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Human Rights Council Background Guide 2024

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Jost Giesing, and Johnny Mendoza



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Dear Delegates,

Welcome to the 2024 National Model United Nations New York Conference (NMUN•NY)! We are pleased to introduce to you our committee, the Human Rights Council (HRC). Your committee's work is facilitated by volunteer staffers. This year's committee staff are: Director Kendrick King and Assistant Director Jost Giesing (Session 1), and Director Mariana G. Marañón Laguna and Assistant Director Johnny Mendoza (Session 2). Kendrick King studied Health Policy at Georgia Southern University and currently works for a state-level organization focused on mental health disparities in the workplace. Jost is pursuing an LL.M. in Business Law at Westphalian University. He also works on due diligence laws relating to human and environmental rights along the supply chain. Mariana obtained a Master's degree in Integrative Neuroscience at Georgetown University and is currently working part-time as a figure skating instructor before starting medical school in early 2024. Johnny Mendoza graduated with degrees in International Relations and Political Science from Cal Poly Humboldt. He is currently employed at a local insurance company in Oakland, California. The preparation of these materials was supported by Under-Secretaries-General Maïke Weitzel (Session 1) and Martin Schunk (Session 2).

The topics on the agenda for this committee are:

1. Human Rights and the Use of Private Military and Security Companies
2. Human Rights of Indigenous Peoples

This Background Guide serves as an introduction to the topics for this committee. However, it is not intended to replace individual research. We encourage you to explore your Member State's policies in depth and use the bibliography to further your knowledge on these topics. In preparation for the conference, each delegation should submit a Position Paper by 11:59 p.m. ET on 1 March 2023 in accordance with the guidelines in the [Position Paper Guide](#) and the [NMUN•NY Position Papers website](#).

Two resources, available to download from the NMUN website, serve as essential instruments in preparing for the Conference and as a reference during committee sessions:

- The [NMUN Delegate Preparation Guide](#), which explains each step in the delegate process, from pre-conference research to the committee debate and resolution drafting processes. Please take note of the information on plagiarism, and the prohibition on pre-written working papers and resolutions.
- The [NMUN Rules of Procedure](#), which includes the long and short form of the rules, as well as an explanatory narrative and example script of the flow of procedure.

In addition, please review the mandatory [NMUN Conduct Expectations](#) on the NMUN website. They include the conference dress code and other expectations of all attendees. We want to emphasize that any instances of sexual harassment or discrimination based on race, gender, sexual orientation, national origin, religion, age, or disability will not be tolerated. If you have any questions concerning your preparation for this committee, please contact the Deputy Secretaries-General at dsg.ny@nmun.org.

We wish you all the best in your preparations and look forward to seeing you at the Conference!

Kendrick King, Director
Jost Giesing, Assistant Director
Session 1

Mariana G. Marañón Laguna, Director
Johnny Mendoza, Assistant Director
Session 2



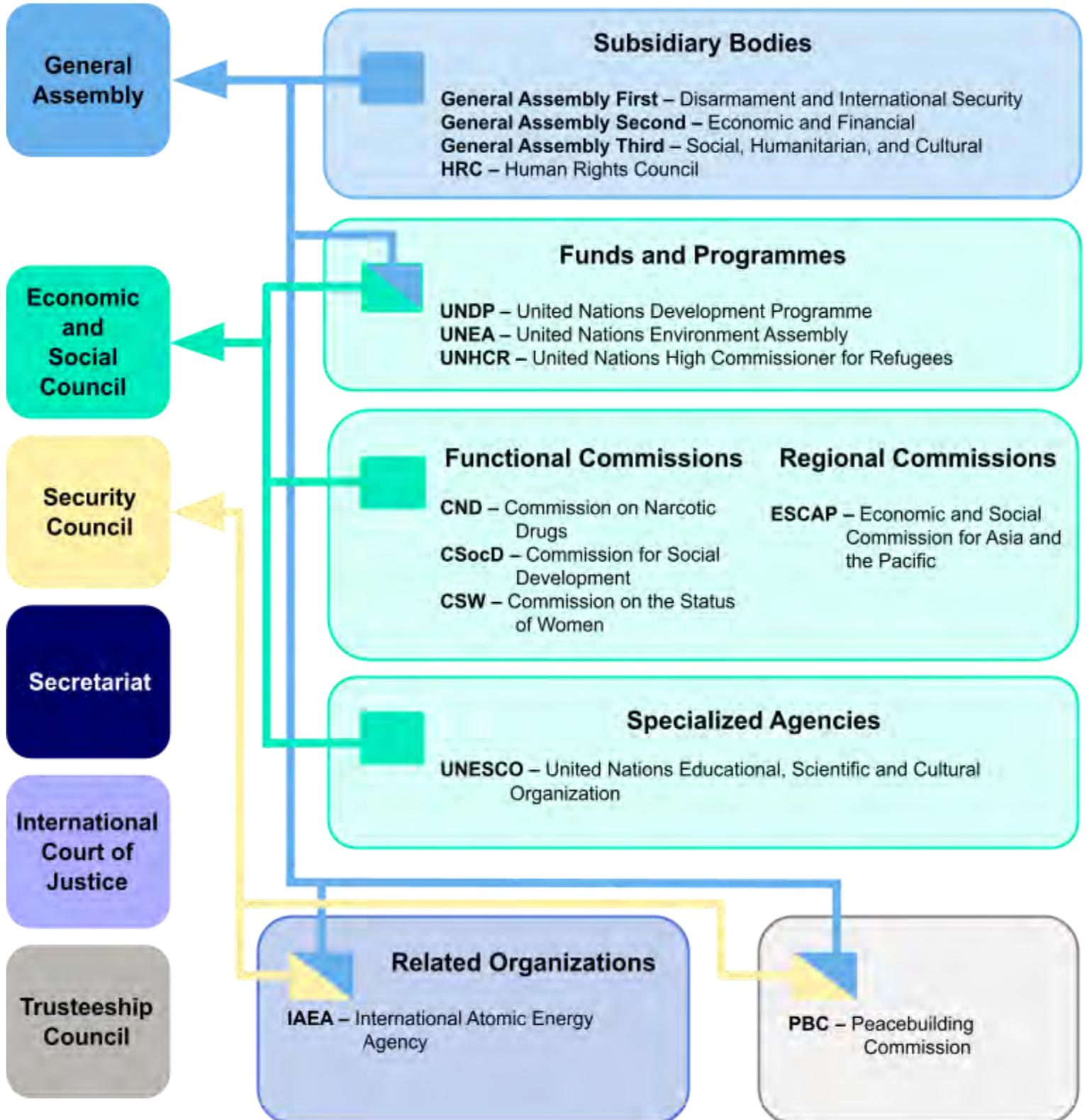
Table of Contents

United Nations System at NMUN·NY	4
Committee Overview	5
Introduction.....	5
Mandate, Functions, and Powers.....	5
Governance, Structure, and Membership.....	6
1. Human Rights and the Use of Private Military and Security Companies	8
Introduction.....	8
International and Regional Framework.....	9
Role of the International System.....	10
The Human Rights Implications of Employing PMSCs.....	12
Accountability for Human Rights Violations Committed by PMSCs.....	13
Conclusion.....	14
Further Research.....	14
2. Human Rights of Indigenous Peoples	18
Introduction.....	18
International and Regional Framework.....	19
Role of the International System.....	21
Right to Self-Determination for Indigenous Peoples.....	23
Human Rights of Indigenous People and Climate Change.....	25
Conclusion.....	26
Further Research.....	26



United Nations System at NMUN·NY

This diagram illustrates the United Nations system simulated at NMUN·NY. It shows where each committee “sits” within the system to demonstrate the reportage and relationships between entities. Examine the diagram alongside the Committee Overview to gain a clear picture of the committee’s position, purpose, and powers within the United Nations system.





Committee Overview

Introduction

The Human Rights Council (HRC) is the primary body responsible for addressing human rights issues in the United Nations system.¹ HRC seeks to promote universal respect for all human rights and fundamental freedoms, effective governance on human rights issues, and, as the need arises, also provides recommendations after human rights violations have occurred.²

Mandate, Functions, and Powers

Replacing the United Nations Commission on Human Rights, HRC was established in 2006 with General Assembly resolution 60/251, "Human Rights Council."³ HRC's operational structures were given further detail in 2007 by Human Rights Council resolution 5/1 on "Institution-building of the United Nations Human Rights Council," which established the HRC Complaint Procedure for cases of consistent patterns of human rights violations.⁴ It is mandated to monitor, discuss, and make recommendations on human rights violations, establish international human rights standards, and promote human rights.⁵ The United Nations has two forms of human rights monitoring mechanisms: treaty-based bodies and charter-based bodies.⁶ While the ten treaty-based bodies assess the implementation of specific human rights treaties, HRC is the primary charter-based body and, although its resolutions are not legally binding, it can monitor human rights across all Member States rather than solely those which are party to specific treaties.⁷

HRC may mandate international commissions of inquiry or investigations into serious violations of human rights law.⁸ These non-judicial commissions allow violations to be recorded and reported and can help to ensure accountability in potential future judicial proceedings, including those held by the International Criminal Court (ICC).⁹ The commissions also review legislative and institutional mechanisms to protect human rights and propose recommendations on how they may be strengthened.¹⁰ Separate from these commissions, HRC and its subsidiaries can establish Special Procedures, which are mechanisms that enable independent parties to report, monitor, and advise on country-specific or thematic issues under HRC consideration.¹¹ Each investigation has a mandate and a mandate holder, typically a Special Rapporteur, an independent expert, or a working group.¹² Special Procedures generally involve field visits, thematic studies, expert consultations, and regular reports to HRC and the General Assembly.¹³

The HRC also oversees the Universal Periodic Review (UPR), a process under which each Member State submits to an assessment of the fulfillment of its human rights obligations.¹⁴ The complete cycle of the

¹ United Nations, General Assembly. *Human Rights Council (A/RES/60/251)*. 2006.

