

PART III:

THE UNDRIP AND WHAT COMMUNITIES CAN DO

YOU AND YOUR COMMUNITY: DEALING WITH REDD THROUGH THE UNDRIP



You are an indigenous person. It is likely that you and your community have lived in the area where you are in for decades, if not hundreds of years.

It is important that you are aware of discussions and decisions on climate change, including REDD. It is important that you participate in discussions where the land you live and make your living is concerned. It is important that you have a voice, to speak your mind or to ask questions, especially when decisions have to be made. It is your right. It is your human right. It is your right as an indigenous person. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) says so.

WHAT IS THE UNDRIP?

The UNDRIP is the result of more than 20 years of work by indigenous representatives, governments and experts – writing the contents, and negotiating and agreeing among themselves, until it was eventually adopted by the UN General Assembly on 13 September 2007. The purpose of the Declaration is to identify standards by which governments can recognize the rights of indigenous peoples.

It sets the **minimum standards** for the survival, dignity and well-being of the indigenous peoples of the world. The Declaration is not a directly legally binding



instrument but *it affirms many rights already contained in international human rights treaties*, and is therefore indirectly legally binding. For this reason and because a majority of the governments in the United Nations (UN) have agreed to its contents, indigenous peoples can use and are already using this to pressure governments to fulfil their obligations in the recognition and protection of our rights.

In fact, already in 2007 Bolivia has adopted the UNDRIP as a law, and it was incorporated into their new Constitution in 2009. Bolivia is proud to be the first country in the world to implement this international instrument. In Belize, the indigenous Maya villages of Conejo and Santa Cruz sued the government in 2007 for giving permission to logging, oil, and hydro-electric companies to undertake projects on their territories and denying Mayan farmers access to their own ancestral land. The Supreme Court of Belize ruled in favour of the Mayas and ordered the national government to recognize the indigenous Mayas' customary rights to their land and to stop any activities that might hinder them from using their land. It made explicit reference to the UNDRIP. It was the first judgment that made reference to the UNDRIP, which could influence the outcome of similar cases in other parts of the world.





WHAT IS IN THE UNDRIP?

The Declaration contains **24 preambulatory paragraphs and 46 operative articles** which list and explain the international human rights of indigenous peoples. Among important contents of the Declaration are: the right to self-definition as indigenous peoples; the right to self-determination; rights to lands, territories and natural resources; the right to free, prior and informed consent for development activities on their lands and territories; and rights embodied in the other human rights instruments. The Declaration is also special because it talks of collective rights. This is particularly important for indigenous peoples, because many aspects of our life are common, or shared, such as ownership of lands and resources.

If you look closely at the UNDRIP, you will find that it is made up of elements that are found in other international legal instruments, like the Charter of the United Nations, the Universal Declaration of Human Rights, the Human Rights Covenants, and conventions and declarations like the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Elimination of All Form of Racial Discrimination (CERD), conventions addressing genocide, minorities and religious intolerance, as well as the International Labour Organization's (ILO) Indigenous and Tribal Peoples Convention No. 169.

The UNDRIP - Summary of what it contains

Self Determination

Indigenous peoples have the right to self-determination, which means that they freely determine collectively their political, economic, social and cultural systems and development.

They are entitled to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, in the life of the State in regard to those aspects.

They have the right to determine their own identity and membership; and the structures and leadership selection of their institutions in accordance with their own procedures, customs and traditions.

Right to land, territories and resources

Indigenous peoples have the right to lands, territories and resources. States shall give legal recognition and protection to these lands, territories and resources with due respect to customs and traditions of indigenous peoples to land tenure systems.

They have the right to maintain and strengthen their distinctive spiritual relationship with their lands, territories and other resources and to uphold their responsibilities to future generations in this regard.

States shall establish and implement, in conjunction with indigenous peoples concerned, an open and transparent process to recognize and settle disputes pertaining to their lands, territories and resources.

Free, Prior and Informed Consent (FPIC)

Indigenous peoples have the right to free, prior and informed consent on the following:

- a. Any action resulting in Forced removal or relocation from their lands or territories
- b. Any change in existing or creation of new laws or regulations by the government that affects them.
- c. Any projects affecting their lands and territories particularly with the development, utilization or exploitation of mineral, water or other resources.
- d. Any Storage or throwing away of anything that is poisonous or dangerous on their lands or territories.

