PFII/2025/EGM

Original: English

UNITED NATIONS **NATIONS UNIES**

DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS

Division for Inclusive Social Development

Indigenous Peoples and Development Branch - Secretariat of the Permanent Forum on Indigenous Issues

International Expert Group Meeting on the theme

"Recognition of Indigenous Peoples' rights in the context of the climate crisis, biodiversity governance and territorial integrity: focusing on nomadic and semi-nomadic peoples, including pastoralists and shifting cultivators"

Virtual format, 1-3 December 2025

Securing the Rights of Mobile Indigenous Peoples in Global Climate and Biodiversity Governance

Expert paper presenter

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1. Introduction: The Convergence of Crises

The triple planetary crisis, climate change, biodiversity loss, and pollution, disproportionately affects the world's most vulnerable populations. For the estimated 500 million nomadic and semi-nomadic Indigenous Peoples, comprising pastoralists and agro-pastoralists, these are not distant threats but current existential challenges (International Labour Organization, 2019). Their identities, cultures, and sophisticated economic systems are intrinsically and spiritually bound to the health of the vast interlinked ecosystems. Indigenous pastoralists, for example, steward over a third of Earth's land, in arid and semi-arid regions (ASALs), where conventional farming simply is not viable (The Food and Agriculture Organization of the United Nations, 2018). Their mobility, a long-tested adaptation strategy, enhances biodiversity, nutrient recycling, and enhances landscape resilience (Barrow & Mogaka, 2007).

Paradoxically, in the very international forums established to address these global crises, the distinct identities and hard-won rights of these peoples are being systematically eroded. The strategic conflation of "Indigenous Peoples and local communities" (IPLCs) into a single acronym, some Member States effectively blur the specific, collective, and inherent rights enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (Schrieder, 2020). Drawing from the frontline experiences of pastoralist communities, this paper argues that safeguarding the distinct status of Indigenous Peoples is far more than a matter of precise terminology; it is a prerequisite for climate and biodiversity actions that are truly effective, equitable, and just. It proposes concrete legal, policy, and procedural reforms to protect their rights, ensure their meaningful participation, and frame their mobility as a vital solution, rather than a problem to be fixed.

2. Safeguarding a Unique Position in Global Negotiations

The term "Indigenous Peoples and local communities" (IPLC) can be a banner for building wide-ranging alliances, yet in international negotiations, it has been repurposed into a kind of bureaucratic haze that blurs concrete legal duties. By merging these categories, states that have not ratified UNDRIP, or that outright deny the presence of Indigenous Peoples on their soil, can sidestep the specific legal frameworks of self-determination, collective land tenure, and Free, Prior and Informed Consent (FPIC) (Mauro, 2019).

Guiding Question 1: How can the International community safeguard the distinct status of Indigenous Peoples in global negotiations?

The international community has to ditch the politically convenient labels in favor of crisp rights-grounded recognition. Pulling that off calls for a multi-pronged approach:

- **Explicit Differentiation in Legal and Policy Documents:** Every decision, financing mechanism, and official report issued under the United Nations Framework Convention on Climate Change (UNFCCC) or the Convention on Biological Diversity (CBD) should draw a clear line between "Indigenous Peoples" and "local communities". Whenever the

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discussion turns to rights that international law specifically grants Indigenous Peoples, such as free, prior, and informed consent (FPIC) under UNDRIP articles 19 and 32, or the right to self-determination, in article 3, the term "Indigenous Peoples" must be applied alone with no ambiguity. The Green Climate Fund (GCF) and the Global Environment Facility (GEF) must similarly refine their eligibility and access criteria to reflect this distinction, ensuring funding streams dedicated to Indigenous rights are not diluted.

- **Strengthening Representation:** The UN's constituency system needs a solid upgrade to ensure Indigenous Peoples' caucuses, such as the International Indigenous Peoples' Forum on Climate Change (IIPFCC), are unmistakably recognized as the chief, authentic voices of Indigenous Peoples, clearly set apart from other civil society bodies or local community groups. Their right to speak their access, to closed-door negotiation rooms, and their ability to submit written proposals must be given priority, resisting any attempts to merge them into a broader, less-specific "stakeholder" category (Tebtebba Foundation, 2015).
- **Challenge the Misuse of Self-Identification:** Though self-determination is hailed as a right (UNDRIP, Article 33), several states have co-opted it, carving out overly narrow, restrictive domestic definitions that, in effect, erase Indigenous groups already recognized. The International community, UN treaty bodies, and their Special Procedures alike must steadfastly uphold the accepted benchmark for recognizing Indigenous Peoples and challenge states that employ procedural gimmicks to deny their existence, thereby sidestepping their international human-rights obligations (Africa Commission on Human and Peoples Rights, 2010).

