



A HUMAN RIGHTS AND NOMADIC TERRITORIES

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ABSTRACT:

This study aims to investigate the place that women play in the military and the nomadic environment. The authors discovered, based on archaeological data and comparative historical analysis, that the majority of nomads organized themselves in two ways. In addition, women in Scythian and Sarmatian societies had the same opportunities as men to lead tribes and perform priestly duties, as well as the ability to work. The study also found that women from the steppe could be a part of their people's fateful decisions. The fact that this study's findings can be used in subsequent studies of women's role in the nomads' life organization and gender equality studies determines its practical significance. Nomads face discrimination in most societies. The crucial issue of land property frequently lies at the heart of this discrimination. Nomads and settled agriculturalist societies' sharing of land has frequently resulted in violent conflict. Numerous nomadic peoples are influenced by land access, as nomads' ability to maintain their mobile lifestyle will be affected by this. Because their nomadic lifestyle was not considered to meet the criterion of "effective occupation" of the land, nomadic people were historically not considered to have any rights to land. This article examines how human rights law could grant nomadic peoples rights to use their lands by examining the development of international law regarding the rights of nomadic peoples to their land. In the end, this article argues that the gradual establishment of a specific corpus of law dedicated to the rights of nomads is gaining nomadic peoples the right to live on their land in their traditional ways under the banner of international human rights law. Because they have developed the habit of fighting over far more land than they can use, wandering tribes cannot claim that they have the right to keep superior races out of large areas.



KEYWORDS: nomadic environment , nomads' life organization and gender equality studies.

INTRODUCTION

Nomadic people were frequently regarded as "criminals" and as a threat to society on a legal level. Words like "vagabond," "tramp," and "wanderer" are frequently associated with the idea of nomadism. For instance, under British colonial rule in India, nomadic tribes were "notified" as born criminals under an 1871 law based on their nomadic lifestyle.¹⁰ This resentment against nomadic peoples is reflected in international law, and nomadic peoples are frequently those left behind by its development. For instance, the Parliamentary Assembly of the Council of Europe adopted a declaration to make it clear that the use of the term "vagrants" in Article 5(1)(e) of the European Convention on Human Rights (ECHR) does not necessarily apply to people who lead a nomadic lifestyle.¹¹ Although

there is a substantial body of anthropological and sociological research on specific uses of nomadic lands¹², there is very little legal research.¹³ The goal of this article is to fill this void. While it examines the legal theory governing the land rights of nomadic people, it will use anthropological, sociological, and political sources to maintain the subject's requirement for a multidisciplinary approach. This article intends to evaluate the role of human rights law in ensuring that nomadic peoples have access to and use of their traditional transhumant territories. It will do so by taking this approach. The word "nomad" comes from the Greek word "nemein," which means "to pasture." According to the Oxford English Dictionary, a nomad is "a member of a people constantly moving to find fresh pasture for its animals and having no permanent home." The connection between a people on the move and the motivation for their movement, which is to seek new pasture, is one central aspect of this definition. According to anthropological research, there are three main types.

CATEGORIES OF NOMADIC

peoples: pastoral nomads, nomadic hunter-gatherers, and peripatetic service nomads¹⁴ are all examples of various nomadic groups, ranging from fully nomadic communities of hunter-gatherers to seminomadic communities of seminomadic communities¹⁵, such as the Roma/Gypsies or Irish Travellers, who are culturally regarded as nomadic peoples despite not being hunter-gatherers.¹⁶ The idea of moving from one location to another. The possibility of traveling through their traditional territories is essential to the survival of many nomadic people; As a result, having access to such territory is crucial. The fundamental question of whether nomadic peoples have the right to remain nomadic or whether they should settle down lies at the heart of the issue of territorial entitlement. Through three distinct lenses, this article examines the territorial entitlements of nomadic peoples under international law. The first section of the article examines the impact of international law's rules on title to territory on the land rights of nomadic people. The article then examines whether the international human rights framework will ultimately have a positive impact on nomadic peoples and the extent to which international law remains entwined with a sedentarist approach to territory that denies nomadic territorial entitlements. The article critically examines the extent to which such development is relevant to nomadic peoples' land rights, with a particular focus on the development of a discourse on collective land rights, in order to address this issue. The second section of the article examines recent developments in human rights law regarding the rights of indigenous peoples, as there is a movement toward linking nomadic peoples' land claims to the rights of indigenous peoples.¹⁷ The third section of this article looks at whether or not human rights law should give nomadic people specific rights to use and access their traditional territories. This section of the article provides a comprehensive outline of the main characteristics of a potential legal regime for nomadic peoples' use of their traditional spatial territories and examines the possibility of its development.

