

EDITED BY

Randall S. Abate  
and Elizabeth Ann Kronk



# Climate Change and Indigenous Peoples

The Search for Legal Remedies



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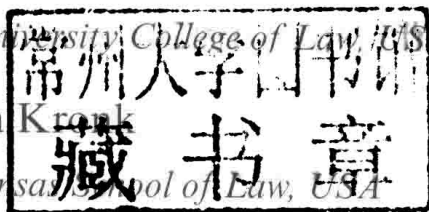
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## PART I

### Introductory context and principles

This book on climate change and indigenous peoples lies at the intersection of two worlds on a potentially catastrophic collision course: the harsh realities of global climate change impacts, on the one hand, and the cultural traditions and lifestyles of indigenous peoples and the existing legal frameworks in place to protect their interests on the other. Chapter 1 describes how these two realities have crossed and come to the forefront of international and domestic discourse in recent years because of a broad spectrum of climate change impacts that have severely affected indigenous peoples worldwide. Though these impacts vary widely, Chapter 1 underscores the commonalities among these unique communities in how they experience these impacts and how there are international and domestic protections available that can offer some measure of protection for indigenous communities suffering from climate change impacts. Chapter 2 discusses the international and US frameworks for climate change regulations, and highlights how the inadequate international and domestic legal responses to climate change have exacerbated the already harsh climate change impacts that indigenous communities must bear.

Chapters 3, 4 and 5 explore international, comparative and domestic dimensions of the complex notion of indigenous peoples' sovereignty and how the interpretation of the scope of indigenous sovereignty will be critical in determining how much protection indigenous peoples can secure in the face of climate change impacts. Chapter 6 completes the introductory context and principles unit with an exploration of the role of indigenous environmental knowledge as a cultural and legal tool to enhance indigenous communities' responses to climate change impacts.





# 1 Commonality among unique indigenous communities: an introduction to climate change and its impacts on indigenous peoples

**Randall S. Abate and Elizabeth Ann Kronk**

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This book explores how climate change affects the rights of indigenous peoples. Climate change is a global environmental problem caused by greenhouse gas emissions. Although the causes of this problem are global, the adverse impacts of climate change are disproportionately burdening indigenous peoples.

In recognition of the growing global problem of climate change, legal strategies to address climate change through mitigation and adaptation have been undertaken.<sup>1</sup> This book recognizes that indigenous peoples are particularly vulnerable to climate change, both physically and legally, and addresses the challenges that these communities face in responding to climate change impacts.

The term 'indigenous peoples' covers a widely diverse group of people within which no two communities of indigenous peoples are the same. Nevertheless, there are some commonalities that exist between groups of indigenous peoples. For example, most indigenous communities existed as autonomous communities and nations before contact with foreign societies. As a result of contact with foreign, dominant societies, many indigenous communities suffered generations of abuse and subjugation.

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<sup>1</sup> Increasingly, the focus of international climate change responses is on adaptation strategies. However, 'the adaptation strategy is deficient because it sees climate change as inevitable and implies that the only choice is to adapt to climate change or perish'. Rebecca Tsosie, 'Indigenous People and Environmental Justice: The Impact of Climate Change', 78 U. Colo. L. Rev. 1625, 1659–60 (2007). See also Dale Jamieson, 'Adaptation, Mitigation and Justice', in Walter Sinnott-Armstrong and Richard B. Howarth (eds), *Perspectives on Climate Change: Science, Economics, Politics, Ethics* 225 (New York: Elsevier, 2005). ('[T]he moral risk of a policy of "adaptation only" is that it will hit the poor the hardest.').

Consequently, many modern indigenous communities lack the economic and political clout of dominant societies. Beyond this history of oppression, many indigenous communities also share unique legal and spiritual connections to their environment. Moreover, because of their unique histories, the law affecting indigenous communities is different in many localities.

Professor S. James Anaya explains that:

[t]he rubric of indigenous peoples includes the diverse Indian and aboriginal societies of the Western Hemisphere, the Inuit and Aleut of the Arctic, the aboriginal peoples of Australia, the Maori of Aotearoa (New Zealand), Native Hawaiians and other Pacific Islanders, the Sami of the European far North, and at least many of the tribal or culturally distinctive non-dominant people of Asia and Africa. They are *indigenous* because their ancestral roots are embedded in the lands on which they live, or would like to live, much more deeply than the roots of more powerful sectors of society living on the same lands or in close proximity. And they are *peoples* in that they comprise distinct communities with a continuity of existence and identity that links them to the communities, tribes, or nations of their ancestral past.<sup>2</sup>

Although indigenous communities throughout the world differ, Part I of this chapter addresses some of the commonalities between indigenous peoples in greater depth:

- (1) increased vulnerability to climate change related to the location of indigenous communities;
- (2) a unique connection to the land for legal, spiritual and cultural reasons;
- (3) a history of colonization and oppression that has potentially increased the vulnerability of many indigenous communities; and
- (4) recognition under public international law that there are basic rights owed to indigenous communities.

