General Assembly 3

Providing a place for traditional perceptions of the use and possessions of land within legal systems of ownership

Research Report

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Forum: *General Assembly 3*
Issue: *Providing a place for traditional perceptions of the use and possessions of land within legal systems of ownership*
Position: *Deputy Chair*

Introduction:

Indigenous peoples, also referred to as First Peoples, Aboriginal Peoples or Native Peoples, represent about 5 percent of the world's population. They are spread across 90 countries, speak over 4000 languages and belong to 5000 different cultural groups. The majority of them (70 percent) lives in Asia. With respect to the variety of Indigenous peoples an official definition of *indigenous* has not been adopted by any UN-system body. However, Indigenous peoples can be identified according to certain features, including: most importantly their self-identification as such, social, economic and political distinction from the dominant societies they live in, strong link to their territories and natural resources. Because of human rights abuses they encounter, they are often made to leave their territories which can lead even to their extinction as people.

Definition of key terms:

Territory - a geographical area subject to the sovereignty, control, or jurisdiction of a state or other entity;

Land tenure - the rules and arrangements connected with owning land, especially land that is used for farming;

Land title - the legal right to own a piece of land or a building, or a document that proves this right;

The Indigenous and Tribal Peoples Convention - an International Labour Organization Convention, also known as ILO Convention 169, is the major binding

international convention concerning indigenous peoples and tribal peoples, and a forerunner of the Declaration on the Rights of Indigenous Peoples; it was established in 1989;

United Nations Declaration on the Rights of Indigenous Peoples – it was adopted by the General Assembly on 13th September 2007, with the majority of 144 votes in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions. Its purpose is to guarantee recognition and protection of the world's indigenous peoples' rights. The Declaration encourages peaceful relationship and partnership between States and indigenous peoples. It is explicitly said that aboriginal peoples all over the world have the right to their territories and natural resources, they can perform their traditional ceremonies and feel safe in their homelands. In many regions, bringing these decisions into force may still present a challenge.

General overview:

Indigenous peoples occupy 20 percent of earth's territory. They have a special relationship with the lands they live on. By protecting and preparing their ancestral territories for the next generations, they safeguard 80 percent of the world's biodiversity. They use their knowledge to manage natural resources and reduce climate change risks. Indigenous peoples land ownership rights are recognized under the international law in some countries, however the instituted rules are usually not obeyed. Many governments do not acknowledge the land occupied by indigenous peoples as legally belonging to them. Very often their territories are used as e.g., mining concessions or touristic attractions without indigenous peoples' consent. This forces Native peoples to leave their lands which not only has a negative impact on First Peoples wellbeing but also threatens the ecosystem which we all depend upon.

Indigenous peoples' land rights in selected regions:

Australia: In the 1960s, Aboriginal people in Australia started going on strike against disrespecting their rights. Over the years their demands shifted from issues concerning e.g., their wages to a focus on their need to control their homelands. Their movement resulted in the Aboriginal Land Rights (Northern Territory) Act in 1976 – first legislation that allowed First People to claim the land title to their territories. In 2022 a new Aboriginal-controlled body – Aboriginal Benefit Account – is being established. Its destiny is to give Australian indigenous
people control over their finances and provide a stable economic future for the next generations.

New Zealand: In New Zealand the indigenous community, the Maori, represents more than 15 percent of the country's population. It is said that among other indigenous communities, the Maori are treated the most equally. However, there are still challenges remaining to be taken up, mostly providing access to education and healthcare (for instance, there is a 7 year difference in the life expectancy of the Maori and non-Maori; about 25 percent of Maori do not gain proper education).

Canada: Canada has been involved in United Nations working groups concerned with indigenous peoples' rights, however the UN Declaration on the Rights of Indigenous Peoples was adopted in Canada in 2016, whereas in most countries it was adopted in 2007.

Recently, the UN human rights report has shown that Canada is struggling to provide Aboriginal Peoples their rights. The report points out the problems such as lack of partnership between the government and indigenous community which results in e.g., forcing first peoples to defend rights to their territories during long and costly court battles.

