

Questionnaire on biodiversity and human rights - replies by the New Wind Association

1. 1. Please provide good practices in the adoption of biodiversity-related legislation, policies and programmes that incorporate human rights obligations.

As long as people's daily life-practices are structured to displace biodiversity it is not possible to save biodiversity without changing these structures.

If we do not reduce the overall loss of biodiversity that is kept displaced by our over-consumption - by our cities, industries, traffic, pollution, monoculture crops/tree plantations and other commercial use and control of land, forest, water and air, etc. , - we do not save biodiversity, no matter how many sanctuaries we establish or maintain.

For due adoption of biodiversity-related legislation and policies states have thus to reduce the amount of such our consumption that displaces biodiversity

Due access to biodiversity by which people have adapted to live by its regeneration is crucial also to respect human rights to life, food, health, water, housing, culture or way of life - also as such people's rights to their own means of subsistence which depend crucially on biodiversity.

The ways how peoples and communities have been adapted to live by biodiversity regeneration that thus fulfills their human rights have been based on the locally adapted diversity of ways how their local environment have been understood and treated in their life-heritages.

For the realisation of biodiversity related human rights of people who live by the regeneration of such biodiversity, it is thus crucial to enable people to use the biodiversity compliant to their locally adapted understanding of such biodiversity and environment.

The world needs to learn why and how the modern society with all its scientific ecological knowledge and education is not able to live in a sustainable way but the indigenous and local communities who do not have any such modern scientific knowledge or education on ecology live in a much more sustainable way based on how they have recognised and observed life's diversity by their own local understanding that has for ages adapted to that diversity.

Indigenous peoples and local communities have internationally recognised traditional rights on their bio-cultural life-heritage, on customary sustainable use and conservation of biodiversity, on their own means of subsistence and ways of life, on customary tenures and traditional occupations on lands & territories and on areas' cultural significance.

These include their rights to use the local environment in their own ways compliant to how they understand it and are adapted to its regeneration in their life practices.

Rights on diversity of life depend on saving the diverse heritages of life as adapted to the locality and secured through the community-based rights on combined cultural and natural heritage in life of the community, being also unique and irreplaceable common property of world heritage (1) which needs however to become governed via "the free, prior and informed consent and equitable and effective participation of indigenous peoples" or local communities in respect to "their territories, lands, resources and ways of life". (2)

There is a need to observe what kind of understanding and rights on biodiversity form a culture that sustains the diversity of what the Earth grows and its locally adapted significance. There is also a need to address what kind of understanding and rights on culture create biodiversity-sustained life-heritage of the area, way of life of its community.

The local content of communities' traditional rights is best known by these traditional communities themselves. The more the bio-cultural content of these rights is self-determined by the local or indigenous life-heritage, language and significance, the more autonomously the community can rule in its area by means adapted to area's regeneration.

The communities need to be provided a procedure to determine the local content of their internationally recognised traditional local rights and practices (like those quoted below) and to claim such content (by community protocols or other documentation) to become respected and protected to stop the violations of such rights.

1. 2. Please provide specific examples of good practices in the implementation of human rights

obligations in biodiversity-related matters. For instance, such examples may include practices related to: guaranteeing procedural rights (e.g., rights to information, participation and remedy); monitoring human rights affected by biodiversity-related legislation, programmes and projects (e.g., rights to life, food, housing, health, water and sanitation, cultural rights, etc.); protecting the human rights of individuals and groups from adverse impacts related to biodiversity; promoting the enjoyment of human rights (e.g., rights to life, food, housing, health, water and sanitation, cultural rights, etc.); guiding business activities in accordance with the UN Guiding Principles on Business and Human Rights; and seeking remedies for victims.

