

From Expropriation to Compensation: Legal Remedies for Indigenous Land Grievances

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This article aims to critically examine the legal remedies available for addressing Indigenous land grievances across various jurisdictions, focusing on restitution, compensation, recognition, and procedural mechanisms. Using a scientific narrative review approach and descriptive analysis method, this study reviewed peer-reviewed academic literature, legal texts, court rulings, and international instruments published between 2019 and 2024. Sources were selected based on relevance to Indigenous land rights and included case law from Canada, Australia, the United States, Brazil, and New Zealand. The analysis identified patterns and challenges in the legal treatment of Indigenous claims and evaluated the effectiveness of different forms of remedy. The findings reveal that while legal systems have increasingly recognized Indigenous land rights, significant limitations remain in the design and implementation of remedies. Restitution is often obstructed by evidentiary and political barriers, compensation is frequently perceived as inadequate, and legal recognition is constrained by regulatory limitations. Procedural access to justice is hindered by cost, jurisdictional fragmentation, and lack of enforcement. Across jurisdictions, legal remedies tend to reflect state-centered frameworks rather than Indigenous worldviews, leading to widespread dissatisfaction and demands for transformative reform. Although notable progress has been made in the recognition of Indigenous land rights, current legal remedies often fall short of addressing the historical and cultural dimensions of dispossession. Achieving meaningful land justice requires rethinking legal paradigms to center Indigenous epistemologies and governance systems, supported by enforceable, inclusive, and context-sensitive remedies.

Keywords: *Indigenous land rights, legal remedies, restitution, compensation, recognition, procedural justice, land grievances, state sovereignty, customary law, legal pluralism.*

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1. Introduction

Indigenous land grievances represent some of the most enduring and complex legal and moral challenges facing modern nation-states. These grievances are rooted in the systematic dispossession of Indigenous peoples from their ancestral territories, a process that has occurred across diverse geopolitical

contexts and continues to reverberate through legal, social, and political systems today. The loss of land is not only a material concern but a deeply existential one, as land for Indigenous communities is inextricably linked to cultural identity, spiritual belonging, and collective memory. Addressing land-related injustices requires more than piecemeal policy interventions; it necessitates



a critical engagement with historical patterns of expropriation and the design of legal remedies that are culturally responsive, structurally inclusive, and capable of advancing reparative justice.

The historical trajectory of land expropriation is closely tied to colonial expansion, settler-state formation, and modern developmentalism. In many regions, colonial administrations seized Indigenous lands under doctrines of terra nullius or through coerced treaties and unilateral declarations of sovereignty. These actions were not merely political maneuvers but formed the legal and institutional foundations for the marginalization of Indigenous peoples. In Australia, for instance, the colonial legal order operated on the presumption that the land was uninhabited, thereby denying Indigenous peoples legal personality and territorial rights until the landmark *Mabo* decision disrupted this narrative (Blatman, 2019). Similarly, in Canada, the Crown's assertion of sovereignty ignored Indigenous governance systems and land stewardship traditions, institutionalizing dispossession through a combination of treaties, military force, and legal fictions (Wilkes et al., 2022). In Latin America, countries such as Brazil and Mexico pursued internal colonization policies that transferred vast swathes of Indigenous land to state control or commercial interests under the pretext of national development (Espinosa & Camacho, 2024).

In the post-colonial era, development-induced displacement has continued to threaten Indigenous territorial integrity. Infrastructure projects, resource extraction, and agribusiness expansion have frequently been carried out without free, prior, and informed consent. The cumulative effect of these actions is the disruption of socio-ecological systems, loss of cultural heritage, and erosion of Indigenous autonomy. These patterns are not confined to one region or political system but are evident across both democratic and authoritarian states. The result is a persistent tension between state interests in land-based development and Indigenous claims to historical justice and territorial restoration (Diana & Aswari, 2024; Miftah, 2024).

In response to these enduring grievances, legal remedies have emerged as a crucial means of redress. The three primary legal mechanisms for addressing Indigenous land claims are restitution, compensation, and recognition. Restitution refers to the return of land to Indigenous communities, aiming to restore their original

relationship to territory. This remedy is considered the most comprehensive but is often limited by competing interests or the irreversible transformation of landscapes (Aziz et al., 2024b). Compensation, by contrast, involves financial or symbolic payments in lieu of land return and has been used extensively where restitution is deemed impractical (Almeida, 2021). Recognition, the third form, typically involves the legal acknowledgment of Indigenous land tenure systems and formal incorporation of these into national legal orders without necessarily altering ownership structures. While recognition is often framed as a progressive step, critics argue that it can entrench state control under the guise of inclusion (Gilbert, 2020).

