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Safeguarding the Distinct Status, Territorial Rights and Mobility of Indigenous Peoples in the Context of Climate Change and Biodiversity Governance

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Safeguarding the Distinct Status of Indigenous Peoples

The question of how the international community can safeguard the distinct status of Indigenous Peoples in global negotiations must be considered in light of how international law has historically separated different types of collectives. This background also helps explain why some States attempt to merge Indigenous Peoples with so-called "local communities", a practice that undermines the rights that apply specifically to Indigenous Peoples.

The international legal order that grew out of the post-Westphalian European state system treated Indigenous Peoples and minorities in fundamentally different ways. Indigenous Peoples were considered external populations encountered through colonization, while minorities were internal groups within Europe differing from the majority in religion, culture or language. As a result, international law developed along two separate tracks. The very emergence of international law was closely connected to the effort to legitimize colonization. Under terra nullius, Indigenous Peoples were deemed too "uncivilized" to possess political rights and their relationships to land insufficiently "civilized" to constitute property rights. [1]

At the establishment of the United Nations, the international order thus recognized three main categories of collectives: states or state-forming peoples, minorities (mainly in Europe) and Indigenous and other colonized populations (primarily outside Europe). With decolonization, colonial territories became independent states despite their internal diversity, now dominated by a majority and various minorities. Legally speaking, Indigenous Peoples could at this time have been reclassified as minorities. Instead, the international community began treating them as sui generis legal collectives. This development started with ILO Convention No. 107 (1957), which distinguished Indigenous Peoples from other tribal groups by descent from pre-colonial populations and by maintaining their own institutions.[2] Although ILO 107 is assimilationist, it marked the point at which Indigenous Peoples were first acknowledged as distinct legal subjects rather than merely colonized populations.

Minority rights, meanwhile, were consolidated through instruments such as Article 27 of the International Covenant on Civil and Political Rights (1966) and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992).

These instruments define minority rights as individual rights relating to religion, culture and language, along with non-discrimination and limited participatory guarantees.[3]

In environmental, climate and intellectual property regimes (CBD, UNFCCC, WIPO), a different and legally ambiguous category emerged: "local communities". These processes increasingly employ formulations pairing "Indigenous Peoples and local communities", implying that both

[1] Patrick Thornberry, The International Convention on the Elimination of all Forms of Racial Discrimination: A Commentary (Oxford University Press, 2016)
[2] ILO Convention No. 107, art. 1.
[3] UN Minorities Declaration, art. 1–4.

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categories share similar legal status. Yet "local communities" are not recognized subjects of international law and have no agreed definition. If the term carries any legal meaning, it must fall under an existing category, namely minorities, rather than Indigenous Peoples or state-forming peoples.

Indigenous Peoples have repeatedly rejected composite categories, stressing that merging them with "local communities" undermines the legal standards specific to them. In 2024, the concern about such conflation was highlighted by the UN Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, and the UN Special Rapporteur, who jointly stressed that combining these categories creates serious challenges for the implementation of the UN Declaration on the Rights of Indigenous Peoples.[4]

Contemporary international law concerning Indigenous Peoples has developed along a path distinct from minority rights. After the International Labour Organization's Convention No. 107, the Cobo Report provided the widely used working definition of Indigenous Peoples, highlighting their enduring relationship to ancestral territories and cultural identity.[5]

Attempts to merge "Indigenous Peoples and local communities" therefore create two possible outcomes, both problematic. Either the rights of Indigenous Peoples are interpreted through the much lower ceiling of minority rights, diluting their content, or the text attempts to extend peoples' rights to groups that do not meet the criteria, producing incoherence and legal inapplicability. This logic applies equally to "local communities".

The most effective way for the international community to safeguard the distinct status of Indigenous Peoples is therefore to maintain doctrinal clarity: preserving the established categories of international law and ensuring that Indigenous Peoples, who form a sui generis category with collective, territorial and self-determining rights, are not subsumed into broader, undefined or politically expedient labels. Within the current framework, preventing the instrumental conflation of Indigenous Peoples and local communities requires insisting that the specific legal character of Indigenous Peoples remains intact, both in doctrine and in global negotiations.

The statement issued jointly by the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the Rights of Indigenous Peoples, together with the positions of Indigenous Peoples' organizations such as the Inuit Circumpolar Council and the Sámi Council, make clear that any conflation with "local communities" undermines the legal standards that apply specifically to Indigenous Peoples. A united global Indigenous Peoples' movement is therefore essential, alongside continued engagement with States to secure a shared understanding of these distinctions. Moreover, new

[4] United Nations Permanent Forum on Indigenous Issues, United Nations Expert Mechanism on the Rights of Indigenous Peoples and United Nations Special Rapporteur on the Rights of Indigenous Peoples, *Outcome Document of the Joint Meeting*, FAO Headquarters, Rome, 26–28 February 2024.
[5] UN Doc. E/CN/Sub.2/1986/7

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institutional arrangements or "pragmatic" compromises that blend categories must be avoided, as the long-term harm caused by such conflation outweighs any short-term convenience.

