



Statistics, rights and recognition: the identification of Indigenous peoples

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Paper prepared for the 16th Conference of IAOS
OECD Headquarters, Paris, France, 19-21 September 2018

Session 1.E., Day 1, 19/09, 11:00: Indigenous statistics: Time for an international response

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DRAFT VERSION 10/09/2018
PLEASE DO NOT CITE

Prepared for the 16th Conference of the
International Association of Official Statisticians (IAOS)
OECD Headquarters, Paris, France, 19-21 September 2018

Note:

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ABSTRACT

Globally, Indigenous peoples experience substantial social, economic and health disadvantages. There have been significant steps made at the international level to better promote and protect the rights of Indigenous peoples around the world. This has included the 2007 adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). There have been a range of other international human rights mechanisms committed to improvements in the rights of Indigenous peoples and in working towards better addressing Indigenous disadvantage. Importantly, the realisation of human rights and the reporting on how Indigenous peoples are progressing requires the availability of high quality statistics that enumerates Indigenous peoples accurately. There is therefore a requirement for the provision of the identification of Indigenous peoples in the collection of information. For formal administrative processes to identify Indigenous peoples within official statistics reporting, there is an essential requirement for the recognition of Indigenous peoples. This paper provides a brief overview of the role of the UNDRIP in the identification of Indigenous peoples, as well as how the intersection of statistics, rights, and recognition politics requires consideration in identifying Indigenous peoples.

Keywords: Indigenous peoples, Statistics, Human Rights, Identification

BACKGROUND

It has been a little over ten years since the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the United Nations General Assembly (1). The document is an essential instrument, providing the backbone for international law and guidance for Member States to implement necessary mechanisms in ensuring the collective values of Indigenous and Tribal peoples¹. The provision of such a document supports the visibility of Indigenous peoples within all nations. However, overall statistics regarding Indigenous peoples still remains inadequate (2). While the UNDRIP provides a range of considered international standards regarding the rights of Indigenous peoples as well as guidance on its practical application within nations, there is still work to be done in embedding the substantive rights within domestic political and legal systems. The realisation of human rights and the reporting on how Indigenous peoples are progressing over time requires the availability of accurate, high quality statistics. Furthermore, specific reporting on the social, economic and health status of Indigenous peoples is an important aspect of assessing progress in addressing global challenges through other international reporting structures such as the United Nations Sustainable Development Goals. This raises critical discussion points regarding the recognition and identification of Indigenous peoples in national and international statistical reporting and also how Indigenous rights, as affirmed and recognised in the UNDRIP are discussed in the development of the identification of Indigenous people.

In contemporary society the term ‘Indigenous peoples’ arises from the assertion that peoples, as opposed to populations, have the right to self-determination (3). This concept of self-determination, and Indigenous peoples right to it, is the critical concept in addressing the right to recognition as Indigenous peoples and therefore the right to be identified and counted within nations. There is no definition of Indigenous peoples in international law. Although, the topic of whether or not Indigenous peoples should be defined was comprehensively considered in the early to mid-1980s (4, 5). Indeed, it is an important consideration in addressing how to operationalise identifying Indigenous peoples within nations. However, while there are a few definitions across a range of United Nations (UN) mechanisms, a definition of Indigenous peoples is not used within the UNDRIP, with the emphasis being upon self-identification.

