



Report of UNPO Members' Meeting on the Right to Land

12 July 2021

Unrepresented Nations and Peoples Organization

Table of Contents

I. INTRODUCTION.....	5
II. THE REALIZATION OF THE RIGHT TO LAND IS A CRUCIAL CONDITION FOR THE REALIZATION OF THE RIGHT TO SELF-DETERMINATION.....	7
A. International jurisprudence suggests that the right of self-determination entails the right to land..	9
1. Indigenous peoples’ right to self-determination underlies their permanent sovereignty over natural resources.....	9
2. Indigenous people’s right to free, prior, and informed consent—an expression of the right of self-determination—is emerging as a customary international legal norm.....	10
3. The right to free, prior, and informed consent translates indigenous people’s land rights into a concrete practice.....	13
4. Indigenous peoples’ exercise of their right to self-determination does not violate the sovereignty of existing states.....	13
B. The experiences of UNPO members demonstrate that the right to self-determination cannot be realized without the realization of the right to land.....	15
1. The infringement of indigenous peoples’ land rights is a direct threat to the very survival of the peoples, without whose continued existence the right of self-determination has little meaning..	15
2. When states violate affected peoples’ land rights, they effectively disregard the free, prior and informed consent right of affected peoples, and bypassing the consent requirement is all but repudiation of the principle of self-determination.....	16
3. States’ violations of peoples’ land rights limit their exercise of self-determination because they reflect the legacies of past colonialism.....	17
III. NEW COLONIALISM AND STATES’ VIOLATIONS OF PEOPLES’ LAND RIGHTS.....	21
IV. CONCLUSION.....	24

ABOUT THE UNPO

The Unrepresented Nations and Peoples Organization (UNPO) is an international membership-based organization established to empower the voices of unrepresented and marginalized peoples worldwide and to protect their fundamental human rights.

The peoples represented within the UNPO membership are all united by one shared condition: they are denied equal representation in the institutions of national or international governance. As a consequence, their opportunity to participate on the national or international stage is limited, and they struggle to fully realize their rights to civil and political participation and to control their economic, social and cultural development. In many cases, they are subject to the worst forms of violence and repression.

UNPO is a unique presence in the international arena in that it is built and primarily funded by its members. This gives it a strong connection to those suffering the consequences of the exclusion that the organization seeks to address. UNPO is thus able to address issues that often remain hidden because the organization has the freedom to raise issues that others cannot due to political or funding constraints.

The organization consists of a General Assembly of members, which serves as a deliberative body for decision-making, solidarity and standard setting among unrepresented nations and peoples, and a number of Foundations established to provide secretariat services for the General Assembly and to improve the respect for the rights of unrepresented peoples everywhere through research, education and public campaigns.

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I. INTRODUCTION

This report consolidates the findings of the UNPO Members’ meeting on the right to land held on 12 July 2021. It serves as an annex to the five-page contribution to the general comment draft prepared on behalf of the UN Committee on Economic, Social and Cultural Rights (hereinafter, “The Committee”).¹ The goal of the general comment No. 26 (2021) is to clarify States parties’ obligations relating to land and the governance of tenure of land under the International Covenant on Economic, Social and Cultural Rights (ICESCR), given that the Covenant does not explicitly mention “land rights” or its equivalents. The general comment points out ICESCR Articles 6,² 9,³ 11,⁴ and 12⁵ as the bases from which the right to land can be inferred. For example, land rights are inferred from the right to housing mentioned in Article 11.1 as part of the right to an adequate standard of living: When people are evicted from lands where they had established their home, availability, accessibility, and affordability of housing are curtailed, thus infringing upon their right to housing. Also, the general comment describes the effect of violating land rights on the right to food (Article 11), particularly in rural areas, and the right to employment (Article 6) in urban areas as well as the impact of the enclosure of communal lands on the rights to health (Article 12), food (Article 11), and access to healthcare and

1 E/C.12/69/R.2.

2 Article 6 partly states:

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. . . .

3 Article 9 states: The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

4 Article 11 partly states:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. . . .

5 Article 12 states:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

social services (Article 9). The first part of this report provides support for the written contribution's recommendation to ground the land right in the right of self-determination as provided in Article 1⁶ of the ICESCR. In recognizing the salience of the issues addressed in the general comment to the challenges faced by UNPO members, the first part will also relate the experiences of UNPO members to further support the relationship between land rights and self-determination.

The second part of this report will focus on Section III.D (“Extraterritorial obligations”), lays out three obligations—to respect, to protect, and to fulfill. The paragraphs on the extraterritorial obligation to respect emphasize that States parties’ actions to implement obligations under international agreements must not violate the land rights of peoples in other states. On the other hand, the paragraph on the extraterritorial obligation to protect points out the positive duty of States parties to regulate those over whom they exert control to ensure that rights to land are protected in other States. Lastly, the paragraphs on the extraterritorial obligation to fulfill address States parties’ obligation to adopt policies that promote land rights through international cooperation. The second part of this report will contribute to the draft comment by illustrating the importance of the aforesaid extraterritorial obligations by States parties mainly through the experiences of UNPO members encountering foreign actors.

