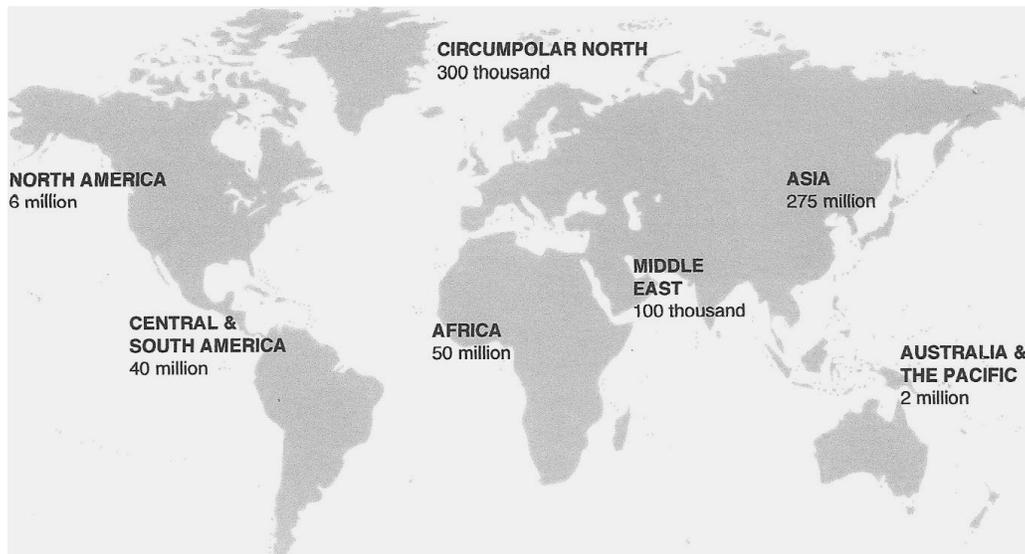


CHAPTER 2

THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

By Mariana Leal Ferreira

Today, Indigenous Peoples number more than 370 million individuals and live in more than 90 different countries on every continent.¹ They have inherited and retained social, cultural, economic, and political characteristics that are distinct from those of the dominant societies in which they live. In some countries, such as Ecuador and Bolivia, Indigenous Peoples form the majority of the population; in others, including Norway and the United States, they comprise small minorities. Most Indigenous Peoples, including the Xavante in Brazil and the Mapuche in Chile, strive to preserve traditional ways of life, while others seek greater participation in mainstream society. Despite their vast geographic and cultural differences, Indigenous Peoples share a common experience: they are among the most disadvantaged and vulnerable groups of people in the world today.



World Map of Indigenous Population

Indigenous Peoples also hold many positive qualities in common. Most Indigenous cultures share worldviews based on a spiritual and material relationship to the Earth that honors all things that give life as sacred, including the land itself. Another striking common characteristic is a collective economy of

¹ State of the World's Indigenous Peoples Report;
<http://www.un.org/esa/socdev/unpfii/en/sowip.html>

gift-exchange, practiced by Indigenous nations worldwide to ensure an equitable distribution of resources rather than mere accumulation by individuals.

During the era of European colonial expansion and imperialism, most Europeans considered themselves superior to native peoples from regions such as Africa, Asia, and the Americas, whom they regarded as “primitives” or “savages” to be dominated. This attitude justified the invasion and settlement of these “virgin territories” and even slavery of the native “inferior people.” European missionaries have sought to “save” and “civilize” native peoples by leading them out of “paganism” to Christianity, thus imposing on them the strict control of both church and state.

During this process of colonial domination, Indigenous Peoples were systematically deprived of their land and its resources, their languages and histories, their cultural identities and ways of life. Thousands of groups were wiped out altogether by diseases introduced by colonizing peoples, sometimes through explicit policies of extermination – including, for example, the sanctioned distribution of infected blankets and expired medications. Most Indigenous societies that have survived into the twenty-first century are predominantly subsistence-based – that is, they are non-urban and farm or hunt for food for immediate use. Although traditionally Indigenous Peoples used wide-spread territories to obtain needed resource, today dominant societies have seized most of these lands and restricted Indigenous Peoples to ever-shrinking “reservations” or “territories” that are inadequate for their needs.

