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Legal Protection of Indigenous Peoples Under International Environmental Law

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Abstract: Indigenous peoples have a unique relationship with their environment, but they are under immense threat from environmental destruction, dispossession of land, and climate change. Even with the UNDRIP and CBD, although there are frameworks comprehensively defining their rights, protective measures lack adequate enforcement and are superficial at best. This article intends to focus on how much international environmental law extends in protecting an indigenous person's environmental rights by conducting a normative legal analysis of basic international treaties, case law, and regional human rights adjudications. The results suggest a gap between extensive legal recognition of indigenous rights and the perpetual challenge of state-controlled borders, corporate dominance, and insufficient enforcement policies. There are major gaps regarding the violation of FPIC, legal and illegal land tenure thresholds, widespread poverty, and restricted civil participation in the Amazon, Southeast Asia, and East African regions. The article examines gaps such as minimal legal oversight and looser regulation on state and corporate actors that impede shielded privileges from public scrutiny. To achieve these objectives, the author suggests strengthening these identified gaps through the establishment of bottom-up accountability approaches, integration of indigenous law frameworks, and an approach that views governance and environmental issues as human rights matters. The study advocates for the incorporation of indigenous peoples as active participants at the national and international levels of environmental governance, with full legal recognition and protection of their rights.

Keywords: Climate Justice, Indigenous Communities, International Environmental Law, Rights of Nature, UNDRIP

Introduction

The custodians of the natural world, Indigenous people, have all of the ecological knowledge systems, land stewardship, and sustainable living practices, which modern legal frameworks exist in parallel to. Globally, Indigenous communities make up for less than 6% of the entire population, but as a collective figure exceed 476 million individuals, spread across 90 plus countries. Still, Indigenous communities preserve a staggering 80% of the world's remaining biodiversity (United Nations, 2021). The deep relationship that Indigenous people have with the land, forests, rivers, and ecosystems is much more than

cultural and spiritual. It is existential. Even with such intrinsic rights to land, the ecological role of Indigenous communities is severely underappreciated, leading Indigenous people to face severe dispossession due to climate change, environmental degradation, extractive industries, and land grab (Tsosie, 2017; Knox, 2018).

The past twenty-one years have experienced a notable increase in the merging of international laws concerning the environment with legislation focusing on Indigenous people. Major global frameworks now recognize the importance of incorporating Indigenous wisdom into the management of natural resources. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007, recognizes the right of Indigenous peoples to protect their unique bond with their lands, territories, waters, and resources (UNDRIP, Art. 25). In the same way, the Convention on Biological Diversity (CBD), also through Article 8(j), supports the safeguarding of traditional knowledge associated with the conservation of biological diversity. Unfortunately, these declarations often remain in theory because there are no binding legal obligations, political law scoffs at bindings, and there are underdeveloped means to enforce them (Morgera and Nakamura, 2021; Crawhall, 2011)

The gap between acknowledgment and realization poses the distinct problem. Governments and multinational firms have, at times, pursued the so-called "development" of the environment or resource extraction activities, which centrally entail the removal, persecution, and even death of Indigenous defenders (Global Witness, 2023). The lack of guardrails within international environmental law raises issues about responsibility and fairness. What is the status of legal provisions designed to protect the environmental rights of Indigenous people? Do instruments of soft law like UNDRIP fulfill such a role, or is there a demand for more rigorous legal obligations accompanied by international courts of law to enforce them?

This article intends to answer those questions by focusing on the scope and impact of international legal frameworks regarding Indigenous peoples' rights to land and resources. It employs a legal research approach by analyzing treaties, legal documents, primary and secondary materials, and relevant jurisprudence from international and regional bodies like the Inter-American Court of Human Rights, the African Commission on Human and Peoples' Rights, and their counterpart Human Rights Committee. The research will underscore the efforts made within international law and the persistent failure of international environmental law to address, protect, and fulfill the rights of Indigenous peoples.

This research is important not just from a doctrinal perspective, but also from a practical one. The IPCC report of 2022 acknowledges that Indigenous and local knowledge systems are important in the context of climate change adaptation and mitigation (IPCC, 2022). However, without legal frameworks establishing land tenure, consenting before harm and environmentally invasive activities, and protective clauses against ecological damage, these peoples exist in a grey area of very limited legal protection and policy welfare (Savaresi, 2019; Tsosie, 2020).

