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MODULE II
Human Rights of Indigenous Peoples and Women
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To create theoretical knowledge about the individual and collective human rights of Indigenous Peoples and Indigenous Women, especially their right to economic autonomy and environmental justice, as well as the mechanisms of protection and enforceability.
INTRODUCTION

Indigenous women are part of the most important international lobbying and advocacy processes for the individual and collective human rights of Indigenous Peoples. Together with their male peers, they have strongly struggled for the recognition of collective rights, and at the same time for the claims of their particular gender rights, from their own perspective.

The World Conference on Women (Beijing-China, 1995) is considered a milestone in the construction of the global indigenous women’s movement. On that occasion, indigenous women from different regions managed to articulate and agree on a common position vis-à-vis the statements of the Governments and the results of the Conference itself. The Beijing Declaration of Indigenous Women highlights the “western” gaps of the results at the Conference because it does not consider the women’s diversity and the inequalities they are going through.

Since then, the need for participation and advocacy in international spaces engaged to women has been evident. The Annual Meetings of the United Nations Commission on the Status of Women (CSW), whose mandate includes follow-up and inspect of the progress and difficulties found in the implementation of the Beijing Declaration and Platform for Action, as well as the incorporation of the gender perspective in the activities of the United Nations, gain relevance.

The Commission began its meetings in 1947 and, as an intergovernmental body, the participation of civil society has been difficult. It is from the Beijing Conference in 1995 that NGOs began to be considered more relevant. For indigenous women, it has been a greater effort to achieve their participation and to influence the agreements adopted by the CSW. In 2005, after 49 meetings of the Commission, indigenous women achieved, after intense lobbying, to adopt of the first resolution referring to indigenous women. “Indigenous Women beyond the Ten-Year Review of the Beijing Declaration and Platform for Action” (Resolution 49/7), which requires to adopt measures that ensure “the full and effective participation of indigenous women in all aspects of society.” This resolution allowed drawing attention to the distinct characteristics of indigenous women and the need for the UNCSW to take women’s diversity into consideration.

In 2012, once again thanks to the advocacy efforts of indigenous women who obtained the support of several Governments, the UNCSW adopted a second specific resolution titled “Indigenous women: key actors in poverty and famine eradication” (Resolution 56/4). With a more detailed content, this resolution urges Governments and agencies of the United Nations System to adopt measures aimed at the empowerment of indigenous women and the fulfillment of rights in order to eradicate poverty and hunger. In this case, the previous resolution is enhanced since it includes the concept of empowerment beyond participation.

Little by little, indigenous women expanded their possibilities of participation, obtaining scholarships, support and increasing the arrangements among the regions. When analyzing the texts in both resolutions, a progress in their language is noted. The first resolution recognizes the “profound inequalities between indigenous women and other groups” and recommends the full and effective participation of women. The second resolution adopted seven years
later goes further and considers indigenous women as “key actors in poverty and famine eradication.” Not only are they considered active actors in their own development, but also their “distinct and crucial” contribution in several local economies, food security and sustainable development is recognized. In terms of recommendations, not only participation in the decision-making process is included, but also the concept of empowerment is included as a more holistic issue covering different areas such as the creation of policies and programs, the possibilities of choice, the need of consultation, respect for traditional knowledge, access to several types of social resources and services, support for organizations and cooperatives, among other aspects. It also recognizes the equal rights to own lands and other properties, the link between poverty and discrimination and the generation of violence. It also highlights the importance of collecting and disseminating disaggregated data on indigenous women.

This progress set up the basis for lobbying during the negotiations on the document of the World Conference on Indigenous Peoples held in September 2014. Finally, the resolution adopted by the General Assembly made important progress. There, the Meeting invites the “Commission on the Status of Women to examine the issue of the empowerment of indigenous women in a future session.” (A/RES/69/2)

This resolution allowed the CSW in its Multi-Year Program of Work (E/RES/2016/3) to establish “Recalling the invitation to the Commission on the Status of Women to consider the issue of the empowerment of indigenous women at a future session, as stated is in paragraph 19 of General Assembly resolution 69/2 dated September 22, 2014, and acknowledging the intention to place this issue as a focus area/emerging issue during its 61st session.”

In the international human rights framework, there is a series of tools to protect the rights to environmental and intergenerational health and to live free from environmental violence, including the United Nations Declaration on the Rights of Indigenous Peoples, the United Nations Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of Persons with Disabilities.