Legal and Policy Reforms for Protecting Indigenous Peoples Facing Climate Displacement

Climate change is already displacing Indigenous Peoples and disrupting land-based livelihoods, yet legal and policy frameworks remain poorly equipped to protect their rights when climate impacts intensify. Because Indigenous Peoples' identities, cultures, and legal rights are inseparable from their territories, climate-driven relocation cannot be treated as a technical matter. It raises fundamental questions of self-determination and cultural survival.

At the national level, the foremost requirement is to strengthen territorial rights and prevent forced displacement. The Fosen case in Norway illustrates how climate and renewable energy initiatives can override Indigenous Peoples' rights even in well-functioning democracies. Although the Supreme Court found that the wind power development violated Sámi reindeer herders' cultural rights, the project had already been allowed to proceed through "advanced possession", meaning that the developers gained access to the land before the legal issues were settled. This practice must be prohibited. No state should be able to advance climate or renewable-energy projects on Indigenous Peoples' territories before rights claims are properly adjudicated and before Indigenous Peoples have participated meaningfully in the decision-making process.

The same concern applies to fast-track permitting regimes introduced under the banner of the green transition, such as the European Union's Critical Raw Materials Act. Such mechanisms aim to accelerate extraction and infrastructure development by shortening approval procedures. However, when applied to Indigenous Peoples' territories, fast-track systems risk bypassing environmental and human rights safeguards, compressing consultation timelines and weakening the possibility of free, prior and informed consent. Any accelerated permitting process that diminishes Indigenous Peoples' participation or undermines legal protections can replicate the very injustices climate policy is meant to remedy.

At the United Nations level, climate and biodiversity governance must fully recognize Indigenous Peoples as collective rights-holders with the right to participate through their own institutions. Adaptation, mitigation and relocation frameworks must embed the requirement of free, prior and informed consent. Climate finance mechanisms must also guarantee that funds cannot support projects that lead to dispossession or cultural erosion.

Protecting Indigenous Peoples from climate-driven displacement requires strong land rights, genuine participation, respect for mobility and adherence to the legal standards already established in international law.

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Safeguarding Mobility and Participation of Mobile Indigenous Peoples in Global Frameworks

Global climate and biodiversity frameworks must recognize that mobility, cross-border movement and seasonal land use are not marginal practices but core elements of the territorial rights of many Indigenous Peoples. For the Sámi and other nomadic or mobile Indigenous Peoples, identity, culture and livelihood depend on the ability to move across large landscapes according to ecological cycles. Climate change places these practices under increasing pressure, while current governance systems often fail to accommodate them.

Most international and national frameworks still assume that land use is fixed and rooted in one place. This approach does not reflect the reality of mobile Indigenous Peoples, whose territories consist of interconnected grazing areas, migration routes and resource zones that may cross state borders. When climate or biodiversity measures restrict movement in one area, they can disrupt entire livelihood systems. Effective protection requires recognizing mobility itself as a protected form of land use.

A positive example of how this can be achieved is found in the Laponia World Heritage area in Sweden, where Sámi institutions play a central role in governance. In Laponia, conservation authorities and Sámi representative bodies jointly manage land and resources, and reindeer herding is recognized as a fundamental cultural and ecological practice. This model demonstrates that when Indigenous Peoples retain decision-making authority, mobility can be protected while also achieving strong conservation outcomes. It shows that rights-based management and biodiversity protection are fully compatible, and it offers a practical template for other regions facing similar challenges.

Meaningful participation is essential. Decisions made without the direct involvement of Indigenous Peoples frequently ignore how mobility works on the ground. Conservation measures, renewable-energy production or landscape restoration can all block migration routes or reduce access to seasonal areas if Indigenous Peoples' knowledge is not fully included. Participation must therefore be based on Indigenous Peoples' own representative bodies, with the authority to influence outcomes rather than merely provide input.

Cross-border mobility poses a further challenge. The Sámi have long moved across what are now Norway, Sweden, Finland and Russia, and climate change makes such flexibility even more important. Regional cooperation is needed to protect these movements and ensure that rights are not lost when crossing borders. States must coordinate rules so that traditional land use remains possible even as ecological conditions shift.

Fast-track procedures created under the green transition, such as the European Union's Critical Raw Materials Act, add new risks. By accelerating extraction or infrastructure development, these processes reduce time for consultation and weaken safeguards. For mobile Indigenous Peoples, who rely on broad and seasonally shifting territories, rapid approvals can fragment

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landscapes and cause irreversible harm. Climate and biodiversity goals cannot justify sidestepping Indigenous Peoples' rights.

Knowledge protection is equally important. Mobile Indigenous Peoples hold detailed understanding of shifting weather, grazing conditions and ecological change. Global frameworks increasingly recognize this knowledge, but such recognition must be accompanied by shared decision-making power. Without this, Indigenous Peoples' knowledge becomes symbolic rather than effective.

A just transition must ensure that mobility is preserved, that cross-border patterns of use are respected, and that Indigenous Peoples participate directly in all climate and biodiversity negotiations affecting their territories.

Only through such measures can global frameworks support mobile Indigenous Peoples in adapting to climate change while maintaining their cultures, livelihoods and longstanding relationships with the land.

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