Additionally, more current case law has started to strengthen the links between ecological harm and damage to the Indigenous peoples. In *Saramaka People v. Suriname* (2007), the Inter-American Court of Human Rights held that the right to property within the American Convention must, as a matter of logic, be extended to cover collective Indigenous ownership of land and resources. The same in the decision made by the African Commission in the case *Endorois v. Kenya* (2010), where FPIC was, as usual, emphasized on Indigenous lands.

Given these changes, this article is organized as follows: Section II provides an overview by defining "Indigenous peoples," "environmental rights," and certain commanding legal terms like sustainable development and FPIC. Section III maintains the focus of discussion around primary documents of international law dealing with the environmental rights of Indigenous peoples. Section IV focuses on lack of enforcement and compliance problem issues. Section V presents public policy issues in Latin America, Southeast Asia, and Africa to show practical realities. Section VI presents an assessment of the legal and policy framework of identified gaps and new legal developments. Section VII wraps up with a presentation of the main conclusions as well as recommendations on policy actions.

This study puts forward a new perspective on the issue of transnational environmental justice by demanding stronger laws that support the engagement of Indigenous peoples and legislation where governance is bottom-up in orientation. It requires a change from acceptance of acknowledgment without legal action to protective measures that legally bind states and non-state entities to protections under international law.

Methodology

This article utilizes a legal framework approach using normative legal research, which is appropriate for doctrinal studies in international law. The methodology includes examining legal documents such as treaties, declarations, case law, and scholarly writings with the intention of determining and critiquing the legal safeguards afforded to indigenous peoples within international environmental law.

The branches of the law from which this research draws are all in the public domain and therefore free for use in research, including:

- International treaties and conventions as of the date of writing, for example, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Convention on Biological Diversity (CBD), International Covenant on Civil and Political Rights (ICCPR), ILO Convention No. 169, and the Paris Agreement.
- Regional legislative documents and decisions, including rulings by the Inter-American Court of Human Rights (*Saramaka People v. Suriname*) and decisions of the African Commission on Human and Peoples' Rights (*Endorois v. Kenya*).
- Soft law instruments, including resolutions by the General Assembly and principles formulated under the UN Human Rights Council.

Moreover, the article performs a cross-country comparative legal study of Brazil, Indonesia, and East Africa to assess international norm implementation at the domestic level. The selection was based on the existence of documented legal controversies, sufficient scholarly literature, and relevance of the area.

Other published materials include academic journal articles, reports published by the UN, and legal writings by recognized authorities in international human rights law, environmental law, and indigenous peoples' law. All documents cited are held by the author and are otherwise accessible through the institution's academic archives and legal research tools.

Given that this is a purely non-intrusive doctrinal legal study, there are no human or animal subjects. Hence, no ethical approval was sought for this research study. The research did not incorporate any proprietary datasets, software, or confidential protocols

Conceptual Framework

Grasping the legal safeguards of Indigenous peoples in the context of international environmental law requires understanding basic concepts and the development of applicable legal precedents. This part outlines the primary concepts of this article, assesses the developing doctrine of environmental rights, and places the Indigenous legal persona within the scope of the governance of the environment.

a. Definition of Indigenous Peoples in International Law

No definition exists in international law to classify Indigenous peoples that could be universally accepted. Regardless, it appears that international legal instruments and bodies attempt to pinpoint Indigenous peoples through a blend of objective and subjective standards. The most referenced definition remains that of the International Labour Organization (ILO) Convention No. 169 (1989), which focuses on historical continuity, distinct culture, and self-identification (ILO, 1989, Art. 1).

Self-identification is claimed to be a fundamental criterion by the United Nations Permanent Forum on Indigenous Issues (UNPFII), along with shared history, territory, and cultural ties (UNPFII, 2023). In the view of Anaya (2009), ancestral colonization, dispossession, and social marginalization form the basis of Indigenous status.

