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# **RIGHTS OF INDIGENOUS PEOPLES UNDER INTERNATIONAL LAW: “AN OVERVIEW”**

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## **ABSTRACT**

Human resources are the most valuable resource for any nation in the global village. Any development strategy must be based on the development of people. Indigenous peoples being a significant section, there can be no real development without the empowerment of this silent majority. Indigenous peoples are inheritors and practitioners of unique cultures and ways of relating to people and the environment. They have retained social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live. Despite such extensive diversity the indigenous communities throughout the world have one thing in common that they share common problems related to the protection of their rights as distinct peoples. Indigenous peoples around the world experience a variety of injustices due to their small population size, political marginalisation, and weak economic standing. Under the basic principles of universality, equality and non-discrimination, indigenous peoples are entitled to the full range of rights established under international law. They should be treated equally, be free from all forms of discrimination, be allowed to actively participate in society, and have the right to preserve their own identities, cultures, languages, and lifestyles. However, indigenous peoples, as collectivities, have distinct and unique cultures and world views, and their current needs and aspirations for the future may differ from those of the mainstream population. Over the last 20 years indigenous peoples rights have been increasingly

recognised through the adoption of international instruments and mechanisms. Despite international recognition and acceptance of the UNDRIP and UDHR, which guarantees the fundamental rights of all human beings, to this day, indigenous people continue to face serious threats to their basic existence due to systematic government policies. The existing international human rights standards have consistently failed to protect them thus far. Hence there is a need for the development of new international mechanisms, addressing the specific needs of the world's indigenous peoples. Henceforth this article aims to examine the significance of international law in protecting the rights of indigenous peoples. This article will also provide an overview on a number of common threads that shed light on the policy development of indigenous rights in contemporary international law.

**Keywords:** *Human resources, Indigenous peoples, inheritors, Marginalisation, UNDRIP.*

## 1. Introduction:

There are nearly 476 million Indigenous people around the world and spread across more than 90 countries and they constitute about 6.2% of the world's population. The vast majority of them live in Asia.<sup>1</sup> Indigenous peoples are called by different names like Tribal Peoples, First Peoples, Native Peoples, Native Indians, Aboriginal Peoples and Adivasis.<sup>2</sup> Indigenous peoples hold and manage a significant part of the Earth's most biodiverse regions and play a vital role in conserving lands, seas and resources. They cultivate strong economic, cultural and spiritual relationships with their natural environments and have developed and often maintain traditional management practices and knowledge that contribute to biodiversity conservation and to the sustainable use of natural resources. They safeguard 80 per cent of the world's remaining biodiversity. They also hold vital ancestral knowledge and expertise on how to adapt, mitigate, and reduce climate and disaster risks.<sup>3</sup> Despite such extensive diversity, indigenous people suffer from the non-recognition of their own political and cultural institutions and the integrity of their cultures has been undermined. Indigenous peoples are also harmfully impacted by development processes, which pose a grave threat to their continued existence. They are often marginalised and face discrimination in countries' legal systems, leaving them even more vulnerable to violence and abuse.

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<sup>1</sup> <https://www.un.org/development/desa/indigenouspeoples/> (last visited Aug.20. 2021).

<sup>2</sup> Aman Gupta "Human Rights of Indigenous Peoples" Volume 1 (Protecting the Rights of Indigenous Peoples), 2005 Ed.[ ISHA Books Publications, New Delhi.].

