



UNDRIP: EVOLUTION OF THE INTERNATIONAL STANDARD SETTING

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Abstract

While many countries differed in recognising the aboriginals and tribal citizens as indigenous peoples, others are hesitant to consent the right of Indigenous Peoples in exercising their right to self determination and maintenance of their own land, territories and resources. Indigenous Peoples fuelled their struggle for recognition exceeding their national territories catching the attention of the United Nations. The UNDRIP is a reward to the earnest endeavour of a number of subsidiary organs of the UN, Special rapporteur mechanisms and expert mechanisms along with the relentless struggle of the Indigenous Peoples organisations and other NGOs working with similar purpose. Even prior to the declaration there were quite a few initiatives and norms, programme and plan of actions that were ventured to address the very basic causes of Indigenous Peoples like right over their land and territories, their distinct identity, development and security etc. the present article is an endeavour to make an analysis of the evolution of the UNDRIP and the role played by the International Community towards this Holistic approach.

Key Word – Indigenous Peoples, Land Territory and Forest, Tradition and Custom, Socio-economic and Education, Language, Marginalization.

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INTRODUCTION

United Nations (UN) Declaration on The Rights of Indigenous People is an outcome of the age long struggle of Indigenous People's organisations that can be traced back from 1920s itself i.e. right from the time of League of Nation¹. The International Labour Organisation was the first International body and the Bolivian Government was among the first state government to take natives for the promotion and protection of the rights of Indigenous people. Special Rapporteur Jose R Martinez Cobo's report on discrimination against Indigenous people to the sub Commission on prevention of Discrimination and Protection of minorities started the era of development of UN concern for the Indigenous people's issues. Working group on Indigenous population; inter-sessional working group of the Commission on Human Rights; Expert mechanism on the rights of Indigenous people, UN Voluntary Fund for Indigenous people were the subsidiary organs that were devoted in the formulation of the UN Declaration of Indigenous people. There were mentions worthy indigenous people organisations that contributed in formulation of the UN Declaration and received consultative status with financial assistance.

There is no doubt of conviction from part of the Indigenous people's organisation for establishing their causes before the world. They displayed no less effort than that of the International Community². The International Community also responded to the urges of the Indigenous people³. The UN in follow up of the recommendation of the World Conference on Human Rights proclaimed two International decades for Indigenous people in order to formulate an International Standard for promotion and protection of human rights of the Indigenous peoples. And thus the UN Declaration on rights of Indigenous peoples (UNDRIP) became the first international Human right Instrument that is formulated as a joint venture of the UN System, International Community,

¹ In 1923, Cayuga Chief Deskaheh, the representative of the Six Nations of the Iroquois travelled to Geneva, to the League of Nations, to plead for the cause of his people, STATE OF THE WORLD'S INDIGENOUS PEOPLES http://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP_introduction.pdf

² To mention some such initiatives among the numerous are namely the Kari Oka Declaration of the world conference of Indigenous people on territory, environment and development; the Indian Confederation of Indigenous and Tribal peoples second General Assembly, the Beijing Declaration on Indigenous Women ; the Indigenous people's statement on the Trade Related Aspects of Intellectual; Property Rights of World Trade Organisation Agreement, the Indigenous people's Seattle Declaration; the declaration of the first International Forum of Indigenous people in Climate Change, the Kimberly Declaration; the International Cancun Declaration of Indigenous peoples; resolution of Indigenous and Tribal Leaders and their Allies towards a consensus of the people; and the Asian Development Bank's Indigenous people's Policy and its impacts on the Indigenous peoples.

³ International Labour Organisation (ILO) adopted its first convention no. 107 and later on owing to its short comings revised the same and adopted ILO Convention no. 169. The World Bank and the Asian Development Bank also adopted policy to regulate the development projects with potentials to prejudice the prospects of Indigenous peoples.

non-governmental organisations as well as the ultimate beneficiaries of the UNDRIP making it a unique instrument itself⁴.

I. THE INTERNATIONAL LABOUR ORGANISATION AND INDIGENOUS PEOPLES

The International Labour Organisation was established by the treaty of Versailles in 1919⁵ and was the first specialised agency of United Nations after its establishment in 1946. Since then ILO has been endeavouring to promote social justice for workers and formulating of international policies and programmes to improve their living and working conditions⁶. In the year 1926 a committee of experts was created for preparing international standards for the protection of Indigenous and Tribal workers. And thus since 1930s the ILO started working on the situation of a particular section of people often called the Native workers and were found numerous among the bonded labours at that time. The ILO published a study on Indigenous Peoples in the year 1953⁷ and based on that study a short-lived ILO Expert Committee was established on whose recommendation the ILO adopted its convention no 107⁸. Thus the first ever international convention⁹ defending the plights of Indigenous peoples came into being in the year 1957.