The aim of this narrative review is to critically examine how various legal systems have conceptualized and operationalized remedies for Indigenous land grievances. By synthesizing contemporary legal scholarship, international human rights instruments, and national case law, this review seeks to explore the extent to which restitution, compensation, and recognition serve as effective forms of legal redress. The central research questions guiding this analysis are: How have different legal systems responded to Indigenous land grievances? What forms of legal remedy have proven most effective or most contested? And to what extent do these remedies reflect or undermine Indigenous conceptions of justice, land, and sovereignty? By adopting a descriptive analysis approach, the review will not only map the legal frameworks and jurisprudence surrounding Indigenous land claims but also interpret their broader implications for Indigenous-state relations, legal pluralism, and transitional justice. In doing so, it contributes to the growing scholarly and policy-oriented discourse on decolonial legal reform and the transformation of state-Indigenous relationships through the lens of land justice.

2. Methodology

This study employed a scientific narrative review approach grounded in a descriptive analysis method to examine the spectrum of legal remedies available for addressing Indigenous land grievances. The narrative review format was selected to allow for a comprehensive, interpretive, and context-sensitive examination of the evolving legal responses to historical and ongoing expropriation of Indigenous lands. Unlike

systematic reviews that follow a rigid protocol, the narrative review enabled the integration of diverse sources of legal, historical, and socio-political data, drawing connections across jurisdictions, legal systems, and theoretical frameworks. This methodology facilitated the identification of key trends, challenges, and advancements in legal remedies for Indigenous communities, particularly within the context of settler-colonial and post-colonial legal orders. The descriptive analysis method provided the foundation for systematically organizing and interpreting the material by focusing on the content and function of legal mechanisms, without seeking to test hypotheses or quantify results. The goal was to analyze how legal systems have conceptualized and operationalized remedies such as restitution, compensation, and legal recognition in response to Indigenous claims.

The data for this review were drawn from a carefully curated selection of academic literature, legal documents, and case law published between 2019 and 2024. Peer-reviewed journal articles in the fields of Indigenous rights, legal anthropology, international law, transitional justice, and comparative constitutional law were identified through academic databases such as JSTOR, HeinOnline, Scopus, and Google Scholar. In addition, international legal instruments and policy documents—including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), International Labour Organization Convention No. 169, and reports by the United Nations Permanent Forum on Indigenous Issues—were incorporated to provide a transnational legal context. Jurisprudence from national courts, such as the Supreme Court of Canada (e.g., *Southwind v. Canada*, 2021), the High Court of Australia (e.g., *Love v. Commonwealth*, 2020), and the Inter-American Court of Human Rights (e.g., *Yakye Axa Indigenous Community v. Paraguay*, revisited in 2020 reports), was analyzed to assess how courts have responded to land grievances and what forms of redress have been validated or denied. Relevant legislative frameworks, including the Native Title Act 1993 (Australia), the Indian Claims Commission Act (USA), and the Waitangi Tribunal legislation (New Zealand), were also studied to evaluate procedural and substantive mechanisms for land restitution or compensation.

The inclusion criteria for sources were based on relevance to the research objective, recency of

publication (2019–2024), and the depth of legal or theoretical analysis offered. Sources that merely summarized legal developments without critical analysis were excluded. Emphasis was placed on scholarly texts and official legal sources that discussed not only the legal aspects but also the cultural, political, and ethical dimensions of Indigenous land remedies. Thematic coding was used to identify recurring concepts such as reparative justice, sovereignty, legal pluralism, and state accountability. These codes were then organized into overarching themes that informed the analytical structure of the review. Particular attention was paid to the ways Indigenous epistemologies were acknowledged or marginalized in legal reasoning, and how remedies were received or contested by Indigenous communities themselves. Through this approach, the review seeks to offer a nuanced, multidimensional understanding of the strengths and limitations of legal remedies for Indigenous land grievances across different national and international contexts.

3. Historical and Legal Background

The historical origins of Indigenous land dispossession lie in the legal doctrines and imperial policies that justified colonization across continents. In many cases, the doctrine of discovery and *terra nullius* were deployed to delegitimize Indigenous sovereignty and facilitate the appropriation of territory. This legal erasure was not incidental but formed the basis for the state's authority over land. In the Americas, the expansion of settler colonies involved a systematic displacement of Indigenous nations through war, treaty manipulation, and the imposition of Western property regimes (Chavez, 2024). In Australia, as noted by Blatman (2019), the legal system failed to acknowledge the prior occupation and complex land relations of Aboriginal peoples until the late twentieth century, culminating in a gradual recognition of native title through judicial intervention.