6 Article 1 partly states:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

II. THE REALIZATION OF THE RIGHT TO LAND IS A CRUCIAL CONDITION FOR THE REALIZATION OF THE RIGHT TO SELF-DETERMINATION.

The right to land may be traced as far back as the recognition of the right to self-determination, which itself is a *jus cogens* featuring in Article 1 of the United Nations Charter.⁷ The right to self-determination is most popularly understood as the right to self-determination *external* to a state's current constitutional order—e.g., right to secession. This skewed understanding is likely the result of the self-determination right's successful and consistent application in the context of decolonization. The Declaration on the Granting of Independence to Colonial Countries and Peoples (UN General Assembly Resolution 1514),⁸ adopted in 1960, in calling for the end of colonial rule and paving the path towards independence of former colonies, affirmed the right to self-determination as expressed in the UN Charter. Under this narrow understanding of self-determination, the right to land is reduced to a one-off exercise through which peoples of former colonies reclaim sovereignty over their lands.

The right to land, however, cannot be fully realized by a single moment or event in history through reclamation of sovereignty over a territory because the right to self-determination is a right that a people must continue to assert and states have a continuing obligation to protect. This broader conception of self-determination as a continuing right and obligation is codified in the very first article of the two main human rights treaties⁹ by the exact same language.¹⁰ Based on the common Article 1, the right of self-determination entails: a people's right to determine their political status and pursue economic, social and cultural development; a people's right to dispose of their natural wealth and resources and be free from deprivation of their means of subsistence; and States parties' obligation to

7 Article 1.2 states: [The Purpose of the United Nations is, *inter alia*, t]o develop friendly relations among nations based on respect for the principle of . . . self-determination of peoples.

8 General Assembly resolution 1514 (XV) of 14 December 1960, "Declaration on the Granting of Independence to Colonial Countries and Peoples," <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Independence.aspx>.

9 International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).

10 *Id.* art. 1.

respect and promote those rights. Under this interpretation of self-determination, peoples' self-determination right also includes *internal* self-determination, the exercise and respect of which right do not require the formation of a new independent state but instead require a continued assertion and protection of the rights articulated in the common Article 1 of the ICCPR and ICESCR. The ongoing obligation of States parties to respect and protect peoples' right to self-determination implies that it is not just those in former colonies who can exercise the right to lands, but rather even those outside colonial influence are entitled to occupation and use of their lands should the lands be essential for them to "freely pursue economic, social and cultural development," "freely dispose of their natural wealth and resources," and be free from deprivation of their means of subsistence.

What complicates the relationship between the right to self-determination and the right to land is that the international legal system has also enshrined territorial integrity as a basic principle in Article 2.4¹¹ of the UN Charter. The respect for territorial integrity imposes a limitation on the right of self-determination¹² and particularly, on peoples' land rights because the exercise of the self-determination and land rights may amount to a changed governance structure over a given territory.¹³ The UN General Assembly's Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States,¹⁴ in accordance with the Charter of the United Nations, elaborated on the principle of territorial integrity by stating that "any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State . . . is incompatible with the purposes and principles of the Charter."¹⁵ The Declaration also explained the interrelationship between the principle of territorial integrity and other rights, including the right of self-determination:

11 Article 2.4 states: All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state . . .

12 See the common Article 1.3 of the ICCPR and ICESCR ("The States Parties to the present Covenant . . . shall promote the realization of the right of self-determination, and shall respect that right, *in conformity with* the provisions of the Charter of the United Nations.") (emphasis added).

13 Robert McCorquodale, "Self-Determination: A Human Rights Approach," *The International and Comparative Law Quarterly*, 43(4) (Oct. 1994), pp. 865-876.

14 <http://www.un-documents.net/a25r2625.htm>.

15 *Id.*

Nothing in [this Declaration] shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described [in this Declaration] and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.¹⁶

In other words, the public interest in upholding the self-determination and land rights of different peoples must be balanced against the interest in respecting the territorial integrity of sovereign states. Moreover, the evidence of a certain group's oppression, marginalization, persecution, or exclusion from political participation by the ruling state tips the balance toward prioritizing the oppressed group's rights including land rights over the ruling state's territorial integrity.

A. International jurisprudence suggests that the right of self-determination entails the right to land.

1. Indigenous peoples' right to self-determination underlies their permanent sovereignty over natural resources.

The principle of permanent sovereignty over natural resources,¹⁷ a principle originally developed to guarantee former colonies' political and economic self-determination, has since evolved to encompass indigenous peoples living within state boundaries. In particular, the paragraph 2 of the common Article 1 (the article on the right of self-determination) of the ICCPR and ICESCR,¹⁸ while it confers former colonies a right over their natural wealth and resources, also protects against the newly independent states from using the same principle of permanent sovereignty to infringe upon indigenous peoples' rights over natural resources through the practice of nationalization that effectively confiscates indigenous peoples' property including lands.¹⁹ Articles 47 and 25 of the ICCPR and ICESCR,

¹⁶ *Id.*

¹⁷ See General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources": <https://www.ohchr.org/EN/ProfessionalInterest/Pages/NaturalResources.aspx>.