The ILO convention no 107 recognised the indigenous peoples as a distinct entity and also recognised their very basic and human rights like right to ownership, collective or individual, over land and territory under traditional occupation of such population and right to be compensated either in money or in kind if land is appropriated by government for public purposes. With time and rise of awareness among the indigenous peoples and their organisations the ILO convention no 107 failed to address the basic expectations of indigenous people like demand for equality, participation and self-determination. The ILO convention no 107 was also criticised for promoting ideas of assimilation and integration with the mainstream dominant segment of the

⁴ Statement of Victoria Tauli-Corpuz, chair of the UN Permanent Forum on Indigenous Issues on the occasion of the adoption of the UN Declaration on the Rights of Indigenous Peoples. 61st Session of the UN General Assembly, 13 September 2007, New York.

⁵ The United States partnership with the ILO began with its founding in 1919 when the ILO was created along with the League of Nations from the Treaty of Versailles. Part XII <http://www.ilo.org/washington/ilo-and-the-united-states/brief-history-and-timeline/lang--en/index.htm>

⁶ There are ILO standards on rights at work, on many aspects of conditions of work, on safety and health, on social security, on labour administration and inspection, on employment and training, on wages, migration, and on particular categories of workers such as seamen, agricultural workers, indigenous peoples or migrants. Together they form a comprehensive corpus of international law. See *The ILO and the Quest for Social Justice, 1919-2009*, Gerry Rodgers, Eddy Lee, Lee Swepston and Jasmien Van Daele, International Labour Office Geneva.

⁷ ILO: Indigenous peoples: Living and working conditions of aboriginal populations in independent countries (Geneva, ILO, 1953).

⁸ One of the recommendations of the second session of the ILO Committee of Experts on Indigenous Labour in 1954 was the adoption of a “comprehensive recommendation” formulating “general standards of social policy” in relation to indigenous groups leading to the adopted the Indigenous and Tribal Populations Convention (No. 107) and its accompanying Recommendation (No. 104) in 1957.

⁹ ‘Convention concerning the protection and integration of indigenous and other tribal and semi-tribal population’.

society which was then perceived as prejudice to the urge of indigenous peoples in development with preservation of their distinct identity and respect for their social, cultural and administrative institution and structures that evolved in and within their communities and societies since time immemorial.

The ILO convention no 169¹⁰ is a revised version of ILO convention no 107, and is more progressive than its predecessor in addressing issues of indigenous peoples that they were deprived discriminately unlike other section of populations. The ILO Convention no 169 encompassed quite a few most needed human rights and fundamental freedoms and made provision to ensure full realisation of these rights by indigenous peoples without any hindrances and discriminations within the member states of ILO ratifying the convention.

II. THE UNITED NATION AND INDIGENOUS PEOPLE

The UN Charter 1945¹¹ sets forth the purpose of UN as the establishment and maintenance of international peace and security based on principle of equality and self-determination¹². Human rights were regarded as one of the dimension to achieve the said goal and international bill of human rights was a bold step toward the said goal but because of its general character, it failed to address the complex plights of the vulnerable sections of the society that needs special attention. Responding this issue the UN system started working on specific issues as well. In 1965 Mr. Hernan Santa Cruz was appointed as a special rapporteur by the UN Sub-commission on Prevention of discrimination and protection of minorities to make a study on racial discrimination¹³, an initiative of UN succeeded almost after two years of Bolivian Governments proposal for establishing a sub-committee to analysis the social problems encountered by aboriginal populations of American countries¹⁴. Mr. Cruz added a chapter, 'Measures taken in

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¹⁰ 'Convention concerning indigenous and tribal peoples in Independent countries' adopted in 1989

¹¹ October 24, 1945, charter of the United Nations, San Francisco – 1945, <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>

¹² Charter of the United Nations, 1945; Article 1

¹³ In 1969 the Special Rapporteur H. Santa Cruz submitted a preliminary report of the special study on racial discrimination in political, economic and cultural sphere to the sub commission and the final report was completed in 1971 as cited by Jolan Hsieh in his Book Collective Rights of Indigenous Peoples: Identity Based Movement of Plain. See also Edited by Claire Charters and Rofolfo Stavenhagen. Making of the declaration work, the United Nations declaration on the Rights of Indigenous Peoples, Copenhagen 2009 – Document No. 127. See also Hernan Santa Cruz, Study on Racial Discrimination, Chapter IX, Measures adopted in relation to protection of indigenous peoples, United Nations Publication, Sales No. E.76.XIV.2.