An important mechanism for defending the rights of indigenous women in relation to environmental justice are the different rapporteurs of special rights within the United Nations system such as the special rapporteur on women’s rights, the special rapporteur on indigenous peoples’ human rights, the special rapporteur on hazardous substances, among others. In each working area of these rapporteurs, the issue on Indigenous Peoples has been taken up again, especially in those of the indigenous women and the impacts resulting from the violation of their rights, and even the issue on the impacts of environmental imbalances on their communities, territories and bodies. These mechanisms are an important tool for indigenous women to find opportunities to reflect on the violation of their rights as indigenous peoples, but at the same time to put their positions and proposals under discussion in order to deal with them and seek environmental justice from their voices and perspectives.
Unit 1.

The distinct rights of Indigenous Peoples: validity, practices

The Distinct Legal Systems: Indigenous Peoples have their distinct law systems, culturally acknowledged, validated, including the regulations, institutions, uses, customs and proceedings, social inspection and regulation methods of their cultural tradition, implicit in their cultural history, spiritual conception, mythology and distinct worldview, in their kinship systems, types of ownership, use, exploitation and conservation of their collective territories and natural resources.

The Special Laws for Indigenous Peoples: these laws are composed of international conventions and treaties on the rights of Indigenous Peoples ratified by the Government and constitutional and legal regulations (national, regional and local), which establish a set of special rights and guarantees for the benefit of the ethnic population recognizing the reality of cultural difference and its autonomy.

Historically, the special regulations are the result of resistance struggles and the conquest of claims lead by socio-organizational movements of indigenous peoples and communities. In this regard, the Special Ethnic Laws are made up of all the regulations establishing special rights for the benefit of Indigenous Peoples. They include regulations in the matter of identity, territorial and environmental rights, autonomy, participation and prior consultation, acceptance of the plurality in development models and the right to self-development and the choice of an articulation to the national economic and social model, institutional adaptation, education, health, administration of justice, tax and electoral regime, among other matters.

Indigenous Peoples have collective rights based on their historical rights and collective cultural identity, essential for their existence, well-being and comprehensive development as peoples. Collective rights are third-generation human rights resulting from their political, social and cultural structures, spiritual traditions, histories and philosophy. The collective rights include preserving and strengthening their own political, legal, economic, social and cultural institutions, while maintaining their rights to fully participate, if desired, in the political, economic, social and cultural sphere of the Government.

Indigenous peoples, communities and nations enjoy the collective rights that are based on their historical rights and collective cultural identity and, as it has been previously mentioned, they are essential for their existence, well-being

1 It is adopted in the definition of the peoples’ rights contained in the International Covenants on Civil, Political and Economic, social and cultural rights.
3 Rights based on the historical rights and the collective cultural identity of the indigenous peoples, indispensable for their existence, well-being and integral development as peoples.
and comprehensive development as peoples. The rights based on the historical rights and the collective cultural identity of indigenous peoples are essential for their existence, well-being and comprehensive development as peoples.\(^4\) the right to freely establish their relations with the Governments in a coexistence, mutual benefit and full respect spirit, and their political status, and freely pursue their economic, social and cultural development; the right to preserve and strengthen their own political, legal, economic, social and cultural institutions while maintaining their rights to fully participate, if desired, in the political, economic, social and cultural spheres of the Member Governments.

These peoples have preserved their distinct cultural characteristics, worldview and spirituality, and have decided to maintain a harmonious relationship with nature and the environment through the application of their distinct types of organization, customs and traditions. However, the characteristics related to this understanding should not be considered static because the manifestation of individual and collective identity responds to social, economic and cultural relationships.

An argument used to ignore and violate collective rights—despite living in backgrounds identified as rule of law—is that the universality and indivisibility, fundamental characteristics of human rights, have been omitted. For example, in the case of indigenous women, we are aware that, according to the universality characteristic of human rights, every woman has the right to enjoy all her human rights regardless of their culture, religion and ethnic origin. However, according to the indivisibility characteristic, it is evident that indigenous women can only exercise the individual rights—gained for all women—to the extent that we enjoy the collective rights of our indigenous peoples.

From a human rights-based approach, it is clear that the subject of cultural rights is the person, even though those rights can only be fully enjoyed by all persons in community with other members of their group or people. Therefore, a human rights-based approach to analyzing the progress of cultural rights should focus on individual and collective rights when referring to Indigenous Peoples.

These rights are linked to the territorial right based on the historical domain and ancestral usufruct.\(^5\) The core element in the debate on the collective rights of indigenous peoples has been the recognition of their collective identity as peoples, and the resulting rights from such recognition.

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\(^4\) It is adopted in the definition of the peoples’ rights contained in the International Covenants on Civil, Political and Economic, social and cultural rights.