² Ibid.

³ Ibid.

⁴ Ibid; United Nations, Human Rights Council. *Institution-building of the United Nations Human Rights Council (5/1)*. 2007.

⁵ United Nations, General Assembly. *Human Rights Council (A/RES/60/251)*. 2006.; Permanent Mission of Switzerland to the United Nations. *The Human Rights Council: A practical guide*. 2015.

⁶ Office of the United Nations High Commissioner for Human Rights. *Instruments & mechanisms*. 2023.

⁷ Ibid; Permanent Mission of Switzerland to the United Nations. *The Human Rights Council: A practical guide*. 2015.

⁸ Office of the United Nations High Commissioner for Human Rights. *International Commissions of Inquiry, Commissions on Human Rights, Fact-Finding missions and other Investigations*. 2023.

⁹ Office of the United Nations High Commissioner for Human Rights. *Commissions of inquiry and fact-finding missions on international human rights and humanitarian law: Guidance and practice*. 2015.

¹⁰ Ibid. p. 7.

¹¹ Office of the United Nations High Commissioner for Human Rights. *Special Procedures*. 2023.

¹² Ibid.

¹³ Ibid.

¹⁴ Office of the United Nations High Commissioner for Human Rights. *Universal Periodic Review*. 2023



UPR process takes around four years to complete and includes several steps.¹⁵ At the preparation stage, information is gathered that will form the basis of the review, including national reports, stakeholder submissions, and information prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR).¹⁶ At the review stage, documents are presented at the regular sessions of the working group on the UPR.¹⁷ At the adoption and consideration stage, each Member State provides comments and the Member State under review can offer reservations on specific issues.¹⁸ Finally, during the follow-up stage, each Member State under review presents an assessment of how effectively it has acted upon the recommendations.¹⁹

While the following list is not exhaustive, the mandate of HRC can be summarized as:

- **HRC will generally:** serve as a forum for dialogue on human rights; advance human rights policies and norms; mandate investigative commissions on severe violations of human rights law; initiate Special Procedures, which may encompass field visits, studies, and reports; manage the UPR processes; receive reports via the Complaint Procedure; coordinate with non-governmental and civil society actors; and make recommendations to Member States and United Nations bodies.²⁰
- **HRC will not generally:** adopt legally binding resolutions or decisions; intervene operationally in situations of human rights violations; or create new bodies or programs.²¹

Governance, Structure, and Membership

HRC is a subsidiary organ of the General Assembly and makes regular recommendations and reports, most often to the General Assembly's Third Committee.²² It works closely with OHCHR and receives an annual report from the commissioner on ongoing situations and topics.²³ It is served by several sub-committees, including the Advisory Committee and various intergovernmental working groups on specific thematic areas.²⁴

The council consists of 47 Member States who are elected via a majority vote of the General Assembly through a direct and secret ballot.²⁵ Membership is based on equitable geographical distribution and a specific number of seats are designated to each geographic region.²⁶ During the first regular session of each year, HRC elects a President and four Vice-Presidents to serve on its Bureau, responsible for the organization and procedural functions of the committee.²⁷

¹⁵ Ibid; Office of the United Nations High Commissioner for Human Rights. *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*. 2008. pp. 80-81.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Office of the United Nations High Commissioner for Human Rights. *Special Procedures*. 2023; International Justice Resource Center. *UN Human Rights Council*. N.d.

²¹ Permanent Mission of Switzerland to the United Nations. *The Human Rights Council: A practical guide*. 2015. pp. 7, 18.

²² United Nations, General Assembly. *Human Rights Council (A/RES/60/251)*. 2006; Permanent Mission of Switzerland to the United Nations. *The Human Rights Council: A practical guide*. 2015. p. 18.

²³ Ibid. p. 7.

²⁴ Office of the United Nations High Commissioner for Human Rights. *Advisory Committee*. 2023.

²⁵ Office of the United Nations High Commissioner for Human Rights. *Membership of the Human Rights Council*. 2023.

²⁶ Ibid.

²⁷ Permanent Mission of Switzerland to the United Nations. *The Human Rights Council: A practical guide*. 2015. p. 6.



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United Nations, Human Rights Council. *Human Rights Council Complaint Procedure*. 2023. Retrieved 21 October 2023 from: <https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/hrc-complaint-procedure-index>



1. Human Rights and the Use of Private Military and Security Companies

Introduction

The United Nations Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination defines private military and security companies (PMSCs) as “corporate entities which provide on a compensatory basis military and/or security services by physical persons and/or legal entities.”²⁸ PMSCs have been used to guard individuals and assets, operate and upkeep weapons systems, detain prisoners, and offer guidance and training to local forces and security personnel.²⁹ In peacekeeping operations, PMSCs have provided personnel, guard services, logistics, intelligence, and risk assessment.³⁰ PMSCs are active in nearly every Member State and serve a diverse clientele, including governments, private companies, individuals, and non-governmental organizations.³¹ Their work can involve everything from governance matters to the protection of national interests and those of its citizenry.³² While their use is widespread, the United States, United Kingdom, China, and South Africa are host to roughly 70% of the PMSCs worldwide.³³ Over the past two decades, the use of PMSCs has also increased in various conflict regions and countries, chiefly Iraq, the Central African Republic, Colombia, Libya, Afghanistan, Somalia, Mozambique, Mali, and Ukraine, among others.³⁴

In contrast to PMSCs, mercenaries are “soldier[s] fighting in another country’s army for profit without any affiliation to a cause or any loyalty to a country.”³⁵ The *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* (1989) prohibits the use, training, financing, and hiring of mercenaries.³⁶ There is a common understanding that PMSC personnel are mercenaries.³⁷ However, if their primary role does not involve direct combat in an armed conflict, and their services do not entail active involvement in hostilities, they do not meet the criteria for being labeled as mercenaries.³⁸

In 2022, during the 51st session of the Human Rights Council, the Working Group on the Use of Mercenaries highlighted that the increased use of mercenaries, mercenary-related actors, and PMSCs in wartime, post-conflict scenarios, and even during peaceful times has led to a rise in human rights violations.³⁹ Their reports indicated that PMSCs can harm the ability of many groups to enjoy their rights,

²⁸ United Nations, Office of the High Commissioner for Human Rights. *Mercenarism and Private Military and Security Companies: An overview of the work carried out by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*. 2018. p. 17.

²⁹ International Committee of the Red Cross. *Private military and security companies (PMSCs)*. 2023.

³⁰ Sherman et al. International Peace Institute. *The Future of Peacekeeping and Parallel Operations*. 2021. p. 5.

³¹ Swed et al. Stockholm International Peace Research Institute. *Private Military and Security Companies in Armed Conflict*. 2023.

³² Ibid.

³³ Ibid.

³⁴ Center for Civilians in Conflict. *Privatizing War: The Impact of Private Military Companies on the Protection of Civilians*. 2022. p. 3.

³⁵ Ibid. p. 8.

³⁶ United Nations, General Assembly. *International Convention against the Recruitment, Use, Financing and Training of Mercenaries (A/RES/44/34)*. 1989. p. 307.

³⁷ Williamson. Elimination of mercenarism in Africa: a need for a new continental approach. *Chapter 7: Status and Obligations of Mercenaries Under International Humanitarian Law*. 2008; United Nations, Office of the United Nations High Commissioner for Human Rights. *The Impact of Mercenary Activities on the Right of Peoples to Self-Determination: Fact Sheet No. 28*. 2002. p. 5.

³⁸ Ibid.

