

# **Recognition and Registration Issues and Their Impacts on the Religious Rights of Indigenous Peoples**

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Although the international legal framework protects the rights of all persons to adopt or manifest any religion or belief of choice without discrimination, indigenous spirituality is generally dismissed, marginalised or denied respect and recognition in many states. The dismissal and denial of recognition of indigenous spirituality has led to severe discrimination against many indigenous communities and human rights violations, including the dispossession and loss of sacred sites, the obstruction of spiritual practices and the violation of the right to religious freedom. This article examines state policies and practices on the recognition and registration of indigenous religious groups and the implications for their exercise of religious freedom. It argues that while states' recognition of indigenous spirituality has grown in recent decades, indigenous

beliefs remain among the most marginalised, disrespected, discriminated and unrecognised. Consequently, many indigenous groups cannot fully exercise their religious freedom.

Keywords: indigenous rights, indigenous spirituality, registration of religious groups, recognition of religion or belief, religious freedom.

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## **Introduction**

While state recognition or registration of religious organisations is not legally required for the exercise of freedom of religion or belief<sup>1</sup>, a lack of it can significantly impact people's ability to exercise that right and other fundamental freedoms.<sup>2</sup> Registered and recognised religious communities receive several privileges and benefits, including access to state funds, national inclusion, protection of sacred sites and tax exemptions and deductions<sup>3</sup>, that are not often available to unregistered or unrecognised groups.<sup>4</sup>

Freedom of religion or belief is enshrined in many international human rights instruments<sup>5</sup> such as the International Covenant on Civil and Political Rights (ICCPR)<sup>6</sup>, and applies to the followers of all religions, including indigenous spirituality.<sup>7</sup> Despite this, the religious beliefs and practices of indigenous peoples are often disrespected<sup>8</sup> and not given adequate recognition compared to other religions by

authorities in many states, including by courts.<sup>9</sup> In Western democracies such as Canada<sup>10</sup> and the United States<sup>11</sup>, indigenous peoples' exercise of their spirituality has been subjected to historical and ongoing political, cultural and racial discriminatory policies and practices, leading to the limitation, dismissal and denial of their rights.<sup>12</sup> According to the former United Nations Special Rapporteur on Freedom of Religion or Belief, Ahmed Shaheed, the spirituality of indigenous peoples is denied recognition and restricted in eighteen states and territories where arbitrary administrative requirements are imposed.<sup>13</sup>

The dismissal or absence of recognition for indigenous peoples' spirituality and practices has facilitated indifference, marginalisation, discrimination and human rights violations, including the destruction of sacred sites belonging to indigenous communities.<sup>14</sup> In many states, government policies, practices and laws have caused the dispossession and loss of many indigenous lands, including sacred sites, knowledge, language and other practices that are essential to indigenous religious traditions.<sup>15</sup>

This article explores the implications of religious registration and recognition practices on indigenous peoples' right to practice their beliefs or spirituality.<sup>16</sup> It focuses on government laws, policies and actions and other practices, and how they favour or disfavour

indigenous spirituality and the impacts on indigenous peoples' rights. The article argues that while states' recognition of indigenous spirituality has grown in recent decades, it remains amongst the most marginalised, discriminated against, least respected and unrecognised religion or belief tradition in many states.

Besides being misunderstood, indigenous religious traditions have been impacted by religious chauvinism, prejudice and racially motivated policies that privilege Christianity, Islam and other imperialistic traditions and their cultures.<sup>17</sup> The article concludes that states' discriminatory policies and laws denying recognition limit the religious freedom of indigenous peoples. This includes the dispossession and damage of traditional lands and sacred sites and the loss of the right to self-determination.<sup>18</sup>

The article largely draws on a wide range of publicly available sources of information, including the U.S. Department of State's annual *International Religious Freedom Report*, reports by the U.S. Commission on International Religious Freedom, the United Nations Special Rapporteur on Freedom of Religion or Belief, court rulings and academic literature. Finally, the article draws some concluding remarks and makes recommendations on how to enhance the visibility and recognition of indigenous religious practices to ensure the protection of indigenous peoples' freedom to exercise their right to practice,

manifest, teach and maintain their spirituality and beliefs or mitigate violations of that right.

