

The Need for a Cultural Rights-based Approach to Ensure the Right to Food Sovereignty of Indigenous and Local Communities

*Janet Blake**

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Abstract

The central question addressed in this article concerns the role that cultural rights do and should play in protecting the right to food sovereignty of local and indigenous communities. The right to food, predicated on the narrower concept of food security, is not adequate alone in ensuring this right. As a starting point in this discussion, this article draws out the linkages between biological diversity, food sovereignty and cultural diversity. The international law frameworks for preserving biological diversity, protecting intellectual property rights relating to traditional knowledge, seeds etc. and for protecting the rights of farmers are then presented in broad terms. Following a brief examination of the rights of indigenous peoples relevant to the cultural aspects of ensuring food sovereignty, the specific role that is played by cultural heritage law and, in particular the law safeguarding intangible cultural heritage, is then explored in more detail. This is illustrated by two cases related to indigenous food production practices that draw out the aforementioned linkages between biological diversity, food sovereignty and the preservation of cultural diversity.

Keywords: Food Sovereignty; Cultural Rights; Biological and Cultural Diversity; Indigenous Peoples; Local Communities; Intangible Cultural Heritage.

* Associate Professor, Department of Human Rights, Faculty of Law, Shahid Beheshti University, Tehran, Iran.
Email: j-blake@sbu.ac.ir



1. Introduction

It is helpful to situate this discussion, first, by reminding ourselves what the term “food sovereignty” refers to, especially since it involves an understanding of the term sovereignty that is not the one immediately familiar to international lawyers. It has been defined as “the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems.”¹ Into this definition are packed a number of important ideas that are highly relevant to the situation of many local communities and, in particular, of indigenous and tribal peoples and pastoralists. First, the notion of “culturally appropriate food” is a profound one that goes far beyond simply taboos on eating certain foods, such as the Jewish and Muslim injunction against eating pork, and relates more to the idea of food and its production as part of a wider cultural system.² Second, the reference to “ecologically sound and sustainable methods” again reminds us that this is not simply about having food that is nutritious and does not counter cultural norms, but extends to the place of food production within ecological and environmental sustainability. A key feature of food production by local and indigenous communities is that it is frequently carried out at subsistence level, not as an industrial agro-business,³ and that the approaches used in its production often rest upon traditional knowledge, innovations and practices developed over millennia and passed on through the generations. These food production methods are highly sustainable since it is based on an understanding of the ecological limits of the environment and, not being mobile, these communities must act as caring stewards of the land and its resources in order to survive.⁴

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1. World Forum for Food Sovereignty, *Declaration of Nyéléni*, (Nyéléni: World Forum for Food Sovereignty, 2007); Food Secure Canada, *The Six Pillars of Food Sovereignty* (Montréal: Food Secure Canada, 2012); “Family Farming Knowledge Platform,” Food and Agriculture Organization, accessed August 22, 2023, <https://www.fao.org/family-farming/detail/en/c/877809>.
 2. Hannah Wittman, Annette Desmarais, and Nettie Wiebe, eds., *Food Sovereignty - Reconnecting Food, Nature and Community* (Halifax: Fernwood Publishing, 2010).
 3. It is of interest here that the term “food sovereignty” was first used in 1996 by La Via Campesina, a transnational movement of small-scale farmers, peasants, agricultural workers, and indigenous groups and so reflects a worldview that they espouse. Priscilla Claeys, “From food sovereignty to peasants' rights: an overview of La Via Campesina's rights-based claims over the last 20 years,” in *Food Sovereignty: A Critical Dialogue*, ed. International Institute of Social Studies, (New Haven: Yale University Press, 2013).
 4. Michel Pimbert, *Towards Food Sovereignty: Reclaiming Autonomous Food Systems* (London: International Institute for Environment and Development, 2010).

Third, the right of local communities and indigenous peoples “to define their own food and agriculture systems” is again one that has profound implications for their relationship with the State and also implies several actions for Governments to respect this right. These may include limiting the scope of agricultural, industrial, pharmaceutical and other commercial activities, and recognizing some degree of control by these communities over their land and resources and recognizing their cultural rights. Here, I wish to focus on the cultural aspects of this question and the range of legal and administrative approaches that can protect the right to food sovereignty for indigenous peoples, local communities, subsistence farmers, tribal peoples and pastoralists. Finally, the linkage between biological diversity and food sovereignty is clear also: The local and indigenous communities that are the focus of my paper are often heavily reliant on endemic species and plants that have important characteristics essential for the sustainability of their lifestyles.⁵ To understand this, is to understand that these natural resources are inextricably part of a wider cultural model that is essential to their survival, of which food sovereignty plays an important role. Hence, for example, the way of life of local, often indigenous, communities in northern India relies upon being able to keep at least one of India’s indigenous breeds of cattle: The entire domestic economy of these local communities revolves around the cows’ milk production, draught strength for agricultural work and their dung for cooking and without them it will fail.⁶