¹⁴ Fact Sheet 9 Rev 2 Indigenous Peoples and United Nations Human Rights system, UN Human Rights, Office of the High Commissioner New York and Geneva, 2013, P 18

connection with protection of Indigenous peoples' where in there was a recommendation for conducting a comprehensive study on discrimination against the Indigenous populations¹⁵.

In 1971 responding to the studies of Mr. Cruz, the Economic and Social Council, one of the specialised agency of UN authorised the Sub-Commission on Prevention of Discrimination and Protection of Minorities to appoint Jose R. Martinez Cobo as a special rapporteur to make study on discrimination against indigenous and tribal peoples. The said study was of a remarkable significance and was to a great extent the foundation of later prospects in formulation of international standards for protection and promotion of rights of indigenous peoples. The report was submitted in between 1981 to 1984 and some of the important aspects covered by the report regarding issues of Indigenous peoples were like definition of Indigenous peoples, discrimination against them, their crises regarding health, housing, education, language, culture, social and traditional institutions, political rights, religious rights, equality in administration of justice etc. received much appreciation from the sub-commission and was warmly welcomed by the working group on Indigenous population¹⁶.

As a result of the report of Jose R Martinez Cobo on the problems faced by indigenous peoples all around the world¹⁷, the economic and social council established the working group on indigenous population in the year 1982 to work under the sub-commission on the prevention of discrimination and protection of minorities and to develop a set of minimum standards for protection and promotion of rights of indigenous peoples who were referred by Jose R. Martinez Cobo's study to be oppressed, marginalized and exploited. The said working group comprises of five members each representing for the geographical regions of the world with object to review national measures toward promotion and protection of rights of Indigenous peoples; and to formulate international standards for Indigenous peoples.

The working group owing to its activities gathered attention of both government and non-governmental organisations concerned with Indigenous issues and soon became one of the largest UN forums on the field of human rights. It had a worldwide participation and collection of data around the world that reveals issues of human right violations against the Indigenous peoples. The working group decided to prepare a draft declaration on the rights of Indigenous peoples in 1985 in its fourth session which was completed in 1994 and in the 11th session the sub-commission

¹⁵ J K Das Human Rights and Indigenous Peoples, A.P.H Publishing Corporation, New Delhi 2011

¹⁶ Study of the Problem of Discrimination against Indigenous Populations, Final Report Submitted by the special Rapporteur Mr. Jose R Martinez Cobo, E/CN.4/Sub.2/1983/21/Add.8 30 September 1983

¹⁷ UN Doc. E/CN.4/Sub.2/1986/7 and Add. 1-4. The conclusions and recommendations of the study, in Addendum 4, are also available as a United Nations sales publication (U.N. Sales No. E.86.XIV.3). The study was launched in 1972 and was completed in 1986, thus making it the most voluminous study of its kind, based on 37 monographs.

adopted the draft and presented for consideration before the Commission of Human Rights before submission of the said draft declaration to the Economic and Social Council and the UN General Assembly.

Accordingly the UN Commission on Human Rights created an open ended Inter-Sessional working group in 3rd March 1995 to consider such issues elaborately with urgency so that the draft declaration can be adopted by the UN General assembly within the time frame of the International Decade of the Worlds indigenous peoples (1995-2004). The Human Right commission made provision of participation of indigenous organisations that do not have consultative status as well, based on application¹⁸. The Inter-Sessional group was not only participated by the 15 indigenous organisations having consultative status but also 99 other such indigenous organisations whose applications were approved. The mandate of the working group was extended (as it was not possible to adopt the declaration within the international decade) by the UN Commission on Human Rights for the Second International Decade of the World indigenous peoples (2005-2015). The Inter-Sessional group had two session of which in the first session of 1995 November-December the draft declaration was debated and considered section by section¹⁹ and in the second session those sections of the draft declaration were re-clustered based on their thematic relationship²⁰ in 1996 October- November. And thus finally the working group under chair person Mr. Luis Enrique Chavez, in its 11th session submitted the reconsidered draft to UN Human Right Council, which approved the same in 2006. The UN General assembly in its 107th plenary meeting on 13th September 2007 adopted the United Nations Declaration of the Rights of indigenous peoples within the very first half of the Second International Decade for Worlds' Indigenous People.