## **International legal framework**

Freedom of religion and belief (FoRB) is protected in Article 18 of the Universal Declaration of Human Rights (UDHR), Articles 18 and 27 of the ICCPR, and several other international human rights instruments<sup>19</sup> and national constitutions. This right is further elaborated on in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981. The right includes the freedom of all persons, including indigenous peoples, to have or adopt their religion or belief of choice, whether theistic, non-theistic or atheistic<sup>20</sup>, and extend to individuals or groups even if they do not adhere to ‘institutionalised’ belief systems. Freedom of religion also guarantees the right of every person to freely manifest their religion or belief in the form of worship, observance, practice, teaching and dissemination without interference or the fear of punishment.<sup>21</sup>

Articles 18 and 27<sup>22</sup> grant indigenous peoples the right to define and determine their spirituality and identity. In his interim report of 2022, Shaheed articulated that indigenous peoples’ FoRB is also connected with their right to self-determination.<sup>23</sup> This means that indigenous peoples are guaranteed the freedom to define and determine their own

spiritual identity. Although there is no universally accepted definition of “indigenous peoples” under international law, one of the most fundamental and generally accepted criteria is “community self-identification.” Many indigenous people consider themselves ‘distinct’ from others by their shared identity, culture, language and their possession of a “historical continuity with pre-colonial societies on their land.”<sup>24</sup>

The term ‘spirituality’ instead of ‘religion’ is used by many indigenous communities to describe their religious beliefs and practices.<sup>25</sup> This is because there is no equivalent word in English for the term ‘religion’ to describe indigenous spirituality, which is considered to be much broader.<sup>26</sup> The term ‘spirituality’ is also preferred because spirituality is central to indigenous peoples’ identity in ways that are distinctive from other religions, including Christianity and Islam.<sup>27</sup> Unlike in most European cultures, many indigenous cultures do not conceptually draw a clear distinction between what is “sacred and secular”, or culture, language and identity, or between “spirituality and the land on or through which it is expressed<sup>28</sup>.” Thus, the term ‘spirituality’ represents the holistic nature of indigenous beliefs in how they transcend spiritual ceremonies and encompasses a wide range of activities, including hunting, fishing, herding and gathering plants, medicines and goods “[with] a spiritual dimension.”<sup>29</sup>

Many indigenous communities view their spirituality as a ‘way of life’, and transcendental worship intrinsically linked to local culture and worldview that forms an integral part of their emotions, habits, daily experiences and practices or virtues, ways of thinking, health and a particular way of living together and communicating.<sup>30</sup>

To indigenous peoples, land is not merely material and nature is not just natural.<sup>31</sup> Rather, both have spiritual dimensions and are part of a sacred substance that is “the source, sustenance and end of all cosmic life on which everything depends.”<sup>32</sup> Indigenous spirituality is thus interrelated to the land, and all that is within it, including plants, the animal world, supernatural beings, forces and rituals, as they “are all interrelated.”<sup>33</sup> Researchers have reported for example that “religion” for the Inuit people in Alaska is connected to “their traditional ways of relating to their land and the life that is present in seas and other waterways.” An Inuit way of life includes the transmission of their traditions and customs across generations to ensure their communal well-being and survival.<sup>34</sup>

Recent growth in international human rights standards and mechanisms has led to a significant expansion in the conception of indigenous peoples’ right to FoRB.<sup>35</sup> For example, the 2007 Declaration on the Rights of Indigenous Peoples (UNDRIP; hereafter “the Declaration”) is an internationally-recognised framework that sets

the minimum standards for the protection of the human rights of indigenous peoples.<sup>36</sup> The Declaration was developed in consultation with indigenous peoples to articulate their rights, including their spiritual practices. It provides an important clarification on the standards of the specific rights of indigenous people provided in Article 18 of the UDHR and Articles 18 and 27 of the legally binding instrument ICCPR and how they are applied to indigenous peoples.<sup>37</sup> Several provisions directly relate to rights associated with practising indigenous spirituality, including but not limited to Articles 8, 10, 11, 12 (2), 13 and 18. For instance, Article 12 (1) states the following:

Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

Article 25 of the Declaration extends beyond the conventional concept of religious rights of individuals to manifest and practise their religion or belief outlined in Article 18 of the ICCPR.<sup>38</sup> Article 12 of the Declaration guarantees indigenous peoples' access to and maintenance of religious and cultural sites, ceremonial objects and repatriation while



Article 25 provides for recognition of their spiritual connection with traditional lands.

