



ODUMUNC 2014
Issue Brief for the
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Increasing the Role of Indigenous People in Government

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Introduction

The relationship between states and their indigenous populations is often turbulent. Some groups vie for absolute sovereignty, wishing to interact with the surrounding state only as separate actors. In much of the world, settler groups from the 1500s through mid-1900s violently pushed previous inhabitants out of their homelands, eliminated their political and human rights, and marginalized their place in society. The effects have been devastating for many groups. Many were forced into extinction. Others were enslaved or forced to endure repression and extreme poverty. Only in the 1960s did indigenous people begin to recover legal and political rights. But the process remains far from complete and highly contentious.

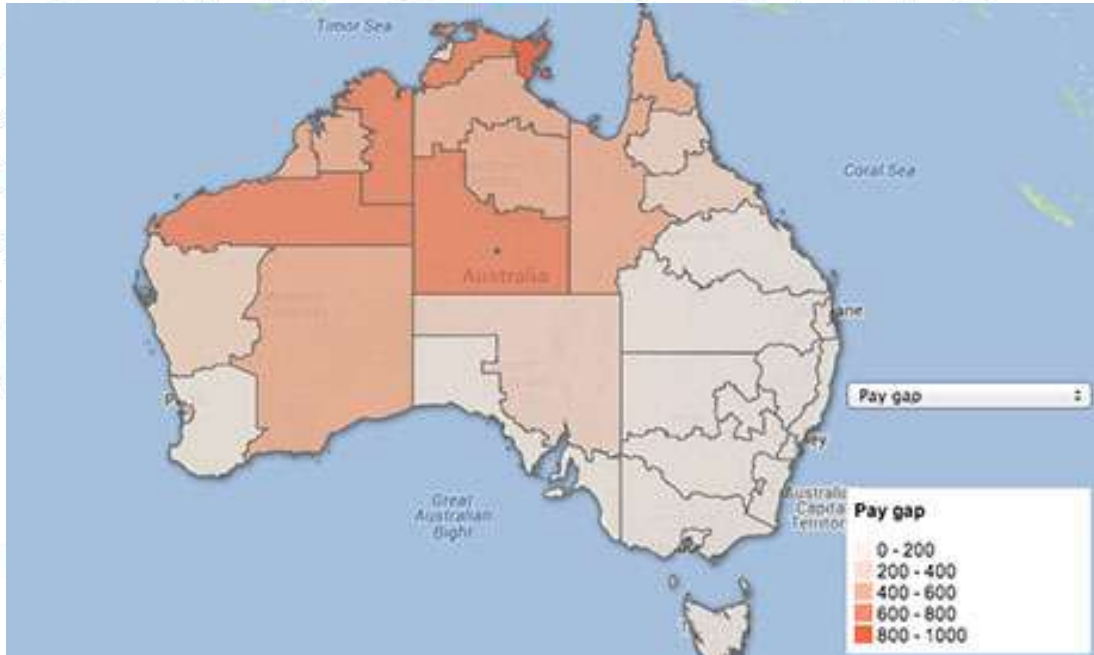
Indigenous people face many challenges, from lack of employment and education opportunity, to unequal pay and physical endangerment. While most governments agree that protection of human rights is vital, indigenous rights are a contentious issue because they require both parties to acknowledge a history of persecution and to face the harmful stereotypes that continue to flourish in societies that consider themselves more modern, principled or cultured. Furthermore, they often involve disputes over territory and resource ownership, which states are unsurprisingly hesitant to relinquish. Returning ancestral lands to their original owners is costly, disruptive and extremely controversial. But without rigorous attention, indigenous people seem certain to remain marginalized and condemned to second-class lives.

The UN has emerged as the most visible forum for presentation of global grievances of marginalized indigenous people. While the UN often lacks the power to tell sovereign states what to do, it sets essential standards, establishing best practices approaches for all to emulate, and shaping the normative principles that affect everyone.