¹⁸ The common Article 1.2 reads: "All peoples may, for their own ends, freely dispose of their natural wealth and resources *without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*" (emphasis added)

¹⁹ Allan Rosas, "The Right of Self-Determination," in Economic, Social and Cultural Rights, A. Eide, C. Krause, and A. Rosas (eds.), Martinus Nijhoff, p. 84 (1995).

respectively,²⁰ also provide a safeguard against states' invoking the self-determination principle of the common Article 1 to repeat the imperialist policies that they themselves had had to endure under former colonial powers.²¹ Moreover, a 1955 report of the Secretary-General, in describing the debates surrounding the drafting of the common Article 1, acknowledged that "the right of self-determination [included the] principle that a nation or people should be master of its own natural wealth or resource."²² In short, the evolving human rights framework shows that the right of sovereignty over natural resources including land is a shield not only for state independence but also for all peoples with a right of self-determination.

As the Secretary-General's statement suggests, it has long been understood that without the right of permanent sovereignty over natural resources, the right of self-determination would be meaningless.²³ The self-determination in the context of indigenous peoples within state boundaries is different from the right of secession or independence applicable to former colonies. In fact, especially since the termination of the UN Trusteeship Council, other alternative forms of self-determination have overtaken secession or state independence as the primary manifestations of self-determination. It is under these alternative schemes of self-determination that the right of sovereignty over natural resources including land is an essential component for full realization of the right to self-determination.

2. Indigenous people's right to free, prior, and informed consent—an expression of the right of self-determination—is emerging as a customary international legal norm.

The Article 10 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) states: "Indigenous peoples shall not be forcibly removed from their land or territories . . . without the free,

20 The said articles state: "Nothing in the present Covenant shall be interpreted as impairing the inherent right of *all* peoples to enjoy and utilize fully and freely their natural wealth and resources." (emphasis added)

21 See Matthew C.R. Craven, *The International Covenant on Economic, Social and Cultural Rights, A Perspective on its Development*, Clarendon Press, p. 147 (1995).

22 E/CN.4/Sub.2/2004/30, para. 13 (quoting "Draft international covenant on human rights; annotation," report of the Secretary-General (A/2929), paras. 19-21 (1 July 1955)).

23 E/CN.4/Sub.2/2004/30, para. 13.

prior and informed consent of the indigenous peoples”²⁴ Because the UNDRIP is a declaration, however, versus a treaty like the ICCPR or ICESCR, its provisions are not binding. Therefore, the establishment of the free, prior, and informed consent right (FPIC) requires a survey of jurisprudence to determine whether the FPIC has become as a customary international law. The discussion in this sub-section demonstrates that it is, at minimum, emerging as such a legal norm.

The UNDRIP (2007) was a product of a half-century-long evolution of jurisprudence around participatory rights of indigenous peoples. First, the International Labour Organization (ILO) Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1959) (ILO No. 107)²⁵ was a binding instrument over seventeen states. In addition to the limited number of states under its force, even though the ILO No. 107 did require the free consent of affected indigenous peoples, it did not provide an adequate guarantee of the right because it allowed states to bypass the consent requirement if in the states’ security or economic interests.²⁶ Such a limitation on the participatory right was in effect no different than the justifications often invoked by past colonial powers in forcibly taking away lands from and relocating indigenous peoples.²⁷

Over thirty years after the ILO No. 107 was the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (1991) (ILO No. 169).²⁸ The ILO No. 169 was an improvement to the ILO No. 107 in that the provisions no longer placed state interests before the participatory right being codified. Article 6, for instance, required that consultations undertaken in the application of the Convention be “in good faith and in a form appropriate to the circumstances, with the

24 A/61/295, <https://undocs.org/A/RES/61/295>.

25 International Labour Organization (ILO), Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (ILO No. 107), adopted June 26, 1957, entered into force June 2, 1959, 328 U.N.T.S. 247.

26 *Id.*, art. 12(1).

27 Tara Ward, “The Right to Free, Prior, and Informed Consent: Indigenous Peoples’ Participation Rights within International Law,” **Northwestern Journal of International Human Rights**, 10(2), Winter 2011, p. 59 (citing **Alexandra Xanthaki, Indigenous Rights and United Nations Standards: Self-Determination, Culture and Land**, 49, 64 (2007)).

28 ILO, Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Doc. 169), adopted June 27, 1989, entered into force September 5, 1991, 28 I.L.M. 1382.

objective of achieving agreement or consent to the proposed measures.”²⁹ Still, in addition to governing just twenty states, the ILO No. 169 only required a communications mechanism, short of judicial enforcement.³⁰

After another sixteen years, the FPIC underwent another major stage of development under the Inter-American Court of Human Rights in the case of *Saramaka People v. Suriname*.³¹ *Saramaka* involved the dispute over Suriname’s resource concessions to private companies within the Saramaka people’s lands without their consultation. The Inter-American Court, while recognizing that indigenous peoples’ land rights are not absolute but subject to restrictions to further broader public interests, did hold that those restrictions could not violate the right of indigenous peoples to their very survival.³² Moreover, in order to ensure this protection, the Inter-American Court required states to not only consult but also obtain “free, prior, and informed consent” of the affected communities in the case of large-scale projects with the potential to endanger the very existence of the affected peoples.³³ This judgment of the Inter-American Court was a pivotal moment in the development of the FPIC because it set a binding precedent on all States parties in the Inter-American Convention on Human Rights.³⁴ Hence, even though the Inter-American Court’s decisions and subsequent applications do not create a customary international law by themselves due to the the court’s limited jurisdiction, these opinions, coupled with legally binding instruments in other fora, demonstrate the FPIC requirement is emerging as a “legitimate expectation” for states.³⁵

29 Ward, *supra* n. 59 (quoting ILO No. 169, art. 6(2)); *see also* ILO No. 169, art. 15(2) (right to consultation prior to exploration or exploitation of resources); ILO No. 169, art. 16(2) (free informed consent prior to relocation); ILO No. 169, 17(2) (consultation prior to transfer of land rights outside community).