Many international actors, including states, regional and domestic courts, scholars and rights-holders rely on the Declaration to interpret ICCPR provisions concerning the rights of indigenous peoples.<sup>39</sup> The United Nations Human Rights Committee has observed that the protections of minority rights provided under Article 27 of the ICCPR include indigenous peoples' relationship with "the use of land resources...[such as] traditional activities as fishing or hunting."<sup>40</sup> Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>41</sup> also protects the right of everyone to participate in cultural life, which has been interpreted to include 'religion or belief systems.'<sup>42</sup> The Committee on Economic, Social and Cultural Rights also affirms that 'culture' in Article 15 requires states to respect the rights of indigenous peoples to maintain and strengthen their spiritual relationship with their ancestral lands and other natural resources.<sup>43</sup>

## **State policies and practices**

Despite the religious protections provided for all persons in Article 18 of the ICCPR and the expansion in the concept of indigenous peoples' right to FoRB in recent decades, indigenous beliefs or spirituality is not

respected or recognised in many states.<sup>44</sup> In this context, recognition and registration issues encompass various state efforts, including laws, practices and policies of states that privilege certain religious groups or their members, ban, restrict or discriminate against others or limit their ability to practise their religion or beliefs, including the freedom to preach, publish or convert to another religion.<sup>45</sup>

Legal commentators, rights-holders and key stakeholders argue that the existing international legal framework for protecting freedom of religion or belief fails to provide adequate or appropriate protection for a wide range of practices and beliefs that constitute indigenous spirituality.<sup>46</sup> Several states have failed to protect believers of indigenous spirituality equally, often dismissing legal claims invoking their right to FoRB as a justification to deny protection of indigenous practices as well as access to and use of traditional lands.<sup>47</sup>

Many human rights experts observed that indigenous spirituality was poorly understood and largely dismissed in the conceptualisation of FoRB within the international legal framework.<sup>48</sup> For instance, the conceptualisations of Articles 18 of the UDHR and the ICCPR were shaped mainly by debates between Islamic and Protestant Christian groups, albeit its expansion having also been influenced by the rights of atheists in states of the former Union of Soviet Socialist Republics.<sup>49</sup> Moreover, indigenous peoples' religion and traditions have too often been articulated through the lens of non-indigenous people, including

theologians, lawyers and politicians.<sup>50</sup> This is because the term ‘religion’ is a Western concept that fails to capture the full understanding of beliefs, spiritualities and worldviews, leading to a narrower interpretation of indigenous peoples’ right to FoRB.

As a consequence, the legal protections provided for religious freedom in the international legal framework usually privilege Abrahamic religions, in particular Christianity and Islam. These religions are generally recognised as “voluntary, individual, textual and believed”, and centred on a clear distinction between religion and culture.<sup>51</sup> On the contrary, indigenous peoples’ religions are defined as primarily “public, obligatory, collective, oral, local”, and a matter of practice rather than conventional belief.<sup>52</sup> Indigenous spirituality is often oriented to indigenous peoples’ communities, local culture, identity, relationship with the ‘Creator’, traditional lands and “all their relations”<sup>53</sup>, including waters and other natural resources in ways that are completely distinct from universal religions.<sup>54</sup>

According to Shaheed, indigenous spirituality is broader than the universal religions.<sup>55</sup> It encompasses diverse spiritual beliefs and localised practices that are “integral to [the] indigeneity” of the indigenous group in question, and their “distinctive” spiritual relationship with “traditionally owned or otherwise occupied and used” lands, territories, waters, coastal seas, and other resources. In their

submission to the Special Rapporteur, the Indigenous Values Initiative and American Indian Law Alliance opined that indigenous spirituality is so intrinsically intertwined with the indigenous peoples' way of life, worldview or culture that it "cannot be divided into frameworks and categories."

