

Research Report

MUNISH '12



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Forum: General Assembly Third Committee

Issue: Protecting the land rights of indigenous cultures

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Position: Chair of GA3, MUNISH 2012

Introduction

An example of a group of indigenous people who experienced an infringement on their habitat that we all know are the Native Americans. This happened many years ago, but indigenous cultures all over the world are still experiencing such issues. These indigenous people are not informed about their rights. Multinationals often take advantage of this situation and use the land the indigenous people live in for their projects. This land is wanted badly, as in many cases valuable materials, such as oil, are hidden under the ground. The indigenous people aren't able to stand up for themselves because they form a minority and obviously don't have a chance against the powerful multinationals. Also, they often have no clue of what's going on until the fundamentals for these projects are placed. Although housing is considered a fundamental human right and everyone should be entitled to live in a safe place, indigenous people often aren't.

Definition of Key Terms

Indigenous cultures

There is no official UN definition for the concept 'indigenous peoples'¹. It is difficult to define the term 'indigenous cultures', as different societies all have another view on this term. Usually, people agree on the following definition. Indigenous people are people that have experienced a history of struggles about a territory with the main community, often considered as 'western', which live in that area. They form the minority, live isolated and are often recognized as the original inhabitants of this area, they had already been living there before the colonial ages. Furthermore, they consider themselves different from the other communities living in the territories. They want to preserve their original customs, culture, social institutions, language and legal system and try not to be involved with the culture.

¹ In 1972, a definition was accepted by the United Nations Working Group on Indigenous Peoples. This group was discontinued however.

Land rights

Land rights can be described as 'entitlement to ownership or use of a certain part of land'.

