

Forum: Human Rights Council (HRC)
Question of: Preserving the Rights of Indigenous People Under International Law
Student Officer: Shwe Thone Diri, Deputy Assistant President

Introduction

Even with the diversity that comes with the number of groups included under the term “indigenous people ” there is no definition of indigenous people under the International Law - the United Nations Declaration on the Rights of Indigenous People (UNDRIP) - which was adopted by the General Assembly in 2007 with means to “apply human rights to indigenous people (and) reverse historical exclusion from the integrational system”.¹ While their definition may be indefinite, their struggles and sufferings are not. The rights of indigenous people under International Law have evolved throughout the years from the current existing laws to the human rights treaties to address the specific complications of the rights of the indigenous people such as their right to lands, resources, and culture. Unfortunately, the implementation of their rights is one with multiple flaws. As a result of modern-day colonization practices for the development and extraction of resources, threats on the land, territories, resources, and rights of passage - economic, social, and cultural rights - of the indigenous people have been put at risk. While modern society recovers and progresses at a malleable rate after the global pandemic, indigenous people are at risk of becoming extinct due to their lack of access to effective monitoring, adequate healthcare, and more. Overall, their vulnerability has been exaggerated by intergenerational traumas that arise as a result of discrimination and even colonization practices due to the lack of security by international laws.

With high rates of malnutrition, poverty, and homelessness and much lower literacy rates as well as access to health care Indigenous people are at high risk with no protection under International Law. Some of the current active threats to the Indigenous People are as follows²:

- 1) State discrimination, such as withholding citizenship or rights afforded other citizens, the tactical use of violence to intimidate and control and legislation that defines basic Indigenous activities as illegal and punishable by imprisonment, torture, and death”

¹ <https://www.ohchr.org/Documents/Publications/fs9Rev.2.pdf>

² <http://www.firstpeoples.org/the-challenges-we-face.htm>

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- a) States refusing to recognize the Indigenous Tribes and Peoples due to a conflict in beliefs/lack of legalization documents
 - i) The Bureaucratic process to be recognized as an indigenous tribe in some nations can be an extensive process that either the governments refuse to provide or the tribes lack enough “resources” such as but not limited to - proof of certain lands and practices, money to carry out the legalization process, etc.
- 2) Eviction from their own native land by their own government for the interest of resource exploitation and profit
- 3) Eviction of their natural resources including their agricultural lands and mineral resources for corporate profits

At the same time, few nations such as China fail to recognize the term Indigenous People as well as fail to recognize Indigenous groups as legitimate parties, and therefore rights have been excluded from political forums defending their rights. These nation-states failure to recognize indigenous people not only puts the safety of the Indigenous people at risk but also removes them from any lawful rights or justification in legality issues. Having been stripped from their rights to self-govern as given by the UNDRIP (Article 3) as laws to protect Indigenous People in separating countries are not enforced or require a legal process in order for businesses to profit and benefit from them, the community becomes impoverished. Often beaten or killed during government and company-induced evictions, their homes and resources perished right before their eyes as the Indigenous people then became forced to fight for their rights and resources. During this process, Indigenous women and children are put at higher risk before the eyes of their community as well as others due to their “less-than-human status in their dominant culture” and are therefore more likely to be raped and sexually harassed, and assaulted than any other group.³

Having faced traction with International Law since World War II, the indigenous people have been “classified under the scope of domestic law, and have propelled their cause into the global arena.” While each and every Indigenous society differ from one another in a massive contrast, they share the lack of lawful rights to their lands (statehood), economic, political, and social marginalization, and intergenerational racial and cultural discrimination. Within the past couple of years, more nations are starting to recognize the full impact of the importance of recognizing indigenous societies as a whole, and therefore several international institutions that seek to address indigenous rights have been established. The Universal Declaration of Human rights in 148 was the first international document that recognized

³ Ibid 2

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the urgency of the rights of the indigenous groups and their much-needed protection and so has teamed up with external parties such as Working Group on Indigenous Populations, The First Nations and other NGOs such as but not limited to : Center for World Indigenous Studies, Cultural Survival and Centre for World Indigenous Knowledge and Research.

