

**Forum:** Human Rights

**Issue:** The Issue of Indigenous people's fundamental rights in the Americas

**Student Officer:** Fa Sing Pei

**Position:** Deputy President of Human Rights

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## Introduction

Indigenous Peoples are prevalent across the Americas. With the strong ancestral ties given to the land and cultural practices, most of the Indigenous Peoples remain hidden and isolated from the general population. Accordingly, the limited interactions between the Indigenous peoples and the general population have been harmful to the survival of the communities as the discovery and exploitation of natural resources have led to the destruction of the culture, land, and lives of the indigenous groups. Indigenous populations in the Americas have long been active in defending their rights, particularly regarding the exploitation of natural resources and unlawful land use by governments and extractive companies.

Currently, 41 percent of the murdered human rights defenders in the Americas are Indigenous Peoples, and the acts of defending their rights leave them at risk of violence. The unfairness has led to an outcry for the development of indigenous rights and the creation of the ILO Convention 169 on Indigenous and tribal Peoples in 1989 and the United Nations Declaration on the Rights of Indigenous people (UN DRIP) in 2007. The establishment of the Declaration is a significant move towards the recognition, protection, and promotion of the rights of the Indigenous population in the Americas. Even though the rights of the indigenous population have been increasingly recognized through the adoption of international instruments (treaties) and mechanisms, however, the rights are still not specifically regulated and the mechanisms in some cases, are incomplete and inadequate. It is important to note, the traditional approach to indigenous rights, failing to recognize the complexity of the communities, is not sufficient. Furthermore, the adoptions of laws and treaties are not enough. Countries shall enact and implement policies at a higher level to ensure that indigenous populations can enjoy their rights.

## Definition of Key Terms

### Indigenous Peoples

Indigenous Peoples are a group of individuals that identify themselves as indigenous peoples and are accepted by the members of their community. They have historical continuity with the pre-colonial and/or pre-settler societies. Indigenous people have distinct social, economic, or political systems, language, culture, and beliefs of their own. Indigenous people are from non-dominant groups of society and are determined to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

### International Instrument

International instrument refers to any international treaty, declaration, recommendation, or any relevant international agreement made in the social, human rights, and labor fields signed by member states. International instruments provide directions to states and parties on how to meet obligations to develop and implement legislation about an issue.

### Inter-American Human Rights System

Inter-American refers to anything that involves or is concerned with some or all of the nations of North and South America. The Inter-American human rights system is a regional system that is responsible for promoting and protecting human rights in the 35 countries in North and South America that are members of the Organization of American States (OAS). The system is composed of two bodies: the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR). Both bodies are responsible for hearing the complaints regarding human rights violations from individuals and provide emergency protective measures when an individual of a complaint is at risk of irreparable harm.

## Background Information

The Indigenous peoples of the Americas are the original inhabitants of North and South America before the European settlers have arrived in the 15th century. During the European colonization of the Americas, the conquest changed the lives of the resident Indigenous peoples completely. Without advanced technology and knowledge, the Indigenous peoples have long suffered the effects of segregation and discrimination imposed by the government and the larger societies. In many countries, the Indigenous peoples are not even granted the full rights and protections of a citizen in their country.

In the modern world, many parts of the Americas are still populated with Indigenous people. Some countries, such as Bolivia, Canada, Ecuador, Guatemala, Mexico, Peru, and the United States, have

sizeable populations of Indigenous peoples. They consist of unique languages, cultures, religions, and social organizations where many are still practiced today. While some cultures have evolved to incorporate traditional aspects and modern culture, others remained relatively isolated from the Western culture or are completely in isolation.

### Native Americans in North America

At the very beginning of the European settlement in North America, Native Americans were abused and exploited. In the 19th century, Native Americans were forced to move from the lands where their ancestors have lived. Although the federal government signed treaties that guaranteed the Natives the right to live on the land they had traditionally lived, people who sought resources continued to violate the treaties signed because the federal government did little to enforce the agreements.

After the Indian Self-Determination and Education Assistance Act in 1975, Native Americans were granted some degree of control over land, rights to education, rights to practice traditional religious rituals, self-government, and restoring land; however, despite the improvements, most tribes continued to remain impoverished, unemployed, and less educated. Extractive industries continue to bring destructive impacts on indigenous peoples and their environment.

### Ineffective Enforcement of Law

Tribes in South America have been struggling to preserve linguistic and cultural patrimony. With the lack of access to formal interpreters, Indigenous peoples find it hard and complicated to administer justice within their communities with the national court system. The ongoing armed conflicts, the desire for natural resources companies have, the large-scale development projects that take place in lands of the Indigenous peoples all inhibited protective legislation which caused the indigenous peoples to continue to suffer.