III. INTERNATIONAL EVENTS AND INDIGENOUS PEOPLES

The World Conference on Human Right was an International event, organised in alignment of the holistic objectives of the United Nations regarding Human Rights, which reviewed the potentials of the United Nations System and added multiple edges to the United Nations potentials setting forth the Vienna Declaration and Programme of Action calling for International Co-operation. The Vienna Declaration there after paved the way to formulation of the United Nations Declaration on the Rights of the Indigenous Peoples availing all the required avenues. The First International Decade devoted for the Indigenous Peoples was one such event in consequence and follow up of the Vienna Declaration that finally lead to the United Nations General Assembly to

¹⁸ See Resolution 1995/32

¹⁹ See E/CN.4/1996/84

²⁰ See E/CN.4/1997/108

proclaim the Second International Decade for the World's Indigenous Peoples during which the most awaited United Nations Declaration on the rights of the Indigenous Peoples was adopted by the United Nations General Assembly. Like the World conference of Human Rights both the International Decades devoted for United Nations General Assembly issues and causes were added with adequate Programme of actions. A bird's eye view of the three essential International events mentioned can be summarises as –

a. WORLD CONFERENCE ON HUMAN RIGHTS

The World Conference on Human Rights was held on 25th June 1993 attended by 171 states with a wide participation of 7000 participants comprising of academicians, treaty bodies and national institutions, representatives of about 800 or even more Non-Governmental Organisations²¹. This was the first ever August platform to review the developments of Human Rights for the past 45 years and the prospects there off. The said conference also ended up with a list of commitments and resolutions to be followed up for promotion and protection of human rights which came to be known as the Vienna Declaration and Programme of Action²².

Regarding indigenous peoples, the world conference called for early completion of the drafting the Declaration on the rights of indigenous people by working group on the rights of indigenous population, of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. And the Commission on Human Rights was recommended to renew mandates of the working group even after completion of the drafting. Adequate technical and advisory assistance was recommended form State members and the United Nations for this purpose ensuring full and free participation of the indigenous people. The United Nations General Assembly was also recommended to proclaim an International Decade of the World's indigenous people along with action oriented programmes in participation with the indigenous people starting from January 1994. Another very crucial recommendation was the establishment of a Permanent Forum for indigenous peoples²³ within the United Nation System. The world conference also addressed the issue of financial assistance and recommended for an appropriate Voluntary Trust Fund to support the formulation of International Standards for indigenous peoples and availing of adequate representation of the indigenous peoples from all around the world.

²¹ Vienna Declaration and Program of action,
http://www.ohchr.org/Documents/Events/OHCHR20/VDPA_booklet_English.pdf

²² Vienna Declaration and Programme of Action A/ CONF.157/23 Part I UN Documents: Gathering a body of global agreements, text of the Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993.

²³ The Permanent Forum of Indigenous issues was established by the Economic and Social Council as its subsidiary organ by resolution 2000/22 to deal with indigenous people's issues including economic and social development, culture, the environment, education, health and Human rights.

b. FIRST INTERNATIONAL DECADE OF THE WORLD'S INDIGENOUS POPULATION

The first International decade was proclaimed by the general assembly by its resolution 48/163 of 21st December 1993 and by its resolution 49/214 of 23rd December 1993 made the theme for the International decade, 'indigenous people: participation in action'. The general assembly also adopted a programme of activities for the international decade in 21st December 1995 by its resolution 50/157. The international decade was proclaimed for 10th December 1994 to 10th December 2004, with objectives of strengthening of the international co-operation for the solution of the problems faced by the indigenous peoples such as human rights, the environment, development, health care, education. The general assembly further set certain specific objectives for the success of the decade.²⁴

During the first international decade the permanent forum was established by the Economic and Social Council by its resolution no 200/22 respecting the proposal made by the world conference on human rights held in the year 1993. During this decade the special rapporteur Rodolfo Stavenhagen of Mexico was entrusted to report and recommend on the situation of human rights and fundamental freedoms of indigenous peoples. There were other special rapporteur as well to address religious intolerance, racism, human rights and environment. There were thematic and country rapporteurs as well²⁵. During the said decade few crucial studies were accomplished namely on indigenous people and their relationship with land, protection of the heritage of the indigenous peoples, indigenous peoples permanent sovereignty over natural resources, or treaty agreements and other constructive arrangements between state and indigenous peoples.

