



HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 17.10.2016
SWD(2016) 340 final

JOINT STAFF WORKING DOCUMENT

Implementing EU External Policy on Indigenous Peoples

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I. Introduction

In the last few decades, there has been considerable progress in the advancement and recognition of indigenous peoples' rights both at international level and at national level in many regions. The development of the institutional and policy frameworks at the United Nations (UN) level has been an important driver for this. In particular, the adoption of the International Labour Organisation Convention no 169 on Indigenous and Tribal Peoples (ILO Convention 169) in 1989 and of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 was crucial. These positive developments were celebrated at the World Conference on Indigenous Peoples (WCIP) in 2014.

The EU as well as some of its associated Overseas Countries and Territories is home to several indigenous peoples, some of which live in the Arctic region. In the context of the EU Arctic Policy¹ adopted in June 2016, the EU will continue to engage with Arctic indigenous peoples² and local communities to ensure that their views and rights are respected and promoted in the on-going development of EU policies affecting the Arctic. The EU also commits in its Arctic Policy to continue work on advancing consistency between the EU's internal³ and external policy towards indigenous peoples.

The partnerships between 'European' indigenous peoples and the EU and its Member States have contributed to EU's support to indigenous peoples in its external relations. The EU has contributed actively to developments in the UN context through its external policies and actions. The EU supported the adoption of the UNDRIP and contributed actively to WCIP and its Outcome document.

In line with the 2015-2019 EU Human Rights and Democracy Action Plan⁴, this Joint Staff Working Document focuses exclusively on the EU external policies and development cooperation. It provides an overview of actions supporting indigenous peoples, in relation to the developments within the UN and its instruments such as the UNDRIP and the Outcome Document of the WCIP. It then lays out a number of considerations on how the EU could enhance the implementation and impact of its existing external policies and financing instruments, notably in the context of development, to strengthen its overall support to indigenous peoples.

¹ Joint Communication to the European Parliament and the Council – An Integrated European Union policy for the Arctic. The European Commission and the High Representative of the Union for Foreign Affairs and Security Policy, Brussels, 27.4.2016; JOIN (2016)21 final and the corresponding Council Conclusions on the Arctic 10400/16 of 20 June 2016 (COEST 166)

² Arctic Indigenous Peoples live in Russia, Finland, Sweden, Norway, Denmark (Greenland), Canada and the USA (Alaska). To learn more see also www.arcticpeoples.org

³ The Saami People and the Kalaallit (Greenland Inuit) are the only Arctic Indigenous peoples living partly on the territory of EU Member States Denmark, Finland and Sweden.

⁴ Adopted by Council on 20 July 2015 (10897/15). Indigenous peoples are covered under action 16.d as follows: "further develop the EU policy on Indigenous Issues in line with the UN Declaration on the Rights of Indigenous Peoples and the Outcome Document of the World Conference on Indigenous Peoples".

II. Identifying indigenous peoples

The UN estimates that there are more than 370 million indigenous people worldwide, living in more than 70 countries and belonging to approximately 5,000 peoples/distinct groups.⁵

Given that indigenous peoples represent an enormous cultural diversity and live in extremely diverse geographical, social and political settings, there is no universally accepted definition of the term "indigenous peoples". As a consequence, the UN system emphasises the indigenous peoples' right to self-identify as such. Further guidance on the identification of indigenous peoples is provided in Annex I.

In many countries, indigenous peoples are often amongst the poorest, most discriminated and marginalised groups in society and are often victims of serious human rights violations and abuses. These include threats such as the dispossession of their lands and resources due to agricultural expansion, timber production, and extractive industries or forced displacements in context of conflicts. Threats may also arise in the context of efforts for environment, climate, biodiversity, and cultural heritage protection, as well as in development, trade and business activities. The risk of human rights violations is particularly heightened when the rights of indigenous peoples and the needs of their local communities are not taken properly into account.

III. The normative framework

1. The United Nations approach

The **UNDRIP** sets out the individual and collective rights of indigenous peoples, prohibits discrimination against indigenous peoples and promotes their full and effective participation, by inter alia, applying the principle of the free, prior and informed consent (FPIC), in all matters that concern them. UNDRIP prescribes the indigenous peoples' right to remain distinct and to pursue their own visions of development. UNDRIP includes the indigenous peoples' rights to: culture, identity, language, employment, health, education, recognition of subsistence rights and rights to lands, territories, and resources. The EU supported the adoption of UNDRIP.⁶

While the human rights standards of UNDRIP are the same as the International Human Rights conventions⁷, several of the principles addressing the specific challenges of indigenous

⁵ See also: <https://www.amnesty.org/en/what-we-do/indigenous-peoples/> and http://www.un.org/esa/socdev/unpfii/documents/UNDG_guidelines_EN.pdf

⁶ Adopted in 2007 by the UN General Assembly. FR pronounced an interpretative declaration regarding its Constitution which does not recognise any collective right or subdivision of the French people in accordance with the principles of equality and non-discrimination as well as the indivisibility of the French Republic.

⁷ See Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. UN doc. A/68/317 para. 65

peoples complement and evolve from the standards of the ILO Convention 169⁸ which is the only binding international instrument on indigenous and tribal peoples.

The most significant principle in the ILO Convention 169 is the establishment of appropriate and effective mechanisms for the consultation and the participation of indigenous and tribal peoples for matters, which concern them. ILO Convention 169 also provides for systematic action to protect rights and to guarantee the integrity of indigenous peoples including through government agencies and appropriate mechanisms to administer programmes. Its provisions address the policy areas concerning indigenous and tribal peoples, the resolution of land claims, employment, training, social protection, education, facilitation of cross-border contacts as well as international cooperation and administration.