There is a comprehensive UN international framework for Indigenous rights that includes the UNDRIP, the Special Rapporteur on the Rights of Indigenous Peoples, the Expert Mechanism on the rights of Indigenous peoples and the Permanent Forum on Indigenous Issues (UNPFII) for the purposes of identifying and asserting Indigenous people’s rights. In recognizing these rights, statistics is an important reporting tool. However, there are limitations and variations in the quality of the data pertaining to Indigenous peoples within and between different nations. Specifically, issues arising from the UNPFII Workshop on Data Collection and Disaggregation for Indigenous Peoples specific to the identification of Indigenous peoples included variations in Indigenous definitions, inaccurate reporting of Indigenous identity (due to issues with how the question is asked and limitations in the provision for an

¹ Hereafter, respectfully referred to as Indigenous peoples as a collective term with acknowledgement of the heterogeneity of Indigenous peoples and tribal groups around the world.

individual to respond), ethnic mobility, migration, remoteness², and the propensity of Indigenous peoples to identify in the data (6). It has also been acknowledged that there are limitations in the current statistical systems specific to the accurate and appropriate reporting of Indigenous peoples. The Report of the UN Special Rapporteur on the Rights of Indigenous Peoples states that there are ‘systemic weaknesses in national data collection systems in relation to understanding Indigenous peoples’ and highlighted that ‘epidemiological data often fails to capture information of Indigenous communities and the social determinants of health, thereby making them “invisible”’(7). Further, most of the groups within the international framework have called for improvements in Indigenous statistics. There are currently no international data standards regarding the collection and utilization of existing data pertaining to Indigenous peoples to guide or assist in an international effort to respond to these calls. The roles and responsibilities of governments and how the realisation of these efforts can be addressed and maintained requires further consideration. There are three specific areas of focus to be considered in statistics reporting which includes:

1. Who is counted, which includes considerations regarding the definitions of indigeneity and the operationalization of those definitions;
2. How many people are counted, including issues of the completeness of the coverage and accuracy of enumeration as well as methodologies utilized by national statistics agencies to address these issues; and
3. What is counted and measured, which involves considerations pertaining to the development of indicators and measures that encompass indigenous peoples values and understandings.

This paper focuses on the first focus area, although Indigenous identification and the underlying discussion of indigeneity are central points of discussion in enumeration and measures used in Indigenous relevant statistics.

THE IDENTIFICATION OF INDIGENOUS PEOPLES

There is no definition of Indigenous peoples in international law. There are, however, working definitions that can be used for the purposes of implementing conventions and mechanisms specific to Indigenous peoples within countries.

In 1986, a working definition of Indigenous peoples was offered by the UN Working Group on Indigenous Issues, developed within the comprehensive *Study on the problem of discrimination against indigenous populations* (4):

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

² Remoteness refers to remote and inaccessible areas within countries

The International Labour Organization (ILO) adopted its Convention on Indigenous and Tribal Peoples (169) in 1989 (8). The Convention is a comprehensive international agreement for Indigenous peoples to exercise control over their lives to preserve and develop their identities, languages and cultures. While a definition is provided, according to Convention 169, the fundamental criterion in Indigenous identification is self-identification (8).

Article 1

1. This Convention applies to:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

Although there is no formal international definition of ‘Indigenous peoples’, there are seven features that the UNPFII sets out as a guide for the identification of Indigenous peoples across the globe (9). This includes the: Self- identification as Indigenous peoples at the individual level and accepted by the community as their member; Historical continuity with pre-colonial and/or pre-settler societies; Strong link to territories and surrounding natural resources; Distinct social, economic or political systems; Distinct language, culture and beliefs; Formation of non-dominant groups of society; and Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities (9).

The lack of an international definition, changing definitions within nations and differences between nations, results in challenges in the collection and reporting of data pertaining to Indigenous peoples. There is however, a disconnect in the application of definitions within administrative systems for identifying Indigenous peoples in statistics.

The most recent estimates of Indigenous peoples is at 302.45 million (10). United Nations reporting shows that Indigenous peoples are found within over 90 different countries and seen in almost all regions in the world (11). These estimates arise from best available data; however, the data describing Indigenous peoples arising from nations have a range of limitations. The most recent international reporting on the health and wellbeing of Indigenous peoples utilised an algorithm that encompassed six of the seven identification characteristics outlined by the UNPFII that national reporting captured which resulted in the inclusion of only 23 countries and 28 Indigenous population groups (12). While this reporting provides important information about patterns of inequality, it also highlights current inadequacies in the data systems and the data collected on Indigenous peoples across the globe (12).

