



## CLIMATE CHANGE AND ITS IMPACT ON HUMAN RIGHTS OF INDIGENOUS PEOPLE: A STUDY

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### ABSTRACT

*Climate Change today has been the burning issue as the planet on which the life survives is degrading and becoming unworthy of sustaining life. Entire world is worried about the climate changes taking place, adversely affecting human rights of billions living on the planet. This paper primarily focuses on challenges of a special class of people i.e. indigenous people, who are most affected of not only climate change but also by measures taken to combat climate change. As far as impact of climate change is concerned, they are first to face the consequences of climate change owing to their absolute dependence on natural resources and this affect indigenous peoples in multiple ways. Climate Change poses threat to their survival even though it is a proved that their contribution is least among anthropogenic factors responsible for climate change. There is seen evidence that even a single act of climate change disrupts their life. Astonishing to note is that, they are even more affected by Climate Change Mitigation Measures. There has often seen a failure to consult indigenous people even when their land, natural resources, and lifestyles are directly impacted whereby there is gross violation of their human rights in the form of massive displacements, forced migrations, loss of habitat, loss of livelihood, etc. Massive increase in hydroelectric projects lead to loss of traditional territories of indigenous people, nuclear waste is usually stored in areas inhabited by indigenous people, biofuel plantations for palm oil, REDD (Reducing Emissions from Deforestation and Forest Degradation) are some of the mitigation projects detrimental to interests of indigenous people. These projects are executed without complying with the international norms to be followed before implementing these measures. Their*

*grievance against human rights violations is not even redressed by Judicial agencies on account of serving public interest or policy matters. This paper demands coordination with range of international instruments and processes including United Nations Permanent Forum on Rights of Indigenous Peoples. Today when there is growing paradigm of linking climate change with human rights, there is need to keep balanced or human rights based approach while dealing with effects of climate change and its mitigation measures.*

## **INTRODUCTION**

Life on the planet earth is dependent on climate. Climate in common parlance means the weather conditions prevailing in area in general or over a long period of time. The climate of a region or city is its typical or average weather<sup>1</sup>. Earth's climate is the average of all the world's regional climates. Climate change, therefore, is a change in the typical or average weather of a region or city. Climate Change refers to the increasing temperatures and changing weather patterns created by carbon or other green house gas emissions and their negative consequences on the humankind and the more the human world.<sup>2</sup> Climate change is also a change in Earth's overall climate. This could be a change in Earth's average temperature, it could be a change in Earth's typical precipitation patterns,<sup>3</sup> it could be rising sea levels, it could be heavy precipitation events (rainstorms, snowstorms, floods in many areas) or it could be more intense and longer draught over wider areas especially in tropics and subtropics. Earth's climate is always changing. In the past, Earth's climate has gone through warmer and cooler periods, each lasting thousands of years. Observations show that Earth's climate has been warming. Its average temperature has risen a more than one degree Fahrenheit during the past 100 years or so. Most recent to mention is the combined average temperature over global land and ocean surfaces for November 2015 was the highest for November in the 136-year period of record, at 0.97°C (1.75°F) above the 20<sup>th</sup> century average of 12.9°C (55.2°F), breaking the previous record of 2013 by 0.15°C (0.27°F).<sup>4</sup> Changes in Earth's average temperature has lead to big impacts like increase in carbon dioxide concentrations in atmosphere, increase in warmth in oceans, high rising sea

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<sup>1</sup> NASA Knows (Grades 5-8) Series

<sup>2</sup> L. Anders Sandberg and Tor Sandberg (eds.) Climate Change-Who's Carrying the Burden, The chilly climates of the global environmental dilemma 2010 (11), The Canadian Centre for policy Alternatives.

<sup>3</sup> *Ibid* 1

<sup>4</sup> NOAA National Centers for Environmental Information, State of the Climate: Global Analysis for November 2015, published online December 2015, retrieved on December 20, 2015 from <http://www.ncdc.noaa.gov/sotc/global/201511>.

levels, global warming. These are the reasons which are responsible for frequent catastrophes which our planet is bearing.

