

(Re)affirming sovereignty, self-determination, and democratic rights: An analysis of evolving jurisprudence concerning indigenous peoples under international law



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Abstract This research article delves into the formidable obstacles and struggles that indigenous people encounter as they strive for their rights within the framework of international law. Its broad objective is to obtain a comprehensive understanding of the rights indigenous communities demand in contrast to the rights available to them at the international level. The paper focuses on three fundamental rights actively sought by indigenous peoples: indigenous sovereignty, right to self-determination, and democratic rights. To commence, the paper undertakes a thorough examination of the concept of sovereignty and its pertinence to indigenous communities. It analyzes the nature and extent of indigenous sovereignty, considering how the ongoing debate on sovereignty influences the calls for indigenous self-governance. Additionally, it critically evaluates the associated rights that are intrinsically linked to indigenous sovereignty. Following this, the paper explores the notion of self-determination and investigates the interpretations and aspirations of indigenous peoples with regard to this right. It also scrutinizes the right to self-determination within the specific context of indigenous communities. Subsequently, the paper delves into the democratic rights of indigenous peoples as prescribed under international law. It emphasizes the challenges and prospects involved in ensuring democratic participation and representation for indigenous communities. By comprehensively exploring these crucial facets, the authors aim to provide valuable insights into the challenges faced by indigenous peoples in asserting their sovereignty, self-determination, and democratic rights. Moreover, the research also endeavours to contribute to the existing discourse on indigenous rights, shedding light on the evolving nature of international law and its feasibility to address the concerns and aspirations of indigenous communities.

Keywords: indigenous sovereignty, self determination, democratic rights, indigenous peoples, international law

1. Introduction

The recognition and protection of rights of indigenous peoples have become increasingly prominent in the global discourse on human rights and international law. Indigenous communities, with their unique cultures, histories, and deep connections to their ancestral lands, have long endured marginalization, discrimination, and the erosion of their sovereignty and right to self-determination (Lâm, 2021). In an era where issues of justice and equality continue to be at the forefront of international discussions, it is of utmost importance to explore the legal frameworks governing the rights of indigenous peoples and delve into the intricate interplay between sovereignty, self-determination, and democratic rights within the international legal system (Summers, 2014). The aim of this research paper is to provide a comprehensive analysis of the evolving legal landscape surrounding sovereignty, self-determination, and democratic rights concerning indigenous peoples under international law. By critically evaluating existing international legal instruments, judicial decisions, and emerging trends, the current endeavour seeks to enhance the understanding of legal mechanisms that shape the protection of indigenous rights. It aspires to shed light on the complexities and nuances inherent in these concepts, ultimately contributing to a deeper comprehension of the legal principles governing the rights of indigenous peoples on a global scale.

The term sovereignty traditionally denotes the authority of state and its exclusive control over defined territories (Biersteker, 2013). However, for indigenous peoples, sovereignty encompasses a distinct dimension. Their sovereignty is intrinsically tied to their historical, cultural, and spiritual connections to their traditional resources and specifically land (Corntassel, 2008). Indigenous communities advocate for recognition of their collective rights, which includes - right to self-governance, protection and management of their lands, resources, and traditional knowledge, as well as preservation of their cultural identity (Binder and Binder, 2016). The tension arising from interplay between state sovereignty and indigenous sovereignty forms a central element of examination in the current research. Self-determination, as enshrined in international



instruments, is a fundamental principle affirming the rights of indigenous peoples to freely determine their political, economic, social, and cultural development (Cambou, 2020). Nevertheless, the application of self-determination to indigenous peoples poses unique challenges due to their distinct status as original inhabitants with deep historical and cultural ties to specific territories (Kuokkanen, 2019). The current investigation explores the evolving interpretation of self-determination for indigenous peoples and analyzes its legal implications in shaping their autonomy and decision-making processes.

Furthermore, the democratic rights of indigenous peoples play pivotal role in ensuring their meaningful participation in decision-making processes that impact their lives (Brugnach, et al 2017). Democratic rights encompass not only political participation, but also the right to equality, non-discrimination, and cultural expression (O'Sullivan, 2020). Here, the authors shall examine how democratic principles can be effectively applied to safeguard the rights and interests of indigenous peoples within the framework of international law. By scrutinizing the intersection of sovereignty, self-determination, and democratic rights, we attempt to shed light on the challenges (and opportunities) faced by indigenous peoples in asserting their rights within the international legal arena. Through an analysis of pertinent case laws, international instruments, and emerging trends, it seeks to contribute to the ongoing discussions concerning protection and promotion of these rights and endeavours to advance the understanding of legal mechanisms that can be harnessed to foster the sovereignty, self-determination, and democratic rights of indigenous peoples and communities, across the globe.

2. Sovereignty: Definition and Meaning

Sovereignty is a concept that has sparked extensive debates among political theorists throughout history, encompassing various dimensions. At its core, sovereignty refers to the undeniable control exerted by the state or government over its citizens and territory (Goldsmith, 2000). Essentially, a sovereign state is not subordinate to the authority of any other state or international body and possesses the ability to establish and enforce laws within its borders (Stilz, 2019). However, the understanding of sovereignty has evolved over time, leading to diverse interpretations. One influential definition of sovereignty originated from philosopher Thomas Hobbes in the seventeenth century. Hobbes (1651) argued that sovereignty embodies the absolute power of a government to establish and enforce laws without external interference. According to Hobbes, the government stands as the sole legitimate source of authority in society, with individuals willingly surrendering certain rights in exchange for safety and protection. Other political theorists have proposed alternative definitions of sovereignty, often emphasizing the role of popular consent and democratic participation in its exercise. For example, Jean-Jacques Rousseau (1762) argued that sovereignty resides within the people themselves, who have the right to choose their own leaders and engage in political processes. Thus, sovereignty is not an absolute power vested in a single entity, rather, it is a shared authority dispersed among people.