THE RIGHTS OF INDIGENOUS PEOPLES AND STATISTICS

The UNDRIP was adopted by the United Nations General Assembly on 13 September 2007. It was voted in through a majority of 144-Member States. The UNDRIP had been under development since 1982 and provides a broad framework of global standards for the Human Rights of Indigenous Peoples (1). It is a representation of “the dynamic development of international legal norms and it reflects the commitment of the UN’s members states to move in certain directions” (1). Furthermore, it covers the individual and collective rights of more than 300 million Indigenous peoples living across the globe. The rights are grouped into the following themes: self-determination; life; integrity and security; cultural; religious; spiritual and linguistic identity; education and public information; participatory rights; lands and resources (6).

Relative to the statistical capabilities of nations and Indigenous communities, there are a range of data sources that can be used in assessing the realization of Indigenous rights and to monitor progress in other international standards. This includes census’, survey data, administrative data and vital statistics. Each with their own properties and data collection limitations. Additionally, while survey data can be collected for the same purposes of the other data collections, it can also be used to develop culturally relevant and appropriate domains, that can provide information on Indigenous peoples on their own terms.

Over the past two decades there has been growing demand for statistical information to address human rights issues and monitor social, economic and health progress of populations. We have seen increased resources and the capacity of nations to have considerable infrastructure for the collection of data and information, advancements in methodologies, the development of general indicators, as well as the availability of basic data and indicators relating to equity (13). With this noted, there have been a range of issues in the coverage and quality of data pertaining to Indigenous peoples (2, 6, 12).

As the first theme of the UNDRIP is self-determination and is a fundamental principle of international law. It states that a people have the right to freely choose their sovereignty and international political status with no interference (14). The concept of self-determination is therefore foundational in how Indigenous peoples decide to engage within their nations.

Specifically, two articles provide for the right to self-determination in the UNDRIP:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to the internal and local affairs, as well as ways and means for financing their autonomous functions.

Indigenous peoples still experience a range of barriers regarding the realization of self-determination within nations. This can impact the relationships between governments and Indigenous peoples (15). The extent of the impact that barriers to self-determination can have on national and international Indigenous reporting is still yet to be determined.

To apply self-determination, and in order to self-identify for reporting purposes, there is a requirement for Indigenous peoples to come into their own identity. Specifically, Article 33 of the UNDRIP describes Indigenous peoples right to identity:

Article 33

Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

The identification of Indigenous peoples in the reporting of the UN Sustainable Development Goals (SDGs) is an obligation of Member States. Specifically, Indigenous peoples are included across several articles in the global indicator framework to measure progress in the UN SDGs. Article 79 of the SDGs emphasizes that Member States should discuss reporting processes with Indigenous peoples and to have the capacity to review progress in alignment with current national systems and governance.

Article 79

We also encourage Member States to conduct regular and inclusive reviews of progress at the national and subnational levels which are country-led and country driven. Such reviews should draw on contributions from indigenous peoples, civil society, the private sector and other stakeholders, in line with national circumstances, policies and priorities. National parliaments as well as other institutions can also support these processes.

The role and responsibility of official statistics agencies is to provide a national statistical system to produce accurate and meaningful statistics (16). Moreover, the United Nations Fundamental Principles of Official Statistics states official statistics provides information in supporting the Government, economy and the public, as well as collecting data and disseminating its respective information about economic, demographic, social and environmental situations (17). It is therefore imperative for the rights of Indigenous peoples to be considered and imbedded within statistical reporting structures to capture and produce accurate and meaningful statistics regarding Indigenous peoples.