The international community's increasing attention to the rights of indigenous peoples has brought about a range of initiatives throughout the international community and the UN system⁹ including three UN mechanisms with specific mandates to address indigenous issues¹⁰: the UN Permanent Forum on Indigenous Issues (UNPFII), the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and the mandate of the Special Rapporteur on the Rights of Indigenous Peoples (SRRIP).

The international community's commitments to and support for the UNDRIP principles were reaffirmed at the September 2014 **World Conference on Indigenous Peoples (WCIP)**, held as a high-level meeting of the UN General Assembly. The World Conference's Outcome document contains recommendations for actions¹¹ at the national and international levels. Specific attention is given to the needs of indigenous women, children, youth and persons with disabilities in the Outcome Document. The EU contributed to and supported the adoption of the Outcome document. The WCIP Outcome Document also recalls the responsibility of transnational corporations and other business enterprises to respect the UN **Guiding Principles on Business and Human Rights (UNGPs)**, adopted in 2011 as a universally accepted global framework aiming to reduce business-related human rights abuses. The EU recognises the UNGPs as the authoritative framework in addressing corporate social responsibility and in June 2016 adopted Council conclusions in this regard¹².

⁸ The ILO Convention 169 was adopted in 1989 and has to date been ratified by 22 countries, including three EU Member States: Denmark, the Netherlands and Spain. The preceding ILO convention 107 on Indigenous and Tribal Populations (1947) is still in force in 17 countries, including one EU Member State (Belgium)

⁹ See further in Annex II

¹⁰ The establishment of these mechanisms eventually led to the disbandment of the UN Working on Indigenous Populations (est. 1982) of the former UN Sub-Commission of the Promotion and Protection of Human Rights. See Annex II for further description of the initiatives of multilateral actors.

¹¹ WCIP Outcome document A/RES/69/2 and its annex (the Outcome of the Alta Conference) A/67/994 annex

¹² The Council Conclusions on Business and Human Rights were adopted on 20 June 2016 (10254/16). The Conclusions stress the strong EU support to the UN Guiding Principles. The Council also supports the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration on Multinational Enterprises and Social Policy, and acknowledges the importance of the UN Global Compact and ISO 26000 Guidance on Social Responsibility. The relevance of ILO core labour standards for indigenous peoples such as Convention 111 on discrimination in labour and 182 on the worst forms of child labour, should also be noted. See also the Commission Staff Working Document on Implementing the UN Guiding Principles on Business and Human Rights – State of Play (Brussels 14.7.2015, SWD (2015) 144 final)

Due note should also be taken of the recent adoption (15 June 2016) by the Organisation of American States of the American Declaration on the Rights of Indigenous Peoples.¹³

BOX 1: the 2030 Agenda for Sustainable Development

Of crucial importance in the UN context is the **2030 Agenda for Sustainable Development** with its pledge to "**leave no one behind**". The 2030 Agenda constitutes a clear commitment to human rights¹⁴ and their enjoyment by everyone everywhere and to equitable and sustainable development benefits without discrimination. Although all 17 goals of the Agenda are relevant for indigenous peoples who, along with other groups, are considered as deserving heightened attention, there are specific references to indigenous peoples in two of the targets.¹⁵ The EU has strongly argued and negotiated for inclusiveness at the heart of the 2030 Agenda, calling for innovative participatory and inclusive processes at all levels.¹⁶ Indigenous peoples were one of the "major groups" that contributed to the process leading to the adoption of the 2030 Agenda.

As regards the environmental and climate areas, the rights of indigenous peoples are included in a number of multilateral environment (and climate) agreements¹⁷ and their related protocols and guidelines, some of which serve as safeguards for protecting indigenous peoples' rights. The most recent Conference of Parties to the United Nations Framework Convention on Climate Change (UNFCCC Paris Agreement) of December 2015 decided to establish an exchange platform on indigenous peoples' climate issues.

Relevant to indigenous peoples are also the **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest in the Context of National Food Security (VGGT)**.¹⁸ The VGGT Guidelines set out principles and standards for practices in the responsible governance of tenure of land, fisheries and forests, with respect to all forms of tenure: public, private, communal, indigenous, customary, and informal. The VGGT Guidelines make specific reference to how to consider and protect the right to land of indigenous peoples. The EU supported the preparation of the VGGT and committed significant thematic funding under the Global Public Goods and Challenges (GPGC)

¹³ http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-075/16

¹⁴ Attention should be given to the "Human Rights Guide to the SDGs" elaborated by the Danish Institute for Human Rights, based on the international human rights instruments' and labour standards' and their anchorage with the 17 SDGs and 169 targets of the 2030 Agenda.

¹⁵ Target 2.3 on promoting food security and target 4.5 on ensuring equal accesses to education and vocational training.

¹⁶ See EU Council Conclusions on A New Global Partnership for Poverty Eradication and Sustainable Development after 2015 of 26 May 2015 and on a transformative post-2015 agenda of 16 December 2014.

¹⁷ The 1946 Convention on Regulation of Whaling is the earliest example of the inclusion of indigenous peoples' rights in environment-related conventions. The Convention includes a scheme for "Aboriginal whaling" so as to enable aboriginal people to harvest whales in perpetuity at levels appropriate to their cultural and nutritional requirements. This scheme is still in force and highly relevant for the food security, cultural and nutritional needs of indigenous peoples with whaling traditions.

¹⁸ Endorsed by the Committee on World Food Security (CFS) in 2012

programme¹⁹ of the Development Cooperation Instrument²⁰ (DCI) to partner countries' application of the VGGT. Moreover, the VGGT serve as the guidelines for EU-funded projects addressing land governance.