#### *Effects of Multinational Corporations on the Indigenous Populations*

Indigenous peoples have long been fighting with multinational corporations for respect and rights to their lands and territories. Access to their land is essential for the health, sustainability, and preservation of the Indigenous communities. Interactions with multinational companies have brought numerous impacts to Indigenous communities in the Americas especially pollution to the surrounding areas. The contamination has inflicted serious health problems for both the communities and the environment.

### The Establishment of UN DRIP

In 2007, the United Nations issued the UN Declaration on the Rights of Indigenous People (UNDRIP), which established the right for self-determination for the Indigenous Peoples. The Indigenous

were allowed to have more control over educational systems, the practice of traditional rituals, and the right to receive restitution for unlawful seizure or use and damage of lands. After the establishment of the UN DRIP, indigenous groups have been able to mobilize against multinational corporations and resist corporations from accessing natural resources and land. However, current instruments of indigenous rights are not enforced entirely, which results in a gap between legal doctrines and reality.

## Major Countries and Organizations Involved

### Mexico

Under Mexico's constitution, indigenous peoples have the right to self-determination. It includes, right to autonomy, education, infrastructure, and no discrimination. However, each state in Mexico has its constitution. This means that the protection of indigenous people's rights varies greatly between states. While some states have policies aiming to protect indigenous rights, many others don't acknowledge it. According to indigenous organizations, the main issues suffered by indigenous peoples in Mexico are related to the exploitation of land and natural resources by extractive companies, insufficient administration of justice, internal displacements, and many other problems linked to language, education, and constitutional reforms.

### Guatemala

Guatemala faces many significant human rights issues related to Indigenous Peoples, including unlawful killings or extrajudicial killings arranged by government officials and crimes involving violence towards members of indigenous human rights defenders. According to the nongovernmental organization (NGO) Unit for the Protection of Human Rights Defenders (UDEFEGUA), attacks related to land disputes and exploitation of natural resources, with Indigenous communities heavily involved, increased drastically in 2020. Between January and August, at least 14 members of rural and indigenous activist groups were killed in disputed circumstances. Education was limited in indigenous communities, especially ones that live in rural areas. The situation worsened after COVID-19 for those who lacked access to stable internet connections. Even though the constitution provides the right to a fair and public trial, the trials are often delayed. The lack of formal interpreters for Indigenous victims also is an ongoing issue.

### Bolivia

Human rights violations remain a serious problem in Bolivia under the administration of President Evo Morales, who created a hostile environment for human rights defenders. Human rights defenders continue to face harassment or even violence, including government officials. In 2009, the constitution

guaranteed indigenous groups' rights to land, intercultural education, development projects, and the protection of indigenous justice systems. However, this law is not enshrined in the Bolivian legislation. In May 2017, President Morale signed a bill that authorized the building of a highway that went into the Indigenous Territory. The law was based on a 2012 consultation with indigenous groups; however, many called it unfair.

## United States

The United States has established numerous policies and programs in the attempt of bringing reconciliation with the Natives who have struggled with right violations. Treaties were negotiated with Native American tribes and recognized in the US constitution. Since 1975 when the Indian Self-Determination and Education Assistance Act, Natives have taken advantage of the policy and exercised sovereignty. Despite the significant outcomes of the negotiations, the US continued the systematic removal of children from their families with the intention of assimilation which gradually eradicates their culture. Even though the US government has made formal apologies for the practices and harm, the apologies were never announced.

## Inter-American Commission on Human Rights (IACHR)

The IACHR is a principal organizer of the Organization of American States (OAS), created in 1959, that addresses human rights conditions and violations. The main function of the commission is to promote and protect human rights in the American Hemisphere. It considers petitions from individuals who claim that their rights have been violated by the State.

## International Work Group for Indigenous Affairs (IWGIA)

The IWGIA is one of the largest global human rights organizations that promotes, protects, and defends indigenous peoples' rights. This organization cooperates with indigenous peoples' organizations and other international institutions to promote the implementation of the law that protects indigenous peoples' rights.

## Timeline of Events

Date	Description of event
December 10 <sup>th</sup> , 1948	The establishment of the UN Declaration on Human Rights that sets a minimum

standard for human rights.