Who are Indigenous Peoples?

The international community has developed an understanding of the term based on the following fundamental criterion of self-identification:

- Self-identification as Indigenous Peoples at the individual level and acceptance as a member by the community;
- Historical continuity with pre-colonial and/or pre-settler societies;
- Strong link to territories and surrounding natural resources;
- Distinct social, economic, or political systems;
- Distinct language, culture, and knowledge;
- Status as a non-dominant social group;
- Resolve to maintain and reproduce ancestral environments and systems as distinctive peoples and communities.

These criteria are brought together in a definition formulated by José Martínez Cobo in his 1983 report “Study of the Problem of Discrimination Against Indigenous Populations”:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that

developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.²

Reflecting this contemporary understanding, Article 33 of the United Nations **Declaration on the Rights of Indigenous Peoples (UNDRIP)**³ refers to the rights of Indigenous Peoples to decide their own identities and procedures of belonging. This means that a particular people may establish the membership criteria for enrollment in their “tribe,” “nation,” or “society.” In the United States several tribes still require a “minimum blood quantum,” while in Brazil, self-identification by the individual and his or her community is the basic prerequisite.



Joker: Indigenous Peoples or Populations? Although earlier human rights documents use the words “populations” or “peoples,” the meaning of the words has been disputed. Some governments refer to Indigenous Peoples as “tribes” or “populations” for fear the term “peoples” implies the right to independent statehood according to international legislation. However, as reflected in the title of the Declaration, the term “peoples” is now applied to Indigenous Peoples with the full international significance of the term.

The Movement for Indigenous Rights

The struggle for Indigenous Peoples’ rights surely began with the first colonial invaders of ancestral territories, most recently with the arrival of European colonists in the Americas and elsewhere. The international drive for recognition of Indigenous rights gained momentum after the two world wars, along with nationalist movements of peoples around the world struggling to gain independence from their colonial masters. At the same time, the newly formed United Nations began the development of the human rights framework, starting in 1948 with the adoption of the **Universal Declaration of Human Rights (UDHR)**, which established fundamental rights for all members of the human family.

² The full report is available at http://www.un.org/esa/socdev/unpfii/documents/MCS_intro_1983_en.pdf.

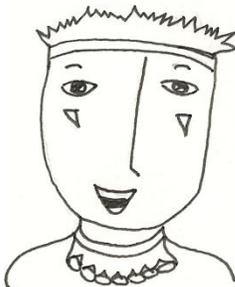
³ Words in **bold face type** are defined in the Glossary.



A human rights **declaration** establishes agreed-upon principles and standards. However, because it doesn't impose legally binding obligations on the countries that sign it, a declaration is the weakest form of international law. Unfortunately, this is true of the Declaration on the Rights of Indigenous Peoples.

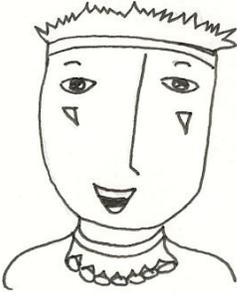
Based on the cornerstone of the UDHR, a system of human rights **declarations** and **covenants, treaties** or **conventions** has developed that:

1. establishes fundamental civil, political, social, economic, and cultural rights. These rights were initially set out in 1966 in the **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**;
2. condemns certain inhumane acts (e.g., conventions against torture, genocide, slavery, racism); and
3. protects the rights of specific vulnerable groups (e.g., **Convention on the Rights of the Child (CRC)**, **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**).



A treaty is a legally binding agreement between states. When a government **ratifies** a human rights treaty, it can be held accountable if it violates the terms of the treaty. The words “convention” and “covenant” mean the same thing as “treaty.” I hope someday there'll be a Convention on the Rights of Indigenous Peoples rather than just a declaration!