FPIC means that indigenous peoples should determine whether a project can go ahead or reject or set conditions for project implementation based on their collective decision making processes.

Right to Development

Indigenous peoples have the right to maintain and develop their political, economic and social systems and institutions and to secure their own means of subsistence and development, including the freedom to engage in traditional and other economic activities. Those deprived



of such means are entitled to just and fair redress. They have the right to determine and develop priorities and strategies for their own development and to be actively involved, in health, housing and other economic and social programmes which when possible they will administer through their own institutions.

States shall take special measures to improve the economic and social conditions of indigenous peoples, while paying attention to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities. States shall take specific measures to protect indigenous children from economic exploitation and all forms of child labour.

Culture and Cultural Heritage

Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture, and States shall provide effective mechanisms to prevent and provide redress to forced assimilation.

Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies, including the use and control of their ceremonial objects and the repatriation of their human remains. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through mechanisms developed with indigenous peoples concerned.

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures. States needs to act to recognise and protect these rights.

Education

Indigenous peoples have the right to establish and control their educational systems and institutions in their own languages and methods. They are also entitled to receive all levels and forms of education from the State. States shall take effective measures for indigenous individuals to have access, when possible, to an education in their own culture and provided in their own language.

Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information. States shall take effective measures to combat prejudice and eliminate discrimination and promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Health

Indigenous peoples have the right to their traditional medicines and to maintain their health practices, as well as to the enjoyment of highest attainable standard of physical and mental health. States must make sure that whenever indigenous peoples are affected by poisonous or dangerous materials that proper programmes are in place that will improve and repair the health of indigenous peoples and that these programmes are designed by the affected indigenous peoples.



So what does that have to do with Climate Change and REDD?

The UNDRIP should be the overarching framework which guides the design and implementation of climate change policies as these relate to indigenous peoples. Any policy, programme or project, including those on climate change, which will be implemented on indigenous territories should be carried out with indigenous peoples' free, prior and informed consent (FPIC). Many of the problems faced by indigenous peoples on climate change-related activities arise from neglect of these rights and the FPIC principle.

Can you tell me more about Free, Prior and Informed Consent (FPIC)?

FPIC is the consensus/consent of indigenous peoples which has come about in accordance with their customary laws and practices. This does not necessarily mean that every single member must agree, but rather that consensus will be determined according to customary law and practice. In some cases, indigenous peoples may choose to express their consent through procedures and institutions that are not formally or entirely based on customary law and practice, such as statutory councils or tribal governments. Regardless of the nature of the process, the affected indigenous peoples retain the right to refuse consent, or to withhold consent until certain conditions are met. Consent must be obtained without coercion and manipulation ("free" consent). It must be obtained before the activities start ("prior" consent), and after the project proponent has provided all information needed to fully understand all the details of the project, like its purpose, scope and of course the impact on the environment and the people, and this information has to be provided in a language and in a way that is understandable to the affected indigenous communities ("informed" consent).



FREE PRIOR AND INFORMED CONSENT

FPIC IS MECHANISM AND A PROCESS WHEREIN INDIGENOUS PEOPLES UNDERTAKE THEIR COLLECTIVE DECISION ON MATTERS THAT AFFECTS THEM, AS AN EXERCISE OF THEIR RIGHT TO THEIR LAND, TERRITORIES AND RESOURCES, THEIR RIGHT TO SELF-DETERMINATION AND TO CULTURAL INTEGRITY.

FREE: INDEPENDENT PROCESS OF DECISION-MAKING

- ◇ WITHOUT COERCION OR FREE FROM SPONSORED IDEAS OR MANIPULATIVE OR DECEIVING ACTIONS TO GET CONSENT;
- ◇ DECISION MAKING PROCESS COMPATIBLE TO THE INDIGENOUS CUSTOMARY LAWS.

