

Guidelines for Assessing the Intersection of the Rights of Indigenous and Traditional Peoples, Group Rights, and Freedom of Religion or Belief

Product of the Sub-Committee on Freedom of Religion
or Belief of the G-20 Interfaith Forum

Rights for indigenous and traditional peoples (IT peoples) have been increasingly recognised by human rights bodies and states over the past four decades.[1] The development of specific rights for these peoples occurs within an existing framework of international human rights, which includes the right to Freedom of Religion or Belief (FoRB).[2] In articulating and advancing the rights of IT peoples, public authorities should observe the following guidelines in order to preserve and promote both the group rights of these peoples and the Freedom of Religion or Belief, a fundamental right for all.

I) Defining and Recognizing the Rights of Indigenous and Traditional Peoples

1. **Indigenous peoples:** In defining indigenous peoples, four criteria are often cited: 1) Historical continuity with pre-colonial societies within a territory; 2) Cultural distinctiveness from the majority population ; 3) Non-dominance; 4) A collective determination to preserve, develop and transmit to future generations their ancestral territories and identity as peoples in accordance with their own cultural patterns, social institutions, and legal system.[1]
2. **Traditional peoples:** Criteria one above places emphasis on cultural continuity over time within a territory. This criterion should not diminish recognition of analogous claims from ‘traditional peoples’ who meet the three other criteria, but whose presence in a territory is relatively recent compared to those groups typically identified as ‘indigenous’. Many groups are present within a territory as a result of voluntary or forced displacement (such as slavery, deportation, economic migration, or some other exigent circumstance), but retain a shared ethnic, culture, traditional, religious, or spiritual heritage and practices which cause them to persist as a discrete and organic community within the larger state or nation. They also often have special connections with the land, through tribal areas, communities, or villages.

[1] The most notable international expression of indigenous rights is the 2007 [United Nations Declaration on the Rights of Indigenous Peoples](#). In 2016, the Organization of American States adopted its own [American Declaration on the Rights of Indigenous Peoples](#). These are not legally binding documents and numerous other documents and declarations are also in circulation.

[1] [United Nations Universal Declaration of Human Rights](#).

[1] Cf : José Martínez Cobo, Study of the Problem of Discrimination Against Indigenous Populations Final report submitted by the Special Rapporteur, E/CN.4/Sub.2/1986/7.

Examples of such communities would include certain Afro-diasporic peoples, such as the Afro-Brazilian communities of Brazil, various Native American groups in the United States who have been displaced from their native and historic lands, and could include various African immigrant communities within South Africa. It could also extend to religious groups that retain a distinctive group identity, such as certain Jewish, Christian, or Muslim groups who retain features such as a minority language or communal living arrangements.

3. Equal consideration

Public authorities should show due and equal consideration to both types of groups. Efforts to articulate and advance the specific rights for indigenous peoples should also apply to traditional peoples and vice-versa.

II) Freedom of Religion or Belief for Indigenous and Traditional Peoples: Group and Individual Rights

1. **Freedom of indigenous and traditional religions or beliefs:** The right of IT peoples to maintain their own religious traditions and belief systems should be ensured and protected. This includes their freedom to express their beliefs and practices without fear of retribution or discrimination, both within and outside their communities, within the limits of peace and safety, and other compelling state interests applicable to all religious communities and practices.
2. **Education and preservation of traditions:** In ensuring the right to education for IT peoples, efforts should be made to support the practice and revitalisation of traditional customs and languages. In the pursuit of this aim, IT peoples should have the right to establish and control their educational systems and institutions, providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning, within the limits of peace and safety, and with respect for the non-derogable rights of individuals and, in particular, the rights of the child.^[1]
3. **Environmental stewardship and sacred sites:** Public authorities should ensure that public, private, and religious entities respect the environmental stewardship responsibilities of the land of IT peoples, and that sacred sites important to religious groups and IT peoples are not desecrated or exploited. Acts of violence against or destruction of traditional shrines, temples, and other property should be promptly investigated and prosecuted
4. **Individual freedom of religion or belief for indigenous and traditional persons:** The individual right to leave or not to practice an IT community's religion should be protected. Individuals should not be coerced into observing beliefs or practices on the basis of their IT group membership. Nor should the barriers to exit be so high as to make it reasonably impractical for a person to leave an IT religion.

