Bolivia adopted the UNDRIP as their National Law on Indigenous Peoples. There are other countries which have developed national laws on indigenous peoples rights before and after the UNDRIP was adopted. Examples of these are the Philippines, Ecuador, among others. Other countries have established indigenous peoples parliaments, like the Sami Parliaments of Norway, Sweden and Finland and the self-governments like the Greenland Self-Government established in 2009. However, many of these governments face great challenges when it comes to implementing their rights and most indigenous peoples still face multiple forms of oppression, marginalization, discrimination, racism and exclusion.

The challenges of good governance

The practice of good governance by indigenous peoples' own governments and institutions depends, to a very large extent, on whether and how good governance is being/will be practised at the international, national and local levels by global institutions, governments, corporations and other institutions. It is also important that these various and differing governance systems

are able to interact. Ideally, they should work together instead of competing or attempting to superimpose themselves, and their relationship should be defined in intercultural terms albeit with a cross-cutting nature (i.e. policies concerning indigenous peoples should be designed with the participation of indigenous peoples).[13]

Improving governance is, however, primarily the duty of national governments. They must design and adopt policies and statutory frameworks that recognize indigenous peoples' rights and facilitate their implementation, including indigenous "governance building". Indigenous peoples and their leaders, on the other hand, play an important role in ensuring good governance in their communities. In doing so, they face a sizable number of challenges. One such challenge is to take up the fundamental task of designing and exercising self-governing arrangements. Another is to mediate the relationship between indigenous cultural values and traditional knowledge and modern governance systems and norms. Indigenous social structures and value systems differ from those the national society has established and imposed on them but they may also differ from the standards established by international law. What may constitute sound governance from a Western perspective is not necessarily sound governance from an indigenous one.[14] Even when there are overlaps with the United Nations' list of the features of good governance, indigenous peoples will still need to develop their own definition of good governance through a judicious blend of traditional and contemporary norms.[15] Other challenges include dealing with demographic issues (e.g., youth migration, communities with heterogeneous indigenous populations or non-indigenous populations); poverty, welfare dependency and the weak potential for self-sufficient economies; the delivery of culturally-appropriate health and educational services, etc.[16] A further major challenge is related to achieving sustainable development, and how to integrate economic activity with indigenous peoples' social concerns, cultural priorities and legal rights. This calls for indigenous governance systems that can effectively exercise the right to Free, Prior and Informed Consent about developments.[17] It is important in this regard to bear in mind the profoundly asymmetric power relations between indigenous communities, corporations and states, and indigenous peoples' limited negotiating and decision-making power.[18] In any event, the diversity of indigenous cultures and contexts suggests that there is no "one size fits all" model of indigenous governance.[19] For indigenous peoples, these considerations are crucial to take into account in the post-2015 development agenda and the development of the SDGs.

Key recommendations

For the future well-being of indigenous peoples:

1. Governance practised at the international, national and local levels must be consistent with the UNDRIP, ILO Convention No. 169, indigenous peoples' customary laws and governance systems consistent with International Human Rights

standards and other key human rights standards affirmed by international law that recognize indigenous peoples as legal subjects, subjects of international law and bearers of individual and collective rights, including the right to self-determination and self-government. This comprehensive legal framework should guide international and national policies, and be used to monitor progress and assess impacts.

2. Indigenous peoples and their representatives must be ensured full and equal participation in all relevant global policy processes and knowledge platforms so that their views and concerns can be taken into account and be reflected in declarations, policies and other documents adopted by these forums.

3. Support must be provided to indigenous peoples in terms of programmes, projects and budgets which will allow them to strengthen their self-determined, sustainable development, reinforce and transmit their traditional knowledge systems, customary laws and governance systems to the youth. As well, for them to develop their indicators of well-being and good governance which can feed into local, national, regional and global processes.

4. National legislation and constitutions must fully recognize indigenous peoples' collective rights, including their territorial rights, as well as their right to determine their own development priorities. Indigenous peoples' customary laws and governance systems should be recognized and supported at national and local levels and not be destroyed nor discriminated against. Administrative barriers introduced by district, provincial, regional or national boundaries must not form an obstacle to the autonomous territorial government and the right to self-determination of indigenous peoples.

5. States must be proactive in eliminating discrimination and promoting the recognition of indigenous cultures, including their languages, traditional knowledge and practices. States should identify specific measurable targets for the elimination of discrimination and the protection of human rights.

6. States and indigenous peoples must cooperate to facilitate the creation of spaces for communication, information and training with the aim of raising awareness and sensitizing public opinion on indigenous peoples and their situation.

7. Indigenous peoples must establish their relations with the state, society and the market in a free and self-determined manner.

8. States must ensure the legal stability of territorial rights both in legislative and judicial terms and protect the integrity of indigenous territories.

9. Indigenous communities must fully recognize the role women play by contributing to the well-being and resilience of their families and communities, by possessing specific cultural and ecological knowledge and by playing a key role in the inter-generational transfer of know-how. This recognition must be reflected by ensuring women's right to participate in decision-making.