30 Ward, *supra* n. 59, at 59 (citing Xanthaki, *supra* n. 27, at 91).

31 Preliminary Objections, Merits, Reparations, and Cost, Inter-Am. Ct. H.R. (ser. C) No. 174 (Nov. 28, 2007).

32 *Id.* para. 127.

33 *Id.* para. 134.

34 Organisation of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 123.

35 Ward, *supra* n. 59, at 66 (quoting Committee on Formation of Customary (General) International Law, *Final Report of the Committee Statement of Principles Applicable to the Formation of General Customary International Law*, at 8 (2000) (defining customary international law)).

3. The right to free, prior, and informed consent translates indigenous people's land rights into a concrete practice.

The conclusion that the FPIC is emerging as a customary international legal norm is significant to indigenous peoples' land rights because the FPIC is the major safeguard for protecting the land rights. The case involving Mayan communities of Sipacapa and San Miguel Ixtahuacan demonstrates this relationship between the participatory rights of indigenous peoples and their land rights. In the Mayan communities case, the Guatemalan government granted a private company licenses to explore and exploit the mineral deposits (the site of the Marlin Mine) in the western highlands of Guatemala, where the indigenous peoples of Maya-Mam and Maya-Sipacapense make up greater than eighty percent of the population.³⁶ Regarding the case, the Committee of Experts on the Application of Conventions and Recommendations (CEACR), which monitors the application of the ILO conventions including the No. 169, clarified that the terms, "lands" and "territories," do not only include lands owned in the European sense of property but also territories that affected peoples have traditionally occupied and used.³⁷ Therefore, the sales of lands by individual landowners alone do not fulfill the consultation or FPIC requirements when the lands are considered to be of a collective nature—often the case of indigenous peoples.³⁸ Such a reformulation of "lands" and its implication on the FPIC exhibits how the FPIC functions as a mechanism to protect land rights of indigenous peoples.

4. Indigenous peoples' exercise of their right to self-determination does not violate the sovereignty of existing states.

Indigenous people's exercise of their right to self-determination does not conflict with the principle of state sovereignty. The land right of indigenous peoples is a sensitive issue for states

36 Ward, *supra* n. 59, at 75 (citing FREDEMI & The Center for International Environmental Law, *Specific Instance Complaint Submitted to the Canadian National Contact Point Pursuant to the OECD Guidelines for Multinational Enterprises Concerning: The Operations of Goldcorp Inc. at the Marlin Mine in the Indigenous Community of San Miguel Ixtahuacán, Guatemala*, 4-5 (2009)).

37 Ward, *supra* n. 59, at 82 (citing CEACR, *Individual Observation concerning Indigenous and Tribal Peoples Convention*, 1989 (No. 169) Guatemala (ratification: 1996), para. 5, ILO Doc. 062007GTM169 (ILO, 2007)).

38 Ward, *supra* n. 59, at 82.

because the implied sovereignty of indigenous peoples over their lands seems to conflict with states' sovereignty, a principle considered sacred and enshrined in the UN Charter.³⁹ However, neither the broader right of self-determination nor the right to land of indigenous peoples offends states' sovereignty because the modern conception of "sovereignty" differs from its traditional meaning. The Special Rapporteur on the Rights of Indigenous Peoples, Erica-Irene A. Daes, in her final report on indigenous peoples' permanent sovereignty over natural resources, defined "sovereignty" as "governmental control and authority over the resources in the exercise of self-determination," as opposed to an absolute and "supreme power within a State without any restriction."⁴⁰ It is under this new understanding of the term, "sovereignty," that *imperium in imperio* is possible.⁴¹ The United States Supreme Court Chief Justice John Marshall said in *Worcester v. Georgia*, "a weaker power does not surrender . . . its right to self-government . . . by associating with a stronger, and taking its protections," but rather, "[a] weak state . . . may place itself under the protection of one more powerful, without stripping itself of ["sovereignty"]."⁴² In other words, when applied to indigenous peoples, sovereignty does not mean absolute power over a territory within existing state borders, which would effectively contradict state sovereignty.⁴³ Instead, sovereignty of indigenous peoples merely indicates their right of self-governance.⁴⁴ On the flip side, without the new understanding of "sovereignty," much of the international system rife with treaties that limit states' absolute power in return for certain benefits would break down.⁴⁵ Various state practices from a federal system to recognition of the special status of indigenous peoples illustrate the changed but prevailing, limited concept of "sovereignty."⁴⁶ Hence, indigenous peoples' exercise of their self-determination or land rights does not diminish or contradict the sovereignty of existing independent states.⁴⁷

39 Article 2.1 states: "The Organization is based on the principle of the sovereign equality of all its Members."

40 E/CN.4/Sub.2/2004/30, paras. 18-19.

41 See Emmerich de Vattel, *The Law of Nations*, American ed. (1805), Bk. I, Ch. 1, p. 60.

42 31 U.S. (6 Pet.) 515, 520 (1832).