Despite these differing viewpoints, most definitions of sovereignty share commonalities. Territoriality represents a fundamental aspect of sovereignty, whereby a sovereign government is recognized as the legitimate authority within a specific region and possesses power to formulate and enforce laws within that domain (Held, 2000). Consequently, foreign nations or international organizations are prohibited from intervening in the internal affairs of any sovereign state (Weiss and Wallace, 2021). Independence is another significant element of sovereignty (Stilz, 2019). A sovereign government is not subordinate to the authority of any other state or international organization, enjoying autonomy in making decisions regarding governance and foreign policy (Young, 2019). This independence is often considered a crucial component of national identity and is vigorously defended by political leaders and citizens (Blokker, 2019). Nevertheless, the concept of sovereignty faces challenges and controversies. In an increasingly interconnected and interdependent world, the boundaries between states have become more fluid and permeable, raising questions about the notion of absolute national sovereignty due to globalization, transnational corporations, and international organizations such as the United Nations (UN) and the European Union (EU) (Konrad, 2021).

Some theorists argue that sovereignty is no longer relevant or useful in the twenty-first century, advocating for new governance and authority frameworks that recognize the complex and interconnected nature of global society (Landemore, 2020). The growing importance of international law and human rights presents another challenge to the concept of sovereignty (Dunoff et al 2023). Countries are increasingly subject to an expanding body of international law that restricts their exercise of sovereignty in specific areas as more nations ratify international treaties and agreements (Hathaway, 2008). Certain rights, such as those outlined in the Universal Declaration of Human Rights (UDHR), are considered universal and inalienable, with nations that violate them potentially facing international condemnation or intervention (Rowhani, 2023). Despite these challenges, sovereignty remains a powerful and influential concept in contemporary politics, shaping the understanding of government functions and the nature of political power (Bartelson, 2006). Whether conceptualized as an absolute power, a shared authority, or a contested and evolving concept, it is evident that sovereignty will continue to impact the understanding of politics and governance for a significant period (Cheesman, 2022).

2.1. Indigenous Sovereignty: Nature and Scope

Indigenous sovereignty encompasses the unified expression of the rights to self-determination and self-government by indigenous peoples (Wiessner, 2008). It acknowledges their inherent entitlement to manage their lands, rivers, and resources in alignment with their customs and beliefs (Tsoie, 2007). Furthermore, it recognizes their intrinsic right to address political, economic, social, and cultural matters (Coulthard, 2007). Indigenous sovereignty holds immense significance for indigenous communities worldwide, particularly in nations impacted by European colonization (Bauder and Mueller, 2021). In these contexts, indigenous peoples have frequently endured forced displacement, land dispossession, and assimilation policies aimed at eradicating their languages, cultures, and ways of life (Menziez, 2019). History is characterized by dispossession, exploitation, and marginalization, as they were uprooted from their ancestral lands during colonization and subjected to the imposition of Western legal, political, and economic systems (Anaya, 2008). The enduring impacts of colonialism continue to shape the lives of indigenous peoples and their interactions with settler colonial societies (Maddison, 2013).

As Vine Deloria Jr. aptly observed in his book 'Red Earth, White Lies,' (2018) indigenous sovereignty challenges the fundamental principles upon which the United States and other settler colonial civilizations were built foundations established through the dispossession of indigenous lands and the subjugation of indigenous peoples. The concept of indigenous sovereignty is intimately linked to the history of colonialism and the imposition of Western legal and political systems upon indigenous peoples (Watson, 2014). As Deloria Jr. (2003) further emphasizes that the history of relations between indigenous peoples and colonizers in the United States fundamentally reflects indigenous resistance to the white man's attempts to destroy indigenous cultures, displace indigenous peoples, and appropriate indigenous lands. This history is marked by broken treaties, forced relocations, and genocidal policies, all justified by the notion that indigenous peoples are 'primitive' and incapable of self-governance. Consequently, many indigenous groups have actively asserted their sovereignty, right to self-determination, and right to self-governance through various means, including legal challenges, political advocacy, and direct action (Deloria, 2003).

The recognition and advancement of indigenous sovereignty have been significantly influenced by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in 2007. UNDRIP outlines a range of rights and principles aimed at promoting indigenous self-determination and overall well-being. These include the right to govern their own political, economic, social, and cultural affairs, as well as the right to participate in decisions that affect their lives and territories (UNDRIP, 2007). International Labor Organization's Convention No. 169 also safeguards indigenous peoples' rights to self-determination, self-governance, land and resource management, and the preservation of their traditions and customs (Article 1, 13, 23, 30). Despite the recognition of indigenous sovereignty in UNDRIP and other legal instruments, indigenous peoples worldwide continue to face significant challenges in asserting their rights and securing their autonomy. The implementation of these legal frameworks has been inconsistent, and indigenous communities continue to encounter obstacles in asserting their sovereignty. As noted by Audra Simpson in her book 'Mohawk Interruptus,' (2014), settler colonial states often employ legal mechanisms to undermine indigenous sovereignty, limiting the recognition of indigenous rights within constrained frameworks. Many indigenous groups still face persistent violence, marginalization, and prejudice, and they are frequently excluded from processes that impact their survival and territories.

While the nature and scope of indigenous sovereignty may vary depending on historical, cultural, and political contexts, certain common themes and principles can be identified to describe its nature and extent (Lenzerini, 2006). The management and conservation of natural resources, which are often integral to indigenous peoples' traditions, livelihoods, and identities, fall within the purview of indigenous sovereignty (Ford et al 2020). Many indigenous communities have developed sophisticated resource management systems that reflect their deep understanding of local ecosystems and their commitment to sustainable and equitable resource utilization (Lertzman and Vredenburg, 2005). These systems may involve practices such as rotational agriculture, sustainable forestry, selective hunting and fishing, and controlled forest burning (Estrada et al 2022). However, the aspirations and interests of local communities have frequently been subordinated to the extraction of natural resources for economic gain driven by colonialism and capitalist expansion (Kohn and Reddy, 2006). Indigenous tribes have sought to assert their sovereignty over their lands and resources to halt resource extraction methods that threaten their communities and ecosystems (Wouters, 2020).