State policies and practices that govern the recognition and registration of religious groups and their activities are rooted in racism, colonisation, forced assimilation and the dispossession of indigenous people of ancestral or sacred sites. For many centuries, indigenous peoples, their spirituality, culture and other traditions have been subjected to historical and ongoing political, cultural and racial discriminatory policies and practices to deny their worldviews adequate protection. The cultural hierarchies and their supporting theories are justified based on racially motivated theories, science and legal arrangements.<sup>56</sup> Since the colonial era, most indigenous peoples and their cultures have been considered less worthy and inferior to colonial people and their cultures.

Religions such as Christianity and Islam have been used to justify the annihilation of many indigenous peoples, their worldviews and cultures and to perpetrate gross rights violations against them.<sup>57</sup> This was the case in Latin America where Catholicism was instrumental in the annihilation of indigenous cultures for centuries.<sup>58</sup> While such

racially based cultural hierarchies have long been denounced and rejected by science, they have considerable influence on current legal regimes, policies and state practices with significant implications on the lives and practices of indigenous people in the present day. Studies show that substantial aspects of the laws that were created during the colonial era remain in current law books and continue to influence the opinions of authorities who apply the law. The Doctrine of Discovery for instance has long been used in many states as a justification to dismiss, destroy or deny recognition to indigenous spirituality.<sup>59</sup>

Despite being a secular state<sup>60</sup>, Canada's laws and institutions, including in the fields of education, healthcare and social services are greatly influenced by past Christian institutional structures, teachings and traditions.<sup>61</sup> According to the Ontario Human Rights Commission, secular Canada is structured in favour of Protestant Christian groups, including Anglicans and Presbyterians, as well as Roman Catholics to some extent.<sup>62</sup> The establishment of weekends (rest days), public holidays and other Christian traditions such as Easter and Christmas also favour dominant Christian groups, allowing them to attend their religious services. Canadian religious practices are deeply rooted in religious chauvinism combined with racism, sexism, classism and gender-based prejudice. These practices are rooted in Protestant Christian faiths which some sociologists have argued are Canada's

“shadow establishment.”<sup>63</sup> The dismissal and delegitimisation of indigenous spirituality, ways of life and policies to ‘civilise’ and convert Canada’s indigenous peoples have been justified on the assumption that one must be Christian to be a ‘proper’ Canadian citizen.<sup>64</sup>

Current U.S. laws are rooted in the legal doctrine of Christian discovery and the fifteenth-century Christian theological presumptions that justified the dispossession of indigenous peoples by transferring absolute titles to Christian sovereigns by virtue of “discovery.”<sup>65</sup> Issues of religious freedom arising in the context of forced assimilation often centred on equal access of both Catholic and Protestant institutions to government resources to the neglect of indigenous groups. The law has been used as a justification for the dispossession and forced cultural assimilation of indigenous people based on a presumed lack of cognisable religion.

During a virtual meeting with Shaheed in 2022, Professor Michael D. McNally remarked that the concept of ‘religious freedom’ has been weaponised against indigenous peoples and their traditions.<sup>66</sup> McNally also noted that indigenous peoples have disproportionately experienced histories of violations of their FoRB through the dispossession of their territories, including sacred places, and have experienced historic and

ongoing schemes of forced assimilation at the behest of states, and often in collaboration with religious institutions.<sup>67</sup>

Although the factors that contribute to the discrimination of indigenous people on the basis of their religion or belief are diverse and complex, legal experts have observed that insufficient legal imagination plays a significant role.<sup>68</sup> What counts as ‘religion’ for legal protections under the freedom of religion law privileges traditions that centre on individual belief such as Christianity than those with beliefs set off from other aspects of culture. In places such as the U.S., religious freedom laws have not only failed to provide adequate protection but in some cases have permitted further violations of indigenous peoples’ right to exercise their religious freedom.<sup>69</sup> The U.S. Supreme Court for instance rejected the claims of indigenous groups like the Yurok, Karuk, Tolowa and Hoopa Indians that constructing a federal road through their sacred sites in a national forest would violate the Free Exercise Clause.<sup>70</sup>