For the purposes of international environmental law, Indigenous peoples are defined as distinct, self-identifying groups with a culture of ecosystem interactions that are bounded by particular lands and features, whose legal and political claims encompass essential components like sovereign territorial delineation, self-governance, environmental protection, and guardianship.

b. The Development of Environmental Rights Within International Law

Environmental rights have developed slowly in international law, often within other overarching frameworks of human rights instruments and declarations. In the 1972 Stockholm Declaration, Principle 1 granted the right to "an environment of a quality that permits a life of a dignified existence." This was built upon in the 1992 Rio Declaration and Agenda 21 by furthering sustainable development, the social good, environmental justice, and civic participation.

One important step was the adoption of UN General Assembly Resolution 76/300 (2022), which proclaimed as a right the title "Clean, healthy and sustainable environment" as a human right for everyone. While non-binding, this resolution marks a shift in policy intent and scope for assessing state obligations (UNGA, 2022).

For Indigenous peoples, environmental rights are not something theoretical; these are life-and-death issues. They bear directly on issues of cultural survival, identity, and even their occupation (Tsosie, 2017; Shelton, 2022). This connection has increasingly been drawn with regard to international law, which attempts to balance the protective policies vis-à-vis the environment with liberties dealing with lands, resources, and even traditional knowledge.

c. Free, Prior, and Informed Consent (FPIC)

Among the most crucial doctrines in Indigenous rights protection is the principle of Free, Prior, and Informed Consent (FPIC). As codified in Article 32(2) of the UNDRIP, FPIC obligates states to have the consent of Indigenous peoples for their projects dealing with the land, territory, and resources (Marah, 2025).

FPIC and self-determination carry the core virtues of freedom, involvement, decision-making power, and self-governance. As pointed out by Doyle (2015)—FPIC is not simply a matter of procedure; it is a right of dignity situated in deeper normative terrain. Regional interstate human rights institutions, for instance, the Inter-American Court of Human Rights, have understood the FPIC treaty as constitutive quasi-jus cogens or customary international law requirements in the context of extractive activities or even infrastructure projects (see *Saramaka People v. Suriname*, 2007).

Social FPIC's recognition is expanding; however, it is still circumvented or violated by states and corporations during its implementation, particularly in regions with governance gaps or during economic competition (Krakoff, 2018). Its effectiveness hinges on concrete steps toward implementation, a legal framework for enforcement, and clearly defined processes for non-compliance challenges.

d. Customary Land Tenure and Collective Rights

Another core concept involves acknowledgment of customary land tenure systems. Indigenous peoples do not receive state-issued land titles; they claim land based on their culture and identity, which is the foundation of collective ownership. There is growing acceptance in international law that such property, which is not democratic in nature, requires legal recognition (Gilbert, 2010).

In the matter of *Endorois v. Kenya* (2010), the African Commission on Human and Peoples' Rights ruled that Indigenous peoples have the collective right to own and control their ancestral lands, and people cannot be legally restricted from claiming 'ownership' if there are no legal documents or laws delineating boundaries. The Human Rights Committee was similarly of the view that doing so, without some due process and compensation, would contravene Article 27 of the International Covenant on Civil and Political Rights (ICCPR) (UNHRC, 2019).

Acknowledgment of customary tenure is necessary for achieving meaningful environmental justice for those marginalized groups and in places where legal systems are non-existent.

Legal Documents of a Global Scope Relating to the Marginalized Indigenous People's Environmental Rights

International law appears to be a patchwork of specialized instruments, evolving in its complexity, particularly in the context of the rights of indigenous people concerning their land and nature. These treaties and principles are either legally binding or considered "soft law" alongside regional court rulings. Even though there is no singular international treaty addressing the indigenous people's environmental concerns, there are various sources of legal instruments that are attempting to create a standard framework that countries are preferred to follow (Marah, 2025). This section looks into the most pertinent international legal documents, focusing on their content, coverage, legal authority, and other associated criteria.

a. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

UNDRIP was adopted by the United Nations General Assembly in 2007, marking it as the most detailed document on a global scale emphasizing the entitlement of marginalized indigenous people. Although not legally binding, it has been normatively influential over time and is increasingly being referenced in international jurisprudence, domestic courts, and international human rights institutions (Crawhall, 2011); Gilbert, 2020).