Central to indigenous sovereignty and resource management is the principle of free, prior, and informed consent (FPIC) (Doyle, 2014). FPIC requires governments and other actors to obtain the consent of indigenous peoples before undertaking any actions that may affect their lands, territories, or resources (Ward, 2011). This principle is rooted in the belief that indigenous peoples have the right to self-determination and participation in decisions that impact their way of life and territory. (Hanna and Vanclay, 2013). However, the implementation of FPIC has been inconsistent and contested, with many governments and corporations failing to adequately consult with or obtain the consent of indigenous communities before proceeding with projects such as mining, logging, or dam construction (Tigre and Slinger, 2020). Consequently, conflicts and confrontations between indigenous communities and these actors have arisen, leading to legal battles and political campaigns aimed at strengthening and enforcing the principle of FPIC (Vanclay and Hanna, 2019).

2.2. Economic and Cultural Aspects of Indigenous Sovereignty

The economic dimensions of indigenous sovereignty hold immense significance. Throughout history, indigenous peoples have endured systematic exclusion from the advantages of economic progress, as their lands and resources have often been exploited for the benefit of settler colonial societies (Greer, 2019). The concept of indigenous sovereignty challenges this exploitative relationship and strives to empower indigenous peoples to govern their own economic development. (Bonds and Inwood, 2016). Dian Million, in the book 'Therapeutic Nations,' (2013) stresses the need for a fundamental re-assessment of prevailing economic models to achieve indigenous economic sovereignty. This entails the creation of alternative economic systems that prioritize community well-being and ecological sustainability. Examples include fostering local economic development, supporting indigenous entrepreneurship, and engaging in sustainable resource management (Million, 2013). Moreover, the concept of indigenous sovereignty encompasses cultural dimensions as well (Bauder and Mueller, 2021). Indigenous peoples possess unique cultures, languages, and ways of life that have been endangered by colonialism and assimilation policies (Samson and Gigoux, 2016). Indigenous sovereignty necessitates the acknowledgment and safeguarding of these cultures, alongside promotion of cultural revitalization (Wiessner, 2008). In the book 'Wasáse,' Alfred (2005) argues that indigenous sovereignty involves creating spaces for indigenous cultures to flourish and resist the pressures of assimilation. This includes promoting language revitalization, cultural education, and the preservation of cultural heritage sites (Alfred, 2005).

2.3. Foundations of Indigenous Sovereignty

Indigenous sovereignty is founded upon the Principle of Consent, which recognizes the inherent right of indigenous peoples to determine their own political status and choose a governance system that best serves their needs and objectives (John, 2015). This may entail the establishment of independent, self-governing indigenous nations, collaborative ventures, or systems of shared governance in partnership with local, state, or federal authorities. Moreover, the principle of stewardship lies at the core of indigenous sovereignty (Shadian, 2010), acknowledging the profound connection indigenous peoples have with their lands, rivers, and resources. They bear the responsibility of managing and preserving these resources in an equitable and sustainable manner, drawing upon traditional ecological knowledge or devising new models of land and resource management rooted in indigenous principles and values (Jentoft., et al, 2003). Inextricably linked to indigenous sovereignty is the notion of cultural revitalization (Cobb, 2005). It upholds the rights of indigenous peoples to address their social, healthcare, and educational needs while also safeguarding and enriching their unique languages, cultures, and traditions (Stavenhagen, 2005). This may encompass the establishment of indigenous-led educational institutions, healthcare facilities, and social service providers, as well as the infusion of indigenous philosophies and practices into existing systems (Williams, 2014). Indigenous sovereignty is a fluid and evolving concept shaped by ongoing political, legal, and social struggles. It emerges from the historical experiences of colonization, assimilation, and dispossession that indigenous peoples have endured, often finding expression through acts of resistance, protest, and advocacy (Borrini, et al, 2004). It is important to recognize that indigenous sovereignty is not a fixed or static idea but rather an ongoing process of resilience and negotiation aimed at advancing the rights and aspirations of indigenous peoples (Shrinkhal, 2021).

2.4. Challenges and Implications of Indigenous Sovereignty

The notion of indigenous sovereignty poses significant challenges and carries profound implications in addressing the ongoing oppression of indigenous peoples. One prominent challenge revolves around the inherent tension between indigenous sovereignty and the sovereignty of settler colonial states. Glen Coulthard, in his seminal work 'Red Skin, White Masks,' (2014) argues that acknowledging indigenous sovereignty necessitates recognizing indigenous peoples as distinct political entities with unique histories and ways of life, often conflicting with the dominant narratives and structures of settler colonial states. Another challenge arises from the potential divisions within indigenous communities concerning the interpretation and practical implementation of sovereignty. J. Kēhaulani Kauanui, in her influential publication 'Paradoxes of Hawaiian Sovereignty,' (2018) underscores the existence of multiple sovereignty visions within indigenous communities, which can give rise to disagreements and tensions. The implications of indigenous sovereignty are far-reaching and transformative. Embracing indigenous sovereignty demands a comprehensive reassessment of established structures and systems of power, encompassing legal, political, economic, and cultural dimensions (Wensing, 2021). This entails confronting the enduring consequences of colonialism and settler colonialism, as well as recognizing the urgent need for reparations and restitution (Clavé-Mercier, 2022).

