
INDIGENOUS RIGHTS TO LANDS, TERRITORIES, AND RESOURCES IN INTERNATIONAL LAW: A LEGAL ANALYSIS IN THE CONTEXT OF ENVIRONMENTAL AND CLIMATE CRISIS

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ABSTRACT

This paper examines the nature, scope, and international legal protection of Indigenous peoples' rights to their lands, territories, and resources (LTR), and explores the relationship between these rights and the global climate and environmental crisis. It first considers the underlying values of indigenous rights to LTR, grounding them in collective claims, cultural and spiritual connections to land and the principle of self-determination. It then analyses the recognition and protection of these rights within international law, with particular reference to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), ILO Convention No. 169, and relevant international soft law instruments. The paper further investigates how environmental degradation, biodiversity loss, and climate change affect the enjoyment of LTR rights, and how Indigenous stewardship contributes to environmental sustainability and climate resilience.

Keywords: Indigenous peoples, Rights to Lands, Territories, and Resources, International Law, Climate change

1. Introduction:

There is no clear definition of ‘indigenous peoples’ in international law.¹ Jose Martinez Cobo, a former UN Special Rapporteur, defines Indigenous peoples as those with historical ties to their land before invasions and colonisation, distinct from the dominant society, and committed to preserving their land and identity.² Anaya describes them as descendants of the original inhabitants who are now under different rules,³ and Wiessner emphasises their special bond with ancestral lands.⁴ Indigenous peoples have historical ties to their land from pre-colonisation. They are distinct from dominant societies and committed to preserving their land and identity, characterised by their special bond with ancestral lands and territories.

Debates on the legal status of Indigenous peoples are as old as international law itself.⁵ Researchers have shown that colonisation and imperialism were pivotal in shaping historical standards for conduct among nations.⁶ Decolonisation promoted self-determination for majority societies and ignored the special status of indigenous peoples, especially by the states in the Americas, Asia, and Oceania, which were ‘discovered’ by European explorers from the fifteenth century onward.⁷ Jernej L. Cernic commented that these territories were inhabited by what are now known as ‘Indigenous peoples.’⁸ The 1492 voyage of Columbus to the Bahamas marked a dark chapter in their history, with many dying from new diseases or suffering inhuman treatment by European conquerors.⁹

Despite its early origins, a distinct international legal regime for Indigenous peoples began to

¹ Jernej Letnar Čerňič, ‘State Obligations Concerning Indigenous Peoples’ Rights to Their Ancestral Lands: Lex Imperfecta?’ (2013) 28 *American University International Law Review* 1129, 1135.

² Secretariat of the Permanent Forum on Indigenous Issues, *The Concept of Indigenous Peoples* UN Doc PFII/2004/WS.1/3 (January 2004).

³ James Anaya, *Indigenous Peoples in International Law* (2nd edn, Oxford University Press 2004) 3.

⁴ Siegfried Wiessner, ‘The Cultural Rights of Indigenous Peoples: Achievement and Continuing Challenges’ (2011) 22 *European Journal of International Law* 121, 134.

⁵ James Anaya and Luis Rodríguez-Piñero, ‘The Making of the UNDRIP’ in Jessie Hohmann and Marc Weller (eds), *The UN Declaration on the Rights of Indigenous Peoples: A Commentary* (Oxford University Press 2018) <<http://opil.ouplaw.com/view/10.1093/law/9780199673223.001.0001/law-9780199673223-chapter-3>> accessed 6 June 2024.

⁶ Jeremy Waldron, ‘Indigeneity? First Peoples and Last Occupancy’ (2003) 1 *New Zealand Journal of Public and International Law* 56, 57 <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/nzjpubin11&div=7&id=&page=>>> accessed 6 June 2024.

⁷ Serv Wiemers, ‘The International Legal Status of North American Indians After 500 Years of Colonization’ (1992) 5 *Leiden Journal of International Law* 69, 70.

⁸ Jernej Letnar Cernic (n 1) 1135.

⁹ Ibid.

form only in the late 19th century.¹⁰ This development emerged as the positivist international law school sought to codify standards, clashing with colonial interests.¹¹ The international approach to Indigenous peoples was expressed through the trusteeship doctrine and the standard of civilisation.¹² As articulated in the League of Nations' covenant, the trusteeship doctrine aimed to protect native populations in conquered territories, blending humanitarian concerns with colonial and religious expansion motives.¹³

Meanwhile, the standard of civilisation reserved international rights and privileges for the so-called 'civilised' nations, excluding Indigenous peoples, and labelled them as 'savages' from such entitlements.¹⁴ This led to the dispossession of their lands, which were considered '*terra nullius*- nobody's land' until recently.¹⁵ The actual international status of countries with Indigenous populations, whether colonial or postcolonial, was deemed insignificant within these Eurocentric and racist legal frameworks.¹⁶

The trusteeship doctrine influenced the development of international instruments addressing Indigenous peoples, which began with the ILO's efforts, particularly the 1936 ILO Recruiting of Indigenous Workers Convention.¹⁷ However, post-World War II, decolonisation efforts shifted the focus from regulating colonial practices to ending colonialism, excluding Indigenous peoples within independent states from self-determination.¹⁸ Despite this ignorance, the influence of the Indigenous movements led to ILO Convention 107 in 1957, promoting social and economic conditions for Indigenous populations.¹⁹ The Convention established a foundation for recognising Indigenous rights within the international human rights framework.²⁰

¹⁰ Anaya (n 3) 26–48.

¹¹ Anaya (n 5) 39.

¹² Ibid.

¹³ Gong GW, *The Standard of Civilization in International Society* (Oxford University Press 1984) 76–77.

¹⁴ Anaya (n 5) 40.

¹⁵ Ibid.

¹⁶ Luis Rodríguez-Piñero, *Indigenous Peoples, Postcolonialism, and International Law: The ILO Regime* (Oxford University Press 2005) 40.

¹⁷ International Labour Organization, *Convention concerning the Regulation of Certain Special Systems of Recruiting Workers* (adopted 20 June 1936, entered into force 8 September 1939) ILO No 50, 40 UNTS 109.

¹⁸ Anaya (n 5) 40.

¹⁹ International Labour Organization, *Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries* (adopted 26 June 1957, entered into force 2 June 1959) ILO No 107, 328 UNTS 247.

²⁰ Anaya (n 5) 42.