There is an equally significant mutual relationship between culture and food sovereignty which is the core focus in this article which we can also frame as the connection between biodiversity and cultural diversity. This serves to remind us that preserving the biodiversity essential for food sovereignty and the right of local and indigenous peoples to food sovereignty often relies upon safeguarding cultural traditions as it does on more obvious approaches such as

5. The website of the 1992 Convention on Biological Diversity states that 80 percent of biological diversity today is being protected through the stewardship of Indigenous peoples. “Indigenous Peoples and Local Communities”, Convention on Biological Diversity, accessed August 23, 2023, <https://www.cbd.int/topic/indigenous-peoples-and-local-communities>.

6. Vandana Shiva, “Ecological Balance in an Era of Globalization,” in *Global Ethics and the Environment*, ed. Nicholas Lowe (New York: Routledge, 2003). She notes that “[a] buffalo produces around 12 kg of wet dung every day. This converts to 6 kg of dry dung. An average Indian family of five members needs 12 kg of dung cakes every day as cooking fuel, which translates into a pair of buffaloes. The 182,400 buffaloes that Al-Kabeer [a halal slaughterhouse] kills every year could satisfy the fuel needs of 91,200 families in India.” Shiva, “Ecological balance,” 59.

benefit-sharing over the exploitation of plant genetic resources.⁷ Ultimately, all these strands are inter-connected, namely land, culture, biodiversity and the rights to exploit natural resources. As the definition of food sovereignty (above) made clear, none of these can truly be addressed as a separate issue, although it is necessary to choose one or two to highlight. This implies, in turn, that an approach based primarily on environmental protection alone will not be sufficient but that the recognition and protection of the cultural rights of indigenous and local communities and farmers is also essential. It is also important to recognize that, although it is clearly highly relevant to protecting the food sovereignty of often marginalized communities, the right to food⁸ is too dependent upon the narrower notion of food security to be wholly sufficient on its own to protect their right to food sovereignty.⁹

2. The Connection between Biodiversity and Cultural Diversity

A central proposition here is that the preservation of cultural diversity is necessary for the safeguarding of traditional knowledge related to the sustainability of the ecosystem.¹⁰ This traditional ecological knowledge is, in turn, an essential element for the preservation of biological diversity and the long-term ecosystem health. Since humans are the repositories of such knowledge, its preservation inevitably involves safeguarding their ability to continue to create and maintain it. For this, their lifestyle and the natural resources that are essential to its continuation must be protected which involves protecting, *inter alia*, their cultural rights. Any loss of biodiversity harms the cultural diversity with which it has co-evolved and, by extrapolation, this will directly impact upon communities' right to food sovereignty.¹¹ For example, the loss of an indigenous language includes also a loss of a vast

7. Shawn N. Sullivan, "Plant Genetic Resources and the Law: Past, Present, and Future," *Plant Physiology* 135, no. 1 (Spring 2004); Anna G. Micara, "International Law on Plant Genetic Resources for Food and Agriculture: Towards a New Balance?" in *Agricultural Law: Current Issues from a Global Perspective*, ed. Mariagrazia Alabrese et al. (York: Springer International Publishing, 2017).

8. Committee on Economic, Social and Cultural Rights, General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), Geneva: UN, 1999; Lidija Knuth and Margret Vidar, *Constitutional and Legal Protection of the Right to Food around the World* (Rome: Food and Agriculture Organization, 2011).

9. Devon Sampson et al., "Food Sovereignty and Rights-Based Approaches Strengthen Food Security and Nutrition Across the Globe: A Systematic Review," *Frontiers in Sustainable Food Systems* 5 (2021), <https://doi.org/10.3389/fsufs.2021.686492>.

10. Janet Blake, "Safeguarding Endangered and Indigenous Languages – How Human Rights Can Contribute to Preserving Biodiversity," *Environmental Sciences* 11, no.4 (Winter 2013).

11. Michel Pimbert, *Food Sovereignty, Agroecology and Biocultural Diversity: Constructing and Contesting Knowledge* (New York: Routledge, 2017).

