

Issue: Rights of the indigenous people

Forum: Human Rights Council

Position: Chair of the Human Rights Council

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Introduction¹

Indigenous Peoples worldwide number between 300-500 million, embody and nurture 80% of the world's cultural and biological diversity, and occupy 20% of the world's land surface. The Indigenous Peoples of the world are very diverse. They live in nearly all the countries on all the continents of the world and form a spectrum of humanity, ranging from traditional hunter-gatherers and subsistence farmers to legal scholars. In some countries, Indigenous Peoples form the majority of the population; others comprise small minorities. Indigenous Peoples are concerned with preserving land, protecting language and promoting culture. Some Indigenous Peoples strive to preserve traditional ways of life, while others seek greater participation in the current state structures. Like all cultures and civilizations, Indigenous Peoples are always adjusting and adapting to changes in the world. Indigenous Peoples recognize their common plight and work for their self-determination; based on their respect for the earth.

Despite such extensive diversity in Indigenous communities throughout the world, all Indigenous Peoples have one thing in common - they all share a history of injustice. Indigenous Peoples have been killed, tortured and enslaved. In many cases, they have been the victims of genocide. They have been denied the right to participate in governing processes of the current state systems. Conquest and colonization have attempted to steal their dignity and identity as indigenous peoples, as well as the fundamental right of self-determination.

Definition of key terms²

Indigenous people: those having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of societies now prevailing in 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

¹ "The Rights of Indigenous Peoples." *Sexual Harassment - Effects of Sexual Harassment*, hrlibrary.umn.edu/edumat/studyguides/indigenous.html.

² "The Rights of Indigenous Peoples." *Sexual Harassment - Effects of Sexual Harassment*, hrlibrary.umn.edu/edumat/studyguides/indigenous.html.

continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

Rapporteur: An expert entrusted by the UN with a special human rights mandate, acting in his or her personal capacity.

Colonization: An act of colonizing, meaning to establish a body of people living in a new territory but retaining ties with the parent state.

Self-determination: The right of a cohesive national group ("peoples") living in a territory to choose for themselves a form of political and legal organization for that territory.

Collective: Denoting a number of persons or things considered as one group or whole.

Ratify: Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty.

Enter into force: When it enters into force, a treaty is legally binding on all parties that have ratified the treaty. A treaty usually goes into effect when a certain number of member states have ratified it.

Accede: "Accession" is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force.

Reservations: When a state makes a reservation to a treaty, it means that the state considers itself bound to the treaty, except for those provisions to which it makes the reservation. A reservation enables a state to accept a multilateral treaty as a whole by giving it the possibility not to apply certain provisions with which it does not want to comply. Reservations must not be incompatible with the object and the purpose of the treaty. Furthermore, a treaty might prohibit reservations or only allow for certain reservations to be made.

General Assembly: The General Assembly is the main deliberative organ of the United Nations. It is composed of representatives of all Member States, each of which has one vote. The General Assembly passes resolutions on important issues concerning everything from outer space to disarmament.

International Decade: An International Decade is a ten-year period in which the UN focuses on a specific topic (for example: Indigenous Peoples) and tries to fulfill important goals regarding that topic.

Covenant: A usually formal, solemn, and binding agreement. It is similar to a treaty.

Operational directive: World Bank Operational Directives contain a mixture of policies, procedures, and guidance on how the Bank deals with specific topics.

World bank: The World Bank is a development assistance bank. It provides strategies and loans to developing countries to help them “improve living standards and eliminate the worst forms of poverty.”

General Overview

Despite international recognition and acceptance of the [Universal Declaration of Human Rights](#), which guarantees the fundamental rights of all human beings, in practical fact Indigenous Peoples’ human rights remain without specifically designated safeguards. To this day, Indigenous Peoples continue to face serious threats to their basic existence due to systematic government policies. In many countries, Indigenous Peoples rank highest on such underdevelopment indicators as the proportion of people in jail, the illiteracy rate, unemployment rate, etc. They face discrimination in schools and are exploited in the workplace. In many countries, they are not even allowed to study their own languages in schools. National governments continue to deny Indigenous Peoples the right to live in and manage their traditional lands; often implementing policies to exploit the lands that have sustained them for centuries. In some cases, governments have even enforced policies of forced assimilation in efforts to eradicate Indigenous Peoples, cultures, and traditions.

