

Indigenous Values Initiative Together with the American Indian Law Alliance Submits this Report The Territorial Integrity of Mother Earth, Indigenous Peoples, and the Right to Freedom of Religion or Belief

Indigenous Values Initiative et American Indian Law Alliance

Volume 5, numéro 2, automne 2024

From Indigenous Religions to Indigenous Values

URI : <https://id.erudit.org/iderudit/1118657ar>

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Éditeur(s)

Council for Research on Religion

ISSN

2563-0288 (numérique)

[Découvrir la revue](#)

Citer cet article

Indigenous Values Initiative & American Indian Law Alliance (2024). Indigenous Values Initiative Together with the American Indian Law Alliance Submits this Report: The Territorial Integrity of Mother Earth, Indigenous Peoples, and the Right to Freedom of Religion or Belief. *Journal of the Council for Research on Religion*, 5(2), 40–45.

Résumé de l'article

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Indigenous Values Initiative Together with the American Indian Law Alliance Submits this Report: The Territorial Integrity of Mother Earth, Indigenous Peoples, and the Right to Freedom of Religion or Belief¹

Summary: The present report is the input provided by the Indigenous Values Initiative (IVI) and American Indian Law Alliance (AILA) in response to the new report drafted in 2022 by Ahmed Shaheed, the Special Rapporteur on Religious Freedom or Belief.

Introduction

Indigenous sovereignty and the territorial integrity of Mother Earth have been recognized since time immemorial. The Haudenosaunee Confederacy, along with all Indigenous nations have a sacred relationship with the natural world. We carry with us a sacred obligation to speak for those who cannot speak for themselves. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a testament to Indigenous peoples' tireless advocacy not only for ourselves but also for Mother Earth and all living beings. The Haudenosaunee *Thanksgiving Address or the Words that Come Before All Else* reminds us of the responsibility, respect, and reciprocity between Indigenous peoples, Mother Earth, and all living beings.²

The critical success of the UN Sustainable Development Goals (UNSDG), UN Permanent Forum on Indigenous Issues (UNPFII), and the rest of the work of international nation to nation and treaty relationships rests in the acknowledgement of the territorial integrity and rights of Mother Earth and the full recognition of Indigenous peoples' sovereignty. The special relationship between Mother Earth and Indigenous peoples must be protected. We acknowledge the General Assembly's resolution on the Harmony of Nature. The report acknowledges the limitations of the human rights framework, "Recognizing that a number of countries consider Mother Earth the source of all life and nourishment and that these countries consider Mother Earth and humankind to be an indivisible, living community of interrelated and interdependent beings."³ These types of relationships cannot be properly categorized within a human rights framework. Instead, we operate under our traditional pre-colonial way of life, guided by the teachings of our ancestors and preparing the way for the seven generations yet to come. As Onondaga Nation Turtle

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2. For more information about the Haudenosaunee Thanksgiving Address (Greetings to the Natural World), visit: https://americanindian.si.edu/environment/pdf/01_02_Thanksgiving_Address.pdf.

3. See the resolution adopted by the United Nations General Assembly on December 22, 2015 [on the report of the Second Committee (A/70/472/Add.7)] 70/208. "Harmony with Nature," United Nations Document A/RES/ 70/208, <https://undocs.org/en/A/RES/70/208>.

Clan Faithkeeper Oren Lyons says, “the ice is melting in the north and still we do nothing.”⁴

Statement of the Problem

The Special Rapporteur on Freedom of Religion or Belief aims to provide evidence-based analysis of the diverse obstacles that Indigenous peoples worldwide experience in exercising the right to freedom of religion or belief, including as it pertains to the experiences of Indigenous environmental and human rights defenders.

In the six languages of the Haudenosaunee Confederacy there are no words for religion. This is true not only for the Haudenosaunee but many of the nations of Turtle Island/Abya Yala. Our culture, language, ceremony, government, and inhabitation of our ancestral lands cannot be divided up into frameworks and categories. The Dish With One Spoon Wampum teaches us that we are all eating together out of the same dish with the same spoon. Everything is interconnected and related. As Special Rapporteur Tonya Gonella Frichner highlighted in her 2010 preliminary, the Doctrine of Discovery attempted to disrupt this special relationship between Indigenous peoples and Mother Earth.⁵ Scholar Steven T. Newcomb highlights three primary classifications of harm derived from the Doctrine of Discovery: enslavement, exploitation, and extraction.⁶ Indigenous environmental defenders seek to protect the natural world from multi-national extractive industries (e.g. hydrocarbon and mining).⁷ Additionally, Indigenous peoples are disproportionately impacted by the exploitation of natural resources, which leaves them vulnerable, lacking clean drinking water, and safe and sustainable food sources (e.g. Onondaga Lake).⁸ Perhaps the most devastating effect of extractivism is the epidemic of Missing and Murdered Indigenous Women, Girls, and Two Spirits. This cycle must be broken. The protection of Mother Earth and Indigenous land, water, and environmental defenders begins with the rescinding and repudiation of the Doctrine of Discovery by the United Nations and Member States.