In the 1960s and 1970s, Indigenous peoples actively advocated for their rights.²¹ This led to the 1971 ECOSOC study on Indigenous discrimination,²² which published multi-volume reports by José Martínez Cobo.²³ Later, the UN Working Group on Indigenous Populations (WGIP) was established in 1982 to advance Indigenous rights, culminating in the UN Declaration on the Rights of Indigenous Peoples.²⁴ WGIP allowed Indigenous peoples to share experiences and raise concerns at the UN under the Sub-Commission on the Promotion and Protection of Human Rights.²⁵

In 1989, the ILO revised its Convention 107 and adopted ILO Convention 169.²⁶ Convention 169 marked a departure from assimilation policies, recognising Indigenous control over their institutions and ways of life.²⁷ Initially met with resistance, it eventually gained support, particularly in Latin America, prompting legal reforms and significantly influencing the drafting of the UN Declaration.²⁸ The affirmation of Indigenous rights, including ILO Convention 169, set the stage for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). In June 2006, the Human Rights Council adopted the Declaration's text.²⁹ By September 2007, following critical agreements and negotiations, the General Assembly adopted the Declaration with 143 votes in favour.³⁰

The UNDRIP is a significant milestone in international human rights law. Although not all UN declarations are legally binding, documents like UNDRIP have garnered widespread support,

²¹ Anaya (n 5) 42.

²² United Nations Economic and Social Council, 'The Problem of Indigenous Populations' (21 May 1971) UN Doc E/RES/1589(L) <<https://digitallibrary.un.org/record/214989?v=pdf#files>> accessed 6 June 2024.

²³ Special Rapporteur José Martínez Cobo's multi-volume reports (1981-1983) compiled extensive information on Indigenous peoples globally and made findings and recommendations supporting their demands. José Martínez Cobo, 'Study of the Problem of Discrimination Against Indigenous Populations' (30 July 1981) UN Doc E/CN.4/Sub.2/476; (10 August 1982) UN Doc E/CN.4/Sub.2/1982/2; (5 August 1983) UN Doc E/CN.4/Sub.2/1983/21 <<https://social.desa.un.org/publications/martinez-cobo-study>> accessed 6 June 2024.

²⁴ United Nations Department of Economic and Social Affairs, 'Indigenous Peoples at the United Nations' <<https://social.desa.un.org/issues/indigenous-peoples/indigenous-peoples-at-the-united-nations>> accessed 6 June 2024.

²⁵ Ibid.

²⁶ International Labour Organization, *Convention concerning Indigenous and Tribal Peoples in Independent Countries* (adopted 27 June 1989, entered into force 5 September 1991) ILO Convention No 169, 72 ILO Official Bull 59; 28 ILM 1382 (1989).

²⁷ Anaya (n 5), 44.

²⁸ Ibid.

²⁹ 'Report of the Human Rights Council, First Session (19–30 June 2006)' 61 UN GAOR Supp (No 53) 19, UN Doc A/61/53 (2006).

³⁰ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), GA Res 61/295, Annex, UN GAOR, 61st sess, Supp No 49, vol III, 15 (2007) UN Doc A/RES/61/295.

elevating their principles to the status of customary international law.³¹ It advances beyond the individualist paradigm to embrace collective human rights and promotes restorative justice, addressing historical oppression.³² Over the past three decades, global recognition of Indigenous peoples' rights has led to a common understanding based on longstanding human rights principles.³³ This normative consensus has been reflected in international human rights practices. The Declaration is the most significant development, encapsulating decades of evolving understanding about Indigenous peoples' rights built on existing international human rights law.³⁴ Article 3 of the Declaration affirms Indigenous peoples' right to self-determination, echoing the International Covenants on Civil, Political, Economic, Social, and Cultural Rights.³⁵ It outlines individual and collective rights essential for Indigenous peoples' survival, dignity, and well-being, addressing equality, non-discrimination, cultural integrity, and autonomous institutions.³⁶

Building on the historical development of Indigenous peoples' rights, it is evident that these rights are fundamentally connected to their lands, territories, and resources, which form the foundation of their cultural identity, livelihood systems, and self-determination. The integrity of these lands and resources is now increasingly jeopardised by the accelerating climate and environmental crisis. Deforestation, biodiversity loss, shifting weather patterns, and ecosystem degradation threaten both the survival of Indigenous communities and the ecological balance they have long sustained.

This paper is structured into six sections. Section 2 examines the nature and scope of Indigenous rights to LTR, tracing their foundations in customary law, human rights norms, and evolving legal interpretations. Section 3 analyses the protection of LTR within international legal frameworks, with particular reference to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), ILO Convention No. 169, and relevant instruments of international environmental law. Section 4 explores the relationship between the environmental crisis—such as biodiversity loss, deforestation, and ecosystem degradation—and the enjoyment of Indigenous peoples' rights to LTR. Section 5 focuses on the intersection between

³¹ : James S Phillips, 'The Rights of Indigenous Peoples under International Law' (2015) 26(2) *Global Bioethics* 120, 120.

³² Anaya (n 5) 60.

³³ Ibid.

³⁴ Ibid.

³⁵ UNDRIP (n 30) Article 3.

³⁶ Ibid, Article 45.

climate change and Indigenous rights to LTR, considering the legal implications of mitigation and adaptation measures, as well as the role of Indigenous stewardship in climate governance. Section 6 concludes the paper by synthesising key findings and proposing pathways for harmonising human rights protection with environmental and climate objectives in international law.

2. Nature and Scope of Indigenous Rights to LTR

The contemporary international Indigenous rights framework recognises that Indigenous peoples' societies, cultures, ways of life, and identities are deeply connected to their historically used LTR.³⁷ This connection implies legal consequences, establishing Indigenous peoples' legal ties to these areas. Former UN Special Rapporteur José Martínez Cobo's 1982 study on discrimination against Indigenous populations is foundational to this framework.³⁸ Cobo emphasised that Indigenous identities are inseparable from their lands, asserting that without their ancestral territories, Indigenous peoples cannot exist. His influential description highlights the critical link between land and identity.³⁹

Other organisations like the World Bank and the Food and Agriculture Organization (FAO) echo this understanding. The World Bank notes Indigenous peoples' collective attachment to distinct habitats,⁴⁰ while the FAO emphasises their priority in occupying specific territories, linking identity to ancestral lands.⁴¹ Article 25 of the UNDRIP affirms the right to maintain and strengthen spiritual relationships with traditionally owned lands, reinforcing the intrinsic connection between Indigenous identities and their lands.⁴² The Inter-American Court of Human Rights (IACtHR) also acknowledges the essential ties between Indigenous peoples and their lands, viewing them as crucial for cultural legacy and future generations.⁴³ UN documentation highlights that ownership and control of lands, territories, and resources are

³⁷ United Nations Department of Economic and Social Affairs, 'State of the World's Indigenous Peoples: Rights to Lands, Territories and Resources' (Vol 5, 1 January 2021) UN Doc ST/ESA/375 <<https://social.desa.un.org/publications/state-of-the-worlds-indigenous-peoples-volume-v-rights-to-lands-territories-and>> accessed 7 June 2024.

³⁸ Cobo (n 23) para 370.

³⁹ Ibid, para 379.

⁴⁰ World Bank, 'Operations Manual: Operational Policy 4.10: Indigenous Peoples' (Washington DC, 2005) para 4 <<https://thedocs.worldbank.org/en/doc/2e32d9beec85a16da0bac98d14df191-0290012023/original/OP-4-10-Indigenous-Peoples.pdf>> accessed 7 June 2024.