³⁹ United Nations, Human Rights Council. *Access to justice, accountability and remedies for victims of mercenaries, mercenary-related actors and private military and security companies: Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (A/HRC/51/25)*. 2022. p. 3.



including women, children, migrants, refugees, people with disabilities, LGBTQIA+, older persons, ethnic, racial, and religious minorities, human rights advocates, and journalists.⁴⁰ Furthermore, PMSC presence in conflict areas increases risks for civilians residing there, including the risk of injury or death due to attacks on civilian infrastructure, conflict-related sexual violence, enforced disappearances, arbitrary detention, and displacement.⁴¹ Accountability when such incidents occur can be difficult as Member States may deny any accountability for or awareness of potential misconduct of PMSCs.⁴² A lack of coherence between international and national law combined with insufficient government regulation and industry self-regulation has often led to impunity when human rights abuses are committed by PMSCs.⁴³ The Human Rights Council regularly addresses the human rights challenges associated with the operations of PMSCs and their use has become a regular topic of discussion as human rights violations in conflicts have risen worldwide.⁴⁴

International and Regional Framework

The *Geneva Conventions* (1949) are a set of international treaties and protocols defining humanitarian rules of war.⁴⁵ The four main Geneva Conventions address the treatment of wounded, sick military personnel, prisoners of war, and civilians during armed conflicts, with additional protocols further enhancing these protections.⁴⁶ Article 47 of the *Additional Protocol I to the 1949 Geneva Conventions* (1977) specifically addresses the issue of mercenaries in armed conflicts and defines mercenaries as individuals who are not members of the armed forces of a party to the conflict, do not have a right to participate in hostilities, and are motivated to take part in the conflict essentially by the desire for private gain.⁴⁷

The *Universal Declaration of Human Rights* (UDHR) (1948) outlines fundamental human rights and principles applicable to all individuals, regardless of their nationality, ethnicity, or any other characteristic.⁴⁸ The UDHR recognizes the inherent right to life, liberty, and security of a person, and serves as the basis for many subsequent human rights frameworks.⁴⁹ The *International Covenant on Civil and Political Rights* (ICCPR) (1966) builds on the UDHR and highlights certain civil and political rights, including the right to life, freedom from torture or cruel, inhuman, or degrading treatment, freedom of thought and religion, freedom of expression, the right to a fair trial, and the right of peoples to self-determination, among others.⁵⁰ The ICCPR provides a legal framework and sets out fundamental principles that govern the actions of all parties involved in armed conflicts, including PMSC personnel.⁵¹ The third framework that makes up the *International Bill of Human Rights* is the *International Covenant on Economic, Social and*

⁴⁰ Ibid.

⁴¹ Center for Civilians in Conflict. *Privatizing War: The Impact of Private Military Companies on the Protection of Civilians*. 2022. p. 13.

⁴² El Mquirmi. Policy Center for the New South. *Navigating in a Grey Zone: Regulating PMSCs*. 2022. p. 16.

⁴³ Ibid.

⁴⁴ United Nations, Office of the High Commissioner for Human Rights. *Concept Note on A Possible Legally Binding Instrument for the Regulation of Private Military Security Companies*. 2015.

⁴⁵ *Geneva Convention relative to the Protection of Civilian Persons in Time of War (2nd part)*. 1949.

⁴⁶ Ibid.

⁴⁷ Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1)*. 1977.

⁴⁸ United Nations, General Assembly. *Universal Declaration of Human Rights (A/RES/217 A (III))*. 1948.

⁴⁹ Ibid.

⁵⁰ United Nations, General Assembly. *International Covenant on Civil and Political Rights (A/RES/2200 (XXI))*. 1966.

⁵¹ Ibid.



Cultural Rights (ICESCR), which seeks to provide guarantees against individuals having their way of life harmed, even during conflict.⁵² States bear the primary responsibility for upholding these frameworks.⁵³

Several frameworks are also directly connected to the use of PMSCs, including the *International Convention against the Recruitment, Use, Financing, and Training of Mercenaries*, which prohibits the deployment of mercenaries in armed conflicts.⁵⁴ In 2008, the Swiss government and the International Committee of the Red Cross launched the process that gave rise to the *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict* (Montreux Document).⁵⁵ The Montreux Document is a multinational agreement that compiles recommendations on the responsibilities of Member States in engaging PMSCs during armed conflicts, with a focus on promoting compliance with international humanitarian law, as well as ensuring accountability and respect for human rights by PMSC.⁵⁶

In addition to the Montreux Document, Switzerland launched an initiative that combines governments, civil society, and PMSCs, which jointly established the *International Code of Conduct for Private Security Service Providers* (ICoC) in 2010.⁵⁷ The following year, the Human Rights Council endorsed the *United Nations Guiding Principles on Business and Human Rights* (Guiding Principles) in its resolution 17/4 on “Human rights and transnational corporations and other business enterprises.”⁵⁸ The Guiding Principles were created by the United Nations Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises as a document for the private sector to guide the protection of human rights.⁵⁹ For PMSCs, the ICoC and the Guiding Principles are frameworks that are meant to ensure the delivery of security services while respecting human rights and humanitarian law.⁶⁰ They seek to help PMSCs conduct human rights due diligence, implement policies and procedures to prevent human rights abuses, and provide access to effective remedies for those affected by their actions.⁶¹

Role of the International System

The Human Rights Councils regularly addresses the multifaceted implications of PMSCs on human rights worldwide.⁶² In 1987, the Commission on Human Rights (CHR), the predecessor of the Human Rights Council, appointed a Special Rapporteur on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination to closely monitor violations of human rights and humanitarian law perpetrated by mercenaries, mercenary-related actors, and PMSCs.⁶³ With its resolution 2005/2 on “the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination” (2005), CHR replaced the

⁵² United Nations, General Assembly. *International Covenant on Economic, Social and Cultural Rights (A/RES/2200 (XXI))*. 1966.

⁵³ United Nations, General Assembly. *Universal Declaration of Human Rights (A/RES/217 A (III))*. 1948.

⁵⁴ United Nations, General Assembly. *International Convention against the Recruitment, Use, Financing and Training of Mercenaries (A/RES/44/34)*. 1989.

⁵⁵ International Committee of the Red Cross. *The Montreux Document*. 2008.

⁵⁶ Ibid.

⁵⁷ International Code of Conduct for Private Security Service Providers' Association. *About us*. N.d.

⁵⁸ United Nations, Human Rights Council. *Human rights and transnational corporations and other business enterprises (A/HRC/RES/17/4)*. 2011.

⁵⁹ Ibid. p. 2.

⁶⁰ United Nations, Office of the High Commissioner for Human Rights. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. 2011; International Code of Conduct for Private Security Service Providers' Association. *The International Code of Conduct for Private Security Service Providers*. 2010.

⁶¹ Ibid.

⁶² United Nations, Office of the High Commissioner for Human Rights. *Welcome to the Human Rights Council*. 2023.

⁶³ El Mquirmi. Policy Center for the New South. *Navigating in a Grey Zone: Regulating PMSCs*. 2022. p. 8.



mandate of the Special Rapporteur with the Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of People's Self-determination.⁶⁴ Five independent experts representing the five regional groups make up the working group, which monitors and researches how mercenaries and mercenary-related activities, foreign fighters, and PMSCs interfere with human rights, especially the right of people to self-determination.⁶⁵ The working group assesses the impact of mercenaries, mercenary-related actors, and PMSCs on human rights and reports the findings annually to the Human Rights Council and the General Assembly.⁶⁶ Through the thematic reports, experts focus on specific issues and regularly update the international community on situations involving human rights and mercenarism, mercenary-related activities, and PMSCs.⁶⁷ The most recent report of the Working Group focused on the "Recruitment, including predatory recruitment, of mercenaries and mercenary-related actors."⁶⁸

Since 2009, the Human Rights Council has attempted to create a legally binding document to increase regulation, accountability, and transparency of Member States and PMSCs.⁶⁹ Such a legally binding document would address challenges through a comprehensive and binding international framework with a focus on enhancing accountability, transparency, and human rights protection.⁷⁰ To this end, the Human Rights Council established an open-ended intergovernmental working group (IGWG) in 2010.⁷¹ As of October 2023, the IGWG is still in the drafting stage for a legally binding document on the use of PMSC, with the mandate of the IGWG expiring in 2026.⁷²

While deliberations on the human rights implications of the use of PMSCs are an integral part of the mandate of the Human Rights Council, multistakeholder holder initiatives that incorporate both the perspectives of PMSCs and civil society emerged from the discussions following the Montreux Document.⁷³ For example, the International Code of Conduct Association (ICoCA), which brought forward the ICoC, is an association that comprises civil society as well as private sector representatives.⁷⁴ ICoCA aims to improve the industry standards of PMSCs to ensure that human rights and international humanitarian law is protected in PMSC operations.⁷⁵

⁶⁴ United Nations, Office of the High Commissioner for Human Rights. *Working Group on the Use of Mercenaries*. 2023.

⁶⁵ Ibid.

⁶⁶ United Nations, Office of the High Commissioner for Human Rights. *Mercenarism and Private Military and Security Companies: An overview of the work carried out by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*. 2018. p. 11-13.

⁶⁷ Ibid. p. 11.