3. Revamping Legal Frameworks and Policy Measures to Confront Climate-Driven Displacement

Mobile Indigenous Peoples find themselves in a storm of displacement. Climate effects, such as severe and recurrent droughts and erratic rainfall, are eroding the rangelands they rely on, and concurrently, top-down conservation models (such as 30x30 initiatives) and climate-mitigation projects, such as large-scale afforestation for carbon offsets, are sealing off their traditional territories and migration corridors (Brockington & Igoe, 2006). This displacement severs their connection to sacred ties, disrupts social networks, and fuels inter-communal conflict over dwindling scarce resources. Their stake in shaping solutions goes beyond courtesy; it stands as a right and a pragmatic prerequisite for sustainable outcomes.

Guiding Question 2: What legal and policy reforms, at national, regional, and UN levels, are needed to protect the rights of Indigenous Peoples facing climate-driven displacement?

National Level Reforms: The essential task is to embed standards within the domestic legal systems. Countries ought to align their legislation with UNDRIP and ILO Convention 169: This calls for:

- **Legislating Collective Land Tenure:** Enacting specific laws that secure legal, collective title to the ancestral lands, territories, and resources of nomadic peoples. The law must

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explicitly safeguard seasonal migration routes, cross-border corridors, and vital dry-season grazing areas, the lifelines of pastoralism (African Union, 2010). In Kenya, the Community Land Act of 2016 is a step yet translating it into practice across the vast communally held pastoral landscapes remains a formidable challenge. At the regional level, IGAD members are ratifying the IGAD Protocol on Transhumance that aims to facilitate the safe, orderly, and sustainable cross-border movement of pastoralists and their livestock for seasonal grazing. The protocol commits member states to harmonizing laws, investing in pastoral regions, and promoting cooperation to manage resources, prevent conflicts, and allow for the free movements of herders and their livestock in search of pasture and water.

- **Codifying FPIC into law:** For the current international law to succeed in strengthening Indigenous Peoples' rights in a climate crisis, Free Prior and Informed Consent (FPIC) must be redefined and strengthened. The duty to consult must be expanded to require FPIC in all climate efforts and strategies. Consulting with Indigenous Peoples to fulfill procedural requirements provides far too much leeway for Indigenous perspectives to be ignored. The emphasis on only achieving procedural consultation rights often leads to a disregard for substantive rights, such as territorial land rights. (Rotz 2024) Legally obliging free, prior, and informed consent for any project, policy, or legislative act that impacts Indigenous territories. This would encompass conservation initiatives carving out protected zones, "green energy" enterprises encroaching on rangelands, and the full spectrum of climate-mitigation programmes, such as REDD+

- **Co-designing participatory relocation frameworks:** Developing national guidelines and legal standards for climate-induced displacement, together with Indigenous Peoples. These frameworks must treat relocation as a last-resort measure, be rooted in FPIC, and protect cultural integrity, traditional livelihoods, and social structures, thereby avoiding the painful mistakes of forced relocations to ensure continuity of Indigenous governance (de Sherbin et al., 2011). Such self-determination can look like deciding against certain development projects, raising or reclaiming land on sinking island nations, consolidating populations into more climate-safe geographic areas, getting reparations from the worst emitters to cover relocation costs.

Regional and UN Level Reforms:

- **UN Human Rights Mechanisms:** The UN Special Rapporteur on the Rights of Indigenous Peoples should issue a comprehensive thematic report on the climate-driven displacement affecting mobile Indigenous Peoples, supplying governments with clear actionable guidance on safeguarding those rights throughout prevention, planned relocation, and eventual resettlement.
- **Leveraging Human-Rights Frameworks:** Bolstering both the capacity and mandate of regional bodies such as the African Court on Human and Peoples' Rights so that they can adjudicate disputes over land, climate, and cultural rights, anchoring their work in UNDRIP

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and the African Charter, documents that explicitly enshrine peoples' rights to develop (Article 22). The landmark Endorois ruling before the African Commission set a precedent for restitution and for free, prior, and informed consent, for displaced pastoralist communities (The African Commission on Human and Peoples Rights, 2010)

- **Operationalizing the Loss and Damage Fund:** The UNFCCC's Loss and Damage Fund needs a clearly marked, easy-to-use gateway for Indigenous Peoples. Its implementation should hinge on direct-access procedures that allow communities to lodge claims for non-economic damage, including the loss of sacred sites, traditional knowledge, and cultural identity resulting from displacement.

4. Guarding the Freedom to Traverse and Ensuring Participation in Global Frameworks

The traditional knowledge systems of mobile Indigenous Peoples represent millennia of accumulated wisdom in adaptive ecosystem management. Their seasonal movements are a form of rotational grazing that curtails land degradation, permits vegetation recovery, disperses seeds, and maintains critical wildlife corridors (Galvin, Reid & Beeton, 2014). However, these time-tested sustainable practices are routinely criminalized, labeled as "backward" or blocked outright by rigid land-tenure regimes, fixed international borders, and the rise of exclusionary "fortress conservation" models that privilege wildlife over people (Brockington, 2002).