Recognizing these commonalities is crucial to understanding the legal mechanisms available to assist indigenous communities in adapting to the threats posed by climate change. Part II of this chapter addresses three of these legal responses: (1) law suits based on procedural rights; (2) law suits based on common law legal principles; and (3) law suits based on public international law.

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<sup>2</sup> S. James Anaya, *International Human Rights and Indigenous Peoples* 1 (Aspen Publishers/Wolters Kluwer Law & Business 2009).

## I. COMMONALITY OF EXPERIENCE

Before one can begin to consider the problem of climate change from a legal perspective as it impacts indigenous peoples, one must understand common attributes of many of the world's indigenous communities. By understanding commonalities among various indigenous populations, one can understand more readily the types of legal claims that these communities may bring. Moreover, as Professor Rebecca Tsosie explains, 'because climate change is often thought to be the inevitable byproduct of industrialization, rather than an international policy of national governments, and because the triggering events generally do not take place on or near the reservation and are not within the control of Native peoples as governments, the discussion in this area must go beyond tribal sovereignty and evaluate the rights of indigenous peoples as unique cultural and political groups'.<sup>3</sup> This is not to suggest that every indigenous community from the Arctic to the South Pacific has a shared experience. To the contrary, indigenous communities differ substantially and even indigenous communities located in the same country can vary widely. However, despite these differences, commonalities exist regarding the vulnerability of these communities to climate change and their relative contribution to the climate change crisis.

Although climate change is a global phenomenon affecting all areas and people, various regions and environments are affected very differently.<sup>4</sup> Indigenous communities experience differing impacts depending on the region they inhabit – from the Arctic to the Andes to the Amazon, and from the islands of the Pacific Ocean to Canada's Pacific Rim.<sup>5</sup>

Unlike other populations, indigenous peoples have a tendency to be located in vulnerable locations throughout the world.<sup>6</sup> Indigenous communities are already dealing with impacts of climate change in their daily

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<sup>3</sup> Tsosie, *supra* note 1 at 1628.

<sup>4</sup> Jan Salick and Anja Byg, *Indigenous Peoples and Climate Change* 6 (Tyndall Centre for Climate Change Research, Oxford 2007).

<sup>5</sup> Survival International, *The Most Inconvenient Truth of All, Climate Change and Indigenous People* 1 (2009) available at [http://assets.survivalinternational.org/documents/132/survival\\_climate\\_change\\_report\\_english.pdf](http://assets.survivalinternational.org/documents/132/survival_climate_change_report_english.pdf) (last visited 8 September 2012) (hereinafter Survival International).

<sup>6</sup> Alan Parker et al. (eds), 'Climate Change and Pacific Rim Indigenous Nations, Executive Summary', 1–2, 19 (2006), available at <http://academic.evergreen.edu/g/grossmaz/IndigClimate2.pdf> (last visited 8 September 2012); Nancy G. Maynard (ed.) 'Native Peoples – Native Homelands Climate Change Workshop: Final Report' (1998), available at <http://www.nativepeoplesnativehomelands.org/> (last visited 8 September 2012).

lives.<sup>7</sup> For instance, the Amazon Rainforest, home to the Yanomami indigenous group, has experienced less rain, severe drought and higher temperatures.<sup>8</sup> In Canada, indigenous groups such as the Tl'azt'en and the Gitga'at are experiencing unpredictable weather; increased temperatures have contributed to the largest insect infestation in North America, destroying millions of acres of pine trees that they rely on and affecting their food supply.<sup>9</sup> In southern Africa, rising temperatures and increased wind speeds have resulted in vegetation loss, and, as a result, this land, customarily used for cattle and goat farming, is no longer viable for traditional uses.<sup>10</sup> Traditional farming practices in Asia and South America are also threatened by warming surfaces.<sup>11</sup>

In the Arctic, climate change is causing indigenous peoples to lose land and natural resources that are crucial to their subsistence lifestyle. Increasing temperatures related to climate change have caused melting of sea ice and permafrost,<sup>12</sup> resulting in both global and local climate change impacts. For example, greenhouse gases that are trapped in the marshlands of Northeastern Siberian permafrost are being released because of permafrost ice melting, thereby exacerbating global climate change

<sup>7</sup> International Expert Group Meeting on Indigenous Peoples and Climate Change, 2 [http://www.un.org/esa/socdev/unpfii/documents/E\\_C19\\_2008\\_CRP\\_9.doc](http://www.un.org/esa/socdev/unpfii/documents/E_C19_2008_CRP_9.doc) (last visited 15 August 2012).

