

HISAR SCHOOL

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**“Protecting Freedom in the Global Age ”**

**Advisory Panel – On Asia and the Pacific**

*Protecting the Rights of Indigenous People*



**RESEARCH  
REPORT**

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## RESEARCH REPORT

**Forum:** Advisory Panel – On Asia and the Pacific

**Issue:** Protecting the rights of indigenous people

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### Introduction

On July 23rd, 2019, the dead body of Emyra Wajãpi, the tribal leader of the Amazon forest was found in Amapa, Brazil. This news came as a shock following Brazilian President Jair Bolsonaro's Amazon Agenda, calling for the rainforest to be opened for mining as well as his appointment of Marcelo Xavier da Silva, a former police officer linked with agribusiness, as the head of the country's indigenous agency Funai ("Bolsonaro pick for Funai Agency"). The recent developments in Brazil raised questions and concerns about the indigenous people, ethnic groups that are the original settlers of a region that form strong connections with it, and the lack of protection that this situation has proven them to have.

The rapidly changing world and the inability of adaptation of the United Nations (UN) Declaration on the Rights of Indigenous People (UNDRIP) has resulted in violations of these people's rights, and has put them in a dangerous position. The distinct way of living indigenous people have is under the threat of extinction, their freedom hindered as the world becomes more globalised, and as countries adapt their governmental bodies in response to it. It is upon Member States to protect the rights of indigenous people in the global age we are living in, threatening them day after day.

### Definition of Key Terms

**Self-determination:** "Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and of the International Covenant on Economic, Social and Cultural Rights state that "all people have the right of self-determination" ("Right to Self Determination"). This means that all people have the right to determine their political status and accordingly "pursue their economic, social and cultural development". This right is protected by the Charter of the United Nations. "



Economist's August 2019 issue front cover depicting the the recent developments and its implications to the Amazon Rainforest.

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**Discrimination:** The United Nations Educational, Scientific and Cultural Organisation defines discrimination 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" ("The International Convention on the Elimination"). Indigenous populations are affected by discrimination directly and indirectly, and it is considered the root of the injustice indigenous people face today.

**Indigenous:** The term "indigenous" has not been defined, but the UN has introduced characteristics which identify indigenous people. Some of the characteristics include to be self-characterized, have strong relations with the surrounding nature and its resources, be targeted by marginalization and discrimination. The remaining characteristics can be found on the UN website. The lack of a proper definition causes severe problems in the legal systems of Member States, elaborated in the following sections.

### General Overview

Every year, the 9th of August is dedicated as the International Day of the World's Indigenous Peoples, and so comes numerous unilateral yet monophonic reports and statements from numerous international and intergovernmental organizations, including the bodies of the United Nations. All statements commend the efforts of the UN Member States in the adaptation of then UNDRIP, but admit the long process awaiting them to fulfill its requirements, and therefore fully protect the rights of indigenous people. In order to fulfill UNDRIP, and adjust it to the current problems undermining the rights of indigenous people, being knowledgeable about the history as well as the types of injustices and human rights violations indigenous people face is vital. After all, one statement says it all: "Protecting the rights [...] of indigenous peoples is protecting everyone's rights" ("Protecting Rights and Dignity").

### Dispossession of Land

In a UN factsheet for the Permanent Forum on Indigenous Issues, it states that "[the indigenous people] have a special relation to and use of their traditional land" by which they "possess invaluable knowledge of practices for the sustainable management of their natural resources" ("Indigenous Peoples, Indigenous Voices"). The overly-simplified explanation of this special relation prevents people from grasping the grave effects indigenous people's face due to the forced dispossession of their lands. The dispossession of Indigenous Peoples' lands started centuries ago in Africa, and then found its way into the Americas. The First People, as the indigenous people were called, were forcefully converted into a settled agricultural population, and many were killed instead. The most suitable historic example to this would be the colonization of North America, as it would portray the different ways indigenous people have been removed from their lands, dead or alive; and would explain that the "suppression and rights violations [...] can often be directly or indirectly attributed to the legacies of colonialism" ("Discrimination against indigenous peoples").

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When Christopher Columbus first put step onto America in 1492, it is estimated that “more than 100 million indigenous people [were] in the Americas” (“Dispossession, Destruction and the Reserves”). The population, however, fell drastically following the first contact between the indigenous and the colonialists. Historians summarize this sharp decrease as the indigenous people’s face-off with “imminent destruction”. The spread of diseases such as measles and smallpox to which the indigenous people were not immune to nor developed enough to cope with are largely accounted for the decrease of the population, but are not solemnly responsible. European settlers colonized their land, and killed the indigenous people who opposed them. The difference in development between the two ethnic groups enabled this process to be much more easier, and eased the process colonization. Indigenous people were forcefully removed from their lands, and their natural resources were exhausted. The settlers became the protecting authority of the lands, but stripped away the land rights of the indigenous people. With the arrival of more settlers in the following centuries, the need of local partners slowly decreased, worsening the already dangerous position the indigenous were in.