43 See E/CN.4/Sub.2/2004/30, para. 46.

44 *Id.*

45 E/CN.4/Sub.2/2004/30, para. 20.

46 *Id.*

47 E/CN.4/Sub.2/2004/30, para. 30.

B. The experiences of UNPO members demonstrate that the right to self-determination cannot be realized without the realization of the right to land.

In support of the jurisprudential argument expounded above, this section details the experiences of UNPO members. The members' experiences show that a full exercise of self-determination is impossible when peoples' rights to lands are violated. First, member experiences demonstrate that land security is indispensable to the survival of an indigenous people. Second, in ignoring the FPIC, a mechanism to put land rights into practice,⁴⁸ states also violate the basic UN principle of self-determination. Lastly, member experiences show that their struggles and conflicts stem from violations of their land rights while such violations, legacies of colonialism, limit their exercise of self-determination.

1. The infringement of indigenous peoples' land rights is a direct threat to the very survival of the peoples, without whose continued existence the right of self-determination has little meaning.

The violations of indigenous peoples' rights are common phenomena among UNPO members. These violations threaten the very existence of the affected peoples. For example, the heritage site and national park designation of lands traditionally occupied and used by Barotse people without their consent has deprived the Barotse people of their central governance space while making it impossible for them to continue rituals that they have practiced for centuries. Also, the development activities through foreign actors such as China have depleted the natural resources and taken away their source of livelihood.

Biafrans' struggles in Nigeria also demonstrate the importance of land to their survival as a people. Biafrans are frequent targets for various atrocities including extrajudicial killings largely because of Nigeria's interest in the mineral and oil deposits found in their lands. Unless their land

48 See *supra* II.A.3.

rights are respected, violence will continue to threaten the lives of the Biafran people. Outside Africa, the survival of South Malukans has been under threat due to their land rights' infringement, which dates back to the colonization by the Dutch and subsequently the occupation by Indonesia. In particular, mining and deforestation effected by companies under the enforcement by the military and with the financial backing of foreign banks strip South Malukans of their lands, without which their survival as a people is at risk.

2. When states violate affected peoples' land rights, they effectively disregard the free, prior and informed consent right of affected peoples, and bypassing the consent requirement is all but repudiation of the principle of self-determination.

Violations of peoples' land rights signal overlooked FPIC requirement, an affront to the principle of self-determination in effect. The situation of Khmer-Kroms, an indigenous people in the Mekong Delta, exemplifies this link between the violation of land rights and self-determination, thanks to their unique context under a communist regime. According to Article 4 of the Land Law, "Land belongs to the entire people with the State acting as the owner's representative and uniformly managing land. The State shall grant land use rights to land users in accordance with this law."⁴⁹ The "people's ownership" and "state management" reflect Vietnam's communist ideology and have justified land grabbing from landowning farmers. Such land grabbing has ultimately resulted in a transfer of land ownership from many Khmer-Kroms, almost all of whom depend on lands for their subsistence, to Vietnamese with no consultation, much less consent, of Khmer-Kroms.

The Jumma people of the Chittagong Hill Tracts in Bangladesh also continue to have their FPIC infringed through violations of their land rights. For example, the Border Guards Bangladesh (BGB) evict the Jumma people from their own lands through seizure to expand the state's tourism industry, and since late 2020, the military has been building a five-star hotel and an amusement park despite widespread demands to scrap the plan. This project has put 10,000 Jumma farmers at the risk of

49 Vietnam Law in English, <https://vietnamlawenglish.blogspot.com/2013/11/vietnam-land-law-2013-law-no-452013qh13.html>.

displacement, depriving them of their basic means of livelihood. In addition, the military has been constructing a dam at Sijokchara of Sajek with serious consequences on the ecosystem of affected areas while private actors set up brick fields in various parts of the Bandarban District in violation of environmental laws. Such predicaments of the Jumma people typify a pattern across UNPO members, in which the state ushers in private developers at the expense of the indigenous peoples' land rights. In forcing development projects upon the traditional lands of indigenous peoples, not only do states and private developers disrespect the FPIC right of the peoples but also threaten their very survival through violent enforcement and harm to the biodiversity and environment, which are usually crucial to the livelihoods of indigenous peoples.

3. States' violations of peoples' land rights limit their exercise of self-determination because they reflect the legacies of past colonialism.

While traditional forms of colonialism based on conquest have had their heyday, their influence and the concerns that culminated in a collective international rejection of such colonialism persist in today's world order. Two of the shields put in place against imperialist tendencies and colonial domination were the right to self-determination and permanent sovereignty. However, as described earlier, with the ripening of the post-colonial era, some states transformed these very same ideals into swords to infringe upon the rights of peoples within their borders.

Zambesia presents an interesting case as a nation that had never been under a direct colonial rule. When states were created upon the departure of former colonial powers based on their arbitrary boundary-drawing, ironically Zambesia's situation worsened compared to before. A main issue for Zambesia is the dispute over the Zambezi river within the bounds of its lands. During the colonial period, the British and German empires signed the Heligoland-Zanzibar Treaty, also known as the Anglo-German Agreement of 1890, which provided for access rights to the river. As a result of imperfect implementation and uncertain status of the treaty following the end of the Second World War, however, newly independent states such as Namibia and Botswana plunder natural resources of

Zambesia with impunity. Thereby, Zambesia presents a case where the self-determination right continues to be ignored through the encroachment of existing state influence even though it was never fully under colonial control.

