

**SUBMISSION to the UN Special
Rapporteur on Freedom of Religion or
Belief**

**Call for Inputs: Indigenous Peoples and
the Right to Freedom of Religion or Belief**

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History

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Introduction

In response to the *Call for inputs: Indigenous Peoples and the right to freedom of religion or belief*, we submit our ongoing project, which maps global compliance with the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”). *See* Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007). Our project addresses the Special Rapporteur’s Key Question 3.1 by evaluating how the laws and actions of countries that have endorsed UNDRIP (“Endorsing Countries”) promote and implement UNDRIP Article 12 (“Article 12”). Specifically, our research asks whether Indigenous peoples, living within the borders of Endorsing Countries, have the right to (1) manifest, practice, develop and teach spiritual and religious traditions, customs and ceremonies; (2) maintain, protect, and have access in privacy to religious and cultural sites; (3) the use and control of ceremonial objects; and (4) the repatriation of human remains (“Elements”).

The Research and Mapping Process

Our final product will be an online, interactive map, detailing the evaluations of Endorsing Countries and their compliance with UNDRIP. Please find our current version (as of July 11, 2022) [here](#). Countries are color-coded based on their UNDRIP status, the legal status of religion, and other factors per the map key. Clicking on a country will bring up additional contextual information about the status of Indigenous religious rights in that jurisdiction.

The Endorsing Countries examined for this project were chosen strategically based on factors including Indigenous population size, access to information, and geographic distribution. Data was collected through desk-research. We initially focused on laws, looking first to constitutions and statutes to evaluate the status of enumerated religious rights for Indigenous peoples. Court rulings and academic articles then provided information on the enforcement of relevant rights. Finally, we reviewed news articles, investigative journalism, and popular media to better consider personal Indigenous narratives on religious rights. Entries on the Endorsing Countries that we examined were then uploaded to our map, allowing for the visualization of religious freedoms. We are happy to provide additional data on request.

Our Results and Analysis

As of July 11, 2022, we collected information on 25 Endorsing Countries. Of those 25 nations, we found that 3 (Australia, Philippines, and the United States of America) have legal protections for all 4 UNDRIP Article 12 Elements. Five nations (Argentina, Mexico, Nepal, New Zealand, and Venezuela) have protections for 3 out of the 4 UNDRIP Article 12 Elements. Three nations (Bolivia, Ecuador, and India) have protections for 2 out of the 4 UNDRIP Article 12 Elements. Next, 7 nations (Brazil, Denmark, Finland, Guatemala, Norway, Peru, and Sweden)

have 1 UNDRIP Article 12 protection. Finally, 7 of the Endorsing Nations that we examined (Algeria, Canada, France, Indonesia, Japan, Malaysia, and South Africa) do not have any legally protected UNDRIP Article 12 Elements.

Element (1) has the broadest compliance, with protection for the right to “manifest, practice, develop and teach spiritual and religious traditions, customs and ceremonies,” found in 18 of 25 Endorsing Countries studied so far. Often, this right is enshrined in an Endorsing Country’s constitution. While some constitutions allow for a blanket freedom of all religions, it is not uncommon for the constitutions to include a specific carveout for Indigenous religion (see, e.g., Article 30 of Bolivia’s constitution, explicitly recognizing Indigenous rights to “cultural identity, religious belief, spiritualities, practices and customs, and their own world view”). However, the realities of colonialism have undoubtedly led to the erasure of many aspects of Indigenous religiosity. In line with histories of conquest and efforts of missionaries, we have observed that in many Endorsing Countries, Indigenous religions have fused with teachings of Christianity (as seen in Ecuador, Bolivia, Peru, and Brazil). There are also instances where Indigenous beliefs mixed with other dominant religions in the nation such as in Nepal, where the Indigenous religion of Kirati has Hindu, Buddhist, and animist influences. Histories of colonialism and the force of dominant religions extend to the lived experiences of Indigenous communities today, which continue to be marred by forced conversions or religious persecution. Instances of religious persecution often manifest as the enforcement of other laws such as blasphemy, social media, or public disturbance laws. For example, Indonesia’s “blasphemy law” (Presidential Decree No. 1/PNPS/1965) combined with the law on Electronic Information and Transaction (Law No. 11/2008) has been used as a tool to prosecute individuals accused of insulting religions online.