Post-colonial states often inherited these colonial legal structures, continuing the logic of dispossession under nationalist and developmentalist ideologies. In Southeast Asia, for example, national agrarian systems subsumed Indigenous tenure systems under state-based land regimes, often justified by economic modernization agendas (Maisa et al., 2024). This is evident in Indonesia, where customary land (*ulayat*) systems have been

subjected to expropriation through infrastructure projects and capital-intensive agriculture, sparking legal controversies and resistance movements (Aziz et al., 2024a). Likewise, in sub-Saharan Africa, Indigenous communities such as the Ogiek of Kenya have experienced both colonial and post-independence exclusion from ancestral lands designated as protected areas or national reserves (Claridge & Kobei, 2023). These exclusions were frequently legitimized through environmental discourses that disregarded Indigenous land stewardship practices and treated them as obstacles to conservation or development.

International law has increasingly recognized the rights of Indigenous peoples to land and self-determination. Instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Labour Organization's Convention No. 169 on Indigenous and Tribal Peoples have affirmed the rights of Indigenous communities to control their ancestral territories and be consulted on decisions affecting their land. UNDRIP, in particular, has been instrumental in articulating the principle of free, prior, and informed consent, which has become a benchmark in global Indigenous rights advocacy (Walker & Paige, 2024). Although these instruments are not universally binding, they exert normative pressure on states and influence domestic legal reforms.

Despite international recognition, national legal frameworks remain uneven in their protection of Indigenous land rights. In Canada, while Section 35 of the Constitution Act recognizes Aboriginal and treaty rights, implementation has often been fraught with legal ambiguity and political resistance. The establishment of the Specific Claims Tribunal and landmark decisions such as *Southwind v. Canada* have provided avenues for restitution and compensation, yet many claims remain unresolved due to bureaucratic delays and evidentiary burdens (Wilkes et al., 2022). In the United States, the Indian Claims Commission (1946–1978) offered monetary compensation for lost lands but did not allow for land return, and its adversarial process often resulted in settlements that Indigenous nations deemed insufficient or unjust (Ezeudu, 2023).

Australia's Native Title Act 1993 marked a turning point in the legal acknowledgment of Aboriginal land rights, yet its implementation has been criticized for imposing Western legal standards of proof and failing to reverse

the structural inequalities embedded in land tenure systems (Averyanova et al., 2021). In Brazil, constitutional protections for Indigenous lands have been undermined by political opposition and the expansion of extractive industries, despite the formal recognition of demarcated Indigenous territories (Espinosa & Camacho, 2024). Similarly, in New Zealand, the Waitangi Tribunal has provided an institutional forum for addressing historical grievances under the Treaty of Waitangi, leading to partial restitution and compensation. However, critics argue that these remedies are constrained by the political parameters set by the state and often fail to address broader questions of sovereignty and justice (Pouhe, 2023).

The legal recognition of Indigenous land rights remains complicated by the coexistence of multiple legal traditions within the same state. Customary law, Indigenous law, and state law often operate in tension, with formal legal systems privileging written documentation, cadastral surveys, and statutory authority. This has created structural barriers for Indigenous communities whose land tenure systems are based on oral histories, collective ownership, and spiritual relationships to the land (Isaac, 2022). In many cases, legal remedies require communities to translate their epistemologies into the language of dominant legal systems, thereby distorting or commodifying their land claims (Gilbert, 2020).

Moreover, legal remedies often unfold within political landscapes that are resistant to Indigenous empowerment. As noted by Waardt et al. (2021), attempts at redress are frequently constrained by dominant narratives of national unity, economic growth, and legal certainty, which tend to subordinate Indigenous justice to broader state interests (Waardt et al., 2021). This is especially evident in situations where state actors act as both defendants and arbiters in land disputes, creating conflicts of interest and eroding trust in formal legal processes (Eshemo-Omo & Obieshi, 2024). Consequently, many Indigenous communities seek hybrid or non-judicial mechanisms that incorporate traditional dispute resolution, community consultation, and restorative justice principles (Sukirno & Wibawa, 2024).