Important clauses of UNDRIP are attentive to rights regarding the environment. Article 25 recognizes the right of indigenous peoples to protect their spiritual relationship with traditionally owned lands, waters, and resources. Article 26 facilitates recognition of proprietary interests over these lands, whereas Article 29 mandates that states safeguard the environment and the productive ability of indigenous territories. Most notably, Article 32(2) establishes the principle of Free, Prior and Informed Consent, or FPIC, which obliges states to notify indigenous peoples and consult with them before the endorsement of any development activities on their territories.

Despite being soft in nature, UNDRIP has had an impact on domestic policy, especially in nations like Bolivia, Canada, and the Philippines. It has also been referenced in judicial and legislative analyses aimed at determining the scope of a state's responsibilities under internationally binding human rights treaties (Anaya, 2009) Savaresi, 2019).

b. Convention on Biological Diversity (CBD)

In 1992, the Convention on Biological Diversity, mandated by 196 Parties, is a biodiversity treaty that weaves together the conservation of biological diversity, sustainable biological resource use, and the fair sharing of derived benefits with the indigenous peoples' rights. States are required to acknowledge and defend the preservation of knowledge, customs, and practices of the indigenous people concerning

biodiversity and the innovation stemming from them (8j). They must also promote the equitable sharing of benefits that arise from utilizing such knowledge.

The Nagoya Protocol, adopted in 2010 under the CBD, sets out the strategies for access and benefit-sharing (ABS) with the indigenous peoples of the local community and reinforces their rights towards traditional ecological knowledge (Morgera, 2015). These provisions correspond with the FPIC principle and serve to advance environmental justice in a participatory governance framework.

But, as of now, the issues of implementation are still of concern. Under national legislations, Article 8(j) is not infused into the laws of existing frameworks. In addition, indigenous peoples are denied access to legal protection for the infringements (Knox, 2018; Sekine, 2021).

c. International Covenant on Civil and Political Rights (ICCPR)

Despite the fact that the ICCPR (1966) does not focus explicitly on the environment, it still has clauses that have been seen to support indigenous peoples' claims over land and culture. Article 27 secures the minority rights of enjoying their culture in common with other people, while international jurisprudence has associated this with land, territory, and resource capture (UNHRC, 2019). The Human Rights Committee, while recalling its General Comment No. 23, claimed that the airborne rights over land and the wiring practices pertaining to the country should be granted protection under Article 27.

Poma Poma v. Peru (2009) is one of the cases that has advanced this line of interpretation by arguing that failure to account for environmental impact as a part of development consultation with indigenous people is a civil and political rights violation under the covenant.

d. ILO Convention No. 169

The ILO Convention No. 169 (1989) is considered the only international treaty on indigenous and tribal peoples that is legally binding. It has been ratified by 24 countries as of 2024, but it does recognize the self-determination, land ownership, and inclusive decision-making sovereignty of indigenous peoples (ILO, 1989).

Articles 6, 7, and 15 are of particular concern. They require that indigenous people are elected through their representative bodies so that they participate in the governance of their region and that they also partake in the environment's control as well. Article 15(2) states that it is necessary for the people to be consulted regarding the exploitation of natural resources on their land.

The convention is legally binding but has an issue of low ratifications, particularly from countries with large indigenous populations like Canada, the United States, and several Asian countries (Swepston, 2014).

e. The Paris Agreement and Climate Justice

Historically, climate law has been state-centric. However, in 2015, the Paris Agreement recognized the rights of indigenous peoples in its preamble and operative clauses. It promotes the integration of traditional ecological wisdom in climate change-related activities (Paris Agreement, 2015, Art. 7.5). Within the UNFCCC, the Local

Communities and Indigenous Peoples Platform (LCIPP) offers some form of participation for indigenous peoples, although it is predominantly nomothetically advisory and does not exercise legal authority (Morgera & Nakamura, 2021).

There is a growing movement for the classification of climate justice as a human right, and indigenous peoples are rapidly emerging as principal actors in international climate processes, litigating for legal action on government neglect and damage to nature (Savaresi & Auz, 2019).

f. Regional Legal Systems and Jurisprudence

Regional human rights institutions have been active in the development of legal recognition of the environmental rights of indigenous peoples. The Inter-American Court of Human Rights has developed rich jurisprudence on collective land rights. In the case of *Saramaka People v. Suriname* (2007), the Court decided that nations are obliged to respect FPIC and carry out environmental impact evaluations prior to allowing any resource extraction activities within indigenous lands.