No definition of indigenous people has universal acceptance. Current practices usually leave definitions to domestic decision-making. Certainly they are people with a historical connection to a particular geographic area and a shared set of linguistic, religious, political or otherwise cultural values that precede and distinguish them from the state that surrounds them. Some say that the abstract definition makes it difficult to pen protective legislation while others argue that such flexibility is necessary because the cultures and circumstances of groups vary so widely by location. After all, one of the most basic elements of indigenous rights is the freedom of each group to define its own identity.

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Figure 1. Income disparity between indigenous and non-indigenous people in Australia.



Source: Nick Evershed, *The Guardian*.

Because of the diversity of the identities and needs of indigenous populations, their involvement in political processes at a local and national level is critical. The international community's role, then, is to encourage this and to protect them against discrimination and physical harm. It can also reduce the deficit of good information on indigenous populations, helping to dispel popular conceptualizations of native people as backward. In partnership with and in addition to national organizations and NGOs, the United Nations is committed to improving indigenous peoples' circumstances through a combination of treaties, monitoring mechanisms and outreach initiatives.

Background

Indigenous rights have only recently found their place on the international stage as a central issue. This is not for lack of effort by the people affected. As early as 1923, the representative of the North American Iroquois Nations visited Geneva to request an audience before the League of Nations, the U.N.'s predecessor. Chief Deskaheh was refused and, after a year of protesting the League's decision, returned to the United States without having had a chance to advocate for the Native American people before the world. This is one of many such incidents on record in the histories of the League of Nations and the early United Nations.

Fueled by the accelerating decolonization movement, indigenous groups became increasingly organized in the form of NGOs in the 1960s and 1970s in an attempt to call wider attention to their plights. The U.N. finally recognized that it was time to give them a forum in

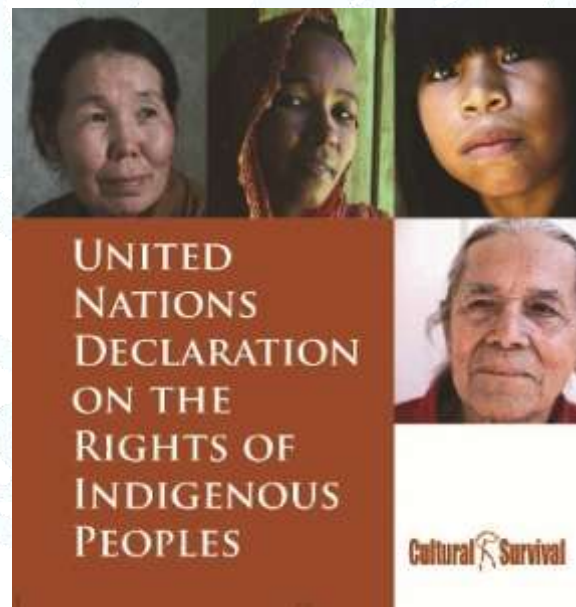
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1972 when the Sub-Commission on Prevention of Discrimination and Protection of Minorities ordered a study on unequal treatment of indigenous populations, recognizing for the first time the legitimacy of indigenous rights as an independent category of human rights issues.

Progress has continued to be slow in advancing the indigenous agenda. It took 10 years following the first study for the U.N. to establish the Working Group on Indigenous Populations, its first mechanism charged with the matter. Even then, the Working Group would not become particularly active until the 1990s. They made some strides—involving indigenous representatives in the mechanism’s work in 1983, setting up the Fund for Indigenous Populations in 1985—but their first major accomplishment was in drafting the *Declaration on the Rights of Indigenous Peoples*.

The *Declaration* is the primary global guidance to policy on the topic. This document was first circulated in 1993 and was praised by indigenous representatives, who saw it as an indicator that the U.N. was finally open to the contributions and concerns of their people. However, the Human Rights Council did not adopt the declaration until June 2006, and the General Assembly waited an additional year to follow suit. Australia, Canada, New Zealand and the United States all voted against the document, not disagreeing with its broad principles but concerned by its vague definitions and its call to return privately owned land to its original inhabitants. All four countries, however, have since reversed their positions and signed. Eleven countries abstained, and nine, including Russia, still haven’t signed the document today.

