

Chapter 8

Protecting the Rights of Indigenous Peoples as an Essential Element of Inclusive Economic Growth



Fridon R. Ananidze and Naser A. R. Al Ali

Abstract The notion that the fruits of economic growth should be enjoyed by wide sections of society has not always received universal support. Traditional approaches to economics have long focused on the role of market forces as an engine of economic growth rather than on ensuring equitable development outcomes driven by market forces. In practice, however, as a result of a policy of total non-government intervention in the economy, there is growing evidence of unwanted outcomes, such as increased income inequality and persistent poverty levels, which weaken social cohesion. Over time, the number of people who understand that economic development and growth must bring prosperity and well-being for all increases, including among scientists and policy-makers at the national and international levels. This increase in public awareness has led to increased recognition and understanding that growth must be inclusive, including the growth of prosperity and the protection of the rights of all vulnerable groups. Within the framework of this article, special attention is focused on protecting the rights of such a vulnerable category of the population as indigenous peoples.

8.1 Introduction

Indigenous peoples live compactly on all continents inhabited by humans. In North America, these are Indian tribes (Iowa, Apache, and Roquez, Eskimos, Aleuts, and others); in Latin America—Aimara, Aruaki, Aztecs, Maya, Inca, Yanomami, and others; in Australia—the Australian Bushmen; in Africa—Maasai, Enderois, San (bushmen), Mbatl (pygmies), and others; in Europe—the Sami (Lapps); in Asia—the Ainu and Ryukyu peoples (Japan), the Nanai and some other peoples of China; in Oceania—Chamorro (Guam), Hawaiians

F. R. Ananidze (✉)

Peoples' Friendship, University of Russia, Moscow, Russia
e-mail: ananidze_fr@rudn.ru

N. A. R. Al Ali

Law Institute of the Russian University of Transport, Moscow, Russia

(Hawaii), Maori (New Zealand), Papuas (Papua New Guinea and some regions of Indonesia), Naura (Nauru), and others [16]. A large group of indigenous peoples is made up of the small indigenous peoples of the Russian Federation living in a vast area from Karelia to Kamchatka and Sakhalin—Vepsians, Sami, Koryaks, Khanty, Mansi, Nanais, Yukagirs, Nivkhs, Nenets, Chukchi, Shors, and many others [16]. It is approximately from 200 to 360 million people who share common needs and problems [8].

Indigenous peoples as peoples with all their own characteristics (cultures, customs, traditions, languages, ancestral lands, traditional way of life, etc.) have been existing for centuries. Nevertheless, it was only in the past century when the world community started to recognize the vulnerability of millions of representatives of aboriginal communities and realize special politics to increase the level of social and legal aspects of their life.

However, neither the international law science nor international legal documents still are able to define what members of the Earth population should be included in the concept of “indigenous people” and what criteria the concept of “indigenous people” do consist of [1]. Nowadays, in international law practice, it is possible to find how the concept functions in various kinds of its definitions.

The issue is further complicated by the fact that a whole host of distinctive features characterizes indigenous peoples: first, they represent different ethnic groups, ethnicity, and races; secondly, they profess different religions; thirdly, they speak different languages; fourthly, they are representatives of different cultures, traditions and customs, and alike.

The only thing that is a standard feature for them is that almost all of them live on their ancestral (traditional) lands and lead a traditional way of life [16].

Thus, based on such a variety of races, languages, cultures, religions, and the mere fact that indigenous peoples are at different stages of their socio-economic development, and they have different interests and aspirations, it is not very easy to develop internationally one adequate definition which would be a common name for all aborigines.

8.2 Methodology

The methodological basis of the study involves a combination of general scientific (dialectical, historical, inductive, deductive, analytical, synthetic) and private scientific methods (formal-legal, comparative-legal, interpretative, statistical, procedural, and dynamic).

8.3 Results

As Russian researcher, R. Garipov states, “the development of the concept of “indigenous people” should be based on the approach of comprehensive coverage of indigenous peoples, which would include all their (indigenous peoples) diversity and, at the same time, be based on some general criteria” [12]. We agree with this statement and believe that starting point here is a criterion of determining indigenous peoples as “descendants of the population, that lived in this certain area before the arrival of people of other racial and ethnic origin, with another religion, culture, language, customs” [13].