[1] Cf. Convention on the Rights of the Child, 1989.

5. **Freedom against internal religious oppression and persecution:** As such, IT persons or groups should be permitted to dissent from the dominant religious beliefs or practices within their community's religion, as well as to hold religious beliefs and engage in practices which do not conform to the dominant norms within that community. In such cases, the existent indigenous or traditional religious group should retain autonomy in matters pertaining to qualification for involvement in religious practices, rituals, and instruction, as well as who can access religious and ritual assets held by the relevant institution.

6. **Physical and economic security as important conditions to the full realization of freedom of religion and belief.** Particular rights do not exist in a vacuum, and their fuller realization and flourishing can only occur in an environment where basic needs of physical security and safety, as well as core economic needs, such as housing, food, and education are reasonably met. Indigenous and traditional peoples have often experienced social and economic marginalization, and are thus subject to higher levels of various kinds of insecurity and physical violence. Redressing these social and economic inequalities must be viewed as part of the advancement and protection of the basic religious and civil rights of these communities

III) Relations between Sovereign States and Indigenous Peoples

1. **Legal recognition of rights:** States should provide legal recognition and protection for both FoRB and the group rights of IT peoples. Such protections should prohibit discrimination against individuals based on their religion as well as on their IT group membership; such protections should also provide for the protection of the rights of both individuals and group to exercise their religious beliefs and practices, in a manner consistent with the peace and safety, and other compelling state concerns of other persons and the larger community.
2. **Balancing public and private interests:** Legal regimes should balance the interests of public order and secular governance with the private rights of individuals and cultural communities to practice their religion and culture, recognizing that only public interests of the highest order, such as public health, peace, and safety, and other compelling government interest, be allowed to limit a religious practice or conduct.
3. **Balancing collective and individual rights:** Public authorities should strive within these legal frameworks to balance collective rights of IT peoples with the individual religious freedoms of members within and outside those communities. Such religious freedom involves, according to international standards, the right to hold and practice a religious belief, as well as freedom to change one's religion or religious belief.
4. **Fostering mutual respect:** Public authorities should foster mutual respect between secular society, religious groups, and IT communities, acknowledging the importance and value of each group's beliefs and practices. This can be aided by developing and promoting educational programs that increase awareness and understanding of the value of both religion and religious freedoms as well as IT peoples and their rights within the context of a pluralistic community.
5. **Being intentional about interfaith and intercultural cooperation in policy-making:** Officials should approach policymaking that will impact religious and IT groups with cultural sensitivity and cooperation, understanding the needs of larger society in the context of both religious and indigenous practices. Both religious and IT leaders should be involved in the development of policies that will affect their communities.
6. **Monitoring policy implementation:** Public authorities should establish platforms for dialogue and mediation to address conflicts that arise between societal policies, FoRB, and IT group rights. They should work to minimize, and where possible eliminate, the impact of social policies and practices on the religious, cultural, and traditional practices of both religious and IT peoples.

IV) International Norms

1. **Recognising both indigenous and traditional group rights:** Future international declarations and documents should recognise the claims of IT peoples.
2. **Consistency with international norms:** National legal protections should align with international standards such as relevant United Nations documents, including the Declaration on the Rights of Indigenous Peoples (UNDRIP), the Universal Declaration of Human Rights (UDHR), and other international human rights treaties.
3. **Monitoring and evaluation:** States should regularly monitor and evaluate the implementation of policies and practices to ensure they are effectively balancing the rights of IT peoples and FoRB, making adjustments as necessary. Monitoring bodies should have representatives from the affected communities, including from relevant religious and IT peoples.