⁴¹ Food and Agriculture Organization of the United Nations, 'FAO Policy on Indigenous and Tribal Peoples' (Rome 2010) paras 4–5 <https://www.fao.org/4/i1857e/i1857e00.pdf> accessed 7 June 2024.

⁴² UNDRIP (n 29) Article 3.

⁴³ *The Mayagna (Sumo) Awas Tingni Community v Nicaragua* (Judgment) Inter-American Court of Human Rights Series C No 79 (31 August 2001) [149].

vital for Indigenous self-determination and community health, emphasising the need for explicit recognition and compensation for historical dispossession.⁴⁴ Thus, Indigenous land rights are fundamental to their identity and well-being.

2.1. Collective Rights

The Indigenous peoples' movement introduces a groundbreaking notion, i.e., the importance of collective rights. Contrary to the Universal Declaration of Human Rights (UDHR)⁴⁵, which primarily emphasises individual rights, Indigenous advocacy emphasises the rights of communities as a whole.⁴⁶ This challenges the prevailing post-Second World War international legal paradigm, which assumes that individual human rights alone are adequate for a fair global legal framework.⁴⁷ Commentators highlighted collective land rights as central to Indigenous governance systems, which prioritise communal ownership and decision-making processes that ensure the well-being of present and future generations.⁴⁸ This collective stewardship fosters sustainable resource management practices that have sustained ecosystems for millennia.⁴⁹

2.2. The Right to Self-Determination

After decades of debate, international law now recognises Indigenous populations as 'peoples' with rights, including self-determination.⁵⁰ This political right allows Indigenous peoples to govern themselves and manage resources within their territories.⁵¹ Historically, self-determination applied to entire state populations, but for Indigenous peoples, it meant controlling their distinct territories' resources.⁵² The IACtHR, in *Kaliña and Lokono Peoples v. Suriname*,⁵³ affirmed that Indigenous groups can manage their natural resources to ensure their subsistence. This principle is reflected in Article 4 of the UN Declaration on the Rights of

⁴⁴ United Nations Committee on Economic, Social and Cultural Rights, 'General Comment No 21: Right of Everyone to Take Part in Cultural Life (art 15, para 1(a) of the Covenant on Economic, Social and Cultural Rights)' (21 December 2009) UN Doc E/C.12/GC/21 para 36.

⁴⁵ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

⁴⁶ Allen Buchanan, 'The Role of Collective Rights in the Theory of Indigenous Peoples' Rights' (1993) 3 *Transnational Law & Contemporary Problems* 89, 89.

⁴⁷ Buchanan (n 46).

⁴⁸ Robert N Clinton, 'The Rights of Indigenous Peoples as Collective Group Rights' (1990) 32 *Arizona Law Review* 739, 747.

⁴⁹ Buchanan (46) 107.

⁵⁰ UNDESA (n 37) 7.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Case of the Kaliña and Lokono Peoples v Suriname* (Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 309 (25 November 2015) [122].

Indigenous Peoples, emphasising Indigenous autonomy in internal and local matters.⁵⁴ UN report affirmed that state practices and legal doctrine support this autonomy-based exercise of Indigenous self-determination.⁵⁵

It may be argued that Indigenous peoples' right to autonomy-based self-determination is equivalent to the right to consultation under Article 31 of UNDRIP.⁵⁶ However, compelling arguments exist against equating Indigenous peoples' right to self-determination with their right to consultation.⁵⁷ While international legal sources provide limited guidance on what self-determination entails, it is clear that it is more than consultation.⁵⁸ When Indigenous peoples and the State/majority population disagree on land and resource management, Indigenous priorities may sometimes prevail, indicating a real, not just formal, right to self-determination.⁵⁹ Although the exact extent of this right is unclear, it exceeds consultation but is not equivalent to full sovereignty.⁶⁰ It must be exercised in relation to the State's broader population, balancing Indigenous self-determination with national interests.⁶¹

2.3. Right to Property

Indigenous peoples' property rights stem from historical land use rather than political status. These rights are held by traditional users, often coinciding with their political territory. Within larger Indigenous populations, distinct communities establish civil property rights in specific areas within the overall territory.⁶² Thus, Indigenous communities are considered collective legal subjects regarding property rights.⁶³

Property rights articulated in human rights institutions involve equal opportunity to acquire and retain property without arbitrary deprivation, which is inherently tied to the right to non-discrimination.⁶⁴ Non-discrimination today encompasses more than just treating equals

⁵⁴ UNDRIP (n 30) art 4.

⁵⁵ UNDESA (n 37) 9.

⁵⁶ UNDRIP (n 30) art 31.

⁵⁷ UNDESA (n 37).

⁵⁸ Ibid.

⁵⁹ UNDESA (n 37).

⁶⁰ Patrick Macklem, *The Sovereignty of Human Rights* (Oxford University Press 2015) 30.

⁶¹ Ibid.

⁶² Jeremy Webber, 'The Public-Law Dimension of Indigenous Property Rights' in Nigel Bankes and Timo Koivurova (eds), *The Proposed Nordic Saami Convention: National and International Dimensions of Indigenous Property Rights* (Hart Publishing 2013) 79–102, 85, 87.

⁶³ UNDESA (n 37) 12.

⁶⁴ eg, UDHR (n 45) art 17; International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (ICERD) art 5(d)(v).

equally; it also involves recognising and accommodating cultural differences.⁶⁵ For instance, in *Thlimmenos v. Greece*, the European Court of Human Rights emphasised that not addressing the distinct needs of culturally different individuals constitutes discrimination.⁶⁶ Similarly, the Committee on the Elimination of Racial Discrimination highlights that equal treatment without considering objective differences can still be discriminatory.⁶⁷ In summary, non-discrimination requires that Indigenous communities aren't compelled to use land in ways typical of the majority society to claim property rights. Instead, if Indigenous communities have historically utilised land in culturally specific ways, this constitutes a legitimate basis for property rights.

2.4. Rights to LTR as Cultural Rights

Indigenous rights to LTR were initially framed as cultural rights. This stemmed from Indigenous groups advocating for control over their territories through the right to self-determination, albeit indirectly, due to limitations within the Human Rights Committee.⁶⁸ The Committee, unable to address collective rights directly, interpreted indigenous claims as violations of individual cultural rights, shaping the foundation of contemporary international indigenous land rights.⁶⁹

The Human Rights Committee has broadened the scope of Article 27 of the International Covenant on Civil and Political Rights to include protection for indigenous land uses. It prohibits interference that significantly impacts indigenous livelihoods or cultural land practices, considering cumulative effects without a proportionality test.⁷⁰ While not formally recognising Indigenous collectives as legal subjects, the Committee acknowledges collective dimensions of cultural rights, protecting individuals' practices can indirectly safeguard the group.⁷¹

UNGA Res 217 A(III) (UDHR) art 17; International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965) (ICERD) art 5(d)(v).