<sup>3</sup> *Id.*

Considerable thinking has been dedicated to defining “indigenous peoples” in the international arena. Indigenous peoples have argued against the adoption of a formal definition at the international level, stressing the need for flexibility and for respecting the desire and right of each indigenous peoples to define themselves. As a consequence, no formal definition has been adopted in international law.<sup>4</sup> A strict definition is seen as unnecessary and undesirable.<sup>5</sup> According to ILO Convention No.169, indigenous peoples are descendants of populations “which inhabited a country or geographical region during its conquest or colonization or the establishment of present state boundaries” and “retain some or all of their own social, economic, cultural and political institutions”.<sup>6</sup>

## 2. Indigenous Peoples in International Law:

Several centuries ago, the indigenous peoples would be subject to slaughter, enslavement, and disease, and those who survived would endure a long history of discrimination at the hands of their rulers. Gradually it became apparent that this was an issue that needed to be dealt with at the international level. Indigenous peoples experience a variety of injustices on a global scale due to their small population size, political marginalisation, and weak economic standing.<sup>7</sup> Perhaps it is because of their susceptibility to marginalisation and discrimination by other dominant groups and the State that the international community has decided to make them direct subjects of international law using the tools provided by international human rights law<sup>8</sup>. In the past Indigenous peoples used to coexist peacefully with nature in their native habitats. Then "civilization" appeared, hungry for wealth for a select few and driven by ambitions for wealth and power.<sup>9</sup>

Indigenous peoples are essentially a unique subject in contemporary international law since the groups directly affected have effectively waged a campaign since the early 1970s to have their plight addressed by international law and programmes. There were no international agreements or concerns

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<sup>4</sup> <http://www.worldbank.org>.

<sup>5</sup> James Anaya S. “Indigenous Peoples in International Law”, 08 [3<sup>rd</sup> Ed. [Oxford University Press, New York] 2004.

<sup>6</sup> Anaya, *Supra note 4*, at 10.

<sup>7</sup> Sylvanus Barnabas & Sylvanus Barnabas, *The Role of International Law in Protecting Land Rights of Indigenous Peoples in Nigeria and Kenya: A Comparative Perspective*, INDIG. ABORIG. FUGITIVE ETHN. GROUPS AROUND GLOBE (2019), <https://www.intechopen.com/state.item.id> (last visited Nov 4, 2022).

<sup>8</sup> *Id.*

<sup>9</sup> Patrick Thornberry, *Chapter Title: We are still here Book Title: Indigenous peoples and Human rights*, <https://about.jstor.org/terms> (last visited Apr 5, 2022).

regarding indigenous peoples at the end of World War II. At the time, they were viewed by many countries as a barrier to growth, and some still hold this view now.<sup>10</sup> The way indigenous peoples are currently treated by the international system is the consequence of decades of work. Indigenous peoples themselves have been heavily involved in and driving force behind this activity. Indigenous peoples have transitioned from being inert discussion points about their rights to active participants in a broad international conversation that includes nations, NGOs, and outside experts.<sup>11</sup> Indigenous peoples started gaining more attention in the 1960s with their calls for continuous recognition as unique communities with historically rooted traditions, political structures, and rights to land. Indigenous peoples expressed a self-image that was distinct from that which had previously been established and implemented by dominant sectors.<sup>12</sup> The indigenous peoples expanded their efforts in the 1970s by making direct appeals to international intergovernmental agencies and participating in a number of international conferences. Concerned NGOs and an increase in encouraging academic and popular publications helped these attempts to come together into a campaign. A transnational indigenous identity that later grew to include indigenous people from other regions of the world was formed in part as a result of the 1977 Conference.<sup>13</sup> A pattern of coordination in the development and expression of indigenous peoples' demands from around the world was also established as a result of the conference.<sup>14</sup> Following the 1977 Conference, representatives of indigenous peoples started appearing before U.N. human rights committees more frequently and in greater numbers, securing their requests on the basis of universally accepted human rights principles. Due to the fact that some organisations that represent indigenous communities have been granted official consultative status with the UN, indigenous peoples now have greater access to these organisations.<sup>15</sup> The heightened international concern over indigenous peoples generated through years of work was signalled by the U.N. General Assembly's designation of 1993 as "The International Year of the World's Indigenous People" followed by the proclaiming of an "International Decade" on the same theme. As a result of this increased concern, general human rights principles and their implications for indigenous peoples

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<sup>10</sup> JOSHUA CASTELLINO AND NIMAH & WALSH, *INTERNATIONAL LAW AND INDIGENOUS PEOPLES* (2021).