Timeline of Key Events³

Constitution becomes law of the land

January 1, 1901 - The Australian constitution comes into effect providing the legal framework to govern the country. It can only be changed by a referendum.

17 December, 1965 - Aboriginal and Torres Strait Islander peoples had the right to vote in some states before 1901, but it was taken away or limited when the constitution was enacted.

In 1962, Indigenous people gain the right to vote in federal elections.

May 27, 1967 - More than 90 per cent of Australian voters choose yes to count Aboriginal and Torres Strait Islander peoples in the census and for Indigenous people to be subject to Commonwealth laws, rather than just state laws.

February 6, 1995 - The Aboriginal and Torres Strait Islander Commission (ATSIC) report Recognition, Rights and Reform says constitutional reform is a priority. The report, which is endorsed by ATSIC at its 33rd meeting held in Canberra, says consultations across the country have found overwhelming support for the recognition of Indigenous Australians in the constitution.

³ “Declaration on the Rights of Indigenous Peoples.” *Wikipedia*, Wikimedia Foundation, 3 July 2018, en.wikipedia.org/wiki/Declaration_on_the_Rights_of_Indigenous_Peoples.

February 2, 1998 - The constitutional convention held at Old Parliament House from February 2-13 to debate proposals on whether Australia should become a republic supports Indigenous recognition in a new preamble.

November 6, 1999 - The proposed preamble is put to voters that includes Indigenous recognition as one element of a wider statement about the nation.

The referendum question is unsuccessful.

May 28, 2000 - The Council for Aboriginal Reconciliation's Roadmap To Reconciliation agenda presented at the Corroboree 2000 calls on the Federal Parliament to initiate and support a referendum to deal with Sections 25 and 51 (xxvi) and add recognition of Aboriginal and Torres Strait Islander peoples to the constitution. More than 250,000 people walk across the Sydney Harbour Bridge in support of Indigenous Australians.

October 16, 2007 - Prime minister John Howard makes a re-election pledge to hold a referendum on constitutional recognition for Indigenous Australians. Kevin Rudd, as opposition leader, follows by promising bipartisan support for the proposal, regardless of the election outcome.

February 13, 2008 - Prime minister Kevin Rudd delivers an apology in Federal Parliament for the mistreatment of Indigenous Australians. In the speech he commits to closing the gap on Indigenous disadvantage and makes a statement of recognition "that today we honour the Indigenous peoples of this land, the oldest continuing cultures in human history".

July 23, 2008 - Yolngu and Bininj clans of Arnhem Land call on Kevin Rudd to "work towards constitutional recognition of our prior ownership and rights".

December 1, 2009 - Galarrwuy Yunupingu writes in The Monthly that he wants constitutional recognition "to bring my people in from the cold, bring us into the nation".

June 8, 2011 - Lowitja O'Donoghue, the inaugural chair of the Aboriginal and Torres Strait Islander Commission, declares there is a once-in-a-lifetime opportunity to change the constitution, stating it would be good "for the nation's soul".

16, January 2012 - The Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander peoples presents its report to the Gillard government.

February 13, 2013 - Prime minister Julia Gillard and opposition leader Tony Abbott address Parliament in support of the Aboriginal and Torres Strait Islander Peoples Recognition Bill. Ms Gillard said:

"We must never feel guilt for the things already done in this nation's history, but we can and must feel responsibility for the things that remain undone.

"No gesture speaks more deeply to the healing of our nation's fabric than amending our nation's founding charter.

"We are bound to each other in this land and always will be. Let us be bound in justice and dignity as well.

March 27, 2015 - An opinion poll conducted by ANU finds 82 per cent support for removing race discrimination from the constitution.

May 17, 2015 - Recognise opinion poll says 75 per cent of Australians would back a yes vote.

June 20, 2015 - Newspoll says 63 per cent of voters support recognition in the constitution.

June 25, 2015 - Liberal MP Ken Wyatt tables a much-anticipated report, with support from the Government, Labor and the Greens, on progress towards a referendum on Indigenous recognition in the constitution.

July 6, 2015 - Prime Minister Tony Abbott and Opposition Leader Bill Shorten host an unprecedented joint summit with about 40 of the nation's most influential Indigenous representatives on the path forward to a referendum.

