

# CONSTITUTION OF THE INTERNATIONAL INDIGENOUS TRIBUNAL (IIT)

## Preamble

We, the Indigenous Peoples of the world, in recognition of our inherent sovereignty, historical significance, cultural integrity, and right to self-determination, establish this Constitution for the **International Indigenous Tribunal (IIT)**. Our goal is to ensure justice for Indigenous and non-Indigenous persons within Indigenous territories, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and other relevant international laws. This Tribunal upholds our collective responsibility to maintain our traditions and customs, respect human dignity, and safeguard the rights of defendants.

This Constitution outlines the rights of defendants, the authority of Indigenous governance, and the operational procedures of the IIT. It ensures the protection of fundamental rights under international law while stressing the importance of cultural practices, values, and customs in the administration of justice.

## Chapter 1: Authority and Governance of the IIT

### Article 1: Sovereignty and Self-Governance

1. The IIT derives its authority from the inherent right of Indigenous Peoples to self-determination, as recognized by **UNDRIP (Articles 3, 4, 5)** and the **International Covenant on Civil and Political Rights (ICCPR, Article 1)**.
2. Indigenous Peoples have the right to govern themselves in matters related to justice, including legal proceedings, through their own institutions, laws, and practices, subject to compliance with international human rights standards.
3. The IIT operates independently of any national court system, and decisions made by the Tribunal are final, binding, and recognized at the international level under **UNDRIP (Article 34)**.
4. **Eligibility for Membership:**  
To be eligible for membership in the Indigenous International Tribunal (IIT), applicants must demonstrate verifiable Indigenous lineage extending back **seven (7) generations**. Lineage may be proven through:
  - o **Official tribal enrollment records** from federally or state-recognized tribes.

- **Documentation of membership in non-recognized tribes**, including historical records, genealogical evidence, or community-based recognition of Indigenous ancestry.
- **Documentation Standards:**  
Acceptable forms of documentation for establishing Indigenous lineage include, but are not limited to:
  - Official enrollment records from federally or state-recognized tribes,
  - Historical or government documents linking the family to Indigenous ancestry, such as birth, marriage, or death records,
  - Genealogical research certified by recognized historians or lineage-tracking organizations,
  - Records or declarations from non-recognized tribes, including community recognition and oral history, verified by tribal elders or leaders.
- **Inclusion of Non-Recognized Tribes:**  
Recognizing the impact of colonization and forced displacement on Indigenous communities, the IIT shall honor the lineage claims of individuals affiliated with **non-recognized tribes**, provided that:
  - Applicants can provide documentation from community or tribal authorities verifying their familial and cultural ties,
  - Applicants may supplement claims with oral histories and testimony from tribal elders to substantiate their lineage when formal documentation is unavailable.
- **Review Process:**  
A designated committee of the Tribunal will review applications for membership based on Indigenous lineage. This committee shall consult with both recognized and non-recognized tribal authorities, cultural experts, and genealogists to ensure the accuracy of claims. Consideration shall be given to individuals whose families were impacted by historical or cultural disruptions, with flexible approaches to documentation where appropriate.

**1. Protection of Ancestral Identity:**

The IIT is committed to upholding the integrity of Indigenous ancestry and cultural heritage. This clause serves to ensure that membership reflects genuine ties to Indigenous ancestry, respecting the diversity of recognized and non-recognized Indigenous communities.

**Article 2: Recognition by International Law**

1. The IIT is recognized by the international community as a legitimate body for the adjudication of disputes involving Indigenous and non-Indigenous persons, based on principles of justice, equity, and respect for cultural heritage.

2. **UNDRIP (Article 40)** and the **American Declaration on the Rights of Indigenous Peoples** affirm the right of Indigenous Peoples to access effective judicial systems that align with their cultural and legal traditions.
3. IIT operates in accordance with international norms established by the **Universal Declaration of Human Rights (UDHR)** and the **International Covenant on Civil and Political Rights (ICCPR)**, ensuring respect for the rights of all persons appearing before the Tribunal.