<sup>11</sup> S. James Anaya, *Indigenous Rights Norms in Contemporary International Law*, 8 *ARIZ* (1991), <https://scholar.law.colorado.edu/articles/880>. (last visited Feb 13, 2022).

<sup>12</sup> *Id.*

<sup>13</sup> MAURO BARELLI, *SEEKING JUSTICE IN INTERNATIONAL LAW* (2016).

<sup>14</sup> S. JAMES ANAYA, *INTERNATIONAL HUMAN RIGHTS AND INDIGENOUS PEOPLES* (1991).

<sup>15</sup> Federico Lenzerini, *Implementation of the UNDRIP around the world: achievements and future perspectives. The outcome of the work of the ILA Committee on the Implementation of the Rights of Indigenous Peoples*, 23 *INT. J. HUM. RIGHTS* 51–62 (2019), <https://doi.org/10.1080/13642987.2019.1568993>.

have been reinterpreted. And based on this revised perspective, a new body of international law pertaining to indigenous peoples has been developed.<sup>16</sup> However, international law is not easily enforceable within the domestic jurisdiction of some States, making it difficult for subjects of international law to enforce their rights thereunder in the domestic jurisdictions of States where they live. This raises interesting academic issues about how to enhance a viable relationship between international law and national law.<sup>17</sup>

### **3. Indigenous Peoples as Beneficiaries of Human Rights**

Human rights are not aspirational, rather they are meant to be realised. Human rights are universal, and civil, political, economic, social and cultural rights belong to all human beings, including indigenous peoples. The Universal Declaration of Human Rights proclaimed in 1948 exhibits a content and structure which has conditioned thinking on human rights to a significant degree. Indigenous peoples have a comprehensive spectrum of legal rights that have been outlined under international law. They should be treated equally, be free from all forms of discrimination, be allowed to actively participate in society, and have the right to preserve their own identities, cultures, languages, and lifestyles. These rights are established in the Charter of the United Nations and the subsequent human rights treaties.<sup>18</sup> Every indigenous woman, man, youth and child is entitled to the realisation of all basic rights and freedoms on equal terms with others in society, without discrimination of any kind. Indigenous peoples also enjoy certain rights specifically linked to their identity, including rights to maintain and enjoy their culture and language free from discrimination, rights of access to ancestral lands and land relied upon for subsistence, rights to decide their own pattern of development, and rights to autonomy over indigenous affairs.<sup>19</sup>

#### **3.1 Civil and Political Rights of Indigenous Peoples:**

The civil and political rights of indigenous peoples are enshrined in the United Nations Charter, Declaration and various international human rights treaties and instruments. The International Covenant on Civil and Political Rights, is a comprehensive legal agreement of civil and political

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<sup>16</sup> BARELLI, *supra* note 13.

<sup>17</sup> NIMAH AND WALSH, *supra* note 10.

<sup>18</sup> UNDG, *Guidelines on Indigenous Peoples Issues* (2009).

<sup>19</sup> <https://www.pdhre.org/rights/indigenous.html>

rights.<sup>20</sup> The Covenant on Civil and Political Rights is a global mechanism to monitor a State's policies and practice in meeting promises to its indigenous peoples, including the demand for inherent dignity, participation in democratic political structures and self-determination, right to lands, territories and resources.<sup>21</sup>

### **3.2 Economic, Social and Cultural Rights of Indigenous Peoples:**

International Covenant on Economic, Social and Cultural Rights, the Declaration and ILO Convention No. 169 affirm indigenous peoples' rights to health, education, employment, housing, sanitation, social security and an adequate standard of living. The Declaration's article 3 is of particular importance, articulating their right to freely determine their economic, social and cultural development. These include their right not to be subjected to assimilation or destruction of their culture; the right to practise and revitalize their cultural traditions and customs, to teach their cultural mores, and to the repatriation of human remains; and the right to "maintain, control, protect and develop" their cultural heritage, traditional knowledge and traditional cultural expressions.<sup>22</sup>