⁶⁵ UNDESA (n 63).

⁶⁶ *Thlimmenos v. Greece* (2000) 31 ECHR 411 [44].

⁶⁷ United Nations Committee on the Elimination of Racial Discrimination, 'General Recommendation No 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms of Racial Discrimination' (24 September 2009) UN Doc CERD/C/GC/32 para 8.

⁶⁸ UNDESA (n 37) 20.

⁶⁹ ICCPR, *Poma Poma v. Peru* (Comm. No. 1457/2006) UN Doc CCPR/C/95/D/1457/2006 (27 March 2009), paras 7.6, 7.7.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

3. Rights to LTR in International Legal Frameworks

UNDRIP and ILO Convention No. 169 are foundational international instruments defining Indigenous peoples' rights to lands, territories, and resources.⁷² They are harmonious and mutually supportive, framing these rights within the broader universal human rights framework. Rather than introducing new rights, they contextualise existing rights to address the collective needs of Indigenous peoples, aiming to rectify historical injustices and contemporary discrimination.⁷³

However, UNDRIP has garnered significant support, with many arguing it reflects customary international law due to its widespread acceptance and integration into national laws and policies.⁷⁴ The consistent references to UNDRIP in international jurisprudence, such as by the Inter-American Court of Human Rights, further solidify its principles as part of customary law.⁷⁵ By enhancing existing human rights frameworks, UNDRIP articulates specific rights for Indigenous peoples, advancing norms that many states practise and endorse, thus indicating both state practice and *opinio juris*.⁷⁶ On the contrary, some commentators argued that UNDRIP is a non-binding General Assembly resolution, and its principles require explicit state consent to be considered legally binding.⁷⁷ Inconsistent state practices and a lack of clear *opinio juris*, where states do not uniformly see these principles as obligatory, weaken the argument.⁷⁸ Initial opposition from key states like Canada, Australia, New Zealand, and the United States, despite their later endorsement and varied implementation across jurisdictions, further highlights the divergence in acceptance and application, suggesting that UNDRIP remains more aspirational than a binding norm in international law.⁷⁹

⁷² UNDRIP (n 30); ILO Convention No 169 (n 26).

⁷³ Birgitte Feiring, *Indigenous peoples' rights to lands, territories, and resources* (The International Land Coalition 2012), 16 <<https://learn.landcoalition.org/en/resources/indigenous-peoples-rights-to-lands-territories-and-resources/>> accessed 7 June 2024.

⁷⁴ Shea Esterling, 'Looking Forward Looking Back: Customary International Law, Human Rights and Indigenous Peoples' (2021) 28(2) *International Journal on Minority and Group Rights* 280, 283.

⁷⁵ James S Phillips, 'The Rights of Indigenous Peoples under International Law' (2015) 26(2) *Global Bioethics* 120, 120 <<https://www.tandfonline.com/doi/full/10.1080/11287462.2015.1036514>> accessed 28 March 2024.

⁷⁶ Esterling (n 74).

⁷⁷ International Law Association Committee on the Rights of Indigenous Peoples, 'Rights of Indigenous Peoples' (75th Conference of the International Law Association, Sofia, 2012) para 2; Phillips (n 75); Megan Davis, 'To Bind or Not to Bind: The United Nations Declaration on the Rights of Indigenous Peoples Five Years On' (2012) 19 *Australian International Law Journal* 17, 20.

⁷⁸ International Law Association (n 77).

⁷⁹ Rosa M Navarro, 'The Right to Self-Determination of Indigenous Peoples under International Customary Law' (MA thesis, The American University in Cairo 2021) 45.

Articles 10, 25, 26, and 27 of the UNDRIP emphasise the protection of Indigenous lands and rights. Article 10 prohibits forced removal from their lands without free, prior, informed consent, fair compensation, and the option of return.⁸⁰ Article 25 affirms their right to maintain and strengthen their spiritual relationship with traditionally owned lands and resources.⁸¹ Article 26 grants Indigenous peoples the right to own, use, develop, and control their lands and resources, requiring states to recognise and respect their customs and traditions legally.⁸² Article 27 mandates states to establish fair, independent, and transparent processes, in collaboration with Indigenous peoples, to adjudicate land rights, respecting Indigenous laws and traditions.⁸³

The Declaration's articles on Indigenous peoples' rights to lands, territories, and resources are progressive, providing extensive and clearly defined rights not previously detailed in international human rights instruments.⁸⁴ These articles build upon the 1989 ILO Convention 169, which set binding standards for states regarding Indigenous land rights, including respect for their cultural and spiritual relationship with the land, recognition of ownership and possession of traditionally occupied lands, access to lands traditionally used but not exclusively occupied, and prohibition of removal except under specific conditions.⁸⁵

Article 26 of the Declaration addresses Indigenous peoples' rights to their lands, territories, and resources, stating that-

- ‘1. Indigenous peoples have the right to land, territories, and resources traditionally owned, occupied, or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources they possess by reason of traditional ownership or other traditional occupation or use, as well as those they have otherwise acquired.

⁸⁰ UNDRIP (n 30) art 10.

⁸¹ UNDRIP (n 30) art 25.

⁸² UNDRIP (n 30) art 26.

⁸³ UNDRIP (n 30) art 27.

⁸⁴ International Law Association Committee on the Rights of Indigenous Peoples, *Report* (The Hague Conference 2010).

⁸⁵ Claire Charters, ‘Indigenous Peoples’ Rights to Lands, Territories, and Resources in the UNDRIP’ in Jessie Hohmann and Marc Weller (eds), *The UN Declaration on the Rights of Indigenous Peoples: A Commentary* (Oxford University Press 2018) 395–424

<<http://opil.ouplaw.com/view/10.1093/law/9780199673223.001.0001/law-9780199673223-chapter-3>> accessed 6 June 2024.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.⁸⁶

From the plain meaning of Article 26, the extent of Indigenous peoples' rights to lands, territories, and resources previously used but now under third-party ownership is unclear.⁸⁷ Charters commented that it should not fall below Article 14 of ILO Convention 169,⁸⁸ This safeguards the right to use lands for subsistence and traditional activities, even if not exclusively occupied by Indigenous peoples.⁸⁹ S. James Anaya interprets Article 14 of ILO Convention 169 as extending to lands no longer possessed by Indigenous peoples if there is a continued cultural attachment, particularly if dispossession was recent.⁹⁰ However, it remains unclear if Article 26(1) extends to owning, using, developing, and controlling lands now under third-party ownership.⁹¹ Article 26(2) only guarantees these rights for lands still in Indigenous possession.