## **Chapter 2: Rights of Defendants**

### **Article 3: Universal Rights and Protections**

1. **Fair Trial and Due Process (ICCPR, Article 14; UNDRIP, Article 40)**
  - All defendants have the right to a fair and public trial within a reasonable time by a competent, independent, and impartial tribunal.
  - Defendants are entitled to the presumption of innocence until proven guilty beyond a reasonable doubt.
  - Defendants shall be informed promptly of the charges against them and shall have the right to present a defense.
2. **Right to Counsel and Legal Representation (ICCPR, Article 14; UNDRIP, Article 40)**
  - Defendants have the right to effective legal representation, and for indigent defendants, legal counsel shall be provided by the Tribunal at no cost.
3. **Right to Language and Cultural Interpretation (UNDRIP, Articles 13, 40)**
  - Indigenous defendants have the right to legal proceedings conducted in their own language or with the assistance of a translator. The Tribunal respects the customs, languages, and legal traditions of the Indigenous Peoples involved in the case.
4. **Right to an Impartial Jury (ICCPR, Article 14)**
  - All defendants have the right to a trial by an impartial jury, drawn from a fair cross-section of the community. Jury selection processes must not systematically exclude any group, particularly based on ethnicity or Indigeneity.

### **Article 4: Rights Specific to Indigenous Defendants**

1. **Cultural and Traditional Protections (UNDRIP, Articles 11, 12, 13, 34)**
  - Indigenous defendants have the right to have their cultural identity, customs, and legal traditions respected throughout the legal process.
  - The Tribunal must ensure that the defendant's cultural practices are taken into consideration during hearings, sentencing, and any other relevant legal procedures.
2. **Restorative Justice Principles (UNDRIP, Articles 7, 40)**

- Indigenous defendants may request a restorative justice approach, allowing for traditional forms of dispute resolution that prioritize reconciliation, community well-being, and the restoration of harmony.

## **Chapter 3: Procedures for Case Processing**

### **Article 5: Intake and Case Processing**

#### **1. Intake of Cases**

- **Jurisdiction:** The IIT exercises jurisdiction over criminal and civil cases involving Indigenous persons and non-Indigenous persons within Indigenous territories or cases involving disputes related to Indigenous rights, customs, or territories. Cases may be brought before the IIT by an Indigenous individual, a community, or an international body.
- **Preliminary Review:** Upon receiving a case, the IIT Registrar will conduct a preliminary review to ensure that the case falls within the Tribunal’s jurisdiction. This review will assess whether the matter involves Indigenous laws, customs, or rights protected by international law.
- **Acceptance or Rejection:** Once the preliminary review is complete, the Registrar will notify the parties involved of the acceptance or rejection of the case within 30 days.

#### **2. Pre-Trial Procedures**

- **Investigation:** The IIT may order a preliminary investigation of the facts surrounding the case, including cultural context, traditional practices, and any violations of rights.
- **Mediation and Reconciliation:** For civil disputes, the IIT will encourage mediation or reconciliation in accordance with Indigenous practices and cultural norms, where possible, before moving to trial.

## **Chapter 4: The Trial Process**

### **Article 6: Structure and Conduct of the Trial**

#### **1. Court Composition**

- The Tribunal shall consist of judges with extensive knowledge of international law and Indigenous customs, and one or more may be selected from the local Indigenous community involved in the case.
- The panel of judges will ensure cultural sensitivity and expertise in handling matters related to Indigenous traditions and international standards of justice.