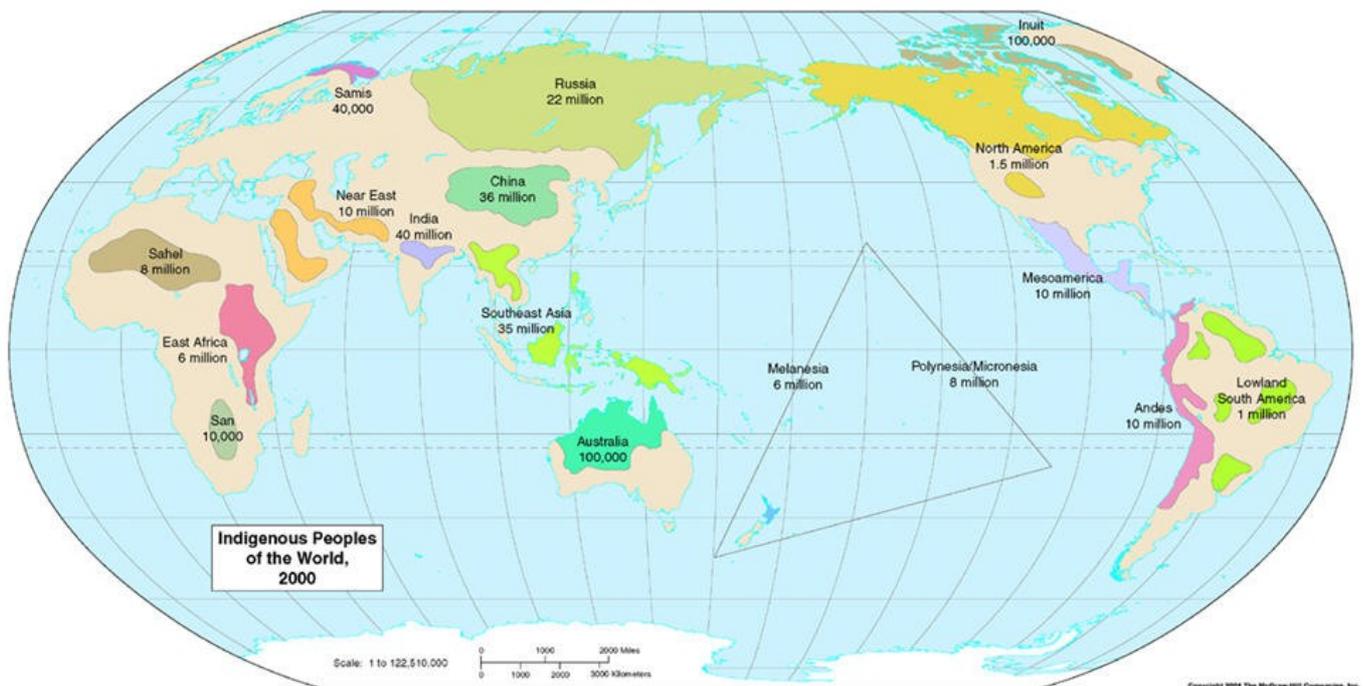
Universal Declaration of Human Rights

The Universal Declaration of Human Rights is a treaty created by the UN General Assembly. There was a need for a common definition of the human rights. In the treaty, various basic human rights for every individual are included. The treaty pursues justice, peace and freedom. All member states are to imply the declaration and defend the articles included. The full declaration can be found here: <http://www.un.org/en/documents/udhr/>

General Overview

The amount of indigenous people doesn't concern small numbers. In total, approximately 370 million indigenous people are living worldwide, in some 70 countries. Currently, a shocking one third is in danger of becoming extinct as a result of exploitations and violations on their habitat. It all started when the Europeans came to conquer and discover the world. They considered themselves better than the original inhabitants and overruled them by making the land their colony. Indigenous people face many problems including discrimination, no rights to education, the prohibition to speak their own language, the lack of participation and representation, violence from outside and no access to justice.

Source: http://www.westga.edu/~gvanvale/map_of_indigenous_people.htm



The main problem they face is the dispossession of their land. You might think this last problem is easy to solve, that the indigenous people would be satisfied with a large amount of money or a new living place. This, however, is not the case. The indigenous people need the territory, which has been theirs for years, for several means. Firstly, the land has a very significant religious meaning to them and is necessary for the spiritual development of the people. Often, they consider the land they are living on as holy, and everything they can make from the land is considered a gift from their gods. Should they lose their land, they'll also lose their contact with the earth and their identity. Furthermore, the land forms an essential economic factor for the indigenous people. Everything they use on a daily base comes from the land they inhabit, so the ability to take care of themselves depends on the natural resources of their land. The indigenous peoples living in forests, for example, grow crops in small gardens and go fishing and hunting for their food. They use the trees and plants for their homes. The security that they are able to use and control the natural resources is more important to most of them than the direct ownership of the land itself. In conclusion: their land is of the utmost importance to indigenous people.

Unfortunately, these indigenous people aren't the only ones interested in the land. Multinationals see chances for the natural winning of resources, such as oil, or a useful piece of ground to built something on. Sometimes, highways are being constructed through the habitat of the indigenous people. These infringements do not only affect the indigenous people, but also the nature. Experts have predicted that the last remaining rainforests could be consumed within 40 years. It is extremely difficult for the indigenous people to prove that the ground is theirs, as nothing was officially written down. Even though they have been living there for ages. As you may understand, this seems unfair.

On September 13, 2007, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted. The declaration emphasizes the fact that indigenous people have the right to basic needs, such as the right to identity and the preservation of their culture. Since 2010, the four countries that voted against (Australia, Canada, New Zealand and the USA) have all ratified the declaration. One of the main articles of this declaration, when looking at the issue of 'Protecting the land rights of indigenous cultures', is article 26. This article states the following:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.²

Unfortunately, after five years, the content of this article hasn't fully been implemented.

Another important article is article 27:

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

In some Latin American countries, the political systems are becoming more democratic and open to hear about the opinions of the minorities in the country. In Africa, only a few countries have recognised the existence of indigenous people. The Republic of Congo is among these countries. In December 2010, a law for the promotion and protection of the rights of indigenous peoples was adopted in this country. Congo is the only African country with a law that protects the rights of indigenous people. The African indigenous peoples are poorly represented within the government and other decision-making bodies (both nationally and locally). Therefore, they cannot oversee what decisions will be affecting their lands, and cannot advocate themselves.

In Australia, the creation of the National Indigenous Representative Body was announced in 2009 as an attempt of the government to reset the relation with the indigenous people. As a consequence of this, the Australian indigenous people are being represented in the government according to the size of the indigenous people.