\(^5\) Sentence of Awastingni.
Unit 2.


Let’s read and discuss:

It has been a long way to the achievement of an international legal framework for encouraging the Indigenous Peoples’ rights. The relations between Indigenous Peoples and Governments in Latin America have ranged from slavery and servitude of the colonial feudal system, based on the encomienda and the merciless exploitation of the indigenous peoples, to the republican era of their “equal rights” which in fact, were not recognized at all, depriving them of their lands and turning them into cheap labor force for the haciendas founded in their own lands; to the indigenism intended for solving “the indigenous problem”, incorporating them to the national mestizo culture appealing to a false homogeneity, encouraging great alphabetization campaigns to suppress the indigenous languages and replace them by the Spanish language; to the Agrarian Reforms having an impact on indigenous lands to turn indigenous and peasants populations into organized cooperatives because they were part of modernity. It went from the hacienda model to that of agroindustry, but the indigenous peoples’ rights continued to be violated. In 1957, in order to protect indigenous workers, the International Labor Organization (ILO) enacted 107 Convention on Indigenous and Tribal Populations, which aimed at protecting populations and encourage their integration with other national communities, in which they were lagging.

As a result of the persistent advocacy of Indigenous Peoples, their authorities and organizations, the ILO promulgated the Convention Nº 169 concerning Indigenous and Tribal Peoples, which surpasses the integrationist approach of its predecessor, the C107 Convention. In the C169 Convention, the concept of “People” is incorporated into a category which recognizes that indigenous peoples are right-bearing subjects. The C169 is, in turn, the precedent of the United Nations Declaration on the Rights of Indigenous Peoples, promulgated by the General Assembly of that body on September 7, 2011.

CONTENT DEVELOPMENT.

1. ILO Convention Nº 169 concerning Indigenous and Tribal Peoples

Enacted in 1989, the Convention No. 169 of the International Labor Organization (ILO) breaks with the policies of assimilation approach, characteristic of the indigenism and post-indigenism times, that is, those policies for indigenous people created and executed by non-indigenous people who intended to integrate natives to national societies under the myth of miscegenation as cultural homogeneity, imposing the Spanish language through literacy and including them into national development projects.

Convention No. 169 recovers the aspiration of indigenous peoples to take control of their own institutions, lifestyles, economic development and to maintain and develop their identities, languages, religions, within the framework of
Governments (Preamble, Article 7).

This agreement is part of the human rights treaties that recognize and encourage equality of opportunities and treatment—equality understood in a dynamic sense (respect for diversity, real equality and not only formal). It is an instrument of dialogue, due to the importance of the mechanisms of participation and consultation (Tripartism and social dialogue). It also is considered extremely important for inclusive development, democracy, governance and conflict resolution, and a guiding instrument for cooperation in the development, private sector, sustainable development and Living Well of the Indigenous peoples.

This is an international treaty of a legally binding nature, open to ratification, which should be implemented in good faith (Vienna Convention) and in which Institutionalized supervisory mechanisms of the ILO should be applied.

To date, the C169 is the only international treaty specific on the grounds of indigenous peoples’ rights; however, its content is acknowledged, reflected and complemented by the main sources of the International human rights law.

The Historical Tour of the C169.

• 1920: rural workers (a large numbers came from indigenous and tribal peoples).
• Between 1952 and 1972: Indigenous Program for Andean countries in Argentina, Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela.
• 1957: Convention No. 107 concerning indigenous and tribal populations, and Recommendation no. 104 were adopted
• 1989: Convention No. 169 on indigenous and tribal peoples was adopted.

The C169 reviews C107 and establishes a change in the ILO’s conception of indigenous and tribal peoples, whose protection — based on the respect for their cultures, lifestyles, traditions and customs— continues to be the main objective.

The Governmental obligations that ratify the C169 consist on protecting and encouraging the rights of indigenous and tribal peoples and Governments are the main responsible for ensuring the full compliance with this Convention.


In 1993, the United Nations Working Group on Indigenous Populations completed the final text of the Draft Declaration on the Rights of Indigenous Peoples and submitted it to the Commission on Human Rights, which created a Working Group for monitoring it. Some issues were significantly controversial, from the point of view of the Governments; for example, the right to self-determination, the collective rights, the right to territory and natural resources, and the principle of free, prior and informed consent. Finally, as a result of several decades of work and struggle, on September 13, 2007, the General Assembly of the United Nations adopted the Declaration on the Rights of Indigenous Peoples. Its approval represents a historic step in the struggle of indigenous peoples, establishing clear parameters to ensure the dignity and well-being of peoples and recognizing their individual and collective rights. Additionally, the adopted
Declaration grants the Governments, international cooperation agencies and donors, as well as civil society, a clear framework for action for the design and implementation of policies involving indigenous peoples.

