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Ensuring the rights of indigenous peoples to natural resources

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Abstract

Ensuring the rights of indigenous peoples to natural resources, including the right to water, is one of the most important achievements of international humanitarian law. Over the years, these processes have led to the formation of a legal model that provides indigenous tribes of Australia with water rights. The study shows that until the 1960s, the Australian government did not conduct land return processes, but under pressure from the social movement, some jurisdictions changed their rules for regulating land rights. New forms of corporate ownership of land based on the right to use land and changes in the management of natural resources have given indigenous peoples greater autonomy in matters of land and the environment. In 1983, legislation was passed legalizing illegal land holdings and enacting the New South Wales Aboriginal Rights Act 1983. These changes have opened up access to the water market, which has allowed indigenous organizations to generate additional income. However, since the early 1980s, environmental restrictions on water licenses have effectively stopped access to water resources for the indigenous population. Therefore, the implementation of the provisions of the Law on the Rights of Aborigines to Land has been limited, since most of the land is not suitable for use. Another way that Aboriginal organizations obtained water licenses was by purchasing land from state and federal governments. However, this potential was limited. It was only after the 2000s that indigenous peoples managed to obtain rights to water resources on the basis of the provisions on "coastal law" and the corresponding licenses.

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Keywords

Access to natural resources, indigenous people, environmental management, water resources, traditional way of life.

Introduction

In modern research, it has been proven that in many countries with compact settlements of indigenous peoples, their rights to traditional ways of life have been violated in one form or another. This could manifest as direct restrictions on access to land resources, as well as pollution of natural resources such as water and air. Simultaneously with the development of the legal system, there has been a search for an institutional model to ensure the rights of indigenous peoples and to recognize their rights. By the 1970s, international conventions had established that the observance of rights to traditional ways of life is a key factor in their development. To implement these provisions in national legislation, many countries recognized the absolute or general rights of indigenous peoples to use surface or subsurface resources. In some cases, compensation was offered for the loss of land resources, and in some cases, compensation was provided to indigenous peoples for the loss of territory.

Analyzing the trends in land reform for indigenous peoples and the granting of titles to indigenous peoples indicates the influence of a range of mechanisms on social institutions and living conditions of indigenous populations, as well as on land distribution methods. Historically, the process of colonization represented a denial of the rights of indigenous peoples to natural resources, leading to irreversible consequences for them.

In matters concerning the development of the legal status of indigenous peoples, the issue of land ownership became the main focus in the 1970s. Modern international human rights standards currently consider land rights as a fundamental factor in the sustainable development of indigenous peoples.

Main content

Consider the experience of Australia, where indigenous peoples were returned the rights of the indigenous population over territories that make up at least 30% of the continent's land in the form of legal land rights and titles of indigenous peoples. In Latin America, States have also expanded new property rights regimes, transforming the way indigenous peoples' rights are recognized and related models of collective ownership. Latin American States currently recognize the rights of indigenous peoples and people from Africa to own about 200 million hectares of land. Although the effects of restitution are spatially uneven both between and within settler States, indigenous peoples today control or have ownership rights over more than a quarter of the world's land surface.

Both land ownership and ownership of water resources are important property rights that shape the regulation of the political economy of the region. For example, up to 236 Native American tribes have lands with unresolved groundwater claims in the western United States, where water supply is becoming increasingly strained and water allocation decisions are heavily contested. That is, this problem is still very relevant in many countries of the world.

However, at present, the issues of protecting the rights of the indigenous population in relation to the rights to other natural resources are unresolved. In particular, this problem concerns ensuring access to such scarce resources as water in relation to the aborigines of Australia. The well-established system of State regulation of access to resources has led to the fact that, in some cases, representatives of

indigenous peoples have been exercising land rights for decades.

In most developed countries of the world, land claims and dispute settlement procedures have been introduced to return land to indigenous peoples, recognize the absolute or general rights of indigenous peoples to use the surface or subsoil, and in some cases compensate indigenous peoples for the loss of territory.

An analysis of trends in the reform of indigenous land tenure and the assignment of titles to indigenous peoples shows the impact of a number of mechanisms on social institutions and living conditions of the population, as well as on models for the realization of land rights. However, with regard to other resources, such as water, this mechanism has not actually been studied. In modern law, there is significantly less data on the impact of these mechanisms on indigenous peoples' rights to water (surface or groundwater) or on how other global processes that reshape water rights affect indigenous peoples. The relative lack of attention to indigenous peoples' water rights can be partly explained by the fact that in many jurisdictions, water rights have been viewed by States as an auxiliary component of land ownership rights, and in regions where there is plenty of water, there may be little need to regulate water ownership. Moreover, the political, regulatory and administrative frameworks that once jointly regulated land and water resources have often developed in relative isolation from each other.

The nature of land and water rights and the manner in which they are distributed have implications for their modern use and management, as well as for the social and economic conditions of indigenous peoples leading traditional lifestyles. The importance of this resource makes the consideration of water rights no less important than the rights of indigenous peoples.

Consider the evolution of indigenous Australian water rights. Prior to the British occupation, there were many and diverse land ownership systems in Australia. The British did not recognize or seek to protect these traditional systems concerning both land and water, and they did not enter into formal treaties with indigenous peoples. The process of creating and granting land to settlers — without taking into account the land tenure systems of indigenous peoples — caused the process of dispossession. According to economic research, during the colonial period, much of Australia's wealth was based on the exploitation of water resources for mining, urban water supply, and later irrigated agriculture. The expansion of pastoral settlements along waterways has put intense pressure on Aboriginal land use, radically changing the country, and competition for land and especially water has accelerated conflict. As a result of local conflicts, the indigenous population of Australia has been greatly reduced.

