



International Human Rights Perspectives of Indigenous Peoples' Land Rights and Way Forward

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Abstract

This article aims to provide an understanding of Indigenous Peoples land rights as human rights, focusing on the lens of global human rights mechanisms. It begins by setting out the historical development of the Indigenous Peoples movement for recognition and its relationship to land rights. The discussion then outlines the concept of land rights from Indigenous Peoples' perspective – namely, land rights as a means of survival with culture, identity, and dignity. After presenting an interpretation of Indigenous Peoples land rights as individual and collective rights, the article then explores the relevance of core provisions of the UN Declaration on the Rights of Indigenous Peoples and other UN mechanisms and their connection to policy and practice at the domestic level. Finally, the argument addresses Indigenous Peoples' perspective on land and the interrelationship of political, legal, and policy formulations on land rights and their impact on policy and practice.

Introduction

"In the past, indigenous peoples were living peacefully in their homelands, in harmony with nature. Then came 'civilization' which wanted to conquer, with a hunger for richness for only a few, the ambition of capital and power. They conquered the land; we lost our homes, our sacred sites, our agricultural areas, our hunting fields, our fishing waters. They called it development, we called it destruction. They said it would raise living standards, we said it brings humiliation. They earned money, we got poor. They founded big companies, we became cheap labour. They ruined the biodiversity; we lost our sources of traditional medicines. They spoke of equality, we saw discrimination. They said infrastructure, we saw invasion. They thought civilization; we lost our cultures, our language, and our religion. They subjected us to their laws; we saw them claiming our land. They brought illnesses, weapons, drugs and alcohol, but not equal education and health care. It has been going on for more than 500 years. And it still goes on."

Indigenous representative from South America¹

Global movement for the recognition of Indigenous Peoples' rights

The above statement is significant in seeking to address and justify Indigenous Peoples' land rights as central to their survival and 1E/CN.4/Sub.2/1995/24, para 54, p.15.

existence. Through my extensive involvement and observation of the Indigenous Peoples movement at both national and global scales, I have come to understand that its primary objective is to safeguard and preserve ancestral and traditional land against both internal and external colonisation and exploitation of resources. This global movement has provided the impetus for in-depth analysis of Indigenous Peoples' land rights – including through United Nations bodies and mechanisms – as based on their deep historical, spiritual, social and cultural connection to their land.

Attempts by Indigenous Peoples to defend and protect their ancestral territory have sometimes translated into violence, notably throughout the period of colonisation and decolonisation. Resistance from Indigenous Peoples can be attributed to their connection to land, which provides the foundation of their distinct identity, culture, traditional political institutions and governance system, and is essential to their rights to self-governance and self-determination. Where treaties and agreements have been signed or arranged between the state and Indigenous Peoples, the aim has been to safeguard and defend traditional lands [1]. However, the aims of the Indigenous Peoples movement also extend to non-discrimination, equality, justice, and the eradication of colonial attitudes and discriminatory behaviours in accordance with treaty obligations.

The Indigenous Peoples global political movement has played a significant role in

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the establishment of United Nations bodies, mechanisms and processes aimed at addressing the Indigenous rights, particularly land rights. Indigenous Peoples' formal engagement with the United Nations commenced with the Working Group on Indigenous Populations (WGIP) in Geneva, Switzerland, in 1982. This event laid the groundwork for the acknowledgement and inclusion of Indigenous Peoples within the UN framework. Subsequently, the United Nations implemented various structures and entities to facilitate the promotion of the rights of Indigenous Peoples. Examples include the establishment of the UN Permanent Forum on Indigenous Issues (UNPFII) in 2000, the appointment of the UN Special Rapporteur on the Rights of Indigenous Peoples (UNSRIP) in 2001 and the creation of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) in 2007. The involvement of Indigenous Peoples in almost four decades of talks, negotiations, advocacy and diplomacy since 1985 also saw the development and adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) by the UN General Assembly on 13 September 2007.

As an observer at the annual sessions of the UNPFII and EMRIP since 2007, I have seen first-hand the significance of the acknowledgement of Indigenous Peoples' rights as human rights within the international legal framework as a goal of Indigenous Peoples' advocacy, negotiations and diplomacy. This recognition aims to safeguard Indigenous Peoples' entitlement to their land and territory.