Guiding Question 3: How can global climate biodiversity frameworks recognize and protect the mobility, cross-border movements, and seasonal land use of mobile Indigenous Peoples, while guaranteeing their direct participation in negotiations that affect their territories and livelihoods?

- **Formal Recognition of Mobility in Global Targets:** The Kunming-Montreal Global Biodiversity Framework (GBF) and the UNFCCC National Adaptation Plans (NAPs) need to move beyond vague references to "stakeholder inclusion". They must explicitly support "mobile Indigenous livelihoods" and "Indigenous and Community-Conserved Areas (ICCAs)" as proven, effective strategies for in-situ conservation, ecosystem-based adaptation, and sustainable land management. Target 3 of the GBF, which calls for protecting 30% of lands and waters, must explicitly require that Indigenous land tenure and governance serve as the avenue for achieving this goal rather than relying on exclusionary protected-area schemes.
- **Protecting Cross-Border Movements through Diplomacy:** States must be encouraged and supported to recognize Indigenous territories whose land use span across administrative borders and establish bilateral and regional memoranda of understanding and treaties that legally protect the cross-border movement of pastoralist communities. Such agreements should treat mobility as a legitimate form of climate adaptation and disaster risk reduction, regulating it through a community-based passport system or special visa regimes, rather than framing it as illegal immigration or a security threat (International

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Centre for Migration Policy and Development & International Organization for Migration, 2015).

- **Guaranteeing Direct and Meaningful Participation:** Real participation is not satisfied by a simple invitation; it demands tearing down structural barriers and reshaping power so it is shared more equitably.
    - **Direct and Decentralized Funding:** Set up adaptable financing channels earmarked for Indigenous Peoples' representatives and their bodies/institutions to participate in international negotiations. Such a scheme guarantees their attendance is not tied to the whims of Northern non-governmental organizations or the permission of their national governments.
    - **Institutionalizing Indigenous Knowledge:** Creating formal, equitable mechanisms within scientific bodies such as the Intergovernmental Panel on Climate Change (IPCC) and Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), where Indigenous knowledge is presented as a co-equal evidence base alongside Western scientific data. This necessitates the establishment of robust ethical protocols for the use of this knowledge, ensuring the confidentiality of sacred information, and providing fair compensation to knowledge holders (Carmona et al., 2023).
    - **Investing in Community-Led Monitoring:** Supporting and financially investing in community-based monitoring and information systems (CBMIS). These systems empower Indigenous communities to use both traditional knowledge and modern technology (e.g., Global Positioning System (GPS), satellite imagery) to gather their own data on climate impacts, rangeland health, and biodiversity trends. This empowers them to engage in local, national, and international negotiations from a position of authoritative, evidence-based strength, transforming them from "victims" to "agents of change" (International Institute for Environment and Development, 2020).

Conclusion: From Rhetorical Recognition to Rights-Based Action

The strategic conflation of Indigenous Peoples with "local communities" is not a benign administrative shorthand; it is a potent political tool that undermines hard-won rights and perpetuates historical injustices. For nomadic and semi-nomadic Indigenous Peoples, this ensures that at the negotiating table in New York, Geneva, and Bonn translates directly into hunger, conflict, and cultural disintegration in the rangelands of Kenya and beyond. The international community stands at a crossroads. It can continue with business-as-usual, allowing the IPLC acronym to obscure its duties, or it can choose a path of courageous, principled action.

When precise rights-affirming language is demanded, robust legal reforms that safeguard land, mobility, and free, prior, and informed consent are championed, and a decisive shift toward direct, well-resourced, genuine participation is made; global climate and biodiversity frameworks can finally be stopped from serving as tools of marginalization. Instead, they must become vehicles

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that protect rights, knowledge, and sustainable solutions that Indigenous Peoples, the planet's custodians of biodiversity, have tended successfully for millennia. The age of hollow rhetorical acknowledgement has ended; it is time for rights-based action right now. Consequently, recognition that mechanisms enforcing FPIC protocols are limited is a good place to start. ILO Convention 169 only has a duty to consult, which by itself is only a procedural right and therefore not enough to secure Indigenous-centered State policies. Even Article 16, which requires consent for necessary relocation, is only binding on those who ratify the ILO Convention, and there are only twenty-four ratifying nations to date. Additionally, the UNDRIP, which is more sweeping in the rights it guarantees and has a potential for ensuring a veto power within the FPIC framework, is not legally binding despite being widely supported. For the world to be ready for the inevitability of environmentally displaced Indigenous Peoples, more States must therefore ratify the ILO Convention 169, honor the UNDRIP as customary international law, all to make FPIC a more effective tool for protecting Indigenous sovereignty.

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