#### **2. Trial Process**

- **Opening Statements:** Both parties (the prosecution and the defense) will present their opening statements.
  - **Examination of Witnesses:** The defendant has the right to cross-examine all witnesses. Indigenous witnesses may provide testimony according to their cultural practices, which must be respected by the Tribunal.
  - **Evidence:** All evidence, including oral traditions, sacred customs, and documented materials, will be admitted based on their relevance and cultural significance.
  - **Closing Arguments:** The prosecution and defense will have the opportunity to present their closing arguments.
3. **Verdict and Judgment**
- After the trial, the judges will deliberate in private. The verdict will be based on the evidence presented, the application of both Indigenous and international legal standards, and the protection of fundamental rights.
  - The judgment must be issued in writing and communicated in a language understood by all parties. The reasoning behind the decision must take into account both legal and cultural considerations.

## **Chapter 5: Specific Procedures for Indigenous and Non-Indigenous Defendants**

### **Article 7: Indigenous Defendants**

#### **1. Cultural Sensitivity**

- Indigenous defendants have the right to have their case adjudicated according to Indigenous customs and laws, provided they are consistent with internationally recognized human rights standards.
- The Tribunal will consult with local Indigenous elders or legal experts to ensure that the defendant's cultural context is fully respected.

#### **2. Restorative Justice**

- The Tribunal may offer Indigenous defendants the option to engage in restorative justice practices, including reconciliation with the victim or community, instead of punitive measures.

### **Article 8: Non-Indigenous Defendants**

#### **1. Equal Treatment**

- Non-Indigenous defendants are entitled to equal treatment under the law, with the same procedural and substantive rights as Indigenous defendants.
- However, non-Indigenous defendants must respect the customs, laws, and procedures of the Indigenous community in whose territory the alleged crime occurred.

#### **2. Cultural Education**

- In cases involving non-Indigenous defendants, the Tribunal may require the defendant to undergo cultural education programs to foster understanding of the Indigenous laws and customs relevant to the case.

## **Chapter 6: Appeal and Enforcement**

### **Article 9: Right to Appeal**

#### **1. Grounds for Appeal**

- Any party to the case has the right to appeal a decision of the IIT. Grounds for appeal may include procedural irregularities, errors in the application of law, or violations of the defendant's rights.

#### **2. Appellate Review**

- Appeals will be reviewed by a higher chamber of the IIT, consisting of judges not involved in the original case.

### **Article 10: Enforcement of Judgments**

#### **1. Binding Nature**

- Judgments of the IIT are final and binding. Member states and international bodies are required to respect and enforce the Tribunal's rulings, in accordance with international law and UN declarations.

#### **2. Implementation**

- The IIT works with Indigenous communities, national governments, and international organizations to ensure the implementation of its rulings in a manner consistent with Indigenous customs and international human rights norms.

## **Conclusion**

The International Indigenous Tribunal (IIT) affirms the right of Indigenous Peoples to self-governance, justice, and the protection of cultural integrity. Through its procedures, the Tribunal ensures that both Indigenous and non-Indigenous persons receive fair treatment, rooted in the principles of equality, respect for human dignity, and the recognition of cultural diversity. This Constitution reflects the historical and ongoing importance of Indigenous self-governance in the administration of justice at the international level.

# Cite Listing

The sources and resources used in outlining the rights of defendants for the **International Indigenous Tribunal (IIT)** are grounded in international human rights treaties, declarations, and legal frameworks, along with specific guidelines relating to Indigenous rights. Here are the main sources cited:

## International Laws and Legal Frameworks

### 1. International Covenant on Civil and Political Rights (ICCPR)

- Adopted by the United Nations General Assembly in 1966, the ICCPR is a key international treaty that provides for fundamental civil and political rights, including the right to a fair trial, protection from torture, and equal treatment before the law.
- Relevant Articles:
  - **Article 9:** Protection against arbitrary arrest and detention.
  - **Article 14:** Rights to a fair trial, presumption of innocence, legal representation, and protection against self-incrimination.
  - **Article 26:** Right to equal protection and non-discrimination.