THE POLITICS OF RECOGNITION IN OFFICIAL STATISTICS PERTAINING TO INDIGENOUS PEOPLES

There are considered demands of Indigenous peoples around the world for the recognition of their distinctive cultures, connectedness to land, traditional knowledges and traditional political processes. In

regards to international statistical efforts, there has been limited progress in the recognition of Indigenous peoples rights (2). The politics of recognition is usually a philosophical discussion, which has ethical, social and political significance regarding how Indigenous rights and the right to self-determination are considered and applied within current statistical processes. The aim here is not to go through the different theories of recognition politics, but to identify some of the significant theoretical concepts that are critical to address with regards to the recognition and identification of Indigenous peoples within national statistics.

The recognition of Indigenous peoples across national statistics has been achieved within the context of colonialism and racialized settings. Theoretically, the recognition of Indigenous peoples within colonial settings works to reproduce a colonial structure and provides Indigenous peoples with colonizer-sanctioned forms of recognition (18). The right to be counted has historically fallen under hegemonic processes, whereby rights were granted to Indigenous peoples. The parameters regarding the recognition of identity can be achieved by Indigenous peoples for Indigenous peoples. However, the procedure of recognition of Indigenous peoples within nations and the formalization of identifying Indigenous peoples in official statistics reporting is typically granted within existing Western forms of governance and reporting processes. The concept of granting permissions is based on a hegemonic relationship, as often seen between colonized Indigenous peoples and governments. As an example, the Australian government subjectively counted Indigenous people for the purposes of excluding them from the nations census counts from 1901 through to the 1967 referendum, when a national democratic vote resulted in constitutional change that saw Indigenous Australians being included in census counts (19). This example shows how Indigenous issues are domesticated within Western structures. It is also worth noting that it was only through a moral imperative, through a national vote, that enabled the recognition of Indigenous Australians to be included in the official Australian picture.

There is, however, a strong movement towards data sovereignty with regards to the collection, ownership and use of data pertaining to Indigenous peoples. Indigenous data sovereignty aims to include the inherent and inalienable rights and interests of Indigenous peoples in regards to data storage, ownership, access and consent of data and the considerations on how data is used in the context of research, policy and practice (20). The movement is driven by the concept of self-determination. In terms of the theory in recognition politics, this is through the process of anti-colonial agency and empowerment (21). That is, Indigenous peoples making decisions through their own models of governance, without reliance upon Western constructs, for their own purposes. The most refined example of this is the work arising from The First Nations Information Governance Centre (FNIGC) where the Centre vision is for all First Nations peoples to achieve data sovereignty that applies OCAP® principles to ensure that First Nations peoples are stewards of their own data (22). There are a number of Indigenous communities across the globe that are working towards data sovereignty today, many of which work with national or jurisdictional government agencies to achieve their aims.

Theoretical understandings of recognition can work towards providing a useful framework in the considered steps forward to address existing and arising issues regarding the identification of Indigenous peoples. This potential approach, however, requires much more development and refinement. This requires exploring possibilities regarding how human rights can be applied in addressing the issues that arise in recognition politics. The specific issues of colonization, hegemony, anti-colonial agency and

empowerment that has been discussed here, are by no means a comprehensive list. And additionally, further work is needed in how these developments can be further applied to direct improvements in official statistics reporting of Indigenous peoples.

CONCLUDING COMMENTS

The identification of Indigenous peoples within official statistics reporting requires more attention and strategic collaborations. While we have shown that Indigenous peoples have the right to be counted in accordance with the UNDRIP and other international human rights mechanisms, Indigenous peoples must be counted in official statistics reporting. To do this official statistics agencies within nations must have an Indigenous identifier, that aligns with Indigenous peoples rights to identity and identification. Accurate identification of Indigenous peoples in official reporting structures, however, involves a complex entanglement of human rights, recognition politics and indigeneity in addition to statistical methods in enumeration. This is no simple task. There is a clear need for international recommendations that nations can use in developing quality and meaningful statistics pertaining to Indigenous peoples which includes information specific to Indigenous identification. Drawing on the successes and the lessons from other nations, there is a real opportunity for the realization for the right to self-determination to drive improvement in international Indigenous statistics and the right to be counted.