Peoples have an inalienable human right "for their own ends, freely dispose of their natural wealth and resources" including the biodiversity and thus self-determine their life as peoples so that:

As "in no case may a people be deprived of its own means of subsistence" (3) and as peoples' own, locally adapted subsistence is often based on customary sustainable use of biodiversity, it is crucial to save biodiversity to secure people's fundamental right to self-determination of their own means of subsistence as "an essential condition for the effective guarantee and observance of individual human rights". (4)

Thus also peoples who determine their subsistence by their communities' local life shall not be deprived of freedom to use such biodiversity which has formed their own locally adapted means of subsistence of their communities. Where land is needed to secure "inherent right to life" and "adequate conditions for a dignified existence for all" people may not be deprived of their "own means of subsistence, including those deriving from land". (5)

Minorities have also a right to enjoy their own way of life in their communities as adapted and integral to the local land, "territory and use of its resources" (6) as "form of subsistence and an ancestral tradition". (7)

They have a right "to follow a way of life associated with the use of [...] land, water, biodiversity, language", with their lifeheritage's access to "rivers, mountains, forests and nature reserves, including the flora and fauna found there" (8) States need to "obtain their free and informed prior consent when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk". (9)

The heritage, significance and diversity of life of an area is however not only a right of human community but also a right of the Earth and its living beings to such community and culture which sustain diversity of life as adapted to the area - as has been understood by many communities and as noted also by the UN Secretary General:

"Communities could extend to non-human forms of life" with recognition "that non-human beings (animals, plants or ecosystems) should all have rights", "the equal inherent rights of all Earth's community members to struggle, thrive and evolve together" under the "Earth law". (10) "Species extinction crisis can be averted" only if we conduct "our activities as integrated with all life on the planet." (11) As in certain sense "the human right to life is meaningless if the ecosystems that sustain us do not have the legal right to exist", in many respects also:

"Our rights are derived from" the "Earth rights" which "are not in opposition to human rights" but are "fundamental legal rights of ecosystems and species to exist, thrive and regenerate", rights of "plants, animals, water and air as beings with their own conscious experiences" in some sense. (12) As "the rights of each sentient being are limited by the rights of all other beings" we have "to respect [...] the rights of non-human members of the Earth community". As peoples' "well-being is derived from the well-being of the Earth" the "human governance systems must be derived from the laws of the Earth". (13)

As everyone's life and right to life is dependent on the lives of others, rights concerning life and its conditions are commonly shared, not only human rights but also rights of the Earth and the communities of diverse life it carries. Rights of community life to the Earth and its biodiversity are simultaneously the rights of land, forest, water, and the life they carry, to the various communities of the planet.

1. **3. Please specify, where relevant, specific examples of challenges and obstacles to the integration and protection of human rights in biodiversity-related matters.**

What displaces biodiversity threatens also human rights whose implementation depends on this biodiversity.

The modern homes, cultivations, modes of production, culture, life and society, all displace biodiversity, that has regenerated for millenniums through homes, cultivations, modes of production, culture and life-heritages of indigenous and local communities.

As far as people are not secured rights to live by the biodiversity by which they are adapted to live in a manner which sustains its regeneration, people are left to live by practices that displace biodiversity and its regeneration - causing loss of biodiversity.

This violates also human rights whose realisation depends on biodiversity and its regeneration and on people's opportunities to use the environment compliant to such their own understanding of it that is adapted to its regeneration.

Rights on life's bio-cultural diversity depend on the sustainability of the ways how people use and observe that diversity as adapted to the local environment and its regeneration.

As modern state and society often do not understand the traditional rights adapted to local environment thus communities' such bio-cultural rights on which the realisation of their human rights depends, remain easily neglected by the state who does not know how to respect the traditional rights whose content it often barely even understands - even though these rights have been internationally widely recognised. And while "blind adherence to economic growth as a measure of well-being has resulted in increasing harm to the planet and to all of us", world needs another approach that "prioritizes the dignity of the human being and the dignity of the Earth over corporate personhood."(14)

The prevailing ways how the lands, forests and biodiversity are held, treated as property, sold and consumed continue severe degradation of biodiversity and undermine diverse more sustainable customary ways how these have been held. States are however responsible to respect equally the diverse customary ways of how people hold and use the land by their "specific forms and modalities of control, ownership, use and enjoyment of their territories" (15), as having equal rights compliant to the international law - which is "autonomous from domestic legal provisions, and operates even in the absence of recognition of the right in States' domestic legal systems". (16)

As property status is "prohibited ground of discrimination" and human rights can "not be made conditional on a person's land tenure status" (17), under the international law States are responsible for "ensuring security of tenure of all [...] regardless of the type of tenure". (18) Land is duly possessed insofar as after the possession the land is "left in as good or better condition than that in which it was found" "the notion that a deed to property conveys with it the right to destroy an ecosystem needs to be changed." (19)

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4. Please give examples of how the rights of those who may be particularly vulnerable to the loss of biodiversity, including but not limited to indigenous peoples, are (or are not) provided with heightened protection.

