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## THE GENESIS OF INDIGENOUS PEOPLE'S RIGHTS

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### ABSTRACT

Historically the growth of indigenous community could be traced back to the development of the late 15<sup>th</sup> century and the early 16<sup>th</sup> century. Various founders and theologians of the domain of international law including that of Francisco<sup>1</sup> de Vitoria and Bartholome de las Casas had chronicled the relation between Europeans and indigenous people in the Indies. Natural Law theorist like Hugo Grotius, Pufendorf, Wolff and Vattel<sup>2</sup> had debated on the issue of the significant rights of the indigenous community. For half of 20<sup>th</sup> century, the rights of different ethnic groups, communities with varied linguistic, social characteristics were looked down upon with skepticism and suspicion. The rights of the indigenous community only came up in the limelight due to the evolution of the “principles of self-determination” which was evidently linked to the creation of two important international human rights covenants- ICCPR and ICESCR, 1966.

**Keywords:** Indigenous, Vattel, Asia, Colombia, Latin America, Self - determination, UN, Kari-Oca declaration

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<sup>1</sup> Francisco de Vitoria and on the American Indians a modern contribution to International relations available at <https://www.e-ir.info/2009/09/24/francisco-de-vitoria-and-on-the-american-indians-a-modern-contribution-to-international-relations> (last modified on 22 September, 2022)

<sup>2</sup> The Westphalian peace tradition in International Law available at <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1435&context=ils> (last modified on 25 September, 2022)

## Indigenous People

At the twilight zone of civilization, conflicts over rights to land and self-determination continue and not only for indigenous peoples. The world is full of peoples who are clamoring for rights, resources and recognition or achieving these, sometimes at the expense of other peoples. Indigenous peoples are part of this wider context.

Indigenous peoples are “those living descendants of pre-invasion inhabitants of the lands now dominated by others”. The term ‘indigenous’ often used in a pejorative sense to marginalize these communities and limit protection of the treaties that deal with these people’s rights.

Hanning<sup>3</sup> has described Indigenous peoples as human groups which have characteristics- “*They are the original descendants of a territory and nomadic or semi-nomadic people such as shifting cultivators, people who are without any centralized political institutions and who share a common language, religion or culture*”.

During the emergence of modern system of states, after peace conference of Westphalia in 1648 Emerich Vattel in the Law of Nations (1758)<sup>4</sup> rationalized the post-westphalian concept of “Law of Nations’ in which nations were bearer of rights and duties and stated that once “a people has passed under the rule of another it is no longer a state and does not directly come under the Law of Nations thus, excluding indigenous peoples as subjects of international law.

In 1960’s there were attempts in the UN to assert a new category of rights i.e. Third generation of *Collective Rights and Indigenous People’s Right*. The first was ILO Convention 169 concerning Indigenous and Tribal People in Independent countries, which gives indigenous peoples to consult and participate in national and regional development plans and strategies for their culture and relationship to the land to be safeguarded and to participate in use, management and conservation of these resources. The indigenous & tribal convention adopted by ILO in 1989 recognises the “aspirations of indigenous people to exercise control over their own institution, ways of life and economic development and to maintain and develop their identities, language and religion within the framework of States to where they reside.”

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<sup>3</sup> RM Hanning on *Indigenous community perspectives of food security, sustainable food systems and strategies to enhance access to local and traditional healthy food for partnering* available at <https://www.mdpi.com/1660-4601/18/9/4404> (last modified on 27 September, 2022)

<sup>4</sup> Vattel on Westphalia available at <https://www.jstor.org/stable/2193560> (last modified on 27 September, 2022)

The UN's Working Group on Indigenous Populations has been one of the most visible manifestations of international dialogue on the status and rights of indigenous peoples. This working group was established in 1982 and brings together delegates from around the world annually in Geneva. ILO Convention 107 on Indigenous and Tribal Populations (1957) legally recognized indigenous peoples' claims to their ancestral territory. And even this document assumed that indigenous groups would eventually assimilate into national societies.

### **Indigenous peoples in Latin America**

Estimate states that indigenous population of Latin America is something over 40 million. Indigenous peoples comprise nearly 10 per cent of the total Latin American population and are very diverse, speaking over four hundred different languages<sup>5</sup>.

These peoples include the descendants of complex civilizations such as the Maya, Aztec and Inca, as well as tribes of the forests and lowland plains, peoples such as the Yanomamo<sup>6</sup>, Xavante, Miskito and Guarani.

The largest indigenous peoples of Latin America live in a diverse range of settings, from tropical forest villages to mountain towns, and in the largest cities of the continent. They may be agriculturalists or hunter-gatherers, merchants or labourers, trades people or crafts people or professionals are found in Bolivia, Peru, Ecuador, Guatemala and Mexico<sup>7</sup>.

In these countries, indigenous culture has exercised a particularly strong influence on national culture, even as indigenous peoples themselves have experienced racism, marginalization, violence and pressures to assimilate. Despite the diversity in which the indigenous peoples of Latin America live, there is a clear pattern connecting indigenous peoples with poverty and disadvantage, from the highlands to the tropics.