Figure 2. A Transformative and Controversial Document

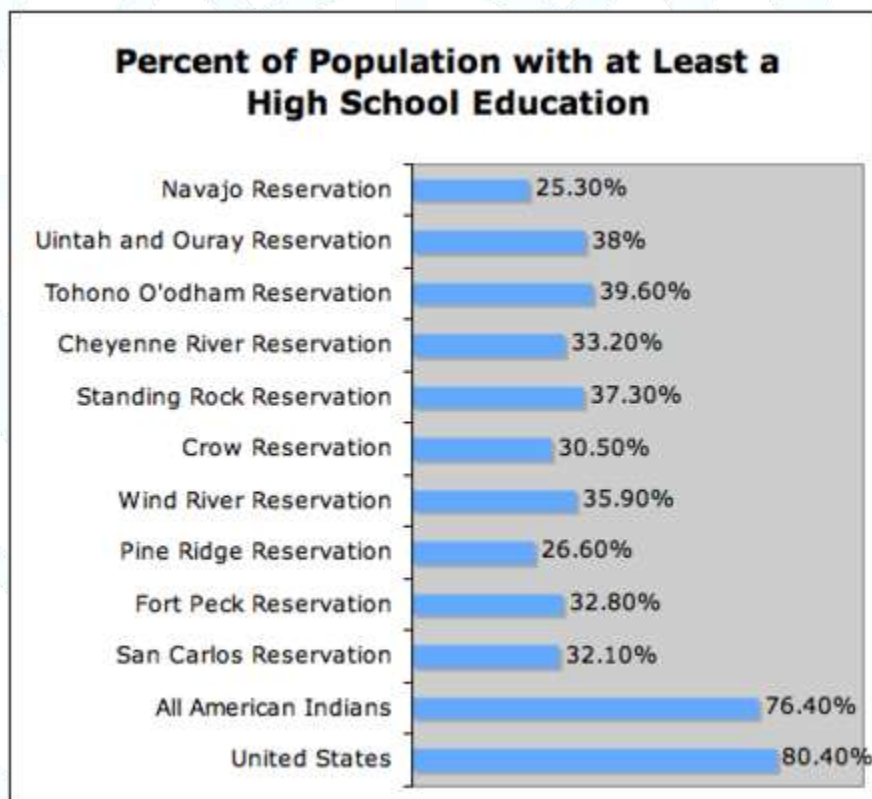


Currently, three mechanisms direct United Nations treatment of indigenous issues. Established in 2000, the Permanent Forum on Indigenous Issues is an advisory body to the Economic and Social Council that issues recommendations to the Council on where to direct its attention and its funds with regards to indigenous issues. It also raises awareness and disseminates information on indigenous issues within the U.N. and to the general public.

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In 2007, the UN agreed to create the *Expert Mechanism on the Rights of Indigenous Peoples*, one of the Human Rights Council's newest thematic human rights monitoring mechanisms designed to gather information from different countries and formulate advisory reports on what can be done to improve the situation of native people worldwide. Finally, the Human Rights Council appointed a Special Rapporteur on the rights of indigenous people, currently James Anaya, a U.S.-born professor of human rights law. He conducts studies, crafts reports, suggests legislation and educates broadly on the subject of indigenous rights. All guided by the *Declaration on the Rights of Indigenous Peoples*, these mechanisms are helping to bring the so often suppressed voices of indigenous populations to the forefront of international politics.

**Figure 3. Indigenous inequality:
Lack of Education Among Indigenous People in the United States**



Current situation

Today, indigenous people struggle for victories in two major areas: human rights and sovereignty. The human rights situation has made some progress thanks to the platform of the U.N. and other organizations that want to increase the issue's visibility as well as the continuous work of indigenous people on their own behalves. However, the native people of most countries continue to be marginalized and disadvantaged with generally poorer access to health care and education and lower wages. In some areas, they have to contend with the ever-present threat of

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physical violence because of racism or conflicts over land rights. Finally, they fight to preserve their languages, traditions and cultures and to educate the non-indigenous communities surrounding them to promote mutual respect.