The commission on human rights addressing one of the essential objects of international decade i.e. adoption of a declaration on the rights of the indigenous peoples established a working group to review the draft proposed by the sub commission. The general assembly also created a voluntary fund for the international decade by resolution 49/214 itself to assist indigenous people's organisations and their activities and projects keeping in mind human right capacity building as an essential aspect of the decade. The wide geographical indigenous people's representation during this decade is evident from the fact that around 176 indigenous projects including human rights training sessions, publications, strengthening indigenous organisations, bringing out newsletters etc. were supported by the said voluntary fund. Around 560 indigenous

²⁴ Report of the Secretary-General on the preliminary review by the Coordinator of the International Decade of the World's Indigenous People on the activities of the United Nations system in relation to the Decade, page 2 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/405/51/PDF/N0440551.pdf?OpenElement>

²⁵ Jose R Marteniz Cobo, Erica Irene Daes, Rodolfo Stavenhagen, Hernan Santa Cruz, S. James Anaya, Victoria Tauli-Corpuz,

people's representatives received financial assistance to attend the working group for indigenous population. Indigenous people's organisations that actively volunteered adequate information needed for the purpose²⁶ and many governments too actively participated in volunteering information and assistance²⁷ and so did the UN Departments and organs²⁸ that actively contributed.

c. SECOND INTERNATIONAL DECADE ON THE WORLD'S INDIGENOUS PEOPLE

The general assembly proclaimed the second international decade of the world's indigenous peoples with the theme, 'Partnership for action and dignity' by its resolution 59/174 commencing from 1st January 2005, where the Under-Secretary-General for Economic and Social Affairs shall be the coordinator and the programme of action for the decade was adopted by the UN General Assembly resolution 60/142 calling for international cooperation of the member states, UN Agencies, international and intergovernmental organisations, indigenous peoples organisations and civil societies organisations. The program of action further suggested objectives and specific activities for the success of the decade²⁹.

One of the major achievements of the second international decade was the UN Declaration on the rights of indigenous peoples adopted by general assembly vide resolution 61/295 after about two decades of worldwide hard works and hot debates. An expert mechanism on rights of indigenous peoples was established by the Human rights council in December 2007 vide its resolution 6/36, as an essential instrument in inter-governmental works of indigenous peoples rights like research and documentation of indigenous peoples issues. During the said decade specific task force on indigenous peoples issues were established and inclusion of indigenous peoples issues in common country assessment and UN Development Assistance Framework process including issuance of UN Guidance on indigenous peoples issues were of significant importance in insuring institutional awareness of indigenous peoples issues and initiation of programmes targeting those issues³⁰.

²⁶ International Indian Treaty Council, Grand Council of Crees, Institute for the problems of indigenous peoples of the north, Association of Tamaynut, Indian Confederation of Indigenous and Tribal Peoples and Ocaparce Internationale.

²⁷ Argentina, Austria, Denmark, Finland, Mexico, Paraguay and Russian Federation.

²⁸ The UN-Habitat, UNFPA, ILO, UNIFEM, DESA, WFP, FAO, Secretariat of Convention on Biological Diversity, WHO, UNICEF, UNCTAD, Department of Peacekeeping Organisation, Office for Coordination of Humanitarian Affairs, Office of the Legal Affairs, Department of Public Information, and organisation for economic co-operation and development, and the World Trade Organisation.

²⁹ See Midterm assessment of the progress made in the achievement of the goal and objectives of the Second International Decade of the World's Indigenous People, para 6

³⁰ Ibid Para 81

The first report³¹ drawn on achievements of the observance of the first international decade for world's indigenous peoples mentioned non attainment of two essential goals namely adoption of UN Declaration of the rights of indigenous peoples and implementation of the human rights measures at the national level adequately referring the indigenous issues. The said report expressly mentions the need of observation of the second international decade of the world's indigenous peoples firstly to maintain the august momentum gained by the first international decade for indigenous people issues and secondly to do what is left undone³².

IV. UNITED NATIONS VOLUNTARY FUND FOR INDIGENOUS PEOPLE

The commission on human rights on recommendation of the sub commission for establishing a funding mechanism for promotion and protection of human rights of Indigenous population recommended the Economic and Social Council for establishment of such a fund³³. The Economic and Social Council convinced with the proposal recommended the UN General Assembly which established the same in the year 1985 titled, 'UN Voluntary Fund for Indigenous Population'³⁴. The said voluntary trust for indigenous population has a Board of Trustee comprised of 5 persons serving in their personal capacity with adequate experience on issues affecting indigenous population for three years renewable term. The voluntary Fund is to assist representatives of indigenous communities and organisations to participate in the deliberations of the working Group on Indigenous Population³⁵ availing them financial assistance³⁶.

The said fund shall be administered according to the Financial Regulations and Rules of the United Nation³⁷ and certain criteria³⁸ set forth for consideration of the beneficiaries' application of financial assistance. The United Nations Economic and Social Council (ECOSOC) gave 15

³¹ Report of the Secretary-General on the preliminary review by the Coordinator of the International Decade of the World's Indigenous People on the activities of the United Nations system in relation to the Decade

³² *ibid*, chapter iv, preliminary conclusions Para 68.

