

Committee: SOCHUM 1

Topic: The question of protecting rights of indigenous people

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Summary

There are an estimated 370 million indigenous people across at least 72 countries worldwide.¹ While these 5000 peoples are very diverse, they share a common feature – that they have been displaced from their original lands and have often become minorities in their own territories. Their plight has been somewhat overlooked in recent times, and it is only in the past few decades that their grievances have been addressed.

These grievances begin centuries ago, when invasions were carried out across the globe, not only by nearby rival groups, but by imperial powers on the other side of the globe, most commonly by those from western Europe and far east Asia. Fuelled by economic, political and utilitarian ambition, along with racist disregard for these ‘uncivilised’ peoples’ rights, the invaders carried out genocide, forced displacement, slavery, exploitation, and property theft and damage. As a result, many indigenous peoples have ceased to exist, become destitute or lost touch with their cultural roots.

Displacement, one of the most prominent forms of oppression these groups have faced in recent times, has huge implications. Not only are their territories the place of their homes, communities, hunting grounds and livelihoods, but in many cases the main source of spirituality and culture. Invaders, who are either ignorant, heedless or disdaining of the spiritual connection and cultural significance of native peoples’ lands, have continually exploited the resources of those lands.

It is not only their lands and resources that have been exploited, though. Many indigenous people have been taken into slavery or forced labour, and been economically, and in some cases sexually, exploited. More recently, these groups have also suffered from forced assimilation through the separation of families, the destruction of indigenous communities/institutions and the prohibition of cultural ceremony and education. The most infamous of these cases have taken place over the last century in Australia (with the ‘stolen generations’ scheme), the USA, Canada and New Zealand.

Over the past few decades, many governments have put a stop to these practices, and some have begun processes of redress; the UN has also taken steps to affirm the rights of indigenous groups.

In addition to stopping malpractice and providing compensation, though, there are much more complex programmes of promoting and protecting indigenous cultural institutions, sites and identities which must be put in place, as well as deep-rooted prejudices which must be tackled. These are the goals which recent UN resolutions and declarations have been trying to achieve.

¹ ‘Human Rights & Democracy–Indigenous Peoples’, EU website: https://eeas.europa.eu/headquarters/headquarters-homepage/414/human-rights-democracy_en

However, not everyone has the same goal in mind – as the more philosophical questions of historical responsibility and human rights start to come into play, the issue becomes much more controversial. The example of the Maori people in New Zealand is, in my view, a good case to use to demonstrate these complex and divisive issues. On the question of historical responsibility, some feel that the past grievances of the Maori people should be put right by the current government because it was their institutional predecessors which acted in a way which most agree was wrong and largely caused the current social, political and economic difficulties of those peoples. Some, however, feel that the wrongdoings of European settlers two centuries ago should not fall to the current government to compensate and apologise for – they say that, considering the number of invasions, broken treaties and wars which have taken place throughout history to the detriment of certain groups, it would be utterly impracticable for everyone to compensate each other for malpractice since the beginning of time, and it would be unfair for some to compensate while others don't. In an increasingly globalised and ethnically/culturally integrated world, they say, it is impossible to assign responsibility for historical grievances to certain groups, never mind immoral. The issue of redress and historical responsibility is further confused when it is considered that the Maori people were themselves imperial invaders a few centuries before the Europeans were, and in fact carried out genocide on the truly indigenous Maorori people.

On the second issue of rights, there is a fine and controversial line between autonomy and the duty of the state to protect human rights. These groups have a collective right to self-governance, but each member also has individual fundamental human rights. Sometimes, the two collide – if individuals in a certain indigenous group are known to be being deprived of their rights by the community leader, it is difficult for the state to then interfere and protect those individuals while observing the group's right to self-governance. The question becomes even more difficult when philosophical questions around cultural relativity and universal rights of man are brought into play – do state governments have the right to impose their views on, for example, education or recreational drug use, on indigenous communities in the name of their duties to ensure their citizens' wellbeing, or is this simply just another form of cultural imperialism?

Definition of Key Terms

Indigenous people – ‘those that, 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 in those territories, or parts of them’²

Nations – many indigenous groups define themselves as ‘nations.’ In Canada, indigenous people are formally known as ‘first nations’³

² The UN does not have an official definition for indigenous people; this definition was put forward by the UN Working Group on Indigenous Populations in 1982

³ ‘Timelines–Indigenous Peoples’, Canada Encyclopaedia website:
<https://www.thecanadianencyclopedia.ca/en/timeline/first-nations>

Major Countries and Organizations Involved

Currently, the largest groups of indigenous people are the Amerindians of the Americas (most notably in the highlands of Guatemala and in the USA), the Aborigines of Oceania (most notably the peoples of Australia, Papua New Guinea and New Zealand), the Eskimo and Siberian peoples in the far northern hemisphere, the Taiwanese, the Ainu of Japan, and the Tibetan and Turkic peoples of China. These nations, therefore, are or should be more concerned on this issue.