As a human rights instrument, the Declaration should align with principles of equality and non-discrimination. Article 26(1) should be interpreted to reduce inequality by allowing Indigenous peoples who lost their lands a claim to them while ensuring robust protection for those who still retain their lands.⁹² Thus, Article 26(1) suggests that Indigenous rights to lands now held by third parties extend beyond mere access for spiritual purposes but fall short of complete ownership and control. It also requires more than just a process for recognising and adjudicating these rights.⁹³

The negotiating history of Article 26(1) highlights the reasons for its ambiguity and offers insights into its interpretation. The CANZUS states (Canada, Australia, New Zealand, and the United States) consistently argued that Indigenous rights to lands, territories, and resources should be limited by third-party rights and expressed concerns about the provisions'

⁸⁶ UNDRIP (n 30) art 26.

⁸⁷ Charters (n 85) 414.

⁸⁸ Article 14 of ILO Convention 169 mandates the recognition of indigenous peoples' rights to ownership and possession of the lands they traditionally occupy, and it requires governments to take necessary steps to identify these lands and safeguard their rights. ILO Convention No 169 (n 26) art 14.

⁸⁹ Ibid.

⁹⁰ Anaya (n 10).

⁹¹ Charters (n 85) 414.

⁹² UNDRIP (n 30) art 26 (2).

⁹³ Charters (n 91).

retrospective nature regarding past losses.⁹⁴ Despite these objections, the Declaration retained a robust, albeit general, provision for lands no longer in Indigenous possession, reflecting Indigenous peoples' insistence on their claims.

Earlier drafts of the Declaration included strong rights to lands and resources lost by Indigenous peoples. For example, the 1987 draft principles stated that governments should guarantee Indigenous rights to traditional territories and return or adequately compensate for lands taken without consent.⁹⁵ Throughout negotiations from the mid-1990s to early 2000s, Indigenous peoples strongly supported a more explicit text, as in the Sub-Commission Text, affirming their right to own, control, use, and develop traditionally owned lands and resources.⁹⁶

The IACtHR in *Yakye Axa v. Paraguay*⁹⁷ and *Sawhoyamaya v. Paraguay*⁹⁸ analysed Indigenous land rights even under third-party ownership. Both cases involved Indigenous peoples maintaining a connection with their lands despite legal titles held by others for over a century.⁹⁹ The IACtHR held that Indigenous peoples' right to restitution persists as long as their identity is tied to their traditional lands. The Court balanced private property rights with Indigenous communal rights, emphasising the unique significance of Indigenous territories for their survival and cultural heritage. It ruled that protracted delays and ineffective procedures violated fair trial rights and ordered Paraguay to return the lands.¹⁰⁰ Similarly, in the *Endorois case*¹⁰¹, the African Commission found breaches of property rights for Indigenous peoples evicted decades earlier. It concluded that traditional possession has the equivalent effect as state-granted titles, and Indigenous peoples maintain rights to lands lost without legal title, requiring restitution or equivalent lands.¹⁰²

⁹⁴ United Nations Commission on Human Rights, 'Report of the Working Group Established in Accordance with Commission on Human Rights Resolution 1995/32' (6 January 2003) UN Doc E/CN.4/2003/92 paras 28–29

⁹⁵ United Nations Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 'Report of the Working Group on Indigenous Populations' (24 August 1987) UN Doc E/CN.4/Sub.2/1987/22 annex IV.

⁹⁶ Charters (n 85) 415.

⁹⁷ *Yakye Axa v Paraguay* (Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 125 (17 June 2005).

⁹⁸ *Sawhoyamaya v Paraguay* (Merits, Reparations, and Costs), IACtHR Series C No 146 (29 March 2006)

⁹⁹ Charters (n 85) 416.

¹⁰⁰ *Sawhoyamaya* (n 98) para 136.

¹⁰¹ *Centre of Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (4 February 2010) African Commission on Human and Peoples' Rights Communication No 276/2003.

¹⁰² *Ibid*, para 209.

Indigenous peoples' rights to currently possessed lands, territories, and resources, as expressed in Article 26(2) of the Declaration, are now settled. These rights are confirmed by various international instruments and jurisprudence from bodies like the IACtHR and UN human rights treaty bodies.¹⁰³ The IACtHR's jurisprudence, seen in *Sawhoyamaya* and cited in *Endorois*, aligns with Article 26(2), affirming that Indigenous peoples do not need state-recognised titles to acknowledge their land rights.¹⁰⁴ Article 26(3) further requires states to legally recognise and protect Indigenous possession of lands, territories, and resources.¹⁰⁵

The Declaration also draws on interpretations of binding human rights conventions, notably the Committee on the Elimination of Racial Discrimination (CERD)'s General Recommendation 23,¹⁰⁶ This urges states to recognise and protect Indigenous peoples' rights to own, develop, control, and use their communal lands, territories, and resources.¹⁰⁷ Similarly, the Human Rights Committee (HRC) has clarified that Article 27 of the ICCPR includes cultural rights tied to land use, particularly for Indigenous peoples. This includes traditional activities like fishing and hunting, and may require legal protection and participation in relevant decisions.¹⁰⁸ In the *Lubicon Lake*¹⁰⁹ In this case, the HRC found Canada in breach of Article 27 for allowing land expropriation.¹¹⁰ Similarly, the CESCR in General Comment 4 stated that forced evictions are generally incompatible with the Covenant, except in exceptional circumstances.¹¹¹

3.1. Free, prior, and informed consent

Article 10 of the Declaration prohibits the forced removal of Indigenous peoples from their lands without their free, prior, and informed consent.

¹⁰³ *Sawhoyamaya* (n 98) para 128.

¹⁰⁴ *Charters* (n 85) 417.

¹⁰⁵ UNDRIP (n 30) art 26 (3).

¹⁰⁶ United Nations Committee on the Elimination of Racial Discrimination, 'General Recommendation 23: Rights of Indigenous Peoples' (18 August 1997) UN Doc A/52/18 para 5. (CERD)

¹⁰⁷ CERD (n 106) para 5.

¹⁰⁸ United Nations Commission on Human Rights, 'Report of the Working Group Established in Accordance with Commission on Human Rights Resolution 1995/32' (6 December 1999) UN Doc E/CN.4/2000/84 para 106 (UNCHR).

¹⁰⁹ Report of the Human Rights Committee, *Lubicon Lake Band v Canada* (Comm No 167/1984) UN Doc Supp No 40 A/45/40 (26 March 1990).

¹¹⁰ *Ibid*, para 2.3.

¹¹¹ United Nations Committee on Economic, Social and Cultural Rights, 'General Comment No 4: The Right to Adequate Housing' (13 December 1991) UN Doc E/1992/23 annex III, 114 (CESCR).