NOMADIC PEOPLES; HUMAN RIGHTS

Nomads face discrimination in most societies. The crucial issue of land property frequently lies at the heart of this discrimination. Nomads and settled agriculturalist societies' sharing of land has frequently resulted in violent conflict. Numerous nomadic peoples are influenced by land access, as nomads' ability to maintain their mobile lifestyle will be affected by this. Because their nomadic lifestyle was not considered to meet the criterion of "effective occupation" of the land, nomadic people were historically not considered to have any rights to land. This article examines how human rights law could grant nomadic peoples rights to use their lands by examining the development of international law regarding the rights of nomadic peoples to their land. In the end, this article argues that the gradual establishment of a specific corpus of law dedicated to the rights of nomads is gaining nomadic peoples the right to live on their land in their traditional ways under the banner of international human rights law.

Along the Silk Roads, a variety of ways of life existed and continue to exist, including nomadism. The cultural exchanges that took place along these historic routes were significantly influenced by the Central Asian nomads. The social structures of the nomadic communities that lived

alongside the modern countries of Kazakhstan, Kyrgyzstan, Afghanistan, Tajikistan, Turkmenistan, and Uzbekistan had very specific social structures that were based on pasturing herds over large expanses of grassland and desert and traveling significant distances on horseback. They coexisted with sedentary populations scattered throughout oases and river valleys throughout Central Asia. Ladies in itinerant society assumed an exceptional part by attempted a variety of errands including riding, housework, setting up and bringing down shelters, preparing and bringing up youngsters as well as making. In addition, they were well-known for handling domestic matters like selling or purchasing the family's livestock. In addition, women's voices and opinions were frequently taken into consideration at community gatherings in some nomadic societies in Central Asia, particularly when it came to matters of common interest. In the steppes, women rode freely and participated in numerous sporting and cultural festivals.

WHILST WOMEN IN THE NOMADIC SOCIETIES OF CENTRAL

Although their roles in society were certainly restricted from the 16th century CE onward, they nevertheless played a crucial role in the preservation and transmission of cultural heritage through the Silk Roads, such as traditional craftsmanship or technology, across the Eurasian Steppe. For instance, the knowledge and abilities necessary to make traditional felt carpets were typically handed down from older women to younger women in the family over the course of several generations. These felt carpets' designs and the rituals that went into making them had a significant cultural significance that was inextricably linked to the day-to-day lives of nomadic people who used them to keep warm and decorate their homes. Along the Silk Roads, the nomadic people of Central Asia acted as a link between people of various cultures. Women have and continue to play a crucial role in preserving and transferring important aspects of shared culture and knowledge, as they do in many cultural fields. Their influence, particularly within the shared heritage of the Silk Roads, remains to be better recognized and documented, despite the fact that their contribution has spanned many different fields, including traditional crafts, performing arts, and oral traditions and expressions. According to Dyson-Hudson and Dyson-Hudson (1980), gender formation as a sociocultural and psychosocial role of men and women took place in the nomadic culture under the strong influence of a particular ideological system and traditions. (2012 Mishukova). As a result, the participation of women in military affairs was one of the requirements for the social development of nomads.

CULTURE AND TRADITION OF DE-NOTIFIED, NOMADIC AND SEMI-NOMADIC TRIBES

The ideologies, cultures, political and social customs, and lifestyles of the De-notified and Nomadic communities are diverse. Nomadic communities' practices have a long history of continuity, and many of them claim to be rooted in ancient history. They created their very own Gods and Goddesses. Additionally, their own celebrations and festivals are more diverse. Nomadic communities' economic activities are closely linked to their social and cultural characteristics. The majority of communities adhere to a conventional method in which senior members lead each group of five to twenty people and move in groups of five to twenty people. In order to survive, each of these subgroups traveled independently along distinct routes. In some communities, annual customary camping is used as a gathering place for family reunions, marriages, and even cattle trading. The vast majority of De-notified and nomadic communities, like the majority of communities in India, are primarily patriarchal.