Inter-Agency Support Group on Indigenous Issues (IASG)

The IASG was established, within the United Nations, in order to: (1) 'provide an opportunity for the exchange of information in regard to their work on indigenous issues'; (2) 'strengthen inter-agency cooperation to promote the human rights and well-being of indigenous peoples'; (3) 'analyse, disseminate and contribute to the implementation of the recommendations of the Forum'; (4) 'interact with the Forum and its members to provide and seek information, advice and substantive inputs'; and (5) 'advise in the mainstreaming of indigenous peoples issues within the UN system, and strengthen mutual collaboration.'⁴

The IASG have also been published reports of each of their annual sessions since 2002, with special additional reports in 2006 on 'The Millennium Development Goals and indigenous peoples: redefining the Goals' and in 2007 on 'Territories, lands and natural resources.'

Working Group on Indigenous Populations (WGIP)

The WGIP was established in 1982 as a subsidiary organ to the Sub-Commission on the Promotion and Protection of Human Rights, in order to provide an opportunity for indigenous peoples to share their experiences and raise their concerns at the UN.

International Labour Organisation (ILO)

The ILO has been engaged with indigenous and tribal peoples' issues since the 1920s, and is responsible for the Indigenous and Tribal Peoples Convention of 1989. The ILO's Decent Work Agenda serves as a framework for indigenous and tribal peoples' empowerment, focussing on gender equality.

UN Permanent Forum on Indigenous Issues

This forum was established in July 2000 as an advisory body to the Economic and Social Council, with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights. It has a mandate to: (1) 'provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council'; (2) 'raise awareness and promote the integration and coordination of activities related to indigenous issues within the UN system'; and (3) 'prepare and disseminate information on indigenous issues'⁵

Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)

EMRIP was established by the UN Human Rights Council in 2007 under Resolution 6/36 as a subsidiary body of the Council. It aims to provide the Human Rights Council with thematic advice, in

⁴ 'Indigenous Peoples at the UN–AISG', UN website:

<https://www.un.org/development/desa/indigenouspeoples/about-us/inter-agency-support-group.html>

⁵ 'Indigenous Peoples at the UN', UN website: <https://www.un.org/development/desa/indigenouspeoples/about-us.html>

the form of studies and research, on the rights of indigenous peoples as directed by the Council, as well as suggest proposals to the Council for its consideration and approval.

European Union

The EU states that: 'EU support to Indigenous Peoples is based on the UN Declaration on the Rights of Indigenous Peoples which sets out the individual and collective rights. The EU supports indigenous peoples' rights to, inter alia, culture, identity, language, employment, lands and territories, health, education as well as their rights to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations.'⁶

The EU also funds programmes through the European Instrument for Democracy and Human Rights, which supports indigenous representatives in seeking to participate in relevant UN activities and supports intergovernmental organisations working to promote Convention 69.

EU delegations also organise events around the 9th August (the International Day of the World's Indigenous Peoples) to raise awareness of their rights.

Timeline of Events

Date	Four phases of the conquest of indigenous peoples ⁷
7000-8000 years ago	<u>Phase 1: agrarian v. foraging</u> Agricultural societies' populations began to outgrow foraging and nomadic societies, replacing indigenous peoples through conquest and colonisation. At times, nomadic peoples invaded agricultural societies, but were eventually absorbed – for example, in the Aryan invasions of India in the 1200s BC or the Mongol invasions of Russia, the Middle East and China in the 1200s BC
1500s-1900s	<u>Phase 2: conquest of the Americas and the Philippines</u> The Spanish and Portuguese conquest of the Americas and the Philippines began the second phase in the subjugation of indigenous peoples. The people, known as 'Indians' (Maya, Mexicans/Aztecs and Incas) were mainly agriculturalists too, thus changing the older dynamic of mostly agrarian v. foraging societies. The Amerindians suffered conquest and absorption by European states for centuries, ending only in the 20 th century
Late 1800s	<u>Phase 3: industrialised v. agrarian and foraging</u> When European powers conquered the peoples of the Pacific islands and Australia, shortly followed by the conquest and division of Africa and