⁶⁸ United Nations, Human Rights Council. *Recruitment, including predatory recruitment, of mercenaries and mercenary-related actors: Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (A/HRC/54/29)*. 2023.

⁶⁹ United Nations, Office of the High Commissioner for Human Rights. *Concept Note on A Possible Legally Binding Instrument for the Regulation of Private Military Security Companies*. 2015.

⁷⁰ Ibid.

⁷¹ United Nations, Office of the High Commissioner for Human Rights. *Open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies relating to the activities*. 2023.

⁷² United Nations, Human Rights Council. *Mandate of the open-ended intergovernmental working group to elaborate the content of an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies (A/HRC/RES/54/11)*. 2023; United Nations, Human Rights Council. *Second Draft Instrument on an International Regulatory Framework on the Regulation, Monitoring of And Oversight over the Activities of Private Military and Security Companies*. 2022.

⁷³ International Code of Conduct for Private Security Service Providers' Association. *About us*. N.d.

⁷⁴ Ibid.

⁷⁵ Ibid.



The Human Rights Implications of Employing PMSCs

The use of PMSCs and the recruitment of mercenaries and mercenary-related actors has increased in recent years in conflict, post-conflict, and conflict-affected contexts, intensifying the risk of human rights violations.⁷⁶ Use of excessive force by PMSC personnel can infringe upon the human right to life, liberty, and security and PMSC personnel may engage in torture or cruel, inhuman, or degrading treatment or punishment, all of which violate provisions of the UDHR.⁷⁷ In their 2022 report on *Access to justice, accountability and remedies for victims of mercenaries, mercenary-related actors and private military and security companies*, the Working Group on the Use of Mercenaries highlighted that the presence of mercenaries and related actors in armed conflicts contributes to population displacement.⁷⁸ The Working Group also highlighted that attacks on infrastructure can affect livelihoods, water, and power supplies and lead to looting, occupation, and destruction of private property and educational and medical facilities.⁷⁹ In some cases, PMSC presence can exacerbate instability within communities, impinging on the ability of local populations to exercise their right to self-determination.⁸⁰

Member States are responsible for promoting human rights, overseeing the activities of mercenaries, mercenary-related actors, and PMSCs, and minimizing the harm they cause.⁸¹ As the custodians of human rights within their territories, Member States are meant to uphold and safeguard these rights while regulating and monitoring the actions of PMSCs and those they employ.⁸² Their responsibilities extend to ensuring that the activities of mercenaries and PMSCs adhere to international legal standards and norms, thereby reducing the risk of human rights violations.⁸³

Since violations of international humanitarian law perpetrated by mercenaries, mercenary-related actors, and PMSCs could constitute war crimes or crimes against humanity, it is legally possible to investigate, prosecute, or extradite the perpetrators irrespective of how much time has passed since the crimes were committed.⁸⁴ Justice is often difficult to pursue, however, as in many places where PMSCs operate there also exists a climate of impunity and corruption due to a lack of adequate legal regimes, capable governmental institutions, or other factors.⁸⁵ The Human Rights Council and its subsidiary bodies have advocated for the implementation of international legal mechanisms and principles that address the effect

⁷⁶ United Nations, Human Rights Council. *Recruitment, including predatory recruitment, of mercenaries and mercenary-related actors: Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (A/HRC/54/29)*. 2023. p. 1.

⁷⁷ United Nations, General Assembly. *Universal Declaration of Human Rights (A/RES/217 A (III))*. 1948. Art. 3; Crowe et al. *Melbourne Journal of International Law* 18. *The Status of Private Military Security Companies in United Nations Peacekeeping Operations Under the International Law of Armed Conflict*. 2017. p. 21.

⁷⁸ United Nations, Human Rights Council. *Access to justice, accountability and remedies for victims of mercenaries, mercenary-related actors and private military and security companies: Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (A/HRC/51/25)*. 2022.

⁷⁹ Ibid; United Nations, General Assembly. *Universal Declaration of Human Rights (A/RES/217 A (III))*. 1948.

⁸⁰ United Nations, Office of the High Commissioner for Human Rights. *Expert consultation on "Private military and security companies in extractive industries – impact on human rights"*. 2017.

⁸¹ United Nations, Human Rights Council. *Access to justice, accountability and remedies for victims of mercenaries, mercenary-related actors and private military and security companies: Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (A/HRC/51/25)*. 2022. p. 4.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid. p. 20.

⁸⁵ Ibid. p. 13.



that PMSCs and mercenaries have on human rights and have also collaborated with international legal bodies, such as the International Criminal Court.⁸⁶

Accountability for Human Rights Violations Committed by PMSCs

Achieving accountability for the human rights violations that PMSCs commit brings up practical, legal, and institutional challenges.⁸⁷ PMSCs often operate in complex and decentralized environments, spanning multiple jurisdictions, which can make establishing clear lines of responsibility and legal recourse challenging.⁸⁸ The absence of uniform international legal frameworks that comprehensively address PMSC activities further complicates the enforcement of accountability measures.⁸⁹ This fragmented system, combined with the ability of PMSCs to operate across borders, can contribute to potential impunity and evasive actions.⁹⁰ Moreover, the legal accountability of PMSCs can often be unclear due to the lack of universally accepted definitions and classifications of terms, such as mercenaries, security outsourcing, use of force, and the interpretation of international law.⁹¹ These legal and practical hurdles are indicative of the lack of clear and binding standards to regulate PMSCs.⁹²

The lack of effective regimes also leads victims of PMSC-related human rights abuses to often face significant obstacles in seeking justice, including the challenges of identifying responsible parties and navigating complex legal systems.⁹³ In their 2018 report on *Mercenarism and Private Military and Security Companies*, the Working Group on the Use of Mercenaries emphasized the importance of ensuring that victims have access to justice and adequate remedies that are victim-centered, meaning that they prioritize the needs and rights of victims throughout the accountability process.⁹⁴ This includes providing victims with legal support, psychosocial assistance, and protection from potential retaliation.⁹⁵ It also requires establishing mechanisms that allow victims to participate in proceedings and have their voices heard, helping to ensure that their experiences are considered in the pursuit of justice.⁹⁶ Such mechanisms can help address the power imbalance between victims and PMSCs, fostering a more equitable pursuit of justice and accountability.⁹⁷

⁸⁶ Ibid. p. 20.

⁸⁷ United Nations, Human Rights Council. *Relationship between private military and security companies and the extractive industry from a human rights perspective: Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.* (A/HRC/42/42). 2019. p. 14.

⁸⁸ Ibid.

⁸⁹ Ibid. p. 18.

⁹⁰ United Nations, Office of the High Commissioner for Human Rights. *Concept Note on A Possible Legally Binding Instrument for the Regulation of Private Military Security Companies.* 2015. p. 4.

⁹¹ Ibid. p. 2.

⁹² United Nations, Human Rights Council. *Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination* (A/HRC/36/47). 2017. p. 14.

⁹³ United Nations, Office of the High Commissioner for Human Rights. *Violations by mercenaries and private military and security companies highlight urgent need for maritime security oversight.* 2022.

⁹⁴ United Nations, Human Rights Council. *Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination* (A/HRC/36/47). 2017. p.15.

⁹⁵ United Nations, Office of the High Commissioner for Human Rights. *Mercenarism and Private Military and Security Companies: An overview of the work carried out by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.* 2018. p. 17.

⁹⁶ Ibid.

⁹⁷ Ibid.



The Human Rights Council has already recognized the need for effective remedies for violations of human rights committed by PMSCs.⁹⁸ In its recent resolution 54/3 on “Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination” (2023), the Human Rights Council encouraged Member States that employ PMSCs to establish national mechanisms that can help ensure accountability.⁹⁹ However, unlike with mercenaries, the Human Rights Council does not urge Member States to follow any international obligations to access justice for victims due to the lack of an international treaty on the use of PMSCs.¹⁰⁰ In this context, the current draft instrument, prepared by the IGWG, includes provisions to address the lack of access to justice and establishes legal obligations for Member States.¹⁰¹

Conclusion

The use of PMSCs has become an integral part of contemporary security operations, with an increased presence observed globally.¹⁰² The proliferation of mercenaries, mercenary-related actors, and PMSCs in various contexts has been accompanied by a rise in human rights abuses and violations of international humanitarian law.¹⁰³ This has often led to a lack of accountability, where victims find themselves with limited access to legal processes and justice.¹⁰⁴ In response to these human rights challenges, the international community has initiated a series of efforts aimed at addressing PMSC operations' implications.¹⁰⁵ The Human Rights Council and IGWG actively promote efforts to monitor, document, gather information, and report on violations of human rights and international humanitarian law committed by mercenaries, mercenary-related actors, and private military and security companies.¹⁰⁶ This multifaceted approach is designed to establish facts, contribute to ensuring justice, and enhance accountability within the PMSC industry.¹⁰⁷ The Human Rights Council continues to explore how to ensure that the PMSC industry upholds the principles of accountability, transparency, and human rights protection, including through the creation of legally binding instruments to regulate PMSCs.¹⁰⁸

Further Research

As delegates conduct further research and address this topic, they should consider: How can the Human Rights Council address gaps between the international legal provisions regarding mercenaries and the softer regulatory approaches of multistakeholder initiatives addressing PMSCs, such as the Montreux Document? In creating a binding instrument to regulate PMSCs, what should the scope be, what human rights provisions should be included, and what would accountability and remedies for victims look like? Is the current draft instrument on the use of PMSCs sufficient to address the human rights implications of PMSCs? What responsibilities do Member States have in addressing PMSC use? What is the intersection of human rights and PMSCs? What is the difference between mercenaries and PMSCs?