While states’ recognition of indigenous spirituality has grown in recent decades, indigenous people are amongst the most discriminated groups based on their religion or belief. In many states, indigenous groups are subjected to severe and systematic discrimination and marginalisation with significant implications on their ability to exercise their innermost religious or belief convictions.<sup>71</sup> A series of research

and engagements conducted by the Ontario Human Rights Commission with indigenous peoples in recent years showed that they are faced with systemic barriers, prejudice and discrimination when exercising their spirituality.<sup>72</sup> In some cases, prejudice and discrimination against indigenous people on account of religion were found to be on the rise.<sup>73</sup> Scholars have also observed that the U.S. Supreme Court has “never extended the protections of the First Amendment” to the country’s indigenous peoples.<sup>74</sup>

States have failed to respect indigenous legal systems, culture and other traditions.<sup>75</sup> For example, a lack of recognition of the Winnemem Wintu tribe by the U.S. Bureau of Indian Affairs has resulted in interrupted access to their lands for the performance of certain ceremonies or participation in decisions relating to spiritually based fishing activities. Similarly, Indonesia’s lack of recognition for indigenous spirituality is reflected in how adherents of Aliran Kepercayaan spirituality are forced to identify as Hindus before they are given access to national identification cards.

State policies have also long been assimilative and prohibitive towards indigenous populations. Many indigenous peoples have been subjected to ‘legalised’ assimilation and discrimination<sup>76</sup>, past and ongoing state restrictions on ceremonial practices and spiritual leaders often to forcibly or coercively convert them to the majority religion.<sup>77</sup>



During the colonial period, indigenous peoples' lands were taken and their sacraments were often outlawed.<sup>78</sup> In several states, indigenous people have been subjected to dispossession and forced cultural assimilation on the basis of a lack of state recognition.<sup>79</sup> Assimilative policies and state support for colonial cultures led to the forcible removal of indigenous children from their families and communities to distant places to attend faith-based schools.<sup>80</sup>

Shaheed observed that the historical and ongoing experiences of discrimination, violence and hostility against indigenous peoples threaten their "spiritual, cultural and physical survival."<sup>81</sup> In 2022, the U.S. government found that assimilative policies are associated with intergenerational loss of indigenous spirituality. Similarly, representatives of Canada's indigenous people reported to Shaheed their "enduring trauma from...imposed loss of ancestral identity and spirituality."<sup>82</sup>

Many indigenous peoples are systematically excluded from civic and political spaces on account of their indigeneity. Some states even prohibit those who do not belong to their official religion from holding public office, contrary to their right to non-discrimination. Indigenous peoples have been denied or stripped of their citizenship, in turn affecting their socioeconomic participation.<sup>83</sup> For example, the Citizenship Law of 1982 of Myanmar does not recognise the

ethnoreligious Rohingya community as citizens, rendering them stateless and denying them several civil and political rights, including the right to participate in elections.<sup>84</sup>

Besides restrictions on indigenous spiritual ceremonies, symbols and leaders, the right of indigenous people to exercise their FoRB has also been implicated by past and current state policies involving forced displacement, the exploitation of indigenous territories without their free, prior and informed consent, environmental damage and destruction, as well as the impacts of climate change. The veneration of natural areas as sacred sites is one of the most common aspects of indigenous cosmology.<sup>85</sup> Indigenous sacred sites transcend cultural and geographic boundaries; they constitute essential aspects of the spiritual, psychological and social foundations of many indigenous communities.<sup>86</sup> Therefore, the destruction of such sites could present an “existential harm”, or significant threat to the freedom of indigenous people to practise their religion.<sup>87</sup> The Inter-American Court of Human Rights, for instance, has observed that the forcible removal or dispossession of indigenous people from their ancestral lands<sup>88</sup> is “not merely a matter of possession and production but [also has] a material and spiritual element” that they must fully enjoy to preserve culture.<sup>89</sup>

