

Kurdish Rights and the Indigenous Rights Framework

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By looking at the politics of indigenous identity and indigenous rights, this paper examines possibilities for the Kurdish people who live under the oppressive states of Iraq, Iran, Turkey, and Syria. There, they lack appropriate human rights instruments to defend them as a people. The Kurds have faced land rights issues for centuries, as well as physical and cultural forms of genocide. This article assesses whether the indigenous rights framework is helpful for protecting Kurdish rights. Although indigenous rights have been developed under international law, there are still questions about how they will be executed; for instance, due to the lack of full inclusion of nomadic peoples' rights. Lastly, this article discusses the benefits and drawbacks of the indigenous rights framework when applied to Kurdish people.

A central point in any discussion on the origins of Kurdish identity includes Ahmed Khani's seventeenth-century "Mem u Zin," a tragic love story about a young man (Mem) and woman (Zin) from different tribes who are separated by misfortune and treachery. The tale is widely understood to be an allegory for the Kurdish condition under foreign rule. Nationalists embrace Khani's notion of *derde ma* (our struggle), which represented the deprivation of the Kurds. Khani's use of the term Kurd refers to groups of people that were common to each other yet distinct from their neighbors or colonizers, but without a common identity. Khani's call for Kurdish unification under one ruler – not to be interpreted as a call for the establishment of a modern nation – predated the modern nation-state. He suggests the differentiation between culture, including language, made the Kurds different from their neighbors; therefore, this difference makes it difficult for their rights to be protected with a nation-state that does

not necessarily cater to their rights. The creation of nation-states led to further rights violations among many identity groups in the Middle East, such as the Palestinians, Bedouin, Assyrians, etc.

There are approximately 300 to 500 million indigenous people and about 3,000 to 5,000 nations that are forced to live in, and are divided among, the governance of nation-states. Indigenous peoples often find themselves as targets of several human rights violations, resulting in a shared history of injustice. Many nation-states do not recognize indigenous communities within their territories and there is no consensus on who indigenous people are. Furthermore, there is no particular framework that stands above nation-state politics for recognizing indigenous groups. There are still questions on how the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) can be executed in protecting indigenous people's rights, for instance, because it is not legally binding.

While many countries consider Kurds an ethnic minority, this article looks at discussions of Kurdish origins and identity. There are between 25 and 35 million Kurds inhabiting modern day southeastern Turkey, northeastern Syria, northern Iraq, northwestern Iran, and southwestern Armenia (BBC News, 2017). The first section of this paper discusses the definitions of indigenous peoples and the indigenous rights framework. We will also examine the human rights violations committed against the Kurds. The next section outlines the benefits and drawbacks of the indigenous rights framework, as it relates to protecting Kurdish rights. The paper then concludes with recommendations to improve the indigenous rights framework so that it is more useful for protecting Kurdish rights.

Defining "Indigenous"

Before an umbrella term of "indigenous peoples" was introduced, indigenous people identified themselves and constructed their identities as members of a certain family, clan, tribe, kinship, etc. Oftentimes, indigenous identity is rooted in the collective connection between traditions, traditional homelands, and a shared history of indigenous peoples (Weaver, 2001). After colonization, indigenous

peoples reinforced a sense of central identity across tribes. In whole, indigenous identity has elements of being inherent – and what is inherent may be constructed from their identity as distinct peoples; indigenous identity is malleable and fluid, so that it changes and is reconstructed over time. A common misconception is that indigenous identity is something static or inherent that can be obtained or claimed. Rather, it is something that is constructed and reinforced through culture, language, territory, and more. Like many identities, indigeneity is both reflective and constructed, making a definition of indigenous peoples a complicated task. For the purposes of this paper, three definitions are noteworthy. The first definition is one created by Jose R. Martinez Cobo in his *Study on the Problem of Discrimination against Indigenous Populations*. The Cobo Definition is as follows:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system (quoted in Gilbert, 2007, p. 693).

Another definition is from Article 1 of the ILO Convention No. 169 on Indigenous and Tribal Peoples. The definition is as follows:

...peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; ... peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions (quoted in Gilbert, 2007, p. 693).