Colonisation impact: Land rights and intrastate conflicts

The goal of the Indigenous Peoples' movement at the national, regional and global levels is to safeguard and preserve their land and territory against the detrimental effects of colonisation (including neo-colonisation) and the exploitation of their resources. The exclusion of Indigenous Peoples from the decolonisation process was particularly evident during the early 1960s and 1970s, as the process of liberation in colonised areas occurred across the global south. With the departure of Western colonisers, the lands of Indigenous Peoples were included or amalgamated into the newly established structure of the state; in many new states, if not all, the national liberation project and decolonisation process itself became a colonising tool. A novel manifestation of subjugation of Indigenous Peoples emerged, characterised by the emergence of neo-colonialism, with Indigenous Peoples in the new states subjected to even more severe victimisation; in many cases Indigenous Peoples contested the process of nation-state formation due to their concern at the potential transformation of their land into a new colony [2]. Indigenous Peoples in the newly liberated territories underwent a significant transformation known as "internal colonialism", a result of both the process of nation- or state-building and cultural and administrative changes [2-4].

Internal colonialism has resulted in the marginalisation and mistreatment of Indigenous Peoples, including population transfer (outsider settlement), leading to the displacement of Indigenous Peoples from their land and territory to facilitate exploitation of resources that are integral to their cultural, identity, and survival. The post-colonial era has thus seen the occupation and governance of their lands and territories and the erosion of culture, identity and languages through assimilation. The resultant loss of political autonomy and self-determination [2,3,5,6] has given rise to many manifestations of resistance among Indigenous Peoples, seeking to assert their entitlement to a unique identity and culture, and to possess, govern and

oversee their ancestral lands, territories and resources and engage in their customary means of subsistence and traditional livelihoods.

The control of ancestral lands and territories, as observed through the lens of intrastate conflict, can be understood as a type of regional autonomy arrangement outlined in peace agreements. This arrangement involves the establishment of territorial-based decentralised government and/or specific self-governing zones [7,8], with territorial power delegated to a regional or local level with a certain degree of self-governance [9]. It involves the delegation of powers and responsibilities from the central government to geographical units, such as ethno-national groups, which are involved in conflicts and strive for increased self-determination [9]. Inclusion within the governance structure of political authority and institutional responsibility is facilitated by the opportunities presented by such an arrangement.

The purpose of land ownership and territorial control is to uphold the territorial autonomy and self-governance of geographically concentrated Indigenous Peoples groups, enabling them to exercise their right to self-determination as distinct groups. Therefore, it may be contended that the recognition of land rights serves the purpose of offering legal safeguards that are equitable, autonomous, unbiased, transparent and considerate of the laws, cultures, practices and land utilisation methods of Indigenous Peoples. It is for this reason that treaties or agreements between the state and Indigenous Peoples typically address matters of land claims and land dispute settlement, or establish dedicated mechanisms for resolving conflicts pertaining to the land rights of Indigenous Peoples [10]. Given their importance it is essential that these procedures are accessible to Indigenous Peoples, respect Indigenous laws, customs and traditions, and make it possible to resolve disputes promptly.

Understanding the land rights of Indigenous Peoples

How do Indigenous Peoples define or envisage land concepts and land rights? Indigenous community's perspective concerning land: more than anything else, which gives life and meaning to our whole being, for it is in our land that our history, identity and culture are contained [11]. It has a "spiritual special relationship between Indigenous Peoples and their land is fundamental to their very existence as such and to all their beliefs, practices, customs, traditions and culture" [12]. An 'interconnectedness between the spiritual life of Indigenous Peoples and Mother Earth, and their land, carries numerous profound implications. Indigenous Peoples' land is not a commodity which can be acquired, but rather a material element to be enjoyed freely' [12]. Indigenous Peoples land is the territory where they live in "pre-invasion and pre-colonial" societies, "non-dominant sectors of society" are determined to preserve, develop and transmit to future generations their ancestral territories" as peoples, in accordance with their own cultural patterns, social institutions and legal system [13]. A UNPFII report on the doctrine of discovery explains the term "pre-invasion" as acknowledging the invasion of Indigenous Peoples' territories, while "pre-colonial" acknowledges the patterns of colonialism and colonisation that have had a negative impact on Indigenous Peoples, their lands, territories and resources [14]. The former chairperson of the WGIP Erica-Irene A. Daes identified four major elements of Indigenous Peoples' relationship to land. The first element is the "profound relationship between Indigenous Peoples and their lands, territories and resources" and the second is that "this relationship has various social, cultural, spiritual,