In *Endorois v. Kenya* (2010), the African Commission on Human and Peoples' Rights held that Kenya was responsible for illegally evicting the Endorois community from their ancestral lands, thereby establishing the rule of prior consultation and compensation within the framework of the African Charter.

The engagement of the European Court of Human Rights in cases of environmental justice is notable, although their attention to indigenous issues is far less in comparison to other jurisdictions.

Challenges in Enforcement and Compliance

While international environmental law has gradually recognized the rights of indigenous people, there remains the difficult problem of respecting and enforcement. These issues stem not only from the legal fragmentation and jurisdictional gaps, but also from more profound issues such as state control, corporate domination, and the political economy of development. This subsection summarizes the gaps that limit the enforcement of legal provisions on the environmental rights of indigenous people (Marah, 2025).

a. Legal Fragmentation and Weak Normative Integration

Among the multitude of issues relating to international law, one is the disintegration of different legal regimes. There is also a system of Indigenous lists which are unified under the UNDRIP framework, such as CBD, ICCPR, ILO 169, but it is fragmented. The existence of multiple documents creates ambiguity as to what constitutes a legal obligation, who is competent to grant authority, and what mechanism needs to be employed to solve normative disputes (Koskenniemi, 2007).

Furthermore, many international documents regarding indigenous people, particularly UNDRIP, are classified as 'soft law,' which indicates the absence of enforcement authority or judicial proceedings. Considered another way, these frameworks do not lack legal value; rather, their execution hinges entirely on the goodwill of the State, which undermines legal credibility (Shelton, 2022; Crawhall, 2011)

b. Sovereignty and Reluctance of State

The doctrine of state sovereignty is still the challenge to the indigenous rights of self-governance. There is always a dominant perception by many states that the claims made by the indigenous people in regard to land are an encroachment toward the threats of national unity, economic development, or even territorial integrity (Kingsbury, 2011). For this reason, the government tends not to acknowledge collective land rights, does not willingly apply FPIC procedures, or gives more attention to the national extractive and infrastructure projects as opposed to indigenous environmental protective measures.

Such is the case in the Amazon region and Southeast Asia, where the state has unconsulted the indigenous population and compensated them through primitive logging, large scale mining, or agricultural expansion (Gonzalez, 2015; Forest Peoples Programme, 2022). The absence of effective bounds on the discretion of a state renders the indigenous people's ability to exercise their rights virtually impossible, including in cases where such rights are supported by international legal frameworks.

c. Corporate Impunity and Investor-State Dispute Settlement (ISDS)

The indigenous lands have suffered tremendous violence through environmental degradation due to the activities of multinational corporations. Yet they go unpunished in international law. Usually, business people involved in such activities are the ones subject to investment treaties. They enable the suing of states under Investor-State Dispute Settlement (ISDS) arrangements if their environment or human rights regulations infringe upon the benefits (Tienhaara, 2018).

There is an increasing amount of scholarship illustrating how corporations exploit ISDS to litigate challenges to indigenous land protective measures, thereby inhibiting states from enforcing environmental policies (Bernaz, 2021). On the other hand, indigenous populations incur a lack of legal standing in most international arbitration tribunals, which further perpetuates a power imbalance structural dualism.

The attempt to draft a Treaty that would Bind Businesses to International Laws on Human Rights at the UN is still in progress, but political wrangling has made their advancement quite contentious and slow (UNHRC, 2022). So far, the voluntarily enforceable UN Guiding Principles on Business and Human Rights (2011) provide and lack mechanisms for enforcement.

d. Limited Access to Justice

In some cases, the legal frameworks in place do not provide protective measures for indigenous peoples, and even if they did, there are additional barriers to justice. These barriers involve cultural, financial, and linguistic factors, along with the lack of legal representation and systemic discrimination in court. Some regions do not recognize an indigenous community's land tenure system, which effectively means the group cannot claim jurisdiction over their land in legal proceedings (Gilbert, 2016).

In a good number of states, independence from the judiciary is lacking, while they, and other aspects, exercise severe bullying, even on eco-friendly defenders, with them attacking, persecuting, and killing them. Global Witness (2023) estimates that over

170 eco-activists of benign such as indigenous women were brutally murdered in 2022, making this activism one of the most compelled and life-threatening professions there is.