2. The European Union approach

The protection of persons belonging to minorities is a fundamental principle under the EU Treaties. Article 2 of the Treaty on European Union refers to the rights of persons belonging to minorities. The Charter of Fundamental Rights of the European Union provides under its Article 21 that discrimination based on membership of a national minority is prohibited and, under Article 22, that the Union shall respect cultural, religious and linguistic diversity. As recalled in the 2010 strategy on the implementation of the Charter, the Charter applies to the EU external action²¹.

Concerning the Union's external action, Article 21 of the TFEU (Treaty on the Functioning of the European Union) states that "the Union shall define and pursue common policies and actions, and shall work for the a high degree of co-operation in all fields of international relation, in order to (...) consolidate and support democracy, the rule of law, human rights and the principles of international law".

The EU's external action on supporting indigenous peoples is guided by a number of principles, mainly set out in the 1998 European Commission Working Document on support for indigenous peoples in development cooperation²² and the corresponding 1998 Council Resolution²³, as well as in the Council Conclusions on indigenous peoples in 2002²⁴. These principles, to be applied in EU strategies and financing instruments including through mainstreaming, include the following:

- the indigenous peoples' right to their "self-development", including the right to object to projects, in particular in their traditional areas, and the right to obtain compensation where projects negatively affect their livelihoods;
- the full and effective participation of indigenous peoples at all stages of the project cycle (in development cooperation) and the importance of building the capacities of organisations representing indigenous peoples;

¹⁹ The GPGC programme of the DCI seeks to foster economically, socially and environmentally sustainable development in an integrated and holistic way aiming of promoting good governance, political stability and security and the requirement for policy coherence in external action. The overall objective is to support inclusive sustainable development: environment and climate change, sustainable energy, human development, food and nutrition security and sustainable agriculture, migration and asylum.

²⁰ Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014, OJ L77, p. 44

²¹ Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, 19 October 2010, COM(2010) 573 final.

²² The May 1998 European Commission Working Document "On support for indigenous peoples in the development co-operation of the Community and Member States"

²³ Council Resolution of 30 November 1998 "Indigenous peoples within the framework of the development cooperation of the Community and the Member States".

²⁴ General Affairs and External Relations 2463rd Council meeting, document 13466/02, 18 November 2002.

- the inclusion of the concerns of indigenous peoples into the political dialogues with partner countries.

In 2005, the European Consensus for Development²⁵ defined indigenous peoples among the **crosscutting** issues that are at once objectives in themselves and vital factors in strengthening the impact and sustainability of cooperation. The Consensus further states that the "key principle for safeguarding indigenous peoples' rights in development cooperation is to ensure their full participation and the free and prior informed consent of the communities concerned".²⁶

Over the years, the EU has continued working to put these principles into practice in its policy implementation. The EU's support for the adoption of UNDRIP has further enhanced support to indigenous peoples. The EU's commitments to the UNDRIP principles were most recently confirmed in the 2016 Communication on the EU strategy for International Cultural Relations.²⁷ The strategy puts the promotion of indigenous peoples' cultural rights in the context of peace-building and inter-cultural dialogue.

3. The UN and the EU approaches: a comparative perspective

The EU and the UN fully recognise the distinct identities of indigenous peoples. Accordingly, the principle of equality and the prohibition of discrimination in regard to the enjoyment of the full range of human rights is enshrined both in the EU policies and in UNDRIP. In this context, the EU acknowledges for instance "the importance that indigenous peoples attach to the affirmation of their "self-development", that is to say, the shaping of their own cultural identities. This approach also recognises their own diverse concepts of development [...]"²⁸ Article 3 of UNDRIP stipulates 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."

The EU and UN frameworks vary in specifying the material scope to which the rights of participation apply. UNDRIP stipulates that indigenous peoples have the right to participate in decision-making on matters that would affect their rights and requires States to apply the principle of indigenous peoples' right to free, prior and informed consent (FPIC) when adopting legislation and administrative measures.²⁹ The EU framework refers to the FPIC principle only in the context of EU development cooperation and therefore never extends to legislative and administrative measures going beyond development cooperation.

²⁵ Joint statement by the Council and the Representative of the Governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus' (2006/C 46/01)

²⁶ Under the heading of "Democracy, Good Governance, Human Rights, the rights of children and indigenous peoples"

²⁷ "Toward an EU strategy for international cultural relations", Joint Communication of the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to the European Parliament and the Council, Brussels, 8.6.2016: Join(2016) final

²⁸ Source: 2141th Council meeting, Council Resolution 30 November 1998 on indigenous peoples, paragraph 2

²⁹ UNDRIP also states that FPIC should apply in the approval of projects affecting indigenous peoples' lands, particularly in connection with the development, utilisation or exploitation of mineral, water and other resources, as well as in conjunction with relocation, and in relation to redress, restitution or compensation.

Intrinsically linked to the principle of FPIC is the indigenous peoples' right to be represented **through representatives chosen by themselves and in accordance with their own decision-making institutions**. UNDRIP states that "*consultation and cooperation in good faith with the indigenous peoples concerned through their own representative institutions*" is a means to achieve FPIC³⁰. Despite the references to FPIC and the capacity-building of "organisations representing indigenous peoples" in the relevant EU documents, there are no explicit references to indigenous peoples' own decision-making institutions in the EU framework.

IV. EU policies, financing instruments and their implementation

1. EU External Policies

Human rights are central to all EU external action and cooperation, including trade agreements with third countries. The 2012 EU Strategic Framework on Human Rights and Democracy, sets out the EU's objectives, principles, and priorities for the advancement of human rights. There have been two Action Plans setting out the practical steps, which the EU will take to achieve these objectives.