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.¹¹²

However, there's ambiguity regarding whether it applies only to present and future situations or retroactively to past removals. The language of Article 10, expressed in the present and future tense, leaves room for interpretation. This ambiguity is evident from the negotiating history of the Declaration.¹¹³ Article 10 primarily applies to present and future removals of Indigenous peoples, with potential, albeit limited, application to past removals.¹¹⁴ This provision of the Declaration imposes an absolute prohibition on removals and relocations of Indigenous peoples without exceptions, reflecting their historical experiences of forced displacement. States expressed concerns about practical challenges and advocated for exceptions, especially in armed conflict or natural disasters, emphasising the need for just compensation.¹¹⁵

The Declaration's provisions, including those on Free, Prior, and Informed Consent (FPIC), do not establish new rights for Indigenous peoples but elaborate on general human rights principles in their unique historical, cultural, and social circumstances.¹¹⁶ FPIC has three primary purposes in the Declaration. First, it aims to restore indigenous control over lands and resources based on native title principles and long-standing international law.¹¹⁷ Second, FPIC can enhance Indigenous cultural integrity and self-esteem,¹¹⁸ Addressing the issue of cultural heritage taken without consent. Third, FPIC seeks to balance power between indigenous peoples and States, promoting partnerships based on rights and mutual respect.¹¹⁹

3.2. Spiritual relationship with traditionally owned and used LTR

Article 25 of the Declaration asserts Indigenous peoples' right to nurture and fortify their

¹¹² UNDRIP (n 30) art 10.

¹¹³ Charters (n 85) 407.

¹¹⁴ UNCHR, 'Report of the Working Group' (6 December 1999) UN Doc E/CN.4/2000/84 para 91.

¹¹⁵ Charters (n 85) 408.

¹¹⁶ UNHRC, 'Free, prior and informed consent: a human rights-based approach: Study of the Expert Mechanism on the Rights of Indigenous Peoples' (10 August 2018) UN Doc A/HRC/39/62 para 3.

¹¹⁷ UNDRIP (n 30) art 28.

¹¹⁸ Ibid art 11.

¹¹⁹ UNHRC, 'Progress report on the study on indigenous peoples and the right to participate in decision-making Report of the Expert Mechanism on the Rights of Indigenous Peoples' (17 May 2010) UN Doc A/HRC/EMRIP/2010/2 para 35.

profound spiritual connection with their traditional lands, territories, waters, and resources, emphasising its protection.¹²⁰ This echoes Article 13(1) of ILO Convention 169, which stresses governments' obligation to respect Indigenous peoples' cultural and spiritual ties to their lands.¹²¹ However, Article 25 stands out by recognising Indigenous peoples' spiritual relationship as an independent right, distinct from other land-related rights. While it lacks explicit mention of cultural value, the Declaration prioritises preserving and enhancing Indigenous cultures, particularly concerning their lands and resources.¹²²

The preamble of UNDRIP emphasises that Indigenous control over their lands fosters the preservation of their cultures and traditions. Therefore, a "spiritual relationship" should encompass the cultural connection between Indigenous peoples and their lands, viewed through their cultural perspectives rather than outsiders' interpretations of religion.¹²³ This relationship manifests in diverse practices and traditions integral to Indigenous spirituality. Article 25's broad interpretation should encompass these practices, even if they require exclusive possession of lands, potentially conflicting with other claims.

Unlike other articles, Article 25 mentions explicitly 'waters,' 'coastal seas,' and 'other' resources, prompting questions about its scope compared to generic references to resources. This may suggest a narrower interpretation, limiting 'other' resources to similar ones like lakes and rivers. However, earlier drafts and negotiation positions indicate that Article 25's inclusion of waters and coastal seas doesn't restrict the interpretation of 'other' resources, which should encompass all resources.¹²⁴ This aligns with the broad interpretation of 'lands' in ILO Convention 169 and the negotiations' acknowledgement that Article 25 covers surface and sub-surface resources.¹²⁵

3.3. Recognise and Adjudicate Rights to LTR

Article 27 of the Declaration requires states to establish fair, independent, and transparent processes in conjunction with Indigenous peoples to recognise and adjudicate their land,

¹²⁰ UNDRIP (n 30) art 25.

¹²¹ ILO Convention No 169 (n 26) art 13.

¹²² Charters (n 85) 410.

¹²³ Ibid.

¹²⁴ Ibid, 413.

¹²⁵ UNCHR, *Report of the Working Group Established in Accordance with Commission on Human Rights Resolution 1995/32* (7 January 2004) UN Doc E/CN.4/2004/81 para 112.

territory, and resource rights, considering their laws, traditions, customs, and land tenure systems. Indigenous peoples must have the right to participate in these processes.¹²⁶

Introduced late in negotiations, Article 27 partly compensates for the decision not explicitly addressing rights to traditionally owned lands now lost.¹²⁷ It parallels Article 14(3) of ILO Convention 169, which calls for national legal measures to resolve Indigenous land claims but does not specify the inclusion of lost lands.¹²⁸

Unlike ILO Convention 169, which is limited to circumstances of removal and non-returnable lands, Article 27 broadly applies to recognising and adjudicating Indigenous rights to all traditionally owned, occupied, or used lands, including those not currently possessed.¹²⁹ It demands more stringent process requirements, emphasising fairness, independence, and transparency, and ensures Indigenous participation beyond mere representation.¹³⁰

4. Environmental Crisis and Indigenous Peoples' Rights to LTR

From its inception in 1982, the Working Group on Indigenous Populations (WGIP) focused on Indigenous land protection and their involvement in national development, especially in managing their resources.¹³¹ WGIP expressed concerns about land loss due to development, cultural erosion, environmental damage, and military abuses. They emphasised Indigenous rights to self-determination, land, and resource control, insisting that development should proceed only with Indigenous consent and profit-sharing.¹³² Errico argued that the WGIP's focus on Indigenous rights to land and resources emerged as a key concern, leading to contentious negotiations and a compromise in Articles 29, 30, and 32 of UNDRIP.¹³³ These

¹²⁶ UNDRIP (n 30) art 27.

¹²⁷ Charters (n 85) 423.

¹²⁸ ILO Convention No 169 (n 26) art 14(3).

¹²⁹ Charters (n 85) 424.

¹³⁰ UNDRIP (n 30) art 27.

¹³¹ The Working Group on Indigenous Populations (WGIP) was established under the Sub-Commission on the Promotion and Protection of Human Rights, allowing indigenous peoples to share experiences and raise concerns at the UN. Initially, it was a subsidiary of the Sub-Commission and by Human Rights Council's resolution 6/36, adopted on December 14, 2007, reformed as the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). see, UNDESA (n 24).

¹³² United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, Working Group on Indigenous Populations, *Report of the Working Group on Indigenous Populations on Its First Session* (25 August 1982) UN Doc E/CN.4/Sub.2/1982/33 para 69 <<https://digitallibrary.un.org/record/36801?v=pdf>> accessed 8 June 2024.