"archive" of traditional knowledge of biodiversity. Estimates suggest that as many as 90 percent of the world's approximately 6,800 languages, of which around 4,000 are indigenous, may be lost over the next 50 years.¹² Moreover, six of the countries that enjoy high cultural diversity are also mega-diversity hotspots with exceptional numbers of unique plant and animal species.¹³ As noted by Skutnabb-Kangas and colleagues, "there is also an increasing realisation that biological diversity and cultural and linguistic diversity are not separate aspects of the diversity of life, but rather intimately related, and indeed, mutually supporting ones."¹⁴

What place do human rights and, in particular, cultural rights have in preserving cultural and biological diversity? A number of cases concerning protection of the natural environment and its resources essential for safeguarding the lifestyle of indigenous peoples have been heard by the UN Human Rights Committee on the basis of the norm of cultural integrity (under Article 27 of the International Covenant on Civil and Political Rights),¹⁵ the African Court of Human Rights¹⁶ and the Inter-American Court of Human Rights.¹⁷ The judgments in these cases clearly identified the linkage between environmental protection and the protection of human (cultural) rights.

The ways of life and of relating to the environment of traditional knowledge-holders in their ancestral homelands of are often essential to the

12. Riëks Smeets, "Language as a Vehicle of the Intangible Cultural Heritage," *Museum International* 56, no. 1–2 (2004): 156–165.

13. Darrel A. Posey, *Cultural and Spiritual Values of Biodiversity* (Nairobi: United Nations Environment Programme, 2000).

14. Tove Skutnabb-Kangas, Luisa Maffi, and David Harmon, *Sharing a World of Difference – The World's Linguistic, Cultural and Biological Diversity* (Paris: UNESCO, 2003), 38.

15. In *Francis Hopu and Tepoaitu Bessert v. France* the Committee upheld the petitioners' contention that a tourist development project in Polynesia involved an unacceptable impact on traditional tribal lands, including sacred burial grounds of the indigenous community. *Francis Hopu and Tepoaitu Bessert v. France*, Communication No. 549/1993, UN Doc.CCPR/C/60D/549/1993/Rev/1, 29 Dec. 1997.

16. *Centre for Minority Rights Development and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya*, Comm. No. 276/03, 4 February 2010 AfCHPR. The Court's judgment included that "Specifically, with regard to Article 17 of the African Charter the AfCHPR stated in its ruling that: "By forcing the community to live in semi-arid land without access to medicinal salt licks and other vital resources for the health of their livestock, the Respondent State have (*sic*) created a major threat to the Endorois pastoral way of life. It is of the view that the very essence of the Endorois' right to culture has been denied, rendering the right, to all intents and purposes, illusory". *Centre for Minority Rights Development*.

17. In *Saramaka People v Suriname*, the Court found, inter alia, that "the concession by the respondent government of logging rights to Chinese investors amounted to an infringement of the collective rights of the Saramaka people to the peaceful enjoyment of their ancestral land, and specifically to their communal property over the forest (Article 21)." *Saramaka People v Suriname*, Judgment of 28 November 2007, IACtHR (Ser. C), No. 172 (2007).

sustainability of an ecological system and its biological diversity. Taken together, these constitute a part of what is now understood in UNESCO's 2003 Intangible Heritage Convention to be "intangible cultural heritage"¹⁸ of which one of the domains is "knowledge and practices concerning nature and the universe".¹⁹ Since the erosion of cultural diversity that accompanies the loss of traditional cultural practices, knowledge and languages can also lead to a severe reduction of biological diversity, the importance of safeguarding intangible heritage is not just a cultural question; It is also one that has great implications for maintaining ecosystems and the biological diversity that depends on them and the resources necessary for the sustainability and food sovereignty local and indigenous communities.

3. The International Law Framework

Safeguarding the cultural diversity that is so essential for food sovereignty requires, in part, finding means of countering the economic and utilitarian measures that legal systems traditionally apply to exploiting biological and genetic resources in order to render them suitable to the needs of the cultural and spiritual values inherent in biological diversity. The 1992 Convention on Biological Diversity ('1992 CBD') was the first international treaty to address this issue, by intertwining the economic benefits of plant genetic diversity with the cultural aspects of their use and related local knowledge.²⁰ The 2001 Food and Agriculture Organization's treaty on plant genetic resources²¹ also accords a central role to the traditional knowledge of local and Indigenous communities for the preservation of biodiversity and sustainability. This focuses particularly on the rights of farmers to employ traditional farming practices, such as re-using seeds.

However, the problem of treating 'nature' and 'culture' as two separate categories remains which serves a legislative and operational purpose but does not reflect the true nature of heritage.²² For most indigenous and many local

18. UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage, 2368 UNTS 3, Paris 2003, Art. 2 § 1.

19. These five illustrative domains are listed in: UNESCO, Convention for the Safeguarding, Art. 2 § 2.

20. Convention on Biological Diversity, 1760 UNTS 79, Rio de Janeiro, 1992 [31 ILM 818 (1992)].

21. Food and Agriculture Organization, International Treaty on Plant Genetic Resources for Food and Agriculture, Rome 2001 [2400 UNTS 303].