10. States, corporations and other institutions must recognize indigenous peoples' collective control over their territories and their right to free, prior and informed consent for any external activity of potential impact. States, corporations and other institutions must also accept procedural guarantees as well as effective and functional monitoring and sanctioning mechanisms that can mitigate the profoundly asymmetrical power relations existing between them and indigenous peoples.

11. Indigenous peoples must play a central role in the mechanisms set up to implement and monitor the progress of post-2015 development goals by, inter alia, participating in the development of indicators, data collection and data analysis. Data should be disaggregated as appropriate by gender, ethnicity, religion, language, and be relevant to indigenous peoples

12. The UN agencies, bodies and mechanisms and other global and regional multilateral bodies and organizations, such as Multilateral Development Banks and Regional human rights institutions should develop programmes and provide budgets to build the capacities of UN Member States to implement the UNDRIP and address the huge gaps in implementation. ○

Notes and further reading

1   IWGIA and Tebtebba take full responsibility for the content of this briefing note but would like to thank the contributions from our partners and indigenous peoples' specialists.

2   Tim Plumptre & John Graham, "Governance and Good Governance: International and Aboriginal Perspectives" (Ottawa, Institute On Governance, 1999), p.3.

3   Ibid., p. 12.

4   See UNDG et al., "Final Report Global Thematic Consultation on Governance and the Post-2015 Development Framework" (2013), p. 34. At http://www.worldwewant2015.org/governance

5   The principle of indigenous self-determination remains contentious as many nation-states fear that self-determination means secession and separatism although this has repeatedly been refuted by the global indigenous movement (and UNDRIP Article 46). See, e.g., Albert K. Barume, "Responding to the Concerns of the African States" in Making the Declaration Work, edited by Claire Charters and Rodolfo Stavenhagen (Copenhagen: IWGIA, 2009)

6   Omaira Mindiola, Foreword to "Indigenous Governance and Democracy in the Americas", Special edition of FOCAL POINT Spotlight on the Americas (2006). At http://www.focal.ca/pdf/focalpoint_se_may2006.pdf

7   See Mick Dodson and Diane E. Smith, "Governance for sustainable development: Strategic issues and principles for Indigenous Australian communities". Discussion Paper 250, (Canberra: Centre for Aboriginal Economic Policy Research, the Australian National University, 2003), p.2. At http://www.anu.edu.au/caepr/working.php

8. Gail Fondahl & Stephanie Irlbacher Fox, "Indigenous Governance in the Arctic". A Report for the Arctic Governance Project prepared for the Walter and Duncan Gordon Foundation (2009), p. 2. At http://www.arcticgovernance.org/indigenous-governance-in-the-arctic.4667323-142902.html

9   Pedro García Hierro, N.D. "Ten Critical Points for Indigenous Peoples in relation to Governance"

10 These bodies include the Permanent Forum (2000), the Special Rapporteur on Rights of Indigenous Peoples (2001) and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP, 2008).

11 These countries include most Latin American countries. A few countries in Africa and Asia have passed legislation on the rights of indigenous peoples.

12 Examples of indigenous self-government can be found in the Circumpolar North (see, e.g., Fondahl & Irlbacher Fox, op.cit.), in Australia (see Diana E. Smith, "From Gove to Governance: Reshaping Indigenous Governance in the Northern Territory", Discussion Paper 265. Canberra: Centre for Aboriginal Economic Policy Research, the Australian National University, 2004, pp. 13-15, at http://www.anu.edu.au/caepr/working.php); in the Americas (see Stephen Cornell and Joseph P. Kalt, "American Indian Self-Determination: The Political Economy of a Policy that Works", HKS Faculty Research Working Paper Series RWP10-043, John F. Kennedy School of Government, Harvard University, 2010, at https://research.hks.harvard.edu/publications/workingpapers/; Julio Davila Puño, Gobiernos Locales y Pueblos Indigenas – Peru and Maria Teresa Quispe, Gobiernos Locales y Pueblos Indigenas – Venezuela, both IWGIA, 2005, at http://www.iwgia.org); and in Asia (see, e.g., Cordillera Peoples' Alliance, Indigenous Peoples and Local Government: Experiences from Malaysia and the Philippines (Copenhagen: IWGIA, 2005).

13 Mindiola, op.cit., p. 1.

14 Contentious issues are, e.g., the question of elections, which many indigenous peoples find have divisive effects on their communities; consensus government-style versus competitive political parties; defining the role and status of women, and balancing secular-based Western approaches to government with a system of government based on indigenous spirituality. See Plumptre & Graham, op.cit., p. 14 fn. 22. See also Fondahl and Irlbacher Fox, op.cit.; García Hierro, op.cit.; and IWGIA, Challenging Politics: Indigenous Peoples' Experiences with Political Parties and Elections (2001).

15 Plumptre & John Graham, op.cit., p. 13.

16 See García Hierro, op. cit., Smith, op.cit., pp. 13-15.

17 See García Hierro, op. cit., p. 3; Dodson & Smith, op.cit., p. 6.

18 César Rodriguez-Caravito, "Ethnicity.gov: Global Governance, Indigenous Peoples, and the Right to Prior Consultation in Social Minefields", Indiana Journal of Global Legal Studies, Vol. 18 #1 (Winter 2010), pp. 12 and 24.

19 Plumptre & John Graham, op.cit., p. 12.