### 2. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

- Adopted by the UN General Assembly in 2007, UNDRIP sets the minimum standards for the survival, dignity, and well-being of Indigenous peoples, and highlights their right to self-determination and cultural integrity.
- Relevant Articles:
  - **Article 2:** Equality and non-discrimination.
  - **Article 7:** Protection from arbitrary detention and violence.
  - **Article 11:** Right to practice and revitalize cultural traditions and customs.
  - **Article 13:** Right to preserve and protect Indigenous languages.
  - **Article 34:** Right to promote and practice customs and legal systems.
  - **Article 40:** Right to access fair procedures for dispute resolution and redress.

### 3. Universal Declaration of Human Rights (UDHR)

- Adopted by the UN in 1948, the UDHR provides a foundation for universal human rights standards and serves as a guideline for many international and national laws.
- Relevant Articles:
  - **Article 3:** Right to life, liberty, and security.
  - **Article 7:** Equality before the law and protection from discrimination.
  - **Article 10:** Right to a fair and public hearing.

- **Article 11:** Presumption of innocence and protection from retroactive laws.

## **Indigenous Rights Frameworks and Tribunals**

### **1. ILO Convention No. 169 on Indigenous and Tribal Peoples**

- Adopted by the International Labour Organization in 1989, this legally binding convention recognizes Indigenous peoples' rights to land, cultural preservation, and self-governance.
- Relevant Sections:
  - **Part VI (Articles 8-12):** Indigenous peoples' rights to maintain their own judicial systems and customary laws, provided they align with national and international human rights standards.

### **2. American Declaration on the Rights of Indigenous Peoples (ADRIP)**

- Adopted by the Organization of American States (OAS) in 2016, ADRIP complements UNDRIP and provides additional protections for Indigenous peoples in the Americas.
- Relevant Articles:
  - **Article XXI:** Right to autonomy or self-government.
  - **Article XXII:** Right to cultural integrity.
  - **Article XXV:** Right to participate in the legal process and access justice without discrimination.

### **3. Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA Region**

- Adopted in 1995, this document sets out the principles of judicial independence applicable to courts, including Indigenous judicial bodies, throughout Asia and the Pacific.
- Focus: Independence and impartiality of tribunals in Indigenous communities.

## **Restorative Justice and Customary Legal Practices**

### **1. Restorative Justice Practices in Indigenous Communities**

- Various Indigenous communities around the world practice restorative justice as part of their legal systems. This focuses on repairing harm through reconciliation and community-based solutions, rather than purely punitive measures.
- Resources:
  - **The Indigenous Justice Clearinghouse (Australia):** Resources on Indigenous legal traditions, including restorative practices.
  - **Maori Restorative Justice (New Zealand):** Indigenous-led restorative processes.



## Other International Guidelines and Reports

### 1. United Nations Office on Drugs and Crime (UNODC)

- UNODC's work on promoting the rule of law includes guidelines on human rights protections in criminal justice systems, with special attention to vulnerable populations, including Indigenous peoples.
- Relevant Resource: "**Handbook on Restorative Justice Programmes**" (UNODC, 2006).

### 2. UN Special Rapporteur on the Rights of Indigenous Peoples

- Reports and recommendations from the UN Special Rapporteur often serve as a guiding framework for Indigenous self-governance and judicial practices, emphasizing the right to self-determination, fair justice, and cultural preservation.

## Cultural and Historical Relevance

### 1. Historical Legal Traditions of Indigenous Peoples

- Various Indigenous nations around the world have long-established legal traditions that stress collective responsibility, reconciliation, and the role of community in maintaining order. The IIT draws from these traditions while aligning with modern international legal norms.
- Examples include:
  - **Navajo Peacemaking** (North America).
  - **Inuit Customary Law** (Greenland and Canada).
  - **Aboriginal Law in Australia**.

By drawing upon these various sources—**international human rights treaties, Indigenous rights declarations, and customary law frameworks**—the IIT seeks to uphold the highest standards of justice while respecting the cultural and legal sovereignty of Indigenous peoples.