The first Action Plan on Human Rights (2012-2014) contained specific actions relating to indigenous peoples.³¹ The second Action Plan on Human Rights and Democracy (2015-2019) contains actions relating to the protection and promotion of the rights of indigenous peoples. Under the section "Cultivating an environment of non-discrimination", there is an action to "further develop the EU policy in line with the UN Declaration on the Rights of Indigenous Peoples and the outcome of the 2014 World Conference on Indigenous Peoples".³² The Action Plan also calls for enhanced efforts to protect Human Rights Defenders working on economic, social and cultural rights: in this context, indigenous peoples are specifically mentioned as are issues of particular relevance to them such as land-related human rights issues, 'land grabbing' and climate change.

The EU Better Regulation guidelines³³ provide that fundamental rights must be taken into account when assessing the impacts of EU actions. This means that when assessing the impacts of initiatives with effect outside of the EU, additional consideration must be given to international human rights instruments in addition to the requirements of the Charter of Fundamental Rights. Furthermore and still as part of the overall Better Regulation

³⁰ ILO Convention 169 also prescribes the undertaking of consultations with indigenous and tribal peoples, *in good faith and in a form appropriate to the circumstances, with the objective of achieving agreements or consent to the proposed measures*.

³¹ Notably under the heading "a strengthened policy on indigenous issues", there was an action "*to review and further develop EU policy relative to the UN Declaration on the Rights of Indigenous Peoples, with a view to the 2014 World Conference on Indigenous Peoples*".

³² Action 16 d

³³ Better Regulation "Toolbox", Tool #24: Fundamental Rights & Human Rights, http://ec.europa.eu/smart-regulation/guidelines/tool_24_en.htm

Agenda³⁴ and in response to the 2012 EU Strategic Framework on Human Rights and Democracy, guidelines to help the analysis of the potential impacts of EU Trade policy initiatives on human rights both in the EU and in partner countries have been developed. The guidelines include references to indigenous peoples' rights³⁵.

In May 2016, the EU adopted the Council conclusions on the EU approach to forced displacements and development in response to the Communication "Lives in Dignity: From Aid-dependence to Self-reliance. Forced Displacement and Development".³⁶ The Conclusions and the Communication provide the policy framework for a more efficient, context specific and dignified global response to forced displacement. This framework that is guided by a rights-based approach is highly relevant in addressing the needs of indigenous peoples affected by displacement, as well as the root causes of migratory pressures and displacement.

An integral part of its human rights policy are the EU's **human rights dialogues** with partner countries and regional organisations. These dialogues are guided by the EU Guidelines on Human Rights dialogues and are an opportunity for the EU to raise human rights concerns as well as discuss cooperation on human rights in multilateral fora. Over the years, indigenous issues have become more prominent in human rights dialogues with an increasing number of countries, such as most Latin American countries, Canada and some Asian countries such as Bangladesh and Vietnam. However, it has not yet become common practice to cover this topic during dialogues with all countries where it would be relevant, including in particular in Africa and Asia.

The EU has also developed human rights **guidelines** on eleven priority human rights areas intended primarily to serve as a practical tool to guide EU actors around the world. Notably, the EU guidelines on Human Rights Defenders (2008) recall the legal framework for promoting and protecting human rights defenders, including indigenous human rights defenders.³⁷

³⁴ Adopted by the European Commission on 19 May 2015

³⁵ Guidelines on the analysis of human rights impacts in impact assessments for trade related policy initiatives, 2 July 2015 http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153591.pdf and <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1344>

³⁶ Council conclusions on the EU Approach to forced displacement and development 240/16 -12/05/2016 and the European Commission Communication "Lives in Dignity: from Aid-Dependence to Self-Reliance. Forced Displacement and Development" Brussels, 24.4.2016, COM (2016) 234 final.

³⁷ Human rights defenders also promote and protect the rights of members of groups such as indigenous communities

BOX 2: Examples of best practices on protecting Human Rights Defenders

Several EU Delegations in Latin America participate in monitoring and supporting indigenous human rights defenders. In Guatemala, the EU Delegation has established an informal mechanism known as the "Filter Group", which monitors emblematic cases of human rights defenders, including defenders of indigenous peoples and communities.

In Honduras, "Grupo ENLACE" allows for continuous contact and dialogue between the local diplomatic representations and civil society counterparts to discuss natural resources and indigenous peoples and for organising visits to monitor the human rights situation *in situ*, giving particular attention to human rights defenders representing indigenous peoples.³⁸

As regards consultation with indigenous peoples, a good example is the annual dialogues with Arctic indigenous peoples' organisations that hold the status of Permanent Participants in the Arctic Council organised by the European Commission services in cooperation with the EEAS. Two consultations were also held with indigenous peoples to prepare this Joint Staff Working Document. The first one was held in Brussels in March 2015, while a Global Consultation Workshop with the participation of nearly 70 indigenous representatives and experts was held in April 2015 in New York in conjunction with the annual session of the UN Permanent Forum on Indigenous Issues (UNPFII). Informal exchanges with indigenous peoples on the draft Joint Staff Working Document were also held in conjunction with the 15th Session of the UNPFII in 2016.

At these consultations, indigenous peoples' representatives acknowledged EU's policy commitments and actions on principles related to consultation, participation, self-development and the right of indigenous peoples to object to imposed development. In their recommendations, they emphasised the importance of a sustained dialogue with the EU at local, national and international levels and the need to set up of a forum at the highest level, with a mandate to engage in policy dialogue and oversee the implementation of the EU policy, commitments and action plan on indigenous peoples.

2. EU financing and other instruments

Of the nine financing instruments³⁹ that the EU currently has at its disposal for external cooperation and assistance, specific references to indigenous peoples can be found in the following three instruments:

Under the **European Instrument for Democracy and Human Rights (EIDHR)**⁴⁰ for the period 2014-2020, the scope for support includes the rights of indigenous peoples "*as*

³⁸ In 2015, the group addressed five issues, including prisons and torture (February 2015), persons with disabilities (April 2015), emblematic or so-called classic local human rights defenders (July 2015), the judicial system (September 2015) and socio-economic and labour rights (December 2015).