Understanding the historical and legal context of Indigenous land dispossession is essential for evaluating the effectiveness of legal remedies. The continued

marginalization of Indigenous peoples within legal systems reveals the limitations of existing frameworks and underscores the need for transformative approaches that center Indigenous voices, traditions, and legal orders. Only through such approaches can the promises of international human rights law and constitutional recognition translate into meaningful land justice.

4. Typology of Legal Remedies

4.1. *Restitution: Return of Land*

Restitution remains the most comprehensive and symbolically significant remedy for Indigenous land grievances, aiming to restore ancestral territories to Indigenous communities. However, legal restitution is often conditioned by a set of stringent procedural and evidentiary requirements that complicate its realization. In many jurisdictions, land return is possible only if the land remains unalienated, unencumbered by third-party interests, or under state control. For instance, in Australia, the recognition of native title under the *Mabo* decision was a groundbreaking legal moment, but the practical implementation of restitution under the Native Title Act 1993 has been hindered by legal standards that place a high burden of proof on Indigenous claimants (Blatman, 2019). Claimants must demonstrate an ongoing connection to the land in accordance with traditional laws and customs, which is particularly difficult given the historical disruptions caused by colonial violence and forced removals.

In some cases, restitution is facilitated through specific mechanisms such as land claim settlements or treaty negotiations. In Canada, comprehensive land claims processes have resulted in agreements like the Nisga'a Treaty, which returned over 2,000 square kilometers of land and provided self-government powers to the Nisga'a Nation (Wilkes et al., 2022). However, these settlements often involve complex trade-offs, including the extinguishment of other land claims and the assimilation of Indigenous governance into state frameworks. Moreover, while the return of land is a powerful act of justice, it is not always feasible. Urbanization, privatization, and ecological degradation often make the original land irrecoverable. In such cases, restitution is either denied or redefined in narrow terms, leading to dissatisfaction and further contestation (Claridge & Kobei, 2023).

The legal mechanisms enabling restitution also face resistance from political actors and economic stakeholders. In Brazil, demarcation processes intended to reconstitute Indigenous lands have been slowed or reversed by governmental reluctance and lobbying by agribusiness interests (Espinosa & Camacho, 2024). Even when court rulings support Indigenous claims, the enforcement of restitution orders can be delayed or ignored. This reflects a broader challenge wherein legal victories do not automatically translate into material change, especially when state institutions are weak, fragmented, or politically compromised (Aziz et al., 2024a). Thus, while restitution remains a central aspiration for many Indigenous communities, its practical realization is often elusive, requiring persistent advocacy and structural legal reform.

4.2. *Compensation: Financial or Symbolic Reparation*

Compensation emerges as an alternative or supplementary remedy when restitution is impossible or contested. It generally takes the form of monetary payments, land substitutes, or symbolic reparations intended to acknowledge past wrongs. While financial compensation offers a tangible form of redress, it is frequently criticized for commodifying the loss and failing to restore the cultural and spiritual relationships Indigenous communities maintain with their land (Almeida, 2021). In the United States, the Indian Claims Commission provided compensation for land takings from 1946 to 1978 but did not authorize land return. Many tribes viewed the monetary settlements as inadequate, especially given the Commission's unilateral determination of land value and its dismissal of non-material losses (Ezeudu, 2023).

The valuation of Indigenous land for compensation purposes presents a significant legal and ethical dilemma. Standard valuation methods prioritize market-based assessments, which fail to account for the sacred and communal dimensions of land in Indigenous worldviews (Reibold, 2019). Moreover, compensation schemes often impose finality clauses that prevent further legal recourse, effectively closing the door to future claims. In Indonesia, for example, the inclusion of fixed compensation clauses in land acquisition laws has sparked criticism from Indigenous rights groups who argue that these settlements undermine the principle of free, prior, and informed consent (Nizwar et al., 2024).

Community acceptance of compensation is another contentious issue. While some communities accept financial reparations as pragmatic solutions, others reject them as insufficient or morally unacceptable. In New Zealand, the Waitangi Tribunal has facilitated settlements involving both financial compensation and cultural redress, including official apologies and the return of sacred sites (Pouhe, 2023). However, these settlements often reflect political compromises that fall short of the full restitution many Māori communities seek. In such contexts, compensation becomes a tool of partial justice—valuable but inherently limited in scope and effect (Gilbert, 2020).

4.3. *Recognition and Formal Titles: Legal Acknowledgment Without Return*

Legal recognition and the granting of formal titles represent another category of remedy that seeks to incorporate Indigenous land rights into national legal frameworks. This approach is often used where restitution or compensation is not feasible or politically viable. Legal recognition can include the formal acknowledgment of customary tenure systems, the demarcation of Indigenous territories, or the registration of land in the name of Indigenous communities. In theory, these measures offer security of tenure and shield communities from external encroachment. However, in practice, legal recognition is frequently accompanied by regulatory constraints that limit its effectiveness (Averyanova et al., 2021).