22. UNESCO's 1972 Convention on the Protection of the World Cultural and Natural Heritage is an unusual exception to this, though cultural elements are implied in some environmental

communities, this division is meaningless²³ as is clearly demonstrated by the definition of “Indigenous heritage” provided by a UN Special Rapporteur in 1997. As she noted, it includes not only “everything that belongs to the distinct identity of a people” but also “inheritances from the past and from nature, such as human remains, the natural features of the landscape, and naturally-occurring species of plants and animals with which a people has long been connected”.²⁴ Any approach towards ensuring food sovereignty that meets the needs of indigenous communities must therefore take a holistic cultural-natural or ‘biocultural’ approach. This implies the protection of their cultural rights, including access to and use of their cultural heritage, as much as protection of the environment and its natural resources. The brief overview of relevant international law below shows that all of these are important elements in a protective regime for the right to food sovereignty, but that are not sufficient in themselves; a cultural rights-based approach is also needed.

3.1 UN Convention on Biological Diversity (1992)

The 1992 CBD is the sole international treaty text that explicitly recognizes the link between intangible heritage – indigenous and local knowledge, practices and innovation – and environmental resources and the important role these play in ensuring the sustainable use of natural resources. It makes reference to the cultural, recreational and aesthetic values of biological diversity and its components whose conservation is a common concern of humankind.²⁵ This treaty also accords a primary role to the *in situ* conservation of biological resources, an approach that has strong parallels with cultural heritage preservation measures, and this involves also preserving the way of life and associated knowledge and know-how of tradition-holders. It recognizes that local and indigenous communities are vital to the success of *in situ* conservation policies for biodiversity which implies the need to develop mechanisms that enhance traditional knowledge itself while also strengthening the viability and resilience of the communities that hold it. The connection of

treaties and, as we shall see, environmental dimensions are clearly implicit in UNESCO’s 2003 Convention.

23. Jelena Porsanger and Pirjo Kristiina Virtanen, “Introduction—a holistic approach to Indigenous peoples’ rights to cultural heritage,” *AlterNative: An International Journal of Indigenous Peoples* 15, no. 4 (Winter 2019).

24. Erica-Irene Daes, *The Protection of the Heritage of Indigenous People* (Geneva: United Nations, 1997), 25.

25. Convention on Biological Diversity, Preamble. This also reflects calls in cultural heritage instruments to protect and preserve their subject as a ‘common heritage of humankind’.

this to their cultural heritage is well-expressed in a Code of Ethics adopted in 2010 that refers to “the cultural and intellectual heritage of indigenous and local communities relevant for the conservation and sustainable use of biological diversity”. In this way, they contribute to the achievement of the objectives of Article 8(j) of the Convention on Biological Diversity and its Plan of Action for the retention and use of traditional knowledge, innovations and practices of indigenous and local communities.²⁶ The intellectual property system *per se* is generally regarded as an inappropriate mechanism to achieve this²⁷ while human rights mechanisms contain some important concepts that can make a valuable contribution.

Article 8(j) contains the core statement of this approach, requiring the Contracting Parties (as far as possible) and subject to their national legislation to, “[r]espect, preserve and maintain knowledge, innovation and practices of Indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustained use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices.”²⁸ This places an obligation on Parties to identify and eliminate policies that have a negative impact on biological diversity through the erosion of cultural diversity and to develop policies that promote the wider application of such traditional knowledge and practices while ensuring the consent of the knowledge-bearers and equitable benefit-sharing from such application.²⁹ In addition to the need to protect tradition-holder communities, control of the customary use of components of biological diversity in accordance with traditional cultural practices is encouraged,³⁰ explicitly recognising the importance of such practices as crop rotation and traditional pest control for preserving biodiversity. Here, again, we see a direct linkage with UNESCO’s 2003 Convention that also places a great importance

26. UNEP, *Tkarihwaï:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities* (Nairobi: UNEP, 2010), Principle 3.

27. World Intellectual Property Organization, *Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions* (Geneva: World Intellectual Property Organization, 2020); Freedom-Kai Philips, “Intellectual Property Rights in Traditional Knowledge: Enabler of Sustainable Development,” *Utrecht Journal of International and European Law* 32, no. 83 (2016).

28. Convention on Biological Diversity, Art. 8§j.

29. Actions that might be taken to achieve this include legislation that requires the informed consent (FPIC) of tradition-holders and the sharing of benefits with them, supporting traditional communities in the protection and control of their knowledge, raising public awareness of the value of such knowledge and developing ethical guidelines for its collection and dissemination.