³⁹ Four thematic and five geographic instruments

⁴⁰ Regulation (EU) No 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide, OL L77, p.85

proclaimed in the UN Declaration on the Rights of Indigenous Peoples"⁴¹.

The **Development Cooperation Instrument** (DCI) including its underlying thematic programme Global Public Goods and Challenges programme refers specifically to indigenous peoples (and afro-descendants in Latin America) as targets for cooperation and as cross-cutting concerns. It also lists "*organisations representing indigenous peoples*" as eligible beneficiaries. The **Instrument contributing to Stability and Peace**⁴² (IcSP) places indigenous peoples among cross-cutting issues to be included, where possible, in programming.

The European Neighbourhood Instrument⁴³ (ENI) has no specific reference to indigenous peoples, though it does refer to the rights of persons belonging to minorities. **The Cotonou Agreement** which guides the programming and activities under the European Development Fund⁴⁴ (EDF) does not refer to specific groups.

The following trade-related EU instruments of particular relevance to indigenous peoples should be mentioned as well:

The FLEGT (Forest Law Enforcement, Governance and Trade) Voluntary Partnership Agreements (VPAs) ensure that only legally harvested timber is licensed and imported into the EU from timber producing countries. The respect for indigenous peoples' rights can be an explicit requirement for the licencing system, if the timber producing country has laws to protect the land tenure rights of indigenous peoples. Since the adoption of the aforementioned Voluntary Guidelines on Responsible Governance of Tenure (VGGT) in 2012, these have been applied increasingly in the FLEGT VPAs to minimise possible adverse impacts on affected indigenous communities and their livelihoods⁴⁵.

The amended Regulation (EC) No 1007/2009⁴⁶ that imposes a **ban on the import of seal products** grants exemptions to products coming from indigenous Inuit communities. The Regulation provides for placing on the Union market of seal products, which result from hunts traditionally conducted by Inuit and other indigenous communities. The amended Regulation, in its explanatory recitals, gives references to the UNDRIP and the obligations of three EU Member States⁴⁷ in respect of their ratification of the ILO Convention 169.

⁴¹ Already at its inception in 1999, the EIDHR reflected the 1998 Council resolution on indigenous peoples.

⁴² Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 (OJ L 77, 15.3.2014, p.1)

⁴³ Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument

⁴⁴ The European Development Fund (EDF) provides aid for 79 African, Caribbean and Pacific (ACP) partner countries of the Union and for the Overseas Countries and Territories of Member States

⁴⁵ VPAs have been agreed with Ghana, followed by Cameroon, the Central African Republic, Indonesia, Liberia and the Republic of Congo. Negotiations are on-going with Côte d'Ivoire, Democratic Republic of the Congo, Gabon, Guyana, Honduras, Laos, Malaysia, Thailand and Vietnam.

⁴⁶ The amendments to Regulation (EC) No 1007/2009, which also repeal Regulation (EU) No 737/2010, became applicable on 18 October 2015. The Commission adopted a new Commission Implementing Regulation (EU) 2015/1850, also applicable as of 18 October 2015

⁴⁷ Denmark, the Netherlands and Spain

BOX 3: The rights-based approach to development cooperation, an EU contribution to the 2030 Agenda

In March 2014, the EU adopted a **rights-based approach to development cooperation (RBA)**, encompassing all human rights, as a contribution to the 2030 Agenda. RBA will not only be critical in delivering the EU's overall commitments to this Agenda, but also for EU support to indigenous peoples. By redefining the roles of stakeholders into duty-bearers and rights-holders, the RBA is important for the recognition of indigenous peoples' individual and collective rights in accordance with UNDRIP. The RBA allows for an analysis of the challenges and opportunities for indigenous peoples, including indigenous women and children, in benefitting from, and taking part in sustainable development efforts. Such analysis includes issues related to the ownership and control over ancestral territories and natural resources, reminding State obligations and accountabilities to tackle these issues through development policies and programmes. The RBA further implies the effective participation of indigenous peoples and their representatives throughout the programming cycles and strategic planning processes of EU development cooperation.

The EU has committed to continue promoting gender equality in its external relations through the Gender Action Plan II (2016-2020).⁴⁸ The Gender Action Plan II highlights notably the importance of ensuring equal access for both men and women to financial services, productive resources including land, trade and entrepreneurship through e.g. supporting transformative legislation on ownership, inheritance and control of land and other productive resources. All these aspects are highly relevant for indigenous women and shall be taken into account in the implementation of the Gender Action Plan II in the relevant countries.

3. Practical examples of EU support to indigenous peoples

There are a large number of ongoing projects and programmes in support of indigenous peoples. EU programmes and projects address indigenous peoples as part of broader country (or regional) programmes (*mainstreaming*) or through actions that specifically target indigenous peoples. Many of these programmes and projects focus on the discrimination and the inequality that indigenous peoples suffer from, in relation to their economic, social and cultural rights as well as their civil and political rights.

Examples of projects that address the **economic, social and cultural rights** include the EU's support for Niger's Plan for Economic and Social Development and its actions on access to health for the geographically dispersed nomad populations. Another example is the Support programme for Technical Education and Vocational education and training in Nicaragua which offers indigenous and afro-descendent communities training adapted to their economic, social and cultural characteristics. Cooperation with Vietnam also offers examples of projects on *inter alia* education for ethnic minority children and support for the voice and rights of

⁴⁸ See Council Conclusions on the Gender Action Plan 2016-2020 adopted by the Council at its 3420th meeting held on 26 October 2015

ethnic minority women. With the EU's support, a vaccination campaign took place along with the disbursement of vitamin A to pygmy women and children in Cameroon.