The Australian colonies adhered to legislation based on English common law, according to which there was a "coastal regime" that granted rights to use water from streams and rivers to neighboring (coastal) landowners, mainly pastoralists.

The Aboriginal communities did not own land, so they did not have the right to exercise coastal common law rights, while the colonialists enjoyed the guarantee of "reasonable use" of water, as well as substantial government subsidies for the establishment of farms. From the late 1800s and early 1900s, colonial governments granted the British government direct control over water resources to encourage agricultural expansion. All this has led to the centralization of water resources management and the creation of a specialized body – the National Commission on Water Resources.

Between 1918 and the 1970s, public investments were made in irrigation measures and river regulation, including the construction of large dams, as well as many dams and locks. During this time, government agencies allocated water through legally established license application systems, where potential users applied for water rights at minimal cost. At the same time, the number of failures was insignificant. The trade rights to access water that emerged at the end of the twentieth century were based on these initial licenses and permits for water abstraction.

During the nineteenth century and up to the middle of the twentieth century, the colonial authorities resettled an increasing number of indigenous peoples on special reservations. One of the main stated goals of Aboriginal reservations was farming and agricultural activities, which were partly intended to promote self-sufficiency as part of a broader assimilation program. However, the size of these reservations was constantly decreasing under the political pressure of large landowners.

The processes of settlement, containment, regulation and assimilation have significantly reduced the ability of indigenous peoples to use their lands and water landscapes, which has had a profound impact on the ability of peoples to preserve cultural values. In Australia's colonial history, the reservation served as a place of exclusive residence for indigenous tribes created and controlled by Governments to ensure the security of the Territory. At the same time, the rights to the land on which they lived were not transferred to these tribes.

The Australian Government did not initiate a restitution process until the 1960s, when some jurisdictions responded to a public movement for greater recognition of indigenous peoples' rights and changed approaches to regulating land rights. New types of corporate ownership of property have created a degree of autonomy for indigenous peoples in matters of land and the environment. Since 1966, the rights of indigenous peoples to land have been presented to state parliaments in all jurisdictions, all of which made it possible by 1976 to form legislation allowing the preservation of rights to natural resources.

In 1983, it legalized land ownership along with the passage of the New South Wales Aboriginal Rights Act 1983. The legislation established a process for determining claims, transferring land (which sometimes included ownership of water or other assets) to newly established Indigenous Land Councils, and supporting these land councils in acquiring land. Between its introduction and mid-2014, this provided a positive solution for about 2,500 land applications (with a total area of 127,000 hectares). This represents only about 0.15% of the entire state, or 0.4% of the state's inherited property, and is not comparable to the size of indigenous peoples' possessions returned under some other legislative land rights schemes.

Conclusion

Australian governments did not initiate restitution processes until the 1960s, when some jurisdictions responded to the social movement for greater recognition of indigenous peoples' rights and changed their framework for regulating land rights. New types of corporate ownership of property based on "prior occupation" rights and broader changes in land and natural resource management responsibilities have created a degree of autonomy for indigenous peoples in matters of land and the environment.

In 1983, legislation retrospectively legalized these illegal land holdings along with the passage of the New South Wales Aboriginal Rights Act 1983.

The reform of access to water resources allowed the formation of a water market, which allowed indigenous organizations to gain additional profits. However, environmental restrictions on water licenses have effectively stopped access to water resources for the indigenous population since the early 1980s. Therefore, the effectiveness of the implementation of the provisions of the Law on the Rights of Aborigines to Land in 1983 was insignificant, including due to significant restrictions on the quality of land (only unsuitable for habitation and cultivation).

The second main way in which Aboriginal organizations have obtained water licenses is through schemes for the acquisition of Aboriginal land by state and federal Governments. Buying real estate

could be an effective means of obtaining more water rights, since the land available for purchase could have water licenses, but this potential was limited. Therefore, it was actually only after the 2000s that indigenous peoples obtained rights to water resources on the basis of the provisions of "coastal law" and the corresponding licenses for the sale and use of water resources.

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Обеспечение прав коренных народов на природные ресурсы

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Аннотация

Обеспечение прав коренных народов на природные ресурсы, включая права на воду, является одним из важнейших достижений международного гуманитарного права. В течение многих лет эти процессы привели к формированию правовой модели, обеспечивающей коренным племенам Австралии права на воду. Исследование показывает, что до 1960-х годов правительство Австралии не проводило процессы возврата земель, но под давлением общественного движения некоторые юрисдикции изменили свои правила регулирования

земельных прав. Новые формы корпоративной собственности на землю, основанные на праве пользования землей, и изменения в управлении природными ресурсами дали коренным народам большую автономию в вопросах земли и окружающей среды. В 1983 году было принято законодательство, легализующее незаконные земельные владения и принимающее Закон о правах аборигенов Нового Южного Уэльса 1983 года. Эти изменения открыли доступ к рынку воды, что позволило организациям коренных народов получать дополнительный доход. Однако с начала 1980-х экологические ограничения на лицензии на воду фактически прекратили доступ к водным ресурсам для коренного населения. Поэтому реализация положений Закона о правах аборигенов на землю была ограничена, так как большая часть земли не пригодна для использования. Другим способом, которым организации аборигенов получали лицензии на воду, была покупка земель у правительств штатов и федеральных органов. Однако этот потенциал был ограничен. Только после 2000-х годов коренным народам удалось получить права на водные ресурсы на основе положений о "прибрежном праве" и соответствующих лицензий.

Для цитирования в научных исследованиях

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Ключевые слова

Доступ к природным ресурсам, коренное население, природопользование, водные ресурсы, традиционный образ жизни.

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