¹³³ Stefania Errico, 'Control over Natural Resources and Protection of the Environment of Indigenous Territories' in Jessie Hohmann and Marc Weller (eds), *The UN Declaration on the Rights of Indigenous Peoples: A Commentary* (Oxford University Press 2018) 425–460, 426

provisions coincided with ILO Convention 169, which emphasised Indigenous self-determination in development.¹³⁴ The drafting history reflected a broader shift towards human rights-respecting development and environmental protection, crucial for Indigenous peoples' relationship with their land.¹³⁵

Article 29 of UNDRIP emphasises the right of Indigenous peoples to protect their environment and resources, with states required to support this without bias. It also mandates states to prevent hazardous waste disposal on Indigenous lands without consent and to ensure health programs for affected Indigenous communities are in place.¹³⁶ Article 30 restricts military activities on indigenous lands unless they serve the public interest or are agreed upon by the Indigenous peoples. States must consult with Indigenous communities before conducting military operations on their lands.¹³⁷ Article 32 grants Indigenous peoples the authority to shape the development of their lands and resources. States must seek their consent before starting projects that affect their territories, especially those involving natural resources.¹³⁸ Additionally, states must offer remedies for any damages and minimise negative impacts on the environment and Indigenous cultures.¹³⁹

The UNDRIP acknowledges Indigenous peoples' strong connection to their territories and emphasises environmental protection. Article 29 grants Indigenous peoples the right to conserve and safeguard the productivity of their lands, prohibiting the storage of hazardous materials without their free, prior, and informed consent.¹⁴⁰ This provision addresses concerns raised by Indigenous communities about the detrimental effects of activities like mining and nuclear testing on their lives and livelihoods during the drafting process. Amidst growing global concern for the environment, negotiations for this Article coincided with increased awareness of the health risks posed by hazardous wastes.¹⁴¹

<<http://opil.ouplaw.com/view/10.1093/law/9780199673223.001.0001/law-9780199673223-chapter-3>> accessed 6 June 2024.

¹³⁴ ILO Convention No 169 (n 26) art 7.

¹³⁵ Errico (n 133).

¹³⁶ UNDRIP (n 30) art 29.

¹³⁷ UNDRIP (n 30) art 30.

¹³⁸ UNDRIP (n 30) art 32.

¹³⁹ Ibid.

¹⁴⁰ UNDRIP (n 136).

¹⁴¹ Fatma Zohra Ksentini, United Nations Economic and Social Council, Commission on Human Rights, 'Special Rapporteur on the Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights' (20 March 2000) UN Doc E/CN.4/2000/50.

Debates over Article 29 of the Declaration centred on the extent of State obligations. Originally, the draft included a mandate for environmental restoration alongside conservation and protection measures.¹⁴² However, concerns about this obligation's impracticality and potentially limitless nature led to its removal in the final text.¹⁴³

Article 29(1) mandates that states provide non-discriminatory assistance to indigenous peoples for environmental conservation¹⁴⁴ and Article 29(3) requires effective measures for monitoring and restoring the health of Indigenous populations affected by hazardous materials.¹⁴⁵ The interconnectedness of environmental protection and human rights, including rights to life, health, food, housing, and family, also underscores States' obligations.¹⁴⁶ Even without explicit provisions, environmental threats are addressed through consultation, participation, free, prior, informed consent, and prior impact assessments. ILO Convention 169 also mandates that states collaborate with Indigenous peoples to protect and preserve their environment, including by taking special measures.¹⁴⁷

Despite the protections afforded by the UNDRIP and ILO Convention 169, the environmental crisis severely impacts indigenous rights to LTR. Climate change, deforestation, pollution, and resource extraction are degrading these vital areas, rendering them unusable for traditional practices and livelihoods. This environmental degradation threatens the very existence of indigenous communities, as their cultural and physical survival is intrinsically linked to their land and natural resources. The failure to effectively implement and enforce these international provisions aggravates their vulnerability, highlighting the urgent need for stronger measures to safeguard indigenous lands in the face of escalating environmental challenges.

5. Climate Change and Indigenous Rights to LTR

Indigenous peoples often live in areas highly vulnerable to climate change.¹⁴⁸ In the Amazon

¹⁴² Errico (n 133) 452.

¹⁴³ UNESCO, 'Report of the working group established in accordance with Commission on Human Rights resolution 1995/32' (6 January 2003) UN Doc E/CN.4/2003/92 para 37.

¹⁴⁴ UNDRIP (n 30).

¹⁴⁵ Ibid.

¹⁴⁶ Errico (n 133) 453.

¹⁴⁷ ILO Convention No 169 (n 26) art 7(4).

¹⁴⁸ Erica-Irene A Daes, 'Principal Problems Regarding Indigenous Land Rights and Recent Endeavours to Resolve Them' in Asbjørn Eide, Jakob Th Möller and Ineta Ziemele (eds), *Making Peoples Heard: Essays on Human Rights in Honour of Gudmundur Alfredsson* (Martinus Nijhoff Publishers 2011) 463–484, 465; Michelo Hansungule and Ademola Oluborode Jegede, 'The Impact of Climate Change on Indigenous Peoples' Land Tenure and Use: The Case for a Regional Policy in Africa' (2014) 21 *International Journal on Minority and Group Rights* 256, 257.

Rainforest, traditional homes are threatened by intensified droughts and rising temperatures.¹⁴⁹ Due to these changes, traditional farming practices in Asia and South America face greater risk.¹⁵⁰ Arctic Indigenous peoples, such as the Alaskan Native village of Kivalina, are experiencing melting permafrost, rising sea levels, and more frequent storms, making traditional fishing and hunting increasingly dangerous.¹⁵¹ Some groups face collapsing structures due to sea ice melt and are now seeking relocation. The harm climate change causes to indigenous peoples is difficult to quantify. The costs extend beyond monetary terms. Climate change worsens social vulnerabilities, forcing communities to relocate due to sea level rise or food shortages. This leads to the loss of cultural connections, territories, and identities.¹⁵²

Indigenous groups expressed frustration over the exclusion of the UNDRIP from global climate agreements, notably the exclusion from the main event of the COP21 Climate Summit in December 2015.¹⁵³ In response, they organised their own events and established the Indigenous Peoples Forum on Climate Change (IIPFCC).¹⁵⁴ At the Sixteenth Session of the UNPFII in 2017, the ILO reiterated the critical role of indigenous peoples in climate action and highlighted Indigenous peoples as key players in mitigating and adapting to climate change.¹⁵⁵

Many international declarations and conventions affirm the connection between indigenous peoples and their traditional lands.¹⁵⁶ However, Indigenous peoples are not directly subject to international law. Thus, NGOs often advance their human rights claims. For instance, the Inuit Circumpolar Council (ICC)¹⁵⁷ filed a claim with the IACHR in 2005, asserting that U.S. actions

¹⁴⁹ Bernardo M Flores and others, 'Critical Transitions in the Amazon Forest System' (2024) 626 *Nature* 555 <<https://www.nature.com/articles/s41586-023-06970-0#citeas>> accessed 8 June 2024.