As regards the **civil and political rights of** indigenous peoples, EU bilateral cooperation with many countries places emphasis on addressing their participation at local and national levels. These include projects on access to citizenship and birth registration (Cameroon) and on capacity building of indigenous peoples advocating for the recognition of ethnic diversity and democratic participation in constitutional reforms. There are also a few projects to support indigenous peoples' equal participation in **national democratic processes** in Latin America (e.g. Ecuador). For **local level** participation, examples include capacity building of indigenous peoples' leaders, organisations and networks to better assert and promote their rights in local and sub-national regional governance or projects to address women's priorities and rights to participation (Nicaragua, Uganda (Batwas in the Great Lakes Region)).

In countries such as Bolivia, Chile, Guatemala, Nicaragua and Peru, the EU also finances projects that support the capacity building of indigenous peoples to engage with authorities, donors and other third parties on issues affecting their rights through consultation mechanisms. Such support is most typically linked to the implementation of ILO Convention 169 in countries that have ratified it, since consultation with, and participation of indigenous peoples is central to the Convention.

Through the EU initiative to promote the VGGT⁴⁹, support for the participation and consultation of indigenous peoples as regards their land rights are being addressed at a local level in countries including Cameroon and Colombia. However, programmes such as FLEGT address land and resources' rights at national level. In the negotiations for the EU FLEGT VPA with Honduras, activities ensuring the participation of, and consultations with indigenous peoples were supported for both local and national level processes. Moreover, Honduras is the only VPA country which has decided to have a stand-alone seat for indigenous peoples. In the Republic of Congo, an enactment of indigenous peoples' rights legislation was approved as a result of the VPA and the Liberia VPA helps the government and civil society to strengthen community rights to forests and implementing the shift in land rights.⁵⁰

⁴⁹ The FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest in the Context of National Food Security

⁵⁰ In recent EU negotiations with a partner country on a FLEGT VPA, the EU encouraged the partner government to respect indigenous peoples' rights to consultation and participation. The guidance provided by the VGGT was conducive to this outcome. The country is not identified so as not to prejudice the negotiations. The Committee under the International Convention for the Elimination of Racial Discrimination (ICERD) have observations issued for this country in relation to the land rights of its indigenous peoples.

BOX 4: Crucial support from the EU on making the indigenous peoples' voice heard

At a global level, the EIDHR and DCI instruments give strong emphasis to **supporting indigenous peoples' rights** (as set out in UNDRIP) as follows:

- 1) The participation of indigenous peoples' representatives at the UN Human Rights fora through support to the technical secretariat run by Docip⁵¹;
- 2) Support to ILO on promoting ILO Convention 169. The partnership between the EU and ILO, in combination with support provided to ILO in EU Member States bilateral cooperation, is recognised for example as having made significant contributions to the ratification by Nepal and the Central African Republic of the ILO Convention 169 in 2007 and 2010 respectively. For Nepal, as it was the case for Guatemala in the mid-1990s, the ratification of ILO Convention 169 was also instrumental for the inclusion of indigenous peoples in post-conflict peace-building;
- 3) The EIDHR and the GPGC programme of the DCI are supporting the Indigenous Navigator project⁵². The Indigenous Navigator is a tool for developing Human Development indicators based on the UNDRIP and the Sustainable Development Goals and their Targets. The tool helps communities develop reliable community-based and community-owned data enabling them to feed into the sustainable development targets of the 2030 Agenda and to monitor progress. This third partnership is designed to support indigenous peoples in their efforts to implement their communities' self-identified needs and aspirations in the context of the 2030 Agenda in selected countries in Latin America, Africa and Asia.

Through the EIDHR Emergency Fund, several **indigenous human rights defenders at risk**, both women and men, in Latin America, Asia and Africa have received grants, aimed for instance at ensuring their physical security, legal representation, medical assistance, etc.

In the context of conflict-prevention and peacebuilding there are also examples where the EU gives attention to indigenous peoples who are/ have been affected by conflict. The most recent example is EU's support for peace-building in Colombia.

Despite there being a number of examples showing EU support to indigenous peoples, there are indications that in a number of countries, especially outside Latin America, the EU does not work directly with indigenous peoples' organisations or communities but rather through

⁵¹ Docip, The Centre for Documentation, Research and Information (est. 1978) – Geneva based NGO supporting indigenous peoples

⁵² The official title of the pilot first phase of these projects is: *Improving Indigenous Peoples' access to justice and development through community-based monitoring* (2016-2018) implemented by ILO, Tebtebba, Asia Indigenous Peoples' Pact (AIPP), the Forest Peoples' Programme (FPP), and the International Work Group for Indigenous Affairs (IWGIA), under the EIDHR. Further phases will involve an additional partner, the Danish Institute for Human Rights. The title of the GPGC project is: *Making the SDGs work for indigenous peoples* (2016-2019) implemented by the same partners.

government agencies and/or mainstream civil society organisations. This may in particular be the case in countries where budget support aid modality is the preferred one.⁵³

This implies that the exercise of their right to free, prior and informed consent to programmes that may impact on their rights is limited. This in turn enhances the risks of adverse impacts of development activities. Such risks are consistent with the numerous reports and observations of the UN mandate holders and UN Treaty monitoring bodies.⁵⁴

V. The EU as an agent of change: improving the implementation of the EU policy

On the basis of the above analysis, it appears that an adequate EU policy framework on indigenous peoples' right is in place. Furthermore, there are many best practices showing that the EU human rights policies and instruments, which includes respect for UNDRIP, are being successfully applied in promoting and protecting indigenous peoples' rights. At political level, these include discussions on indigenous issues in some Human Rights dialogues and the protection given to indigenous human rights defenders. EU Member States are also supporting the promotion and protection of indigenous peoples' rights and as a result have developed considerable experience and expertise.