30. Convention on Biological Diversity, Art. 10§c.

in respecting and safeguarding such customary practices. Unfortunately, many governments tend to treat traditional hunting practices as poaching and routinely fail to recognize customary land titles or ignore customary communal ownership over certain resources.³¹

Although the CBD treaty text does not set out in detail what actions are required by Parties to ensure this, two important instruments have been concluded within the treaty's framework that reinforce this: the Bonn Guidelines (2002)³² and the Nagoya Protocol (2010)³³. The former sets out some principles on which a prior and informed consent (PIC) system should operate, while latter reinforces the claims of indigenous and local populations to their genetic resources and establishes mechanisms to prevent their misappropriation. The Nagoya Protocol also aims to achieve more clarity over access and benefit sharing (ABS) regimes. However, there remains a general non-recognition of the rights and claims of local and indigenous communities with regard to genetic resources.³⁴

3.2 2001 Food and Agriculture Organization Agreement on Farmers' Rights to PGRs

The FAO's work in relation to farmers' rights³⁵ represents the main international effort towards recognising the contribution made by farmers using traditional practices and methods to global food security. The International Treaty on plant Genetic Resources for Food and Agriculture (FAO, 2001)³⁶ explicitly refers to the importance of the traditional knowledge of farmers to sustainability of the food supply. Food security requires stability of supplies for all,³⁷ which is clearly not the case with over 826 million people

31. A number of cases in the Inter-American Court of Human Rights have demonstrated these violations of cultural and land rights.

32. UNEP, *Bonn Guidelines on Access and Benefit-sharing as Related to Genetic Resources* (Nairobi: UNEP, 2002).

33. UNEP, *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization* (Nairobi: UNEP, 2002).

34. Krishna Ravi Srinavas, "Protecting the Traditional Knowledge Holders' Interests and Preventing Misappropriation - Traditional Knowledge Commons and Biocultural Protocols: Necessary but Not Sufficient," *International Journal of Cultural Property* 19, no. 3 (Autumn 2012).

35. This work is discussed in more detail later in this section.

36. UNEP, *Tkarihwaïé:ri Code of Ethical Conduct*.

37. The Rome Declaration on World Food Security (1996) noted that "[food security] is achieved when all people, at all times, have physical and economic access to sufficient safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life." Food and Agriculture Organization, *World Food Summit – Final Report* (Rome: Food and Agriculture Organization, 1996).

in many parts of the world chronically hungry.³⁸ In addition, the right to food is a basic human right asserted in international law but food security is only part of the picture; the concept of food sovereignty goes far beyond that and recognizes much more clearly the importance of the cultural aspects of food production and consumption. FAO has noted that food sovereignty “recognizes all the dimensions of a healthy, ethical and just food system [and]...is thus a more holistic system than Food Security” and that control over the food system needs to remain in the hands of farmers, for whom farming is both a way of life and a means of producing food. It also recognizes the contribution of indigenous peoples, pastoralists, forest dwellers and subsistence fishers to the food system. By ensuring that food is produced “in a culturally acceptable manner and in harmony with the ecosystem in which it is produced” traditional food production systems have regenerated biodiversity and preserved climatic conditions for generations.³⁹ By inference, then, this treaty is also highly relevant to the right of local farmers and communities to enjoy their food sovereignty.

Much of our existing legacy of biological diversity and its ecological functions has been acquired cross-culturally through agricultural practices. Where a wide diversity of plant species exists, productivity is high, while the capacity of the ecosystem to recover from environmental stress and its capacity to evolve requires informed adaptive management of biodiversity to secure sustained production. Hence, the successful management of ecosystems, especially agricultural ones, must take account of the human interactions that shape and influence them. These interactions form a part of intangible cultural heritage and include traditional and local knowledge. For this reason, activities that focus on the sustainable management of biological diversity, a fundamental aspect of protecting a community’s food sovereignty, must also include such socio-economic issues as access to resources and rights relating to cultural heritage.

Certain measures for the conservation and sustainable use of plant genetic resources (PGR)⁴⁰ set out in the 2001 treaty are of especial interest in relation to the safeguarding of the related traditional knowledge and include promoting

38. Department for Environment, Food and Rural Affairs, *Food Security* (London: Department for Environment, Food and Rural Affairs, 2021).

39. “Family Farming Knowledge Platform,” Food and Agriculture Organization, accessed August 15, 2023, <https://www.fao.org/family-farming/detail/en/c/877809>.