The making of tools and utensils, providing basic goods like salt and wool, providing medicines and herbs, and entertaining people are all aspects of the nomadic way of life that revolve around socio-economic necessity. The accessible records show that these itinerant networks were a necessary piece of the general public and its financial cycles around the center of the 19th century. They supplied sedentary agrarian communities with essential goods and services by using their skills and the capacity to travel long distances with family. Historically, neither the Nomadic Tribes nor the De-notified Tribes had ownership rights to private land or homes. These tribes made a living and built homes on forests and grazing lands. Strong ecological ties existed between these communities. For their survival, many of

them rely on a variety of natural resources and create intricate ecological niches. Their options for earning a living are severely impacted by the changes in the environment and ecology.

STATUS IN INDIA

South Asia is thought to have the largest population of nomadic people in the world. About 10% of the population in India is denotified and nomadic. There are approximately 150 Denotified Tribes, but there are approximately 500 Nomadic Tribes communities in total. The Nomadic Communities continue to largely be nomadic in pursuit of their traditional professions, whereas the Denotified Tribes have almost established themselves in various states of the nation. In July 2014, the government established the National Commission for Denotified, Nomadic, and Semi-Nomadic Tribes (NCDNT) for a period of three years. The purpose of the NCDNT was to compile a state-by-state list of castes belonging to Denotified and Nomadic Tribes and make suggestions for appropriate actions that could be taken by the Central Government or the State Government in relation to Denotified and Nomadic Tribes. To access the Idate Commission Report, click here. In this article, the role of nomadic peoples in international constitutionalism is examined. According to the article, a sense of law is an essential component of a Nomadic culture. A sense of law like this is different from a constitutionalism that prioritizes fundamental principles with the goal of limiting the actions of the state's executive branch. Numerous current domestic legal systems adhere to this kind of constitutionalism. This kind of constitutionalism is also taken for granted in public international law. The sense of law in Nomadic communities has been overlooked in the pursuit of regulations that restrain the executive branch of the state. As a result, arguments that a jurist might consider to include the safeguarding of such communities have been overlooked. This issue is entwined with a legacy that has weighed down European legal thought's past.

At first, the article identifies three types of nomadism. Since the Greeks and Romans, jurists have written about the social phenomenon of nomadism. Even though the article argues that such communities have had a sense of law, the image of nomadic peoples in such a legacy has depicted them as lawless. A sense of law like this goes against an international system of law that is focused on states. Nomadic peoples have been given their own special legal space in public international law. The article identifies four arguments that could be used to defend nomadic peoples in such a global community that is so focused on the United States. Each such argument raises issues.

STRANGERS IN THEIR OWN LANDS: NOMADIC PEOPLES AS 'INEFFECTIVE' OCCUPIERS OF THEIR TERRITORIES

A conspicuous trouble for roaming people groups while stating regional freedoms is that they meander from one spot to another and involve regions for a restricted timeframe. Because they do not have "a fixed abode, and definite territory belonging to the people by whom it is occupied," nomadic peoples are not considered to be legal occupiers of any particular land.¹⁸ The rules governing territorial ownership originated from the Western theory that land must be "properly" used and occupied to provide title of ownership. However, the nomadic system of land use was viewed as an outdated and non-rational organization of land exploitation, and as a result, nomadic communities have not historically been considered sufficiently "civilized" to possess rights over their territories.