PRIOR: RIGHT TO HAVE A SAY AND DECISION IN ANY PROJECT THAT CONCERNS THEM BEFORE ITS IMPLEMENTATION

- ◇ THE STATE OR THIRD PARTIES PLANNING ACTIVITIES MUST SEEK THEIR INFORMED CONSENT SUFFICIENTLY IN ADVANCE OF ANY COMMENCEMENT AND FINAL AUTHORIZATION FOR IMPLEMENTATION;
- ◇ SUFFICIENT TIME TO UNDERSTAND AND ANALYSE THE INFORMATION THEY RECEIVE, AND TO DEFINE AND UNDERTAKE THEIR COLLECTIVE DECISION;
- ◇ TIME BOUND REQUIREMENT FOR INFORMATION DISSEMINATION SHOULD BE COMPATIBLE TO THE SITUATION OF INDIGENOUS PEOPLES;
- ◇ TIME REQUIREMENTS OF INDIGENOUS CONSULTATIONS AND CONSENSUS PROCESSES SHOULD BE DEFINED BY THE INDIGENOUS COMMUNITIES AND NOT IMPOSED ON THEM.

INFORMED: RIGHT TO BE PROVIDED WITH PERTINENT INFORMATION ON THE ACTIVITY/PROJECT/ PROGRAMME BEING PLANNED IN ORDER FOR THE COMMUNITY TO UNDERTAKE AN INFORMED DECISION MAKING PROCESS. THIS ALSO INCLUDES THE RIGHT TO ACCESS RELATED INFORMATION.

- ◇ INCLUDES THE FULL AND LEGALLY ACCURATE DISCLOSURE OF RELEVANT INFORMATION IN A FORM, WHICH IS BOTH ACCESSIBLE AND UNDERSTANDABLE (LANGUAGE) TO THEM.

CONSENT: CONSENT IS A RESULT OF THE COLLECTIVE, INDEPENDENT AND SELF- DETERMINED DECISION-MAKING PROCESS OF INDIGENOUS COMMUNITIES

- ◇ CONSENT DECISION IS BASED FROM A COLLECTIVE DECISION OF THE COMMUNITY AND NOT JUST A DECISION OF LEADERS;
- ◇ CONSENT AS A COLLECTIVE DECISION OF INDIGENOUS COMMUNITIES MAY ALSO INCLUDE THEIR TERMS AND CONDITIONS FOR THEIR CONSENT DECISION, INCLUDING WITHDRAWAL OF CONSENT IF TERMS AND CONDITIONS ARE VIOLATED;
- ◇ CONSENT SHALL BE SOUGHT AT EVERY STAGE OR PHASE OF THE PROJECT/ ACTIVITY IF DEEMED TO HAVE POTENTIAL IMPACTS AT EVERY STAGE/PHASE OF THE PROJECT;
- ◇ THE PRESENTATION OF CORRECT AND SUFFICIENT INFORMATION, CONSULTATION AND PARTICIPATION ARE CRUCIAL COMPONENTS OF A CONSENT PROCESS;
- ◇ INCLUSION OF A GENDER PERSPECTIVE AND PARTICIPATION OF INDIGENOUS WOMEN ARE ESSENTIAL, AS WELL AS PARTICIPATION OF CHILDREN AND YOUTH AS APPROPRIATE.



In the UNDRIP, articles that are related to FPIC are the following:

- Article 10:** Indigenous peoples cannot be forcibly removed from their lands and territories and relocated without FPIC.
- Article 11:** Redress shall be given to indigenous peoples whose cultural, intellectual, religious and spiritual property are taken without their FPIC
- Article 19:** FPIC must be obtained before adopting or implementing legislative/administrative measures affecting indigenous peoples
- Article 28:** Indigenous peoples have the right to redress for lands, territories, resources, which were confiscated, taken, occupied, used or damaged without their FPIC
- Article 29:** No storage or disposal of hazardous materials in indigenous peoples' lands without FPIC
- Article 32:** FPIC should be obtained prior to approval of any project affecting their lands, territories and resources, particularly exploitation of mineral, water and other resources.

REDD involves our forests and resources, and it may involve the land I am living on. Is there anything in the UNDRIP on these?