Another acceptable, in our opinion, criterion for defining the term “indigenous people” is their non-dominant position in the nationwide collective. According to professors I. P. Blishchenko and A. Kh. Abashidze, “at the national level indigenous peoples usually do not occupy a dominant and sometimes re in a discriminatory provision” [11]. Here we completely agree with them, and cannot agree with the opinion of R. Sh. Garipov, who claims that “this is not a sign of the indigenous people, but a consequence of the unfair state policy towards them. In addition, in a number of states, the indigenous population constitutes the majority in relation to non-indigenous nations (countries of South America) and in some of them state policy is changing for the better before our eyes (for example, Bolivia, where a new constitution was adopted)” [12].

We proceed from the fact that “the result of the unfair state policy toward indigenous peoples”, and such was the colonization of the ancestral lands of the aborigines, the above first criterion can be considered the same success. At the same time, it should be specified that indigenous peoples around the world constitute a minority of the population of states with the exception of three Latin American states—Bolivia (49%), Ecuador (40%), and Guatemala (40%), and note that only in Bolivia, the Quechua and Aymara have status from the state language along with Spanish [5].

The essence of the next criterion for defining the term is the complexity diversity of languages, cultures, traditions, customs, and beliefs of these peoples.

When defining the concept of “indigenous people”, it should also be noted that the overwhelming majority of indigenous people avoid the creation of overly centralized political institutions and organize their life mainly at the community level. Decisions are made after a common opinion has been reached within the community, which, in terms of organization and management of society, is very different from most modern states [4].

One more circumstance should be specially emphasized: the consciousness of belonging to an indigenous people (self-identification) is an integral part of their culture, beliefs, and existence as a separate ethnic group. In general, it is expressed in spiritual closeness to their origins, roots, identity, and unites almost the entire world’s indigenous peoples [10].

This circumstance was manifested in the “Lovelace Case” [24], considered by the Human Rights Committee. The crux of the matter was this: A Canadian Indian woman named Sandra Lovelace, registered as a Malecite Indian, married a non-Indian. If an

Indian woman did not marry an Indian, then, according to the Canadian Indian Act of 1970, she would lose her Indian status. This meant that such a woman could not enjoy all the benefits and preferences enjoyed by members of the Indian community (the right to inherit family property, the right to be buried on a reservation, take part in ceremonies and rituals, and others). Simultaneously, when the male Indians married non-Indian women, they did not lose this status.

Thus, Sandra Lovelace after marriage lost the status of an Indian. When she separated from her husband and decided to return to the reservation, attempts were made by the Canadian authorities to prevent her from living with her fellow tribesmen on her former reservation. In the end, having exhausted all domestic remedies of their violated rights Sandra Lovelace's individual petition addressed to the Committee of the United Nations for Human Rights, whose jurisdiction is recognized by the state. In her appliance, she claimed that the Canadian Indian Act of 1970 disrupted her rights contained in art. 2 and 3 of the International Covenant on Civil and Political Rights of 1966 (equal right of men and women), as well as refusing to her «the right, in community with other members of their group, to enjoy their own culture» on the basis of art. 27 of the Covenant. The Committee decided that Sandra Lovelace IME la eligible to return to the reservation and to live together with other members of her tribe.

Later, in 1985, the Canadian Indian Act was amended to remove provisions that discriminated against women. It is noteworthy that, based on the amended law, all women who suffered like Sandra Lovelace were restored to their rights.

Thus, the criterion of self-identification is an important component of the concept of indigenous people, especially since it found its consolidation in paragraph 2 of art. 1 of the ILO Convention No. 169, which says that «the indication of the peoples themselves as belonging to the indigenous or tribal way of life is considered as a fundamental criterion for determining the groups to which the provisions of this Convention apply» [18].

The actual content of another criterion for defining the concept of «indigenous people» is their attachment to the original (traditional, paternal) lands. The overwhelming majority of indigenous peoples consider the land to be alive and holy, and any economic activity (mining, and others) is considered a great sin. For example, the indigenous people of Haruku, living in eastern Indonesia on the island of Haruku, part of the Moluccas, believe that theiunr lands' commercial use has devastating consequences for their sacred sites [5]. Also, Australia's aborigines believe that their ancestors' spirits inhabit the land around them, so any activity related to the extraction of minerals can hurt them. In a word, the world around and the land for indigenous peoples is a sacred, living creature, and «owning or treating the land as a commodity to be used and then abandoned is considered by them to be the worst crime deserving of damnation» [7].

Traditional lands for indigenous peoples are the foundation of their existence and development. These lands give them food (hunting, fishing, and gathering), on them they lead their traditional way of life, here they perform their cult rites, and here are their holy places. Over the centuries, the indigenous peoples have developed «a certain set of rules on the ownership and preservation of these lands as the

main factor of their existence” [19]. On the din from the representative of the Indigenous Council on this occasion, he said: “execution of indigenous people is the surest way to separate them on the part of the earth” [18]. It should be emphasized that this «territorial» feature is the main distinguishing feature of the indigenous peoples from national minorities.