⁹⁸ United Nations, Human Rights Council. *Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (A/HRC/RES/54/3)*. 2023. p. 2.

⁹⁹ Ibid.

¹⁰⁰ Ibid. p. 3.

¹⁰¹ United Nations, Human Rights Council. *Second Draft Instrument on an International Regulatory Framework on the Regulation, Monitoring of And Oversight over the Activities of Private Military and Security Companies*. 2022. p. 15.

¹⁰² United Nations, Human Rights Council. *Mandate of the open-ended intergovernmental working group to elaborate the content of an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies (A/HRC/RES/54/11)*. 2023.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.



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<https://www.ipinst.org/wp-content/uploads/2021/01/Future-of-Peace-Operations-and-Parallel-Forces-js.pdf>

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2. Human Rights of Indigenous Peoples

Introduction

Indigenous peoples around the world continue to face significant human rights violations.¹⁰⁹ These violations, such as violence, forced cultural assimilation, and economic disparity, can be attributed to indigenous peoples' attempts at defending their rights, lands, and communities.¹¹⁰ The United Nations Human Rights Council (HRC) emphasizes that the existence of systematic racism fostered within state and regional systems has contributed to greater barriers for indigenous peoples to uphold their human rights.¹¹¹ The disadvantages brought upon by these barriers and discriminatory actions are contributing to the forced cultural assimilation and decline of indigenous peoples, who are being pushed to forsake their own heritage and identity for another.¹¹² Due to their cultural background, indigenous youth are highly vulnerable to human rights violations, including limited access to education, marginalization, forced migration, and discrimination.¹¹³ In addition, the inadequate access to essential services paired with continual discrimination and unlawful land repossession are ongoing struggles for indigenous peoples, who are constantly trying to uphold their rights and recognition.¹¹⁴

Although there are over 476 million indigenous peoples in 5,000 different groups, speaking more than 4,000 languages worldwide, indigenous peoples possess little representation within the high-level decision-making forums in the United Nations.¹¹⁵ In addition, the United Nations system has not adopted an official definition of "indigenous" within any United Nations body.¹¹⁶ To acknowledge the diversity of indigenous people, the United Nations Permanent Forum on Indigenous Issues (UNPFII) attempted to identify "indigenous" using concepts and terms, like self-identification and acceptance of their respective communities; historical continuity through generations; a powerful connection to territories and natural resources placed in the area; and distinct social, economic, or political systems.¹¹⁷

Despite indigenous peoples representing 6% of the world's population, they make up 19% of the global extreme poor.¹¹⁸ This contributes to the fact that indigenous peoples have a life expectancy up to 20 years less than the rest of society.¹¹⁹ For example, life expectancy for the Australian Aboriginals and Torres Strait Islanders remained constant at 59.6 years, while life expectancy for the broader population increased to 82.8 years.¹²⁰ Indigenous women face a heightened risk of violence, including sexual assault

¹⁰⁹ United Nations, Department of Economic and Social Affairs. *Human Rights*. 2023; Mitrou et al. BMC Public Health. *Gaps in Indigenous disadvantage not closing: a census cohort study of social determinants of health in Australia, Canada, and New Zealand from 1981–2006*. 2014. pp. 5-9.

¹¹⁰ United Nations, Department of Economic and Social Affairs. *Human Rights*. 2023.

¹¹¹ United Nations, Human Rights Council. *Violence against indigenous women and girls (A/HRC/50/26)*. 2022. p. 3.

¹¹² Marchio. Human Right Pulse. *Cultural Assimilation of Native Americans*. 2022.

¹¹³ International Work Group for Indigenous Affairs. *The Indigenous World 2018*. 2018. pp. 580-582; United Nations, Department of Economic and Social Affairs. *Human Rights*. 2023.

¹¹⁴ United Nations, Department of Economic and Social Affairs. *Human Rights*. 2023.

¹¹⁵ United Nations, Department of Global Communications. *Indigenous Peoples Must Be Part of High-Level Decision-Making, Speakers Stress, Calling for Observer Status in General Assembly, as Permanent Forum Continues*. 2019.

¹¹⁶ International Labour Organization. *Implementing the ILO Indigenous and Tribal Peoples Convention No. 169: Towards an inclusive, sustainable, and just future*. 2019. p. 13.

¹¹⁷ United Nations Permanent Forum on Indigenous Issues. *Indigenous Peoples, Indigenous Voices*. N.d.

¹¹⁸ International Labour Organization. *Implementing the ILO Indigenous and Tribal Peoples Convention No. 169: Towards an inclusive, sustainable, and just future*. 2019. p. 20.

¹¹⁹ United Nations, Department of Economic and Social Affairs. *State of the World's Indigenous Peoples (ST/ESA/328)*. 2009. pp. 22-26.

¹²⁰ Cooke et al. BMC International Health and Human Rights. *Indigenous well-being in four countries: An application of the UNDP'S Human Development Index to Indigenous Peoples in Australia, Canada, New Zealand, and the United States*. 2007. p. 5.



and trafficking.¹²¹ This decline is often rooted in historic submission, racial discrimination, and socioeconomic factors; and worsened by displacement via natural disasters, denial of the right to self-determination, and gender-based violence.¹²²

Historical practices, such as the forced assimilation of indigenous children in residential schools, exemplify the damaging consequences of denying self-determination, resulting in trauma, loss of language, and cultural erosion.¹²³ Additionally, the withholding of self-determination hinders indigenous representation in international forums, perpetuating underrepresentation and limiting their ability to advocate for their rights and resources.¹²⁴ Governments and privately-owned corporations continually exploit the natural resources on ancestral lands of indigenous peoples without seeking consent, leading to adverse consequences for the environment and indigenous communities.¹²⁵ The ancestral land of indigenous peoples accounts for 80% of the world's biodiversity, meaning indigenous peoples are among the first to be affected by any changes in ecosystems since they are heavily dependent upon their land.¹²⁶ In addition, indigenous people's relationship with the land has provided them with knowledge that can significantly contribute to preserving biodiversity.¹²⁷ However, their contribution is threatened, given the disproportionate violations that indigenous peoples face with respect to human rights.¹²⁸

International and Regional Framework

Article 2 of the *Universal Declaration of Human Rights* (UDHR) (1948) notes that “every person enjoys the protection of his or her personality, irrespective of any differences such as language, ideology, social origin, and religion.”¹²⁹ In 1957, the International Labour Organization (ILO) adopted Convention 107, *Indigenous and Tribal Populations* to protect and strengthen the cultural, religious, civil, and social rights of indigenous peoples at the national level.¹³⁰ The aim was to integrate indigenous peoples into the dominant way of life rather than to preserve their autonomous culture and traditions.¹³¹ Further, ILO Convention 169 on *Indigenous and Tribal Peoples* (1989) extended the existing policies of ILO Convention 107 to become the most advanced international treaty regarding the rights of indigenous peoples.¹³² It explicitly guaranteed and further highlighted the basic rights of indigenous peoples as outlined in the *Charter of the United Nations*, such as the rights to their own way of life and habitat; control over their own economy; and, their right to self-determination.¹³³ To date, this is the only potential binding

¹²¹ United Nations, Human Rights Council. *Violence against indigenous women and girls (A/HRC/50/26)*. 2022. pp. 2-3.

¹²² Amnesty International. *USA: The never-ending maze: Continued failure to protect Indigenous women from sexual violence in the USA*. 2022. p. 8; United Nations, Human Rights Council. *Violence against indigenous women and girls (A/HRC/50/26)*. 2022. pp. 2-3.

¹²³ Amnesty International. *Indigenous People*. 2023.

¹²⁴ United Nations, Department of Economic and Social Affairs. *Participation of indigenous peoples at the United Nations: Overview of responses by indigenous peoples and Member States to a 2015 questionnaire*. 2015.

¹²⁵ United Nations, General Assembly. *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya (A/HRC/18/35)*. 2011. pp. 8-14; Global Witness. *Last line of defence*. 2021.

¹²⁶ International Fund for Agriculture Development. *Indigenous Peoples are protecting biodiversity, one harvest at a time*. 2022.