## **4. International Legal Framework on the Rights of Indigenous Peoples**

The international community has progressed in the recognition of indigenous human rights, as well as the protection of their right to maintain a separate culture, community, and tradition from the majority of citizens.<sup>23</sup> Over the last 20 years, indigenous peoples rights have been increasingly recognised through the adoption of international instruments and mechanisms. Several international legal documents are focusing on the need to protect indigenous communities and their rights.<sup>24</sup>

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<sup>20</sup> Garth Nettheim, *International Human Rights: bases for Indigenous rights*, WHAT GOOD COND. REFLECTIONS AN AUST. ABORIG. TREATY 1986–2006 (2006).

<sup>21</sup> Heather A Northcott, *The International Journal of Human Rights Realisation of the right of indigenous peoples to natural resources under international law through the emerging right to autonomy* (2012), <https://www.tandfonline.com/action/journalInformation?journalCode=fjhr20> (last visited Nov 3, 2022).

<sup>22</sup> *Id.*

<sup>23</sup> Elvira Pulitano "Indigenous Rights in the Age of the UN Declaration" [1<sup>st</sup> Ed. Cambridge University Press, New York] 2012

<sup>24</sup> <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/indigenous-peoples-international-law>

## 4.1. International Labour Organisation

The first international organization to deal seriously with indigenous peoples' issues was the International Labour Organization (ILO); it had signalled the need for cooperation and international attention. It has been working to protect and promote the rights of indigenous and tribal peoples since early 1920. ILO developed two international instruments relating exclusively to indigenous and tribal peoples: the Indigenous and Tribal Populations Convention, 1957 (No.107) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169).<sup>25</sup> This 1989 treaty provided greater protections for indigenous peoples than the earlier convention by considering issues such as education, health, land rights, and employment. Convention No. 169 is designed specifically to defend indigenous peoples by improving their living conditions while preserving the identity and culture of the group as a whole. This universal labelling and conceptualisation of indigenous peoples helped to facilitate transnational indigenous activism directed towards articulating and securing indigenous rights.

## 4.2. The United Nations Declaration on the Rights of Indigenous Peoples, 2007

Throughout the United Nations system, a range of initiatives brought increasing attention to the rights of indigenous peoples, including the establishment of a United Nations Voluntary Fund for Indigenous Populations in 1985, the proclamation of the International Year of the World's Indigenous People in 1993 and the adoption of two consecutive International Decades of the World's Indigenous People, beginning in 1995.<sup>26</sup>

The United Nations system has established a number of mechanisms with specific mandates to address the rights of indigenous peoples:

- The United Nations Permanent Forum on Indigenous Issues
- The Expert Mechanism on the Rights of Indigenous Peoples
- The Special Rapporteur on the Rights of Indigenous Peoples<sup>27</sup>

In addition to mechanisms specific to indigenous peoples' rights, a number of treaty-monitoring

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<sup>25</sup> *Id*

<sup>26</sup> <https://www.ohchr.org/documents/issues/ipeoples/undripmanualfornhris.pdf>

<sup>27</sup> *Id*

bodies play an important role in advancing the rights of indigenous peoples. Despite international recognition and acceptance of the Universal Declaration of Human Rights (UDHR), which guarantees the fundamental rights of all human beings, in practical fact, Indigenous Peoples' human rights remain without specifically designated safeguards and due to the past and ongoing violence and abuse of Indigenous individuals and peoples, the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) on 13th September 2007.<sup>28</sup> With other human rights instruments and growing human rights jurisprudence concerning indigenous peoples, the Declaration contains crucial guidance for building societies that ensures full equality and rights of indigenous peoples. It is the most comprehensive international instrument on the rights of indigenous peoples. It establishes 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<sup>29</sup>. Therefore, the Declaration illustrates the interdependent and indivisible nature of international human rights norms and standards.