<sup>8</sup> Survival International, *supra* note 5 at 3; Daniel C. Nepstad, *The Amazon's Vicious Cycles, Drought and Fire in the Greenhouse, Ecological and Climatic Tipping Points of the World's Largest Tropical Rainforest, and Practical Preventive Measures, A Report to the World Wide Fund for Nature* 4 (2007).

<sup>9</sup> Salick and Byg, *supra* note 4 at 16; International Indian Treaty Council, *Climate Change, Human Rights, and Indigenous Peoples*, 19 (2008) <http://www.treatycouncil.org/PDF/HR%20IPS%20and%20Climate%20Change%20corrfinal122708OHCHRa.pdf> (last visited 15 August 2012).

<sup>10</sup> 'Global Warming Solutions are Hurting Indigenous People, Says U.N.', *mongabay.com*, (2 April 2008), [http://news.mongabay.com/2008/0402-redd\\_indigenous\\_people.html](http://news.mongabay.com/2008/0402-redd_indigenous_people.html) (last visited 15 August 2012).

<sup>11</sup> *Ibid.*

<sup>12</sup> Daniel Cordalis and Dean B. Suagee, 'The Effects of Climate Change on American Indian and Alaska Native Tribes', 22 *Nat. Resources & Env't* 45, 47 (2008) ('Alaska may be experiencing the impacts of global warming more than any other place on Earth, and Alaska Native tribes are among the first American populations to feel the effects of global climate change. Erosion and flooding affect 86 percent of Alaska Native villages to some extent, with the greatest effects felt along the coast') (citing General Accounting Office, *Alaska Villages: Most Are Affected by Flooding and Erosion, but Few Qualify for Federal Assistance*, GAO-04-142 (December 2003)), available at [http://www.acia.uaf.edu/PDFs/ACIA\\_Science\\_Chapters\\_Final/ACIA\\_Ch12\\_Final.pdf](http://www.acia.uaf.edu/PDFs/ACIA_Science_Chapters_Final/ACIA_Ch12_Final.pdf) (last visited 8 September 2012).

impacts.<sup>13</sup> Climate change is also causing Arctic indigenous groups such as the Saami, Inuit and Chuckchi to suffer severe local impacts to their daily activities such as whaling, sealing, fishing and reindeer herding.<sup>14</sup> The Inuit's land is experiencing ice melting.<sup>15</sup> Climate change has caused hunting, fishing and travel in the Arctic to become more difficult, forcing some members to relocate after flooding.<sup>16</sup> Reindeer herders report declining populations because the animals find it increasingly difficult to access food and are more likely to fall through melting ice.<sup>17</sup> Some Arctic species, such as caribou, upon which indigenous peoples rely heavily for their survival, have migrated away from their traditional habitats and ranges due to shifts in weather patterns. These impacts limit Arctic indigenous peoples' ability to rely upon these species because the indigenous peoples, for legal reasons, may be tied to specific areas of land, as explained below.<sup>18</sup> In addition, some Arctic species are perishing as a result of climate change.<sup>19</sup>

Indigenous peoples living on low lying island nations are also facing the disproportionate negative impacts of climate change.<sup>20</sup> As the sea ice at the poles melts due to increased temperatures related to climate change and the world's ocean levels rise, low-lying nations are disappearing. Even a slight temperature increase of a few degrees can result in significant

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<sup>13</sup> Mark Nuttall et al., *Hunting, Herding, Fishing, and Gathering: Indigenous Peoples and Renewable Resource Use in the Arctic*, Arctic Climate Impact Assessment – Scientific Report (2006).

<sup>14</sup> Ibid.