“However, the majority of the indigenous rights scholarship only examines the policy on indigenous rights, rather than the broader contexts of indigenous rights or the rise of indigenous rights as a phenomenon.”⁴ Among the major developments throughout the years from the partnerships, the International Non-Governmental Organization Conference on the Discrimination Against Indigenous Populations in the Americas was organized as a part of the NGO-Sub Committee on Racism, Racial Discrimination, Apartheid and Colonialism. “The 1977 Conference contributed to forging a transnational indigenous identity that subsequently expanded to embrace indigenous peoples from other parts of the world. The conference also helped establish a pattern of coordination among indigenous peoples from throughout the world in the formulation and communication of their demands.” The conference was able to allow an increase in the number indigenous peoples’ representatives before U.N bodies, coming to establish and generally demand their human rights principles. The current international law for indigenous peoples includes ILO Convention No.169 and customary law which demands for the “mobilization of social forces through the human rights frame of the contemporary international system”.⁵ However this has “resulted in a heightened international concern over indigenous peoples and a constellation of internationally accepted norms generally in line with indigenous peoples' own demands and aspirations.”

Definition of Key Terms

Indigenous People

As mentioned previously, the UNDRIP does not have a definite definition for the term “Indigenous People” however broadly they have been defined as social and cultural groups that share and value their sentimental and significant ties to their ancestral lands and resources. However, there has been a distinction between Indigenous People and Tribes in terms of their rights in the UNDRIP.

Tribes in independent countries have been distinguished as “those whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is

⁴ <https://oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-77>

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<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/international-law-and-indigenous-peoples-historical-stands>

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regulated wholly or partially by their own customs or traditions or by special laws or regulations” and Indigenous People as “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 colonization 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.”

International Law

International law defines the legal responsibilities of States in their conduct with each other, and their treatment of individuals within State boundaries. Its domain encompasses a wide range of issues of international concern such as human rights, disarmament, international time, refugees, migration, nationality, and conduct of war among others. It regulates the global commons such as sustainable development, international waters, and world trade.

The rights of the Indigenous People are expected to be covered and protected by International Law however with recent circumstances and lack of legal establishment within separate countries there has been little to no action protecting the rights and the safety of these indigenous groups and are now therefore at higher risk than before under International Law.

Indigenous Rights Under International Law

Indigenous peoples' rights under international law have evolved from existing international law, including human rights treaties, to address the specific circumstances facing indigenous peoples as well as their priorities, such as rights to their lands, territories, and resources, and self-determination.

Economic, Social, and Cultural Rights

Economic, Social, and Cultural Rights as known as the ESCR includes the right of all people to adequate food, health care, education, and social security as well as the preservation and right to take part in cultural rights.

While their lands and resources get evicted by the government for profit benefits, with widespread media and the conflicts with today's modern definition of ethical guidelines, most of the practices within these Indigenous groups are being condemned by the modern-day society which leads to these groups being forced to cease all their religious and cultural traditions and ceremonies - taking away their rights to practice their own culture.

United Nations Declaration on the Rights of Indigenous People

Adapted by the General Assembly in September 2007, with 144 states in favor, 4 states against (Australia, Canada, New Zealand, and the United States), and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa, and Ukraine), the UNDRIP is “a universal framework of minimum standards for the survival, dignity, and well-being of the indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples.”

However, nations such as Canada do not implement the UNDRIP as the government saw it to be a statement of aspirations that are not legally binding. With more nations enforcing fewer rights for the Indigenous People through the widespread of business corporations implemented for profits, as well as little to no financial care for the Indigenous people for a sustainable life, and access to food and healthcare, there have been higher rates of death from malnutrition in children as well as a decrease in the peoples' literacy rates and the overall status of life.

Forced Displacement

Forced displacement, also known as forced migration is the act of involuntary migration of people or a person from their homes or rightful region. The United Nations Human Rights Council has defined forced displacement "as a result of persecution, conflict, generalized violence or human rights violations". Those who fall victim to forced displacement are vulnerable to deprivation, and further displacement and are facing a lack of protection of any kind.

Economic, Social, and Political Marginalization

Economic marginalization refers to the lack of equal opportunity for the people to benefit from their own nation's economy. Social marginalization refers to the overall unequal access to basic services or opportunities and at times can be referred to as social exclusion. Political marginalization is the unfair and unequal opportunities for all people to democratically part-take in the decision-making process for significant circumstances.