Sovereignty is a more controversial issue. Of course, indigenous people want to avoid assimilation as they worry about the loss of culture; this is why the *Declaration on the Rights of Indigenous Peoples* lists the right to self-governance as a fundamental freedom. However, states are hesitant to grant autonomy to people within their own borders because doing so would mean losing land and resources and the legislation surrounding some issues, such as the prosecution of crimes committed by non-indigenous people on indigenous land, are not clear-cut.

Furthermore, while political autonomy helps preserve traditions and ancestral land, resources and ingenuity generates some revenue, there are many benefits to being part of a larger society including access to better services, broader employment opportunities and military protection. In a larger, higher income society, human rights abuses also tend to be statistically less frequent, as shown by the graphic above. The reverse is also true; the more human rights abuses are recorded in a country, the less likely its sustained economic growth.

Country positions

Indigenous people vary greatly by location, so it is important to view their circumstances through a geographic lens. While many countries are confronted by the issue, some countries and regions have addressed more readily, especially since the 1960s. Others have failed, sometimes particularly devastating consequences. The issue is sensitive everywhere; making room for indigenous rights and rule means those previously dominant often must yield money and rights. The problem makes for very sensitive and controversial politics everywhere.

African continent: Defining an indigenous people is particularly difficult in Africa because of the long and complex history of human migration that has taken place on the continent. Every country has great diversity, so in determining what groups are indigenous, the African Commission on Human and Peoples' Rights considers not what group was there first, but what group is being systemically marginalized on the basis of traditions or appearance. Most often, these are nomadic people and pastoralists, herdsmen. The problems are especially acute in east Africa, in the nexus of Ethiopia, Kenya, South Sudan and Uganda, where the contested claims of pastoralists routinely cause armed violence and even full-scale war. In other regions, especially Republic of Congo (RC) and Democratic Republic of Congo (DRC), Namibia and Botswana, the worst affected are hunter-gathers, who lead highly marginalized lives, largely ignored by the state.

Few laws protect indigenous rights in Africa; few countries recognize indigenous peoples' existence. Democratic Republic of the Congo became the first country on the continent to adopt legislation protecting their rights in 2010. This followed reports of serious violations in the country, including the organized hunting and cannibalism of Mbuti pygmies during their ongoing civil war. Unsurprisingly, indigenous participation in government is low. Indigenous groups are generally smaller and less organized in Africa than elsewhere in the world, contributing to the problem. However, as the indigenous rights movement continues to gain momentum, there is

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hope for further recognition and legislation like that adopted by the DRC to begin spreading across the continent.

Bolivia: A small country in South America situated in the Andes, Bolivia has made huge strides in facilitating indigenous rights in recent years. A shift in circumstances began in 2006 with the election of Evo Morales, the country's first indigenous president. Morales is of Aymaran descent and has championed the indigenous cause throughout his presidency, now in its second term. Indigenous groups, most prominently the Quechua and Aymara, make up about 55 percent of Bolivia's population, so their representation in government is long overdue. In 2009, Bolivia became the first country to adopt principles of the *Declaration on the Rights of Indigenous People* into its constitution. He has also declared Bolivia a plurinational society, at the same time adopting a total of 35 official languages, granting all of them equal status.

Morales has also made some decisions in the name of human rights that the international community has called into question, most prominently his declaration that growing and chewing the coca leaf is an indigenous tradition. Many countries, including the United States, are wary that the right to cultivate coca is a smokescreen for the desire to profit from the raw materials for cocaine production, but Morales has remained staunch in his position and even managed to get the UN's anti-narcotic convention to remove the coca leaf from its list of illegal narcotics.

China: Although China is a developed nation and a growing economy, it struggles with human rights violations. In particular, its treatment of the 5 to 7 million Tibetans living in China has been condemned. Tibet was absorbed into China in 1951, leaving only the Tibetan Autonomous Region (TAR), which maintains the sovereignty of a province. Although the TAR is inhabited by 92 percent Tibetans, it primarily uses Mandarin Chinese as the language of government and business, and Tibetan language and culture is frequently ridiculed by public officials. Tibetans have been beaten and jailed for peacefully protesting Chinese control and distributing educational materials on Tibetan culture.