In Indonesia, for example, recent constitutional court rulings have affirmed the legal status of ulayat land, yet the process of formalizing these rights remains slow and bureaucratically burdensome (Miftah, 2024). Government agencies require communities to produce documentation and maps that conform to state criteria, a demand that is often at odds with Indigenous knowledge systems and oral traditions. Additionally, recognized lands are frequently classified as non-transferable or non-commercial, creating tensions between legal protection and economic autonomy (Maise et al., 2024).

In countries like Mexico and Brazil, legal recognition is often undermined by competing claims from extractive industries or conservation policies that treat Indigenous presence as a liability rather than an asset. This paradox is evident in cases where Indigenous territories are

legally recognized but remain vulnerable to mining concessions or infrastructure development (Espinosa & Camacho, 2024). The recognition of Indigenous rights within legal systems shaped by colonial legacies often reinforces the authority of the state while marginalizing Indigenous self-determination (Isaac, 2022). Thus, while recognition may offer symbolic validation and a degree of legal protection, it rarely fulfills the deeper aspirations for autonomy, cultural survival, and land governance.

4.4. *Procedural Remedies: Access to Courts, Tribunals, and Negotiation Mechanisms*

Beyond substantive remedies, procedural mechanisms play a vital role in enabling Indigenous communities to pursue justice. These include access to courts, specialized tribunals, mediation processes, and administrative appeals. Procedural remedies are essential for the enforcement of rights and the resolution of disputes, particularly in contexts where state institutions have historically excluded Indigenous voices. However, formal legal systems often impose procedural barriers that limit access, including high legal costs, language obstacles, and evidentiary burdens (Eshemo-Omo & Obieshi, 2024).

In Canada, the Specific Claims Tribunal was created to provide an independent forum for adjudicating land-related grievances arising from historical breaches of treaty or fiduciary obligations (Wilkes et al., 2022). While it offers a streamlined process, its jurisdiction is limited to financial compensation, excluding the possibility of land return. In Kenya, the African Court on Human and Peoples' Rights issued a landmark ruling in favor of the Ogiek community, recognizing their ancestral rights and ordering restitution. However, the implementation of this ruling has faced considerable delays due to bureaucratic inertia and political resistance (Claridge & Kobei, 2023).

Customary dispute resolution mechanisms offer alternative pathways that resonate more closely with Indigenous values and practices. In Indonesia, customary courts (peradilan adat) are increasingly recognized as legitimate forums for resolving land conflicts, particularly in rural areas where formal courts are inaccessible or mistrusted (Sukirno & Wibawa, 2024). These mechanisms often emphasize consensus-building, restorative justice, and communal participation. Nevertheless, their authority is often undermined by

legal pluralism and state reluctance to fully integrate customary law into national legal systems.

International advocacy and litigation have also emerged as procedural avenues for Indigenous land claims. Bodies such as the Inter-American Court of Human Rights and the UN Human Rights Committee have issued binding and advisory opinions supporting Indigenous land rights, pressuring states to adopt more inclusive and accountable legal frameworks (Koorndijk, 2019). However, the effectiveness of these mechanisms depends on state compliance and the capacity of Indigenous communities to mobilize resources for transnational legal action. Procedural remedies thus represent both an opportunity and a challenge—offering platforms for justice while revealing the limits of legal systems shaped by historical and structural inequities.

5. Case Studies

The diversity of Indigenous land remedies is best understood through concrete case studies that illustrate how legal frameworks have been applied across different jurisdictions. In Canada, the Nisga'a Treaty, signed in 1998, represents one of the most comprehensive land settlements in the country. It returned over 2,000 square kilometers of land to the Nisga'a Nation and recognized their right to self-government. The treaty also provided financial compensation and outlined mechanisms for resource management and law-making authority. While heralded as a milestone in Indigenous-state relations, the agreement was also critiqued for requiring the extinguishment of broader Aboriginal title claims, thereby reinforcing the state's sovereignty framework (Wilkes et al., 2022).

The Canadian Specific Claims Tribunal offers another model for redress. Established in 2008, it provides a quasi-judicial forum for adjudicating historical grievances related to land and treaty violations. The Tribunal has ruled in favor of Indigenous claimants in multiple cases, awarding financial compensation and clarifying fiduciary obligations. However, it does not have the authority to return land, which limits its capacity to fulfill community aspirations for territorial restoration (Gilbert, 2020).