The final definition referenced in this paper is adopted by the World Bank. Although the World Bank gives no definition of the term “indigenous peoples,” it does distinguish groups with different cultural and social characteristics as follows:

- (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;
- (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;
- (iii) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and
- (iv) an indigenous language, often different from the official language of the country or region (quoted in Gilbert, 2007, p. 693).

All three of these definitions vary slightly, but also carry core similarities. The common elements include: Indigenous peoples have historical continuity with pre-invasion and pre-colonial societies that inhabited a particular territory; they hold distinct cultures from the dominant society; they have a history of colonization; and they have a strong sense of self-identification.

While indigenous identity is often cited as a tool of resistance and strength, it is noteworthy that such identity can also have negative consequences – as is the case for the Kurdish people in some instances. In the creation and development of a central sense of peoplehood, problems of internalized oppression arise. Internalized oppression often comes from the strain of trying to fit into a constructed collective indigenous identity, although prior to colonization there was no need for an umbrella term for the indigenous. Before using the term “Kurd,” for instance, people identified with their tribal affiliations. Yet when the tribes unified against oppressive colonizers, each tribe was forced to assimilate to the new and reconstructed “Kurdish” identity. This internal conflict further divides communities and allows the colonial perceptions of identity to oppress them further (Weaver, 2001). Colonial world identities are often divided into binary terms, the colonized and the colonizer, underrating the complex forms of identity and hierarchy of tribes. Internal conflict between the tribes increased as their power over their own tribes was disrupted under the agenda of the reconstructed Kurdish identity. As a result, these complex identities that the colonized once had have been reduced to one category (Fanon, 2005). Furthermore, indigenous identity can be used to advocate nationalism and unifying identity to fight against the colonized and therefore used as a form of resistance against the colonizers.

Indigenous Rights Framework

Human rights violations against indigenous peoples is a trademark of colonization. Discussions of indigenous rights slowly evolved with the adoption of international human rights frameworks and law more broadly, but specific indigenous rights mechanisms have been slow-coming. Indigenous rights are envisioned through two dimensions: Develop a specific framework in international law that protects indigenous rights framework, or indigenous peoples should use the current universal human rights framework to protect their rights (Gilbert, 2012). Instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) are applicable to individual indigenous peoples, but they fail to protect the collective rights of indigenous peoples. Under international law, these instruments offer some rights protections to indigenous people's rights, but taking this general approach puts indigenous peoples' voices at risk of not being heard or understood, or being lost within the framework (Chen, 2017). Thus, indigenous peoples argued for a specific international rights framework that would address the rights of indigenous peoples across the globe.

Some progress was made in the protection of indigenous rights, but these provisions suffered from serious shortcomings. In 1957, the International Labor Organization (ILO) Convention No. 107 affirmed states to respect the indigenous way of life. However, this was criticized for promoting the modernization and integration of indigenous peoples into colonized societies. The provisions suggested the validity of indigenous peoples' rights only when they fully integrated into a colonized nation and way of life. That approach also denied their distinct collective identity. The ILO No. 169 was established in the 1980s, replacing the ILO No. 107. Although the ILO No. 169 respected ethnic and cultural diversity, its impact was limited due to the lack of indigenous peoples' engagement in the drafting process, as well as the fact that it was not ratified. About a decade later, the Indigenous and

Tribal Peoples Convention No. 169 in 1989 recognized the aspirations of indigenous people to control their own situations and enjoy fundamental human rights under the states they reside. Although No. 169 addressed some indigenous rights claims, however, it remained insufficient (Chen, 2017). Around the world, indigenous peoples called for better and more inclusive rights protections.