Compliance with Element (2), “maintain, protect, and have access in privacy to religious and cultural sites,” is embedded within the overall struggle by Indigenous peoples for land rights. This is due to the sacred relationships Indigenous groups have with their land and natural resources. Because Element (2) protections are related to highly-contested land rights, incorporation of this Element are is highly variable. Element (2) protections were adopted by 11 out of 25 evaluated nations. Some countries, such as Ecuador, specifically enumerate Element (2) protections in their constitutions (Chapter Four, Article 57, §12 of the Ecuadorian Constitution includes the indigenous right to “restore, promote, and protect ritual and holy places”). Other countries demonstrate their stance on Element (2) protections through the decisions of domestic court cases on mining and deforestation – cases that are often filed as an extension of Indigenous grassroots movements and protests. While domestic courts are sometimes a pathway for the protection of Indigenous religious and cultural sites, progressive decisions on land use and industry do not always get enforced. India’s *Orissa Mining Corporation v. Ministry of Environment & Forest & Others* (2013) demonstrates a positive instance where an Indigenous-led community campaign resulted in both a favorable decision,

protecting religious ties to land, and the successful divestment from a proposed mining project. Although the case in India is a victory, it is unfortunately common to see Endorsing Countries strip land rights from Indigenous people in order to serve the interest of capital extraction. For example, in Brazil, a 2017 mining project, destroying sacred urns and territory of the Munkurku people, was reinforced when the government sent the National Force to restrain Indigenous mobilization. Additionally, the implementation of Ecuador's 2022 decision in *Caso de la Comunidad Sinangoe* (No. 273-19-j), ruling that Indigenous communities must consent to projects that directly affect them environmentally or culturally, is threatened by governmental efforts to establish mining industries and attract foreign capital.

Element (3), regarding “the use and control of ceremonial objects,” was protected by 7 of the 25 evaluated nations. Rights to historical ceremonial artifacts are often withheld from Indigenous communities. Instead, the control over these objects frequently remains with museums and governmental archives. Countries such as Peru, Indonesia, and Guatemala have language in their constitutions or copyright laws which establish that all prehistoric antiquities, historical objects, and items of national culture belong to the national government. In nations where the government maintains possession of ceremonial objects, Indigenous communities may sometimes request permission to use the objects for rituals or ceremonies (see Nepal, Section 17 of the Ancient Monument Preservation Act of 2013, where a Local Office-Chief can recommend the handover of an archeological object for a traditional fair, festival, or ceremony for a fixed period of time). There are also instances where these historical objects are voluntarily returned to Indigenous communities. A positive example of this took place in Bolivia, where private collectors voluntarily returned ceremonial “q’epis” textiles to the Aymara and Quechua speaking village of Coroma in 1989. After that, in 1990 the United States and Bolivia signed a decree declaring that textiles repatriated to Bolivia will be returned to their “community of origin,” specifically mentioning Indigenous Bolivians. D.S. 22546 (1990) (Bol.). Legal protections for modern ceremonial objects and resources, consistent with Element (3), are more commonly found under intellectual property laws and laws protecting biotechnology (see Brazil’s Provincial Measure No. 2.186016, which protects access to traditional knowledge practiced within Indigenous communities). While these laws are usually not designed to protect ceremonial objects of Indigenous people, the language of these laws can be broad enough to encompass the rights in Element (3).

Endorsing Countries have the weakest records of adhering to Element (4): “the right to repatriation of human remains.” Only 4 of the 25 evaluated nations protect this right. Echoing the pattern we see with historical ceremonial objects, the primary vehicle for repatriation of Indigenous remains comes from instances of voluntary accords between museums and communities. However, it is rare that this right is codified by law. A frequent unsettling reality of repatriation struggles is that the return of Indigenous remains is often from a European power back to the Endorsing Country’s government—not to the Indigenous community of origin. For

example, the Ecuadorian Embassy, the Ministry of Cultural Affairs, and the National Cultural Heritage Institute are in charge of receiving the repatriated remains of tsantas, or “shrunk heads,” made by Indigenous communities. The most positive instances of repatriation can be seen through the creation of national policies. In the United States, the Native American Graves Protection and Repatriation Act mandates the return of certain human remains to lineal descendants. 25 U.S.C.A. Ch. 32. Argentina’s Law No. 25,517 establishes that Indigenous remains held as part of a museum, public, or private collection must be made available to Indigenous communities of origin. The Department of Communications and the Arts in Australia, created in 2011, establishes that Indigenous communities of origin are the rightful custodians of their ancestral remains. These policies not only provide the right to the repatriation of remains but they also set aside funding for implementation.

Conclusion

Although our project is still ongoing, there appears to be a wide range in the implementation of UNDRIP Article 12. The most positive instances of Indigenous religious rights protection emerged from the self determination of Indigenous communities and grassroots movements for change. Without meaningful, Indigenous-led decision making, what we have found speaks to the often bleak realities facing Indigenous communities existing within historically colonized countries. *See UN News, End inequalities, recognize abuses, UN chief says on International Day of Indigenous Peoples* (Aug. 20, 2021). Our map reflects the disparities in UNDRIP implementation, and demonstrates the need for greater force behind Article 12. Often, religion and spirituality is an intrinsic part of Indigenous ways of life. Preserving and protecting the self autonomy and land rights of Indigenous communities is an essential part of ensuring the Article 12 religious rights and the cultural survival of many Indigenous communities.

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URL of Project Map (as of July 11, 2022):

<https://nu.maps.arcgis.com/apps/mapviewer/index.html?webmap=4a146bbb87944a38895b5639355b5847>