In Australia, the High Court's decision in *Mabo v. Queensland (No 2)* fundamentally altered the legal landscape by recognizing the existence of native title and rejecting the doctrine of terra nullius. The subsequent

enactment of the Native Title Act 1993 provided a statutory framework for asserting native title claims. Yet, the process has been marred by complex litigation, high evidentiary burdens, and the fragmentation of land rights. While some Aboriginal communities have successfully secured legal recognition, others have struggled due to historical displacement and the erosion of customary knowledge (Blatman, 2019).

The United States established the Indian Claims Commission in 1946 to address longstanding grievances over land takings. While it provided billions of dollars in compensation, it did not authorize land restitution and operated through an adversarial process that often marginalized Indigenous voices. Many tribes saw the Commission as a mechanism of finality rather than justice, especially as settlements were imposed without meaningful consultation (Ezeudu, 2023). The legacy of the Commission continues to influence contemporary debates over land claims and tribal sovereignty.

In Brazil, the 1988 Constitution recognized Indigenous peoples' rights to their traditional territories, and the demarcation of Indigenous lands was mandated by federal law. However, implementation has been inconsistent and politically contentious. The rise of agribusiness interests and the rollback of environmental protections under recent administrations have threatened demarcated lands and emboldened illegal encroachments (Espinosa & Camacho, 2024). Despite court rulings in favor of Indigenous communities, enforcement remains weak, and state institutions often fail to uphold constitutional guarantees.

New Zealand's Waitangi Tribunal, established in 1975, provides a forum for investigating breaches of the Treaty of Waitangi and recommending remedies. Settlements often include financial compensation, return of specific lands, and symbolic acts such as official apologies. While the Tribunal has contributed to reconciliation and historical recognition, critics argue that it operates within the limits of political feasibility rather than full justice (Pouhe, 2023). Many Māori communities continue to advocate for greater autonomy and the recognition of tino rangatiratanga (sovereignty).

These case studies reveal the diverse modalities through which states respond to Indigenous land claims. They highlight the interplay between legal recognition, political will, historical context, and Indigenous agency. Despite differences in legal systems and political culture,

a common pattern emerges: while progress has been made, legal remedies often fall short of fully addressing the deep historical and cultural dimensions of Indigenous land loss.

6. Challenges and Limitations in Legal Remedies

Despite growing recognition of Indigenous land rights in both international and national legal systems, a range of challenges continue to hinder the effectiveness of legal remedies. One of the most persistent obstacles is political resistance, which often manifests in policy delays, watered-down reforms, or outright backlash against Indigenous claims. In Brazil, for example, legal victories for Indigenous communities have frequently been undermined by political leaders allied with agribusiness interests who seek to halt or reverse demarcation processes, even in cases where constitutional protections are clearly established (Espinosa & Camacho, 2024). This form of resistance not only erodes the credibility of the state's commitment to justice but also places Indigenous communities at renewed risk of violence and dispossession.

Legal barriers also play a substantial role in frustrating Indigenous efforts to reclaim land or receive adequate redress. Many legal systems impose high evidentiary thresholds, requiring claimants to provide historical documentation, genealogical continuity, or adherence to traditional land-use practices that may have been disrupted by colonization, forced relocation, or state policies (Blatman, 2019). In Australia, the Native Title Act demands proof of uninterrupted cultural connection to land, which can be exceedingly difficult to demonstrate given generations of dispossession (Aziz et al., 2024a). These legal requirements often reflect Eurocentric standards of property ownership and documentation that are misaligned with Indigenous worldviews and oral traditions (Isaac, 2022).

Another critical challenge lies in the inadequacy of compensation mechanisms. Financial settlements often fail to reflect the cultural, spiritual, and existential value that land holds for Indigenous communities. In the United States, the Indian Claims Commission awarded monetary compensation based on land values calculated at the time of takings, ignoring the inflation of land prices and the non-material dimensions of loss (Ezeudu, 2023). Even when symbolic components are added to compensation packages, such as official apologies or

cultural recognition, these measures are often perceived as tokenistic if not accompanied by structural change or the return of land (Reibold, 2019). In Indonesia, fixed compensation policies for infrastructure projects frequently disregard Indigenous governance systems and local consensus processes, resulting in top-down impositions that provoke discontent rather than resolution (Nizwar et al., 2024).