economic and political dimensions and responsibilities”. The third and fourth elements are that “the collective dimension of this relationship is significant” and that the “intergenerational aspect of such a relationship is also crucial to Indigenous Peoples’ identity, survival and cultural viability” [15]. The land rights of Indigenous Peoples are “related to the territorial rights and the land problem is the territorial issue that has historically been associated with in specific locations, their original homelands, which in some cases constitute well defined geographical areas” [16]. From time immemorial they have maintained a special relationship with the land, their source of livelihood and sustenance and the basis of their very existence as communities [16], strong connection and relationships between the cultures and the notion of land rights, occupation and control of territorial homelands [16]. This relationship is characterised by a dynamic exchange of traditions and practices of their spiritual connection. This spiritual connection is linked to their territories, an integral component of all land-related endeavours, encompassing not only spiritual rituals but also a diverse array of activities including hunting, fishing, herding, and gathering plants, medicines and foods that are inherently intertwined with the spiritual bond with the land [17,18]. Thus, the argument is that land is not only the basis of Indigenous Peoples’ livelihoods (from hunting, fishing, gathering and cultivation of cash crops) but, more importantly, it reflects their socio-cultural dimensions as the source of their values of spiritual, cultural and social identity [17-19]. These values and norms are connected to human rights perspectives of land ownership, in particular collective rights attached to self-determination, non-discrimination, cultural integrity and development [17,20,21].

Land serves as the primary foundation for the traditions, social norms, and judicial system of Indigenous communities, which are intricately intertwined with their self-governance framework. Self-government is a longstanding and customary system of governance within Indigenous communities, deeply rooted in their land and territory – a traditional political institution that has significant implications for fostering communal unity and facilitating access to land resources for Indigenous Peoples [11]. The practical application of Indigenous traditional political institutions in the Indigenous community involves utilising the land and territory as a central location to carry out the roles of these institutions and to exercise self-determination rights and self-governance. That is why such traditional political institutions are typically confined to the land and territory of Indigenous Peoples and their governance systems are based on those territorial boundaries [22]. The attainment of self-governance for Indigenous Peoples thus requires the effective enforcement of their rights pertaining to the land and territory that they have historically possessed, inhabited or utilised [23]. The potential loss, confiscation or displacement of land creates significant challenges to the traditional governing systems of Indigenous Peoples. Indigenous Peoples seek political comprehension, forging connections with the government, and reshaping these political connections with the state and other individuals. The transformative method of self-determination adopted by Indigenous Peoples aims to safeguard their fundamental human rights by promoting self-governance and enabling them to exercise autonomy within the territorial boundaries of their communities.

Land rights relationship to individual and collective human rights

Land and territorial rights underpin the human rights of

Indigenous Peoples, including securing “food, housing and development; without access to land many peoples find themselves in a situation of great economic insecurity” [19]. The EMRIP has emphasised the importance of safeguarding “lands, territories and natural resources in order to ensure Indigenous Peoples’ rights to life, culture, dignity, health, water, and food” [17]. Therefore, it is crucial to consider the land rights of Indigenous Peoples from various political, economic and cultural perspectives.

According to Duffy, the political dimension pertains to the self-determination of Indigenous Peoples in relation to the utilisation and governance of their Indigenous lands and resources, while adhering to the established traditions and laws of their political and social framework [24]. The economic dimension pertains to the use of the land and territories belonging to Indigenous Peoples for their economic sustenance, as regulated by laws controlling soil cultivation, land utilisation and harvesting within their traditional territories [24]. The cultural dimension holds land as sacred and something more than economic sustenance, and the spiritual dimension is connected to Indigenous ways of living with nature, traditional land, water and natural resources. This multidimensional approach connects to the customary rules governing the land tenure of Indigenous Peoples [24].

A number of human rights processes and tools have been developed to address land-related concerns relevant to civil, cultural, economic, political and social rights, including those of Indigenous Peoples [25]. International legal frameworks pertaining to land rights of Indigenous Peoples recognise the unique connection between these communities and their territory. Academics and proponents of Indigenous rights note that the land is fundamental to Indigenous Peoples’ human rights, being intricately intertwined with their economic, social and cultural entitlements [19].