UNDRIP

After a long debate and drafting process, the United Nations Declaration of the Rights of Indigenous People (UNDRIP) was finally adopted by the General Assembly as a non-legally binding declaration on the treatment of indigenous peoples (see: United Nations Human Rights, 2007). The UNDRIP does not hold a definition of indigenous peoples, because many indigenous peoples did not want to limit the definition to certain groups. Therefore, the UNDRIP gives sovereign states the capacity to recognize indigenous peoples within their jurisdiction. These rights claims (such as self-determination, land rights, and cultural rights) were often debated by various indigenous activists and states. UNDRIP focuses on different perspectives of understanding indigenous peoples' rights claims, aiming for a more inclusive indigenous rights framework. Indigenous peoples have varying historical contexts and situations and had their own visions of what those rights claims would be. Nonetheless, the UNDRIP incorporates general themes, as explained below.

Self-determination

Although the concept of self-determination has historically been controversial in the context of indigenous rights, there are several articles in the UNDRIP that focus squarely on this fundamental right. Article 3 reads, for example: "Indigenous peoples have the right of self-determination. By that right they freely determine their political status and freely pursue their economic, social and cultural development." Article 4 also contends: "Indigenous peoples, in exercising their right to self-

determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions” (United Nations Human Rights, 2007). To counter the argument that demands for self-determination generate nationalist or separatist conflicts, Article 46 states:

Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States (United Nations Human Rights, 2007).

There is no formal or comprehensive definition of self-determination in the Declaration, so there are many debates about the specific meaning of the concept. Scholars have questioned and challenged limitations of this principle, for instance, sometimes arguing that self-determination can only be exercised if it is implemented within the borders of colonizing states. Even among indigenous groups, there have been disputes and different interpretations over the details of self-determination – often in relation to different levels of autonomy within nation-states and the push for sovereign independence. The right to self-determination centers on a key dichotomy. First, external self-determination is defined as the “right of peoples to freely determine their international status, including the option of political independence” (Chen, 2017). Second, internal self-determination which is the right to “determine freely their form of government and their individual participation in the processes of power” (Chen, 2017).

Despite these debates, however, for the purposes of this discussion the right to self-determination shall include the right of an indigenous people to form and change government for itself; the right to determine the relationship of that government to the state with limits; the right to make and enforce laws to govern their own affairs; the right to exist and act as a collective body politic within the state and to participate in the international community; the right to engage in the

political and economic relations with others; the right to use and resources existing on their traditional territories.

Cultural and Land Rights

The traditional human rights regime is constructed around the interests and concerns of individuals, but many indigenous peoples are also concerned about their rights as a collective group. Many indigenous advocates have criticized the global focus on individual rights for lacking protections of collective rights to culture, land, and property. Many collective rights outlined in the UNDRIP are intended to balance the individual and collective rights of indigenous peoples. These rights include: the prohibition of genocide (Article 8); the prohibition of forced removal and relocation (Article 10); their right to practice and revitalize their cultural traditions and customs, including the right to maintain, protect, and develop past present and future manifestations of culture as stated in (Article 11); and the right to manifest, practice, develop, and teach their spiritual and religious traditions, customs, and ceremonies. Article 16 and Article 15 refer to the education in public information of indigenous people's cultural teachings and languages (United Nations Human Rights, 2007). Article 26 summarizes the rights regarding indigenous peoples:

- 1) Indigenous peoples have the right to the land territories and resources which they have traditionally owned, occupied, or otherwise used or acquired.
- 2) Indigenous peoples have the right to own, use, develop, and control the lands, territories, and resources that they possessed by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
- 3) States shall give legal recognition and protection to these lands, territories, and resources. Such recognition shall be conducted with due respect to the customs, traditions, and land rights of the indigenous people (United Nations Human Rights, 2007).

Case Study: The Kurdish People

There is little history about the Kurds prior to colonization of Islam and Arab rule, but scholars believe that Kurds were divided in to tribes who nomadically inhabited the mountainous regions of

Turkey, Iraq, Iran, Syria, and Armenia. After the conquests of the Arabs, Kurds fell under Persian and Ottoman rule in the late fifteenth and early sixteenth centuries. While the Kurdish tribes recognized these rules, they were significantly independent. The Kurds experienced some detribalization under these new empires, which led to the rise of Kurdish political power and principalities (Hassan, 2013). Because they were nomadic, the Kurdish tribes were discriminated and marginalized between the two empires of the region, limiting the political and social autonomy they once had (Gilbert, 2007; Hassan, 2013). Like many nomadic and indigenous peoples, they were unwilling to be placed within such political structures (dating back from colonization to the modern states). Their forms of governance were modified and adapted to the changing times, and this situation later led to both internal and external conflict and violence (Stavenhagen, 2005).