¹²⁷ United Nations Educational, Scientific and Cultural Organization. *UNESCO's actions for biodiversity: Making peace with nature*. 2022. p. 28.

¹²⁸ Novak et al. National Oceanic and Atmospheric Administration. *Chapter 15: Tribes and Indigenous People*. 2018. p. 574.

¹²⁹ United Nations, General Assembly. *Universal Declaration of Human Rights (A/RES/217 A (III))*. 1948.

¹³⁰ International Labour Organization. *C107 - Indigenous and Tribal Populations Convention, 1957 (No. 107)*. 1957.

¹³¹ *Ibid.*

¹³² Office of the United Nations High Commissioner for Human Rights. *International standards: Special Rapporteur on the rights of indigenous peoples*. 2023.

¹³³ International Labour Organization. *C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)*. 1989.



norm for indigenous rights under international law and has been ratified by 24 predominantly South American states.¹³⁴ The *International Covenant on Civil and Political Rights* (ICCPR) (1966) and the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR) (1966) also play a crucial role by affirming the basic rights of indigenous peoples.¹³⁵ By creating a binding framework for States parties, ICCPR aims to safeguard the rights of all individuals.¹³⁶ Particularly important are the guaranteed rights to life and freedom regardless of ethnic or cultural background, freedom of expression, and participation without discrimination in cultural, religious, or political activities.¹³⁷ Additionally, ICESCR contributes to the protection of indigenous peoples human rights by ensuring their right to participate in and enjoy economic, social, and cultural development.¹³⁸ ICESCR also emphasizes the right to an adequate standard of living, including food, housing, and healthcare, as well as the right to education and cultural participation.¹³⁹

In 2007, the General Assembly adopted the *Declaration on the Rights of Indigenous Peoples* (UNDRIP), highlighting the individual and collective rights of indigenous peoples and reducing discrimination in a legally non-binding declaration.¹⁴⁰ UNDRIP urges Member States of the United Nations to work with indigenous peoples to solve existing problems, like under-development and discrimination, and to promote democratic multiculturalism.¹⁴¹ It underlines the importance of their right to self-determination (article 1), cultural integrity (article 3), participation in decision-making (article 21), access to justice (article 18), and equality and non-discrimination (article 20).¹⁴²

With the adoption of the *2030 Agenda for Sustainable Development* (2030 Agenda) (2015), the rights of indigenous peoples have been significantly strengthened.¹⁴³ Indigenous peoples have been directly mentioned in Sustainable Development Goal (SDG) 2 (zero hunger), target 2.3, and SDG 4 (quality education), target 4.5.¹⁴⁴ They also benefit through the 2030 Agenda's general goals, like social protection in SDG 1 (no poverty); SDG 3 (healthy life and well being); social, economic and political inclusion in SDG 10 (reduced inequalities); and environmental sustainability in SDG 15 (life on land).¹⁴⁵ Grounded on the principle of "leave no one behind," the SDGs highlight the rights of vulnerable groups, including

¹³⁴ International Labour Organization. *Ratifications of C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)*. 2017.

¹³⁵ Office of the United Nations High Commissioner for Human Rights. *International standards - Special Rapporteur on the rights of indigenous peoples*. 2023; United Nations, General Assembly. *International Covenant on Economic, Social, and Cultural Rights (A/RES/2200 (XXI))*. 1966; United Nations, General Assembly. *Covenant on Civil and Political Rights (A/RES/2200 (XXI))*. 1966.

¹³⁶ United Nations, General Assembly. *International Covenant on Civil and Political Rights (A/RES/2200 (XXI))*. 1966. p. 5.

¹³⁷ *Ibid.* pp. 5, 8.

¹³⁸ United Nations, General Assembly. *International Covenant on Economic, Social, and Cultural Rights (A/RES/2200 (XXI))*. 1966. p. 1.

¹³⁹ Office of the United Nations High Commissioner for Human Rights. *International standards - Special Rapporteur on the rights of indigenous peoples*. 2023.

¹⁴⁰ United Nations Permanent Forum on Indigenous Issues. *Frequently Asked Questions - Declaration on the Rights of Indigenous Peoples*. N.d. p.1; United Nations, General Assembly. *United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)*. 2007.

¹⁴¹ United Nations Permanent Forum on Indigenous Issues. *Frequently Asked Questions - Declaration on the Rights of Indigenous Peoples*. N.d. p. 2.

¹⁴² United Nations, General Assembly. *United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)*. 2007.

¹⁴³ United Nations, Department of Economic and Social Affairs. *Indigenous People and the 2030 Agenda*. 2023.

¹⁴⁴ United Nations, General Assembly. *Transforming our world: the 2030 Agenda for Sustainable Development. (A/RES/70/1)*. 2015. pp. 1-17.

¹⁴⁵ *Ibid.*; Office of the High Commissioner for Human Rights et al. *Briefing Note: Indigenous Peoples' Rights and the 2030 Agenda*. 2017. pp. 4-6.



indigenous peoples.¹⁴⁶ Also, the *Paris Agreement* (2015) recognizes the rights of indigenous peoples in its preamble and article 7, emphasizing the importance of respecting and promoting their rights, including to use their traditional knowledge when implementing climate action.¹⁴⁷

Regionally, Member States, while few, have implemented regulations regarding the rights of indigenous peoples through varying means.¹⁴⁸ The Organization of American States passed the *American Declaration on the Rights of Indigenous Peoples* (2016) to address the indigenous rights provisions not mentioned in UNDRIP; while further acknowledging its goals.¹⁴⁹ The African Commission on Human and Peoples' Rights publishes an annual report through its Working Group on Indigenous Populations/Communities and Minorities in Africa that highlights the human rights and environmental violations committed against the indigenous Batwa people in Eastern Africa.¹⁵⁰

Role of the International System

As a subsidiary body to the General Assembly, HRC plays a key role in protecting and strengthening the rights of indigenous peoples internationally and nationally.¹⁵¹ In partnership with the Office of the United Nations High Commissioner for Human Rights, HRC engages Special Procedures, such as the Special Rapporteur on the Rights of Indigenous Peoples, to gain expertise and advice on violations against the rights of indigenous people.¹⁵² HRC has also established the Universal Periodic Overview, which oversees and assesses all potential human rights violations within Member States.¹⁵³ In 1985, the Working Group on Indigenous Populations (WGIP) was established at the lowest level of hierarchy of United Nations human rights bodies.¹⁵⁴ However, it provided numerous recommendations for increasing indigenous people's participation in the United Nations.¹⁵⁵ For example, the Voluntary Fund for Indigenous People, established in 1985, is a grant aimed towards helping representatives of indigenous communities to participate in United Nations mechanisms most relevant to them.¹⁵⁶ The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) was established by HRC in 2007 to replace the WGIP.¹⁵⁷ It is a subsidiary body of HRC that provides thematic expertise and advice about the rights of indigenous peoples.¹⁵⁸ EMRIP provides bodies of the United Nations, including HRC, with assistance regarding the rights and concerns of indigenous peoples, such as the promotion of self-determination, free, prior and

¹⁴⁶ United Nations, General Assembly. *Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1)*. 2015. p. 2.

¹⁴⁷ Conference of the Parties to the United Nations Framework Convention on Climate Change. *Paris Agreement*. 2015. p. 2; International Labour Organization. *Indigenous Peoples and Climate Change*. 2016. pp. 2-9.

¹⁴⁸ Office of the United Nations High Commissioner for Human Rights. *Indigenous Peoples and the United Nations Human Rights System*. 2013. p. 38.

¹⁴⁹ Organization of American States. *American Declaration on the Rights of Indigenous Peoples*. 2016.

¹⁵⁰ African Commission on Human and Peoples' Rights. *Working Group on Indigenous Populations/Communities and Minorities in Africa*. 2022.

¹⁵¹ United Nations, General Assembly. *Human Rights Council (A/RES/60/251)*. 2006. p. 2.

¹⁵² United Nations, Human Rights Council. *Human Rights and Indigenous Peoples (A/HRC/RES/51/18)*. 2022. pp. 3-4.

¹⁵³ United Nations, Human Rights Council. *Basic facts about the UPR*. 2023.

¹⁵⁴ United Nations, Department of Economic and Social Affairs. *Indigenous People at the United Nations*. 2023.

¹⁵⁵ Ibid.

¹⁵⁶ Office of the United Nations High Commissioner for Human Rights. *UN Voluntary Fund for Indigenous Peoples*. 2023.

¹⁵⁷ United Nations, Department of Economic and Social Affairs. *Indigenous People at the United Nations*. 2023.