2.5. Advocates of Indigenous Sovereignty

Vine Deloria Jr., a prominent Native American author and activist, is an eminent scholar in the realm of indigenous sovereignty. Deloria underscored (2018) the significance of sovereignty in comprehending the relationship between indigenous peoples and the state. He contended that owing to their profound ties to ancestral lands, indigenous peoples

possess a distinct and valid entitlement to political authority. Deloria also critiqued Western legal and political systems for their failure to acknowledge indigenous sovereignty, attributing this deficiency to fundamentally disparate perspectives on the interconnection between humans and nature. Linda Tuhiwai Smith, a renowned Māori scholar from New Zealand, stands as another influential voice in the field. Smith (2004) brought attention to the inseparable link between indigenous sovereignty and the notion of self-determination. She regards self-determination not merely as a political concept but also as a cultural and spiritual concept rooted in the distinctive histories and experiences of indigenous peoples. Smith further accentuates the importance of indigenous knowledge and ways of knowing, which diverge from Western scientific and knowledge systems. These indigenous epistemologies, intricately tied to land and cultural practices, form the bedrock of indigenous sovereignty. Taiaiake Alfred, a respected Mohawk scholar from Canada, has made significant contributions to comprehending indigenous sovereignty as both a political and cultural concept. Alfred (2005) asserts that the revitalization of indigenous cultures and languages is vital for the attainment of sovereignty. He also emphasizes the historical resistance of indigenous peoples to colonialism and imperialism, advocating for a commitment to decolonization and the restoration of indigenous lands, languages, and cultures.

Despite the contributions of these scholars and others, the concept of indigenous sovereignty remains a subject of contention and often receives inadequate attention in many parts of the world. Numerous states persist in denying or restricting the sovereignty of indigenous peoples in the name of national sovereignty or economic progress (Barker, 2005). One pressing challenge faced by indigenous sovereignty today is the persistent issue of resource extraction and development on indigenous lands (Pereira and Gough, 2013). Indigenous communities worldwide actively engage in endeavors to safeguard their resources and territories from the encroachment of extractive industries, such as mining and oil and gas operations, which pose threats to their cultural and environmental well-being (Kirsch, 2014). Within this context, the struggle for indigenous sovereignty intersects with environmental justice and the battle against climate change (Kojola and Pellow, 2021). Indigenous communities stand at the forefront of environmental preservation and sustainable development, with their knowledge and expertise increasingly recognized by international organizations and governments (Regmi and Walter, 2017).

2.6. Prominent Advocates of Indigenous Sovereignty from Global South

The term 'global south' refers to regions that are economically and politically less developed, encompassing countries in Latin America, Africa, Asia, and the Pacific. Indigenous communities in the global south have historically endured marginalization, oppression, and dispossession of their lands, territories, and resources due to the influences of colonialism, racism, and discrimination (Chaudhury and Colla, 2021). Establishing indigenous sovereignty in the global south is of paramount importance for the preservation of environment, biodiversity, and ecosystems that indigenous peoples have traditionally managed and protected (Samson and Gigoux, 2016). These communities possess invaluable skills and knowledge that can contribute to the conservation of natural resources and mitigation of climate change (Dhakai and Kattel, 2019). Consequently, their participation and leadership play a vital role in global efforts to address environmental and social crises. Numerous indigenous leaders from the global south actively advocate for indigenous sovereignty and rights. Among them, a few notable figures include:

- a) Evo Morales, the leader of the Movement for Socialism (MAS) party and Bolivia's first indigenous president.
- b) Rigoberta Menchú, a Guatemalan indigenous activist who fought for social justice and indigenous rights, was awarded the Nobel Peace Prize in 1992.
- c) Nnimmo Bassey, a Nigerian environmental activist and founder of the Health of Mother Earth Foundation, advocates for environmental and social justice for indigenous communities.
- d) Alberto Acosta, an economist and champion for indigenous rights, is renowned for his contributions to Ecuador's 2008 constitution that supports environmental and indigenous rights.
- e) Winona LaDuke, an environmentalist and co-founder of the indigenous Women's Network and Honor the Earth, an organization dedicated to safeguarding indigenous lands and customs.
- f) Tom Goldtooth, executive director of the Indigenous Environmental Network, an organization that advocates for environmental and climate justice for indigenous peoples.
- g) Oren Lyons, a member of the Onondaga Nation, a spiritual leader and an advocate for indigenous sovereignty and environmental conservation.

In summary, the concept of indigenous sovereignty encompasses the inherent right of indigenous peoples to self-determination, including their ability to choose their political status and govern their own affairs (Kuokkanen, 2019). It is rooted in the historical experiences of colonization and the ongoing struggles of indigenous peoples to assert their sovereignty over their lands, resources, and cultural practices (Anaya, 2004). Indigenous sovereignty extends beyond legal and political dimensions, embracing cultural, spiritual, and environmental aspects that are deeply intertwined with the histories, traditions, identities, and uniqueness of indigenous peoples (Shrinkhal, 2021). Despite challenges, the pursuit of indigenous sovereignty offers a pathway toward decolonization and empowerment for indigenous communities. Recognizing

their rights and authority, as well as establishing their sovereignty, is crucial for promoting justice, equality, and the well-being of both indigenous communities and the natural world they steward (Tsosie, 2007).

3. Self-Determination

Self-determination is a well-established principle in international law that is recognized by the United Nations and other global organizations. It serves as a crucial foundation for indigenous sovereignty, affirming the right of indigenous peoples to self-governance. Self-determination has played a significant role in shaping modern history, encompassing the freedom to choose political affiliations and pursue economic, social, and cultural development (Hannum, 1993). Many scholars and activists argue that self-determination is essential for promoting democracy, upholding human rights, and achieving social justice (Buchanan, 2007; Cohen, 2004; Castellino, 2021). In the following sections, we will explore the origins and importance of self-determination, as well as its implications in contemporary politics and society. The late 19th and early 20th centuries witnessed the rise of numerous nationalist movements in Europe and Asia, which can be seen as the historical birthplace of self-determination (Castellino, 2021). These movements aimed to challenge colonial powers and establish independent nation-states based on shared cultural, linguistic, or religious identities (Sengupta, 2018). Political thinkers such as Johann Herder played a significant role in inspiring these movements by emphasizing the unique character and cultural heritage of each nation (Forster, 2022).