<sup>15</sup> Survival International, *supra* note 5 at 3 ('Satellite data since 1978 show that annual average Arctic sea ice extent has shrunk by 2.7 (2.1–3.3)% per decade, with larger decreases in summer of 7.4 (5.0–9.8)% per decade') (citing IPCC, *Climate Change 2007: Synthesis Report*, 30 (2007), available at [http://www.ipcc.ch/publications\\_and\\_data/ar4/syr/en/contents.html](http://www.ipcc.ch/publications_and_data/ar4/syr/en/contents.html) (last visited 8 September 2012)).

<sup>16</sup> Ibid; Azadeh Ansari, 'Climate Change' Forces Eskimos to Abandon Village', 28 April 2009: <http://edition.cnn.com/2009/TECH/science/04/24/climate.change.eskimos/index.html>. For additional information on hunting and fishing impacts to Arctic indigenous peoples, see Chapter 13.

<sup>17</sup> International Arctic Science Committee, *The Saami Community of Lovozero Climate Change Study Case*, Arctic Climate Impact Assessment §3.4.9 (2010), available at [http://www.eoearth.org/article/Kola:\\_the\\_Saami\\_community\\_of\\_Lovozero\\_climate\\_change\\_case\\_study](http://www.eoearth.org/article/Kola:_the_Saami_community_of_Lovozero_climate_change_case_study) (last visited 8 September 2012).

<sup>18</sup> 43 U.S.C. § 1603 (2006); Cordalis and Suagee, *supra* note 12 at 47 (citing General Accounting Office, *Alaska Villages: Most Are Affected by Flooding and Erosion, but Few Qualify for Federal Assistance*, *supra* note 12).

<sup>19</sup> See Tsosie, *supra* note 1 at 1640.

<sup>20</sup> Alan Parker et al. (eds), *Climate Change and Pacific Rim Indigenous Nations, Executive Summary* 23 (2006), *supra* note 6. For a discussion of climate change impacts to indigenous peoples in Pacific island nations, see Chapters 16, 17, 18, and 19.

melting of the sea ice and, as a result, significant increases in the amount of water in the oceans.<sup>21</sup> Indigenous people in these locations are, therefore, facing a loss of property as the oceans swallow these low-lying island nations.<sup>22</sup>

Like the indigenous peoples of the Arctic, indigenous peoples living on low-lying islands are facing substantial changes to their biodiversity.<sup>23</sup> Temperature increases have led to bleaching of coral reefs, which are of great importance to the Pacific Islands.<sup>24</sup> Coral reefs are important to the region's biodiversity as a shelter for many organisms, and the decline in reef biodiversity is causing a decreased fish population.<sup>25</sup> Because of climate change, indigenous peoples located in these areas of the world also may no longer be able to secure the species upon which they have historically relied for subsistence. Indigenous food security is threatened in this region, as in other regions, because heat and saltwater intrusions are negatively affecting agriculture.<sup>26</sup> Therefore, although indigenous peoples of the Arctic and low lying nations are very different, commonality in their experience exists regarding climate change impacts to their lands and species traditionally relied upon for subsistence.

Perhaps the greatest paradox of the climate change and indigenous peoples context is that some climate change mitigation efforts are actually compounding the plight of indigenous peoples.<sup>27</sup> Many initiatives, such as biofuels, hydroelectric power, forest conservation and carbon offsets, which are generally positive measures to address climate change, are often carried out at the expense of indigenous peoples' rights.<sup>28</sup> In this way,

<sup>21</sup> Ibid.

<sup>22</sup> Tsosie, *supra* note 1 at 1636 ('However, the SIDS [small island developing states] are vulnerable to the catastrophic impacts of rising sea levels. Some of the smaller islands could perish altogether, but even the larger islands are in jeopardy. . . . In these island areas, coastline erosion, loss of land and property, dislocation of people, and saltwater intrusion into freshwater resources could be catastrophic') (citations omitted).

<sup>23</sup> Ibid. ('In addition, an increased prevalence and severity of storms linked to climate change would be especially devastating in such regions, as would be the inevitable loss of biodiversity for ocean species, including the loss of coral reefs and the fisheries in these areas.').

<sup>24</sup> International Expert Group Meeting on Indigenous Peoples and Climate Change, 2 [http://www.un.org/esa/socdev/unpfii/documents/E\\_C19\\_2008\\_CRP\\_9.doc](http://www.un.org/esa/socdev/unpfii/documents/E_C19_2008_CRP_9.doc) (last visited 15 August 2012).

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> 'Global Warming Solutions are Hurting Indigenous People, Says U.N.', *supra* note 10.