¹⁵⁸ United Nations, Human Rights Council. *Expert mechanism on the rights of indigenous peoples (A/HRC/RES/6/36)*. 2007. p. 1.



informed consent, and examining good practices affecting Indigenous Peoples.¹⁵⁹ EMRIP also assists Member States in creating plans, upon request, to reach the promotion and protection of indigenous peoples, as outlined in UNDRIP.¹⁶⁰

To further promote the ideals in UNDRIP, the General Assembly established a World Conference on the Rights of Indigenous Peoples (2014) that resulted in a new permanent participant status for indigenous governments at the United Nations, more action and attention to violence against indigenous women, and increased respect for sacred sites.¹⁶¹ Furthermore, the conference called for the development of a system-wide action plan to achieve and support the implementation of UNDRIP goals within both the United Nations and its Member States.¹⁶² In addition, the conference published an outcome document, entitled *Participation of Indigenous People at the United Nations*, that called for EMRIP to be modified and improved to fulfill its task of assisting and monitoring Member States in implementing UNDRIP.¹⁶³ In 2016, HRC complied with the request and amended the mandate of EMRIP to create an annual study regarding the achievement of the goals set out in UNDRIP, and provided more substantial assistance to HRC and other United Nations bodies.¹⁶⁴ In 2022, the *Annual Report of the Expert Mechanism on the Rights of Indigenous Peoples* pointed out the importance of the participation of indigenous peoples within HRC and the protection of indigenous leaders and human rights defenders.¹⁶⁵ The report calls on Member States to strengthen the impact of development projects on indigenous women by affirming their rights and to take legislative action where necessary.¹⁶⁶

UNPFII acts as an advisory body to the United Nations Economic and Social Council (ECOSOC), offering expert advice and recommendations on initiatives, funding, and partnership on indigenous matters.¹⁶⁷ In addition, the United Nations Development Programme (UNDP) has launched many programs together with indigenous peoples to improve poverty eradication, cultural revitalization, and conflict prevention.¹⁶⁸ For example, the Small Grants Programme provides support for local indigenous communities aimed to advance their rights and sustainable development.¹⁶⁹ In order to enforce indigenous peoples' claim to their own land, which is secured by UNDRIP, the United Nations Human Settlement Programme has also taken measures including the Policy Guide to Housing for Indigenous Peoples in Cities.¹⁷⁰ In addition, the International Fund for Food and Agricultural Development set up programs and micro-projects to protect indigenous peoples in the preservation of their culture and knowledge, and in particular to promote and

¹⁵⁹ United Nations, Human Rights Council. *Expert Mechanism on the Rights of Indigenous Peoples (A/HRC/RES/33/25)*. 2016. pp. 2-3; Office of the United Nations High Commissioner for Human Rights. *Expert Mechanism on the Rights of Indigenous Peoples*. 2023.

¹⁶⁰ United Nations, Department of Economic and Social Affairs. *Reports by the Expert Mechanism on the Right of Indigenous Peoples*. 2023.

¹⁶¹ United Nations, General Assembly. *Indigenous Issues (A/RES/65/198)*. 2011; United Nations, General Assembly. *Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples (A/RES/69/2)*. 2014.

¹⁶² United Nations, Department of Economic and Social Affairs. *System-Wide Action Plan on the rights of Indigenous Peoples*. 2014. pp. 8, 25.

¹⁶³ United Nations, General Assembly. *Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples (A/RES/69/2)*. 2014. p. 5.

¹⁶⁴ United Nations, Human Rights Council. *Expert Mechanism on the Rights of Indigenous Peoples (A/HRC/RES/33/25)*. 2016. pp. 1-2.

¹⁶⁵ United Nations, Human Rights Council. *Annual report of the Expert Mechanism on the Rights of Indigenous Peoples (A/HRC/51/49)*. 2022. pp. 4-7.

¹⁶⁶ *Ibid.* p. 6.

¹⁶⁷ United Nations, Department of Economic and Social Affairs. *Permanent Forum on Indigenous Issues*. 2023.

¹⁶⁸ United Nations Development Programme. *UNDP and Indigenous Peoples: A Policy Of Engagement*. 2015. p. 4.

¹⁶⁹ United Nations Development Programme. *Small Grants Programme*. 2023.

¹⁷⁰ United Nations Human Settlement Programme. *Report on UN-HABITAT Activities Regarding Indigenous Issues*. 2011. p. 1.



emancipate indigenous women.¹⁷¹ Finally, the United Nations Environment Programme has tasked committees and conferences, like the Intergovernmental Panel on Climate Change (IPCC) and 26th UN Climate Change Conference (COP26), to oversee the effects of climate change on indigenous people.¹⁷²

Aside from the United Nations, several organizations work towards the protection of the human rights of indigenous peoples, including the National Indian Foundation of Brazil.¹⁷³ This Foundation aims to protect any invasions on indigenous territory, much like the Arctic Council, which promotes cooperation, coordination, and interaction amongst all Arctic inhabitants.¹⁷⁴ In addition, the Aboriginal and Torres Strait Islander Social Justice Commissioner is a position within the Australian Human Rights Commission to advocate and monitor human rights of indigenous Australians.¹⁷⁵ In Europe, the Council of Europe created the *Framework Convention for the Protection of National Minorities*, which includes indigenous peoples as local minorities.¹⁷⁶ Moreover, the Asia Indigenous Peoples Pact is a multinational network that defends and promotes the human rights of indigenous peoples throughout Asia.¹⁷⁷

Right to Self-Determination for Indigenous Peoples

The right of self-determination is a safeguard for people to retain their distinct cultural identity and rights, while providing the foundation for their economic, political, and social development.¹⁷⁸ It is an important aspect of international human rights law and the *Charter of the United Nations*, making its recognition an integral and fundamental element of basic human rights.¹⁷⁹ Article 1 outlines self-determination as the right of indigenous peoples to choose their own political and cultural status outside the sovereignty of other Member States and within the confines of their designated land.¹⁸⁰ Articles 1 and 5 of the ICCPR further acknowledge and reference the right of self-determination as guaranteed for all people, which cannot be hindered by any activity of state and non-state actors.¹⁸¹ A 1981 *Study on the Problem of Discrimination against Indigenous Populations* by Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities Jose R. Martinez Cobo provided a definition of “indigenous communities, peoples, and nations” that stressed the right of indigenous peoples to self-determination.¹⁸² However, the continued violation and denial of these rights for indigenous peoples is a persistent problem due to limited international representation, unwanted cultural assimilation and marginalization, and the fear of Member States having their territorial integrity compromised from potential separatist threats.¹⁸³ The continued denial of the right to self-determination for indigenous peoples leaves them vulnerable during economic, cultural, and political strife, which could threaten their existence.¹⁸⁴

¹⁷¹ International Fund for Food and Agriculture. *Indigenous Peoples*. 2023.

¹⁷² Office of the United Nations High Commissioner for Human Rights. *Human Rights Council Panel on the adverse effects of climate change on the human rights of people in vulnerable situations*. 2022.

¹⁷³ Survival International. *Background Briefing: FUNAI - National Indian Foundation*. 2023.

¹⁷⁴ Arctic Council. *About the Arctic Council*. 2023.

¹⁷⁵ Australian Human Rights Commission. *About Aboriginal and Torres Strait Islander Social Justice*. 2023.

¹⁷⁶ Council of Europe. *Framework Convention for the Protection of National Minorities*. 1995. p. 1.

¹⁷⁷ Asia Indigenous Peoples Pact. *About us*. 2023.

¹⁷⁸ Australian Human Rights Commission. *Indigenous People and the Right to Self-Determination*. 2004.

¹⁷⁹ United Nations, Department of Economic and Social Affairs. *Indigenous Peoples' Autonomy and Self-Governance: Outcomes of regional dialogues*. 2022. p. 2.

¹⁸⁰ United Nations, Security Council. *Purposes and Principles of the UN (Chapter 1 of the Charter of the United Nations)*. 2023.

¹⁸¹ United Nations, General Assembly. *International Covenant on Civil and Political Rights (A/RES/2200 (XXI))*. 1966.

¹⁸² United Nations, Department of Economic and Social Affairs. *Indigenous People at the United Nations*. 2023.

¹⁸³ United Nations, Department of Global Communications. *Indigenous youth as agents of change for self-determination*. 2023.

¹⁸⁴ United Nations, Department of Global Communications. *Self-Determination Integral to Basic Human Rights, Fundamental Freedoms, Third Committee Told as It Concludes General Discussion*. 2013.