Jurisdictional fragmentation and legal pluralism further complicate the landscape of Indigenous land remedies. In many countries, overlapping authority between national, regional, and customary legal systems creates procedural confusion and delays. In Kenya, for instance, despite the African Court's ruling in favor of the Ogiek community, competing mandates between conservation agencies, courts, and local governments have obstructed implementation (Claridge & Kobei, 2023). In Indonesia, the coexistence of statutory and customary land systems generates ambiguities that are often exploited by developers or state actors to bypass Indigenous consent requirements (Miftah, 2024). This fragmentation often forces Indigenous communities into prolonged legal battles that strain their financial and emotional resources.

Perhaps the most pervasive limitation is the lack of enforcement. Even where courts rule in favor of Indigenous claimants, translating these decisions into material outcomes remains a significant hurdle. In Latin America, multiple rulings by the Inter-American Court of Human Rights have recognized Indigenous land rights, but implementation has been stalled due to insufficient political will or bureaucratic inertia (Koorndijk, 2019). In many cases, enforcement agencies lack the institutional capacity or motivation to confront powerful interests that benefit from the status quo. This gap between legal recognition and practical realization fuels widespread community dissatisfaction and skepticism about the rule of law (Gilbert, 2020). As a result, many Indigenous groups continue to rely on activism, international pressure, or traditional dispute resolution methods to protect their lands, even after securing favorable judgments.

Community dissatisfaction is also rooted in the perception that legal remedies are often state-driven and fail to meaningfully incorporate Indigenous voices. In some contexts, remedies are imposed without adequate consultation, sidelining community priorities and

customary governance structures. In Nigeria, for example, non-judicial remedies such as administrative tribunals have been criticized for excluding traditional leaders and failing to reflect Indigenous epistemologies of justice (Eshemo-Omo & Obieshi, 2024). The resulting disconnect between legal remedies and lived realities contributes to the enduring legitimacy crisis of state-led justice systems among Indigenous populations.

7. Discussion

A cross-jurisdictional synthesis of legal systems and case studies reveals both advancements and enduring shortcomings in addressing Indigenous land grievances. On the one hand, courts and legislatures in countries such as Canada, Australia, and New Zealand have begun to acknowledge the historical and legal foundations of Indigenous claims. The Nisga'a Treaty in Canada, the *Mabo* decision in Australia, and the Waitangi Tribunal settlements in New Zealand represent important legal milestones that have introduced restitution, compensation, and recognition into national discourse (Blatman, 2019; Pouhe, 2023; Wilkes et al., 2022). On the other hand, these legal innovations are often constrained by procedural hurdles, political compromise, and an underlying commitment to state sovereignty that limits the transformative potential of land remedies.

The effectiveness of current frameworks varies widely across contexts but generally falls short of fully redressing historical injustices. While legal remedies have provided pathways for recognition and partial redress, they frequently operate within structures that continue to prioritize state control over Indigenous autonomy. In many cases, Indigenous communities are required to conform to legal standards and institutional procedures that reflect Western epistemologies of ownership, evidence, and justice (Averyanova et al., 2021). This is evident in the strict evidentiary requirements under Australia's Native Title Act and the procedural rigidity of Canada's Specific Claims Tribunal (Aziz et al., 2024b; Gilbert, 2020). Even in cases where land is returned or compensation awarded, the broader goal of restoring Indigenous sovereignty is rarely realized.

Tensions between legal justice and Indigenous epistemologies are central to this discussion. Legal systems rooted in colonial traditions often struggle to accommodate Indigenous conceptions of land as a living

entity embedded in kinship, spirituality, and ecological stewardship. These ontological differences complicate the design and implementation of remedies that resonate with Indigenous communities. For instance, the recognition of ulayat land in Indonesia has advanced formal legal protection, but the state's insistence on mapping, registration, and codification introduces a bureaucratic logic that displaces traditional authority structures (Maisa et al., 2024). In Mexico, resistance to mining on Indigenous land is shaped not only by legal arguments but by spiritual frameworks that understand the land as a sacred actor in communal life (Espinosa & Camacho, 2024).

Despite these challenges, evolving trends in international law offer opportunities for more inclusive and responsive frameworks. Instruments like UNDRIP and ILO Convention No. 169 have shifted global norms by emphasizing the principle of free, prior, and informed consent and recognizing collective land rights. These instruments have been influential in shaping constitutional reforms, judicial decisions, and policy debates around the world (Walker & Paige, 2024). Regional human rights bodies, such as the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights, have issued landmark decisions affirming Indigenous land claims and requiring states to undertake restitution and compensation measures (Claridge & Kobei, 2023; Koorndijk, 2019).