January 4 <sup>th</sup> , 1975	The establishment of Indian Self-Determination and Education Assistance Act. Under this act, Native American tribes regained control of educational and resources management programs that have been controlled by the government.
September 13 <sup>th</sup> , 2007	The establishment of the UN Declaration on the Rights of Indigenous People acknowledged the historic injustices done to the Indigenous groups and established the right of self-determination, where indigenous groups can freely determine their political, social and cultural development.

## Relevant UN Treaties and Events

- The Universal Declaration of Human Rights, 10 December 1948 (General Assembly Resolution 217 A)
- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 13 September 2007 (A/RES/61/295)

## Previous Attempts to solve the Issue

### Committee on the Elimination of Racial Discrimination

The UN has established many ways for promoting and protecting the rights of indigenous peoples and approaching racial discrimination. The Committee on the Elimination of Racial Discrimination (CERD) was created to monitor the implementation of the Convention on the Elimination of All Forms of Racial Discrimination in countries by its state parties. The Committee monitors through three ways: giving early warnings, examining inter-state complaints, and examining individual complaints. All States parties are obliged to submit reports to the Committee on how the conventions are being implemented.

### Raising Awareness

To highlight the problem of discrimination against indigenous peoples, the Permanent Forum on Indigenous Issues was created to assist the UN in raising awareness and promoting the coordination of activities related to raising awareness. The Permanent Forum provides advice and recommendations to programs, funds, and agencies of the United Nations and disseminates information about the ongoing

indigenous rights issues. Trust Fund on Indigenous issues is a small grants program designated to address concerns related to culture, education, health, human rights, and social and economic development of Indigenous peoples. The fund provides grants for indigenous organizations or organizations working for the indigenous peoples to facilitate awareness-raising.

## Possible Solutions

### Establishment and Enforcement of Law

In response to one of the biggest issues the Indigenous Peoples of the Americas are facing, which is related to land control, countries and states need to ensure that the laws are well-established, enforced and land rights are protected. Since the recognition, protection, and implementation of the rights remain dependent on state law and policy, the top priority for many countries must be recognizing the existence of such entities and establishing specific laws and policies that protect those rights. Especially ones that are related to natural resource exploitation.

Furthermore, even though countries have enacted laws regarding indigenous rights, the laws were not enforced. Indigenous Peoples' land rights are not recognized and therefore, not secure. Extractive companies continue to use land without consultation and operate in a way that brings destructive impacts on the Indigenous Peoples and their environment. Thus, to ensure that land rights are protected, contracts should be written and signed. Moreover, landmarks are necessary to clarify the indigenous territory, and the government should enforce the laws related to protecting land rights. This can be achieved through the creation of a new department that manages affairs regarding indigenous rights that works with the police within the countries. The department is authorized to use appropriate force when encountering people who violate the laws and the government should implement harsher punishments specifically on the extractive industries. More patrolling and monitoring are needed to ensure that laws are enforced.

### Education System Reforms

In the past, the education that is provided by the government for the Indigenous communities serves as means to assimilation. Sometimes through massive displacement as in Canada and Australia. The exclusion of indigenous peoples in history has placed the Indigenous in situations of poverty and socio-political exclusion. The lack of access to the general education system, especially for the people that live in remote areas where training and recruitment of cross-culturally trained teachers are extremely difficult, forces them to move away from their communities if they want higher levels of education. Indigenous knowledge, the education indigenous people provide, is not useful for the development of a sustainable economy in the modern world. This leads to the poor integration of indigenous concerns within the education system. With the use of a dual education system, the indigenous kids are still taught

with mainstream language and culture, which makes the accommodation of linguistic and cultural diversity difficult. According to the UN Declaration of Indigenous Rights, Indigenous Peoples have the right to self-determination and education. Whether if indigenous peoples must integrate into the mainstream economy and participate in mainstream education has been argued.

Since the primary reason, in this case, is to improve education levels and conserving indigenous knowledge, governments should have reforms of the education system that integrates both mainstream education and indigenous knowledge all up until university levels. The educational system should encompass the diversity of languages and culture in the indigenous communities and accommodate their ways of teaching. This requires consultation between the government and the indigenous peoples so that the government can have certain control over their education. More schools should be constructed in the indigenous communities and education till high school should be mandatory. Financial burdens will be relieved with support from both organizations and the government.

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## Appendix or Appendices

## Appendix I:

Emerging Issues in Indigenous Rights

<https://core.ac.uk/download/pdf/47727185.pdf>

## Appendix II:

Indigenous Rights in Latin America

<https://www.du.edu/korbel/hrhw/researchdigest/latinamerica2/digest-human%20rights%20in%20latin%20america%20vol%202-indigenoustrights.pdf>