40. FAO, International Treaty on Plant Genetic Resources, Art. 5. which covers conservation, exploration, collection, characterization, evaluation and documentation.

or supporting farmers' and local communities' efforts to manage and conserve their PGR on-farm. It calls for agricultural policies that promote the development and maintenance of diverse farming systems that enhance the sustainable use of agricultural biological diversity and other natural resources.⁴¹ These, as we shall see below, are based on cultural models and the associated intangible cultural heritage. Hence, their protection and that of the associated food sovereignty must involve a cultural rights-based approach as much as a biological and ecological one. In fact, this treaty supports a bio-cultural approach that is both essential for ensuring food sovereignty of local and Indigenous populations and the need to protect their cultural rights.

In Part III, the Parties undertake the responsibility for realizing farmers' rights as they relate to PGR⁴² and to take the necessary measures to promote these.⁴³ Such measures include the protection of traditional knowledge relevant to plant genetic resources for food and agriculture. This, however, begs the question as to the nature of such protection: Does it relate simply to protecting the economic rights of farmers through intellectual property rights and some system of equitable benefit-sharing?⁴⁴ Or can it be read as extending to safeguarding access to the knowledge itself and the way of life upon which it is dependent? If it is the latter, this is a much more radical reading of the obligations of parties under this provision and would bring us closer to the heart of the notion of food sovereignty.

3.3 Related Indigenous Peoples' Rights

The subject of Indigenous peoples' rights is a vast one, but it is key to this discussion since 80 percent of the world's biodiversity is stewarded by indigenous peoples. As the aforementioned 2010 Ethical Code acknowledges,

Most indigenous and local communities inhabit areas where the vast majority of the world's genetic resources are found. Many of them have cultivated and used biological resources in a sustainable way for thousands of years...the contribution of indigenous and local communities to the conservation and sustainable use of biological diversity goes far beyond their role as natural resource managers...as on-site communities with extensive knowledge of local environments, indigenous and local communities are most directly involved with conservation and sustainable

41. FAO, International Treaty on Plant Genetic Resources, Art. 6 § 2 (a).

42. FAO, International Treaty on Plant Genetic Resources, Art. 9 § 1.

43. FAO, International Treaty on Plant Genetic Resources, Art. 9 § 2.

44. Which are addressed in Art. 13 § 2.

use.⁴⁵

The Convention on Indigenous and Tribal Peoples of the International Labour Organization (1989) clearly recognizes the desire of such peoples to preserve their cultural identities – including their cultural heritage and associated practices – while also retaining control over the institutions and policies that underpin this.⁴⁶ In addition, governments are required to respect the special cultural and spiritual connection that these peoples have to their ancestral lands (and their resources),⁴⁷ which is an acknowledgement of the inseparable connection between land, culture and heritage for Indigenous peoples. This connection is also emphasised in Article 25 of the UN Declaration on the Rights of Indigenous Peoples (2007)⁴⁸ (henceforth ‘UNIDRIP’) in its assertion that “Indigenous peoples have the right to maintain and strengthen *their distinctive spiritual relationship* [emphasis added] with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources.”⁴⁹ The ILO Convention (1989) also calls upon respect for the customary laws and practices regarding, inter alia, social organisation and the transmission of land rights of these peoples. It requires that the heritage of Indigenous peoples is strengthened and promoted, including their subsistence economy and traditional hunting, fishing, trapping and gathering.⁵⁰

In a similar manner, UNDRIP makes direct reference to their rights over their heritage, stating that indigenous peoples have the right “to practise and revitalize their cultural traditions and customs”.⁵¹ This would obviously include many elements important for their food sovereignty. It also makes the connection between cultural heritage, traditional knowledge about natural resources, indigenous scientific and technological innovations and natural resources in a way that demonstrates the wholly integrated character of these elements:

Indigenous peoples have the right to maintain, control, protect and develop

45. UNEP, *Tkarihwaïé:ri Code of Ethical Conduct*, Introduction.

46. The Preamble recognizes “the aspirations of these peoples to exercise control over their own institutions, ways of life... and to maintain and develop their identities, languages and religions.” International Labour Organization, Indigenous and Tribal Peoples Convention, No. 169, 1989, Preamble.