³³ Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities On its Thirty-seventh Session, Rapporteur; Mr. Leoadro. Despouy, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Geneva, 6-31 August 1984, E/CN. 4/198 5/3. E/CN. 4/Sub. 2/198 4/43 19 October 1984

³⁴ *Ibid*. chapter XVII, Study of the Problem of Discrimination against Indigenous Population, Section B, United Nations Voluntary Fund for Indigenous Population, E/CN.4/1985/3, E/CN.4/1984/43

³⁵ Economic and Social Council resolution 1982/34 of 7 May 1982, by which the Council authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to establish annually a working group on indigenous populations

³⁶ United Nations General Assembly resolution 40/131 of December 1985

³⁷ E/CN.4/Sub.2/1983/20

- i. ³⁸ For the purpose of participation in the deliberations of the Working Group for Indigenous Population,
- ii. Who would not otherwise be able to attend the sessions of the working group without the financial assistance
- iii. Who would be able to contribute deeper knowledge on the problems affecting the Indigenous Population, to the working group and would secure a broader geographical representation.

organizations of indigenous people's³⁹ consultative status to attend and contribute to a wide range of international and intergovernmental conferences. The Fund mechanism was not limited to the jurisdictions defined at initial stage and has increased including even other Indigenous communities organisations and purpose including not only participation in deliberations and meetings in the Working Group but also in small Indigenous communities organisations projects related capacity building and awareness raising. The fund was utilised to assist the Indigenous community's organisations to participate in the open-ended inter-sessional working group⁴⁰ commission of Human Right on the mandate of the United Nation General Assembly⁴¹. Further the United Nation General Assembly also mandated⁴² that the said fund shall also be utilised to finance the indigenous population communities to participate in the sessions of the United Nations Permanent forum.

V. INTERNATIONAL FINANCIAL INSTITUTIONS AND INDIGENOUS PEOPLES

Today the concept of Indigenous Peoples itself indicates toward a section of peoples who once had an established social structure, own culture, tradition and customs, land, territory and means of subsistence, social norms and means of communications had been deprived off their rights, marginalised and exploited by the relatively later arriving advanced race. There prospects were then forced subservient to the demands of the settlers terms of development which hardly addressed the distinct regards of the Indigenous Peoples. This laid the impetus of exclusion of the Indigenous Peoples in almost all aspects of social life of the respective Nations. Plights of Indigenous Peoples worsened when the optimistic volition of national development started infringing the last remaining abodes of the Indigenous Peoples in remote forests and country sides, plundering not just their lands territories and forests but their identity, culture and social solidarity achieved with civilisation. The International Financial Institutions started an era of International Financial Co-operation for assisting each other in combating with problems like poverty but unfortunately such poverty reduction projects were found to run at the cost of Indigenous Peoples posing a threat of identity crises. Of late however the International

³⁹ Aboriginal and Torres Strait Islander Commission, Asociación Kunas Unidos por Nabguana, Four Directions Council, Grand Council of the Crees (of Quebec), Indian Council of South America, Indian Law Resource Centre, Indigenous World Association, International Indian Treaty Council, International Organization of Indigenous Resource Development, Inuit Circumpolar Conference, National Aboriginal and Islander Legal Services Secretariat, National Indian Youth Council, Saami Council, Sejekto Cultural Association of Costa Rica, and World Council of Indigenous Peoples.

⁴⁰ Established by the Commission on 25th July 1995 vide resolution 1995/32

⁴¹ United Nations General Assembly resolution no 50/156 of 21st December 1995

⁴² United Nations General Assembly resolution no 56/140 of 19th December 2001

Community did realise the rationale of Indigenous Peoples struggles for over the past decades and the trend had adequate reflection in the modifications of the policies of assistance of the Financial Institutions that stood strong against development projects affecting the Indigenous Peoples. In this context the policy for assistance in development projects of the two most important International Financial Institutions, keeping in account of the vulnerable conditions of the Indigenous Peoples in Nation States, shall be a great initiative in recognition of the Indigenous issues in the respective Nation States irrespective to whether the Nation recognise the Indigenous Peoples or not. A bird's eye view of such two policies of those two Banks, namely First the World Bank and Secondly the Asian Development Bank, exclusively adopted for ameliorating Indigenous Peoples issues are detailed below –