Sources: Recognise, Human Rights Commission, Reconciliation Australia, Australian Electoral Commission

Major Parties Involved

Australia⁴

- Concerns about references to self-determination and their potential to be misconstrued.
- Ignorance of contemporary realities concerning land and resources. "They seem, to many readers, to require the recognition of Indigenous rights to lands which are now lawfully owned by other citizens, both Indigenous and non-Indigenous, and therefore to have some quite significant potential to impact on the rights of third parties."
- Concerns over the extension of Indigenous intellectual property rights under the declaration as unnecessary under current international and Australian law.
- The potential abuse of the right under the Declaration for indigenous peoples to unqualified consent on matters affecting them, "which implies to some readers that they may then be able to exercise a right of veto over all matters of state, which would include national laws and other administrative measures."
- The exclusivity of indigenous rights over intellectual, real and cultural property, that "does not acknowledge the rights of third parties – in particular, their rights to access Indigenous land and heritage and cultural objects where appropriate under national law." Furthermore, that the Declaration "fails to consider the different types of ownership and use that can be accorded to Indigenous people and the rights of third parties to property in that regard."
- Concerns that the Declaration places indigenous customary law in a superior position to national law, and that this may "permit the exercise of practices which would not be acceptable across the board", such as customary corporal and capital punishments.

Canada

⁵The Canadian government said that while it supported the "spirit" of the declaration, it contained elements that were "fundamentally incompatible with Canada's constitutional framework", which includes both the Charter of Rights and Freedoms and Section 35, which enshrines aboriginal and treaty rights. In particular, the Canadian government had problems with Article 19 (which appears to require governments to secure the consent of indigenous peoples regarding matters of general public policy), and Articles 26 and 28 (which could allow for the re-opening or repudiation of historically settled land claims).

New Zealand

⁶In 2007 New Zealand's Minister of Māori Affairs Parekura Horomia described the Declaration as "toothless", and said, "There are four provisions we have problems with, which make the declaration fundamentally incompatible with New Zealand's constitutional and legal arrangements." Article 26 in particular, he said, "appears to require recognition of rights to lands

⁴ "Declaration on the Rights of Indigenous Peoples." *Wikipedia*, Wikimedia Foundation, 3 July 2018, en.wikipedia.org/wiki/Declaration_on_the_Rights_of_Indigenous_Peoples.

⁵ "Declaration on the Rights of Indigenous Peoples." *Wikipedia*, Wikimedia Foundation, 3 July 2018, en.wikipedia.org/wiki/Declaration_on_the_Rights_of_Indigenous_Peoples.

⁶ "Declaration on the Rights of Indigenous Peoples." *Wikipedia*, Wikimedia Foundation, 3 July 2018, en.wikipedia.org/wiki/Declaration_on_the_Rights_of_Indigenous_Peoples.

now lawfully owned by other citizens, both indigenous and non-indigenous. This ignores contemporary reality and would be impossible to implement."

United States⁷

Speaking for the United States mission to the UN, spokesman Benjamin Chang said, "What was done today is not clear. The way it stands now is subject to multiple interpretations and doesn't establish a clear universal principle." The U.S. mission also issued a floor document, "Observations of the United States with respect to the Declaration on the Rights of Indigenous Peoples", setting out its objections to the Declaration. Most of these are based on the same points as the three other countries' rejections but, in addition, the United States drew attention to the Declaration's failure to provide a clear definition of exactly whom the term "indigenous peoples" is intended to cover.

United Kingdom

⁸Speaking on behalf of the United Kingdom government, UK Ambassador and Deputy Permanent Representative to the United Nations, Karen Pierce, "emphasized that the Declaration was non-legally binding and did not propose to have any retroactive application on historical episodes. National minority groups and other ethnic groups within the territory of the United Kingdom and its overseas territories did not fall within the scope of the indigenous peoples to which the Declaration applied."

Finland⁹

Finland signed the International Declaration on the Rights of Indigenous Peoples when it was originally put forward. However the reindeer owners and Forest Administration have a long dispute in the area of the forests. The UN Human Rights Committee ordered the Finnish State to stop logging in some of the disputed areas.