A study carried out in 1994 concluded that indigenous peoples in Latin America were more likely than any other group of a country's population to be poor, whether poverty was

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<sup>5</sup> Partridge, W. L. and J. E. Uquillas, with K. Johns - *'Including the excluded: ethno development in Latin America'*, paper presented at the Annual World Bank Conference on Development in Latin America and the Caribbean, Bogotá, Colombia 1996

<sup>6</sup>Portes, A. (1998) 'Social Capital: its origins and application in modern society'- *Annual Review of Sociology* [http://www.adb.org/Documents/Reports/Indigenous\\_Peoples/REG/indigenous\\_reg.pdf](http://www.adb.org/Documents/Reports/Indigenous_Peoples/REG/indigenous_reg.pdf) (last modified on 22nd September, 2022)

<sup>7</sup> Gonzalez, M. L - 'How many indigenous people?' available at <https://rights.culturalsurvival.org/interview-antonio-gonzales-international-mechanisms> (last modified on 26 September 2022)

measured by income indicators, access to basic services such as water and sewage, educational attainment, literacy or housing quality.<sup>8</sup>

The Zenu<sup>9</sup> indigenous people dwell in the northern Colombian departments of Córdoba and Sucre. In the 1970s, they began a process of recovering their ethnic identity, mainly through their struggle for the recovery of land.

Report states that indigenous children are more likely to die before one year of age than those of the general populations of the countries where they live, and are more likely to be stunted due to inadequate nutrition and health issues (parasites, disease).

### Indigenous peoples in Asia

It is estimated that over 70 per cent of the world's indigenous peoples live in Asia<sup>10</sup>. As Barnes<sup>11</sup> writes in the introduction to the excellent volume *Indigenous Peoples of Asia* 'Indigenous people' a category that first came into existence as a reaction to the legacy of Western European colonialism, has proven especially problematic in postcolonial Asia, where many governments refuse to recognize the distinction sometimes advanced by dissident ethnic groups between indigenous and nonindigenous populations'.

The Philippines is the only Asian country to have officially confirmed the status of Indigenous people and their population stands at 20%. And in 1992, the Asian Indigenous Peoples Pact was formed, bringing together the indigenous peoples of Asia in a joint quest for self-determination.

Asia has experienced different waves of migration and a succession of colonial experiences, one ethnic group may have longer-standing claims than any other without actually being the original inhabitants of an area.

Thus, indigenous peoples are often defined as *prior* rather than *original* inhabitants. For instance, many of the peoples of the Chittagong Hill Tracts in Bangladesh are not the original

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<sup>8</sup>Psacharopoulos, G. and H. A. Patrinos (1994) *Indigenous People and Poverty in Latin America, an empirical analysis*- World Bank Regional and Sectoral Studies, Washington, DC: World Bank.

<sup>9</sup> Zenu indigenous community in a braided tradition available at <https://godz.com.co/blogs/blog-articles/zenu-indigenous-community-a-braided-tradition> (last modified on 3 September, 2022)

<sup>10</sup> Report of IFAD available at <https://www.ifad.org/en/web/latest/-/news/ifad-press-releases-2001> (last modified on 19 September, 2022)

<sup>11</sup> Barnes, R.H. A. Gray and B. Kingsbury (eds) - *Indigenous Peoples of Asia* (1995) available at <https://www.asianstudies.org/publications/ea/archives/indigenous-peoples-of-asia> (last modified on 21 September, 2022)

inhabitants of that region only the Kuki peoples can make that claim, but they are recent efforts by the Bangladesh army to colonize the area through violent attacks on villages. The indigenous peoples of Asia do not have the same well-defined, long-standing and recognized status as indigenous peoples in recently colonized areas such as North America, Australia or New Zealand.

Indigenous poverty in Asia takes many forms the problems faced by the people including that of militarization; plundering of resources; forced relocation; and cultural genocide. This adds to this list the forced integration of indigenous peoples into market economies – giving the example of the Santals of north-central India and bigotry/ discrimination, such as that experienced by the Ainu in Japan and the original inhabitants of Taiwan and the Philippines. The harshest programmes of restrictions on land use have targeted areas where indigenous peoples reside, and reports on extensive resettlement initiatives to remove indigenous peoples from protected areas, including an example of 550 Muong<sup>12</sup> households being moved out of Cuc Phuong National Park in Vietnam. Elements of globalization and modernization have come to characterize an increasingly large number of indigenous communities. TV aerials bristle in remote village communities that have been the most aggressive in the transition to cash cropping, satellite dishes are all in the rave.

The 2003 Indigenous World<sup>13</sup> Report are subjected to the worst forms of political, economic and social marginalization and subjugation’ as well as ‘social, ethnic, religious, political and economic inequality’; for them, ‘development’ often involves confiscation of their grazing lands and forced sedentarization.

The representatives of Indigenous people’s communities, organisation and networks from Latin American & Caribbean, Asia, Africa, North America gathered together at the Global Preparatory meeting of Indigenous People on Rio+20 and Kari-Oca<sup>14</sup> from 20-24 August 2011 in Manaus, Amazonia, Brazil. Henceforth, Indigenous people continue to challenge the development made based on resource extraction, exploitation. The protection and respect for

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<sup>12</sup> Cultural Traits of the Muong People available at <http://vietnamlawmagazine.vn/cultural-traits-of-the-muong-4136.html> (last modified on 24 September, 2022)

<sup>13</sup> The Indigenous World 2002-2003 available at [https://www.iwgia.org/images/publications/IW\\_2003.pdf](https://www.iwgia.org/images/publications/IW_2003.pdf) (last modified on 23 September, 2022)

<sup>14</sup> Kari-Oca 2 Declaration on Indigenous People available at <https://www.culturalsurvival.org/news/kari-oca-2-declaration-indigenous-peoples-global-conference-rio20-and-mother-earth> (last modified on 26 September, 2022)

rights to indigenous people to their lands, territories and resources is a precondition to a sustainable development.