"indigenous and forest peoples hold legal entitlement to about one-eighth of the world's forests, and protect about 80 per cent of its biodiversity. They hold traditional knowledge built on centuries of living in harmony with the ecosystems they are a part of and have always protected". (20)

Such vulnerable communities sustain biodiversity so that they "depend directly on biodiversity and its customary sustainable use and management for their livelihoods, resilience and cultures and are therefore well placed [...] to efficiently and economically manage ecosystems". (21) For the living conditions of the land, forests and waters and to remain in biodiversity-sustaining use, the communities must be secured the right to live in accordance with the regeneration and life heritages of their living environments. States need "to promote harmony with the Earth, as found in indigenous cultures, to learn from those cultures". (22)

For these aims, the indigenous and local communities have to be provided procedures to determine the local content of their traditional rights and to claim those rights to become implemented in the following respects:

- States have to respect "free, prior and informed consent of indigenous peoples in all matters covered by their specific rights" of life-heritage as integral "with their ancestral lands" "expressed and enjoyed as a community by indigenous peoples" - "to prevent the degradation of their particular way of life, including their means of subsistence". (23)

- "Indigenous peoples have the right to the lands" to be used thus by their "traditional occupation or use", for "their distinctive spiritual relationship" with it. (24) They "shall not be forcibly removed from their lands or territories" without their consent" (25) but "decide their own priorities for the [...] development as it affects" such lands. (26)

- States shall protect their "customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use" of biodiversity (27) reflected in trends and human rights

status of traditional occupations and land tenure adapted to local biodiversity regeneration. (28) Subsistence-based "traditional occupation confers "a right to the land"" (29) as an area needed for such "exercise of their traditional subsistence activities" "from which they derive their livelihood, and on which the preservation of their culture depends". (30)

- States have to protect equal rights to "indigenous peoples' occupations, traditional subsistence activities, economies, livelihoods, food security and nutrition" (31) as these "originate from generations of experience of caring for and using their lands" (32) "such as gathering rights" "that are not currently protected by national law". State has to ensure customary rights on "land, fisheries and forests" "as commons" where these are "central for the realization of human rights, food security, poverty eradication, sustainable livelihoods". (33)

- State has to secure such "access to land and natural resources" that people "can engage in their traditional occupations if they so choose" (34) with equal access to "terms and conditions" of such occupations of self-employed livelihood (35) as based on "knowledge, innovations and practices of indigenous peoples [...] developed through experience gained over the centuries, adapted to the local culture and environment". (36) "Management of land, water and living resources" "should be decentralized to the lowest appropriate level" since "the closer management is to the ecosystem, the greater the responsibility, ownership, accountability, participation, and use of local knowledge" by "indigenous peoples and other local communities living on the land". (37)

- States need to "support indigenous and community conserved areas and territories, community-based management, customary sustainable use and community governance of biodiversity, and ensure the full and effective participation of indigenous and local communities in decision-making processes, taking into account international instruments and law related to human rights". (38)

5. Please give examples of good practices in the protection of environmental human rights defenders working on biodiversity and conservation issues, including any efforts by Governments or others to create a safe and enabling environment for them to freely exercise their rights without fear.

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Visuvesi, Finland, 30/09/2016