As regards development cooperation, the EU has so far focused on fighting discrimination in relation to the fulfilment of all human rights, often through a mainstreamed approach which in many cases has a positive impact on indigenous peoples. Thematic programmes, such as the EIDHR, the DCI/Global Public Goods and Challenges (e.g. Gender equality, Environment, FLEGT and Land including Forest) target indigenous peoples' rights specifically. There are good examples of the EU's increasing attention to the threats that indigenous peoples experience in relation to land and resource rights.

However, there is room within the existing policy framework for enhancing the EU's impact and making the EU's action in favour of indigenous peoples more effective and more evenly applied in EU relations with partner countries. Considerations on how to enhance the EU action in all relevant countries and in multilateral cooperation are set out below.

⁵³ Budget support involves direct financial transfers to the national treasury of the partner country – conditional on policy dialogue, performance assessment and capacity building. Since the 2012, the Commission has in place a set of dedicated, structured rules to manage the specific risks of budget support in line with general Commission practice – at all stages of the process (from identification to implementation).

⁵⁴ The UN Special Rapporteurs on the Rights of Indigenous Peoples and the ICERD Committee in particular. See for instance UN doc. CERD/C/TZA/CO/16*27 March 2007; A/HRC/24/21 and A/HRC/27/52/Add.3

As a general rule:

- Use better the human rights tools (such as dialogues, guidelines, country strategies) and best practices, by taking into account the UNDRIP principles. The specific needs of indigenous women, children and persons with disabilities should also be considered.
- To avoid risk of adverse impacts and thereby foster effectively the protection and promotion of the rights of indigenous peoples, systematically apply the principles of UNDRIP as well as all relevant voluntary safeguards and guidelines of the Multilateral Environment Agreements, the VGGT and the UN Guiding principles for Business and Human Rights in the EU actions, including trade and development cooperation. For example, Action plans on Business and Human Rights adopted by EU Members States should also refer to UNDRIP. In the same context, special attention should be paid to the implementation of indigenous-related recommendations arising from the Universal Periodic Review (UPR) processes and the UN Treaty monitoring bodies.
- Promote a consistent and coherent approach to indigenous peoples' rights in line with the UNDRIP through EU action at multilateral level, including in the conferences of parties to UN treaties.

Ways to improve the implementation of EU action for the benefit of Indigenous peoples:

Enhanced opportunities for dialogue and consultation:

1. Systematically include indigenous peoples issues, including implementation of the UNDRIP, in all political and human rights dialogues with countries and regional organisations where the issue is relevant, in particular in Africa and Asia. In this context, consultations with representatives of indigenous peoples would be crucial.
2. Continue engagement with partner countries and in multilateral fora to address threats to indigenous human rights defenders and to indigenous peoples' land and resources. This could include threats that arise in the context of efforts for environment, biodiversity and cultural heritage protection, and for climate change mitigation and adaptation as well as in development, trade and business activities⁵⁵.
3. Explore the possibility of conducting regular High-Level EU-Indigenous Peoples dialogues, within existing resources, to inform and underpin EU external action policy and its implementation on matters affecting indigenous peoples worldwide. Such a dialogue could also serve the needs for the exchange of best practices for the implementation of e.g. the UN Guidelines on Business and Human Rights.

⁵⁵ The Communication 'A stronger role of the private sector in achieving inclusive and sustainable growth in developing countries' (COM (2014)263) promotes, among other actions, responsible business practices through EU development policy; it also mentions adherence to social, environmental and fiscal standards, including respect for human rights and indigenous peoples' rights, as a precondition for EU support to private sector actors.

4. Ensure the participation of indigenous peoples' representative organisations in the Policy Forum on Development (PFD), the EU's multi-stakeholders' space for dialogue on development policies⁵⁶.

Mainstreaming UNDRIP principles in the EU's external actions

5. Systematically include references to indigenous peoples in policy documents such as the Human Rights and Democracy Country Strategies and the Road Maps for EU engagement with civil society as well as in structured sector-specific dialogues with various stakeholders.
6. Further promote awareness of indigenous peoples' rights when assessing impacts of a proposed trade action as provided for in the *Guidelines on the analysis of human rights impacts in impact assessment for trade related policy initiatives*⁵⁷, including in context of trade agreements. Regard for indigenous peoples' rights is included in the monitoring of the Generalised Scheme of Preferences Regulation (in particular the GSP+ scheme), and in in the FLEGT VPAs.
7. Use the EU's rights-based approach to development (RBA) as the main vehicle to integrate the rights and issues of indigenous peoples in the EU's implementation of the 2030 Agenda, notably by ensuring their full participation and free and prior informed consent in a meaningful and systematic way in EU-funded programmes and projects. For example, regarding budget support, further integrate the UNDRIP standards based on full participation and free and prior informed consent of indigenous peoples into the structured rules to manage the specific risks of budget support at all stages of the process (from identification to implementation). Operationalising a meaningful participation of indigenous peoples would notably entail: a) improving the stakeholders analysis⁵⁸, b) enhancing the sectoral policy dialogue, and c) including concerned indigenous peoples' own representative institutions in the monitoring process. Such an approach would be conducive for ensuring attention to the development priorities of indigenous peoples, including livelihood development and market access.
8. To avoid duplication of efforts and to increase the effectiveness and adequacy of development support for indigenous peoples, strengthen the coordination between experts from EU institutions and EU Member States in further developing mechanisms for consultation, coordination and implementation.