If you trace the history of the emergence and evolutionary development of the concept of “indigenous people” in the international legal literature, you can find that the term “indigenous people” originally appeared. This was in 1921 in connection with a study by the ILO on the problems of indigenous workers [12]. Then it was included in the text of international legal acts developed and adopted within the framework of the ILO, and to one extent or another, regulating certain rights of the indigenous population. On the basis of analysis and the relevant provisions of these acts, it can be concluded that “they mostly regulate labor relations between indigenous to the village and representatives of metropolises” [9].

ILO Convention 1957 No. 107 “On the protection and integration of indigenous and other communities, Tribal and Semi-Tribal Peoples in Independent States” (hereinafter—the Convention No.107) summarized existing in international law, the first period and the fragmented components of the concept of “indigenous” (the term “indigenous people” appeared in international legal documents later) and in Art. 1 held that it applies:

1. (a) to persons who are part of the population, leading a tribal or semi-tribal lifestyle in independent countries and who are at a lower socioeconomic stage of development than the rest of the population of the state, and whose legal status is regulated partially or completely by their own customs, traditions or special legislation;
- (b) to persons who are part of the population leading a tribal or semi-tribal lifestyle in independent countries, and are considered as an indigenous population due to the fact that they are the descendants of the inhabitants who inhabited the country or geographical area of which this country is a part, during its time conquest or colonization, regardless of their legal status, leading a lifestyle that is more consistent with the socio-economic and cultural system of those times than the system of the country they are part of.
2. For the purposes of this Convention, the expression “semi-tribal” includes groups or individuals who, although they are close to losing their tribal characteristics, are not yet integrated into the national collective” [2].

A few decades later, Convention No.107 has been revised, and on its basis in 1989, the ILO adopted ILO Convention No.169 “About the Indigenous and Tribal Peoples in Independent Countries” (hereinafter—the Convention No.169). There were certain objective reasons for this, the essence of which is briefly as follows:

In a first, the Convention No.107 actually been focused on “integration” of the indigenous population lives in the dominant society was preceded by the United

Nations in the form of the Indian question, adopted by the UN system organizations more in the year 1953. Also, in 1953, the ILO published its first comprehensive study on the working and living conditions of indigenous peoples [7].

In a second, in this period the provisions of the universal legal instruments such as the International Convention on Human Rights of 1966, the Optional Protocol to the International Convention on Civil and Political Rights of 1966, and others are reflected in the national legislation in a number of states and by the ethnic and cultural features of indigenous peoples and their protection, and that are regulated by the national legislation of a raw of countries.

In a third, in a given period the increase of voluntary integration started. This means that indigenous peoples could be integrated into the national community only voluntarily, i.e., only if there is a clearly defined will of themselves. According to par. 1 of art. 5 of the UNESCO Declaration on Race and Racial Prejudice of 1978, “each people is free to decide for itself the issue of preserving and, if necessary, adapting or enriching the values that it considers fundamental to its identity” [15].

Fourth, indigenous peoples have a deliberative vote in certain international intergovernmental organizations in solving their problems at the highest international level. For example, in 1951, the Scandinavian states established the inter-parliamentary international organization called the Scandinavian Council, which included members of 5 Scandinavian countries (Norway, Sweden, Finland, Denmark, and Iceland) and consisted of 20 representatives from each parliament. Among other deputies in the Nordic Council, indigenous people were presented by representatives of the Greenland Eskimos (Denmark) and the Sami people’s (Norway, Sweden, Finland)—the indigenous peoples of these member states of the Organization. The main thing here is that they (representatives of indigenous peoples) are fully-fledged MPs of this significant inter-parliamentary forum of the region’s states [19].

Fifth, in 1982, ECOSOC established the Working Group on Indigenous Issues to address the promotion and protection of human rights and fundamental freedoms of indigenous populations through the development of and the rules in this regard.

All of these new aspects are reflected in the provisions Co. Mr. Wentz ILO number 169, according to art. 1 which it applies:

- a. “to peoples leading a tribal way of life in independent countries, the social, economic and cultural conditions of which distinguish them from the rest of the population of the country and whose legal status is regulated partially or completely by their own customs, traditions or special legislation;
- b. to peoples in independent countries, which are considered as indigenous peoples due to the fact that they are the descendants of the inhabitants who inhabited the country or geographical area of which this country is a part, at the time of its conquest or colonization, or the establishment of the current borders of states, and who regardless of their legal status, they preserve partially or completely their own social, economic, cultural and political institutions” [14].