Catastrophes are something which are inevitable affecting millions of individuals and their families and a distinct category of indigenous people. But what bothers every human being is how ill equipped we are to cope with these devastating consequences. We lack early warning systems, efficient response mechanisms etc. but the force operating behind all this is the climate change. The fact is climate change will have massive human consequences. According to the latest assessment report of the United Nations Intergovernmental Panel on Climate Change (IPCC), there is now unequivocal evidence that the earth's climate system is warming<sup>5</sup> very likely due to anthropogenic greenhouse gas (GHG) emissions<sup>6</sup>. Noteworthy to mention here are the indigenous people who face most the consequences of climate change. These people though contribute least to the world green house gas emissions yet they suffer the worst. Their contribution to the climate change is minimal. Here it becomes pertinent to mention who are indigenous people. Though there is no universal definition of Indigenous people. For purposes of this Standard, Indigenous Peoples” refers to distinct collectives, regardless of the local, national and regional terms applied to them, who satisfy any of the more commonly accepted definitions of indigenous peoples.<sup>7</sup> They are defined by a special relationship with the land. ‘ Their relationship with the lands and all living things is at the core of indigenous societies’.<sup>8</sup> Climate Change is not merely environmental issue for them, rather it’s a matter of their human rights. Indigenous people are mostly dependent on land and natural resources for their livelihood. Their relationship with lands, forests, natural resources, is inseparable and the very basis of their physical, spiritual and cultural systems. They are more exposed to climate change and are significantly more vulnerable to its impacts and long-term consequences. They are first to face the direct consequences of climate change, owing to their dependence upon, and close relationship with the environment and its resources. While indigenous peoples bear the brunt of the catastrophe of climate change, they have minimal access to resources to cope with the changes. There is seen millions of rural dwellers affected by melting of glaciers, deforestation, forest fragmentation and consequent draughts often results in forest fires disrupting their livelihood. Many indigenous communities in some regions depend on hunting for polar bears, walrus, seals and fishing

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<sup>5</sup> Summary for Policymakers of the Synthesis Report of the IPCC Fourth Assessment Report, p. 1

<sup>6</sup> *Ibid*,

<sup>7</sup> UNDP, Social and Environment Standards Report 2014, [www.undp.org/social-environmental-sustainability](http://www.undp.org/social-environmental-sustainability).

<sup>8</sup> Ed. Daniel Bodansky, Jutta Brunnee and Ellen Hey; The Oxford Handbook of International Environment Law, pg 834

and gathering, not only for food to support the local economy, but also as the basis for their cultural and social identity. Rising temperatures, dune expansion, increased wind speeds, and loss of vegetation are negatively impacting traditional cattle and goat farming practices of indigenous peoples in Africa's Kalahari Basin, who have now become dependent on government-drilled bores in order to access water and depend on government support for their survival.<sup>9</sup> We cannot call climate change today inevitable as there are plenty of evidence to suggest factors predominantly affecting the climate change are anthropogenic. Nations like China, United States of America, India, Russia etc. are top Green House Gas emitters.

## **MINIMAL CONTRIBUTORS AND MAXIMUM SUFFERERS OF CLIMATE CHANGE**

Indigenous people globally represent only four percent of world population yet many of the world's biodiversity area are owned, occupied and managed by them. These people are highly vulnerable to the effects of climate change as (i) they inhabit on lands and use resources of exposed geographic area. (ii) they have been historically marginalised from decision making and public policies. (iii) have insecurity with regard to their rights of land, territories and resources (iv) they are subject to weak governance regime that do not respect their institutions and customary laws and that may expose them to unclear and unfair treatment by authorities, (v) do not participate effectively in the current discussions and design of mitigation and adaptation measures even in the cases where the areas they inhabit are being considered for application of such measures.<sup>10</sup> Impacts of climate change on indigenous people vary according to their location, their environment. Some of the Observed impacts of climate change are hereunder:

### **TROPICAL FOREST**

Tropical forests are home to many indigenous people in Asia, Africa and Latin America. There can be seen longer dry seasons for humid forests and there remain risks of forest fires. High temperatures, loss of biodiversity, decrease in water level, growth of vector borne diseases all are affecting the livelihood of indigenous communities. (European parliament)

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<sup>9</sup> United Nations Report on climate change and indigenous people dated Sep 24, 2007 available at [http://www.un.org/en/events/indigenousday/pdf/Backgrounder\\_ClimateChange\\_FINAL.pdf](http://www.un.org/en/events/indigenousday/pdf/Backgrounder_ClimateChange_FINAL.pdf).

<sup>10</sup> Report of European Parliament, May 2009 available at <http://www.europarl.eu/activities/committees/studies.do?language=EN>

## **DRYLANDS/SEMI ARID LANDS**

There can be seen situation of prolonged draughts, or at times excessive rainfall leading to massive floods. According to Report of IPCC, 2007, water availability in these areas is expected to decrease by 10-30% within next 40 years. These changes are damaging not only vegetation but also livestock of indigenous people leading to the problem of food security and malnutrition.

## **ARCTIC REGIONS**

The Arctic Region has been experiencing climate change severe Climate Change that too with rapid pace. Temperatures had been continuously rising leading to melting of mountain snow, sea ice and glaciers, coastal and river bank erosion, disappearance of many species due to warmer water temperatures but between all these are Indigenous people who are experiencing major impacts in the form of loss of hunting, loss of habitat due to floods over areas.