Deriving from intergenerational discrimination against indigenous people for their rights of passage as well as their way of living by the majority of the world's population, the indigenous people around the world to this day are facing economic, social, and political marginalization. Not being able to have access to the basic human rights - economic, social, and cultural rights - the minorities such as the

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indigenous people themselves are not allowed access to the basic economic development, therefore, rendering their developments socially and politically.⁶

Métis status

“A person who self-identifies as Métis, is distinct from other Aboriginal peoples, is of historic Métis Nation ancestry, and is accepted by the Métis Nation”.⁷ A Métis status offers access and fellowship to your extended kinship community however Métis people do not have a full status but remains as an indigneous tribe of Canada.

Timeline of Key Events

1909 - 1969 - The Stolen Generations

“The Stolen Generations were the children of Australian Aboriginal and Torres Strait Islander descent who were removed from their families by the Australian federal and state government agencies and church missions, under acts of their respective parliaments”. Facing forced displacement and culture shock, these children were facing high rates of mental stress in the form of trauma, mental illnesses as well as neglect, and physical abuse. It was reported that they were also the most vulnerable to sexual abuse as well as psychological abuse while living with the non-indigenous people.

The Aborigines Protection Board justified their forced displacement of the children on the fact that their plans were to “breed out the Aboriginality race”.

1965 - Freedom Rides

“The Freedom Rides were first conceived in 1947 when CORE and the Fellowship of Reconciliation organized an interracial bus ride across state lines to test a Supreme Court decision that declared segregation on interstate buses unconstitutional.” Inspired by the United States Freedom Riders, the first Aboriginal university graduate Charlie Perkins alongside other students organized the Australian Freedom Rides which aimed to “broaden movements for Civil Rights in Australia and make changes to the Indigenous Rights' ". The group traveled around regional towns to show the experiences of an Aboriginal Australian and was able to move the public’s opinion towards an affirmative position to remove the discrimination against Aboriginal Australians from the Australian Constitution in 1976.

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<https://www.ohchr.org/en/human-rights/economic-social-cultural-rights#:~:text=Economic%20social%20and%20cultural%20rights,and%20sanitation%2C%20and%20to%20work>.

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<https://www.metisnation.org/registry/citizenship/frequently-asked-questions/#:~:text=According%20to%20MNO%20bylaws%2C%20M%C3%A9tis.Council's%20National%20Definition%20for%20Citizenship>.

26-27 January 1972 - Ongoing - Aboriginal Tent Embassy

Before the 1976 Referendum came to be, due to the efforts of the Australian Freedom Riders as well as multiple other Aboriginal protests, the Aboriginal Tent Embassy came to be. Standing as a symbol of the efforts and protests of the people to the government for the rights of the indigenous people, the Tent Embassy “succeeded in uniting Aboriginal people throughout Australia in demanding uniform national land rights, and mobilized widespread non-Indigenous support for the cause.”

Today the Tent Embassy still stands and focuses on “campaigning for Aboriginal sovereignty over the continent and the right to self-determination.”

27 May 1967 - The 1976 Referendum

“The 1967 Referendum sought to change two sections of the Constitution in relation to Aboriginal and Torres Strait Islander peoples” The Referendum’s question to the public read:

“Do you approve the proposed law for the alteration of the Constitution entitled 'An Act to alter the Constitution so as to omit certain words relating to the people of the Aboriginal race in any state and so that Aboriginals are to be counted in reckoning the population?’”

The Referendum came to be due to the Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCAATSI) organized a petition calling for a referendum on sections 51 and 127 of the Constitution - in response the government introduced the Constitution Alteration (Aboriginals) Bill 1976 to the parliament which passed unanimously and so the Referendum came to be. “Because no parliamentarian had voted against the proposals relating to Aborigines, the Government only prepared a ‘Yes’ case for the referendum. The campaign for a ‘Yes’ vote gained widespread support among the Australian public and this was reflected in the final vote.”⁸

December 1976 - The Land Rights Act for the Northern Territory

Having finally passed after years of political struggle by the Aboriginal people for the right to claim their native lands, The Land Rights Act for the Northern Territory was the first legislation to allow indigenous people to claim their rights to the land title if they were able to show and prove the traditional

⁸ https://www.deadlystory.com/page/culture/history/The_1967_Referendum

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and cultural association. As a result of the legislation, “traditional Aboriginal inhabitants (were able) to claim ownership of vacant Crown land - considered useless by white Australians - as well as pastoral areas held on behalf of Aboriginals.”