a. WORLD BANK POLICY ON INDIGENOUS PEOPLE

World bank's projects and programmes have been strongly criticised by the Indigenous People and others for not taking into account the social cost and their impact on Indigenous People during 1960's and 1970's leading to adoption of the world bank's first policy on Indigenous People in the year 1982. The policy included measures to protect the territorial rights, health and cultural integrity of Indigenous People and ensuring participation of Indigenous People affected by project in planning and implementation. However owing to its shortcomings and dissatisfaction of the Indigenous People the bank revised its policies in the year 1991 including new indigenous people's rights , guarantying land ownership and right to resources , mitigating negative impact of development projects guarantying participation and ensuring share of benefit. the last version of world bank policy on Indigenous People came to being on July 2005 with the claim that, 'this policy contributes to the banks mission of poverty reduction and sustainable development process by ensuring that the development process fully respects the dignity, human rights , economic and cultures of Indigenous Peoples. for all projects that are proposed for bank's financing that affects Indigenous People, the bank requires the borrowers to engage in a process of free, prior and informed consultation'.

The said policy defines identifying characteristics of Indigenous People and recognises different terms coined in different countries for Indigenous People like 'Indigenous ethnic minorities', 'aboriginal', 'hill tribes', 'minority nationalities' scheduled tribes', and, 'tribal groups'. The policy further recognises the complex relationship of identities and cultures of Indigenous People with their lands and natural resources thereof on which they depends. Indigenous People are most often among the marginalised and vulnerable section of population Socio-economically and legally and are thus unable to protect their rights on lands, territories and resources and participate in development process. Thus the impact of development project without consideration of

Indigenous People issues can incur risks including loss of identity, culture and customary livelihood and exposure to disease.

Addressing these issues the policy proclaims that bank shall finance a project proposed having potential to affect Indigenous People only if in the screening of such proposal and based on the social assessment made by borrower there is a disclosure of Indigenous Peoples plan or draft Indigenous Peoples planning framework and proper implementation of a process of free, prior and informed consent of Indigenous Peoples communities who are affected by such projects at each stage of preparation of the project. Determination to precede proposal shall depend on the extent of adverse affect on indigenous people and the extent of mitigation of such affect by the borrower like physical relocation of Indigenous People to an equal status after free, prior and informed consultation. The policy also affirms to assist in projects on initiatives of development planning and poverty reduction strategies⁴³.

b. ASIAN DEVELOPMENT BANK POLICY

The Asian development bank adopted its policy on Indigenous Peoples on April 1998 recognising the adverse impact of development process on Indigenous Peoples due to their non-participation and vulnerable situation. The first and the second paragraph provides an introduction where the bank sets forth exhaustive sets of criteria for identification of Indigenous Peoples, their distinct features from the dominant mainstream segment of the society they are vulnerable and marginalised resulting into their non-participation in the development projects assisted by the bank which costs not only exclusion from development but also disadvantaged of access to their ancestral lands, natural resources, sources of income from those lands, loss of cultural and social

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- a. ⁴³ Strengthen local legislation as needed, to establish legal recognition of the customary or traditional land tenure systems of Indigenous Peoples
 - b. Make the development process more inclusive of Indigenous Peoples by incorporating their perspectives in the design of development programmes and poverty reduction strategies, and providing them with opportunities to benefit more fully from development programmes through policy and legal reforms, capacity building and free, prior and informed consultation and participation.
 - c. Support the development priorities of Indigenous Peoples through programmes (such as community-driven development programmes and locally managed social funds) developed by governments in co operation with Indigenous Peoples
 - d. Address the gender and inter-generational issues that exists among many Indigenous Peoples, including the special needs of Indigenous women, youth, and children
 - e. Prepare participatory profiles of Indigenous Peoples to document their culture, demographic structure, gender and inter generational relations and social organisations, institutions, production systems, religious beliefs and resource use patterns
 - f. Strengthen the capacity of Indigenous People's communities and IPO's to prepare, implement, monitor and evaluate development programmes,
 - g. Strengthen the capacity of Government agencies responsible for providing development services to Indigenous Peoples
 - h. Protect Indigenous knowledge including by strengthening intellectual property rights and
 - i. Facilitate partnerships among the Government, IPO's, CSOS, and the private sector to promote Indigenous Peoples development programmes.

structures and institutions, loss of Indigenous knowledge, loss of recognition as Indigenous Peoples, and in some cases even encountered with physical oppressions.

The third section of the policy depicts the relationship of Indigenous Peoples and development policies that are often formulated to meet the the broader interest of dominant segments of the societies which are unfit to address the specific interests of the Indigenous Peoples and causes conflict of interests. As socio-economic development takes place development initiatives extends into geographical remote areas which very often has been the traditional homelands of the Indigenous People for sake of resources such as forest, minerals and hydropower potentials. And Indigenous Peoples with their strong desire to preserve their cultural identities, ancestral lands and resources considers such development initiatives as physical and social intrusion and violation of their human rights.