The movement to define and protect the rights of Indigenous Peoples is part of this evolving human rights framework. However, the UDHR and subsequent international law emphasize individual rights. The needs and aspirations of most Indigenous Peoples, on the other hand, can only be assured through the protection of not only their individual rights, but also their **collective rights** as distinct human groups. These rights include Indigenous Peoples' rights to their lands, territories, and resources; to maintenance of their cultures; to recognition of their distinct identities; to self-government and **self-determination**; and to be asked for their free, prior and informed consent (**FPIC**) in decisions that may affect them. This recognition has led to the development of a separate body of international instruments for the recognition and protection of the rights of Indigenous Peoples worldwide.



*Individual rights protect human beings one by one, such as the right to be a person before the law. **Collective rights** protect the interests and identities of whole groups of people, such as the right to a language or culture.*

Some milestones in the on-going development of Indigenous rights include:

- In 1971 the Indigenous Movement for the recognition of Indigenous rights at the UN began in earnest with the appointment of José Martínez Cobo to study the problem of discrimination against Indigenous populations.
- In 1977 and 1979 conferences on discrimination against Indigenous Peoples were held at the Palais des Nations in Geneva. In addition to Martínez Cobo's preliminary reports, these conferences led to the formation of the **Working Group on Indigenous Populations (WGIP)**.
- In 1982 the Working Group on Indigenous Populations (WGIP) was established and charged with the task of drafting a document to protect Indigenous rights.
- In 1983 the Martínez-Cobo Report, "The Problem of Discrimination against Indigenous Populations," was released.
- In 1993 the World Conference on Human Rights in Vienna recognized the responsibility of all UN member states to respect the human rights and fundamental freedoms of Indigenous Peoples and recommended consideration of a permanent forum at the UN for Indigenous Peoples.
- In 1994 the UN General Assembly launched the International Decade of the World's Indigenous Peoples (1995-2004) to increase the United Nations' commitment to promoting and protecting the rights of Indigenous Peoples worldwide. As part of the Decade, several UN specialized agencies worked with Indigenous Peoples to design and implement projects on health, education, housing, human rights, the environment, and social and economic development.
- In 1994 the General Assembly also established August 9 as the **International Day of the World's Indigenous Peoples**.
- In 2000 the **UN Permanent Forum on Indigenous Issues** was established to facilitate on-going discussions of Indigenous issues. The Forum provides expert advice and recommendations to the **UN Economic and Social**

Council (ECOSOC), raises awareness of Indigenous issues within the UN system, and prepares and disseminates information on Indigenous issues.

- In 2001 a **UN Special Rapporteur on Indigenous Peoples** was appointed to gather and report information on violations of human rights and fundamental freedoms of Indigenous Peoples and to formulate recommendations to prevent and remedy such violations.



*When there are serious human rights problems relating to a particular region or issue, the UN appoints a **Special Rapporteur** to investigate, monitor, and recommend solutions to this problem. Having a Special Rapporteur on Indigenous Peoples means human rights violations against Indigenous Peoples get greater attention!*

- In 2005 the General Assembly proclaimed a Second International Decade of the World's Indigenous Peoples (2005-2015) with the goal to further strengthen international cooperation for the solution of problems faced by Indigenous Peoples around the globe in such areas as culture, education, health, human rights, the environment, and social and economic development.
- In 2006, after years of negotiations in which hundreds of Indigenous nations and organizations participated, the final draft of the Declaration on the Rights of Indigenous Peoples was presented to the **UN Human Rights Council**, which adopted it and sent it to the UN General Assembly for approval.
- On September 13, 2007, the General Assembly adopted the Declaration on the Rights of Indigenous Peoples.

Declaration on the Rights of Indigenous Peoples

This landmark document is the culmination of decades of drafting and negotiations by the Working Group on Indigenous Populations in which more than one hundred Indigenous organizations and thousands of Indigenous individuals participated. The Declaration testifies to the commitment of the international community to the protection of both the individual and collective rights of Indigenous Peoples. It emphasizes the right of Indigenous Peoples to maintain and strengthen their own institutions, cultures, and traditions and to pursue their development in accordance with their aspirations and needs. It has become a major tool for Indigenous Peoples to defend themselves against discrimination, racism, oppression, marginalization, and exploitation.