⁵⁶ The PFD is currently under review by the European Commission

⁵⁷ http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153591.pdf

⁵⁸ elements of Political Economic Analysis allowing to better understand the obstacles faced by indigenous peoples and to have a more inclusive intervention logic, with adequate complementary support

9. As part of EU's support for 2030 Agenda, the Indigenous Navigator project remains relevant in order to generate consolidated data, making indigenous issues visible and measurable for all relevant sustainable development targets.
10. Step up efforts to build the capacity of indigenous peoples' organisations, including their own decision-making institutions, to develop networks among themselves at national and international levels, including with "European" indigenous peoples, and to effectively participate and engage, through representatives chosen by themselves, in decision-making at local, national, regional and international levels on matters that affect their rights.
11. Continue and expand EU support to National Human Rights Institutions (NHRIs) to effectively promote and protect the rights of indigenous peoples.
12. Continue support for the ratification and implementation of ILO Convention 169 in partner countries.
13. Continue active engagement with indigenous peoples and UN Member States to fulfil the WCIP Outcome document's recommendations to the UN. These include the Human Rights Council's review of the Expert Mechanism on the Rights of Indigenous Peoples; and the on-going deliberations at the General Assembly to enable the participation of indigenous peoples' representatives and institutions at the United Nations on issues affecting them.
14. Support the implementation of the decision in the UNFCCC COP21 (Paris Agreement) to establish a platform for sharing of best practices on climate change mitigation and adaptation between indigenous peoples and UNFCCC parties.
15. Prepare to showcase in partnership with indigenous peoples the EU policy on Indigenous Peoples, taking into account the EU and its Member States activities, as a contribution to the high level meeting of the UN General Assembly in 2017 in commemoration of the 10-year anniversary of the UN Declaration on the Rights of Indigenous Peoples.

Annex I: Further guidance on the identification of indigenous peoples

The so-called "Cobo-working definition" by the former UN Special Rapporteur Jose Martinez⁵⁹ is today the most commonly used guidance, including in EU documents for the identification of indigenous peoples:

*"Indigenous communities, peoples and nations are those which, having a **historical continuity** with pre-invasion and pre-colonial societies that **developed on their territories**, consider themselves **distinct** from other sectors of the societies now prevailing on those territories, or parts of them. They form at present **non-dominant** sectors of society and are determined to **preserve, develop and transmit** to future generations their ancestral territories, and their **ethnic identity**, as the basis of their **continued existence** as peoples, in accordance with their own cultural patterns, social institutions and legal system."*

Article 1 of ILO Convention 169 on Indigenous and Tribal Peoples of 1989 provides for **objective criteria** as to the scope of the Convention: "*Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions*" and for **subjective criteria** '*Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.*' As regards the term "peoples", Convention 169 also provides that "*The use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law*".

Some Latin American countries that have ratified the ILO Convention no.169 on Indigenous and Tribal peoples have recognised that the Convention also applies to Afro-descendant groups.

In Africa, the term "indigenous peoples" is often particularly challenged. According to the African Commission on Human and Peoples' Rights (ACHPR), the concept of indigenous peoples⁶⁰ is relevant on the continent. However, it is mainly applied to pastoralists and hunter-gatherer communities sharing specific characteristics. The World Bank in its Operational Policy 4.10 uses the term "indigenous peoples" in a generic sense to refer to "a distinct, vulnerable, social and cultural group".

Identifying indigenous peoples is particularly challenging when they live outside their traditional territories and/or join populations of internally displaced persons, migrants and/or urban dwellers. Even if a number of countries do not recognise the term "indigenous peoples", the very same countries will most often still have national or local terms to identify the

⁵⁹ UN Doc.No.E/CN.4/Sub.2/1986/87

⁶⁰ 2003 Report of the ACHRP Working Group on Indigenous Populations/Communities in Africa entitled "indigenous peoples in Africa: the forgotten peoples?"

peoples or groups concerned within their national context, such as adivasis, janajatis, mountain dwellers, hill tribes, ethnic minorities, scheduled tribes, highland peoples, hunter-gatherers, nomads, pastoralists or aboriginals.

Annex II: Additional information on the initiatives of multilateral actors

The range of initiatives taken within the UN system included the establishment of the United Nations Voluntary Fund for Indigenous Populations in 1985, the proclamation of the International Year of the World's Indigenous People in 1993 and the adoption of two consecutive International Decades for the World's Indigenous People/s (1994-2004 and 2004-2014).

The **treaty-monitoring bodies** of the UN Human rights conventions and the **Universal Periodic Review (UPR)** of the UN Human Rights Council also provide UN Member States with recommendations and guidance on the promotion and protection of the human rights of indigenous peoples in their country.

The principles of UNDRIP have been integrated in the working methods and guidelines of a number of UN programmes and funds, such as the United Nations Development Programme (UNDP) which uses UNDRIP as a requirement for engagement.

Furthermore, the specialised UN agencies, the international financial institutions as well as regional organisations have developed policies and safeguards addressing the rights and needs of indigenous peoples. These include, inter alia, the World Food Organisations (FAO), the World Intellectual Property Organisation and the International Fund for Agricultural Development, the World Bank, the Asian Development Bank, the Inter-American Development Bank, the European Bank for Reconstruction and Development, the Barents Euro-Arctic Council and the Arctic Council.

Due note should be taken of UNESCO conventions, some of which affect indigenous peoples. In the UN-Indigenous Peoples Partnership (UNIPP) and its multi-donor trust fund, the ILO, OHCHR⁶¹, UNDP and UNICEF work together on developing national capacities to promote effective dialogue and partnership to fulfil the rights of indigenous peoples at the country level.

⁶¹ Office of the UN High Commissioner for Human Rights