During the 19th and 20th centuries, many Member States, like the Dominion of Canada, had a common practice of systematically removing indigenous children from their families to be placed in Indian Residential Schools for forced cultural assimilation.¹⁸⁵ According to Amnesty International, the purpose of these institutions was for indigenous peoples to cease to exist as a distinct group that possesses their own government and culture under the right of self-determination.¹⁸⁶ In Canada, before their closure by the Truth and Reconciliation Commission of Canada, over 21% (or roughly 86,000) of living survivors were reported to have been diagnosed with post-traumatic stress disorder or other chronic medical conditions.¹⁸⁷ In addition, these programs became responsible for over 90 indigenous languages being placed on Canada's endangered language list.¹⁸⁸ The damages committed by similar programs correlates to the disadvantages given to indigenous peoples, who are without the means to uphold their cultural identity and self-determined rights, both nationally and internationally.¹⁸⁹

Withholding the right to self-determination prevents indigenous peoples from being represented and recognized as a people outside the governing constituents and organizations of the Member State that they are residing in.¹⁹⁰ This underrepresentation is observed within most United Nations bodies that fail to recognize the status of indigenous peoples and their respective organizations as anything other than non-governmental organizations (NGOs) without any voting rights.¹⁹¹ This non-observer status has limited indigenous peoples' participation on key decision-making issues that have a direct impact on them.¹⁹² A major limitation can be seen through the need and lack of internal and external United Nations funds designed to increase the diversity of participation of indigenous peoples within United Nations committees.¹⁹³ The United Nations Voluntary Fund for Indigenous People provides opportunities for different groups of indigenous peoples to fully participate as NGOs within relevant committees.¹⁹⁴ However, the limited funding donations and selective criteria by the fund's Board of Trustee, who selects recipients based on interest, prevents all indigenous groups from having the chance for adequate representation.¹⁹⁵ In the World Conference on Indigenous Peoples (2014) report, *Participation of Indigenous People at the United Nations*, this denial of representation can be attributed to Member States' failure to uphold the principle of self-determination, which is the United Nations only form of accreditation for participation and funding within their committees.¹⁹⁶ Without upholding the right to self-determination, indigenous peoples will continue to lag behind other groups and be forced to assimilate.¹⁹⁷

¹⁸⁵ Amnesty International. *Indigenous People*. 2023.

¹⁸⁶ Ibid.

¹⁸⁷ Truth and Reconciliation Commission of Canada. *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*. 2015. p. 135.

¹⁸⁸ Ibid.

¹⁸⁹ Office of the United Nations High Commissioner for Human Rights. *About indigenous peoples and human rights*. 2023.

¹⁹⁰ United Nations, Department of Economic and Social Affairs. *Participation of Indigenous People at the United Nations*. 2017.

¹⁹¹ Ibid.

¹⁹² United Nations, Department of Global Communications. *Indigenous Peoples Must Be Part of High-Level Decision-Making, Speakers Stress, Calling for Observer Status in General Assembly, as Permanent Forum Continues*. 2019.

¹⁹³ Ibid.

¹⁹⁴ Office of the United Nations High Commissioner for Human Rights. *UN Voluntary Fund for Indigenous People*. 2023.

¹⁹⁵ Ibid.

¹⁹⁶ United Nations, Department of Economic and Social Affairs. *Participation of indigenous peoples at the United Nations: Overview of responses by indigenous peoples and Member States to a 2015 questionnaire*. 2015.

¹⁹⁷ Ibid.



Human Rights of Indigenous People and Climate Change

According to UNDP, approximately 70 million indigenous peoples, along with another 350 million rural local people residing around them, are dependent on their historic land for their livelihoods.¹⁹⁸ Climate change is a significant issue that impacts the rights and livelihood of all people and sectors.¹⁹⁹ According to IPCC, an estimated 3.3 billion people are highly susceptible to the impacts of climate change, including droughts, earthquakes, and floods, which have been increasing in both frequency and intensity since 2009.²⁰⁰ If left unaddressed, climate change can jeopardize indigenous peoples' food security, traditional livelihoods, and cultural practices.²⁰¹ Experts of the COP26 highlighted the correlation between climate change and indigenous peoples' rights, focusing on how climate change exacerbates the difficulties already faced by indigenous communities, including political and economic marginalization, loss of land and resources, food scarcity, discrimination, and unemployment.²⁰²

Climate change also affects the supply and quality of traditional foods and cultivated crops that are necessary for the survival of many indigenous populations.²⁰³ For example, rising temperatures, dune expansion, and loss of vegetation in Africa negatively impact traditional practices and animal herding of indigenous peoples located in the Kalahari Basin in the southern part of the continent.²⁰⁴ In addition, increasing droughts negatively impact water scarcity for indigenous peoples, who are unable to gain adequate access to state privatized water resources through state-wide marginalized legislations that violate their right to health and water, as outlined in the ICESCR.²⁰⁵ Historically, indigenous peoples would combat climate change by implementing traditional adaptation plans, like migration or alternative farming for disaster management and recovery.²⁰⁶ However, current political and economic legislations have prevented indigenous peoples from implementing these changes under the guise of territorial integrity (or sovereignty) by Member States or state governments.²⁰⁷ These legislations prevent indigenous peoples from migrating to safer areas outside their trust land under the threat of cultural assimilation or illegal activity on government property.²⁰⁸ In addition, some alternative practices may be deemed illegal under the sovereignty of presiding Member States, thus limiting alternative farming as an effective means for combating climate disasters.²⁰⁹

Similar marginalized legislations have been implemented by state governments and private companies to disregard indigenous peoples' land rights for mining operations that contribute to excess carbon output.²¹⁰ The World Resource Institute's report entitled *Undermining Rights: Indigenous Land and Mining in the Amazon* highlights how 20% of all mining activity, or roughly 450,000 square kilometers, in the Amazon rainforest occurs unlawfully on indigenous peoples land.²¹¹ National laws within presiding Member States are skewed unfavorably against indigenous peoples, whose trusted land is taken for natural resources

¹⁹⁸ United Nations, Climate Change. *Indigenous People Central to Climate Action*. 2016.

¹⁹⁹ Office of the United Nations High Commissioner for Human Rights. *Human Rights Council Panel on the adverse effects of climate change on the human rights of people in vulnerable situations*. 2022.

²⁰⁰ Ibid.

²⁰¹ Ibid.

²⁰² Office of the United Nations High Commissioner for Human Rights. *Protecting Indigenous Peoples' Rights is a "Collective Fight"*. 2021.

²⁰³ United States Environmental Protection Agency. *Climate Change and the Health of Indigenous Populations*. 2022.

²⁰⁴ United Nations, Department of Economic and Social Affairs. *Climate Change*. 2023.

²⁰⁵ Lutz. *Indigenous Peoples and Water Rights*. 2010.

²⁰⁶ Novak et al. National Oceanic and Atmospheric Administration. *Chapter 15: Tribes and Indigenous People*. p. 574.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Vallejos et al. World Resource Institute. *Undermining the Rights: Indigenous Land and Mining in the Amazon*. 2020.

²¹¹ Ibid.



and polluted by industrial runoff.²¹² Data from the World Bank report, *Opportunities for Strengthening Collective Land Tenure Rights in Carbon Fund Countries*, further emphasizes the benefits of respecting indigenous peoples land rights in regard to stopping deforestation and other man-made activities that contribute to climate change.²¹³ Due to their significantly lower carbon output, indigenous peoples are the most effective groups for sustaining and fostering the land that humans and states depend upon.²¹⁴

Conclusion

The rights of indigenous peoples are clearly outlined in the *Charter of the United Nations* and the UDHR, yet indigenous peoples are still among the most vulnerable groups due to their cultural, political, and ethnic backgrounds.²¹⁵ Political and economic marginalization prevents indigenous peoples from retaining their cultural identity without the threat of intimidation and violence for assimilation and exploitation.²¹⁶ Member States should work to uphold indigenous peoples' right to self-determination, as it enables them to regain their voice in political talks that are addressing their issues.²¹⁷ In addition, Member States should address the restrictions placed upon indigenous peoples to exploit their promised land, while recognizing the disastrous environmental effects of plundering their resources and denying their historical knowledge.²¹⁸ By upholding international law, fostering collaboration, and implementing comprehensive regulatory frameworks, the global community can work with indigenous peoples towards upholding their human rights and fostering global sustainability during natural disasters.²¹⁹

Further Research

As delegates conduct further research and reflect on how to address this topic, they should consider: What can HRC do to further uphold and enforce the rights of indigenous peoples? How can HRC recommend greater participation of indigenous peoples in high-level decision-making forums? What can HRC do to ensure that both the rights of indigenous peoples and Member States are being adequately addressed during and after natural disasters? How can Member States uphold and enforce indigenous peoples right to self-determination with regards to their sovereignty?

²¹² Ibid.

²¹³ Undeland. World Bank Blogs. *Indigenous Land Rights: A Critical Pillar of Climate Action*. 2020.

²¹⁴ Ibid.

²¹⁵ United Nations, General Assembly. *Universal Declaration of Human Rights (A/RES/217 A (III))*. 1948.

²¹⁶ Vallejos et al. World Resource Institute. *Undermining the Rights: Indigenous Land and Mining in the Amazon*. 2020.

²¹⁷ Office of the United Nations High Commissioner for Human Rights. *Human Rights Council Panel on the adverse effects of climate change on the human rights of people in vulnerable situations*. 2022.

²¹⁸ Ibid.

²¹⁹ United Nations, Department of Global Communications. *Indigenous Peoples Must Be Part of High-Level Decision-Making, Speakers Stress, Calling for Observer Status in General Assembly, as Permanent Forum Continues*. 2019.



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