1 Introduction

Indigenous peoples are generally characterized as constituting a minority within the national states where they have their origin and traditional lands, and sharing culture, languages and religions that have been suppressed and assimilated over a long period. This implies that indigenous peoples’ cultural heritage is in a particularly vulnerable situation. International society has become aware of this situation, and by adopting the 2007 United Nations Declaration on the Rights of Indigenous Peoples, UN states expressed a willingness to protect indigenous cultural heritage.

Indigenous peoples have largely based their livelihoods on traditional use of lands and natural resources. This is noted by the UN Human Rights Committee, which has stated that there is a clear link between land resources and cultural – and thereby cultural heritage. The Committee has explained this link as follows:

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With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.4

The statement shows that traditional ways of life of indigenous peoples, and the lands needed for such life, are protected under the concept of culture in International Covenant on Civil and Political Rights (ICCPR), article 27. Such lands are thus crucial for the protection of indigenous cultural heritage.

In addition, a statement from the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) underlines the significance of land and natural resources for indigenous peoples:

Indigenous peoples’ cultural heritage... should be considered [as] an expression of their self-determination and their spiritual and physical relationships with their lands, territories and resources. While the notion of heritage encompasses traditional practices in a broad sense, including language, art, music, dance, song, stories, sports and traditional games, sacred sites, and ancestral human remains, for indigenous peoples the preservation of heritage is deeply embedded and linked to the protection of traditional territories.5

The link between land, resources and culture is also reflected in the state obligations under the International Labour Organization Convention No. 169 (ILO 169).6 See e.g. Article 4 (1) and 5 (a). Consequently, the obligation to promote indigenous cultures, including by identifying the lands on which they depend, is strengthened, as it can be subsumed under each of these independent, binding international conventions, and the interaction between them.

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4 Human Rights Committee, General Comment 23, Article 27 (Fiftieth session, 1994), para. 7.
6 See supra note 2.