Western Togoland is another case that shows how the influence of colonialism lingers to this day. Following the end of the First World War, the German Protectorate of Togo was divided between the British, who took control of what is Western Togoland today, and the French, who took control of present-day Togo. After the Second World War and the formation of the United Nations, Western Togoland became a UN Trust Territory under British administration. During the period of decolonization, the United Kingdom organized a referendum to decide whether Western Togoland would become independent or join what is now Ghana, and despite the questionable legitimacy of the referendum, the referendum, with a slight majority, resulted in joining Ghana. Today, Ghana's discriminatory economic and political policies are an obstacle to Western Togoland peoples' full enjoyment of their land rights as those policies hinder with productive use of the lands and curtail Western Togoland's ability to exercise their right to self-determination.⁵⁰

The situation of the Yoruba people exemplifies the way colonialism continues to remain a force impacting the lives of indigenous peoples. The Yoruba people have traditionally lived in what are now six different states in western Africa, including Nigeria, Benin, and Ghana. However, from the perspective of the Yoruba people, Nigeria, for example, is nothing more than an extension of past colonialism under a different name—that is, statehood—and by other Africans instead of Europeans. Typical of African states after the “end” of colonial rule, Nigeria's population consists of several ethnic groups, and the dominant group, Fulanis, does not even comprise the largest group of the population, much less a majority. Thereby, the arbitrary border-drawing, effected through former colonial powers through agreements in which indigenous peoples in Africa took no part, not only created artificial

⁵⁰ See Unrepresented Nations & Peoples Organization, “Western Togoland,” <https://unpo.org/members/20425>. In 2017, seven members of the Homeland Study Group Foundation (HSGF) were arrested for wearing T-shirts with the inscription “9 May 2017 is OUR DAY Western Togoland,” referring to the date when the organization attempted to declare independence. *Id.* Under-development and -investment in Western Togoland is the norm. *Id.*

minorities by dividing the Yoruba population, but also, opened doors for certain minorities to prolong the same oppressive and discriminatory policies that had led the international community to denounce colonialism.

In the Kurdistan Region of Iraq, the government has confiscated and occupied lands belonging to Assyrians, which has driven the escalation of inter-ethnic conflicts. Due to both the instability in their homelands and the continued persecution directed at them, Assyrians must flee with little hope of returning to their ancestral lands. In the face of such plight, Assyrian activists advocate for the rule of law without discrimination.

Experiences of indigenous peoples under the Persian rule in Iran provide examples of ways states infringe on the land rights of the peoples. Not only does Iran directly claim ownership of lands of non-Persian peoples such as Southern Azerbaijanis, but also it changes the names of the lands, cities, rivers, and mountains into Persian. Moreover, the government ownership of lands previously belonging to peoples like Southern Azerbaijanis does not translate into greater spending in the affected regions, but instead, the government sells the lands at prices that are fractions of the market price and doles out any benefits to Persians.

Aceh, a region lying on the northernmost part of Sumatra, is home to one of the oldest nations in Southeast Asia but has been under occupation since the 1950s. The people of Aceh are currently facing four major issues. First, the government of Indonesia has been transferring population in a program to achieve a “democratic balance” among different regions. This transfer program has caused degradation of the economic, social, and cultural life of the people of Aceh as well as environmental harm to their lands. Second, deforestation sanctioned by the government through the issuance of licenses to logging companies has resulted in increasingly frequent floods and destroyed ecosystems, endangering the very existence of the Aceh people. Third, foreign mining companies have been flocking to the region to exploit the natural resources including coal, oil, silver, and gold, resulting in dire environmental consequences and thereby negatively affecting the health of the local people. Lastly, through the

enforcement by the Indonesian military, the Aceh people have recently been subject to land grabbing and forced to leave their homes.

West Papua is another region under the Indonesian rule whose indigenous population is experiencing violations of its land rights. Particularly, by granting projects to foreign conglomerates, the Indonesian government has taken away lands from West Papuans without any due process, and the construction of highways and other industrial projects have encroached upon West Papuans' lands. Gold and other natural resources found in West Papua are the main interest of the Indonesian government.

Lastly, the current situation for Crimean Tatars under the Russian control illustrates the historical connection between past colonialism and current state practices. Particularly, often left out of the debate regarding the Russian intervention in Crimea is the deportation of Crimean Tatars, who are the titular natives to Crimea, by the Soviet Union in 1944 and the state-enforced re-population by ethnic Russians, who still reside there to this day. After Ukraine became an independent state after the dissolution of the Soviet Union, some Crimean Tatars returned, but the process of restitution for them and others of the diaspora still in exile remains an unresolved issue, especially given the presence of Russian secondary occupants. Even though Ukraine is intent on recognizing and respecting the land rights of Crimean Tatars, for instance by calling the 1944 Soviet deportation of Crimean Tatars a "genocide" and proposing a draft law "On the indigenous peoples of Ukraine" (No. 5506),⁵¹ the ongoing occupation of the region by the Russian Federation renders those rights without much force. From Crimean Tatars' perspective, the current Russian occupation of Crimea is unacceptable as no less than continuation of its colonial practice dating back to Imperial Russia followed by Soviet Russia and now the Russian Federation.