The fourth section of the policy is about the laws and conventions at national and international level regarding the status of Indigenous Peoples and their issues. In the national level framework the policy recognises that very few countries had adopted adequate legal measures recognising the rights of Indigenous Peoples to ancestral lands, and support Indigenous People's regaining and strengthening their social and cultural institutions. Some countries experienced conflicts of interest of dominant segment of society with the Indigenous Peoples on control over and exploitation of natural resources of tribal domain and enacted legislation based on eminent domain to reconcile dispute and protect the interest of the Indigenous Peoples⁴⁴. And in International arena the policy sets forth a long list of international conventions Practices, policies and initiatives from international community as an evidence of the growing recognition of the Indigenous Peoples issues⁴⁵.

The said policy in section V sets forth that development initiatives having potentiality of affecting Indigenous Peoples must ensure equal opportunity of their participation and equal benefit of such development. Such initiatives shall have a clear mechanism with transparency and accountability to mitigate the possible negative impacts of such projects on the Indigenous Peoples culture, social and economic institutions, provide adequate compensation and address the aspirations of Indigenous Peoples. Regarding the operational process of the policy there is a mandate for Initial Social Assessment for every development project. When the assessment reveals affected Indigenous Peoples of such project a specific Indigenous Peoples plan must be developed

⁴⁴ Indigenous Peoples sparse occupation of large areas of land and non-intensive use of resources is often character by external interest as economic inefficiency or loss of opportunity; para 20

⁴⁵ United Nations Declaration of Human Rights, International Conventions on civil and political rights, International Conventions on economic, social and cultural rights, International Labor Conventions no 107 and 169, United Nations Conference on Environment and Development, 1992 Conventions on Biodiversity, Vienna Declaration and Program of action, Draft UNDRIP.

including measures and approaches to be taken to mitigate the negative impacts and compensation plans and the same shall be incorporated as an integral part of the proposal design. The assessment must also specifically disclose the significant socio-economic affects of the Indigenous Peoples and set forth definition of identification of Indigenous Peoples in the specific context of the project in question.

The VI section of the policy dealing with the organisational Implications and resource requirements details the responsibilities of different organs like the office of environment and social development, the programme department, the project department, office of specific operation and post evaluation office entrusted with the mandate implementing bank policy on Indigenous People, development of operational guidelines for proper implementations, designating social development specialists and resource persons to provide advice and guidance, implementing policies in development related country programming by conducting fruitful dialogues with governments, project identification, processing, implementation and monitoring assessment of effectiveness of banks operation of applying policy on Indigenous Peoples.

CONCLUSION

Indigenous people since long in spite of all deprivation stood preserving their identity, culture, tradition, custom and language, land, territory and forests facing the Nations Development process at the cost of their abode, Socio-economic institutions; and their culture and customs. As a result survey shows in most cases that Indigenous people are most vulnerable socio-economically as well as educationally compared to other section of population. National policies and Laws are often unable to address their issues, unable even to fetch adequate representation owing to their differences with other population and their marginalised condition. Internal displacement of Indigenous peoples are seen often either owing to development projects or military disputes. Uprooted from their indigenous environment, they become more vulnerable for their survival and livelihood.

Children of Indigenous People faces problem in education taught in national language which are in most cases not their mother tongue or the most common language of the Indigenous Peoples. Indigenous Peoples are often found to suffer from lack of adequate health services and employment opportunities. They often suffer from identity crises causing their plausible misunderstanding with the dominant section of the society. In many cases they also faces problem in access to justice either owing to the National laws not in confirmation with their traditional or customary Laws or owing to such regulation or redressal mechanism of state to address their unique causes. Even they often fail to represent politically and appeal socially to other section of

society owing to lack of sensitization of the others education of the society about the plight of the Indigenous Peoples.

The UNDRIP is without any doubt a praise worthy International recognition still awaiting for formulation of an International Convention along with inherent treaty bodies and implementing mechanism. Even though UNDRIP is of immense importance but its legal binding authority depends much on the Nations as it is only a declaration and neither it has defined the concept Indigenous People nor laid down adequate criteria for identification of a group of people as Indigenous Peoples. The crux remains that respective nations are to determine the criteria for identifying a group of people as Indigenous Peoples. Complex issues in formulation of a definition no doubt owes to the varying features of Indigenous Peoples in various countries and owing to various situation they had to confront for ages but they do share a similar plight and similar sorrow and pain all around the globe.