Previous attempts to resolve the issue

United Nations Declaration on the Rights of Indigenous Peoples¹⁰

Due to the past and ongoing violence and abuse of Indigenous individuals and peoples, the UN created this non-legally binding declaration as an aspiration for how Indigenous individuals and peoples should be treated. The Declaration sets out the individual and collective rights of Indigenous peoples, as well as their rights to culture, identity, language, employment, health, education and other issues. It also "emphasizes the rights of Indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations". It "prohibits discrimination against indigenous

⁷ "Declaration on the Rights of Indigenous Peoples." *Wikipedia*, Wikimedia Foundation, 3 July 2018, en.wikipedia.org/wiki/Declaration_on_the_Rights_of_Indigenous_Peoples.

⁸ "Declaration on the Rights of Indigenous Peoples." *Wikipedia*, Wikimedia Foundation, 3 July 2018, en.wikipedia.org/wiki/Declaration_on_the_Rights_of_Indigenous_Peoples.

⁹ "Declaration on the Rights of Indigenous Peoples." *Wikipedia*, Wikimedia Foundation, 3 July 2018, en.wikipedia.org/wiki/Declaration_on_the_Rights_of_Indigenous_Peoples.

¹⁰ "Declaration on the Rights of Indigenous Peoples." *Wikipedia*, Wikimedia Foundation, 3 July 2018, en.wikipedia.org/wiki/Declaration_on_the_Rights_of_Indigenous_Peoples.

peoples", and it "promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development". The goal of the Declaration is to encourage countries to work alongside indigenous peoples to solve global issues, like development, multicultural democracy and decentralization. According to Article 31, there is a major emphasis that the indigenous peoples will be able to protect their cultural heritage and other aspects of their culture and tradition in order to preserve their heritage from over controlling nation-states.

Possible Solutions¹¹

In international discussions on the protection and promotion of Indigenous Peoples' human rights, some States have argued that a more conscientious application of human rights standards would resolve the issue. On the other hand, Indigenous Peoples argue that such international human rights standards have consistently failed to protect them thus far. What is needed, they argue, is the development of new international documents addressing the specific needs of the world's Indigenous Peoples. Although the Universal Declaration of Human Rights is designed to protect the human rights of all individual human beings, international law concerning collective human rights remains vague and can fail to protect the group rights of Indigenous Peoples.

Further reading¹²

Human Rights Council Res. 2006/2, Working group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of the General Assembly res. 49/214 of 23 December 1994 (2006).

Draft Declaration on the Rights of Indigenous Peoples

This is the most comprehensive statement of the rights of Indigenous Peoples to date, establishing collective rights to a greater extent than any other document in international human rights law. It establishes the rights of Indigenous Peoples to the protection of their cultural property and identity as well as the rights to education, employment, health, religion, language and more. It also protects the right of Indigenous Peoples to own land collectively. Although States are not legally bound by the Declaration, it will exert a considerable amount of moral force when adopted by the General Assembly. Consisting of 46 Articles, the draft Declaration is divided into nine parts:

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¹² "The Rights of Indigenous Peoples." *Sexual Harassment - Effects of Sexual Harassment*, hrlibrary.umn.edu/edumat/studyguides/indigenous.html.

Part 1. Fundamental Rights
Part 2. Life and Security
Part 3. Culture, Religion, and Language Laws
Part 4. Education, Media, and Employment
Part 5. Participation and Development
Part 6. Land and Resources
Part 7. Self Government and Indigenous
Part 8. Implementation
Part 9. Minimum Standards

Universal Declaration of Human Rights (1948)

The Universal Declaration of Human Rights is the first international document that states that all human beings are “equal in dignity and rights.” (Article 1) Everybody is entitled to the rights in the Declaration, “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (Article 2)

Convention on the Prevention and Punishment of the Crime of Genocide (1951)

Genocide means any of the following acts which have the intention of destroying, in whole or in part, a national, ethnical, racial or religious group: “killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent birth within the group; forcibly transferring children of the group to another group.” (Article 2)

International Covenant on Civil and Political Rights (1966)

This Covenant outlines the basic civil and political rights of individuals. There are also provisions for collective rights. “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” (Article 27)

International Covenant on Economic, Social and Cultural Rights (1966)

This Covenant describes the basic economic, social, and cultural rights of individuals. It also has provisions for collective rights.