Scholars contend that international human rights law unequivocally mandates that states must acknowledge the land rights of Indigenous Peoples, even in cases where such rights are not formally recognised by the administration [26]. The legal acknowledgement and safeguarding of land rights for Indigenous Peoples is crucial and merits a particular focus due to the inadequate legal protection, disempowerment, and absence of correct delineation of their territories experienced by many Indigenous Peoples [26].

Historical records, such as WGIP sessions reports (1985–2006), indicate that Indigenous Peoples have consistently engaged in advocacy and negotiation efforts to safeguard their land and territory, exercise self-governance, and maintain their autonomy, seeking to counter external threats. As elucidated in the preceding section, the Indigenous Peoples’ movement pertaining to land ownership serves the dual purpose of safeguarding and advancing their social, economic and cultural rights, as well as preserving their traditional practices and knowledge systems inside the area. Indigenous Peoples have taken a leading role in safeguarding their territory; conversely, states have in some cases employed anti-terrorist laws against them and classified the protection of human rights as a criminal act [27]. Human rights violations against Indigenous Peoples associated with the land have extended to illegal arrests, detention, political killings, assassinations, forced evictions, criminalisation, and serious threats of life and properties [28-30] Scholars have identified that the lack of recognition and protection of Indigenous Peoples’ land rights, customary land tenure and relationship with traditional territory, including their

collective ownership, is a significant factor underlying gross human rights violations [31,32].

UN human rights instruments and Indigenous Peoples land rights

UN Declaration on the Rights of Indigenous Peoples as the key framework

The significance of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007, lies in its recognition of the human rights of Indigenous Peoples; the declaration delineates their collective and individual human rights, and outlines the rights and well-being of Indigenous Peoples on a global scale. It establishes a comprehensive legal framework concerning the land rights of Indigenous Peoples, drawing upon universally applicable human rights principles [33]. This framework adopts a cultural and intergenerational perspective on land rights, incorporating provisions that acknowledge and protect land and territory rights [33]. Although all the rights mentioned in the UNDRIP are interconnected and based on the fundamental right to self-determination, the paragraphs on land rights, with specific requirements outlined in articles 25, 26, 27, 32, and 10, were deemed the most crucial for Indigenous Peoples during the drafting of the Declaration and are still a work in progress, according to academics and activists who took part in the negotiations [34]. In relation to UNDRIP Article 25, the EMRIP has clarified that for Indigenous Peoples, the spiritual relationship to the land is an inseparable part of every activity on the land. It pertains not only to spiritual ceremonies but also to a wide range of other activities such as hunting, fishing, herding and gathering plants, medicines and foods that have a spiritual dimension and are inextricably part of the spiritual relationship to the land [17].

The same study also states that

[m]aintaining and strengthening Indigenous Peoples' spiritual relationship to the land may require ensuring access to the land, protecting or restoring specific features or ecologies important to Indigenous customs or traditions, and preventing uses and activities that would be detrimental to those ends. (p. 6)

This underscores the significance of Indigenous communities' spiritual connection to their territories and their entitlement to engage in customs and rituals linked to that spiritual bond. It acknowledges their duty to make sure that a similar relationship may be maintained by future generations as well [17].

Their right to possess, utilise, develop and exercise control over their lands, territories and resources is expressly acknowledged in UNDRIP Article 26 of the. This article specifically affirms the entitlement of Indigenous Peoples to possess, utilise, cultivate and govern the lands, territories and resources that they have historically owned, inhabited or utilised. This statement asserts the entitlement of individuals to protect and enhance their own political, legal, economic, social, and cultural establishments. This entitlement extends to the right to get free, prior and informed consent, which aligns with Indigenous Peoples' right to self-determination. The correlation between the land, territory and resource rights of Indigenous Peoples and the significance of free, prior and informed consent serves to protect the cultural identity of Indigenous Peoples and empower them to exert influence over the decision-making process.