REFERENCES

1. United Nations Declaration on the Rights of Indigenous Peoples: Adopted by the General Assembly on 13 September 2007, (2008).
2. Madden R, Axelsson P, Kukutai T, Griffiths K, Storm Mienna C, Brown N, et al. Statistics on indigenous peoples: International effort needed. *Statistical Journal of the IAOS*. 2016;32(1):37-41.
3. Tennant C. Indigenous Peoples, International Institutions, and the International Legal Literature from 1945-1993. *Human Rights Quarterly*. 1994;16(1):1-57.
4. Martinez Cobo J. Study of the problem of discrimination against indigenous populations. New York: United Nations; 1986-87. Contract No.: UN Doc. E/CN.4/Sub.2/1986/7.
5. Martinez Cobo J. Chapter V - Definition of indigenous populations. New York: United Nations; 1982.
6. Davis M. Data and the United Nations Declaration on the Rights of Indigenous Peoples. *Indigenous Data Sovereignty: Toward an agenda*. Indigenous Data Sovereignty: Toward an agenda. 38: ANU Press; 2016. p. 25-38.
7. Corpez VT. Report of the Special Rapporteur on the rights of indigenous peoples. 2015. Contract No.: A/HRC/30/41.
8. Indigenous and Tribal Peoples Convention, 1989 (No. 169), (1989).
9. United Nations Permanent Forum on Indigenous Issues. Who are Indigenous peoples? n.d. [Available from: https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf].
10. Hall GH, Anthony Patrinos H. Indigenous peoples, poverty, and development: Cambridge University Press; 2012. 1-406 p.
11. United Nations. State of the world's indigenous peoples. In: United Nations Department of Economic and Social Affairs DfSPaD, Secretariat of the Permanent Forum on Indigenous Issues,, editor. New York 2009.
12. Anderson I, Robson B, Connolly M, Al-Yaman F, Bjertness E, King A, et al. Indigenous and tribal peoples' health (The Lancet/Lowitja Institute Global Collaboration): a population study. *The Lancet*. 2016;388(10040):131-57.
13. United Nations System Task Team on the Post-2015 UN Development Agenda. Statistics and indicators for the post-2015 development agenda. In: Nations U, editor. New York 2013.
14. United Nations. Charter of the United Nations and Statute of the International Court of Justice. United Nations Conference on International Organization; 1945.
15. Aboriginal and Torres Strait Islander Social Justice Commissioner. Chapter 2: Self-determination - the freedom to 'live well', Social Justice Report. Sydney: Australian Human Rights and Equal Opportunity Commission; 2002.
16. Dalenius TE. Official Statistics and Their Uses. *Revue de l'Institut International de Statistique / Review of the International Statistical Institute*. 1968;36(2):121-40.
17. Fundamental Principles of Official Statistics, (2014).
18. Hegel GWF. Georg Wilhelm Friedrich Hegel: The Phenomenology of Spirit. Cambridge: Cambridge University Press; 2018.
19. Attwood B, Marcus A. The 1967 Referendum: race, power and the Australian Constitution (2nd ed.) Canberra: Aboriginal Studies Press, Australian Institute of Aboriginal and Torres Strait Islander Studies; 2007.

20. Kukutai T, Taylor J. Data sovereignty for indigenous peoples: current practice and future needs
In: Kukutai T, Taylor J, editors. Indigenous Data Sovereignty: Toward an agenda. CAEPR Research Monograph No. 38. Canberra2016. p. 1-24.
21. Fanon F. Black Skin, White Masks. France: Editions de Seuil; 1952.
22. First Nations Information Governance Centre. Understanding the First Nations Principles of OCAP®. In: First Nations Information Governance Centre, editor.