Within the United States, one of the biggest obstacles for Indigenous peoples is that “religious freedom” is understood as an individual right to believe whatever one wants to believe, and so when Indigenous peoples talk about communal obligations to the land, courts do not hear this as falling under the umbrella of religious freedom. The courts are unwilling not only to acknowledge the interconnected nature of Indigenous worldviews and the importance of acknowledging the territorial integrity of Mother Earth.

When Indigenous nations speak about sovereignty and #LandBack, this discourse is, understandably, intimidating to state and federal agencies as they are unwilling to conduct a root cause analysis of the historical and ongoing violations to Indigenous sovereignty and treaty rights, which again stem from the Doctrine of Discovery.

4. Oren Lyons, “The Ice Is Melting in the North,” *Manoa* vol. 19, no. 2 (2007): 1–3, 5, doi:[10.1353/man.2008.0011](https://doi.org/10.1353/man.2008.0011).

5. Special Rapporteur Tonya Gonella Frichner, “Preliminary Study of the Impact on Indigenous Peoples of the International Legal Construct Known as the Doctrine of Discovery,” Submitted to the Permanent Forum on Indigenous Issues, Ninth Session. New York, 2010, <https://undocs.org/en/E/C.19/2010/13>. Cf. The Doctrine of Discovery Project; <https://doctrineofdiscovery.org/>.

6. Cf. Steven T. Newcomb, *Pagans in the Promised Land: Decoding the Doctrine of Discovery* (Golden, CO: Fulcrum, 2011).

7. Zoé Edgecomb, “What Does the Doctrine of Discovery Have to Do with Environmental Justice?” *The Field: ALSA Professional Practice Networks’ Blog*, January 30, 2020, <https://thefield.asla.org/2020/01/30/what-does-the-doctrine-of-discovery-have-to-do-with-environmental-justice/>.

8. “Onondaga Lake,” Onondaga Nation People of the Hills, <https://www.onondaganation.org/land-rights/onondaga-lake/>.

Many Indigenous peoples describe their relationship to the land in terms that are not exactly or not exclusively spiritual. They talk about specific places as relatives, for example, and maintaining relationships with these places/relatives often includes ceremonial activity, which is what makes us think about this relation as spiritual or religious in ways similar to other – especially monotheistic – religious traditions. Often places of significance also appear in Indigenous creation stories, which again makes us categorize them as sacred.

On the Limits of Religious Freedom

The UN has expressed an intent to address environmental crises and to protect environmental and human rights defenders using ideas related to religious freedom and Indigenous sacred sites protection. We would like to briefly recount here a history of Native American religious freedom that should be taken into account when pursuing such protection.⁹

Within the United States, Indigenous ceremony was criminalized for over half a century, from 1883 until 1934, as part of the federal government's assimilation policy. Even after 1934, Indigenous ceremonies were policed and required the American Indian Religious Freedom Act of 1978, as well as the Religious Freedom Restoration Act of 1993. Medicine people were persecuted, ceremonial dances were outlawed, access to sacred sites was blocked (if not formally then because settlers would come to ceremonial sites to massacre whole communities).

Indigenous ceremonies and practices are still met with animus and practitioners are denied access to sacred sites and sacred materials.

Now, when Indigenous peoples go to court to ask to protect their religion, the courts want them to prove that what they are asking to protect is “authentic” religion, meaning that it has been practiced in the same way, at the same places, for centuries. But this is impossible to prove since for all these years communities had to go underground to practice their ceremonies. In addition, forced conversion into Christianity, boarding schools, and out-adoption all mean that quite a few generations of Indigenous peoples were not able to practice their religions or to pass on their knowledge to their children.

Finally, many sites that are most significant to Indigenous peoples are located on lands that have been stolen from these peoples, which makes the few places to which they maintain access even more sacred or meaningful to them. What we are getting at is the danger that when we talk about Indigenous relations to land as “spiritual” we depoliticize it. The relationship between Indigenous nations and Mother Earth is a reciprocal sacred relationship, which involves caregiving and mutual respect. It transects all aspects of life.