Courts in specific regions, such as the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights, have offered some level of relief, but their jurisdiction is noncomprehensive and based on voluntary compliance from the states. Execution of rulings is still lacking (Odello & Cavallaro, 2010).

e. Inadequate Monitoring and Accountability Mechanisms

Lastly, enforcement is weakened due to the absence of a solid monitoring and reporting system. There are many international treaties which rely on states' self-reporting, a process which is often lacking, sparse, or tailored for political considerations (Knox, 2018). The UN Human Rights Council along with the CBD Secretariat and UNFCCC LCIPP provide important forums, but do not possess the punitive authority required to enforce state compliance.

Some advances have been made through UPR and special report mandates. However, these methods tend to focus on MNFOs, naming and shaming without the capability to create enforceable solutions, and are therefore non-binding (Morgera, 2015). Indigenous peoples are still virtually excluded from meaningful participation in decision-making processes, which results in shallow engagement that is insufficient to change the outcomes.

Case Studies

In order to understand how international legal frameworks, provide protections for indigenous people's environmental rights and how these frameworks function in practice, it is necessary to study their emplaced application where such rights have either been claimed, disputed, or violated. This section presents three case studies from the world: the Amazon Basin in Brazil, Indonesia, and Kenya and Tanzania in East Africa. Each exemplifies the interface of legal schemata, state actions, and indigenous resistance actions in environmental governance.

a. The Amazon (Brazil): Environmental Destruction and FPIC Violations

The Amazon rainforest, considered the "lungs of the Earth" as it is one of the most important ecosystems for climate moderation, comprises more than 400 indigenous groups. Illegal activities such as logging, mining, agriculture, and construction of infrastructure come with perennial threats to Brazil's indigenous population, and these activities are often backed or at least neglected by state actors.

Even though Brazil has ratified ILO's Convention No. 169, there remains a deficiency in the implementation of Free, Prior, and Informed Consent (FPIC) mechanisms. Brazil is also bound to respect the indigenous people's land rights enshrined in their constitution. A case in point is the construction of the Belo Monte Dam on the Xingu River, which was sanctioned without consulting the indigenous groups (Bratman, 2015).

In 2019, the IACHR warned Brazil of increasing deforestation and violence against Indigenous Communities of the Amazon and requested that protective measures be enforced (IACHR, 2019). However, under Bolsonaro's rule, there was a systematic dismantling of environmental protections, which led to deforestation reaching a new 15-year high (Ferrante & Fearnside, 2020). This sparked the case of the Amazon, which highlighted the vulnerability of Indigenous rights in the face of unchecked state capitalism and expansionist nationalism.

b. Indonesia: Conflicts in Customary Land Relating to the Expansion of Palm Oil

Indonesia is home to the world's third-largest tropical forest and has a vast multicultural population that includes a number of Indigenous people who rely on *hutan adat* forests for cultural and economic sustenance. The expansion of palm oil plantations has resulted in land grabbing on an unprecedented scale, along with socially and regionally disparate violence, socially degrading indigenous peoples' land.

Despite Indonesia not being a signatory to ILO 169, the Constitutional Court's ruling for MK35/PUU-X/2012 in 2013, acknowledging *hutan adat* as non-state-controlled forests, granted legal recognition to *adat* communities. This was indeed a step forward. Enforcement of such laws has remained a challenge, and even low-level local governments have been slow to adapt to these new frameworks (Butt, 2014).

A case in point is the Kasepuhan Ciptagelar Community in West Java, which continues to face challenges in obtaining formal recognition of its ancestral forest due to a lack of formal acknowledgment stemming from a government ruling in 2013. Meanwhile, government agencies continue to implement policies that partition vast areas of land to willing corporations without conducting FPIC or acknowledging the customary redress systems of land ownership in the given region (Colchester et al., 2016).