## **Themes of indigenous spirituality and further state practices**

Despite the protections provided in Articles 18 and 27 of the ICCPR guaranteeing the rights of all persons, including minorities to exercise their religious rights “either individually or in community with others and in public or private”, scholars argue that they may not fully protect indigenous peoples’ collective right to exercise their spirituality.<sup>90</sup> Indigenous spirituality includes diverse beliefs and traditions. Many indigenous peoples describe their relationship with nature as balanced or cyclical, embracing places, viewing natural phenomena including land, sea, flora and fauna as sacred, and emphasising respect for God, nature, humans and animals. Many indigenous communities practise animism, holism, shamanism, solstice celebrations, sacred environmentalism and ancestral worship, and maintain ceremonial or burial sites and consider hunting and using other resources sustainably as part of their spiritual customs.<sup>91</sup> In Canada for example, many indigenous spiritual ceremonies include burning traditional medicine such as sweetgrass, sage, tobacco and cedar.<sup>92</sup>

Discriminatory state policies privileging dominant cultures have often led to a steady disappearance of indigenous languages with severe implications on indigenous spirituality and the transmission of knowledge.<sup>93</sup> Inadequate state support, coupled with prohibitions in

state policies, have also led to a steady loss of indigenous languages which are integral to traditional ceremonies and knowledge transmission.<sup>94</sup> Thousands of indigenous children have been systematically removed from their families and communities to distant religiously-based schools leading to disconnections with their cultures and languages.<sup>95</sup> Religious chauvinism, racially based assumptions and prejudice against indigenous culture and ways of life resulted in the creation of the day and residential school systems by the Canadian government and Christian churches which led to the removal of indigenous children from their communities.<sup>96</sup>

Whereas the places of worship and rituals of other religions are understood and recognised by government institutions including courts, indigenous peoples' spirituality, including the sacredness of natural sites are often neither understood nor recognised by state authorities.<sup>97</sup> Legal experts have argued that although the protection of religious sites and shrines is guaranteed in paragraph nine of the Human Rights Council's Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, evidence shows that indigenous religious sites have often not been equally protected in several states.<sup>98</sup>

Many indigenous people face severe discrimination with respect to the protection of their sacred sites such as lands, waters and

communities of non-human life that are often considered relatives, access to which is essential in the exercise of their right to practice and manifest their belief or spirituality.<sup>99</sup> As such, access to and the integrity of such places are essential to the exercise of religious freedom by indigenous peoples.<sup>100</sup>

In the case of *Ktunaxa Nation v British Columbia* (2017), seven out of nine judges in the Supreme Court of Canada ruled that the development of a ski resort in the mountains considered sacred by the Ktunaxa Nation did not violate the Ktunaxa's Charter right to freedom of religion.<sup>101</sup> The Supreme Court clarified further that the freedom of religion guaranteed in section 2(a) of Canada's Charter of Rights does not extend to the protection of "the object of beliefs", but rather protects "the freedom to worship."<sup>102</sup> The Court also stated that the State's duty is to protect the freedom of everyone "to hold such beliefs and to manifest them in worship and practice or by teaching and dissemination...not protect the spiritual focal point of worship."<sup>103</sup>

Two dissenting judges stated that the Court's "restrictive approach takes away the spiritual significance of beliefs or practices and amounts to an interference with "an individual's ability to act in accordance with his or her religious beliefs or practices."<sup>104</sup> While the dissenting opinion appears to be more sympathetic to indigenous spirituality, the majority decision of the Court affirmed Canada's discriminatory law.<sup>105</sup> Before

the Court's ruling, a Ktunaxa Nation Council Chair, Kathryn Teneese, had doubted "whether [the community's] freedom of religion right [was] the same as other Canadians" because the "the previous courts have told [them] that [their] spiritual practices and beliefs [...] matter less than a ski hill."<sup>106</sup> Some U.S. courts have also ruled that the commercial use of traditional lands would not "coerce" indigenous peoples to act contrary to their religious beliefs<sup>107</sup>, and the state could use federal lands "even if [it] makes worship [...] impossible."<sup>108</sup>