47. ILO, Indigenous and Tribal Peoples Convention, Art. 13.

48. UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, U.N. Doc. A/RES/47/1 (2007). [hereinafter UNIDRIP]

49. UNGA, UNIDRIP, Preamble.

50. UNGA, UNIDRIP, Art. 23 § 1.

51. UNGA, UNIDRIP, Art. 11.

their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.⁵²

Here see that that “heritage” when applied to Indigenous people is a more expansive and comprehensive notion than “cultural heritage” and one that truly encompasses the notion of bio-cultural heritage that is fundamental to food sovereignty. It is clear that protecting their rights to this heritage encompasses environmental, economic, moral and other rights which all express important aspects of their right to food sovereignty.⁵³

4. A Cultural (Rights) Approach Towards Food Sovereignty

UNESCO’s Convention on Safeguarding Intangible Cultural Heritage (2003) is an important treaty in this discussion⁵⁴ since it is the only one under which, thus far, the food systems that support local food sovereignty and the associated rights of local communities have been recognized. Although the 2003 Convention does not make much explicit mention of Indigenous heritage, this is the subject of much of the related heritage elements that have been internationally inscribed on the treaty’s main list. The “intangible cultural heritage” covered by this treaty is defined as:

the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, *is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history*, and provides them with a sense of identity and continuity, thus

52. UNGA, UNIDRIP, Art. 31.

53. Siri Damman, Harriet V. Kuhnlein and Bill Erasmus, “Human Rights Implications of Indigenous Peoples’ Food Systems and Policy Recommendations,” in *Indigenous Peoples’ Food Systems and Well-Being: Interventions and Policies for Healthy Communities*, ed. Siri Damman, Harriet V. Kuhnlein, and Bill Erasmus (Rome: Food and Agriculture Organization, 2013).

54. In *UNEP Tkarihwaí:ri Code of Ethical Conduct*, the 2003 UNESCO Convention is ranked fourth out of 12 instruments listed, above the main human rights treaties.

promoting respect for cultural diversity and human creativity...⁵⁵

From this, we see that intangible cultural heritage (ICH) reflects a form of socio-cultural adaptation to environmental as well as other factors and so its safeguarding can be essential for protecting food sovereignty. One of the five domains in which ICH is found is “knowledge and practices concerning nature and the universe”⁵⁶ which closely responds to traditional knowledge and practices of Indigenous and local communities that are essential to securing their food sovereignty. Hence, we see that Parties to this Convention now have a further series of obligations (albeit rather soft ones) to safeguard the ability of Indigenous peoples and some other local communities, including nomadic and pastoral peoples, to be self-sufficient in terms of hunting and producing food and to continue the ways of life and the natural resources upon which this relies.

Two examples of indigenous heritage, one of which has been internationally-recognized under the 2003 Convention, are presented below in order to illustrate how key this heritage can be for securing the food sovereignty of indigenous peoples along with their related ways of life, cultural practices and knowledge. Before this, however, I wish to situate these cases by setting out the ‘six pillars of food sovereignty’⁵⁷ which are that it: (1) focuses on guaranteeing healthy and culturally appropriate food, an idea closely linked with diversified food production; (2) values food providers, such as smallholder farmers, who often face marginalization, and agricultural workers who may face severe exploitation (especially women in the global South); (3) localizes food systems where food is grown primarily for local consumption; (4) gives control over territory, land, grazing, water, seeds, livestock and fish populations to local food providers and respects their rights; (5) builds knowledge and skills by rejecting technologies such as genetic engineering that undermine food providers’ ability to develop and pass on knowledge and skills, encouraging appropriate research systems; and (6) requires production and distribution systems that protect natural resources and avoid energy-intensive industrial methods.

The Traditional Mexican cuisine - ancestral, ongoing community culture, the Michoacán paradigm element was inscribed on the Representative List of

55. UNESCO, Convention for the Safeguarding, Art. 2 § 1.

56. UNESCO, Convention for the Safeguarding, Art. 2 § 2 (d).

57. “Six Pillars of Food Sovereignty,” Global Justice, accessed September 15, 2023, <https://www.globaljustice.org.uk/six-pillars-food-sovereignty>.

the Intangible Cultural Heritage of Humanity (RL) in 2010 and is an example that epitomises much of what has been stated above. It is seen as a comprehensive cultural model comprising farming, ritual practices, age-old skills, culinary techniques and ancestral community customs and manners. It is made possible by collective participation in the entire traditional food chain: from planting and harvesting to cooking and eating. Traditional Mexican cuisine – and in this case, the Michoacán paradigm – is an integral part of the ancient pre-Hispanic cultural system of the Indigenous population of Mexico that is based on corn, beans and chili. These three main elements, along with numerous other associated original crops, have formed a communal diet and at the core of ritual and ceremonial life.