The Declaration does not attempt to bestow indigenous peoples with a set of special or new human rights, but rather provides a contextualised elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of indigenous peoples. The standards affirmed in the Declaration share an essentially remedial character, seeking to redress the systematic obstacles and discrimination that indigenous peoples have faced in their enjoyment of basic human rights.<sup>30</sup> It is a United Nations Declaration, and not an international treaty, and so it is not a legally binding instrument under international law.

## 5. The Rights of Indigenous Peoples at Stake

Even though the Universal Declaration of Human Rights, which upholds the fundamental rights of all people, has gained international recognition and approval, indigenous peoples' human rights continue to be practised without any special safeguards. They are still suffering tremendous obstacles

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<sup>28</sup><https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

<sup>29</sup> *Id*

<sup>30</sup> *Supra note 12*

to living a basic life today as a result of oppressive government policies.<sup>31</sup> In many nations, they aren't even permitted to study their own language. Sacred lands and artefacts are pillaged from them through unfair treaties. National governments frequently adopt strategies to plunder the lands that have sustained Indigenous Peoples for millennia while continuing to deny them the right to live on and administer their native grounds.<sup>32</sup> Indigenous Peoples, however, counter that these international human rights standards have not consistently safeguarded them up to this point.

## 5.1. Challenges to the Rights of Indigenous Peoples:

The UN Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in 2007, provides a global framework for efforts to advance indigenous peoples' rights. Together with other human rights instruments and growing human rights jurisprudence concerning indigenous peoples, the Declaration contains guidance for building societies that ensure full equality and rights of indigenous peoples.<sup>33</sup> The Declaration has already prompted concrete improvements. At the United Nations and in regional organisations, human rights concerns of indigenous peoples have become an integral part of debates. At the national level, the Declaration has inspired new legislation and mechanisms for dialogue with indigenous peoples.<sup>34</sup>

Despite these positive signs, the promise of the Declaration is far from being universally fulfilled.<sup>35</sup> The international legal framework's efforts over the last 40 years to improve conditions and to increase recognition of indigenous rights through law and policy, litigation, national dialogue and enhanced leadership opportunities, full accommodations of indigenous rights remain elusive. As the findings of human rights mechanisms demonstrate, indigenous peoples in many parts of the world continue to be systematically discriminated and silenced<sup>36</sup>. The Indigenous peoples face many challenges and their basic rights are frequently violated: they are denied control over their own

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<sup>31</sup> Dejo Olowu, *International Journal of African Renaissance Studies-Multi-, Inter-and Transdisciplinary The role of African universities in the protection of the rights of indigenous peoples: A development agenda* (2016), <https://www.tandfonline.com/action/journalInformation?journalCode=rars20> (last visited Nov 3, 2022).

<sup>32</sup> Northcott, *supra* note 21.

<sup>33</sup> Gurdip Singh and Ahuja V.K. "Human Rights in 21<sup>st</sup> Century Changing Dimension" 2012 Ed. Universal Law Publishing Co. New Delhi.

<sup>34</sup> <https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/human-rights.html>

<sup>35</sup> *Supra* note, 30

<sup>36</sup> Lisa Ford and Tim Rowse "Between Indigenous and Settler Governance", 1<sup>st</sup> Ed. A Glass House Publications, Canada, 2013.

development based on their own values, needs and priorities. Causes of violations of indigenous peoples rights are wide-ranging. They are unduly restricted in the enjoyment of their civil, political, social, economic and cultural rights. Some of the main rights and liberties that have been denied/violated or diminished are as follows:

### **5.1.1. Denial of Civil and Political Rights of Indigenous Peoples:**

In too many cases, indigenous peoples are now facing even greater struggles and rights violations than they did before the adoption of the United Nations Declaration on the Rights of Indigenous Peoples.<sup>37</sup> Issues of discrimination, violence and brutality, continuing assimilation policies, denying access to information and services, exclusion from decision making, dispossession of land, forced removal or relocation, denial of land rights, impacts of large-scale development, abuses by military forces and armed conflict and in some countries indigenous peoples face lack of constitutional recognition, denial of citizenship and voting rights, lack of political participation and representation etc.<sup>38</sup>are a reality of indigenous communities around the world.

### **5.1.2. Denial of Economic, Social and Cultural Rights of Indigenous Peoples:**

A denial of economic, social and cultural rights occurs when a State fails in its obligations to ensure that they are enjoyed without discrimination or in its obligation to respect, protect and fulfil them. Often a violation of one of the rights is linked to a violation of other rights. The socio-economic indicators in various reports demonstrates the disparities among indigenous peoples. A few examples of violations of economic, social and cultural rights include:

- Indigenous peoples make up to 15% of the world's extremely poor.<sup>39</sup> They suffer higher rates of poverty due to lower levels of literacy, forced removal, internal displacement and landlessness further contributing to their poverty.
- Globally, Indigenous peoples suffer from poorer health, less access to health services, malnutrition than other groups;
- Their life expectancy is 20 years lower compared to non-indigenous populations,

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<sup>37</sup> <https://www.un.org/development/desa/indigenouspeoples/>

<sup>38</sup> <https://www.abc.net.au/>

<sup>39</sup> <https://www.amnesty.org/en/what-we-do/indigenous-peoples/>

- They rank highest for illiteracy and unemployment,<sup>40</sup>
- Suicide rates are 20 times higher among indigenous peoples,<sup>41</sup>
- Failure to recognize their distinct identity and existence has, in many instances, resulted in a loss of language, diversity and cultural heritage.<sup>42</sup>
- In 2011 the Secretary-General of the United Nations stated that “one indigenous language dies every two weeks; indigenous cultures are threatened with extinction.” The loss of language often results in a loss of intangible cultural heritage such as traditions, practices and customs.<sup>43</sup>

It is clear from the above, that there is a need for the promotion and protection of the interest of the indigenous peoples at the international and domestic level by fully implementing the UNDRIP.<sup>44</sup> The minimum standards for survival, dignity and well-being of the indigenous peoples of the world, as set out in the Declaration must now be met.<sup>45</sup>

## 6. Conclusion and Suggestions:

Despite international recognition and acceptance, the indigenous peoples continue to face huge challenges, impediments and denial to the full enjoyment of their individual and collective human rights. Although the Declaration obligates the States to consult and cooperate with indigenous peoples to obtain their free, prior and informed consent before adopting and implementing measures that may affect them. But available data and literature suggest that widespread discrimination exist across the nation’s leading to loss of ownership, unemployment, increase in suicides and loss of life expectancy. Further, it suggests a lack of constitutional recognition of their language, culture and political participation.

### Suggestions:

- There is a need for a renewed international legal action, strong constitutional and legal measures by the nations for the protection of the rights of the indigenous peoples.

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<sup>40</sup>*Id*

<sup>41</sup><https://www.culturalsurvival.org/publications/cultural-survival-quarterly/combating-suicide-amongst-indigenous-peoples-interview>

<sup>42</sup> Implementing the UN Declaration on the Rights of Indigenous Peoples-  
<http://archive.ipu.org/pdf/publications/indigenous-en.pdf>

<sup>43</sup> *Id*

<sup>44</sup> <https://social.un.org/unpfii/sowip-vol4-web.pdf>

<sup>45</sup> *Id*

- Rigorous implementation of human rights principles will address the problem.
- Development of new international documents that address the specific needs of the Indigenous Peoples of the world.

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