51 President of Ukraine, "President submitted a draft law "On the indigenous peoples of Ukraine" to the Verkhovna Rada as urgent," <https://www.president.gov.ua/en/news/prezident-podav-do-parlamentu-yak-nevidkladnij-zakonoproekt-68529>.

III. NEW COLONIALISM AND STATES' VIOLATIONS OF PEOPLES' LAND RIGHTS

Beyond the theoretical connection from self-determination to land rights explained in Part II, this part of the report will highlight the extent and prevalence of infringements of indigenous peoples' land rights by foreign actors following international agreements. Based on the testimonies of UNPO members and the information provided during a UNPO conference in 2020, the reported materials will bring to the fore the importance and relevance of Section III.D ("Extraterritorial Obligations") of the CESCR's general comment draft. Specifically, the discussion will draw a parallel between modern extraterritorial activities and colonialism.

The [Uyghur' situation in East Turkestan](#) is emblematic of what could be considered the 21st century version of "colonialism." Since its inception, the Chinese Communist Party (CCP) has occupied the area, which the party aptly from a Sino-centric view, renamed *Xin-Jiang*, literally meaning "new land" in Mandarin. Nowadays, the Xinjiang Production Construction Corps (XPCC), a paramilitary entity (*Bing-Tuan*), has taken control of the forest and other natural resources and taken away lands from indigenous farmers. Through this process, the communist party has deprived Uyghurs of their "means of subsistence."⁵² It is the rich resources and the land in which the communist party is interested. The belt and road initiative (BRI), which includes East Turkestan in its scope, is part of the communist party's larger project to control the land and the natural resources found there as well as its population.

Southern Mongolians, in a manner similar to the Uyghurs in East Turkestan, have been under the Chinese Communist Party's rule. Beginning in the twentieth century, state-owned farms and enterprises have taken away lands from Southern Mongolians while mass migration of Han Chinese transformed the demographic make-up of the lands, pushing out Southern Mongolians whose livelihood as hunters relies on access to their ancestral lands. Even Southern Mongolian farmers

52 ICCPR Art. 1.2.

experience difficulties as their properties including livestock are confiscated by the communist party, and large-scale cultivation of the grassland by immigrant peasants encroach upon their lands. Through this process of disenfranchisement, Southern Mongolia has become China's largest coal and gasoline producer, culminating in the announcement by the Chinese government that Southern Mongolia is China's largest energy base. Ultimately, the Chinese government has destroyed the traditional and nomadic ways of life that Southern Mongolians have enjoyed for centuries.

Baluchis have been subject to similar influence of new “colonialism.” First, the China-Pakistan Economic Corridor (CPEC) is China's flagship BRI project. The “corridor” refers to a vast network of transportation and electrical grid stretching over 3,000 km from East Turkestan to Gwadar in Balochistan, the southwestern corner of Pakistan. Such a project, however, is problematic for the Baluchis native to Balochistan because typical of China's overseas development projects, the development of the “corridor” will likely entail transformation of the affected regions into a quasi-Chinese city in another state.”⁵³ In fact, the Chinese-Pakistan Investment Corporation (CPIC) has already obtained approval to build a city, in which some estimate that by 2048, Chinese citizens will outnumber Baluchis,⁵⁴ turning Baluchis into a “minority in their own province” through a process that included little input from Baluchi leaders, including both business and civil society actors.⁵⁵ Second, Western Baluchis in Iran are also subject to state-enforced population transfers coupled with foreign development projects at the expense of their land rights,⁵⁶ in much the same way as those in Pakistan have experienced their rights ignored. In addition, the Persian regime in Iran has long been adopting and implementing policies to disable Western Baluchis' political voice to assert their land rights. These

53 Pauley, L., & Shad, H. (2018). “Gwadar: Emerging Port City or Chinese Colony?” *The Diplomat*, <https://thediplomat.com/2018/10/gwadar-emerging-port-city-or-chinese-colony/>.

54 Yousafzai, F. (2016), “Chinese to Outnumber Baloch natives by 2048,” *The Nation*, <https://nation.com.pk/29-Dec-2016/chinese-to-outnumber-baloch-natives-by-2048>; International Crisis Group (2018), “China-Pakistan Economic Corridor: Opportunities and Risks,” <https://www.crisisgroup.org/asia/south-asia/pakistan/297-china-pakistan-economic-corridor-opportunities-and-risks>.

55 International Crisis Group (2018), “China-Pakistan Economic Corridor: Opportunities and Risks,” <https://www.crisisgroup.org/asia/south-asia/pakistan/297-china-pakistan-economic-corridor-opportunities-and-risks>.

56 Simon Watkins, “China Inks Military Deal with Iran Under Secretive 25-Year Plan,” *Oil Price*, Jul. 6, 2020, <https://oilprice.com/Energy/General/China-Inks-Military-Deal-With-Iran-Under-Secretive-25-Year-Plan.html>.

policies, among others, include land grabbing and dividing up and incorporating parts of Balochistan into other provinces to prevent forming Baluchi majorities anywhere.