Indigenous Peoples advocate for the acknowledgement of their rights within national constitutional, legal and policy frameworks through active participation in various meetings and conferences. The incorporation of customs and traditions into the regulation of land is vital to uphold self-determination rights and acknowledge their autonomy and self-governance [17] and that the identification and recognition of Indigenous Peoples' land and resource rights should be initiated by considering their customary use and tenure systems [35]. Article 27 underscores the significance of prior and informed consent prior to engaging in any actions that could impact Indigenous Peoples' rights, as it addresses the omission of a specific right to lands, territories and resources that have been lost in the past [34]. Article 32 emphasises the obligation of states to engage in consultation and collaboration with Indigenous Peoples, with the aim of securing their consent prior to the adoption and execution of legislative or administrative actions that could potentially impact them. This includes the provision of just and equitable recompense for any lands, territories or resources that may be appropriated or harmed without their consent. UNDRIP functions as a significant global benchmark for safeguarding the land rights of Indigenous communities and serves as a foundation for promoting, modifying and engaging in conversations with the goal of safeguarding and honouring the land rights of Indigenous populations across the globe.

ILO Conventions 107 and 169

International Labour Organization (ILO) Indigenous and Tribal Populations Convention, 1957 (No.107) 12(1) stipulates that concerned populations shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations.

Convention No. 169 (ILO C169), adopted by the ILO in 1989, specifically addresses the rights of Indigenous and Tribal peoples, asserting the entitlement of individuals to possess and own lands and territories, together with the entitlement to engage in decision-making procedures that impact them. ILO C169 is a legally enforceable international agreement that covers a broad spectrum of topics, including land ownership and the administration of resources. It establishes a comprehensive structure for acknowledging and safeguarding the rights of Indigenous Peoples, including their rights to land and resources.

Article 13(1) of ILO C169A refers to "cultures and spiritual values of the peoples concerned of their relationship with the lands or territories". Under this article, governments are obligated to acknowledge and uphold the cultural and spiritual significance of the peoples involved in their connection with the lands or territories they inhabit or utilise. This includes recognising and respecting the collective aspects of this relationship. The convention clarifies the term "lands" in Article 13(2). The inclusion of the concept of territories is essential, as it encompasses the entirety of the environments in which the respective peoples reside or utilise. According to Article 14, Indigenous Peoples are entitled to the ownership, utilisation and authority over the lands they have historically inhabited. It is imperative for states to acknowledge and uphold this entitlement, while also guaranteeing the complete exercise of it by Indigenous communities.

Article 15 of ILO C169 places significant importance on the involvement of Indigenous Peoples in the utilisation, administration and preservation of various resources, such

as mineral or subterranean resources, as well as the rights associated with other resources related to lands. Indigenous Peoples possess the entitlement to safeguard and maintain their territory, encompassing the preservation and advancement of their resources. Article 16 stipulates that Indigenous Peoples ought not to be subjected to involuntary displacement from their lands or territories, unless specific conditions are met and their voluntary, prior and informed permission is obtained. According to Article 17, Indigenous Peoples are entitled to participate in decisions that impact their lands and territories. This encompasses the need to respect their land tenure systems and their entitlement to be advised and to provide their voluntary, prior and informed agreement to any legislative or administrative actions that could potentially impact them. Again, this encompasses the traditional or customary legal systems of Indigenous communities and aligns with the principles outlined in the Article 8. The right of Indigenous Peoples to preserve and enhance their spiritual connection encompasses all resources, including bodies of water and coastal seas.

ILO C169 underscores the significance of actively participating in conversations and seeking input from Indigenous communities in order to achieve consensus and establish protocols for the management of land and utilisation of resources. The convention again highlights the fundamental concept of free, prior and informed consent, placing significant emphasis on the involvement of Indigenous communities in decision-making that impacts their land rights. The importance of ILO C169 lies in its explicit emphasis on the rights of Indigenous and tribal peoples, offering a legal structure for resolving land rights, enhancing the acknowledgement and safeguarding of the land rights of Indigenous Peoples and other crucial matters. States are obligated to uphold and safeguard the land rights of Indigenous Peoples, encompassing their entitlement to possess, utilise and govern their ancestral territories.

UN treaty monitoring bodies

The United Nations treaty bodies have a vital function in overseeing the enforcement of global human rights accords and standards. Numerous treaty bodies cover diverse facets of human rights, with a notable emphasis on the land rights of Indigenous Peoples. These treaty bodies evaluate and offer suggestions to states regarding their adherence to international human rights agreements concerning the land rights of Indigenous Peoples. The land rights of Indigenous Peoples are directly addressed in international human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Convention on the Elimination of Racial Discrimination (ICERD) [36].