¹⁵⁰ Jeetendra Prakash Aryal and others, 'Climate Change and Agriculture in South Asia: Adaptation Options in Smallholder Production Systems' (2020) 22 *Environment, Development and Sustainability* 5045, 5046 <<https://link.springer.com/article/10.1007/s10668-019-00414-4>> accessed 8 June 2024.

¹⁵¹ P Joshua Griffin, 'Arctic Sea Ice Loss and Fierce Storms Leave Kivalina's Volunteer Search and Rescue Fighting to Protect Their Island from Climate Disasters' (*Down to Earth*, 27 April 2023) <<https://www.downtoearth.org.in/blog/climate-change/arctic-sea-ice-loss-and-fierce-storms-leave-kivalina-s-volunteer-search-and-rescue-fighting-to-protect-their-island-from-climate-disasters-88993>> accessed 9 June 2024.

¹⁵² Hansungule (n 148).

¹⁵³ Linda Etchart, 'The Role of Indigenous Peoples in Combating Climate Change' (2017) 3 *Palgrave Communications* <<https://doi.org/10.1057/palcomms.2017.85>> accessed 9 June 2024.

¹⁵⁴ Established in 2008, the International Indigenous Peoples Forum on Climate Change (IIPFCC) serves as the caucus for Indigenous Peoples involved in UNFCCC processes. International Indigenous Peoples Forum on Climate Change, 'Who We Are' <<https://www.iipfcc.org/who-are-we>> accessed 9 June 2024.

¹⁵⁵ International Labour Organization, *Indigenous Peoples and Climate Change: From Victims to Change Agents through Decent Work* (Technical Note, 7 November 2016) <<https://www.ilo.org/publications/indigenous-peoples-and-climate-change-victims-change-agents-through-decent-0>> accessed 9 June 2024.

¹⁵⁶ UNDRIP (n 30); ILO Convention No 169 (n 26).

¹⁵⁷ Founded in 1977 by Eben Hopson of Barrow, Alaska, the Inuit Circumpolar Council (ICC) represents around 180,000 Inuit Indigenous peoples from Alaska, Canada, Greenland, and Chukotka (Russia) and holds

and omissions contributing to climate change violated Inuit peoples' rights.¹⁵⁸ Although the claim was denied due to climate change's global nature, it highlighted indigenous peoples' ties to their lands, territories, and resources.¹⁵⁹ Global climate policies must create a coherent sustainability framework focused on specific places. For indigenous peoples, a deep connection to their land and environment has naturally fostered sustainability. This traditional land ethic, integral to their identity, contrasts with the modern, often vague use of "sustainability" in political discourse.¹⁶⁰

Indigenous peoples significantly reduce greenhouse gas (GHG) emissions through sustainable practices and resistance to deforestation and resource extraction. Their effective stewardship over biodiversity and sustainable lifestyles has mitigated climate change for thousands of years.¹⁶¹ Additionally, indigenous farming methods, such as rotational farming and pastoralism, also use eco-friendly, renewable resources, enhancing ecosystem health. Examples include the Igorot of the Philippines, the Karen of Thailand, China, and Myanmar, and the Achiks of India, whose rotational agriculture supports forest and jungle ecosystems, which are crucial for mitigating global warming.¹⁶²

Indigenous peoples have a deep connection to their lands, which forms the foundation of their economic, social, and cultural systems. Their traditional livelihoods, such as agriculture, hunting, gathering, pastoralism, and fishing, make them particularly vulnerable to climate change. Despite contributing the least to greenhouse gas emissions and having minimal ecological footprints, they face the worst impacts of climate change and its mitigation measures.¹⁶³ Studies often overlook the specific effects on Indigenous communities, which

Consultative Status II at the United Nations. Inuit Circumpolar Council, 'About ICC'

<<https://www.inuitcircumpolar.com/about-icc/>> accessed 10 June 2024.

¹⁵⁸ Inuit Circumpolar Council, *Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States* (7 December 2005) <https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2005/20051208_na_petition.pdf> accessed 10 June 2024.

¹⁵⁹ Inter-American Commission on Human Rights, *Petition on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States* (Decision, 16 November 2006) https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2006/20061116_na_decision.pdf accessed 10 June 2024.

¹⁶⁰ Rebecca Tsosie, 'Climate Change and Indigenous Peoples: Comparative Models of Sovereignty' in Randall S Abate and Elizabeth Ann Kronk (eds), *Climate Change and Indigenous Peoples* (Edward Elgar Publishing 2013) 239–257, 255.

¹⁶¹ United Nations Economic and Social Council, Victoria Tauli-Corpuz and Aqqaluk Lynge, 'Impact of Climate Change Mitigation Measures on Indigenous Peoples and on Their Territories and Lands' (Report of the Permanent Forum on Indigenous Issues, 19 March 2008) UN Doc E/C.19/2008/10 (UNESCO).

¹⁶² International Working Group for Indigenous Affairs, 'Indigenous Peoples of the Philippines' <http://www.iwgia.org/sw16704.asp> accessed 10 June 2024; Ibid, 8.

¹⁶³ Hansungule (n 148).

have not significantly benefited from climate change funds or emissions trading schemes. Even in mitigation, market-driven measures dominate, while non-market, human rights-based, and ecosystem approaches are largely ignored.¹⁶⁴

6. Conclusion

Indigenous peoples' rights to lands, territories, and resources are deeply rooted in self-determination, property rights, and cultural identity. Unlike traditional human rights frameworks that focus on individuals, Indigenous advocacy highlights the collective nature of these rights, reflecting their unique governance systems and sustainable stewardship of their environments. International law has progressively recognised Indigenous peoples as distinct 'peoples' with the right to self-determination, allowing them meaningful control over their territories and resources. However, this right remains balanced against state sovereignty. However, the journey towards fully realising these rights is fraught with challenges. While UNDRIP has advanced the international discourse on Indigenous rights, its status as customary international law remains debated. Incorporating its principles into national laws and international jurisprudence suggests a growing recognition, yet inconsistencies in state practices and the lack of unanimous support highlight the complexities in its implementation.

These legal and political obstacles are further complicated by the accelerating environmental degradation and climate crisis, which disproportionately impact Indigenous lands and communities. As Indigenous peoples are often the stewards of some of the world's most ecologically significant territories, failure to secure their rights not only threatens their survival and cultural integrity but also undermines global efforts toward biodiversity conservation and climate resilience. Therefore, addressing the full realisation of indigenous rights to LTR is a matter of justice and human rights and a critical component of effective international environmental and climate governance. Integrating indigenous legal claims and stewardship into environmental policies offers a pathway for more sustainable and equitable responses to the planetary crisis. As global awareness and support for Indigenous rights grow, states and international institutions must work collaboratively to address historical injustices. Ensuring that Indigenous peoples can exercise their rights fully and effectively will, in turn, promote environmental conservation and strengthen climate resilience.

¹⁶⁴ UNESCO (n 161) 20.