After the collapse of the Ottoman Empire in World War I, the 1920 Treaty of Sevres held provisions for Kurdish independence (Hassan, 2013; BBC News, 2017). Article 62 of the treaty stated that the Kurds would hold autonomy in the “areas lying east of the Euphrates, south of the southern boundary of Armenia as it may be hereafter determined, and north of the frontier of Turkey with Syria and Mesopotamia” (quoted in Hassan, 2013, p. 78). This treaty was never implemented, however, due to the renegotiation of boundaries in the Treaty of Lausanne, which disregarded the Kurds and set the boundaries of modern Turkey (Hassan, 2013; BBC News, 2017).

Kurdish Identity

Kurds belong to either nomadic or semi-nomadic tribes. These tribes were the dominant socio-political structures until the nationalist movements in the 1920s. In other words, the Kurds identified with their tribal group and the tribal leaders held social and political power over their territories and people (Ross & Mohammedpur, 2018). Many scholars debate on the legitimacy of Kurdish nationalism, but I argue that Kurdish nationalism is no more or less legitimate than any other nationalism or identity.

There are several approaches to looking at the origins of identity or nationalism of Kurds, including the primordial and modern approaches. Like indigenous identity, Kurdish nationalism is not static or inherent, but it could not have emerged without a basis to build it from – such as linguistic, cultural, and social similarities (Hassan, 2013). The primordial approach argues that it is “natural” for tribes to develop a sense of central identity rooted in similar culture, language, and territory. The construction of a central identity also predates nation-states, so they were not interested in creating identity solely for a state. This was not a reaction of colonialism; rather it was reconstructed over time to reinforce a central identity after colonialism. The modern approach claims that nationalism is encouraged by the construction of a common history and language. After the collapse of the Ottoman Empire, there was a regional scramble for territory and resources amongst different groups. This caused Kurdish tribal leaders to claim historical ownership and preservation to the lands they had inhabited for centuries. Hassan (2013) argues that Kurdish nationalism could not have emerged without a unique language and culture that were common among the tribes but differentiated them all from their neighbors. He notes that Kurdish identity was not a reaction to colonial rule and nation-state structures, but there was a “Kurdish ethnics” for centuries. Essentially, Kurds shared a common culture and language prior to the nineteenth century, but – through technology and modernization – scholars and tribal influencers were able to push for the umbrella term of Kurds.

As the Kurds went through some detribalization, tribal leaders determined and debated whether their tribe would oppose, join, or remain neutral toward the national movement (Ross & Mohammedpur, 2018). Tribal leaders were both leaders in the development of Kurdish nationalism, as well as an obstacle. Kurdish tribes were not only resilient in assimilating to their colonizers, but they were also not willing to assimilate to nation-state structures of identity. The tribes dealt with internal competition as they resisted incorporation of the colonizers. This sort of tension within the Kurdish community is still found within the tribal-political principalities that are in the Iraqi part of Kurdistan. For

example, the Kurdish Regional Government still disputes the proper common language and TV channels promoting a specific idea of “Kurdishness.”

The Kurdish people are often introduced as an ethnic minority by many scholars, but their cultural history and historical identity illustrate how they are nomadic indigenous peoples. Anthropological definitions of nomadic peoples suggest there are variety of nomadic peoples, including fully nomadic hunter-gatherer communities and semi-nomadic communities. For nomadic peoples, travelling throughout their traditional territories is crucial to their survival. Gilbert (2012) claims that because nomadic peoples correspond to the definitions of indigenous peoples under international law, it is possible to use the term “nomadic indigenous peoples.” This becomes problematic for Kurds because human rights law does not hold any framework for protecting nomadic peoples’ land claims. However, due to the development of indigenous rights frameworks, human rights scholars like Gilbert (2012) are making connections between nomadic claims to land rights and the indigenous rights framework.