1990s - 2000s - The Supreme Court

“The Supreme Court makes several key decisions respecting Indigenous people, including but not limited to:

- 1) a 1997 ruling that traditional Indigenous land rights and title cannot be extinguished by the British Columbia government and validating oral testimony as a source of evidence;
- 2) a 2003 ruling prescribing three conditions for Métis status: self-identification as a Métis individual; ancestral connection to a historical Métis community; and acceptance by a Métis community.”

September 13, 2007 - The United Nations Declaration on the Rights of the Indigenous People”

Adopted by the General Assembly in 2007 with means to “apply human rights to indigenous people (and) reverse historical exclusion from the integrational system”, The United Nations Declaration on the Rights of the Indigenous People (UNDRIP) established the universal framework for the minimum standards of survival for all indigneous peoples of the world.⁹ With 46 Articles focusing on establishing a basic standard of living for all indigenous tribes, the UNDRIP was initially met with 144 countries voting in support, 4 countries against and 11 abstaining.

2009 - 2016 - Australia, Canada, New Zealand and the U.S Signs The United Nations Declaration on the Rights of the Indigenous People

In 2009 Australia endorsed the UN Declaration on the Rights of the Indigenous People, committing to undertake initiatives consistent with the human rights stands contained in the declaration. following their vote against the declaration in 2007 for “lacking clear practical guidelines for states and was subject to competing interpretations”.

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<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

In 2010, New Zealand finally endorsed the UN Declaration on the Rights of Indigenous Peoples after having voted against the Declaration back in 2007 as it would give Maori special rights over other citizens. However, Prime Minister John Key argued that the UNDRIP would help build better relations between the Maori and the Crown and has since made tremendous efforts in establishing and protecting the rights of indigenous people and is today, one of the global leaders in indigenous rights. In the same year, the United States announced a formal review of the UNDRIP and after months of consultation, it was announced that the nation would fully endorse the UNDRIP.¹⁰

Finally in 2016, Canada was the last of the four nations voting against the declaration to finally endorse the UNDRIP and as of 2020 the Government of Canada introduced Bill C-15, an Act respecting the United Nations Declaration on the Rights of Indigenous Peoples.¹¹

Position of Key Member Nations and Other Bodies

Australia

Having initially voted against the UN Declaration on the Rights of Indigenous People as the government believed that the declaration favored customary law over national law, Australia officially enforced the declaration in 2009 with means to “commit to take actions to implement the Declaration and promote indigenous people’s enjoyment of rights on an equal basis.” However, the Australian Government has failed to take steps to implement the UNDRIP into their law and policy practice nor have they altered the already existing laws to comply with the declaration. Furthermore, they have yet to formally meet with the Indigenous Tribes with means to implement the UNDRIP in ways in which no party gets an unfair advantage or disadvantage from the implementation of the declaration.¹²

Canada

¹⁰ [UN Declaration on the Rights of Indigenous Peopleshttps://indigenousfoundations.arts.ubc.ca/un_declaration...](https://indigenousfoundations.arts.ubc.ca/un_declaration...)

¹¹ [Canadian governments and the United Nations Declaration on the ...https://www.rcaanc-cirnac.gc.ca/eng](https://www.rcaanc-cirnac.gc.ca/eng)

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https://humanrights.gov.au/sites/default/files/2020-10/implementing_undrip_-_australias_third_upr_2021.pdf

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Viewed as a statement of aspirations that were not legally binding and by seeing the similarities with their Free, Prior, and Informed Consent (FPIC) and other similar sweeping provisions in the document are not consistent with Canadian Constitutional Law, Canada not only voted against the UNDRIP during its initial release but also failed to adopt the declaration as a whole. However, in 2016, Canada publicized their endorsement for the UNDRIP.