Asia:

Experiences relevant to land and natural resources rights in Asia vary depending on the country. However, in many cases laws and regulations remain insufficient. Although Indigenous peoples' rights to their lands and natural resources, as well as performing their traditional activities, such as hunting, gathering or fishing are provided in Convention no. 169, they are often not brought into force. This results in a higher level of first peoples' vulnerability and increases the risk of experiencing violence. In spite of having taken some measures to improve Asia's indigenous peoples' wellbeing (for instance, Cambodia and the Philippines have clearly recognized the collective attachment of indigenous peoples with the land and territories that have been traditionally occupied or used by them), a lot of challenges and obstacles affecting Asia's indigenous peoples' rights to land and natural resources need to be taken into consideration, as it is shown in the further parts of the report.

> ***Japan*****:** There are two indigenous groups in Japan - the Ainu and Okinawan. Most of the former group live in Hokkaido, although a lot of them have migrated to the Japanese urban areas recently to work. Representatives of the latter inhabit the southmost areas of the country and are split up into several linguistic groups. Only the Ainu are officially recognised as the indigenous peoples of Japan by the Japanese government. Despite adapting the United Nations Declaration on the Rights of Indigenous Peoples, the State of Japan still needs to take measures to improve the situation of the Japanese indigenous peoples. For instance, a greater emphasis should be put on first peoples' rights education in Japanese schools. Moreover, the Japanese authorities should make every effort to promote indigenous culture and traditions in Japan.
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> ***Indonesia*****:** According to the research carried out by the International Work Group for Indigenous Affairs, nearly 20 percent of the Indonesian population is identified as the indigenous peoples; Indonesia has signed the United Nations Declaration on the Rights of Indigenous Peoples. However, the Indonesian government refuses to address the needs of the native peoples'. There is a significant lack of action and a gap between what is established in legislation and what is practiced. Aliansi Masyarakat Adat Nusantara (AMAN) is the Indonesian non-government organization which has a goal of improving the indigenous peoples' quality of life by respecting their rights to territory, education and culture, as well as their right to be free from violence.

Latin America: Over the past few decades, in Latin America there has been a significant progress in the recognition of indigenous peoples' land tenure rights – a substantial change from denial to legal recognition of their land ownership rights. In spite of this progress, however, neither efforts put in the legal recognition of these rights have met international standards based on the United Nations Declaration. The gaps in enforcement of indigenous peoples' territorial rights often cause local conflicts connected with the control and use of land and natural resources.

Major parties involved:

USA - several federal agencies are responsible for providing direct services or funding to federally recognized tribes and their members—including the Bureau of Indian Affairs (BIA), the Bureau of Indian Education (BIE), and the Indian Health Service (IHS). These agencies face a number of challenges to improve the effectiveness and efficiency of their tribal programs.

Europe - European Network on Indigenous Peoples (ENIP) was established to ensure that all European actors fulfill, respect and protect the rights of indigenous peoples globally; however, Europe is still struggling to provide first nations their fair rights .

Developing countries – despite the efforts put in providing the indigenous communities rights to their territories, the governments of many developing countries need to take determined action to improve first peoples' living conditions.

Timeline of events:

1492 – beginning of the European colonization of the Americas

1620 – the arrival of the Mayflower Pilgrims to New England

1776 – the inception of The United States of America

1830 – the inception of The Indian Territory in the USA and forced relocation of Native Peoples

1828-1832 – the black war – manslaughter of Aboriginal Australians in Tasmania

1867 – the establishment of The Indian Act in Canada – the document concerning government's and indigenous peoples' relationship

1996 – closing of the last Canadian establishment, in which Canadian aboriginal children were abused

2007 – adopting the United Nations Declaration on the Rights of Indigenous Peoples

Possible solutions:

In spite of having taken some measures, either legal loopholes or the governments' unwillingness do not let the indigenous peoples all over the world enjoy their territorial rights. In this situation, the issue can be resolved through education. Broadening the knowledge of the first peoples' problems would help them be heard out and the topic of aboriginal communities would not be so anonymous to the public anymore. Only then indigenous peoples' rights movement and determined action of the authorities would have the desired effects. However, the governments are often unwilling to recognise the indigenous peoples' rights, especially in authoritarian regimes. Thus the powerful figures in the world's politics should take this issue into consideration.

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