Convention on the Elimination of All Forms of Racial Discrimination (1966)

“Racial discrimination” is defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” (Article 1)

International Labor Organization (ILO) Convention 169 (1989)

The ILO Indigenous and Tribal Peoples Convention was the first international convention to address the specific needs for Indigenous Peoples' human rights. The Convention outlines the responsibilities of governments in promoting and protecting the human rights of Indigenous Peoples.

Convention on the Rights of the Child (1990)

The Convention contains regulations and suggestions relevant to Indigenous Peoples on the non-discrimination of children (Article 2), the broadcasting of information by the mass media in minority languages (Article 17), the right to education, including education on human rights, its own cultural identity, language and values. (Article 29) Article 30 states that children of minorities or indigenous origin shall not be denied the right to their own culture, religion or language. (Article 30)

Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

This Declaration deals with all minorities, which includes many of the world's Indigenous Peoples. It only concerns individual rights, although collective rights might be derived from those individual rights. The Declaration deals both with states' obligations towards minorities as well as the rights of minority people. Topics that are dealt with include the national or ethnic, cultural, religious or linguistic identity of minorities (Article 1); the free expression and development of culture; association of minorities amongst themselves; participation in decisions regarding the minority (Article 2); the exercise of minority rights, both individual and in groups (Article 3); and education of and about minorities. (Article 4)

Rio Declaration of Environment and Development and Agenda 21 (1992)

These two documents are connected to the Earth Summit in Rio de Janeiro. In them, the special relationship between Indigenous Peoples and their lands is acknowledged. Indigenous Peoples have a vital role in environmental management and development because of their traditional knowledge and practices. (Rio Declaration, Principle 22) In order to fully make use of that knowledge, some Indigenous Peoples might need greater control over their land, self-management of their resources and participation in development decisions affecting them. (Agenda 21, Chapter 26.4)

Convention on Biological Diversity (1992)

The Convention calls upon its signatories to "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;" (Article 8(j))

Vienna Declaration and Programme of Action (1993)

The Vienna Declaration is the closing declaration of the 1993 World Conference on Human Rights held in Austria. It "recognizes the inherent dignity and the unique contribution of indigenous people [sic] to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well-being." (I.20)

Furthermore, the declaration called for the completion of the draft Declaration on the Rights of Indigenous Peoples, the renewal and updating of the mandate of the Working Group on Indigenous Populations and the proclamation of the International Decade of Indigenous Peoples. (II.28 – 32)

Report of the International Conference on Population and Development (1994)

At the Conference it was agreed that the perspectives and needs of Indigenous Peoples should be included in population, development or environmental programs that affect them, that they should receive population- and development-related services that are socially, culturally and ecologically appropriate. (Paragraph 6.24) Another important decision was that Indigenous Peoples should be enabled to have tenure and manage their land, and protect the natural resources and ecosystems on which they depend. (Paragraph 6.27)

Durban Declaration and Programme of Action (2001)

The Durban Declaration and Programme of Action has a specific section dealing with Indigenous Peoples issues. Perhaps more important than all the recommendations is the fact that the Declaration is the first United Nations document that uses the phrase “Indigenous Peoples” rather than “Indigenous People”.

Council Resolution on Indigenous Peoples within the Framework of the Development Cooperation of the Community and Members States (1998)

This resolution provides the main European Union guidelines for support of Indigenous Peoples. It calls for the integration of Indigenous Peoples’ interests in all levels of development cooperation and the full and free participation of Indigenous Peoples in the development process. The resolution states: “Indigenous cultures constitute a heritage of diverse knowledge and ideas, which is a potential resource for the entire planet.”

OSCE High Commissioner on National Minorities

The Office of the OSCE High Commissioner on National Minorities was established in 1992 to identify and seek early resolution of ethnic tensions that might endanger peace, stability or friendly relations between OSCE participating States. The High Commissioner has no specific Indigenous Peoples mandate, but treats Indigenous Peoples like any other national minority.

Proposed American Declaration on the Rights of Indigenous Peoples (1997)

The draft Declaration outlines the human rights that are specific to Indigenous Peoples. Items covered include, among others, the right to self-government, indigenous law and the right to cultural heritage. A Working Group of the OAS is still discussing the Declaration.

Bibliography

See all footnotes