After World War I, the concept of self-determination gained even more prominence as the victorious Allied nations sought to reshape the global order and establish a new framework for international governance (Knock, 2019). The Treaty of Versailles explicitly enshrined the idea of self-determination, establishing the League of Nations and recognizing nations' right to determine their political status (Spanu, 2020). However, the practical implementation of self-determination proved to be complex and contentious, particularly in cases where different ethnic or religious groups coexisted within the same territory (Valadez, 2018). The partition of India in 1947, which resulted in the formation of separate states for Pakistan and India, serves as a notable example of intense conflict and mass displacement, which remains a contentious issue to this day (Dubey, 2021). Despite these challenges, self-determination continued to inspire political movements and social struggles throughout the 20th century. The fight against colonialism, imperialism, and the pursuit of civil rights and social justice became intertwined with the struggle for self-determination (Barker, 2005).

Prominent political philosophers have contributed to the discourse surrounding self-determination. Joseph Carens (2000) argues that self-determination is a necessary condition for achieving social justice but must be balanced with other important values such as democratic accountability and human rights. Charles Beitz (2009) contends that self-determination should be understood as a collective right rather than an individual one, requiring a balance with principles like global justice and minority rights. On the other hand, scholars such as Andreas Wimmer (2002) highlight the contested and ambiguous nature of self-determination, cautioning against its potential misuse as a pretext for authoritarian or nationalist agendas. They stress the need to consider the historical and cultural contexts in which self-determination is invoked, acknowledging its limitations as a universal principle that can be uniformly applied across different societies and cultures (Wimmer, 2013). Despite ongoing discussions and disagreements, the pursuit of self-determination remains a critical issue in modern politics and society. In the era of globalization, the concept has gained renewed significance as individuals and communities strive to assert their distinct identities and resist the homogenizing forces of modernity (Samson and Gigoux, 2016).

One of the key challenges today lies in reconciling national sovereignty with global interdependence. As the world becomes increasingly interconnected, maintaining strict boundaries between nations and communities becomes more difficult. This has led to calls for new forms of governance and cooperation to address pressing global challenges such as climate change, economic inequality, and political instability (Hirschl, 2006). Nevertheless, many people and communities continue to defend their right to self-determination, pushing back against perceived threats of cultural and economic uniformity. This has contributed to the resurgence of nationalism and populism in various parts of the world (Smith, 2013; Galston, 2017). To address these complex and evolving challenges, scholars and activists must engage in critical and constructive discussions about the implications and definitions of self-determination. Striking a balance between the legitimate claims of different communities and individuals and the broader imperatives of democracy, human rights, and global justice is essential (Falk, 2000). One approach to achieving this balance is by developing new frameworks for global governance that accommodate diverse and sometimes conflicting claims, which could involve creating democratic mechanisms that give people more influence over decisions affecting their lives or adopting conflict resolution approaches founded on principles of justice and equity (Hemmati, 2002).

Another way to promote the values of self-determination is by embracing a pluralistic and inclusive understanding of the concept (Cohen, 2004). This recognizes the diversity of cultural and political identities within and across nation-states, emphasizing democratic discourse, minority rights, and cultural diversity (May, 2008). For instance, the concept of 'multinational federalism' proposed by Will Kymlicka (2012) seeks to strike a balance between self-determination, democratic governance, and minority rights within a single nation-state. Similarly, Seyla Benhabib (2004) suggests a model of 'cosmopolitan federalism' that reconciles self-determination with global justice and human rights, recognizing the diverse

cultural and political identities across different nation-states. Supporting grassroots movements and social struggles rooted in the experiences and aspirations of ordinary people is another avenue to promote the values of self-determination (Kuokkanen, 2019). This may involve endorsing local initiatives that advance social justice and democratic participation or empowering marginalized communities to assert their rights and interests in the face of societal injustice and prejudice (McCowan, 2011). By exploring these avenues and engaging in productive discussions, it becomes possible to navigate the complex challenges posed by self-determination and work toward a more inclusive and just world that respects the aspirations and identities of all individuals and communities (Kabeer, 2005).

3.1. *Self-Determination for Indigenous Peoples*

The principle of self-determination, which is a fundamental human right recognized in international law and human rights agreements, grants individuals the autonomy to shape their own political, economic, social, and cultural futures (Shrinkhal, 2021). For indigenous communities, self-determination plays a vital role in protecting their lands, resources, customs, and identities (Alam and Al Faruque, 2019). It empowers them to manage their own businesses, govern their territories and natural assets, preserve their cultural heritage, and establish their own institutions (Grey and Kuokkanen, 2020). By exercising the right to self-determination, indigenous peoples have an equal opportunity to participate in decision-making processes that impact their lives and well-being, alongside governments and other stakeholders (Anaya and Puig, 2017). The legal framework supporting self-determination is safeguarded by various international human rights treaties and laws. Both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) acknowledge the right to self-determination for all peoples (Pinto, 2022). Regional human rights instruments such as the African Charter on Human and Peoples' Rights and the American Declaration on the Rights and Duties of Man also uphold this right (Murray, 2019). The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007, provides a comprehensive framework for protecting and promoting the rights of indigenous peoples, including their right to self-determination, control over their territories and resources, and meaningful participation in decision-making processes (Article 3, 8, 18, 26).