A common and important problem that indigenous peoples encounter is the violation of their rights to lands, territories and natural resources. This problem is getting more and more serious as natural resource extraction is expanding into even the remotest areas, and it is particularly bad in countries where there are no national laws recognizing indigenous peoples' land rights. What's more, in many countries not even the existence of indigenous peoples is recognized





in laws and policies. The denial of the right to land and resources, as well as the right to their use and management, is one of the causes of biodiversity loss among indigenous peoples, and it leads to tremendous hardship among many of our communities.

Rights to land and resources can be found in the following UNDRIP articles:

Article 25

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.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.





What does the UNDRIP say about Indigenous Peoples' right to development?

The UNDRIP emphasizes the right to self-determined development of indigenous peoples. This is spelled out in Article 3, which states: "Indigenous peoples have the right to self-determination. By virtue of this right they freely determine their political status and freely pursue their economic, social and cultural development."

The right to self-determination is manifested in the following:

- Autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions;
- Respect for the principle of free, prior and informed consent in any activities affecting indigenous peoples;
- Full and effective participation of indigenous peoples at every stage of any activity that may affect them directly or indirectly. The participation of indigenous peoples may be through their traditional authorities or a representative organisation. This participation may also take the form of co-management (managing a project, programme, protected area, etc. jointly with government agencies or other non-governmental organisations);
- Formal recognition of indigenous peoples' traditional socio-political organisation, their institutions, justice and conflict resolution systems;
- Recognition of the right of indigenous peoples to freely define and pursue their economic, social and cultural development.





Now that I have all this information: What can my community and I do and how can we use the UNDRIP?

Because indigenous peoples can play a vital role in the mitigation of climate change, it is important to ensure their meaningful and effective participation at all levels in all policies and programmes affecting them. The UNDRIP serves as a framework according to which the policies and programmes affecting indigenous peoples should be shaped.

The Anchorage Declaration, mentioned earlier, reiterates this, asserting that ***“the inherent rights of Indigenous Peoples, affirmed by the UNDRIP, must be fully respected in all decision-making processes and activities related to climate change”***.

With the UNDRIP as framework for indigenous peoples’ engagement in the climate change processes, they have identified the following as ways forward for indigenous peoples and communities:

- Enhance and deepen our understanding of climate change to implement more effective and appropriate mitigation and adaptation measures in our lands and territories. We need to conduct education and awareness raising campaigns among our communities.
- Strengthen engagements and relationships with other indigenous peoples and communities, and with government and non-government agencies and institutions.
- Enhance our capacities to mitigate and adapt to climate change by using traditional knowledge and sustainable forest management practices and by implementing self-determined development.



- Document how indigenous peoples, including youth and women, are being affected by climate change, and what their contributions are to local adaptation and mitigation strategies.
- Exchange information with other communities on climate change mitigation and adaptation strategies developed based on traditional knowledge, innovations, and practices which includes knowledge and use of land, water and sea ice, traditional agriculture, forest management, agricultural plant diversity, pastoralism and husbandry, herbal medicines etc. In all this we need to ensure that our intellectual property rights are protected and respected at the local, national and international levels.
- Participate in climate change meetings at different levels (local, national, regional and global) and speak out, presenting our position and defend-





ing our rights wherever possible. Ensure the participation of women and children in these processes.

- Write strategy papers on REDD and the issues of technology, finance, adaptation and mitigation, and capacity building. Help to ensure that all initiatives under REDD recognize and protect the rights of indigenous peoples, including their land rights in accordance with traditional practices and customary laws.
- Support campaigns for the implementation of the UNDRIP.
- Wherever not yet recognized, campaign for the recognition of our right to maintain our traditional use of plants and animals through hunting and gathering.
- Nurture and develop our traditional knowledge, environment-friendly technologies, cultural diversity and the biodiversity in our territories.
- Support campaigns of indigenous peoples against projects and policies which worsen climate change and which violate our rights (mining, logging, dams, etc.)
- Undertake sustained lobby and advocacy work within the UNFCCC processes, among the UN agencies and bodies, and multilateral bodies to ensure our effective and meaningful participation and that our rights, perspectives and proposals on climate change are respected and implemented.
- Actively participate in the formulation of national policies on climate change.