Indigenous Lands in Indigenous Hands

Skā·noñh is the Haudenosaunee word for Peace, but as Tadodaho Sidney Hill tells us, Peace is only attained between human beings who are in balance with the Natural World. UN Sustainable Development Goals 10 and 12 emphasize the central importance of Peace and Respect among a diversity of people. The

9. Cf. Ahmed Shaheed, “Statement of Ahmed Shaheed UN Special Rapporteur on Freedom of Religion or Belief,” UN General Assembly, New York, October 20, 2020, https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/UNGA_75_ID_Statement.pdf.

Haudenosaunee concept of Skā·noñh brings attention to how healing the environment is central to social justice.¹⁰

UN Sustainable Development Goals 3 and 6 speak of the importance of good health, well-being, clean water, and sanitation. In seeking to accomplish these goals it would be helpful to listen to the #LandBack movement. They tell compelling stories about how the national park and forest systems have relied on dispossessing Indigenous peoples of their lands (there is good research being done in other geographical contexts as well, such as Israel/Palestine, about how preservation and conservation often goes hand in hand with taking Native lands from Native peoples).¹¹ Some have argued that allowing the park service and forest service to manage (in consultation with Indigenous peoples) conflicts related to access to sacred sites on public lands is the best way to go.¹² Sometimes it is successful, as in the case of Mato Tipila / Bears Lodge and the voluntary ban on climbing this mountain during the month of June.¹³ But the #LandBack movement is asking to start thinking about returning public lands to the Indigenous peoples from whom they were taken. They talk about managing those parks and forests themselves, rather than denying non-Indigenous peoples access to these places. Examples of land return projects show that #LandBack promotes the healing of the environment, as in the recent return of 1,000 acres of forest to the Onondaga Nation.¹⁴

This kind of solution avoids the need to discuss Indigenous religions at all, which is both retraumatizing for many Indigenous peoples and also often requires sharing sensitive information that is not meant to be shared with non-Indigenous people. Returning Indigenous lands to Indigenous hands helps to accomplish Goals 3 and 6 because of the special relationship between Indigenous peoples and Mother Earth. Indigenous peoples and Traditional Ecological Knowledge hold the keys to healing the Earth.

Missing and Murdered Indigenous Women (MMIWG2S)¹⁵

UNSDG 5 highlights the importance of gender equality. Acknowledging the relation between environmental degradation and gendered violence is key to thinking about each of them and moving toward solutions. Building pipelines on Indigenous lands requires building man camps that always come with the disappearance and death of Indigenous women, girls, and two spirit people. The epidemic of Missing and Murdered Indigenous Women finds its root cause in the enslavement and exploitation enshrined by the Doctrine of Discovery and the “man camps” established by extractive industries, as well as the settler-colonial violence of the policy and military. Too often the institutions that commit acts of violence against

10. Cf. Sandy Bigtree and Philip P. Arnold, “Forming a ‘More Perfect Union’ Through Indigenous Values,” *Orion Magazine*, September 17, 2020, <https://orionmagazine.org/2020/09/forming-a-more-perfect-union-through-indigenous-values/>.

11. Netta Cohen, “Between Ecology and Ideology: Climate Change and Forestation Sciences in Mandatory Palestine/Israel,” *Political Theology Network*, May 8, 2020, <https://politicaltheology.com/between-ecology-and-ideology-climate-change-and-forestation-sciences-in-mandatory-palestine-israel/>.

12. Todd Allin Morman, *Many Nations under Many Gods Public Land Management and American Indian Sacred Sites* (Norman, OK: The University of Oklahoma Press, 2018) and Christopher McLeod, *In the Light of Reverence* (Oley, PA: Sacred Land Film Project, 2001).

13. Lloyd Burton, *Worship and Wilderness: Culture, Religion, and Law in Public Lands Management* (Madison, WI: University of Wisconsin Press, 2002).

14. Glenn Coin, “1,000 Acres of Forest to be Returned to Onondaga Nation in Historic Lake Cleanup Agreement,” *Syracuse Post-Standard*, June 30, 2022, <https://www.syracuse.com/news/2022/06/1000-acres-to-return-to-onondaga-nation-in-historic-lake-cleanup-agreement.html>.

15. Missing and Murdered Indigenous Women, Girls, and 2 Spirits.

Indigenous women are the ones charged by settler-colonial states with investigating the problem.¹⁶

Territorial Integrity of Mother Earth

Moving forward with UNSDGs 13-15 requires respecting Indigenous peoples' relation to land. It requires an epistemological or discursive shift from centering the human and its rights to thinking about communities and their responsibilities to Mother Earth or to specific environmental entities.