CAIN AND ABEL'S GHOSTS: NOMADISM VERSUS THE 'AGRICULTURAL ARGUMENT'

The concept of "effective occupation" of the land has been the foundation upon which the laws governing land ownership and use have been formulated from their inception. The "agricultural argument" promotes the view that only agriculture can be regarded as a basis of a real land tenure system and that only cultivation of land can be considered a "proper" occupation of land. The "cultivation test" or "agricultural argument" has been argued for by several major authors, including Locke and Hegel. Although "Indians" did have some usufructuary rights over their hunting products, they were "commonly without any fixed property in the ground," as Locke argued in his *Essay Concerning the True Original, Extent, and End of Civil Government*.^{20,21} As a result, lands used by nonsedentary agriculturists or hunters and gatherers were to be considered vacant. Rousseau used the

model of the development of agriculture to explain the origin of private property. Locke's argument that rights in land only arose from the appropriation and improvement of the land by agriculture was widely accepted.

In a similar vein, Kant argued that the conflict between agriculturists and nomads was the source of statehood and that the establishment of a proper agricultural society was the only path to perpetual peace. Kant referred to nomadic American aboriginal societies as lawless societies based on hunting, fishing, and herding—one of the "all forms of life" that is without a doubt most contrary to a civilized constitution. "In general, the "agricultural argument" that was developed by the various philosophers and political scientists of the 18th century was that settlement and cultivation were the only basis for title to property. According to Kant, the establishment of commerce and agriculture was the only way to bring peace to these "uncivilized" locations and the only path for humanity to achieve moral progress. Therefore, since nomadic groups did not cultivate the soil, they did not assert exclusivity; As a result, whenever the European invader actually or constructively set foot, their rights were so minimal that they disintegrated automatically.²⁵ The primary justification for this argument was that nomadic peoples were thought to be in a kind of pre-political state of nature without proper land property laws or institutions. Political scientists and lawyers have typically failed to recognize such systems because of ignorance or arrogance, despite the fact that some nomadic communities have extremely complex property rights systems²⁶. It was believed that only a system based on established agriculture would result in a recognized system of land property.

The development of international law was profoundly influenced by this "agricultural argument." According to Vattel, who is regarded as one of the founders of international law, "the cultivation of the soil... is... an obligation imposed on man by nature," "Because their occupancy cannot be "a real and lawful taking of possession," he stated that non-agricultural societies "cannot populate the whole country." As a result, it was perfectly legal to occupy such a country.²⁹ Vattel wrote about the Indian tribes' involvement in the colonization of North America, stating that:

The general literature of the 18th century, which promoted the idea that land ownership could only be based on the definite occupancy of such land and that agriculture was the only means to define the terms of occupation, was reflected in Vattel's concept of the superiority of settled agricultural societies.³¹ The agricultural argument had a significant impact on the rights of nomadic people under the Law of Nations; It promoted the idea that a community cannot be considered sovereign if it does not consist of settled residents with a so-called "proper" land tenure system, and it provided justification for the colonization of non-agricultural lands. Nomadic tribes are outside the scope of international law due to the requirement that sovereign nation-states can only be defined in terms of a specific territory, as implied by the agricultural argument. "even if we suppose a nomadic tribe to have attained the requisite degree of civilization its lack of territorial organization would be ample sufficient to exclude it from the pale of International Law," Lawrence stated in 1895. According to Burke, the common law principle of adverse possession is also deeply ingrained in the Western notion that occupation of the land is synonymous with the efficient use of the land: "one justification for this doctrine is that it promotes the efficient use of land through punishment for non-use."³² Similarly, at the national level, the rules governing land tenure typically reflected the idea that nomadic peoples were not "properly" using the land.³³

NOMADIC PEOPLES AS INDIGENOUS PEOPLES: COLLECTIVE LAND RIGHTS

Recent legal developments in indigenous peoples' rights could be used to support nomadic peoples' legal claims over their territories, as one of the cornerstones of indigenous peoples' rights is their right to use and/or own their traditional territories.⁵⁵ Indigenous peoples' rights under international law have undergone significant changes in recent years. Indeed, nomadic peoples have frequently utilized the United Nations' international mechanisms for indigenous peoples; For instance, numerous representatives of nomadic peoples attend the UN Working Group on Indigenous Populations annually. The status of nomadic peoples in terms of international law is an important consideration when discussing their rights. There is no accepted legal definition of indigenous peoples

in international law. However, there are three essential legal. Indigenous communities, peoples, and nations are those that consider themselves distinct from other sectors of the societies that are currently prevailing in those territories, or portions of them, despite having a historical continuity with the societies that existed prior to the invasion and colonization of their territories. They are determined to preserve, develop, and transmit to future generations their ancestral territories and ethnic identity as the foundation for their continued existence as peoples, in accordance with their own cultural patterns, social institutions, and legal systems, even though they make up non-dominant segments of society at the moment.