3.2. *Challenges and Opportunities for Self-Determination*

Despite the existence of a legal framework that protects their rights, indigenous peoples face significant challenges in regard to exercising their right to self-determination. Historical colonization, dispossession, and marginalization have resulted in the loss of lands, resources, traditional knowledge, and cultural identities for indigenous communities (Grant, 2018). Insufficient implementation mechanisms, a lack of political will, and limited resources hinder the full realization of self-determination rights (Valadez, 2018). Furthermore, indigenous peoples' limited involvement in decision-making processes exacerbates the challenges they encounter (Brugnach et al 2017). However, there are also opportunities for indigenous peoples to exercise their right to self-determination. The global recognition of indigenous peoples' rights has been steadily increasing, as demonstrated by the adoption of the UNDRIP, the establishment of the Permanent Forum on Indigenous Issues, and the growing indigenous participation in international and regional forums (Gómez Isa, 2019). The development of new treaties and legal instruments continues to acknowledge and protect the rights of indigenous peoples (Hanna and Vanclay, 2013). Indigenous communities are increasingly asserting their rights and participating in political, economic, and social decision-making processes (Anaya, 2007). The establishment of indigenous political and economic institutions and the recognition of their contributions to sustainable development further reinforce their pursuit of self-determination (Etchart, 2017).

3.3. *Free, Prior, and Informed Consent (FPIC) and Indigenous Peoples*

The principle of free, prior, and informed consent (FPIC) is of great importance in the realm of international law and human rights, especially concerning the rights of indigenous peoples (Hanna and Vanclay, 2013). FPIC entails the obligation for states and other actors to engage with indigenous communities and obtain their consent before undertaking actions or making decisions that could impact their lands, resources, or traditions (Mahanty and McDermott, 2013). The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) introduced the concept of FPIC (Article 10), emphasizing the necessity of consulting and cooperating with indigenous peoples to ensure that their consent is acquired prior to implementing measures that affect them (Barelli, 2012). The legal foundation for FPIC is based on the rights to self-determination and prior, informed, and free consent (Cambou, 2020). FPIC ensures that indigenous peoples, who have historically been marginalized in decision-making processes, are actively involved and have their autonomy respected (Wilson, 2019).

The FPIC process involves conducting consultations in good faith, characterized by respect and meaningful participation (Anaya, 2005). It should provide indigenous peoples with adequate time, resources, and access to information to assess the potential impacts of proposed actions or decisions (Ward, 2011). The process should also include the participation of representative institutions of indigenous peoples, consider cultural appropriateness, and take their

evaluations into account during decision-making (Hanna and Vanclay, 2013). FPIC holds particular significance for indigenous peoples who have suffered adverse effects from decisions made without their consent. Infrastructure projects such as dams or highways, as well as extractive industries such as mining or oil and gas exploration, often have profound impacts on indigenous lands, resources, and cultures (Acuña, 2015). FPIC ensures that indigenous peoples have a say in decisions that affect them and that their rights are upheld (Ward, 2011). Implementing FPIC may require initiatives for capacity building, adapting policies, and addressing debates and challenges related to conflicting interests or rights (Zurba et al 2019).

In conclusion, the realization of the right to self-determination for indigenous peoples depends on the active support and involvement of governments and civil society (Arthur, 2014). Governments have the responsibility to uphold, respect, and enforce the rights of indigenous peoples, including their right to self-determination (Hanna and Vanclay, 2013). This requires implementing effective policies and legal frameworks, allocating resources, and providing capacity-building assistance to empower indigenous communities to fully exercise their rights (Pereira and Gough, 2013). Civil society groups also play a crucial role in advocating for indigenous peoples' rights, supporting their participation in decision-making processes. The concept of self-determination continues to be relevant in contemporary history, particularly for indigenous peoples, as they strive for autonomy and recognition. Whether it is used to establish new nation-states or promote democracy and human rights, self-determination holds significant importance in addressing the needs and aspirations of indigenous communities (Million, 2013).

4. Democratic Rights

Democratic rights serve as the bedrock of contemporary governance, with a focus on the autonomy, equality, and active engagement of individuals in decision-making processes (Davlatova, 2021). The global promotion and protection of these rights have garnered significant attention within the realm of international law (Swiney, 2020). Nevertheless, an ongoing discourse persists regarding the efficacy of international law in safeguarding democratic rights (Benvenisti, 2008). The roots of the notion of direct democracy, granting every person the right to participate in societal decision-making, can be traced back to ancient Greek civilization, laying the groundwork for democratic rights (Ober, 1999). However, it was during the 18th and 19th centuries, particularly with the American and French Revolutions, that democratic rights took shape in their modern form, introducing the principles of individual freedom and popular sovereignty (Habermas, 1990). The contemporary understanding of democratic rights finds its origins in the Universal Declaration of Human Rights (UDHR) adopted by the United Nations General Assembly (UNGA) in 1948 (Alfreðsson and Eida, 1999). Article 21 of the UDHR (1948) recognizes individuals' entitlement to participate in the governance of their respective nations through free and fair elections, affirming that 'the will of the people shall be the basis of the authority of government.'

4.1. Development of Democratic Rights in International Law

Since the adoption of the Universal Declaration of Human Rights (UDHR), democratic rights have been integrated into various international agreements. Among these agreements, the International Covenant on Civil and Political Rights (ICCPR) holds particular significance. Established in 1966, the ICCPR proclaims that every person possesses the right to engage in the governance of their nation through elections that are both free and fair (Article 25). Additionally, it acknowledges the essential rights and freedoms required to exercise this right. The ICCPR also upholds the fundamental human rights of freedom of expression (Article 19), assembly, and association (Article 22), which play a crucial role in facilitating the exercise of democratic rights. Another influential document that safeguards democratic rights is the European Convention on Human Rights (ECHR), which was adopted in 1950. Article 3 of Protocol No. 1 to the ECHR recognizes individuals' right to participate in free and fair elections and in the administration of their country. The ECHR also acknowledges the rights to freedom of expression (Article 10), assembly, and association (Article 11). Similarly, regional human rights frameworks such as the African Charter on Human and Peoples' Rights (1981) and the American Convention on Human Rights (1969) affirm the right of individuals to engage in the governance of their nations through free and fair elections. These frameworks also recognize the indispensable freedoms and rights necessary for the exercise of this right (Mutua, 1995 and Ouguergouz, 2003).