Human Rights Committee

The Human Rights Committee (HRC) is responsible for supervising the enforcement of the ICCPR and is one of the United Nations treaty bodies tasked with overseeing its implementation. This body evaluates state reports and handles individual grievances regarding infringements of civil and political rights. It has also investigated matters pertaining to the land rights of Indigenous Peoples, including instances of land appropriation, absence of consultation, and deprivation of land tenure rights. Although the HRC's mandate does not explicitly focus on Indigenous Peoples, it encompasses a broad spectrum of civil and political rights that pertain to the land rights of Indigenous Peoples. The ICCPR's Human Rights Committee has construed Article 27 of the Convention, which

pertains to the right to culture, as a legitimate foundation for the land rights and resource assertions of Indigenous Peoples [18,37]. In General Comment 23 (1994), the Human Rights Committee asserted that the land rights of Indigenous Peoples are intrinsically linked to their entitlement to cultivate their way of life and engage in traditional economic endeavours, thereby safeguarding the perpetuation and ongoing advancement of their cultural identity.

The right of self-determination is the fundamental basis of the human rights of Indigenous Peoples, as previously mentioned. The HRC oversees the enforcement of the right to self-determination as stated in Article 1 of the ICCPR. This entitlement encompasses the prerogative of Indigenous Peoples to autonomously ascertain their political standing and actively pursue advancements in the realms of economy, society and culture. The committee evaluates the endeavours of states to guarantee the involvement of Indigenous Peoples in decision-making procedures pertaining to land rights and resource management. In addition, the HRC examines how well nations adhere to the principle of non-discrimination as articulated in Article 2 of the ICCPR. This entails the examination and resolution of any prejudiced practices or policies that encroach upon the land rights of Indigenous Peoples, including disparities in their access to and authority over land and resources.

The HRC also evaluates the measures taken by nations in relation to the rights of Indigenous Peoples as outlined in Articles 6 and 9 of the ICCPR. This entails scrutinising instances of violence, intimidation or coerced displacement associated with land ownership conflicts, and advocating for states to safeguard the rights of Indigenous Peoples to their ancestral territories. The HRC also assesses the measures taken by states to guarantee that Indigenous Peoples are provided with effective recourse in cases when their land rights are infringed. This entails examining the extent to which states offer avenues for Indigenous communities to pursue legal remedies, restitution and compensation in instances of land appropriation, coerced displacement, or other infringements of their land entitlements.

Although the HRC's involvement with Indigenous Peoples' land rights may be limited, it serves as a medium for increasing consciousness, bringing attention to concerns and offering suggestions to states regarding their compliance with the ICCPR. Indigenous Peoples, civil society organisations and human rights defenders can utilise the committee's final findings and recommendations as advocacy instruments to argue for enhanced safeguarding and acknowledgement of Indigenous land rights on a national scale.

Committee on Economic, Social and Cultural Rights (CESCR)

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) which was enacted by the United Nations General Assembly in 1966 and is monitored by CESCR, is a human rights instrument that acknowledges and safeguards certain essential economic, social and cultural rights. The ICESCR asserts the entitlements of both individuals and communities to a satisfactory level of well-being, including the entitlements to adequate housing, sustenance, water, healthcare, education and employment.

Although Indigenous Peoples are not directly referenced in the covenant, the concepts delineated in the ICESCR are relevant to all individuals and communities, including Indigenous groups. According to CESCR General Comment 21 (concerning ICESCR part. 15, para. 1(a)) the presence of a robust communal aspect in the cultural life of Indigenous Peoples is crucial for

their survival, welfare and progress. This encompasses their entitlement to the lands, territories and resources that they have historically possessed, occupied, utilised or obtained. The statement emphasises the importance of respecting and protecting cultural values and rights of Indigenous Peoples in relation to their ancestral lands and connection with nature. This is crucial to prevent the deterioration of their unique ways of life, including their means of subsistence, the depletion of their natural resources and, ultimately, the loss of their cultural identity (General Comment 21, para 36).

States that have ratified the ICESCR are bound to uphold, safeguard and satisfy the economic, social and cultural entitlements of all individuals and communities within their territorial boundaries, including Indigenous Peoples. This entails implementing strategies to prevent any violation or deprivation of Indigenous lands, territories and resources, as well as guaranteeing that Indigenous communities maintain access to their ancestral lands and resources. The principles and criteria outlined in UNDRIP can guide the understanding and execution of the ICESCR concerning the land rights of Indigenous Peoples.