In this context, the United Nations Declaration on the Rights of Indigenous Peoples provides guidelines on the measures required for ensuring the dignity, survival and well-being of indigenous peoples. It is a tool for fighting against the structural causes of poverty, since it recognizes the indigenous peoples’ right to land, territories and natural resources critical to ensure their livelihoods, and states that indigenous peoples, like all peoples, have the right to self-determination, which means that we must transcend the shortage approach.

The adoption of the Declaration by the UN General Assembly sends a clear message to the international community that the rights of Indigenous Peoples are not separate nor are they less than the rights of others, but equally they are stating that those rights are an integral and indispensable part of the human rights system created for everyone, whether male or female.

The effective implementation of the Declaration will demonstrate the will of the Government and the entire international community to protect, respect and comply with the individual and collective human rights of indigenous peoples. A very valuable aspect of the Declaration is the fact that this is the only Declaration elaborated in conjunction with the right-bearing subjects, turning it into a true instrument of justice, peace, recognition and mutual respect and, the fact of being Approved by a large majority of Governments enables to leave the painful stories of exclusion and racism behind forever and open the way to a future for human rights. The meaning and legal implications of the Declaration should not be minimized since it would imply to continue with discrimination against indigenous peoples.

As part of the Action Plan of the Second Decade approved by the General Assembly in 2004, the Governments were summoned to review national legislation in order to eliminate discriminatory aspects. It was carried out with the participation of indigenous representatives. The recommended actions included that laws make explicit reference to indigenous peoples, that governments should take traditional systems of administration of justice into consideration in accordance with the international human rights law. The Declaration represents an appropriate platform to address the issue of violations of rights against indigenous peoples in programs for the cultural diversity recognition.

The best way to interpret the Declaration is to address it comprehensively and link it with existing international legislation. To this end, you must be guided by the first preambular paragraph that links it with the existing legal framework when establishing that:

"Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law".

The conviction that Indigenous Peoples enjoy their rights as distinctive peoples and that a constructive dialogue among everyone can improve the level of understanding between different worldviews and cultures, can allow to build trusting relationships between Governments and Indigenous Peoples for a more just and sustainable world.
The Declaration is an ideal instrument to sensitize and monitor the progress in the protection, respect and exercise of the indigenous peoples’ rights. It allows to have a reference in order to implement monitoring systems on the progress of cultural rights.

It also allows to implement the rights approach which leads the international cooperation and make the Action Plan of the Second International Decade of Indigenous Peoples a reality. Its implementation will require all organizations to review and adjust their policies and programs in relation to indigenous peoples in order to ensure their compliance with the international standards established in the Declaration. These aspects can be related to diverse issues such as territorial rights, territoriality and natural resources, free determination, inadequate recognition of indigenous peoples, their distinct cultures, languages, identities, subsistence, distinct concepts about development, free prior and informed consent. The Declaration is a tool that can contribute to improving cooperation and partnership to ensure that all the individuals, regardless of their ethnic origin, beliefs or gender, are effectively equal, respected and have equal opportunities to develop.
Article 43. The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

KEY RIGHTS
- Right to identity.
- Collective rights.
- Right to self-determination.
- Right to consultation.
- Free, prior and informed consent.
- Right to participation and special measures.
- Right to land and natural resources.
- Right to gender equality

RIGHT TO SELF-IDENTIFICATION
- Article 33 of the United Nations Declaration on the Rights of Indigenous Peoples refers to the rights of indigenous peoples to determine their own identities and membership in accordance with their customs and traditions.

TERRITORIAL RIGHTS
- The spiritual relationship of the indigenous peoples with their lands.
- The land as an expression of identity.
- That the lands and resources are an essential aspect for survival.
- The right to possession, use and control based on the traditional way of land occupation.
- Legal recognition through the land titling.
- Consultation, consent and mitigation measures.
- Contact with border communities.

POLITICAL RIGHTS
- To freely decide about all the aspects of life.
- Ancestral types of self-government and distinct political, social and economic systems.
- Internal structures and procedures for decision making
- To participate in all the issues that have an impact on them.
- To be consulted beforehand about the issues that have an impact on them.
- To participate in the political life of the Government and its communities.
- Legislative reforms to achieve the purposes of the Declaration.