<sup>28</sup> Survival International, *supra* note 5 at 1, 5–9.

many indigenous communities are threatened by initiatives designed to benefit foreign communities.

Biofuels are an alternative source of energy and promoted as a climate change mitigation initiative, but it is estimated that 60 million indigenous peoples will be displaced because of biofuel expansion.<sup>29</sup> Indigenous populations in Indonesia and Malaysia have lost forest land because of oil palm plantation expansion.<sup>30</sup> The Guarani tribe of Brazil is losing its ancestral land as Brazil expands sugar cane cultivation to convert into ethanol to meet energy security objectives.<sup>31</sup>

Hydroelectric power is another source of alternative energy and being used as part of climate change mitigation efforts. Yet, hydroelectric dams sometimes occupy indigenous land, destroying their communities.<sup>32</sup> In Borneo, Malaysia, for example, 10,000 indigenous peoples were displaced by the Bakun dam project, flooding 700 square kilometers of surrounding land.<sup>33</sup>

Forest conservation measures and carbon offsets are other initiatives to prevent deforestation and mitigate climate change impacts, but also involve displacing indigenous peoples or otherwise restricting their rights or traditional use of land or natural resources.<sup>34</sup> In Kenya, thousands of Ogiek community members were forced to abandon their homes in the Mau Forest because of the country's conservation efforts, despite the tribe's sustainable existence there for hundreds of years.<sup>35</sup> Moreover, carbon-offsetting initiatives, including reduced emissions from deforestation

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<sup>29</sup> Ibid, at 5; VictoriaTauli-Corpuz, chair of the UN Permanent Forum on Indigenous Issues, email to Survival International, 29 April 2008.

<sup>30</sup> Ellie Brown and Michael F. Jacobson, 'Cruel Oil, How Palm Oil Harms Health, Rainforest Wildlife', Center for Science in the Public Interest, 21-2 (2005), available at <http://www.cspinet.org/palm/PalmOilReport.pdf> (last visited 8 September 2012).

<sup>31</sup> Survival International, *supra* note 5 at 5-6; Amnesty International, 'Foreigners in our Own Country: Indigenous Peoples in Brazil' (2005), available at <http://www.amnesty.org/en/library/asset/AMR19/002/2005/en/b75901b1-d526-11dd-8a23-d58a49c0d652/amr190022005en.pdf> (last visited 8 September 2012).

<sup>32</sup> See generally John D. Echeverria et al., *Rivers at Risk: The Concerned Citizen's Guide to Hydropower*, Washington D.C: Island Press, pp. 4-7 (1989) (describing how dams harm rivers).

<sup>33</sup> See <http://www.deseretnews.com/article/700177219/Borneo-tribe-loses-land-case-in-top-Malaysia-court.html> (last visited 15 August 2012).

<sup>34</sup> Survival International, *supra* note 5 at 7-9.

<sup>35</sup> Ibid; Kevin J. Kelley, 'Act on Threat to Climate, Raila Appeals', *Daily Nation*, 26 September 2009, available at <http://www.nation.co.ke/News/-/1056/663936/-/unej3w/-/index.html> (last visited 8 September 2012).



and degradation (REDD), violate indigenous rights.<sup>36</sup> Apart from concerns regarding the impacts to indigenous peoples, REDD faced many implementation challenges, which led to the creation of 'REDD+' as a more effective and flexible form of REDD for the future. REDD's evolution into REDD+ in the years preceding COP-15 in Copenhagen in 2009 'involved a transition to an enhanced, broad-based approach that includes conservation, sustainable forest management, and forest carbon stock enhancement'.<sup>37</sup>

A large portion of the world's forests contemplated in REDD+ schemes belong to indigenous peoples, who fear that such initiatives will cause forced evictions, prevent access and threaten traditional agriculture activity, destroy biodiversity and violate their rights to their land and natural resources.<sup>38</sup> Under REDD+, developing countries are encouraged to protect their forests, because they can sell stored carbon from the forests as credits to developing countries to offset their carbon emissions.<sup>39</sup> However, until recently, indigenous peoples in developing countries have limited or no participation in decision-making processes such as REDD+.<sup>40</sup>

In December 2011, at the Sixteenth Conference of the Parties of the United Nations Framework Convention on Climate Change in Durban, an alternative to the traditional forms of REDD+ through UNFCCC negotiations emerged. This new way of considering REDD, known as 'Indigenous REDD+', emphasized that REDD+ should be designed to

<sup>36</sup> See generally Stephanie Baez, 'The "Right" REDD Framework: National Laws that Best Protect Indigenous Rights in a Global REDD Regime', 80 *Fordham L. Rev.* 821 (2011).