These three definitions share a few characteristics, despite their slight differences. They all provide a mix of "objective" criteria, like historical continuity, and "subjective" ones, like self-definition, the majority of the time. Specifically, three elements are shared by every one of the definitions: (i) "having a historical continuity with pre-invasion and pre-colonial societies" refers to the original inhabitants of territories that have been colonized by foreigners; (ii) their distinct cultures distinguish them from the majority society; Moreover, they have a solid sense of self-identity (iii). These requirements could be met by nomadic peoples; Due to their commitment to a transhumant pastoralist culture and identity, they have a strong connection to their ancestral territories and frequently existed before the state in which they live. They could be considered "first peoples"⁶⁰. In addition, the three definitions emphasize that indigenous peoples are non-dominant communities. Similarly, due to their non-agricultural economic base and traditional cultural identity, nomadic people frequently live in isolation from the dominant political and economic systems. Therefore, the situation of nomadic peoples may correspond to the international law definition of indigenous peoples, and the term "nomadic indigenous peoples" may be used.

NOMADIC INDIGENOUS PEOPLES' RIGHT TO COLLECTIVE LAND USAGE AND OWNERSHIP

The traditional land use practices of nomadic people are not recognized by many states. The majority of national legal systems do not recognize collective forms of land ownership and use, and a number of states have implemented policies that shift land ownership from common grazing to private ownership by individuals. For instance, during the three sub-territorial workshops on 'Multiculturalism in Africa' coordinated by the Unified Countries, a significant issue was the connection between peaceful people groups and agriculturalists. According to the African Commission on Human and Peoples' Rights' Working Group of Experts on Indigenous Populations/Communities, "the favoring of settled agriculture over hunting, gathering, and nomadic cattle herding has been instrumental in both marginalizing and stigmatizing some peoples and inspiring them to identify themselves as indigenous groups."⁶¹ Participants pointed out that the key issue in this relationship was the very specific conception of individual versus collective control over land and natural resources.⁶¹ Nomadic people can assert their right to have their traditional methods of landholding recognized by asserting their rights as indigenous peoples in 1962. By doing so, nomadic people can assert that their particular attachment to their territories and their right to continue living a nomadic lifestyle are integral to their traditional way of life. Modeling their cultural and property rights requires that nomadic peoples have the right to maintain their traditional nomadic lifestyle.

SPECIAL RIGHTS FOR NOMADIC PEOPLES: TOWARDS

The only specific internationally binding legal document regarding indigenous peoples' right to their traditional territories is ILO Convention No. 169. The only international human rights treaty that specifically addresses the situation of nomadic people is this convention. Article 14 on land ownership specifically states that "particular attention shall be paid to the situation of nomadic peoples and shifting cultivators."⁶³ The ILO's long series of debates and discussions led to the specific focus on the situation of nomadic indigenous peoples. In point of fact, the fact that the ILO Convention No. The preceding ILO Convention No. 169, ILO Convention No. 107 on Indigenous and Tribal Populations 1957⁶⁴, does not specifically address the situation of nomadic peoples. The specific reference to nomadic peoples in ILO Convention No. 169 came as an answer to criticisms of the integrationist goals

of ILO Convention No.107 and of ILO Recommendation 104.67 The first draft of the revised ILO Convention No. Although the Meeting of Experts, which was in charge of drafting the new convention, noted the need to address the particular situation of nomadic peoples, 107 did not mention them.^{68a} position that was founded on the realization that national policies had been implemented to settle nomadic indigenous peoples in many states.⁶⁹ The experts emphasized that "if programs to settle indigenous and tribal peoples occur in situations where competing claims are being made to their traditional lands by outside colonists or developers, there is danger that these peoples may be compelled to change their lifestyles and lose effective access to their traditional lands."⁷⁰ As a result of this strategy, the position of nomadic peoples could have been further considered when ILO Convention No.169 and there was areas of strength for an on the particular circumstance of itinerant people groups as respect their entitlement to utilize their conventional regions during the drafting debates.⁷¹ The text that was at long last taken on gives: It will be acknowledged that the concerned peoples have the legal right to own and possess the lands that they have traditionally occupied. In addition, appropriate measures will be taken to safeguard the peoples' right to use lands that are not exclusively theirs but to which they have traditionally had access for their traditional and subsistence activities. In this regard, the situation of nomadic people and shifting cultivators will receive special attention.