Today [indigenous people] suffer higher rates of landlessness, [...] and internal displacement than other groups (“Learn More about Indigenous People’s Rights”). In order to tackle this issue, the United Nations Human Rights Office of the High Commissioner (OHCHR) has introduced the Expert Mechanism on the Rights of Indigenous Peoples carried out a study on free, prior and informed consent through resolution 33/25 in September 2018. This mechanism prohibits states to relocate Indigenous People’s without their “free, prior and informed consent” and without being given an adequate compensation. This however, did not prevent companies and governments to lease, sell and pollute these lands, therefore indirectly forcing the Indigenous people out it. Discrimination, which will be elaborated on in the next section, and active armed tensions are other factors forcing these people out of their lands. Activists defending these lands are targeted and are even murdered, pointing out the inadequacy of the expert mechanism. Such human rights abuses continue to disconnect these people from their traditional lands and instead force them to leave for urban locations.

### **Discrimination and Social Disadvantages**

15% of the world’s extreme poor is considered to be indigenous, and Amnesty International mainly attributes this to the discrimination they continue to face. The “second-class citizen” treatment is not only conducted by citizens, but also further encouraged by governmental actions.

The legal systems of countries are the starting point of discrimination as they even fail to define the term “indigenous”. Terms such as “native, tribal, ethnic minority, etc.” are used to define indigenous people in laws regarding lands and resources, generating confusion in the legal framework. In some cases, discriminatory language first introduced by the colonialists is still being used in legal texts, ignoring the adoption of UNDRIP and the concept it presents. The confusion in the legal framework allows governments to use it as a loophole to avoid international regulations and obligations put forward by UNDRIP. Indonesia and many other Asian countries have thus been able to “evade UN

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human rights standards” (“Discrimination against indigenous peoples”). The discrimination is very evident today as indigenous people seeking for basic services such as health and education are being suppressed.

Indigenous groups have also been denied their right of self-determination which is protected under international law as their right to identify their political status. Governments therefore do not protect the livelihoods, rights and lands of the indigenous.

Discrimination affects the most vulnerable of the indigenous population: women and children. Amnesty International reports that indigenous women have “higher rates of maternal mortality, teenage pregnancy and sexually transmitted diseases and are likely to suffer violence” (“Learn more about Indigenous People’s Rights”). Discrimination prevents them from using healthcare facilities, and causes tension within communities and the building blocks of it: families. This makes women and children the target of domestic abuse.

Indigenous people have faced injustice for years and governments show no intention of rectification. Patricia Miranda Wattimena, a former advocacy coordinator at Asia Indigenous Peoples Pact in Thailand, pointed out that “justice will only be realized when the colonial-era legacies of marginalization and discrimination are eliminated [...]”. It is the fundamental task of the UN to provide the centuries awaited justice through the provision and proper protection of indigenous people’s rights.

### Major Parties Involved and Their Views

#### Australia

Indigenous population in Australia is estimated to be 3% of the overall population, standing at 745,000 according to International Work Groups for Indigenous Affairs. Australia has not ratified Convention 169 by the International Labour Organisation, which focused on matters extremely significant to the indigenous people, and which will be elaborated in the following sections. Australia also voted against UNDRIP in 2007, but later changed its position and went on to endorse it in 2009. Discrimination and inequalities still show signs of existence in Australia, as mortality rates for Aborigines and Torres Strait Islanders remain 1.7 times higher than that of the remaining non-indigenous population at this time. Discrimination in Australia’s justice system is also evident, with 2,400 prisoners per 100,000 indigenous people against a much less number for the non-indigenous population.

#### Brazil

Briefly mentioned in the introduction, the situation in Brazil is worsening rapidly following the shift in power. Jair Bolsonaro, a far-right politician also referred to as the “Brazilian Trump” has directed the government’s efforts to exploit the natural resources of the Amazon rainfall, and easing this process at

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all costs. The recent leadership change made in the Funai agency points Bolsonaro's efforts into that direction. The Brazilian constitution does recognize the rights of indigenous people and even "states that the government is responsible for the demarcation of indigenous lands" ("Indigenous Rights in Brazil"). However, in practice, Brazil is not doing its best. Despite demarcating indigenous people's lands, Brazil does not provide funding for healthcare and education, therefore worsening their living conditions. Other ongoing projects in Amazon together with the deforestation added up to the already bad treatment standards.