## **SMALL ISLANDS**

Areas where massive impacts of Climate Change can be seen are small islands as there can be seen more flooding and storms due to rising sea levels. Indigenous people are primarily affected by rising sea levels, increasing soil erosion from intense storms and thereby affecting their livelihood activities including food, hunting, housing, water resources and health.

Further, it shall not be out of the place to mention that that Indigenous women are more vulnerable to the impacts of climate change. Due to floods, there can be seen more women deaths as they are not taught to swim. There are women who undertake many responsibilities from acting as custodians and teachers of local ecological knowledge to acting as conveners of political movements aiming with respectful coexistence with neighbours. For these indigenous women, the responsibilities that they assume in their communities can expose them to harms stemming from climate change and other environmental alterations.<sup>11</sup>

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<sup>11</sup> Indigenous Women, Climate Change impacts and Collective Action., by Kyle Powys Whyte, Published in 2014 in *Hypatia: Journal of Feminist Philosophy* 29 (3): 599-616 <http://onlinelibrary.wiley.com/doi/10.1111/hypa.12089/abstract>

So it can be unequivocally said Indigenous people though minimal contributors to climate change are amongst the first ones to have suffered the impacts. Climate change exacerbates the vulnerability of these marginalised people.

## **CONCERNS REGARDING CLIMATE CHANGE MITIGATION MEASURES.**

Since Climate is changing rapidly which is making the entire planet unworthy of survival or healthy living, efforts to combat these climate changes are indispensable in order to protect this planet. Measures to tackle the problem of climate change are called Climate Change Mitigation Measures. These mitigation Measures are essential to prevent further climate change related impacts which contributes vulnerability of indigenous communities. These Mitigation measures are further acting detrimental to the interest of this community rather than to provide relief from effects of climate change which they are primarily bearing. The international community, nation states, civil society and the private sector all are being called upon to develop mitigation and adaptation strategies to address the effects of climate change. The Intergovernmental panel on climate change defines Climate Change Mitigation as technological change and substitution that reduces resource inputs and emissions per unit of output. Although several social, economic and technological policies would produce an emission reduction with respect to climate change, mitigation means implementing policies to reduce Green House Gases emissions and enhance carbon sinks. Examples of mitigation measures include switching to low carbon energy sources, such as renewable and nuclear energy, and expanding forests and other "sinks" to remove greater amounts of carbon dioxide from the atmosphere.<sup>12</sup> Energy efficiency may also play a role,<sup>13</sup> for example, through improving the insulation of building.<sup>14</sup> Another approach to climate change mitigation is climate engineering.<sup>15</sup> Climate change mitigation also covers setting up of hydroelectric projects. Clean Development Mechanisms are another noteworthy Climate Change Mitigation Measures. While direct effects of climate change have recently received attention

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<sup>12</sup>C, "Summary for policymakers", Table SPM.3, C. Mitigation in the short and medium term (until 2030), in IPCC AR4 WG3 2007

<sup>13</sup>"Synthesis report, Sec 5.5 Technology flows and development, in IPCC AR4 SYR 2007, p. 68

<sup>14</sup>Levine, M. et al., "Ch 6: Residential and commercial buildings", Sec 6.4.2 Thermal envelope, in IPCC AR4 WG3 2007

<sup>15</sup> UK Royal Society 2009

of international community<sup>16</sup>, the indirect effects of climate change mitigation on human rights have received little attention. Climate change mitigation calls for norms and actions that may have great impact on fundamental rights of indigenous people where these projects are set up. Indigenous people are entirely dependant on land and natural resources for their livelihood. Their relationship with lands, forests, natural resources, is inseparable and the very basis of their physical, spiritual and cultural systems, which gets severed on implementation of these projects. Indigenous people though distinct, have equal human rights like any other individual. Their communities are entitled to enjoy and exercise their human rights without any discrimination. Some organizations even contend that threats posted by these projects are even more dangerous than the impacts of climate change itself as these lead to closing of plants or mines, the interruption of agricultural models, or the prevention of use of certain type of vehicles.<sup>17</sup> One of the major consequences affecting human rights can be witnessed from vast **hydroelectric projects**. Another mitigation measure covers the generation of **nuclear power** which is vehemently criticised by indigenous communities because they have experienced that nuclear wastes are often stored or disposed in outskirts or in areas where indigenous people inhabits. Biofuel production is so much encouraged since past few years. While implementing these, there is seen Acquisition of lands for estates and smallholder schemes violates the rights of indigenous peoples to their property. Their lands are being confiscated without due payment and without remedy. In addition, their right to give or withhold their free, prior and informed consent for these proposed developments is being violated.<sup>18</sup> In Indonesia, those that sign up to join imposed schemes are not informed that this reallocation of lands implies a permanent surrender of their rights in land. The dramatic changes in local landscapes and ecosystems – including the loss of agricultural and agroforestry lands, hunting grounds, game, fish, forests, as well as water for drinking, cooking and bathing – in turn have major consequences and deprive people of their customary livelihoods and means of subsistence.<sup>19</sup> As a matter of fact it can be said that weather there is climate change or climate change mitigation measures, in both the cases the indigenous communities are the real sufferers. They are the helpless victims either because of

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<sup>16</sup> Report of the United Nations High Commission for Human Rights on the Relationship between Climate Change and Human Rights, 15 January 2009, UN Doc. A/HRC/10/61.