ABORIGINAL AND NATIVE TITLE THEORIES AND NOMADIC PEOPLES

The theory of "aboriginal" or "native" title, which was developed by national courts and recognizes indigenous peoples' land rights as rights existing through indigenous customary laws that pre-date national legal systems, has made significant progress at the national level regarding the right of indigenous peoples to exercise collective ownership over their traditional territories.⁸⁹ Although the theory was developed primarily through Canadian and Australian jurisprudence, its use has gradually become more international, and several common law courts have referred to it when dealing with indigenous peoples. Because it signifies the legal recognition of both their itinerant way of life and their traditional customary laws on land use, the development of this theory represents a positive step for nomadic peoples. McNeil concluded that "there can be little doubt that a group of hunter-gatherers who habitually and exclusively ranged over a definite tract of land, visiting religious sites and exploring natural resources in accordance with their own interest and way of life, would have been in occupation of that land" when examining the common law application of the criteria for occupation to nomadic peoples. He makes the point that modern anthropological research has shown that nomadic groups are not randomly wanderers but rather are attached to a specific territory and bound to it. McNeil makes the following argument regarding the rights of nomadic groups to control their territories:

CONCLUSION:

Nomadic lifestyles are increasingly under pressure from a variety of factors, including environmental concerns, development, migration control, and restrictions on freedom of movement. This article argues that in order to respond to these threats, a legal arsenal that would permit nomadic peoples to maintain their particular nomadic use of the land must exist. There are two sets of specific rights that apply to people who live on the move: to start with, privileges that are assistants to the migrant lifestyle (like hunting or assembling privileges), and second, privileges that connect with an extended way to deal with opportunity of development including a traveling lifestyle. The first set of rights are usufructuary rights that are attached to land and the rights to particular mobile services. On the other hand, freedom of movement is a term that refers to rights like the right to cross borders or get to stopping places. Because they live in harsh environments, nomadic people frequently move around a lot.¹⁰⁹ Environmental pressures have led to the development of specific nomadic survival systems that rely on the specific use of natural resources. Nomadic people have particular requirements due to their unique way of life. Rights to graze or hunt may be necessary for survival, and frequently are. However, states and nomadic peoples frequently disagree on this point. The current trend toward economic globalization is leading to a greater demand for primary natural resources, which frequently has a direct impact on the lives of nomadic communities that live in

areas that are abundant in natural resources. Between states, nomadic peoples, and other private actors like transnational corporations, the control and exploitation of natural resources is a significant area of ongoing conflict. The nomadic way of life is frequently portrayed as destroying the natural environment in this pursuit of natural resources.¹¹⁰ Particularly in very dry regions of Africa, pastoralists are viewed as the primary causes of desertification and soil erosion, which are consequences of overgrazing and deforestation. "[g]overnments and scientists have long regarded the pastoralists' way of life as a cause of environmental degradation," according to Berger's research on the situation of pastoralist nomadic peoples' use of lands in Kenya. This notion is based on a misconception about the pastoralist way of life and is reflected in Kenya's national policies regarding resource access and land tenure. According to Campbell, "scientific" rangeland conservation policies that rely on the "tragedy of the commons" thesis—in which "common property rights" in land and natural resources are incorrectly linked to overgrazing and environmental degradation—have "undermined" nomadic people's pastoralist access to lands in Africa.¹¹² These false claims have tragically affected the lives of nomadic people: States and other organizations have attempted to coerce nomadic peoples into adopting a more sedentarized way of life by invoking the notion that these people are using their lands in the "wrong" way.

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