CULTURAL RIGHTS
- Right to exercise and express their own cultures without the risk of being destroyed.
- Right to revitalize their cultures and protect all their cultural manifestations, as well as their religious places.
- Non-discrimination.
- The Governments must respect and encourage the different cultural expressions and create public policies for coexistence and respect.
- Their distinct educational processes, self-management and indigenous languages.
- Access to information.
SOCIAL AND ECONOMIC RIGHTS
- Right to non-discrimination.
- Social and economic development and the fight against poverty and inequality.
- Special protection for children and women.
- Labor rights and equal access to employment
- Fight against child exploitation.
- Right to the use of traditional medicine and the conservation of medicinal plants.

3. Convention on Biological Diversity

The relevant instruments related to human rights include the International Covenant on Civil and Political Rights, which was approved and opened for ratification in 1966 and came into effect in March 1976. The International Covenant on Economic, Social and Cultural Rights was approved and opened for ratification in 1966 and came into effect in January 1976. Both Conventions or International Covenants establish in the Article 1 that all the peoples have the right to self-determination, and by virtue of that right, they can freely determine their political status and freely pursue their economic, social and cultural development.

In 1992, during the Rio de Janeiro Earth Summit, 150 governments signed the Convention on Biological Diversity 1, engaged to encourage sustainable development. In order to make the principles of Agenda 21 possible, the Convention not only recognizes the planet’s biological diversity, but also makes reference to its people and their need for food security, medicines, clean water, clean air, housing and a healthy environment to live in.

Article 8 (j) “Traditional Knowledge, Innovations and Practices” is particularly relevant for indigenous peoples since it establishes that each Contracting Party shall maintain “knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.” In addition, it promotes their wider participation the approval and involvement of the holders of such knowledge, innovations and practices and encourages the equitable sharing of the benefits arising from the utilization of this knowledge, innovations and practices.

Indigenous and local communities have been participants since the Convention came into force. The establishment of the Ad Hoc Open-ended Working Group about Article 8 (j) and related provisions has greatly enhanced the participation of these representatives. In addition, participation mechanisms in the implementation of the Convention at the national level are also encouraged.


The Convention was adopted in December 1965 and entered into force in January 1969. It was amended in 1992. Its objective is to promote and encourage universal and effective respect for human rights and fundamental freedoms for everyone, without distinction for reasons of race, sex, language or religion. Racial discrimination is condemned in that instrument. It has been ratified by 173 countries which, according to the procedure established by the Convention

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itself, must periodically report on its compliance to the Commission consisted of 18 experts appointed for that purpose.


Approved by the General Conference of UNESCO on October 3, 2005, it entered into force after its ratification by 30 countries in 2007. The International Covenant is designed not only to protect the existing cultural expressions, but also to create conditions in order for cultures to prosper and freely interact so that they benefit.

It has been ratified by 35 countries and the European Community. It is complemented by the Convention concerning the Protection of World Cultural and Natural Heritage adopted in 1972 and the Convention for Intangible Cultural Heritage that came into force in 2006 encouraging a dialogue on cultural diversity.


The International Convention on the Elimination of All Forms of Discrimination against Women was approved by the General Assembly on December 18, 1979 and entered into force as an international treaty in 1981. It is the only international human rights instrument focused on eliminating discrimination against women. The Convention stipulates binding obligations for the ratifying Governments (a total of 185 as at 2008).

The Committee on the Elimination of All Forms of Discrimination against Women was created to oversee and monitor the implementation and compliance with the convention. Periodically, the Governments submit their reports regarding the way in which they have managed to implement the articles of the Convention. In December 2000, the Optional Protocol to the CEDAW came into force, a complaint procedure allowing civil society to file individual or group claims when national remedies are not effective to guarantee their right not to suffer discrimination.

The Optional Protocol also enables the CEDAW Committee to conduct investigations into situations revealing massive and systematic violations against women’s rights.²

Although CEDAW can become a good instrument for defending the indigenous women’s rights, it should be noted that its text makes no reference to indigenous women nor does it contain any provision contemplating the prohibition of racial discrimination. The Committee has shown little interest in the particular situation of indigenous women. Between 1994 and 2000, only 11 of the 97 reports submitted by the member countries and reviewed by the Committee made reference to indigenous women.³ This fact is slowly being reversed thanks to the intense struggles of indigenous women nationally and internationally. An example of this process is resolution 49/7 approved by the Commission on the

² See the procedure for filing a claim on the web site: http://www.mintrab.gov.ec/MinisterioDeTrabajo/Institucional/%C5%CDocumentos%5C318.pdf

In 2001, the Economic and Social Council established the Permanent Forum on Indigenous Issues through resolution 2000/22. The first session took place in 2002 and its mandate includes:

- To examine indigenous issues with respect to economic and social development, culture, environment, education, health, human rights.
- To provide specialized counseling and make recommendations to the ECOSOC, programs, funds and agencies of the United Nations;
- To disseminate activities related to indigenous issues and promote their integration and coordination within the UN System.