The situation has become so serious that Navi Pillay, U.N. High Commissioner on Human Rights, publicly criticized China for its abuses in 2011. She called on them facilitate international cooperation on human rights by allowing U.N. officials to investigate and advise China on conditions of the Tibetan people. China signed the *Declaration on the Rights of Indigenous Peoples* and has pledged many times to increase its involvement in the Human Rights Council, but rarely follows through on its word.

Further complicating the role of international action—including modest steps like recommending observatories and best practices—the majority Han population and political leaders of China often is highly nationalistic and hostile to international attention to its problems.

Self-Immolations in Tibet

Since March 2011, 61 people set themselves on fire in Tibet, most of them young Buddhist monks and former monks.

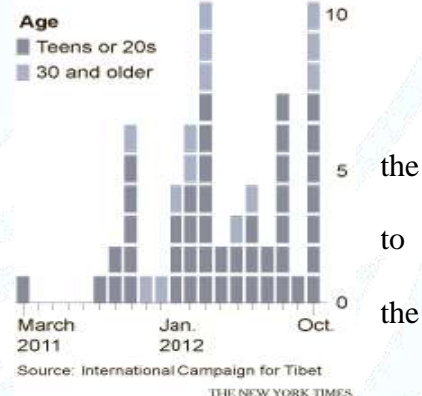
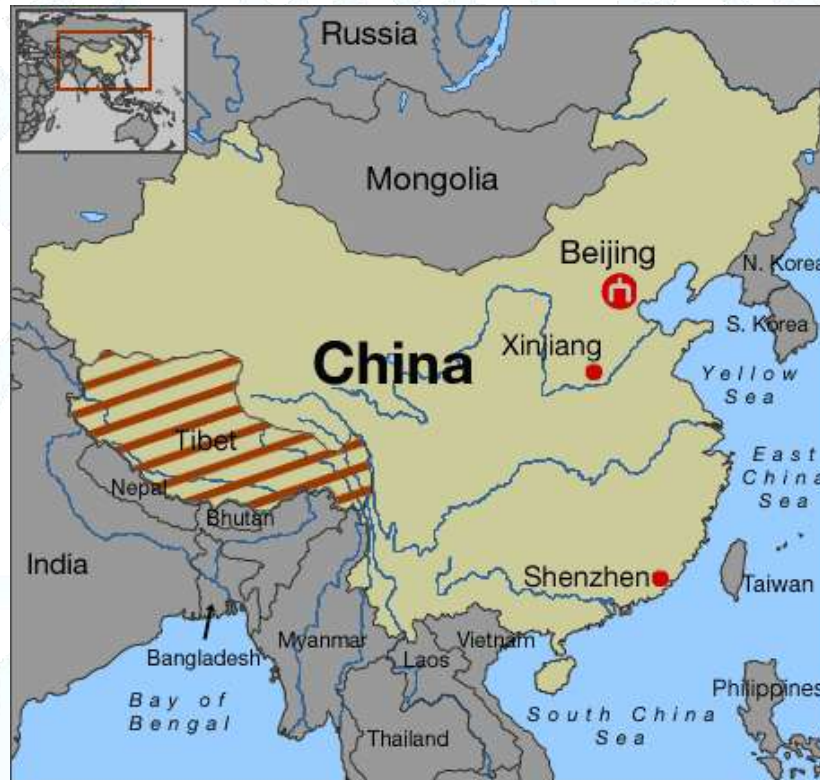


Figure 5. China including Tibet



Spain: The Basque Country is one of Spain's 17 autonomous regions and spills over into a small part of France. The Basque people are the oldest remaining ethnic group in Europe, possibly dating back to the Paleolithic period. The high mountain ranges surrounding the area contributed to their relative isolation and the development of their unique Euskara language. However, under the reign of the Spanish dictator Francisco Franco, the Basques suffered enormous persecution, including the ban of their language and any outward sign of their culture. Many Basques were imprisoned or killed during this period. A large separatist movement emerged in the 1950s, headed in part by the ETA, a terrorist organization responsible for the deaths of 800 Spaniards. After many years of bombings, killings and kidnappings, the Basque Country is moving away from violence and toward a political dialogue. The conflict is an example of an indigenous group with unusual size and power asserting its right to self-determination, and the development of the situation will be an interesting precedent for smaller groups with similar goals.