4.2. Challenges in Implementation of Democratic Rights

Enforcing democratic rights effectively in international law remains a significant challenge, despite the existence of treaties. One key reason is the absence of robust enforcement mechanisms, unlike domestic law, where centralized bodies are responsible for enforcing regulations (Kumm, 2004). Consequently, the willingness of governments to fulfill their obligations plays a crucial role in determining compliance with international treaties (Hathaway, 2005). However, many nations prioritize their domestic concerns over international commitments, leading to violations of democratic rights (Donno, 2013). Furthermore, some states may lack the institutional capacity to effectively enforce these rights, further contributing to violations (Ruggie, 2008). The promotion and protection of democratic rights under international law are also influenced by regional and global political dynamics (Archibugi, et al 1998). The recent rise of authoritarian governments has sparked a global pushback against democracy and human rights, with some nations resorting to force and repression to undermine

these principles (Cooley, 2015). Authoritarian states actively impede efforts to uphold democratic rights, presenting challenges to the promotion and protection of these rights (Diamond, et al 2016). Additionally, the growing influence of non-state actors, such as multinational corporations and non-governmental organizations, also impacts the promotion and defense of democratic rights under international law (Josselin and Wallace, 2001).

Another challenge in enforcing democratic rights is the lack of consensus on their interpretation (Weingast, 1997). Different cultures and political systems have diverse understandings of democracy and democratic rights, leading to conflicts when these systems interact (Roland, 2004). For example, some states may perceive certain forms of political dissent as threats to national security, while others consider them essential to democratic governance (Davenport, 1995). This lack of consensus hinders the consistent enforcement of democratic rights across different contexts. Moreover, implementing democratic rights in post-conflict and transitional societies presents challenges (Grimm and Weiffen, 2018). These societies often lack the necessary institutions and infrastructure to support democratic governance (Boston and Berman, 2017), and there may be a general lack of trust in the political process and institutions (Van der Meer, 2017).

4.3. Democratic Rights for Indigenous Peoples in International Law

Securing democratic rights for indigenous peoples has posed significant challenges within the realm of international law (Castellino, 2021). Throughout history, indigenous communities have experienced marginalization and exclusion from the political processes of many nations (Reid, et al 2019), leading to ongoing struggles for recognition and representation (Fukuyama, 2018). However, international treaties have played a crucial role in promoting and protecting the democratic rights of indigenous peoples. One of the most notable agreements in this domain is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was approved by the General Assembly in 2007. The UNDRIP asserts that indigenous peoples have the right to self-determination, including the freedom to choose their political status and pursue their economic, social, and cultural advancement (Article 3). It also recognizes their right to participate in decision-making processes (Article 18) that affect their lives, such as those related to land, resources, and development. In addition to the UNDRIP, other international treaties have acknowledged the democratic rights of indigenous peoples. For instance, the International Labour Organization's Convention No. 169 on Indigenous and Tribal Peoples recognizes their right to maintain and develop their own political, legal, and economic systems (Article 1, 8, 9), as well as their right to participate in decision-making processes (Article 2) that impact their lives. While implementing these treaties has proven challenging, they provide a framework for advancing and defending the democratic rights of indigenous peoples (Errico, 2017).

4.4. Challenges in Implementing Democratic Rights for Indigenous Peoples

Indigenous peoples face persistent obstacles in exercising their democratic rights, despite the existence of legal frameworks (Donnelly and Whelan, 2020). One major issue is the lack of meaningful consultation with indigenous communities when decisions that affect their lives and resources are made (Turner et al 2008). For instance, infrastructure projects like highways and dams can have a significant impact on indigenous lands and cultures, yet indigenous peoples are often excluded from the decision-making process and denied the opportunity to provide input (Stanley, 2004). This disregard for their rights and interests can lead to conflicts and resistance (Shah, 2007). Another challenge is the underrepresentation of indigenous peoples in political decision-making (Rashidi and Lyons, 2021). Indigenous groups are often marginalized and excluded from decisions that directly affect their communities (Castro and Nielsen, 2001). This lack of representation hampers their ability to advocate for their rights and have their voices heard in the political arena. A further obstacle is the absence of political will and resources in many countries to uphold the democratic rights of indigenous peoples. Despite the existence of international treaties recognizing these rights, many nations fail to take adequate measures for their implementation and genuine political participation (Risse et al 1999). This is often rooted in the history of colonialism, which has marginalized indigenous peoples and denied them political power (Tomiak, 2017). Thus, addressing the underlying structural issues related to colonialism, power dynamics, and representation is essential for realizing the democratic rights of indigenous peoples (Song, 2010).

Moreover, the lack of knowledge of and respect for indigenous political systems and governance structures poses challenges to the implementation of democratic rights (Coombe, 1998). Many countries impose their own political systems on indigenous communities, disregarding their established forms of government and impeding their ability to participate democratically (Kymlicka, 2001). Ignoring indigenous political institutions can lead to conflicts with non-indigenous groups and further limit democratic participation (Hanna and Vanclay, 2013). Additionally, the effects of colonization have resulted in ongoing difficulties for indigenous communities in advancing and defending their democratic rights (Kingston, 2015). Colonization often led to displacement, the erosion of traditions, and the loss of political authority (Samson and Gigoux, 2016), leaving indigenous communities with limited resources and institutional capacity to engage fully in democratic processes (Papillon and Rodon, 2017). Despite these challenges, notable progress has been made in advancing and protecting the democratic rights of indigenous peoples under international law. In recent years, significant developments have occurred.