As human rights frameworks develop in regard to group rights, the task of identifying who qualifies becomes more complicated. Scholars seek to distinguish different groups and define them. For instance, there are many scholars attempting to distinguish nomadic peoples and indigenous peoples from other ethnic or minority groups, partly to determine who can claim which sets of rights. Meyer (2012) argues that minorities often share a single ethnic characteristic, such as language, religion, race, or nationality different from the state in which they reside, for instance, while indigenous peoples have a combination of different languages, religions, races, or nationalities. According to Meyer (2012), indigenous peoples can be defined in three ways: self-identifying as indigenous peoples, establishing their culture and social institutions prior to colonialism, and maintaining traditional ways of life to this day. Due to the oppression the Kurds faced under the rule of the empires, they formed a central Kurdish

identity that is based on culture, language, land, and a common oppressor. As a result, they are often not considered indigenous under existing definitions of indigeneity.

Although many scholars argue that Kurds are not indigenous or nomadic indigenous because of the establishment of modern technology of living and adopting semi-modern forms of governance, it's important to note that cultural traditions can still adapt to changing times but maintain a unique cultural and group identity (see: Kingston, 2015). Both nomadic peoples and indigenous peoples are also distinct from minorities or the dominant society because they may hold different ways of governance, perspectives on the ownership of land, and a spiritual connection to their territory (Meyer, 2012). Recall the tragic love story of "Mem u Zin," which represents the separation tribes have faced because of colonial powers. Khani's notion of *derde ma* (our struggle) is also understood as the deprivation of Kurdish land and culture.

Human Rights Violations

Kurdish rights have been under threat for centuries as a direct result of foreign and colonial rule. Many of these problems are due to Kurdish peoples' distinct identity and claims for autonomy over their regions. The Kurds resistance against the assimilation and integration of colonial and nation-states structures has put them at greater risk for state-sponsored rights violations. The main human rights violations committed against Kurds include (physical/direct) genocide, cultural genocide, and land rights. State boundaries prevented Kurds from retaining their nomadic culture, for instance. It is notable that some of the main cornerstones of the UNDRIP are the rights to self-determination; economic, social, and cultural rights; and territorial rights. If the nation-states that Kurds reside in recognized them as indigenous peoples, there would be a greater chance for the protection of their fundamental rights.

Genocide

The UN Refugee Convention defines genocide as violence committed “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group” (United Nations, 1951). With this legal definition in mind, violence against Kurdish people in Iraq under Saddam Hussein constituted physical/direct genocide. The Anfal campaign was initiated in the 1960s to commit genocide on Kurds in northern Iraq, largely recognized as a policy of “Arabization.” The Hussein regime successfully drove Kurdish families out of their homes and the Kurdish region, into the deserts of Iraq.¹ A key factor in the creation of this policy was the presence of valuable oil fields in the Kurdistan region. The “Arabization” process involved a systematic strategy to end the “Kurdish problem,” which included mass deportation, forced eviction, and mass disappearances of many Kurds. The Iraqi army deported the Kurds from the Kurdish region and into government-controlled camps in the south. These camps were in the middle of a desert, heavily monitored by the Iraqi army. Within one year, many Kurds died in the resettlements due to lack of food, water, and clothing. Since many homes in the Kurdish region were near important oil resources, Kurds who owned these homes were forced to leave (either by death or force) and strategically filled by poor Arabs who were lured in by the inexpensive price. The government then claimed the area as Arab territory, so they could claim the oil resource nearby. Chemical attacks and mass graves intensified the issue for Kurds in Iraq. Thousands of Kurds were executed or disappeared. Ninety percent of Kurdish villages were destroyed because of Anfal campaign and current challenges that the Kurds face can be traced back to the Anfal campaign and Hussein's regime (Human Rights Watch, 1993; Unrepresented Nations & Peoples Organization, 2013).

¹ Article 7 of the UNDRIP addresses “the right to life, physical and mental integrity, liberty and security of person” and “the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group” (United Nations Human Rights, 2007).