### Indonesia

According to the International Work Group for Indigenous Affairs (IWGIA), Indonesia "does not fully accept the concept of indigenous peoples" ("Solidarity Statement for the Recognition") Indonesia is home to an estimated 70 million indigenous people, but yet the indigenous population faces violence due to "investments in indigenous territories". It should be noted the Indonesia adopted UNDRIP, but does not fully implement it as it does not agree with the concept of indigenous people. IWGIA states that the government has therefore "rejected calls for specific needs of indigenous groups as it did not recognize them as indigenous.

### Canada

Canada has a long history with the indigenous people. In 2007, it voted against UNDRIP. Later in 2010, it officially adopted it. Canada currently recognizes three groups of aboriginal peoples: Indians, Inuit and Métis. According to IWGIA, indigenous people in Canada "are challenged by the slow implementation of UNDRIP, child welfare and violence against indigenous women and girls" ("Canada IW 2019"). Canada has started adapting its constitution in order to "ensure consistency with the UN Declaration [UNDRIP]". However, Canada has not consulted indigenous representatives in this process.

### Amnesty International

Amnesty International is an international unbiased human rights movement. It has supported indigenous people in their fight for securing their rights and has supported them during the preparation process of UNDRIP. Amnesty International also provides legal assistance for the indigenous people to reclaim their lands. Amnesty International fights for the fulfillment of the UNDRIP by all Member States.

### Timeline of Events

<b>02 Jun 1959</b>	<i>ILO Convention 107 was put into force.</i>
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<b>05 Sep 1991</b>	<i>ILO Convention 169 was put into force.</i>
<b>13 Dec 2007</b>	<i>UNDRIP was adopted by the United Nations.</i>
<b>2010</b>	<i>Canada endorses UNDRIP.</i>
<b>Jul 2011</b>	<i>USA endorses UNDRIP.</i>
<b>28 Oct 2019</b>	<i>Bolsonaro is elected president.</i>

### Evaluation of Previous Attempts to Resolve the Issue

The International Labour Organization (ILO)'s Convention 169 (C169) serves as "a framework for indigenous and tribal people's empowerment" ("Indigenous and Tribal People's"). It takes matters such as gender equality and non-discrimination at hand, and is considered to be the precursor of UNDRIP. It, however, did not gain support from Asian and African countries, and failed to become an improvement to its previous related convention, C107. This is because "countries clung to [C107's] integrationist approach" ("A Practitioner's Perspective"). The term "indigenous people" in C169 also wasn't applicable for Asian and African countries, therefore causing restraint in the adoption of the convention. The need of a proper and accepted definition for the term "indigenous" surfaced once again.



International  
Labour  
Organization

The UNDRIP was adopted by the United Nations in 2007, but faced opposition from unexpected countries such as Canada and the United States; two of the four countries that voted against the Declaration. Canada was concerned over the wording of clauses regarding lands and natural resources. Later, all four contrast that opposed the declaration adopted it. One problem with the declaration is that it is non-binding, meaning that it is a resolution that "progresses into a law". The lacking specificity of the declaration and its complexity for implementation has pushed Member States to find loopholes partially implement the declaration instead of fulfilling it, and lacking definitions benefit Member States for that particular matter. UNDRIP was a huge step forward for indigenous people, but the steady progress has been slow. Indigenous people still remain vulnerable and still make up 15% of the world's poorest peoples. This signals that other actions must be taken in order to speed up the process of protecting indigenous people's rights.

### Possible Solutions

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One problem in this issue is the lack of a concrete and comprehensive definition of the term “indigenous” which caves way to the evasion of international agreements and treaties protecting the rights of indigenous people. Efforts to define “indigenous” and “indigenous populations” have been conducted but have fallen short in terms of effectiveness. These efforts can be reestablished and modified in order to display progress. A definition would close the loopholes in Member States’ legal framework and thus prevent the partial circumvention of UNDRIP.

Discrimination against the indigenous must be minimized and eradicated in order to create an secure environment for their rights. Governments can be provided with outside support in the identification of laws that are improper and/or do not fall between the lines of UNDRIP in order to minimize the undermining of indigenous people’s rights.

Natural resources embody culture, and therefore need to be protected. The cooperative and appropriate usage of these resources should be discussed with indigenous leaders. An internationally recognized convention regarding the usage of these natural sources can be discussed in sessions organized by the UN and attended by the relevant UN bodies.

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