The ICESCR, in conjunction with other global human rights documents like the UNDRIP, establishes a comprehensive structure for safeguarding and acknowledging the land rights of Indigenous communities. Essentially, the ICESCR, along with other global human rights norms, has a vital function in acknowledging and safeguarding the land entitlements of Indigenous Peoples. ICESCR, in turn, recognises the significance of land in achieving the economic, social and cultural rights of Indigenous Peoples and provides direction to states to set up structures to uphold, safeguard and satisfy these rights. This entails implementing measures to mitigate any violation or deprivation of the lands, territories and resources belonging to Indigenous Peoples as well as to acknowledge and rectify past injustices and offer redress for any infringements upon these rights.

Committee on the Elimination of All Forms of Racial Discrimination

The International Convention for the Elimination of All Forms of Racial Discrimination (ICERD) is monitored by the Committee on the Elimination of Racial Discrimination (CERD). CERD has frequently addressed problems pertaining to the land rights of Indigenous Peoples, such as discriminatory land laws, forced displacement and relocations, and the absence of official acknowledgement of Indigenous territories. Since racial inequality and discrimination are frequently linked to the land rights of Indigenous Peoples, the CERD is crucial in addressing these issues. Examining state reports and holding productive discussions with state parties, CERD concentrates on matters pertaining to land rights for Indigenous Peoples and racial discrimination.

CERD also investigates situations in which Indigenous Peoples are uprooted from their ancestral lands or subjected to forced evictions. The committee evaluates whether states have put in place sufficient safeguards against these kinds of acts, provided appropriate compensation, and protected Indigenous Peoples' rights to continue living on their ancestral grounds. Furthermore, CERD examines whether states recognise communal or customary land rights as legitimate land tenure arrangements for Indigenous Peoples. The committee assesses the extent to which states have addressed past injustices, offered legal protection, and kept Indigenous areas free from

illegal usage or invasion. The CERD also looks at how states handle decisions that could have an impact on the land rights of Indigenous Peoples in terms of their adherence to and application of the free, prior and informed consent principle [36] for projects such as resource extraction or infrastructure development on their territory.

The involvement of CERD in the matter of Indigenous Peoples' land rights is crucial in identifying prejudiced practices. The committee's final remarks and recommendations are important instruments for ensuring that nations are held responsible for guaranteeing equality and safeguarding the land rights of Indigenous Peoples. CERD's findings and recommendations can be employed by Indigenous Peoples, civil society organisations and human rights defenders to promote policy changes, legislative reforms and enhanced acknowledgement and safeguarding of Indigenous land rights on both national and international scales.

Article 5 of the ICERD grants individuals the right to be free from prejudice and to enjoy equal treatment under the law, which includes the right to possess property. CERD General Recommendation No 23 acknowledges the rights of Indigenous Peoples to possess, cultivate, govern and utilise their shared lands, territories and resources [20].

The aforementioned treaty bodies undertake the task of evaluating state party reports, participating in negotiations with states, receiving and evaluating comments from people or groups, and issuing final remarks or recommendations. They have a crucial function in ensuring that states are held responsible for their duties to uphold, safeguard and ensure the land rights of Indigenous Peoples as outlined in international human rights agreements. The recommendations issued by treaty bodies serve as a framework for states to implement steps aimed at enhancing the acknowledgement and safeguarding of land rights pertaining to Indigenous Peoples. These recommendations of the treaty bodies are often utilised by Indigenous organisations and human rights campaigners to fight for policy changes, legal reforms, and improved land governance systems on both national and international scales.

Way forward: Recognition of land rights in domestic law

The land rights of Indigenous Peoples are generally disregarded by national laws and policies. The acknowledgement and validation of the land rights of Indigenous Peoples has consistently been a significant subject of contention. In the absence of established land rights, individuals and communities who reside in a state of perpetual eviction are deprived of a variety of essential human rights. However, the concept of land rights for Indigenous Peoples is endorsed by international human rights law [21] and is progressively gaining recognition within regional human rights frameworks, such as the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights [17]. Nevertheless, observations indicate that legal and regulatory frameworks at the domestic level have yet to adequately address the land rights of Indigenous Peoples.