In the United Nations, indigenous people are represented by the mechanisms of Expert Mechanism on the Rights of Indigenous Peoples (EMRIP, more information can be found in 'Major Parties Involved and Their Views'). From the 7th to the 18th of May 2012, the eleventh session of the United Nations Forum on Indigenous Issues took place. Almost 2000 indigenous participants took part in this event, and they had the chance to engage with UN

² For the full declaration, see the appendix



member states, NGO's and more.

Major Parties Involved and Their Views

United Nations Permanent Forum on Indigenous Issues (UNPFII)

In 2000, this forum was established by the Economic and Social Council (ECOSOC). It includes eight indigenous experts and is the only international UN body with indigenous peoples as members. It meets annually and creates a report to submit to the ECOSOC. The main goal is to advise the ECOSOC about indigenous issues regarding social and economic development, education, health, culture, the environment and human rights. The forum raises the awareness of indigenous issues within the UN.

Unrepresented Nations and Peoples Organisation (UNPO)

This NGO (not a UN body, although the abbreviation might suggest) stands out for all the unrepresented nations and peoples, including the indigenous cultures. They are active all around the world (see the appendix for a link of where the UNPO acts). The UNPO trains groups in finding the best ways to market their issues: for example by having a 'peaceful protest' instead of a regular protest.

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)

With the reformation of the Human Rights Council, the former Working Group on Indigenous Populations became the EMRIP. Its aim is to provide proposals and advice, as a result of studies and research on the rights of indigenous peoples, to the Human Rights Council.

Timeline of Events

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| 1948 | Universal Declaration of Human Rights adapted |
| 1989 | Indigenous and Tribal Peoples Convention took place (forerunner of the UNDRIP) |
| 1994 | Start of the first decade of indigenous people |
| 2000 | The establishment of the UNPFII |
| 2001 | Appointment of UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People |
| 2004 | Start of the second decade of indigenous people |
| 2007 | Declaration on the Rights of Indigenous Peoples adapted |
| 2007 | The Working Group on Indigenous Populations becomes the Expert |

mechanism on the

rights of Indigenous Peoples

2011 The United Nations Indigenous Peoples' Partnership was established

May 2012 Most recent UNPFII session took place

2014 World Conference on Indigenous Peoples will take place

Evaluation of Previous Attempts to Resolve the Issue

As already mentioned throughout this research report, the UN is involved in several projects to solve the issue. In 2011, the UN established the United Nations Indigenous Peoples' Partnership (UNIPP), an initiative that focuses on promoting and protecting the rights of indigenous peoples. They want to strengthen their institutions and ability to participate in governmental and policy processes at both local and national levels. It supports UN programmes at country level, in partnership with the indigenous peoples themselves.

Furthermore, since 2000, a UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People is active. The rapporteur provides reports about the situation of the indigenous people in selected countries, promotes good practices (such as new laws, agreements and government programs) between the indigenous people and the states, addresses violations of the UNDRIP, and makes sure thematic studies on important topics regarding the promotion and protection of the rights of indigenous peoples are being conducted. He also provides help to governments that want to create new laws and policies in advantage of the indigenous cultures by visiting the country and its indigenous inhabitants.

In 2014, the World Conference on Indigenous Peoples will take place.

Possible Solutions

As in many countries the indigenous people aren't acknowledged by the government, it is easy to see why they are being discriminated. First of all, the indigenous cultures should be recognised and considered equal to the 'normal' inhabitants. It is important that the articles in the UNDRIP are implemented, as they are considered the basic human rights for indigenous people. If these measures are being implemented, the indigenous people can be given a position in the government, so they have a vote and can share their opinion. However, the declaration isn't yet ratified by all member states. Furthermore, several approved UN programs designed in cooperation with the indigenous people seem to help

and resolve some of their issues. Another point of view could be to negotiate with multinationals or make international agreements on the protection of the habitats of indigenous peoples. Last but not least, it is important to inform the indigenous peoples about their rights.

Appendix or Appendices

<http://www.unpo.org/members.php>

http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

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