Indonesian policies like the One Map Policy, which seeks to streamline data on land areas and remove the existence of multiple claim controversies, do not seem to have fully integrated land maps that belong to indigenous people, leaving the communities at risk of displacement and/or expedited destruction of nature (Myers et al., 2022). These conflicts illustrate the gap between the legal recognition of rights and the functional or political means of enforcing those rights.

c. East Africa (Kenya and Tanzania): Conservation vs Customary Rights

In East Africa, indigenous peoples such as the Endorois in Kenya and the Maasai in Tanzania have suffered forced relocation from their ancestral land for wildlife conservation and eco-tourism exploitation. These relocations underscore the balance that needs to be found between the need to protect the environment and recognize the land rights of indigenous peoples.

Kenya was found guilty by the African Commission on Human and Peoples' Rights in the *Endorois v. Kenya* (2010) case for unlawfully and forcibly evicting the Endorois people from their ancestral land (Lake Bogoria) without any prior consultation or compensation. The decision reinforced FPIC and collective ownership of natural resources principles (ACHPR, 2010).

In the case of the Endorois, there is a lack of access to implementation even after obtaining victory. They continue to face difficulties reclaiming access to their sacred lands (Lang, 2018). In a parallel scenario, the Maasai people in Tanzania have reported eviction stories for the purpose of developing game reserves and tourism sites, often with the involvement of foreign investors and military forces (Oakland Institute, 2022).

All of these scenarios tell the enduring story of indigenous peoples being perceived monoculturally as an obstacle to development or conservation rather than as modern-day rights holders who navigate and care for nature. It goes to show the disconnect between how state authorities abuse people and try to erase their identity without the people being guaranteed adequate human rights support from international frameworks.

Result and Discussion

Indigenous rights in international environmental law are recognized more in theory than in practice, which is marked by inconsistency and inadequacy. This gap is not simply a technical one; it indicates an underlying problem with the balance between international regulations, territorial integrity, and global economics. In this section, I analyze these problems and how the concepts of environmental justice, legal pluralism, and even more radical approaches such as rights-based frameworks aid in understanding the challenges and opportunities available to strengthen international law on indigenous environmental rights.

From Recognition to Realization: The Implementation Gap

There is a noticeable gap where rights are acknowledged, but practical application is absent. UNDRIP, CBD, and ILO 169 offer crucial rights such as FPIC, customary tenure, and traditional knowledge, but these instruments are non-binding, poorly monitored, dependent on political goodwill at the national level, or face administrative blockades (Savaresi, 2019; Morgera, 2015). The case studies of Brazil and Indonesia demonstrate how countries formally endorse international policies while, at the same time, facilitating extraction processes within indigenous territories, incorporating them into state and market logics without proper consultation.

This raises the question: what legal mechanisms are efficient in creating compliance? While there has been considerable progress at the regional human rights court level (Saramaka and Endorois, for example), they are always limited by state consent and weak enforcement mechanisms. There is no existing court or tribunal specializing in environmental matters that has universal jurisdiction and can independently determine claims made by indigenous peoples regarding environmental disputes.

Environmental Justice and Intersectionality

The application of social justice, particularly concerning issues of climate change, highlights the need for balance in relation to environmental justice—namely, the equitable distribution and management of resources and environmental burdens. For indigenous peoples, environmental justice also means recognizing their culture as having a deep,

fundamental connection and attachment to their environment (Tsosie, 2017; Gonzalez, 2015).

Indigenous peoples' environmental struggles cumulatively overlap with systemic issues of race, class, and even gender, which only increase their level of vulnerability. Take indigenous women, for instance. They hold essential positions as defenders of the land yet are subjected to brutal violence and excluded from official political participation (UN Women, 2021). Changing these discriminatory lenses is necessary not only legally but also in policy to advance justice for all within the frame of environmental imperialism.

Legal Pluralism and the Value of Customary Law

The UN does not fully approach legal pluralism—i.e., the existence of multiple legal systems within a society, including indigenous customary law—which is a significant omission in international law. Customary legal systems are alternative self-governing systems within the cultural boundaries of a nation. Instruments such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), along with jurisprudence from some Inter-American and African human rights courts, accept the existence of indigenous legal systems. However, Gil Award and Krakoff argue that these systems are not adequately incorporated or acknowledged by national legal systems.

These inequities are embedded in the customary land claim processes and in the carving out of particular culturally based ecological niches. Focusing on governance structures aligned with these systems is essential to position the politics of environmental management alongside indigenous knowledge systems. It is possible to curb these issues—overriding indigenous self-determination alongside international law enactment—through legal pluralism, which requires national policies to adjust and interrelate with these laws.