In recent years, we have seen, around the world, movement toward the recognition of nature entities as legal persons to whom rights are granted. In 2008, Ecuador became the first country to enshrine the legal rights of nature in its constitution.¹⁷ Bolivia passed a similar law in 2010.¹⁸ New Zealand¹⁹ and the Indian state of Uttarakhand²⁰ granted legal rights to specific rivers in 2017. In Bangladesh,²¹ since July 2019, all rivers count as legal persons, and an environmental council can take to court anyone who harms the rivers. That same year, the city of Toledo, Ohio, passed the Lake Erie Bill of Rights to protect its shores, and the bill was declared unconstitutional by a federal judge in 2020.²² In May 2019, the Yurok Tribal Council passed a resolution to extend rights to the Klamath River.²³ In February 2021, the Magpie River in Quebec, Canada, was granted official rights and legal personhood. It was assigned nine rights, as well as potential legal guardians responsible primarily for ensuring these rights are respected.²⁴ This is the first such case in Canada.

Recommendations and Good Practices

We reaffirm the call by Special Rapporteur Tonya Gonella Frichner in 2010 for there to be a study and full accounting of the impact of the Doctrine of Discovery. Expanding upon this call, we call for there to be a Special Rapporteur appointed by the General Assembly and the Human Rights Council to follow up on the 2010 “preliminary study of the international construct known as the Doctrine of Discovery” and to further evaluate the violations of Indigenous rights, as outlined in UNDRIP.

16. Julia Stern, “Pipeline of Violence: The Oil Industry and Missing and Murdered Indigenous Women,” *Immigration and Human Rights Law Review: The Blog*, May 28, 2021, <https://lawblogs.uc.edu/ihr/r/2021/05/28/pipeline-of-violence-the-oil-industry-and-missing-and-murdered-indigenous-women/>.

17. Ecuador: 2008 Constitution. <https://pdpa.georgetown.edu/Constitutions/Ecuador/english08.html>.

18. Bolivia: Law of the Rights of Mother Earth | Ley de Derechos de la Madre Tierra [No. 071 | December 7, 2010], <http://peoplesagreement.org/?p=1651>.

19. Te Urewera Act 2014, <https://www.legislation.govt.nz/act/public/2014/0051/latest/DLM6183601.html>.

20. Salim v. State of Uttarakhand, Writ Petition (PIL) No. 126 of 2014 (December 5, 2016, and March 20, 2017), High Court of Uttarakhand, <https://www.elaw.org/salim-v-state-uttarakhand-writ-petition-pil-no126-2014-december-5-2016-and-march-20-2017>.

21. Anima Mundi Law Initiative, Rights of Nature Case Study: Turag River, <http://files.harmonywithnatureun.org/uploads/upload1130.pdf>.

22. Nicole Pallotta, “Federal Judge Strikes Down ‘Lake Erie Bill of Rights,’” *ALDF*, May 4, 2020, <https://aldf.org/article/federal-judge-strikes-down-lake-erie-bill-of-rights/>.

23. Resolution of the Yurok Tribal Council, Resolution No. 19-140, May 9, 2019, <http://files.harmonywithnatureun.org/uploads/upload833.pdf>.

24. Alliance Muteshekau-shipu, “For the First Time, a River is Granted Official Rights and Legal Personhood in Canada,” *PR Newswire*, February 23, 2021, <https://www.prnewswire.com/news-releases/for-the-first-time-a-river-is-granted-official-rights-and-legal-personhood-in-canada-301233731.html>.

We recommend that the Special Rapporteur and their office be composed entirely of Indigenous peoples. Indigenous peoples must be recognized as experts in all areas concerning their rights and the rights of Mother Earth. Additionally, we recommend that an expert group of Indigenous peoples be conceived to discuss in detail the findings of the “updated study of the international construct known as the Doctrine of Discovery.” The findings should be presented to the UN Permanent Forum on Indigenous Issues at its annual session.

We call upon member states to take action to implement and enforce UNDRIP upgrading it from a declaration to a convention.

We call upon member states to take action and assist in the clean up of all sacred waters. Water is life.

We call upon member states to affirm and recognize the rights of Mother Earth and all living beings, not just humans.

We affirm that free prior and informed consent must be sought by any member states, industries, corporations, or any business enterprise seeking to do business with Indigenous peoples or upon Indigenous lands. We remind member states of the provisions under UNDRIP Articles 8, 24–29, 32, and 37.