Cultural Genocide

Although international law defines genocide as violence committed “with intent to destroy, in whole or in part, a national ethnical, racial or religious group,” it still fails to acknowledge that cultural destruction or genocide has a profound impact on many of the indigenous minorities in the world. The discussion of cultural genocide is often ignored or even ridiculed within the international community, and therefore the UN Refugee Convention does not include the concept of cultural genocide.²

Unfortunately, the narrow definition of genocide fails to acknowledge the effects that cultural destruction has on indigenous peoples (Kingston, 2015). Article 8 of the UNDRIP notes that indigenous peoples have the “right not to be subjected to forced assimilation or destruction of their culture” (United Nations Human Rights, 2007), but for the Kurds (and for many others who were colonized centuries ago) current events are a continuum of a broader genocidal process.

Despite its lack of acknowledgement in international law, cultural genocide is often used when referring to the suffering and rights violations that many indigenous groups face (Kingston, 2015). Cultural genocide limits the freedom to practice cultural traditions and live existences that give peoples self-esteem and bind them together as a community. Kurds are stateless as a group, as individuals, and socially – all of which is a form of separating and breaking the bind of the community. Being legally stateless – as well as socially rootless individuals – is disruptive to someone’s identity and intentionally dissolves their culture. Consider how the Kurdish nationalist movement and attempts to unify the tribes against colonial powers was repressed by colonial rule, or how dividing the Kurds within borders and restricting mobility further divides them as a people. In these ways, they are faced with cultural genocide and forced assimilation within their “home” countries.

² Although the UNDRIP does not explicitly mention anything about cultural genocide, there are articles regarding culture – including Article 11, Article 15, and Article 31 (United Nations Human Rights, 2007).

Turkey, for instance, has denied the existence of Kurdish people within their borders through the public sphere and even within publications. This process is a continual discourse of building and maintaining Turkish nationalism. The denial of the existence of Kurdish people and identity was executed in stages. From 1980 until 2012 – a span of thirty years – the stage was set for ignoring and actively denying Kurdish people as a separate people (Yanarocak, 2016). Kurds have faced harsh treatment under Turkish authorities for generations, where Kurdish names, clothes, language, and any kind of Kurdish identity marker was banned. The state also refused to acknowledge them as Kurds, instead referring to them as "Mountain Turks" (BBC News, 2017). (Notably, the Kurds in Iran faced the same issues as those in Turkey – although it can be argued that Kurdish women faced heavier oppression in Iran.)

Statelessness

The Kurds in Syria have been denied citizenship, thus making them stateless persons (individually) and stateless peoples (as a group). Denial of nationality is a violation of Article 6 in UNDRIP, which states that every indigenous person has a right to nationality (United Nations Human Rights, 2007), and it also violates a variety of other human rights laws and frameworks. Like the Kurds in Iraq, Kurdish land in Syria has been confiscated and redistributed to Arabs in an attempt to “Arabize” Kurdish regions. The purpose was to identify “alien infiltrators” and to “Arabize” traditionally Kurdish territories for their rich resources. Kurds make up between seven to ten percent of Syria's population and have been denied citizenship for 56 years through the Jazira census, which was enacted in 1962. They lost their most basic rights of freedom of travel, education, political participation, legal marriage, property ownership, and the list continues. As many people from Syria have recently undertaken forced migration to escape from the country's civil war, stateless people – such as the Kurds – face greater risks of rights violations (France 24, 2015).

Limited progress has been made in addressing statelessness among the Kurds. The adoption of Decree 49 in 2011 gave thousands of stateless Kurds the possibility of acquiring Syrian legal nationality, for instance. Kurds who lived in this area were split into three categories: those who managed to fulfill the registration requirements and remained citizens, those who tried to register but did not fulfill the registration requirements and therefore lost their citizenship and were labelled *Ajanib* (foreigners); and those who never tried to register and were removed from the Syrian registry system, being known as the *Maktoum* (hidden) Kurds. The Kurdish region of Iraq is currently hosting the largest population of stateless Kurdish refugees. Stateless Kurds have turned to the United Nations for protection under the refugee mandate, but those who are not refugees find themselves beyond UN assistance. Even with more access to the Kurdish Region, the UNHCR has not made any efforts to document statelessness of refugee Kurds from Syria. They also do not differentiate between the various nationality statuses when registering the Syrian refugee population. Stateless Kurds continue to suffer because of the exclusion and victimization in resettlement programs. They do not receive any protection under the Kurdish Region in Iraq, and many have fled to European countries without any certainty of their pending asylum applications (Latif, 2016).

