

# INTERNAL DISPLACEMENT OF INDIGENOUS PEOPLES: UNDERSTANDING AND COMBATING THE PHENOMENON

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## Introduction

There are approximately 476 million Indigenous Peoples worldwide, in over 90 countries, constituting over 6 percent of the global population but accounting for nearly 15 percent of the extreme poor.<sup>1</sup> The Cobo Study carried out by Special Rapporteur José Martínez Cobo was perhaps the first most comprehensive study to understand the problem of discrimination against indigenous populations. Comprising twenty-two chapters, this 1981 Study aimed at identifying indigenous peoples, their culture and cultural institutions, religious rights and practices and land amongst other key considerations.<sup>2</sup>

Indigenous peoples are increasingly recognized as a vulnerable community in need of protection, across the International Human Rights Law framework. The UN Declaration on Rights of Indigenous Peoples, adopted in 2007 is the first document which garnered substantial international support in terms of 144 signatures and is instrumental in recognizing the collective nature of indigenous peoples' rights, unprecedented in international law.<sup>3</sup> Four countries voted against it- New Zealand, Australia, Canada and the United States of America. Since 2009, all four of these countries have reversed their stance and now support the Declaration.<sup>4</sup> It is the fruit of 3 decades of international cooperation and negotiation carried out by indigenous activists, scholars and State representatives.<sup>5</sup> Interestingly, the UNDRIPs did not establish new standards of protection, instead elaborating upon the existing framework of human rights and fundamental freedoms with respect to indigenous peoples.<sup>6</sup> The objective of this paper is to analyze briefly the interrelation of indigenous peoples and the phenomenon of internal displacement that has separated peoples from within, from their communities, homes and ancestral lands.

## Who are Indigenous Peoples?

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<sup>1</sup> World Bank, Indigenous Peoples

<<https://www.worldbank.org/en/topic/indigenouspeoples#:~:text=There%20are%20approximately%20476%20million,percent%20of%20the%20extreme%20poor>>.

<sup>2</sup> Martínez Cobo Study (1981)

<<https://www.un.org/development/desa/indigenouspeoples/publications/martinez-cobo-study.html>>.

<sup>3</sup> Chapter 1, p 3 <<https://www.ohchr.org/documents/issues/ipeoples/undripmanualforhris.pdf>>.

<sup>4</sup> UN Declaration on Rights of Indigenous Peoples

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

<sup>5</sup> Jeff Corntassel and Cheryl Bryce, Practicing Sustainable Self-Determination: Indigenous Approaches to Cultural Restoration and Revitalization (2012) <<https://www.jstor.org/stable/24590870>>.

<sup>6</sup> *ibid* (n 3).

There exists no authoritative universal definition of “indigenous peoples” but all attempts to define them across international and regional human rights law frameworks, have recognized a few common elements-

*They are indigenous because their ancestral roots are embedded in the lands on which they live, or would like to live, much more deeply than the roots of more powerful sectors of society living on the same lands or in close proximity. And they are peoples in that they comprise distinct communities with a continuity of existence and identity that links them to the communities, tribes, or nations of their ancestral past.*<sup>7</sup>

Self-identification remains a stolid criterion for classifying peoples as indigenous.<sup>8</sup> The Cobo Study’s most cited working definition of indigenous peoples, identifies those communities which have a “historical continuity with pre-invasion and pre-colonial societies that developed on their territories” and a determination to “preserve, develop and transmit their ethnic identity, as a basis for their continued existence as peoples, in accordance with their own cultural patterns”<sup>9</sup> as indigenous. Notably, it is the spiritual link to ancestral lands that is characteristic of indigenous peoples, whose way of life and sustenance is dependent on continued access to their land.<sup>10</sup>

The African Commission Human and Peoples’ Rights when ruling on the *Endorois* case, determined the status of the community as an indigenous peoples by stating

*The Endorois consider themselves to be a distinct people, sharing a common history, culture and religion. The African Commission is satisfied that the Endorois are a “people”, a status that entitles them to benefit from provisions of the African Charter that protect collective rights.*<sup>11</sup>

## **Who are Internally Displaced Persons?**

Indigenous peoples who are forced to flee from their places of habitual residence, as a result of organized violence, armed conflicts or natural/man-made disasters but do not cross internationally recognized State borders. IDPs also include indigenous peoples who may be forced to leave their homes to “avoid effects of large scale development projects.”<sup>12</sup> The difference between refugees and internally displaced persons is that the former cross internationally recognized State borders to flee persecution, conflict or disasters.

## **Drivers of Displacement**

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<sup>7</sup> S. James Anaya, *International Human Rights and Indigenous Peoples* (2009) Aspen Publishers.

<sup>8</sup> Art. 1, ILO Convention No. 169, 1989

<[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169)>.