United States of America

The United States, having been one of the four nations to have voted against the Declaration when it was first adopted by the UN General Assembly in 2007, has declared to “lend to” the Declaration in form of recognition. It was then restated that “the Declaration expresses aspirations that the United States seeks to achieve within the structure of the U.S. Constitution, laws, and international obligations, while also seeking, where appropriate, to improve (their) laws and policies.”¹³

China

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was approved by the PRC in 2007. (UN General Assembly 2008). The declaration's obligations were immediately renounced, and it was declared that China had no indigenous peoples. It asserted that its 55 designated national minorities had lived in peace on their own territory for 5,000 years in harmony and unity. The most well-known of these minorities, the Tibetans, Uyghurs, and Mongols, have recently protested, which tends to contradict this premise, but the world community has rarely disputed it. Despite PRC protests, it is plausible to argue that China does include indigenous peoples among the groups it has formally designated as national minorities. This article will examine China's claims of exception from indigenous commitments with a specific focus on Tibet and assess the general level of compliance with pertinent international norms. While it may occasionally represent customary international law, this analysis recognizes that a simple UN declaration is rarely regarded as binding international law.¹⁴

New Zealand

Alongside, Australia, Canada and the United States, New Zealand voted against the Declaration. “New Zealand said that the Declaration breached the Treaty of Waitangi (Treaty) because it would give Maori special rights over other citizens.” According to the Minister of Maori Development, government

¹³ <https://usun.usmission.gov/united-states-explanation-of-position-on-rights-of-indigenous-peoples/>

¹⁴

<https://www.e-ir.info/2014/05/27/china-the-un-declaration-on-the-rights-of-indigenous-peoples-the-tibetan-case/>

organizations have just recently given the Declaration "ad hoc" consideration. She views the plan as a chance to monitor domestic policy progress in contrast to this ad hoc approach and to assure the realization of Maori rights, as well as to increase New Zealand's influence on indigenous policy in international fora. The Declaration can be used to settle disagreements over the Treaty's meaning and obligations, but it does not replace the Treaty or create any new rights or obligations.¹⁵

Suggested Solutions

While the considerable efforts put forth by both the academic community and the international indigenous movement have been effective in striving towards the rights for indigenous people under international law, "if the ultimate political goal of the indigenous rights scholarship is to better the conditions of the indigenous people, the study of the efficacy of international legal prescription of indigenous rights is imperative".¹⁶ While there are a few instances of firms adhering to international and national rules engaging in good practices, systemic issues continue to be a major source of worry. The existing system in many areas of the world is based on codes of conduct that prioritize corporate interests and employ international normative frameworks to defend corporate rights and interests under national legislation. Due to the alignment of incentives, States are more likely to protect the interests of foreign firms investing in their nations than the welfare of indigenous peoples.¹⁷

"Even where indigenous peoples have obtained legal protection or title deeds to their lands and resources, those are often violated by development projects; mining or logging concessions, bio fuel plantations or other business operations; or designation of conservation areas."¹⁸ Exploring the respect, or lack thereof, for tribal law, territorial claims, and rights to compensation – both in the sense of reparations for past wrongs and future financial transactions would allow for land security for these indigenous tribes as a start. During the process, ways to help amplify the voices of Indigenous Tribes can be done through non profit organizations working with media producers to host events that informs and exercises Indigenous Peoples' right to freedom and expression. Grants could then be awarded to strengthen the

¹⁵

<https://ohrh.law.ox.ac.uk/implementing-the-un-declaration-on-the-rights-of-indigenous-peoples-in-new-zealand/#:~:text=Alongside%2C%20Australia%2C%20Canada%20and%20the.New%20Zealand%20change d%20its%20position.>

¹⁶

https://www.researchgate.net/publication/330345270_Indigenous_Rights_in_International_Law_in_Oxford_Research_Encyclopedia_of_International_Studies

¹⁷ <https://www.un.org/esa/socdev/unpfii/documents/2012/session-11-e-c19-2012-3.pdf>

¹⁸ <https://www.un.org/development/desa/undesavoice/feature/2018/04/39109.html>

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broadcast infrastructure of Indigenous groups and provide a sustainable standard of living in modern society.¹⁹

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¹⁹ <https://www.f5.com/company/blog/protecting-the-rights-of-indigenous-peoples-to-self-determination>

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