For example, the landmark case of *Awas Tingni v. Nicaragua* in 2009 saw the Inter-American Court of Human Rights recognize the indigenous peoples' right to communal ownership of their lands and the duty of states to obtain their free, prior, and informed consent before making decisions affecting their territories. This decision has had a substantial impact on indigenous peoples' land rights and their involvement in decision-making processes. Civil society groups and indigenous-led movements have played a vital role in advocating for their rights through political and legal means (Sommerfeldt, 2013). International organizations, including the United Nations, have also made significant contributions to promoting indigenous peoples' rights, particularly through the establishment of treaties and conventions (Hanna and Vanclay, 2013). In conclusion, while advancing and defending the democratic rights of indigenous peoples under international law remains challenging, international treaties provide a foundation for progress (Åhrén, 2016). However, addressing ongoing colonialism, fostering political will, allocating resources, and promoting understanding and respect for indigenous political systems are crucial steps in overcoming these challenges (Sundberg, 2014). Prioritizing meaningful participation and representation is essential to ensure the realization of democratic rights for indigenous peoples (Fontana and Grugel, 2016).

5. Summary and Final Considerations

Indigenous sovereignty bestows indigenous peoples to exercise self-determination, self-governance, and management of their lands, resources, and cultural practices. By recognizing indigenous peoples as distinct political entities with unique histories and ways of life, indigenous sovereignty challenges the dominant narrative and structure of modern states. Although legal frameworks, such as the United Nations Declaration on the Rights of Indigenous Peoples, provide a foundation for acknowledging and advancing indigenous sovereignty, however its implementation has not been very consistent. Additionally, indigenous sovereignty encompasses both economic and cultural dimensions. It calls for empowering indigenous communities to govern their own economic enhancement, prioritize the well-being of their communities, and engage in sustainable resource management. It also seeks to protect and revitalize indigenous cultures, languages, and traditions. Furthermore, indigenous sovereignty also includes consent and stewardship to determine their political status and choose governance systems that best serve their needs. They also bear the responsibility of managing and preserving their lands and resources in a just and sustainable manner, drawing upon traditional ecological knowledge. However, this pursuit of indigenous sovereignty faces various challenges. It inherently clashes with the idea of sovereignty of modern nation states, and materializing it shall solicit a comprehensive re-evaluation of established structures and systems of power. Nevertheless, recognizing and honouring indigenous rights and authority is indispensable for promoting equality, justice, and overall well-being of both indigenous communities and the non-indigenous communities.

Self-determination is another cornerstone closely linked with indigenous sovereignty. This fundamental principle, widely recognized in international law, grants individuals and communities the autonomy to determine their own destiny in political, economic, social, and cultural aspects. It serves as a powerful tool for empowering indigenous communities to govern their own affairs, make decisions that directly affect their lives, and preserve their unique cultural heritage. By actively participating in decision-making processes, indigenous peoples can shape policies and practices that align with their values and priorities, ensuring that their voices are heard and respected. However, the path toward self-determination is not without its challenges. The historical legacy of colonization has left lasting scars on indigenous communities, eroding their autonomy and undermining their self-governance. Resource limitations and inadequate implementation mechanisms further complicate the realization of self-determination for indigenous peoples. Despite these obstacles, the rights of indigenous peoples and communities are steadily being recognized globally. This recognition has opened doors for indigenous communities to advocate for their self-determination and challenge the existing power structures. This recognition also provides a platform for indigenous communities to share their traditional knowledge and practices, enriching global discourse with diverse perspectives and fostering intercultural understanding.

However, the journey toward full self-determination remains complex. Indigenous peoples continue to face barriers such as land dispossession, environmental degradation, economic marginalization, and imposition of non-indigenous political systems. Overcoming these challenges necessitates collaborative efforts to dismantle systemic inequalities, promote meaningful participation, and create inclusive spaces that honour indigenous political systems and values. Efforts toward achieving self-determination must also consider the unique circumstances of each community. There is no one-size-fits-all approach, as indigenous communities have distinct histories, cultures, and aspirations. Hence, solutions must be very context specific, respecting the diversity and autonomy of indigenous communities. Another critical aspect relating to this entire discourse has been the securing of democratic rights for indigenous peoples. While international declarations and conventions recognize the right to self-determination and participation, indigenous communities still encounter obstacles such as insufficient consultation, under-representation in decision-making processes, historical marginalization, and the imposition of non-indigenous political systems. Overcoming these challenges necessitates addressing structural issues, confronting colonial legacies and power dynamics, and acknowledging and respecting indigenous political systems. Although progress has been made through legal cases, international treaties, and the advocacy of civil society groups and indigenous-

led movements, achieving full democratic rights for indigenous peoples requires meaningful participation, representation, and the recognition of their political systems.

In essence, the principles of sovereignty, self-determination, and democratic rights are deeply interconnected and mutually supportive. By upholding these principles, it is ensured that indigenous communities possess the autonomy and agency to shape their own futures, actively participate in decision-making processes, and have their voices acknowledged and valued. To advance the sovereignty, self-determination, and democratic rights of indigenous peoples, concerted efforts are required at the local, national, and international levels. This entails addressing systemic challenges, confronting historical injustices, and supporting initiatives that empower indigenous communities to govern their own affairs and preserve their cultures. Additionally, fostering open dialogue, promoting inclusivity in decision-making, and ensuring fair representation are pivotal steps toward realizing these principles. Furthermore, meaningful partnerships with indigenous communities, marked by respect for their knowledge, perspectives, and aspirations, are also of significant importance. Thus, by honouring and upholding the sovereignty, self-determination, and democratic rights of indigenous peoples, societies can strive for greater equality, justice, and overall well-being for both indigenous as well as non-indigenous communities.

Ethical Considerations

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Conflict of Interest

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