<sup>9</sup> E/CN.4/Sub.2/1986/7/Add.4, ¶ 379.

<sup>10</sup> Centre for Minority Rights Development (Kenya) & Minority Rights Group International on behalf of the Endorois Welfare Council v The Republic of Kenya, African Commission on Human and Peoples’ Rights Communication number 276/03 (*Endorois* case) <<http://www.achpr.org/communications/decision/276.03/>>.

<sup>11</sup> *Ibid.*

<sup>12</sup> Protocol on the Protection and Assistance of Internally Displaced Persons, 2006.

The reasons leading to displacement of indigenous peoples can broadly be categorized into the following- conflict; rise of right wing populism (crackdown on migration); climate change and land rights.<sup>13</sup> The UN Permanent Forum on Indigenous Peoples Issues identifies certain “push” factors that contribute to indigenous peoples’ migration to urban areas. These “include land dispossession when indigenous peoples are forcibly removed or driven from their homelands, poverty, militarization, natural disasters, lack of employment opportunities, and the deterioration of traditional livelihoods.”<sup>14</sup>

*a) Conflict*

It has been reported that minorities and indigenous groups form a disproportionately high part of numbers of internally displaced persons. For example, in the first half of 2017 in Columbia, of nearly 8300 civilians who had been uprooted by mass displacements- 70% were the indigenous Afro-Colombian communities.<sup>15</sup> Human rights violations are a common factor driving displacement of indigenous peoples, due to their distinct cultural identities that subject them to discrimination and even persecution. A case in point is the case of egregious violations of international law that include crimes against humanity, war crimes and even genocide, committed against the Yezidi community in Iraq which has been subject to mass displacement at the hands of Islamic State of Iraq and Syria since 2014.<sup>16</sup> As a result of conflict and militarization of their lands, indigenous peoples in Davao city of Mindanao region, Philippines, have been displaced from their ancestral homes.<sup>17</sup>

*b) Climate Change*

Climate change impacts everyone globally, yet its effects are manifest in the disturbingly skewed pattern witnessed with respect to climate change affecting the poorest and marginalized groups. Indigenous peoples are indisputably some of the world’s poorest communities and yet the disproportionate impact of climate change on them is rarely acknowledged. The right to culture of indigenous peoples is directly dependent on their access to traditionally used land and natural resources, conduct of traditional activities and spiritual beliefs that ensure the continued existence of the peoples as unique.<sup>18</sup> It is integral to their way of life.<sup>19</sup> Rising sea levels have affected indigenous peoples’ livelihoods, cultural practices and spiritual beliefs in Pacific Islands.<sup>20</sup> Indigenous community of Yupik subsist on hunting walruses in Alaska and

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<sup>13</sup> ‘No escape from discrimination: minorities, indigenous peoples and the crisis of displacement’ Minority Rights Group International (2017)

[https://reliefweb.int/sites/reliefweb.int/files/resources/MRG\\_Displacement\\_Report\\_Dec17.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/MRG_Displacement_Report_Dec17.pdf).

<sup>14</sup> ‘Urban indigenous peoples and migration’ UN Permanent Forum on Indigenous Issues (2008)

[https://www.un.org/esa/socdev/unpfi/documents/factsheet\\_migration\\_final.pdf](https://www.un.org/esa/socdev/unpfi/documents/factsheet_migration_final.pdf).

<sup>15</sup> Ibid (n 13).

<sup>16</sup> Ibid.

<sup>17</sup> ‘Indigenous peoples/Displacement: UN expert appalled at distortion of his views by Philippines Armed Forces’ (2015) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16315&LangID=E>.

<sup>18</sup> Committee on Economic, Social and Cultural Rights (CESCR). General Comment 21: Right of everyone to take part in cultural life [article 15(a)], 21/12/09, UN doc. E/C.12/GC/21. (2009); UN Human Rights Committee (HRC), General Comment 23: The Rights of Minorities (article 27), 08/04/94, UN doc. HRI/GEN/1/Rev. (1994).

<sup>19</sup> UNDRIPs Manual <<https://www.ohchr.org/documents/issues/ipeoples/undripmanualforhris.pdf>>.