Land ownership over traditional territories is critical for Indigenous Peoples to transmit to future generations a culture largely based on land ownership and traditions of customary use and tenure [17,35]. The land tenure system of Indigenous Peoples upholds their practices, customs and traditions; nonetheless it is frequently the case that states undermine this customary

system, leading to conflict. The absence of customary law from land titling procedures has been observed to result in insufficient protection of land rights for Indigenous Peoples. Even where Indigenous Peoples have been granted land ownership or title, it is frequently not based on historical use or the traditions of these communities. Instead, it is determined by a calculation of the amount of land needed for the economic and cultural sustainability of these groups. In many jurisdictions where the majority of land is subject to customary tenure, there exists a tendency to bypass limitations on the transfer of land titles to businesses or persons [17].

According to the ILO Convention No. 169 and the UNDRIP, Indigenous Peoples have complete ownership rights to their lands if they are exclusively occupied. This is based on the fundamental principle of non-discrimination [38]. Furthermore, the UNDRIP has formalised the acknowledgement of the treaties and agreements established between Indigenous Peoples and states that are interlinked to their land rights. Indigenous Peoples encounter several obstacles in the pursuit of land rights, primarily stemming from the persistent misapplication or inadequate enforcement of land legislation, despite the existence of guidelines outlined in international human rights instruments and Indigenous Peoples' governing institutions. In her 2019 report, UNSRIP outlined the difficulties associated with acknowledging and granting land rights to Indigenous Peoples. In her view, even in nations where the rights of Indigenous Peoples to land and resources have been acknowledged, the requisite steps for their actualisation have not been formulated or executed. Several issues have been noted in the national legal framework, including a lack of coherence, insufficient recognition of the subject of rights, limited jurisdiction and poor adjudication mechanisms [39]. Her report highlights the key concern that majority of infringements of the collective and individual human rights of Indigenous populations are linked to the acquisition and utilisation of natural resources within their own territory.

The greatest factor in safeguarding the land rights of Indigenous Peoples within the state is in the benevolence and political dedication exhibited by the governing authorities. By bolstering legal rights and constitutional safeguards, such as the right to participate in decision-making and the requirement of free, prior and informed consent, goodwill and political commitment at the domestic level can effectively protect the land rights of Indigenous Peoples. According to EMRIP (2020), states, in collaboration with Indigenous Peoples, can create the necessary legal and administrative measures and effective mechanisms to support Indigenous Peoples' ownership, use and titling of their lands, territories and resources. This includes lands that Indigenous Peoples have occupied due to previous relocations. It is imperative to approach this matter with due regard for the customs, traditions and land systems of Indigenous Peoples. This entails acknowledging the Indigenous Peoples' inherent land tenure as a fundamental source of property and land rights. In cases where Indigenous Peoples live across national boundaries, it may be necessary to implement procedures for inter-state discussions. It is also critical for states to eliminate all legislation, particularly laws enacted during the eras of colonisation and nation-state building processes, that claim to validate or enable the displacement of Indigenous Peoples from their territories. Land plays a major role in the political, economic, social and cultural advancement of Indigenous Peoples, necessitating their inclusion within the framework of laws, regulations and policies. The establishment

of a shared comprehension and consensus between states and Indigenous Peoples is of paramount significance, requiring the utmost regard for their human rights.

The acknowledgement of land rights establishes a link between social justice for Indigenous Peoples and their entitlement to utilise, possess and govern the development of their ancestral and customary territory. Consequently, the land rights of Indigenous Peoples are considered as fundamental human rights, and numerous international human rights statutes and legal precedents specifically address land rights as a matter of human rights. It is imperative to acknowledge the entitlement of Indigenous communities to their lands, territories and resources, in accordance with the UNDRIP, and the advancement of this entitlement as articulated by regional and international human rights bodies and institutions. Furthermore, it is the responsibility of the state to enforce further accompanying rights, such as the rights to life and to live with dignity [17]

Recognition of Indigenous Peoples in national constitutions presents an avenue for addressing the domestic legislative and administrative actions, as well as the implementation of suitable and efficient mechanisms, that are essential for facilitating the ownership, utilisation and titling with reverence for the customs, traditions and land systems of Indigenous Peoples.

Conclusion

Land is central to Indigenous Peoples' livelihoods, culture, identity, knowledge and ways of living, all of which are interconnected. In my culture, land is revered as mother earth, a spiritual connection, a sacred place, and a source of inspiration for songs, music, oral history, traditional knowledge, art, and weaving patterns, all integral to the land. This context establishes a robust legal and policy foundation for the state to uphold and defend Indigenous Peoples' rights to their land and territory.

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