# Rights of the Defendant

The rights of the defendant in the **International Indigenous Tribunal (IIT)** are designed to balance international human rights standards with respect for Indigenous laws and cultural practices. These rights ensure fairness, protect dignity, and safeguard the fundamental freedoms of any individual facing charges, regardless of their Indigenous or non-Indigenous status. Below is a detailed explanation of these rights, with reference to both international legal frameworks and Indigenous customs:

## 1. Right to a Fair Trial and Due Process

(ICCPR Article 14; UNDRIP Article 40)

The right to a fair trial is one of the cornerstones of both international and Indigenous legal systems. Defendants are guaranteed the following protections:

- **Impartial and Independent Tribunal:** Defendants must be tried by a neutral body, free from any bias or external influence. The IIT ensures that judges and juries are independent and not influenced by political or external factors, ensuring impartiality.
- **Presumption of Innocence:** The defendant is presumed innocent until proven guilty beyond a reasonable doubt. This principle, central to global justice systems, protects individuals from unjust punishment without proper evidence.
- **Right to Know the Charges:** Defendants must be promptly informed of the charges against them in clear and understandable terms, allowing them to prepare an effective defense.

## 2. Right to Counsel and Legal Representation

(ICCPR Article 14(3)(d); UNDRIP Article 40)

Defendants have the right to be represented by a lawyer or legal advocate throughout the legal process:

- **Effective Legal Representation:** Defendants have the right to seek assistance from a qualified legal professional. In cases where the defendant cannot afford a lawyer, the Tribunal will provide counsel free of charge, ensuring that economic status does not impact access to justice.
- **Counsel for Indigent Defendants:** Special provisions are made for indigent defendants (those who cannot afford legal representation), ensuring they are not disadvantaged by financial circumstances. This aligns with both international human rights standards and the IIT's commitment to fairness.

### 3. Right to an Impartial Jury

(ICCPR Article 14(1); UNDRIP Article 40)

Defendants have the right to a trial by a jury that is impartial and representative of the community:

- **Cross-Section of the Community:** The jury must reflect the diversity of the community, including members from different ethnic, cultural, and social backgrounds. For example, in Indigenous territories, juries must include both Indigenous and non-Indigenous members, as long as it respects the customs of the Tribe and ensures fairness.
- **No Systematic Exclusion:** The process for selecting jurors must not systematically exclude any group, particularly on the basis of ethnicity, gender, or other distinctive characteristics. This ensures that juries are impartial and fair.

### 4. Right to Language and Cultural Interpretation

(UNDRIP Articles 13, 40; ICCPR Article 14(3)(f))

The IIT respects the linguistic and cultural diversity of Indigenous defendants:

- **Right to an Interpreter:** If the defendant does not speak or understand the language of the court, they are entitled to a competent interpreter free of charge. This ensures the defendant can fully understand the proceedings and effectively communicate their defense.
- **Cultural Sensitivity in Proceedings:** Indigenous defendants may request that certain proceedings be conducted in accordance with their cultural customs. The Tribunal must

accommodate these requests as long as they are consistent with human rights standards. This can include the use of traditional dispute resolution methods or sacred practices during the trial.

## **5. Right to Equal Protection and Non-Discrimination**

**(ICCPR Article 26; UNDRIP Articles 2, 15, 40)**

Defendants are entitled to equal treatment under the law, without discrimination based on race, ethnicity, culture, or other protected characteristics:

- **Non-Discrimination:** The IIT ensures that Indigenous and non-Indigenous defendants receive equal protection under the law. The legal proceedings must be free from racial, ethnic, gender, or cultural bias.
- **Cultural Integrity:** The defendant's cultural practices, beliefs, and identity are respected. For example, an Indigenous defendant may request the involvement of a tribal elder or community leader as part of the proceedings.

## **6. Right to Protection from Arbitrary Detention**

**(ICCPR Article 9; UNDRIP Article 7)**

Defendants have the right to be protected from arbitrary arrest, detention, or exile:

- **No Arbitrary Arrest:** The IIT ensures that no individual is arrested without legitimate legal grounds. Arrest and detention must be based on clear evidence, and the defendant must be informed of the reasons for their arrest.
- **Prompt Judicial Review:** Once detained, the defendant has the right to prompt judicial review to assess the legality of their detention.