Major obstacles to the drafting of the Declaration were the concerns of some countries over provisions like the right to self-determination of Indigenous Peoples and the control over natural resources existing on Indigenous Peoples' traditional lands. Although the Declaration was adopted by an overwhelming majority of 143 votes in favor, it initially met with four significant negative votes: Canada, Australia, New Zealand, and the United States, all states with small, historically oppressed Indigenous populations. Since 2007, however, Australia, Canada and New Zealand have announced their approval of the Declaration. Among the objections still held by the United States is the failure of the Declaration to provide a clear definition of exactly whom the term "Indigenous Peoples" is intended to cover.

Among the human rights the Declaration defines and protects are these of particular importance to Indigenous Peoples:

1. **The right to self-determination**, which may be expressed through:
 - Autonomy or self-government in matters relating to their internal and local affairs;
 - Respect for the principle of free, prior, and informed consent (FPIC);
 - Full and effective participation of Indigenous Peoples at every stage of any action that may affect them direct or indirectly;
 - Formal recognition of Indigenous Peoples' traditional institutions, internal justice and conflict-resolution systems, and ways of socio-political organization;
 - Recognition of the right of Indigenous Peoples to freely define and pursue their economic, social, and cultural development.
2. **Collective rights:** Recognition of the collective rights of Indigenous Peoples is necessary to ensure their continuing existence, development, and wellbeing as distinct collectivities. Included in the Declaration are:
 - recognition of Indigenous Peoples' distinctive histories, languages, identities, and cultures;
 - recognition of Indigenous Peoples' collective right to the lands, territories, and natural resources they have traditionally occupied and used;
 - recognition of Indigenous Peoples' right to their collectively held traditional knowledge.
3. **The right to development:** Indigenous Peoples have the right to define and decide on their own development priorities, including participation in the formulation, implementation, and evaluation of plans and programs for national and regional development that may affect them. Historically, Indigenous Peoples' lands have been disproportionately affected by development activities because they often contain valuable natural resources, including timber, minerals, biodiversity resources, water, and oil, among others.

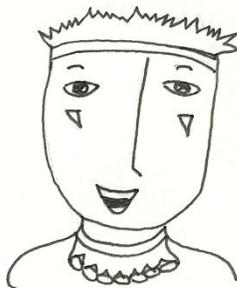
The full text of the Declaration that follows is structured according to these general topics:

- **Preamble.** The policy underlying the Declaration, particularly the section that describes the “new relationship to the state.”
- **Part 1. Fundamental Rights:** Non-discrimination, equality self-determination (Articles 1-3)
- **Part 2. Life and Security** (Articles 4-7)
- **Part 3. Culture, Religion, and Language Laws** (Articles 8-13)
- **Part 4. Education, Media, and Employment** (Articles 14-16)
- **Part 5. Participation and Development** (Articles 17-24)
- **Part 6. Land and Resources** (Articles 25-29)
- **Part 7. Self-Government and Indigenous Peoples** (Articles 30-36)
- **Part 8. Implementation** (Articles 37-42)
- **Part 9. Minimum Standards** (Articles 43-46)

Many human rights advocates regard Article 3, the right of self-determination, as the most significant feature of the Declaration, with all other rights supporting that essential freedom.

The complete text of the Declaration on the Rights of Indigenous Peoples can be downloaded at <http://www1.umn.edu/humanrts/instate/declaration.html>. It is also included in Appendix 1.

This quotation really captures the spirit of this book:



Indigenous peoples around the world have sought recognition of their identities, their ways of life and their right to traditional lands, territories and natural resources; yet throughout history, their rights have been violated. Indigenous peoples are arguably among the most disadvantaged and vulnerable groups of people in the world today. The international community now recognizes that special measures are required to protect the rights of the world's Indigenous peoples.⁴

The chapters that follow bring you a perspective on the struggles faced by Indigenous Peoples today. They will show you how important it is for this Declaration to be implemented worldwide.

⁴ Quoted on the United Nations Permanent Forum on Indigenous Issues (UNFPII) website at <http://social.un.org/index/IndigenousPeoples/AboutUsMembers/History.aspx>.