⁶ 'Human Rights & Democracy–Indigenous Peoples', EU website: https://eeas.europa.eu/headquarters/headquarters-homepage/414/human-rights-democracy_en

⁷ Research paper: 'Indigenous Peoples, Historical Periods' <https://research.universalessays.com/history-research-paper/cultural-history-research-paper/indigenous-peoples-research-paper/>

Asia, agriculturalists and foragers were made indigenous as industrialised powers took over

Phase 4: reinvigoration of indigenous communities

Mid 1900s

Indigenous peoples began to fight against colonial powers and were able to create independent nation-states in Africa, Asia and Oceania. A similar process occurred in the 1990s as the fall of the USSR led to the creation of independent nations where indigenous groups were converted into national societies. Similarly, indigenous groups within the Americas and around the world gained more rights to self-determination and self-governance, either becoming semi-autonomous communities or accepting greater assimilation into multicultural societies

Date

Work of the international community

1923

Haudenosaunee Chief Deskaheh travelled to Geneva to speak to the League of Nations and defend the right of his people to live under their own laws, on their own land and under their own faith – he was not allowed to speak

1925

Maori religious leader T.W. Ratana travelled to London to petition King George over the breaking of the Treaty of Waitangi – he was denied access

He then sent part of his delegation to Geneva to the League of Nations but they were also denied access

1981-82

Jore R. Martinez Cobo, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, published his Study on the Problems of Discrimination against Indigenous Populations

1982

Working Group on Indigenous Populations (WGIP) established

1989

Indigenous and Tribal Peoples Convention of 1989 (Convention 69) passed, mainly as a result of the work of the International Labour Organisation (ILO)

1993

International Year of the World's Indigenous Peoples

1994-2004

International Decade of the World's Indigenous Peoples

2000

Permanent Forum on Indigenous Issues established

2001

Special Rapporteur on the Rights of Indigenous Peoples

2005-2015

Second International Decade of the World's Indigenous People

2007

Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) established

2007	The Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted by the General Assembly
2014	World Conference on Indigenous Peoples
2019	International Year of Indigenous Languages

Relevant UN Treaties and Events

Universal Declaration of Human Rights

The UDHR was adopted by the General Assembly on 10th December 1948 with 48 of its then 58 members voting for, 0 voting against, 8 abstaining and 2 not voting. Article 1 of the Declaration on the Rights of Indigenous Peoples states that: ‘Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized [...] in the Universal Declaration of Human Rights.’ All rights included in the UDHR, then, have been specially reaffirmed so that indigenous people may enjoy these rights in full.

Convention on the Protection and Promotion of the Diversity of Cultural Expressions

The Convention, which was sponsored by France and Canada, was adopted by the UNESCO General Assembly on 20th October 2005 with 148 votes for, 2 against (Israel and the USA) and 4 abstentions (Australia, Honduras, Liberia and Nicaragua). It came into force after it was ratified by 30 governments.⁸

According to UNESCO, the Convention aims to support: national policies which promote creation, distribution and access to diverse cultural goods; sustainable development policies; and legislation related to human rights and fundamental freedoms, particularly in regard to the rights of artists and of minority groups.

Declaration on the Rights of Indigenous Peoples

UNDRIP was adopted by the General Assembly on 13th September 2007, with 144 votes in favour, 4 votes against (Australia, Canada, New Zealand and the USA) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine).⁹ It is described by the UN as ‘the most comprehensive international instrument on the rights of indigenous peoples.’ Find link to PDF of the full declaration in the bibliography. Below are summaries of each article of the Declaration:

Article 1	All rights in UDHR, Charter and international law
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⁸ ‘Convention on Cultural Diversity’, UNESCO website: <https://en.unesco.org/creativity/convention>

⁹ ‘Department of Economic and Social Affairs–Indigenous Peoples’, UN website:

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

Article 2	Equality, no discrimination
Article 3	Right to self-determination
Article 4	Right to self-governance
Article 5	Right to maintain their own institutions, right to use state institutions
Article 6	Right to a nationality
Article 7	(1) Right to life, integrity, liberty and security (2) No genocide, no forcible removal of children to another group
Article 8	(1) No forced assimilation, no destruction of culture (2) States must prevent and provide redress for: a: compromising their cultural values or ethnic identities b: taking lands, territories and resources c: forced population transfer d: forced assimilation e: propaganda which incites racial or ethnic discrimination
Article 9	Right to belong to an indigenous nation
Article 10	No forcible relocation
Article 11	(1) Right to maintain archaeological and historical sites/artefacts and cultural ceremonies/literature (2) Redress and restitution of cultural property
Article 12	(1) Right to religious worship and education (2) States must seek to enable repatriation of human remains
Article 13	(1) Right to retain own names for places and persons (2) States must provide translation/interpretation in political, legal and administrative proceedings
Article 14	(1) Right to control education systems, right to teach language and culture (2) Right to state education (3) States must seek to ensure cultural education for indigenous children
Article 15	(1) State education must reflect cultural diversity (2) States must combat prejudice
Article 16	(1) Right to maintain own media, right to access state media (2) State media must reflect cultural diversity
Article 17	(1) Right to equality under domestic labour law (2) States must protect indigenous children from economic exploitation (3) No discrimination in employment or salary

- Article 18 Right to political representation
- Article 19 States must communicate with indigenous political representatives
- Article 20 (1) Right to economic self-sufficiency
(2) Redress for those deprived of economic subsistence
- Article 21 (1) Right to improvement of economic and social conditions
(2) States must ensure improvement of economic and social conditions
- Article 22 (1) Special consideration for the elderly, the young, women and the disabled in the implementation of this declaration
(2) No violence or discrimination against women or children
- Article 23 Right to administer their own housing and health programmes
- Article 24 (1) Right to maintain their own health practices, right to use state health services
(2) Right to highest attainable physical and mental health
- Article 25 Right to maintain spiritual relationship with lands and resources
- Article 26 (1) Right to traditionally owned/occupied lands and resources
(2) Right to control these lands and resources
(3) States must give legal recognition and protection to these lands and resources, recognition conducted with respect to indigenous customs
- Article 27 Right to participate in political process of adjudicating land rights
- Article 28 (1) Redress (restitution or, if not possible, compensation) for lands and resources which have been confiscated, occupied or damaged without consent
(2) Compensation should be in form of land, resources or money
- Article 29 (1) Right to conservation and protection of land and resources
(2) No storage or disposal of hazardous materials on lands
(3) States must ensure healthcare for people affected by above
- Article 30 (1) (1) No military activity on lands unless agreed or necessary
(2) States must consult political representatives of indigenous people prior to military activity on their land
- Article 31 Right to cultural knowledge and intellectual property
- Article 32 (1) (1) Right to determine use of lands and resources
(2) States must consult political representatives of indigenous people prior to state use of their land
(3) Redress for use of lands and resources

- Article 33 (1) (1) Right to determine their own identity, right to citizenship
(2) Right to select membership of their institutions
- Article 34 Right to maintain institutional structures and customs in accordance with international human rights standards
- Article 35 Right to determine responsibilities of community members
- Article 36 (1) (1) Right to maintain relations with members of the same indigenous community and members of other indigenous communities across borders
(2) States must help to facilitate the exercise of this right
- Article 37 (1) Right to observance of treaties and agreements
(2) Nothing in the Declaration may be interpreted to diminish the rights of indigenous peoples contained in treaties
- Article 38 States must take action to achieve ends of the Declaration
- Article 39 Right to financial and technical assistance
- Article 40 Right to prompt decision for the resolution of conflicts
- Article 41 UN and other intergovernmental organisations shall contribute to ensuring the full realisation the Declaration
- Article 42 UN must promote application of the Declaration and follow up
- Article 43 Rights in the Declaration are the minimum standards
- Article 44 Rights in the Declaration are equal for males and females
- Article 45 Nothing in the Declaration may be interpreted to diminish the rights indigenous peoples have or may acquire in the future
- Article 46 (1) Nothing in the Declaration may be interpreted to act contrary to the Charter of the United Nations or to impair territorial integrity, sovereignty or political unity of states
(2) Human rights of all must be respected in applying the Declaration
(3) The Declaration must be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith

Previous Attempts to solve the Issue

Please see timeline 2 and section on relevant UN treaties.

Possible Solutions

- Creation of an official definition of 'indigenous people' to avoid ambiguity
- Return or restitution of cultural property
- Compensation for loss of land, resources and property
- National legislation to ensure self-determination and programmes to gradually move towards self-governance if desired
- Prohibition of mining, forestry, etc. by on indigenous land
- Enquiries into historic grievances of indigenous peoples
- Cultural and anti-discrimination education for the masses
- Independent hotline / ombudsman to take complaints of malpractice against indigenous communities and settle them accordingly
- Ensure those who speak an indigenous language are catered for within the wider community, e.g. on ballot papers
- Representation of indigenous communities in national political fora if desired

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