This UN high level body with an unprecedented composition. (8 members nominated by Governments and 8 nominated by Indigenous Peoples) demonstrates the growing political will of Governments to dialogue with Indigenous Peoples about their current issues. In the sessions of the Permanent Forum held between 2002 and 2010, many recommendations have been adopted, one of them was the implementation of the Forum Secretariat within the Department of Economic and Social Affairs.

The Forum’s Mandate includes human rights, but also focuses on social and development issues in response to the demand for generating more tangible results in the indigenous peoples’ lives. It is important to take into account that the Forum is not a human rights instrument where individuals can legally file complaints, but it is an advisory body of the Economic and Social Council with the authority to examine indigenous issues —within the context of the powers of the Council— regarding the economic and social development, culture, environment, education, health and human rights.

8. Special Rapporteur on the Human Rights of Indigenous Peoples

The mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people was established pursuant to Resolution 2001/57 of the Commission on Human Rights. The mandate of the Rapporteur is to monitor the situation of indigenous peoples and submit to the Human Rights Council public reports elaborated from visits to countries and maintaining close communications with indigenous peoples, NGOs and governments. The mandate was renewed in 2006 by the Human Rights Council in its Resolution 6/12, which invites the Special Rapporteur to “examine ways and means of overcoming existing obstacles to the full and effective protection of the human rights and fundamental freedoms of indigenous peoples, in accordance with his/her mandate, and to identify, exchange and promote the best practices” (paragraph 1, subparagraph a).

In addition, upon renewal of the mandate of the Special Rapporteur, the Council instructs him/her to “promote the United Nations Declaration on the Rights of Indigenous Peoples and international instruments relevant to the advancement of the rights of indigenous peoples” (A/HRC/6/L.26, paragraph 1, subparagraph g).
It should be noted that within its mandate it is requested to “pay special attention to the human rights and fundamental freedoms of indigenous children and women, and to take into account a gender perspective in the performance of his/her mandate” (A/HRC/6/L.26, paragraph 1, subparagraph h)

1. Receive communications from all the relevant sources, including Peoples, Tribes, Nations, nationalities or Indigenous peoples on alleged violations.
2. Respond to Urgent Action.
3. Apply the UN Declaration on the Rights of Indigenous Peoples.
4. Visit the country and the place where violations are taking place.
5. Formulate recommendations and proposals to prevent or remedy violations.
6. Work in close cooperation with other special procedures, subsidiary bodies of the Human Rights Council, human rights treaty bodies and regional organizations.
7. The use of Special Procedures allows to support a mobilized community, define its demands within the framework of the international Human Rights and the obligations of Governments, makes the struggle more reliable before the public and empowers the community. The use of procedures also allows to educate the national and international public and create opportunities for public attention.

Integrating exercise

Seven working groups will be organized, one per each of the abovementioned instruments and/or mechanisms. In working groups, they will reflect on how these international instruments are applied in the processes of Economic Autonomy of Indigenous Women. In pairs, they will write an essay of 4 pages a minimum and will present it in plenary session.
Unit 3.

Indigenous women’s rights: Analysis of collective rights from a gender approach.

What does discrimination against women mean?

"Article 1 of the ‘Convention on the Elimination of All Forms of Discrimination against Women’ defines such discrimination as: any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status and on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural and civil or any other field1.

¿ What does violence against women mean?

"Any act of gender-based violence —motivated by the victim’s feminine condition—, that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life, constitutes violence against women”.

"Violence against women includes, physical, sexual and psychological violence occurring in the family, including battering and sexual abuse of female children in the household; physical, sexual and psychological violence occurring within the general community; physical, sexual and psychological violence perpetrated or condoned by the state wherever it occurs”.

¿ Why are we talking about special rights for women?

“Although all women’s rights are recognized in international human rights law, these were insufficient to adequately deal with diversity, specificity and complexity of women’s issues. In order to build a truly egalitarian society, it was therefore essential to adopt special instruments for women in order to take their vulnerability into consideration —both in public and private fields— to recognize their particular needs and effectively guarantee the elimination of historical inequalities and structural injustices experienced by women for the sole fact of being a woman”.