Thus, based on the analysis of the above convention definitions, the following main criteria for defining the concept of “indigenous people” can be identified:

Indigenous peoples are the descendants of the population that lived in this particular territory before the arrival of people of a different racial and ethnic origin, with a different religion, culture, language, customs; non-dominant position of indigenous peoples in the national communities of states; linguistic, cultural, ethnic, racial and other differences of indigenous peoples from the rest of the population; self-identification is the voluntary awareness of belonging to an indigenous community.

On September 13, 2007, the UNGA adopted the Declaration on the Rights of Indigenous Peoples [3] (Resolution 61/295) [19]; however, this document only regulates the legal status of indigenous peoples (rights, freedoms, guarantees, obligations) and does not say anything about the definition of the term “indigenous people”.

In such a situation, a starting point for the definition of indigenous people can become a working definition of the United Nations, formulated by the Special Rapporteur on the issue of discrimination against indigenous populations for the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities José Martínez Cobo, according to whom “indigenous people is from the current descendants of peoples who lived in the present territory of all or part of a country at the time when persons of another culture and ethnic origin came to it from other parts of the world, who conquered them and put them in a dependent and colonial position through conquest, colonization, and other means; at present, these peoples live more in accordance with their special customs and social, economic and cultural traditions than with the institutions of the country of which they are a part, with a state structure that is based mainly on the national, social and cultural characteristics of other dominant segments of the population” [20].

José Martínez Cobo also did not ignore the problematic issue of the marginalization of certain indigenous peoples. He states that “Although the isolated marginal groups that exist in the country have not been subdued or colonized, they should also be extended to include the concept of ‘indigenous people’ and names the following factors as evidence for his claim:

- “they are descendants of groups that were on the territory of the country at the moment when groups of another culture or ethnic origin arrived there;
- precisely because of their isolation from other parts of the country’s population, they managed to keep the customs and traditions of their ancestors practically intact, which are similar to the customs and traditions characteristic of the indigenous population;
- they are the odds subordinated to the state structure, which is based on alien they national, social and cultural characteristics” [21].

In his final report of 1982, J. M. Cobo proposed the formulation of the investigated term: “indigenous people are indigenous communities, peoples and nations that maintain a historical continuity with societies that existed before the invasion of the conquerors and the introduction of the colonial system and developed in their own territories who consider themselves to be different from other strata of society currently prevailing in these territories or in part of these territories. They constitute non-dominant strata of society and want to preserve, develop and pass on to future

generations the territory of their ancestors and their ethnic identity as the basis for the continuation of their existence as a people in accordance with their own cultural characteristics, social institutions and legal systems” [22, 23].

Working Group on the OH on Indigenous Populations repeatedly discussed the issue of defining the concept of indigenous people, and set aside time to consider this issue and decided to use the definitions and criteria set forth g wasps hearths J.M. Cobo. As we have noted above, adopted in the subsequent Declaration of Indigenous Peoples’ Rights does not contain a definition of indigenous people.

8.4 Conclusion

On the basis of the analysis carried out, the following general criteria and components of the concept of the term «indigenous people» can be distinguished:

Firstly, indigenous peoples are the descendants of the population that lived in this particular territory before the arrival of people of a different racial and ethnic origin, with a different religion, culture, language, customs;

Secondly, at the national level, indigenous peoples occupy a non-dominant position.

Thirdly, the presence of a variety of languages, cultures, traditions, customs, and beliefs among the indigenous peoples of the spruce complex.

Fourth, self-identification is a voluntary awareness of belonging to an indigenous community.

Fifth, the main feature of indigenous people from other ways of life is a wide adherence to traditional (“father’s”) lands, nature, and the environment in general, resulting in great love and respect for her, in the interconnectedness and interdependence of these two concepts (the root people and land), since all of this is an integral part of the culture, religion, life, and the mainstay of survival, existence, and development of indigenous peoples [6].