Another emerging trend is the increasing recognition of non-judicial and hybrid mechanisms that integrate customary law, community consultation, and participatory governance. In Kenya, Indigenous peoples have begun to reclaim their role in environmental governance through protocols that align with the Akwé: Kon Guidelines (Onyango & Wiman, 2021). In Indonesia, customary courts and local mediation processes are gaining traction as legitimate alternatives to formal litigation (Sukirno & Wibawa, 2024). These innovations reflect a growing awareness that justice cannot be achieved solely through legal formality but must engage with Indigenous knowledge systems and social institutions.

Ultimately, the effectiveness of legal remedies for Indigenous land grievances hinges on the willingness of legal systems to confront their colonial inheritances and embrace pluralistic approaches to justice. This involves not only modifying procedural rules and expanding the

range of remedies but also reimagining the relationship between state sovereignty and Indigenous self-determination. By integrating Indigenous epistemologies into legal reasoning, prioritizing meaningful participation, and ensuring enforcement of favorable rulings, legal systems can move beyond symbolic recognition toward substantive justice. While progress has been uneven, the shifting legal and normative landscape offers a foundation upon which more equitable and respectful remedies can be built.

8. Conclusion

The issue of Indigenous land grievances represents one of the most urgent and complex challenges within the global legal and human rights landscape. Across various regions and legal systems, Indigenous communities have continuously sought remedies for the historical and ongoing expropriation of their ancestral territories. This review has explored the nature and structure of legal remedies designed to address these grievances, focusing on restitution, compensation, recognition, and procedural access. While notable advancements have been made through national courts, legislative reforms, and international instruments, the limitations of existing legal remedies continue to impede the full realization of Indigenous land justice.

Restitution, regarded as the most direct and symbolically powerful form of redress, remains difficult to implement due to legal, political, and practical barriers. In many cases, the original lands are no longer available, and legal mechanisms require extensive evidence that is often incompatible with Indigenous oral traditions and disrupted histories. Compensation, while offering financial or symbolic reparation, frequently fails to capture the cultural and spiritual dimensions of land loss. Many Indigenous communities perceive compensation as a substitute that does not truly acknowledge the depth of dispossession or restore their relationship with the land. Legal recognition and formal land titles, though providing a form of tenure security, are often constrained by regulatory conditions that restrict Indigenous autonomy and subject traditional land systems to state oversight.

Procedural mechanisms such as tribunals, courts, and alternative dispute resolution forums are essential for accessing justice, yet they too are fraught with limitations. Formal legal systems can be inaccessible due

to high costs, procedural complexity, and jurisdictional confusion. Enforcement of favorable rulings remains a significant hurdle, as legal decisions are often undermined by weak institutional commitment or political interference. Moreover, the existence of legal pluralism and fragmented jurisdictional authority complicates the implementation of remedies and erodes trust in state-based systems.

The broader challenge lies in the structural imbalance between state sovereignty and Indigenous self-determination. Most legal frameworks still operate within paradigms that prioritize state authority and economic development over Indigenous values and rights. As a result, legal remedies tend to be designed and administered in ways that reflect the logic of state control rather than Indigenous epistemologies of justice and governance. For remedies to be meaningful and sustainable, they must be informed by the worldviews, traditions, and priorities of Indigenous communities themselves. This calls for a shift toward participatory and pluralistic legal models that integrate Indigenous law and decision-making into formal structures.

Emerging trends in international law, increased recognition of customary legal systems, and the growing influence of Indigenous-led advocacy are reshaping the conversation around land justice. While progress remains uneven, these developments offer a pathway toward more inclusive and equitable remedies. Future efforts must move beyond symbolic acknowledgment to embrace transformative legal and institutional change. This includes strengthening enforcement mechanisms, revising evidentiary standards, ensuring genuine participation, and restoring land where possible. Without such comprehensive approaches, legal remedies risk becoming tools of containment rather than instruments of justice.

The road to remedying Indigenous land grievances is long and fraught with obstacles, but it is also a site of possibility and renewal. By reimagining the relationship between legal systems and Indigenous communities, it is possible to foster more just, respectful, and enduring solutions. True land justice will not be achieved through technical fixes alone, but through a sustained commitment to reconciliation, equity, and the recognition of Indigenous peoples as equal partners in law and governance.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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Declaration of Interest

The authors report no conflict of interest.

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Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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