Towards a Rights-Based Approach to Environmental Governance

Recent innovation creates a gap by emphasizing the need for laws and policies to be rooted in the rights of the environment, advocating for environmentally friendly legislation guided by the efforts of those native to the land and in charge of decision-making. This is termed a *rights-based environmental governance* approach. It stands in contrast to conventional approaches that consider ecological preservation as the primary interest of the state or civilization, often alienating local populations.

The 2022 recognition of the right to a healthy environment by the UN General Assembly (UNGA Res. 76/300) marks foundational progress toward considering environmental rights as enforceable human rights. However, how this can be implemented remains vague, particularly in situations where national judiciaries are not autonomous or do not prioritize multidisciplinary environmental studies.

Calls for the expansion of legal personhood to encompass nature—an idea held in many indigenous legal systems—are gaining attention alongside scholarly and advocacy efforts. Considerable legal developments have been made in this area, such as the legal recognition of rivers in New Zealand and forests in Colombia, which illustrate the potential fusion of indigenous worldviews and law (Kauffman & Martin, 2018).

Pathways Forward: Bridging Norms, Practice, and Power

To address the gap between recognition and reality, there is a growing consensus among scholars and practitioners that the following steps should be taken:

- Strengthen areas of accountability, such as establishing international environmental courts, treaty bodies with executive powers, or indigenous–Aotearoa cross-border litigation platforms added to inter-empire legal systems.
- Implement frameworks that obligate corporations to exercise due diligence and accept liability for human rights and environmental harm, such as the proposed UN Binding Treaty on Business and Human Rights.
- Integrate indigenous constituents into global environmental governance mechanisms under the UNFCCC and CBD to allow for decision-making roles, not just consultation, in the policy-making process—thereby transforming passive roles into active ones.
- Locally incorporate FPIC and indigenous land rights into national constitutions and land laws.
- Finance and provide aid for indigenous legal systems of mapping and land capturing to reinforce self-governance and ecological independence.

Conclusion

Over the past three decades, the ecosystem of international legal documents concerning the environmental rights of indigenous peoples has advanced in a very important manner. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention on Biological Diversity (CBD), and ILO Convention No. 169 have included policies such as Free, Prior and Informed Consent (FPIC) and customary land tenure into frameworks of governance subordinated to environmental policies. The regional human rights systems have also rendered commendable decisions upholding the legal and cultural essence of indigenous peoples' lands.

This article has illustrated that even with these steps in the right direction, the gap between recognition and realization is still persistent. From the findings, it is clear that indigenous societies from different parts of the globe still suffer from dispossession of their lands, destruction of the environment, and systematic discrimination. This occurs even where one would expect that there are international legal norms in place to protect such people. The case studies from Brazil, Indonesia, and East Africa show how development, weak state structures, and fragmented legal systems put indigenous people's environmental rights under severe threat.

The answer to the question: To what extent does international environmental law provide effective legal protection to indigenous peoples? poses a challenge to be answered with guarded hope. International law, albeit recognizing some environmental rights for indigenous peoples, does not provide mechanisms for enforcement and implementation. Inefficient structures, limited jurisdictional reach, and absence of binding mandates in critical realms—all key fragments—thwart the law's latent promise.

As such, the gap suggests the need to shift toward more integrated governance with institutional reform and binding commitments. For international law, this means:

- Improving enforcement frameworks such as providing accessible venues for indigenous claims and increased mandates for regional courts;
- Involving indigenous groups in international treaties and including them in negotiating protocols for the prima facie borders of sovereign states;
- Recognizing indigenous customary law within legal pluralism and incorporating it into domestic legal frameworks;
- Establishing stronger instruments for corporate accountability on the environment and violation of rights legislations;
- Funding the mapping of indigenous lands, legal empowerment, and other environmental defense actions alongside bolstering legal frameworks.

In conclusion, the scope of how international environmental law protects indigenous peoples goes beyond legal obligation. It is an ethical responsibility. Indigenous peoples are not merely active claimants of rights but active participants in ecological stewardship, climate mitigation, and biodiversity safeguarding. Their participation—and leadership, indeed—is fundamental to address a just environmental future.

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