United States: The United States tends to consider itself very advanced when it comes to human rights, but it has historically fallen short in its treatment of indigenous populations. Today, Native American tribes are legally considered "domestic dependent nations", having roughly the level of sovereignty of a state. Tribes are free to determine what percentage of a person's heritage must be tied to the group to join the reservation, and members are exempt from paying

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taxes to the U.S. federal government. Tribes do not have the authority to arrest, try or prosecute non-Native American people who commit crimes on their land, which has been a point of contention in the past. Furthermore, while tribes are considered nations within the U.S., their sovereignty is not necessarily recognized beyond its borders. In 2010, the Iroquois Nations tried to send their lacrosse team to a championship game in the United Kingdom, but the U. K. refused to let them cross the border with their own passports. The United States and Canada do not recognize the document as legitimate either.



North American native peoples live largely on reservations, where employment and education opportunities are limited. Some of those near large cities have famously used their legal sovereignty to establish gambling industries. A few tribes have become rich as a result, but most profit goes to the outside management companies. Most North American tribes still struggle with poverty, unemployment, high rates of addiction and little representation in the U.S. government at large.

Further complicating the role of international action—including modest steps like recommending observatories and best practices—the non-indigenous population and political leaders of the United States often is highly nationalistic and hostile to international attention to its problems.

Future Role of the United Nations

Now in the second International Decade of the World's Indigenous People (2004-2014), the United Nations is growing into its role in supporting indigenous rights across the globe. As always, legislation must take place at a domestic level to cause immediate change, but this is an area in which education can go a long way. The U.N.'s primary role will continue to be monitoring the human rights situation as it pertains to indigenous people, giving recommendations for its improvement and raising awareness about the issue's importance within governments and with the general public. In addition to educating the public on indigenous populations, the U.N. can educate indigenous populations on their rights. Many people are unaware of the legal recourse they have to combat discrimination, and the U.N. can be a force for their empowerment.

Another step the U.N. may choose to take is accepting greater involvement of indigenous representatives in issues that reach beyond their own groups' rights. If the United Nations wants to promote the participation of indigenous people in national government, it might want to promote their participation in international government. Environmental law and economic development in particular have a huge impact of indigenous people, and the U.N. could recognize that by giving their representatives a voice in these broader issues.

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Definitional controversies: A major issue in many countries is the definition of indigenous people. Who has a legitimate claim to inclusion among indigenous groups? Especially when benefits are to be had, claims rise and problems of definition—which involve limiting and extending those benefits and expenses—become acrimonious.

Constitutional issues and Best Practices: The issue often is worst in highly centralized countries, where delegating authority is constitutionally difficult. But even in countries where indigenous peoples have long-standing rights of self-rule, under reservations (Australia, Canada and the United States), establishment of tribal areas (India and Pakistan), or rights of indigenous people (in China), accepting international authority often is difficult for the central government. Often, the best the international community can do is to establish models or recommend best practices, and leave open the opportunity for state governments to follow these.

Oversight: In addition to best practices, the United Nations can establish *observatories* or *monitoring centers* to facilitate reporting of conditions among indigenous people, to draw domestic and international attention to their plight and prioritize their needs. Observatories can be very controversial, with sharp disputes between indigenous peoples, governments and the international community especially on: who pays, who selects staff, how findings are reported, and obligations to act on those findings.

While the United Nations was not created to promote democracy—many member states are not democratic—it does commit its members to promote human rights. That includes the rights of minorities, such as indigenous peoples. This means that regardless of the solution to the complex problems of indigenous sovereignty that states agree upon, the U.N. should be dedicated to helping native peoples establish their roles in their countries' decision-making processes. Until that happens, the UN is the most prominent a forum for indigenous people to make their voices heard.

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