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Notes and references

1. Convention concerning the Protection of the World Cultural and Natural Heritage 1972, preface & articles 1-2 & 5 a & d
2. WHC.15/01 8 July 2015, Operational Guidelines for the Implementation of the World Heritage Convention UNESCO Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage paragraphs 40 and 123 and Policy Document for the Integration of a Sustainable Development Perspective into the Processes of the World Heritage Convention as adopted by the General Assembly of States Parties to the World Heritage Convention at its 20th session (UNESCO, 2015), paragraphs 21-22 related to the Decision 35 COM 12E. See also A/71/229, paragraphs 64-65 & 85-86)
3. Article 1(2) of both ICESCR and ICCPR
4. CCPR, General comment No. 12: Article 1 (Right to self-determination), paragraph 1
5. E/2014/86, Report of the UN High Commissioner for Human Rights on land and human rights, paragraphs 21,28 & 62 and CCPR draft General Comment on right to life 3 and 28 see also ILO Convention 169, article 14
6. CCPR General Comment 23, CCPR/C/21/Rev.1/Add.5, 26 April 1994, paragraph 3.2
7. CCPR, Angela Poma Poma v. Peru, c. No. 1457/2006, paragraphs 7.3 and A/HRC/17/38, paragraph 39
8. CESCR General Comment 21, E/C.12/GC/21, Right of everyone to take part in cultural life, paragraphs 13, 15b & 16 a
9. CESCR General Comment 21, E/C.12/GC/21, Right of everyone to take part in cultural life, paragraphs 49 d-e & 55 e
10. A/69/322, UN Secretary General's report "Harmony with nature", paragraphs 24 and 69

11. A/71/266, paragraph 29
12. A/71/266, paragraphs 21 and 36
13. A/71/266, paragraphs 15, 17 and 37
14. A/71/266 paragraphs 52 and 53
15. IACHR Indigenous and Tribal Peoples' Rights over Their Ancestral Lands, OEA/Ser.L/V/II. Doc. 56/09, paragraphs 68-72 and footnote 198, see also I/A Court H.R. Awas Tingni case (n.21, para 151)
16. IACHR Indigenous and Tribal Peoples' Rights over Their Ancestral Lands, OEA/Ser.L/V/II. Doc. 56/09, paragraph 25
17. CESCR, E/C.12/GC/20, paragr. 25, 34 & 36, and GC 15, E/C.12/2002/11, paragr 14 &16 and CESCR General comment 4, paragr 8 a
18. E/2014/86, Report of the United Nations High Commissioner for Human Rights on land and human rights, paragraph 78
19. A/71/266, paragraphs 41 and 63
20. A/71/266, paragraph 43
21. CBD, Plan of Action on Customary Sustainable Use of Biological Diversity, paragraph 6 a-b
22. A/RES/70/208
23. CESCR General Comment 21, E/C.12/GC/21, Right of everyone to take part in cultural life, paragraphs 36-37
24. UNDRIP, articles 25 & 26.1-2
25. UNDRIP, article 10, see also CESCR General Comments 4 and 7
26. ILO Convention 169, article 7.1, see also for example CERD/C/DEC/SUR/1; CCPR/C/KEN/CO/3; E/C.12/KHM/CO/1)
27. CBD, articles 10 c-d
28. UNEP/CBD/COP/DEC/XI/3, Monitoring Progress in implementation of the Strategic Plan for Biodiversity 2011-2020, section "B. Development of indicators relevant to traditional knowledge and customary sustainable use", paragr. 5-6, see also "Community-Based Monitoring" (UNEP/CBD/COP/DEC/XII/12, section (A), paragraph 915
29. Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169) HANDBOOK, 2013 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_205225.pdf, page 21 and CEACR, 73rd Session, 2002, observation, Peru, para 7
30. IACHR Indigenous and Tribal Peoples' Rights over Their Ancestral Lands, OEA/Ser.L/V/II. Doc. 56/09, paragraph 80 and IACHR, Report No. 73/04, Case of the Sawhoyamaya Indigenous Community v. Paraguay, October 19, 2004, Recommendation 1
31. World Conference on Indigenous Peoples, A/RES/69/2, Outcome document, paragraphs 20 & 25
32. ILO Newsletter 2008 Indigenous and Tribal Peoples, pages 3 & 19
33. FAO Voluntary Guidelines on Tenure, paragraphs 4.1, 5.3, 7.1 , 8.2-3 and 8.9
34. ILO, Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016) Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Cambodia
35. ILO Convention 111, article 1.1-3
36. E/C.19/2015/4, Study on the treatment of traditional knowledge in the framework of the United Nations Declaration on the Rights of Indigenous Peoples and the post-2015 development agenda, paragr. 11 & 32 and www.cbd.int/traditional/intro.shtml
37. CBD, COP 5 Decision V/6, 2000, Ecosystem principles 1-2
38. UNEP/CBD/COP/DEC/XII/5, Biodiversity for poverty eradication and sustainable development, paragraph 11