The most relevant core United Nations instrument concerning the protection of the sacred sites of indigenous peoples is UNDRIP.<sup>109</sup> Canada has formally endorsed and expressed its commitment to implement this declaration.<sup>110</sup> The Declaration explicitly affirms indigenous peoples' religious rights to their traditional land.<sup>111</sup> It empowers indigenous peoples' to protect their sacred sites from outside interference that would seriously undermine the religious value of the area in question.<sup>112</sup> This is further articulated in Article 25 which explicitly guarantees indigenous peoples' right to protect sacred sites for future generations.<sup>113</sup>

Legal experts have observed that the protection of religious sites and shrines guaranteed in paragraph nine of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief appears to apply to manufactured structures<sup>114</sup>,

and also covers ‘traditional lands which are essential indigenous spirituality.’<sup>115</sup> The above provision acknowledges the rights of both use and stewardship.<sup>116</sup> Highlighting the strong interconnectedness between indigenous peoples’ culture and their FoRB, the Committee on Economic, Social and Cultural Rights has observed that maintaining and strengthening indigenous peoples’ “spiritual relationship” with their ancestral lands is “indispensable to their cultural life.”<sup>117</sup> This argument is affirmed in many human rights complaints during which indigenous peoples often cite cultural rights in their complaints to the Human Rights Committee concerning their spiritual practices.<sup>118</sup>

Indigenous ceremonial practices and spiritual leaders have been subjected to historical and ongoing state restrictions designed for assimilation and forced conversion, leading to violations of their FoRB.<sup>119</sup> Until the early twentieth century, for example, Japan barred many Ainu practices, including their bear-spirit-sending ceremony called *iyomante*.<sup>120</sup> Canada and the United States also outlawed sun dances, potlaches and other indigenous traditional practices that were considered “anti-Christian”, despite being an integral part of indigenous worship and the transmission of knowledge between generations.<sup>121</sup> Additionally, religious organisations have also stigmatised and banned indigenous spiritual practices perceived to be “morally damaging” or “corrupt.”<sup>122</sup> For example, experts on Greenlandic indigenous culture

and history have noted that the state-sponsored Evangelical-Lutheran Church in Denmark imposed restrictions to prevent indigenous drum dances from taking place.<sup>123</sup>

Indigenous people have also been dispossessed or denied access to their traditional lands as a result of environmental destruction or damage stemming from construction, extractive industries, agro-based farming, logging, cash crop plantations, hazardous waste dumping and tourism.<sup>124</sup> A mining company in Australia for example destroyed an ancient rock structure in Juukan Gorge that was of considerable spiritual importance to the indigenous people.<sup>125</sup> Elsewhere in Cambodia, India and the Philippines, indigenous peoples have been forcibly evicted from their lands by extractive companies, in some cases supported by national police and the military.<sup>126</sup> Tanzanian authorities, for example, were accused of deploying live ammunition and tear gas against Maasai people to forcibly evict them from their land to pave the way for the development of game reserves.<sup>127</sup>

The failure of states to protect indigenous people and the occupation, access or use of indigenous lands without free, prior and informed consent significantly undermines their enjoyment of their spirituality.<sup>128</sup> In several indigenous societies, the freedom to manifest and participate in spiritual and religious ceremonies is dependent on their access to, use and control of traditional lands and the natural



environment.<sup>129</sup> The African Commission on Human and Peoples' Rights, for instance, has observed that "any impediment to or interference with accessing the natural environment, including land... [would have] considerable repercussions on the enjoyment of freedom of worship."<sup>130</sup>

Moreover, the relocation of burial sites has prohibited indigenous people from practising traditional burial ceremonies.<sup>131</sup> In South America, for example, the sacred sites of indigenous people have been displaced by increasing urbanisation and the development of city infrastructure and extractive industries, including mining and logging which are often in remote locations.<sup>132</sup> These activities have led to the relocation of indigenous people from their traditional lands, severe environmental damage, social tensions and the killing of many indigenous peoples and their leaders while defending their traditional lands and the environment.<sup>133</sup>