References

1. Abashidze, A.K., Inshakova, A.O., Dementev, A.A.: New challenges of international law in the digital age. In: Popkova, E.G., Sergi, B.S. (eds.) *Modern Global Economic System: Evolutional Development vs. Revolutionary Leap*, pp. 1125–1132. Springer Nature, Cham (2021)
2. Abashidze, A.K., Ananidze, F.R., Gugunsky, D.A., Kruglov, D.A., Solntsev, A.M.: ILO Convention No. 107 “On the Protection and Integration of Indigenous and Other Populations Leading Tribal and Semiprimal Life in Independent States” 1957. Ensuring the rights of indigenous peoples in accordance with international and national law. Collection of acts. RUDN, Moscow 445 p. (2017)
3. Abashidze, A.K., Ananidze, F.R., Gugunsky, D.A., Kruglov, D.A., Solntsev, A.M.: United Nations Declaration on the Rights of Indigenous Peoples of 13 September 2007. Ensuring the

- rights of indigenous peoples in accordance with international and national law. Collection of acts. RUDN, pp. 203–204 (2017)
4. Abashidze, A.K., Ananidze, F.R., Solntsev, A.M.: *Mezhdunarodno pravoviye osnovy zashity menshinstv y korennyh narodov* (International legal framework for the protection of minorities and indigenous peoples. Textbook. RUDN), 572 p., RUDN, Moscow (2015)
 5. Abashidze, A.K., Ananidze, F.R., Solntsev, A.M.: The rights of indigenous peoples in a globalizing world (ensuring in accordance with international and national law. A course of lectures delivered within the framework of the program “The UN system and mechanisms for protecting human rights for representatives of indigenous peoples”. RUDN, 330 p. (2017)
 6. Aga Khan, S., Ben Talal, H.: *Dying Forests: Human Impacts of Deforestation*. Report of the Independent Commission on International Humanitarian Affairs. 110 p. (1987)
 7. Aga Khan, S., Ben Talal, H., Blishchenko, I.P.: *Indigenous Peoples: A Global Pursuit of Justice*. Report to the Independent Commission on International Humanitarian Affairs, 226 p. (1988)
 8. Aga Khan, S., Ben Talal, H., Kudryavtsev, H.M.: *Will Humanity Preserve Humanity? Report of the Independent Commission on International Humanitarian Affairs* (1988)
 9. Ananidze, F.R.: On the question of the definition of “indigenous people”. *Vestnik RUDN. Series: Legal Sciences*, vol. 1, p. 110, Moscow (1997)
 10. Anisimov, A.P., Matytsin, D.E.: The concept and types of environmental entrepreneurship. In: Inshakova, A.O., Frolova, E.E. (eds.) *Smart Technologies for the Digitisation of Industry: Entrepreneurial Environment*. Smart Innovation, Systems and Technologies, vol. 254. Springer, Singapore (2022). https://doi.org/10.1007/978-981-16-4621-8_25
 11. Blishchenko, I.P., Abashidze, A.K.: For Indigenous peoples and the international law. *Russian justice*, 3 p., Moscow (1994)
 12. Garipov R.S.: The concept of “indigenous people” and their status in international and domestic law. *International law and international organizations*, 3 p. (2013)
 13. James, S.A.: *Indigenous Peoples in International Law*, 2nd edn. Oxford University Press, Oxford (2004)
 14. Melkov, G.M.: ILO Convention No. 169 “On Indigenous and Tribal Peoples in Independent Countries” 1989. Human rights. Collection of international documents (1998)
 15. Nikulin, I.D.: *UNESCO Declaration on Race and Racial Prejudice 1978*. International normative acts of UNESCO (Conventions, agreements, protocols, recommendations, declarations) (1993)
 16. Prokhorov, A.M.: *Peoples and religions of the world*. Encyclopedia. Institute of Ethnology and Anthropology of Miklukho-Maklay, 928 p. (1998)
 17. Prokhorov, A.M.: *The peoples of Russia*. Encyclopedia. Institute of Ethnology and Anthropology of Miklukho-Maklay, Moscow, 479 p. (1994)
 18. *Rights of the Indigenous Peoples to the Earth-Paper submitted to the UN Working Group of Indigenous Populations–UN Doc. E/CN4/Sub.2/AC4/1985/WP4* (1985). Accessed 28 January 2021
 19. Sandvik, G.: *Legal status of the Sami*. State and law, 9 p. (1992)
 20. UN documents. E/CN.4/Sub.2/1972/566/L. Accessed 28 January 2021
 21. UN documents. E/CN.4/Sub.2/1986/7/Add.4, paragraph 379. Accessed 28 January 2021
 22. UN documents. E/CN4/Sub.2/1983/21/Add. 8, paragraph 379. Accessed 28 January 2021
 23. UN Documents E/CN4/Sub.2/1983/Add4. Accessed 28 January 2021
 24. *Views of the Human Rights Committee under Art. 5 (4) of the Optional Protocol concerning Communication*. NR 6/24. 30 July 1981. Report of the Human Rights Committee, GAOR 36th Session. Supp. 40 (A/36/40). Ann. XVIII, 166 p.