<sup>37</sup> Randall S. Abate, 'A Tale of Two Carbon Sinks: Can Forest Carbon Management Serve as a Framework to Implement Ocean Iron Fertilization as a Climate Change Treaty Compliance Mechanism?', 1 *Seattle J. Envtl. L.* 1, 6 (2011) (citing Food and Agriculture Organization and the Center for People and Forests, *Forests and Climate Change after Copenhagen: An Asia-Pacific Perspective* 6 (2010), available at [http://recoftc.org/site/filesadmin/docs/publications/The\\_Grey\\_Zone/2010/FCC-after-Copenhagen\\_3.pdf](http://recoftc.org/site/filesadmin/docs/publications/The_Grey_Zone/2010/FCC-after-Copenhagen_3.pdf) (last visited 15 August 2012)).

<sup>38</sup> *Ibid.*

<sup>39</sup> Survival International, *supra* note 5 at 7–9.

<sup>40</sup> Estebancio Castro Diaz (2008), 'Climate Change, Forest Conservation and Indigenous Peoples Rights', Discussion Paper, International Expert Group Meeting on Indigenous Peoples and Climate Change ('Despite recent developments in international law in relation to Indigenous Peoples rights, Indigenous Peoples still have limited or in some instances no participation in the decision-making processes of the United Nations Framework Convention on Climate Change (UNFCCC)'). For a discussion of the potential adverse impacts of REDD on indigenous peoples, see Chapters 7, 8, and 9.



ensure that financial benefits from REDD projects flow directly to the indigenous communities, emphasize the ability of indigenous peoples to preserve forests and recognize that REDD+ must be implemented with clear assurances of land ownership in all REDD+ activities.<sup>41</sup> Coordinator of Indigenous Peoples of the Amazon Basin (COICA), the chief proponent of Indigenous REDD+, expressed concern that REDD+ as currently conceived may perpetuate an improper conception that forests are nothing more than carbon sinks and enable the potential for abuse of indigenous populations through inequitable REDD+ arrangements. COICA asserts that Indigenous REDD+ arrangements must remain outside of international carbon markets to avoid measures that exploit indigenous peoples or restrict their access to forests because such measures may be cheaper than holistic forest protection efforts that allow continuation of indigenous uses.

In addition to the commonality of the threat from climate change and mitigation efforts, many indigenous communities also share a unique connection to the land that is often not present in the dominant society.<sup>42</sup> This connection resides in both a legal and a spiritual or cultural context.<sup>43</sup> Following colonization from outside societies, many indigenous communities found themselves relegated to certain territories within the dominant nation. For example, in the United States, many tribal nations were removed from their traditional homelands and placed within reservation boundaries that may or may not have been located within the tribe's traditional homeland.<sup>44</sup> As American federal Indian law developed, many of the legal rights possessed by these tribal nations were tied to the reservations where the tribes were relocated.<sup>45</sup> As a result, American tribal nations now have a strong legal interest in the land upon which they reside.<sup>46</sup>

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<sup>41</sup> 'Coordinating Body of Indigenous Organizations of Amazon Basin (COICA): Alternative Indigenous REDD+: Territories of Harmonious Life to Cool the Planet', Durban Climate Change Conference, Press Briefing, UNFCCC Webcast (2011), [http://unfccc4.meta-fusion.com/kongresse/cop17/templ/play.php?id\\_kongresssession=4324&theme=unfccc](http://unfccc4.meta-fusion.com/kongresse/cop17/templ/play.php?id_kongresssession=4324&theme=unfccc) (last visited 15 August 2012).

<sup>42</sup> Cordalis and Suagee, *supra* note 12 at 48 ('Climate change will affect American Indian tribes differently than the larger American society. Tribal cultures are integrated into the ecosystems of North America, and many tribal economies are heavily dependent on the use of fish, wildlife, and native plants').

<sup>43</sup> Frank Pommersheim, 'The Reservation as Place: A South Dakota Essay', 34 S.D. L. Rev. 246, 250 (1989).

<sup>44</sup> Nell Jessup Newton, et al. (eds), *Cohen's Handbook of Federal Indian Law*, § 1.03 (Lexis Nexis, 2005).

<sup>45</sup> *Ibid.*, § 7.06.

<sup>46</sup> *Ibid.*