Land Rights

Gilbert (2016) defines the term “land grabbing” as the “large-scale acquisition of land for commercial or industrial purposes, such as agricultural and biofuel production, mining, and logging concessions, big infrastructure development or tourism” (p. 11). Foreign investors are often involved in taking control of land that is owned by indigenous peoples, which (as stated above) has consequences related to identity and cultural rights. Land grabbing is not a new concept, but rather it is a continuation of colonial aims to capitalize on natural resources owned by indigenous peoples. As a result, indigenous peoples are directly affected by land grabbing; some of the general human rights violations include the

right to food, the right to water, the right to adequate housing, and the protection from forced eviction (Gilbert, 2016).

Historically, nomadic indigenous peoples around the world have had a profound attachment to their lands and territories, yet they see their lands being reduced and violated. International law, or the lack thereof, has contributed to the reduction and the non-recognition of nomadic people's rights. International law lacks an inclusive definition or understanding of what it means to occupy land. Many parties in the international community hold the view that land can only be occupied if it is used in a settled fashion, which led to the idea that the land occupied by nomadic communities were empty and open for colonization. International law still holds no framework that protects and promotes the rights of nomadic peoples (Gilbert, 2012), but indigenous rights are essential to protecting the right to practice and maintain traditional lifestyles. Therefore, in theory, indigenous protections should be applicable to nomadic peoples.

Land rights overlap with discussions related to natural resources. In the Kurdish region of Iraq, oil is the main natural resource – causing great conflict between the nation-states in which the Kurds reside. The reconstruction of Iraq after the fall of Saddam Hussein's regime recognized the Kurdish region as a federal region. This recognition constrained Iraq's federal authority over the Kurdish region based on Article 115 of the constitution. Article 115 states that "all powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates" (quoted in Voller, 2013, p. 70). In the case of disputes between regional and federal governments, "priority shall be given to the law of the regions and governorates" (quoted in Voller, 2013, p. 70). This article in the Iraqi constitution restrained Iraq's authority in the Kurdish region. In the post-2003 era, the Kurdish Regional Government (KRG) was able to gain high ranking positions in the Iraqi government and was given 17 percent of Iraq's annual budget. Although revenue from oil was controlled by states, Kurds were forced to export their oil to Europe through Turkey, jeopardizing oil revenue – a resource that

allowed them to help themselves thrive as a society rather than relying on state governments. Until 2005, Kurdistan relied on smuggling small amounts of oil through Turkey as their oil revenue. While receiving oil revenue from smuggling oil through Turkey, the KRG began forming agreements with the Iraqi government to get the full potential revenue from the natural resource. Such agreements would provide the Kurds with some autonomy; the threat of that possibility led to the assassination of local Kurdish leaders, possibly ordered by the Turkish government (Voller, 2013). This highlights how countries refuse even a slight movement towards Kurdish autonomy.

Another natural resource, water, is also a route to control and restrict indigenous peoples' basic rights. The Alwand, Sirwan, and Lower Zab Rivers are three main rivers that originate from Iran and enter the north east part of Iraq. They run through the Kurdistan Region and provide more than 70 percent of the water as a source fishery, agriculture, and drinking water. After Iran built dams in the Alwand and Lower Zab river, they have completely dried up – and the Sirwan is under the same threat. There are no agreements between Iran and Iraq, and therefore the Iran government is not restricted on their water projects. The drying of Alwand in 2008 caused tremendous issues for households in agricultural lands. The Sirwan river, which provides drinking water and a water source for agriculture, is expected to be completely dried up this year. The Lower Zab river is also a main source of life and water for many Kurds in the Kurdish Regions.