The infringement of Baluchis' rights is not the only violation of international law effected via activities related to the CPEC. Perhaps the most glaring violation of international law by CPEC activities is that Pakistan effectively violates the UN Security Council Resolution 47 by entering into an agreement with China that ultimately splits Kashmir apart and heightens insecurity in the disputed region, which exposes peoples native to the lands in the "corridor" to an increased likelihood of human rights violations.⁵⁷ In a UNPO conference held in November 2020 on the negative consequences of China's growing influence for unrepresented peoples, the Vice President of the European Parliament, Fabio Massimo Castaldo, linked the human rights issues in Balochistan and Gilgit-Baltistan with the GSP+ and highlighted the need to ensure that any international trade deal is tied to due diligence.⁵⁸ Dr. Ariell Ahearn, from the School of Geography and the Environment, University of Oxford, in sharing her findings about the impact of BRI on minority groups in Central Asia, highlighted the acute effect of the BRI in active conflict zones, disputed territories, and areas stricken with water scarcity, in particular.⁵⁹ Among the key consequences for minority groups Dr. Ahearn identified were the loss of land and traditional livelihoods.⁶⁰

The United States Commissioner for International Freedom of Religion, Nury Turkel, well explained the "neo-colonialist" nature of China's extraterritorial activities during the UNPO conference in 2020. First, he contextualized the CCP's persecution of the Uyghurs, Tibetans, and Southern Mongolians within Beijing's broader geopolitical interests by underlining the importance of Xinjiang for the CCP as a vital route to Eurasia for its vast market and natural resources.⁶¹ Then, he warned,

57 UNPO, "Empire-Building in Asia: the Belt and Road Initiative and its Impact on Minorities and Indigenous Communities," <https://unpo.org/article/22116>.

58 *Id.*

59 *Id.*

60 *Id.*

61 *Id.*

The Uyghurs [situation] might sound like another human rights crisis, it may sound like something that is not related to you particularly. . . . [But] you can no longer ignore this. As long as China is promoting its digital dictatorship, their digital authoritarianism . . . , its corrupt influence campaign, as long as they continue to threaten national rules, norms, and the international system, as long as they continue to invade privacy, not only in our homeland but in the world, then this will become everybody's issue.⁶²

IV. CONCLUSION

The present report attempts to ground land rights of indigenous peoples on the established right of self-determination. To support this argument, the first part of the report reviewed relevant international instruments and cases to establish the connection between the two rights. The conclusions of this review are, in summary, that (1) the principle of self-determination is the basis of peoples' permanent sovereignty over natural resources, which include lands, and (2) the free, prior, and informed consent requirement, which is an emerging customary international legal norm to effectuate the right of self-determination, materializes the protection of land right. Member experiences demonstrated that although the work of the UN Trusteeship Council has ended, intrusion by state actors continues to impose the same oppressive policies, such as population transfers, land grabbing, and deprivation of traditional ways of life and practices, as did former colonial powers. The persistence of these invasive policies, tantamount to violations of the affected peoples' land rights, is problematic because they threaten the very existence of the indigenous peoples. The case law of the Inter-American Court of Human Rights suggests that the principle of self-determination, through the requirement of the free, prior, and informed consent right, should be the vanguard of indigenous peoples' rights to their lands and thereby, ensure the peoples' survival, including the preservation of their lifestyles, traditional forms of governance, and customs.

The second part of the report shifted the focus and extended the discussion in Part I to states' extraterritorial obligations arising from the right to lands. China's occupation of the native lands of Uyghurs, Southern Mongolians, and Tibetans and their oppression by the Chinese Communist Party as

⁶² *Id.*

well as its Belt and Road Initiative activities abroad in areas such as Balochistan and Gilgit-Baltistan provided examples of forced demographic change and denial of the free, prior, and informed consent (FPIC) right of indigenous peoples. Unless the international community recognizes states' obligation to prioritize the FPIC right of indigenous peoples over any economic or geopolitical interests of the states, states' "neo-colonialist" foreign policies will continue to infringe upon the land rights and thereby, self-determination rights of indigenous peoples.

In light of the findings and expositions above, this report will conclude with the following recommendations.

- The general comment should add to Part II ("Provisions in the Covenant relating to land") a discussion grounding peoples' land rights on their fundamental right of self-determination, as enshrined in Article 1 of the Covenant.
- The general comment should retain the section on extraterritorial obligations (III.D) and also link states' extraterritorial obligations back to peoples' right of self-determination by highlighting the "neo-colonialist" nature of some current state activities.
- States should promote education of evolving conceptions of borders and statehood with particular attention to the heavy influence of the colonial period on the current international order. Examples of these efforts include an interactive mapping system that traces histories of indigenous peoples and their relations to the geography.
- International human rights organizations should provide legal and technical assistance to the civil society to build coalitions to hold large private actors accountable to improve their corporate social responsibility regarding land rights of indigenous peoples and environmental protection.
- International jurists should reframe the self-determination right of indigenous peoples as a way to satisfy their obligation as custodians of the lands. Such an understanding better reflects the relationship of most indigenous peoples to their ancestral lands, for until colonial powers and

industrialization began to destroy the earth, indigenous peoples had for centuries acted as responsible stewards.

- The United Nations should develop more effective mechanisms to refer state-enforced population transfers under the International Criminal Court's jurisdiction.