“The instruments of Women’s human rights break with the systems of hierarchies, subordination and discrimination between male and female, bringing the Governments and encouraging the general society to respect the regulations, customs and practices, guaranteeing a real equality between men and women. This equality must be achieved by

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1 Women's Rights, Office in Colombia of the United Nations High Commissioner for Human Rights and Secretariat, Bogotá 2002, pages 11 and 12
recognizing their differences, identifying and generating responses to women’s concerns and needs, taking into account the diversity of women’s situations, and giving women real power and participation in policy, economic, social and cultural fields in order to achieve the full women’s contribution to the democratic development and peace in our societies”.

¿ What are the women’s rights?

“Women have rights —under conditions of equality— to the enjoyment and protection of all human rights and fundamental freedoms recognized by regional and international human rights instruments. Likewise, women have the right to live in a social system in which there are no gender-based power relations, a life free from violence —whether in the public and private field—, to live without any type of discrimination, to be valued and educated without stereotypes of social and cultural behaviors and practices based on the concepts of inferiority and subordination between the sexes, to contribute to the development and well-being of society and to participate in equal conditions as men in the political, economic, social, cultural fields or of any other kind.”

“In addition to these rights linked to equality and non-discrimination, women have specific rights related, in particular, to their sexuality, reproduction and protection of motherhood.”

Let’s read and comment to complement what we learned.

There are several international human rights instruments that have made reference to indigenous women. For the purposes of this study, the following instruments were taken into consideration: CERD, CEDAW, the Resolution of the Commission on the Legal and Social Status of Women in its Session Nº. 49, ILO Convention Nº.169, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, well-known as the Convention of Belém do Pará.

Documentation related to the Reports of the Special Rapporteur on Human Rights and Fundamental Freedoms of Indigenous Peoples, which refer to racial discrimination and violence against women, follow-up actions to the Durban Conference and its Action Program on the Elimination of all forms of discrimination and racism, as well as the recommendations of the Permanent Forum on indigenous issues in relation to women, have been consulted.

Among the aspects related to indigenous women, the Beijing Platform for Action states that “many women face particular barriers because of various diverse factors in addition to their gender. Often these diverse factors isolate or marginalize such women. They are, inter alia, denied their human rights, they lack access or are denied access to education or vocational training, employment, housing and economic self-sufficiency and they are excluded from the decision-making processes ¹. It recognizes the process of making indigenous wo-

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¹ Beijing PFA, 31
men visible in the years prior to the Conference, as well as their particular characteristics, “... whose identity, cultural traditions and forms of social organization enhance and strengthen the communities in which they live”, and refers to the double oppression they face as members of a particular indigenous people, “Indigenous women often face barriers both as women and as members of indigenous communities.”

It states that the continuing environmental degradation has often a more direct impact on indigenous women and rural communities, “whose livelihood and daily subsistence depends directly on sustainable ecosystems.” The Platform for Action recognizes that women face barriers to full equality and advancement because of factors such as race, age, language, ethnicity, culture, religion or disability, because they are indigenous women or for other status. Other instruments that refer to indigenous women are the following:

- The Rio World Conference on Environment and Development (1992), which highlights the participation of women, youth and local governments in the search for maintaining a healthy environment that promotes the sustainable development.
- The Conference on Human Rights in Vienna (1993), which highlights that violence based on sex and all forms of sexual harassment and exploitation are incompatible with human dignity.
- The Cairo Conference on Population and Development (1994), which puts the population issue within the context of Sexual and Reproductive Rights and speaks explicitly of freely chosen motherhood, as well as the empowerment of women and girls.
- The World Conference on Social Development in Copenhagen (1994), which reveals the importance of the women’s contribution in the social and political development of countries and broadens the concept of social and economic rights when referring to the right to development.

Guiding Principles on business enterprises and human rights:

The issue of business enterprises and human rights definitely entered the world political agenda in the 1990s, reflecting the impressive global expansion of the private sector at that time and the corresponding increase in transnational economic activity. This situation enhanced social awareness regarding the impact of business on human rights and also drew the attention of the United Nations.

One of the first initiatives promoted by the United Nations was the so-called Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, prepared by a subsidiary body of experts of the former Commission on Human Rights. It was essentially a matter of directly imposing on companies —pursuant to the international law—, the same range of human rights obligations that States have accepted to comply with under the ratifying treaties: “to promote human rights, ensure their compliance, respect them and protect them.”