With an increase in population of the Kurds over the last 30 years, and industrial activities in the region have increased demands for water. Without the necessary technology, the little water that is in the river is at risk of being contaminated, and, therefore becoming unsuitable for consumption – or it could be evaporated in the hot summer season. The Kurdistan regions do not have a proper water infrastructure and do not have a plan to cope with these water problems. The KRG did not prioritize the water issues because they are having financial problems, which could also be from the limited access or freedom to use their natural resources such as oil and land. Notably, Article 18 and 19 in UNDRIP

address that indigenous peoples have right to participate in decision-making situations that would affect their rights, and that states should consult indigenous peoples before implementing legislative or administrative decisions that would affect them (United Nations Human Rights, 2007). The Iraqi government has made no attempts to solve the water issue, which mainly impacting the Kurdish region, and the Iran government is not interested in communicating with the Kurdish region because they are not a sovereign state (Abdulrahman, 2018). Essentially, nation-states and corporations hold higher power than do indigenous rights, and international law is not enough enforcement ability to combat that imbalance of power.

Conclusion/ Recommendations

There are several benefits of the indigenous rights framework, specifically the UNDRIP, as it refers to nomadic indigenous peoples such as the Kurds. In theory, there is finally a focus on indigenous peoples that may also be applied to nomadic peoples in the international law. However, there are also significant drawbacks that ought to be considered. Although there is more research and discussion to be done, these conclusions provide important starting points for a more long-term conversation. In particular, concepts such as democratic confederalism provide a new approach to rights protection and power relations.

There are some drawbacks to approaching Kurdish rights under the nomadic and indigenous framework. Meyer (2012) explains that states guard their sovereign areas – their borders, supreme law-making authority within those borders, and the wealth represented by natural resources. The heavy guarding of the sovereign nation-state keeps them preoccupied while disregarding the protection of the rights of indigenous peoples in their state. Furthermore, indigenous peoples must work within the parameters of the government, thus limiting their options and means to help themselves. Indigenous peoples can push the limits in an attempt to protect cultural rights as individuals or even as a collective,

but not necessarily regarding land and resources. This reality disregards the fact that culture is closely tied to land and territorial rights and self-determination, as seen in the different Kurdish regions. The efforts of indigenous peoples are inherently challenging and limited by state sovereignty, which creates inherent obstacles to full rights protection.

Another challenge is that states are free to determine if they have indigenous peoples in their state, according to our current international system. "Recognition" by colonial state cannot be understood as a source of freedom and dignity but should be seen rather "as the field of power through which colonial relations are produced and maintained" (Dhillon, 2017, p.67). Thus, the concept of self-determination is also a messy area in which to claim indigeneity. The more the Kurds have, the more they are oppressed by colonial rule. For example, people in the Kurdish region in Syria are currently attempting to gain power, but Turkey strikes down their attempts through violence.

A drawback that occurs internally amongst Kurds is the issue of tribalism and political conflict. For example, certain groups are established as the leaders of the region, but the KRG is divided between two political principalities with strong tribal backgrounds and this causes internal conflict. Although the internal conflict is with opposing political parties or politicians, politicians have strong tribal affiliations that can cause strong biases within Kurdish society and politics. The internal conflict is thus intertwined with politics and tribal association.

The UNDRIP could be greatly improved by not giving sole implementation power to nation-states, which of course is the greatest limitation of the modern human rights regime. As exemplified by the Kurdish people, central identity predates the state borders that were established on their lands. Granting the Kurds autonomous rule through a forced governmental structure only complicates the situation more because of tribalism, culture, language, and other factors. However, Komar (2012) provides a possible solution: democratic confederalism. Democratic confederalism is a non-state paradigm with local social control. This paradigm allows for a self-rule system as historically seen in

tribal societies; essentially there is no hierarchy of a state in which certain groups overpower others (Komar, 2012). More research is required to further understand the rights protections of indigenous people, such as the Kurds; however, there needs to be change that creates more of a balance of power between indigenous peoples and nation-states.

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