<sup>17</sup> Nepal's decision to prevent the use of three-wheeler diesel engines in Kathmandu valley was unsuccessfully challenged before the Nepali Supreme Court, on the ground that it contravened the right to carry out trade or business. See *Advocate KedarBhaktaShrestha and others v. HMG, Department of Transportation, Management and others*, writ No. 3109 of 1999, Supreme Court of Nepal, Laxman Prasad Aryal and Top Bahadur Singh, JJ, in Compendium of Summaries of Judicial Decisions in Environment-Related Cases, UNEP, 2005, at 138.

<sup>18</sup> Palm Oil and indigenous people in South East Asia, prepared by Marcus Colchester, January 2011, ISBN 978-92-95093-34-8, Pg11

<sup>19</sup>*Ibid.*

reason beyond their control or because of measures taken to combat climate change which are not regulated or implemented in violation of International legal framework governing it.

## **INTERNATIONAL FRAMEWORK CONCERNING INDIGENOUS PEOPLE**

International community has always been keen in showing concerns to protect climate against the rapid climate changes taking place. It started with a declaration in the name of 'Stockholm Declaration' in June 1972 which was though not legally binding, but was given persuasive treatment. It was in 1992, when the first binding declaration on climate change was enacted at Rio-de-Janerio in the name of 'United Nations Framework convention on Climate Change'(UNFCCC) and its Kyoto protocol. Initially, neither the text of UNFCCC nor its Kyoto Protocol explicitly touched the issue of indigenous people. However, it was from UNFCCC, Conference of Parties(CoPs) 1998, representatives of these communities started participating in meetings and conferences to address their concerns. Though it can be said that a step is taken forward in this direction but yet to reach miles. Brief review of international regulatory framework with regard to indigenous people is illustrated hereunder:

## **UNITED NATIONS DECLARATION ON RIGHTS OF INDIGENOUS PEOPLE**

This is an exhaustive declaration adopted in September 2007, which not only sets out individual as well as collective rights of indigenous people but also their rights related to culture, language, identity, health and other issues.

There is necessity for taking their human rights into account in the implementation of mitigation and adaptation measures which has been recognized by the Conference of Parties to UNFCCC Article12(2) which has stated that, in all climate change-related activities, states parties should fully respect human rights.<sup>20</sup>

Therefore, from the perusal of above subject matter, it can be said that there are massive effects of climate change on indigenous communities, including political and economic marginalization, loss of land and resources, discrimination, unemployment and consequently causing inherent human rights violation. Not only this, while executing the massive climate change mitigation projects, there is huge violation of basic human rights in the form of massive displacements, and thereby violating their right to property, right to

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<sup>20</sup>Ed.OttavioQuirico and MouloudBoumghar, Climate Change and Human Rights: An international and comparative law prespective.

livelihood and right to religion. There is evidence of forced migrations in which there is no prior consultations as required under International conventions with the local communities or if consulted, the agreements or promises made for their resettlement are not fulfilled or sometimes their outcome is not upto the expectations. So whether there is climate change or climate change mitigation measures, in both the cases the indigenous communities are the real sufferers.

There is necessity for taking human rights into account in the implementation of mitigation and adaptation measures which has been recognized by the Conference of Parties to UNFCCC(Article12(2)) which has stated that, in all climate change-related activities, states parties should fully respect human rights. Further efforts should be made to ensure full and effective participation of indigenous peoples in the conception, design and implementation of sustainable solutions to combat climate change. Indigenous peoples' right to participate has been confirmed by Agenda 21 and most recently in article 18 of the United Nations Declaration on the Rights of Indigenous Peoples which should be taken care of.

The question which remained unanswered is just because indigenous people comprise four percent of world population, are their human rights not as same as rest of ninety six percent? Though they comprise of only four percent population of entire world, their human rights are absolutely same as of rest of ninety six percent, as human rights, the very basic rights are by virtue of being born as human. Hence, there is need to impose responsibility on states to draft well coordinated certification that include human rights principles and protection mechanisms for the most vulnerable section which gets affected with climate change and Climate Change Mitigation Projects.