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3 Beijing PFA, 32
4 Beijing PFA, 34
5 Beijing PFA, 46
In 2005, however, a mandate for a “Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises” was established in order to initiate a new process, and the Secretary-General was requested to appoint the holder of the mandate.

These norms are based on three fundamental principles. The first is the obligation of the State to offer protection against human rights abuses committed by third parties—including companies—, through appropriate measures, regulatory activities and submission to justice. The second is the obligation of companies to respect human rights, which means acting with due diligence to not violate the rights of third parties, and repair the negative consequences of their operations. The third is the need to improve victims’ access to effective remedies, both judicial and extrajudicial. Each of these principles constitutes an essential element of an interrelated and dynamic system of prevention and reparation measures: The State is responsible for providing protection, since it constitutes the very basis of the international human rights regime; the companies have the responsibility to respect human rights because it is the most basic social expectation in relation to companies; and the access to remedies because even the best coordinated efforts can not completely prevent abuses
Unit 4.

Forum on Experiences, achievements and limitations for access and possession of economic assets for indigenous women

This exercise consists in a quick group research on experiences related to National Regulations on incorporation and registration of business enterprises: Trademark Registration and Patents. The result of the investigation will be shared in a plenary session, identifying the common and different items.

BIBLIOGRAPHY

ILO Convention No. 169 on Indigenous and Tribal Peoples.

Convention on Biological Diversity.


International Convention on the Elimination of All Forms of Discrimination against Women

United Nations Declaration on the Rights of Indigenous Peoples
**Right to territory.** It means an integral spatial environment where a people’s livelihood takes place. This is different from the classic perception that usually reduces a territory to a set of productive resources demarcated by administrative or proprietary political boundaries. Territoriality expresses the level of appropriation and consolidation between a people’s population and its territory, especially referred to:

- People’s self-identification with its territory
- The coherence between a representative organization and the territory, and its institutionalization
- Collective rights gained and practiced, especially legal security over the territory and the right to use natural resources
- The degree of actual control over the territory and the natural and cultural resources
- A vision of the future and shared development for the people and its territory

**Territorial Governance.** This concept refers to the capacity of a specific population that —through the recognition and full exercise of their individual and collective human rights— promotes ways of governing themselves based on their distinct governmental institutions and jurisdiction. They may or may not coincide with the political organization of the State. In some cases, harmonized and mutually agreed mechanisms are achieved between the government models in a fully integrated way. Articulation mechanisms that restore the ancestral territories of cross-border indigenous communities and afro-descendant communities, and extend from the municipal scope towards joint fields, other spaces can be even achieved. Two areas of action are identified within the processes: a) relationships and mechanisms to govern internal issues related mainly to the collective and sustainable use of: economic, natural, human and cultural resources in favor of socio-economic subsistence and self-development (planning and administration of community justice, welfare and health care, education, and, b) public actions, self-defense mechanisms, advocacy measures and negotiation with third parties in favor of their territory-population, where individual or collective participation in political life can be taken into consideration through its own and/or public institutions. This vision of indigenous territory has been subject of jurisprudence of the Inter-American Human Rights System, since the IACHR recognizes that the following rights are associated with the right to territory: a) the right to demarcation and titling: carrying out a self-identification process of the territory boundaries and facilitation of the titling process to obtain a legal document that legally guarantees the rights to demarcated lands; b) the right to property, to be recognized as owners of their lands; and, c) the right to restitution, compensation and indemnity, since in the event of displacements or use of their lands not authorized by the indigenous peoples, the States should define mechanisms to return, equalize losses or give economic compensation to solve the resulting damages.¹

**Right to self-determination.** The Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of all peoples to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development. The Declaration of Rights of Indigenous Peoples 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. A principle for the exercise of self-determination is the free and informed prior consent, through which the States will have consultations and cooperate in good faith with the indigenous peoples interested —through their representative institutions— in gaining their free, prior and informed consent before adopting and applying legislative and administrative measures that may have an impact on them.

**Autonomy or self-government.** It is a way of exercising the right to self-determination within the framework of States. It is the result of a process celebrated between the indigenous peoples and the State, which ensures the exercise of self-determination by these peoples in their own spaces, and at the same time ensures participation mechanisms in other Governmental levels allowing them to influence in the decisions on public policies referred to their peoples. It is the right to autonomy or self-government in internal and local issues, especially culture, religion, employment, social welfare, economic activities, administration, territory, resources, environment and access to those who are not group members, as well as the means to finance these self-governing functions.

GLOSSARY.

¹ CEPAL. Guaranteeing indigenous people’s rights in Latin America. Progress in the past decade and remaining challenges.2014.