## **7. Right Against Self-Incrimination and Torture**

**(ICCPR Article 7, Article 14(3)(g); UNDRIP Article 7)**

Defendants are protected from self-incrimination and cruel, inhumane, or degrading treatment:

- **Protection Against Self-Incrimination:** Defendants cannot be compelled to testify against themselves or confess guilt under duress or coercion. Any evidence obtained through torture or cruel treatment is inadmissible.
- **Freedom from Torture and Cruel Treatment:** The IIT upholds the international prohibition against torture and other forms of inhumane treatment. Defendants must be treated with dignity and respect throughout their detention and trial process.

## 8. Right to Bail and Reasonable Conditions of Detention

(ICCPR Article 9(3); UNDRIP Article 7)

Defendants have the right to reasonable bail and humane conditions while in detention:

- **Bail:** The IIT recognizes the right of defendants to apply for bail, ensuring that bail conditions are not excessive or punitive. The decision to grant bail must be based on the severity of the crime and the risk to the community.
- **Detention Conditions:** Defendants must be held in humane conditions while awaiting trial. This includes access to adequate food, medical care, and clean living environments in line with international human rights standards.

## 9. Right to Confrontation and to Present a Defense

(ICCPR Article 14(3)(e); UNDRIP Article 40)

Defendants have the right to defend themselves fully, including:

- **Right to Confront Witnesses:** The defendant has the right to confront and cross-examine any witnesses brought against them in the trial. This ensures transparency and fairness in the presentation of evidence.
- **Right to Present a Defense:** The defendant can call witnesses, provide evidence, and testify on their own behalf. The IIT must allow the defense to gather witnesses and evidence necessary to support their case.

## 10. Right to Appeal

(ICCPR Article 14(5); UNDRIP Article 40)

Defendants have the right to appeal a conviction or sentence:

- **Right to a Higher Tribunal:** If a defendant believes their trial was unjust or their rights were violated, they may appeal the decision to a higher body within the IIT. This appeal ensures oversight and correction of potential errors or violations of due process.
- **No Undue Delay:** The appeal process must occur without undue delay, ensuring the defendant's right to a timely review of the case.

## 11. Limits on Punishment

(ICCPR Article 10; UNDRIP Article 7)

Defendants are protected from excessive punishment or inhumane sentencing:

- **Proportional Sentencing:** The punishment for any crime must be proportionate to the offense. Excessive or inhumane punishments are prohibited under international law.
- **No Cruel or Unusual Punishment:** Sentencing practices must comply with international standards, prohibiting forms of punishment that are considered cruel, degrading, or inhumane.

## 12. Right to Restorative Justice

(UNDRIP Articles 11, 34, 40)

Indigenous defendants have the right to request restorative justice methods:

- **Restorative Practices:** Indigenous defendants may be offered the option of resolving disputes through restorative justice methods, such as reconciliation, community service, or traditional ceremonies, in cases where this aligns with the customs and laws of the Indigenous community.
- **Community Involvement:** Restorative justice involves the active participation of the community, the victim, and the defendant, and seeks to heal relationships rather than

simply punish wrongdoing.

## **Cultural and Historical Importance**

The recognition and protection of defendants' rights in the IIT are rooted in the historical struggle of Indigenous Peoples for self-determination and cultural preservation. Indigenous legal traditions are often centered on community harmony, reconciliation, and restorative justice, which differ from punitive approaches found in many non-Indigenous legal systems. The IIT integrates these traditions while adhering to international human rights standards, ensuring that justice is achieved in a culturally relevant and respectful manner.

By upholding these rights, the IIT not only ensures fairness for all individuals but also reinforces the sovereignty of Indigenous Peoples and their right to administer justice according to their customs and laws, as recognized by **UNDRIP** and other international legal instruments.