<sup>20</sup> Ibid (n 13).

due to increasing temperatures and melting ice, there is a significant decrease in access to the essential food source of walruses, leaving the Yupik no choice but to relocate in addition to erosion of coastlines and intense storms left un-buffered due melting protective barriers of ice in the Arctic.<sup>21</sup> These developments arise in stark contrast to the right of self-determination awarded to indigenous peoples who under no circumstances may be deprived of their means of subsistence.<sup>22</sup>

### *c) Land Rights*

This right to self-determination is intrinsically tied to indigenous peoples' rights over lands and natural resources and has been identified "as a prerequisite for the continued existence of indigenous peoples throughout the world as distinct peoples".<sup>23</sup> Insecure land rights of indigenous populations are exacerbated by land-grabbing, forced displacement as a result of urbanization or resource extraction and climate change. In Kenya, desertification has led to Masai and Oromo people to relocate to urban settlements as it changed traditional grazing routes and disrupted the previously nomadic way of life of these peoples.<sup>24</sup>

Brazil has witnessed the displacement of tens of thousands of indigenous peoples of the Guarani Kaiowá community- one of the largest peoples' groups in the country with a bleak history of forced evictions that can be traced back to the early 20<sup>th</sup> century. Concentration of this community was on the frontier of Mato Grosso do Sul, an isolated region on the border of neighbouring Paraguay. As a result of extensive agribusiness interest of the Parliament in Brazil in this area, there has been widespread displacement and persecution at the hands of armed farmers or hired militia of the Guarani people. Their land, as is characteristic of all indigenous peoples, is the foundational block of the "construction of their unique identity, lifestyle and belief system" that plays a fundamental role in all aspects of society, culture and religion of the Guarani. Government economic policies which include large-scale deforestation and creation of vast stretches of sugar plantations have driven away these peoples from their ancestral lands and is a source of immense tension between the people and the Police forces. In quiet response, the community has retaliated by beginning to peacefully reoccupy their ancestral land- provoking violent backlash. The condition of Guarani is not an isolated incident in Brazil. In a rare victory for indigenous peoples' land rights, the construction of a megawatt dam- the São Luiz do Tapajós- was put on hold in April 2016 due to concerns voiced about the prospective impact of this dam on the lives of Munduruku people who inhabited the region.<sup>25</sup>

### **Beacon of Hope**

In furtherance of acknowledging, recognizing and respecting the right of indigenous peoples to their land- traditionally used or depended upon- on 26<sup>th</sup> May 2017, the African Court on

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<sup>21</sup> Ibid

<sup>22</sup> Art. 1(2), ICCPR and ICESCR; UNDRIPs Manual

<<https://www.ohchr.org/documents/issues/ipeoples/undripmanualforhris.pdf>>.

<sup>23</sup> UNDRIPs Manual <<https://www.ohchr.org/documents/issues/ipeoples/undripmanualforhris.pdf>>.

<sup>24</sup> Ibid (n 13).

<sup>25</sup> Ibid.

Human and Peoples' Rights upheld the right of the Ogiek community in Kenya to their land.<sup>26</sup> The decision is landmark for concluding an 8 year old battle with the Kenyan government, including harassment, forced evictions and additional land rights abuses that have been an integral, even if unfortunate, aspect of treatment meted out to the indigenous Ogiek since colonial times. The Court upheld the role of this community in protecting land and natural resources that is bound to protect them from land-grabbing. The Ogiek case is the largest and first on indigenous peoples' rights that has set the ball in motion for transforming international standards on minority and indigenous peoples' land rights.

## **Recommendations**

While staying cognizant of the multitude of factors that lead to internal displacement of indigenous populations across countries in the world, it is pertinent to suggest reforms to adapt public policy changes that enhance protection, return, rehabilitation or resettlement of indigenous peoples.

- There exists no International human rights based framework that resolves exclusively the questions of gaps in present land rights frameworks. It is urged that treaty bodies established under the International Covenant on Civil and Political Rights (Human Rights Committee) and the International Covenant on Economic, Social and Cultural Rights (Committee on Economic, Social and Cultural Rights) write exclusive General Comments on the right of indigenous peoples to their land- ancestral land and resources, traditionally used. These General Comments must also cater to the rights of minorities and indigenous women who are never regarded as the source of continuation of a community.
- Public outreach and awareness generation must be undertaken on behalf of the international donor community that facilitates access to avenues for redressal of right violations and funding for translating and disseminating national/international laws governing land rights into locally spoken indigenous dialects and languages.
- Land is not an isolated right and is a source for an integrated, holistic approach towards the full realization of all human rights and fundamental self-determination of a people. It must therefore, not be looked upon in a vacuum, instead analysed from the perspective of its interrelations to culture, religion, access to natural resources and ultimately, self-determination.
- In light of rising impunity granted to criminals, the civil society and its organizations should pointedly combat the impunity being granted to those who are harassing and murdering land, environment and indigenous rights defenders.

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<sup>26</sup> African Commission on Human and Peoples' Rights v Republic of Kenya, ACtHPR, Application No. 006/2012 (*Ogiek* case) <[https://www.escr-net.org/sites/default/files/caselaw/ogiek\\_case\\_full\\_judgment.pdf](https://www.escr-net.org/sites/default/files/caselaw/ogiek_case_full_judgment.pdf)>.