The denial of indigenous peoples to access and use their lands also deprives them of the right to enjoy spiritual practices and to transmit knowledge to future generations while engendering spiritual and psychological distress by creating a sense of alienation.<sup>134</sup> Experts argue that the removal of such objects from indigenous communities could have spiritual and physical harm on indigenous peoples, including "spirit-caused illnesses" with the potential to persist into

future generations.<sup>135</sup> Over one million indigenous ancestral remains and cultural items still reside in repositories worldwide.<sup>136</sup> Meanwhile, many states, museums, other cultural institutions and private collectors have refused to repatriate ceremonial objects and remains to indigenous peoples.<sup>137</sup> Furthermore, efforts by indigenous peoples to recover these items are hindered by temporal, financial and legal hurdles, including national laws that limit deaccession or dismiss repatriation claims.<sup>138</sup>

Under UNDRIP, states are obliged to “consult and cooperate in good faith” with indigenous peoples concerned through their own representative institutions to obtain their “free, prior and informed consent” before adopting and implementing legislative or administrative measures that may affect them.<sup>139</sup> Article 32 of the Declaration also provides that states must obtain the free and informed consent of indigenous peoples before they can undertake any projects that affect indigenous peoples’ rights to land, territory and resources, such as the exploitation of minerals, water or other natural resources.<sup>140</sup>

Under Article 11(2) of UNDRIP, indigenous peoples must be provided with an effective mechanism for redress, including restitution for religious and spiritual property taken from the affected group without their free, prior and informed consent.<sup>141</sup> Articles 28 and 32(2) of UNDRIP also state that indigenous peoples are entitled to effective redress and restitution for the dispossession of their traditional lands, or

otherwise “confiscated, taken, occupied or damaged without their free, prior and informed consent” to mitigate inter alia any cultural and spiritual impacts.<sup>142</sup> This implies that the dispossession of indigenous sacred places, objects and ancestors can give rise to substantive protections, including restitution.<sup>143</sup>

Article 25 of the Declaration empowers indigenous peoples “to maintain and strengthen their distinctive spiritual relationship” with their traditional territories, waters and coastal seas, including those occupied or dispossessed.<sup>144</sup> For indigenous peoples, land rights are not merely secular issues, but involve fundamental religious or spiritual elements that can also trigger states’ international obligations to guarantee FoRB in connection with the deprivation or dispossession of indigenous peoples of their ownership or control of their traditional lands.<sup>145</sup>

## **Conclusion**

This article examined the implications of state recognition and registration policies and practices on the right of indigenous people to exercise their freedom of religion or belief. It highlighted that despite the protections provided in several international instruments, indigenous people across the globe face acute discrimination in ways

that limit or deny them their right to exercise their FoRB. State policies and practices are characterised by a lack of recognition of indigenous religious practices, low visibility, indifference and discrimination. Consequently, indigenous people have been subjected to a limitation or a denial of their ability to exercise their right to manifest, maintain and transmit their spirituality, have access to and enjoy protection of their religious and cultural sites, as well as use and control ceremonial objects and other elements. Since spirituality is a vital aspect of most indigenous communities and their subsistence, a failure to protect the right to FoRB of indigenous peoples has significant implications on the continuity of their survival, an adequate standard of living, right to culture and self-determination.

To ensure the full enjoyment of indigenous peoples' right to exercise their FoRB, national laws and policies on registration processes should extend to the protection of indigenous peoples' access, control and use of traditional lands, including preventing their destruction, occupation or disruption of access to sacred sites. Under Article 19 of UNDRIP, states must "consult and cooperate" with the representative of relevant indigenous peoples to obtain their free, prior and informed consent before passing laws that will reasonably foreseeably affect them. This would enhance their ability to manifest, practice, develop and teach their spiritual and religious traditions,

customs and ceremonies. In turn, states should reframe their understanding of FoRB towards a collective model that ensures the full protection of the collective rights of indigenous peoples to exercise their religious rights.

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