The Michoacán culinary tradition is related to secular practices and techniques that are still in use, such as *nixtamalization* which is a specific cooking process that increases corn's nutritional value. This clearly illustrates how such knowledge systems contribute towards food security as well as being part of a wider food sovereignty model. Certain specific food-preparation utensils are associated with this comprehensive food and cultural model, including *metate* grinding stones and *molcajete* stone mortars, which are still in general use. The Michoacán paradigm also encompasses unique farming methods like the *milpa*, a self-sustainable field of corn and other crops, and *chinampa*, man-made farming islets in lake areas. In the *milpa*, corn protects other crops growing in the same furrows and this creates a complex ecosystem whose plants share nutrients. This farming method can adapt to all climatic conditions and is environmentally-friendly, because the interaction among the plants naturally repels pests and prevents weeds.⁵⁸ It is not just a physical agricultural system, though, and even today Mexican indigenous peoples conceive of their universe in terms of food: Humankind was shaped from corn, and food is the means through which people and the deities can interact. Hence, ritual and ceremonial offerings always focus on local foods while demonstrating a reciprocity among the living and between them and their ancestors.

This bio-cultural system has provided food for Mexicans for thousands of years and communities still prepare food using such methods. However, it has not only supported the food sovereignty of the indigenous Mexican peoples

58. S. Ryan Isakson, "No Hay Ganancia en La Milpa: The Agrarian Question, Food Sovereignty, and the on-farm Conservation of Agrobiodiversity in the Guatemalan Highlands." *Journal of Peasant Studies* 36, no. 4 (Winter 2009).

but it also encouraged the development of the great pre-invasion Mesoamerican civilizations and provides an ongoing historic continuity for local indigenous and ethnically mixed communities. In order to protect it, its particular products, procedures and techniques need to be strengthened and even revived through encouraging the transmission of the associated traditional knowledge, skills and know-how. Its inscription by Mexico on the RL in 2010 is part of this safeguarding process and signals that country's commitment to taking the measures to do this. Specific actions for safeguarding this bio-cultural model include transmitting it from the Michoacán region to hubs of traditional culinary knowledge located in other communities that are experiencing threats to their food sovereignty. In places where these traditional agricultural and culinary practices are still carried out, their continuation must be ensured, in the face of a growing influence from alien customs, skills and foodstuffs imported through development programmes and marketing, that generally dismantle the traditional food system while negatively impacting the community's health.

The second example of traditional indigenous food production methods is that of *traditional rotation farming in a village of the Karen people* in the hills of Thailand. This time the practice does not enjoy the recognition and protection of international inscription, probably since the indigenous bearer community is one that is not well recognized by the Government of Thailand. However, it should be noted that, as a State Party to the 2003 UNESCO Convention, Thailand is under the obligation to safeguard all intangible cultural heritage present on its territory⁵⁹ and that protection should extend to this farming practice of the Karen people. Their farming system involves balancing the clearing and burning of land with long fallow periods lasting many years and has been shown to contribute towards the sequestration of carbon in high fertility soil and community forests. The rotation farming system provides food and nutritional security for the Karen indigenous community and, at the same time, it sustains and restores the biodiversity and ecosystems within a 32,000 square kilometre area of tropical forest. The local people are able to grow many different crops and also harvest wild food in the communally stewarded forest that provides them with food, tea, herbs, wood and bamboo. The villagers' extensive traditional knowledge, combined with local spiritual and cultural practices associated with the forest and the

59. The primary purpose of the 2003 Convention, set out in Art. 1(1), is to safeguard intangible cultural heritage and this is to be achieved by a number of measures that are set out in Art. 2(3) and Part III of the treaty (Arts. 12-15).

traditional rotation farming system, constitute a further example of how this agricultural and food production heritage can support the food sovereignty of Indigenous populations.

5. Conclusion

Ensuring food security is, rightly, regarded as an international policy goal of paramount importance. However, this article has shown that the more comprehensive bio-cultural model of food sovereignty is essential if we are to take into account the rights of food producers, particularly the indigenous and local communities mentioned in the 1992 CBD. Since it is these communities that currently protect around 80 percent of the world's biodiversity, it is obvious that only the food security policy approaches that comprehend the importance of protecting food sovereignty can be successful and sustainable.

Various areas of international law, in particular those relating to environmental protection, farmers' rights and intellectual property rights are able to provide some guarantee for the food sovereignty and related cultural rights of the local and indigenous communities that play such a central role in preserving biological diversity. However, none of these alone is sufficient and it is important that the character of the traditional knowledge and practices involved in ensuring food sovereignty is fully recognized as a globally significant heritage of humankind. This article has therefore presented the role that UNESCO's 2003 Intangible Heritage Convention can play in safeguarding this crucial bio-cultural heritage as one way of supporting the cultural rights of the heritage bearers. This protection includes, but is not limited to, international inscription on the Representative List of the 2003 UNESCO treaty.

There is no doubt that this range of knowledge and practices will become increasingly essential over time and that ensuring the food security of such communities is also a guarantee of the protection of biodiversity and of food security globally: This may, of course, be an issue of particular and immediate importance to these communities, but it ultimately touches us all and should be seen as a question of common concern of the international community.

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