

GLOBAL REPORT

on the Situation of Lands, Territories and Resources of Indigenous Peoples



**INDIGENOUS PEOPLES MAJOR GROUP
FOR SUSTAINABLE DEVELOPMENT**

The regional reports were written by the following:

Asia: Shimreichon Luithui Erni

Pacific: Beth (Tui) Shortland

North America: Janene Yazzie, Andrea Carmen, and Roberto Borerro

Latin America: Irma Velasquez Nimatuj and Aileen Ford

Russia: Olga Murashko

The regional reports are available at the IPMG website:

www.indigenouspeoples-sdg.org

This global report was compiled by Joji Carino and edited by Loreto Tamayo.

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Facebook: Indigenous Peoples Major Group for Sustainable Development

Twitter: @IPMGSDG

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**GLOBAL REPORT ON THE SITUATION
OF LANDS, TERRITORIES AND RESOURCES
OF INDIGENOUS PEOPLES**



"We came seeking justice on our homelands. We came here to appeal to the world at large to support our efforts to seek equitable solutions to discrimination, exploitation, racism, ethnocide and genocide of Indigenous Nations and Peoples...

"We came here to speak on behalf of the natural world being plundered by governments and corporations. We spoke on behalf of rooted trees that could not flee the chainsaw. We spoke on behalf of salmon, herring, tuna and haddock killed in their spawning beds. We had alarming news from the Four Directions about fish, wildlife and birds, contaminated, sick and disappearing.

And today we continue to speak on their behalf. Today they are more endangered than ever, and if anything, their conditions are worse.

In these times, humanity must work together, not just for survival, but for quality of life based on universal values that protect the delicate inter-relatedness of life that protects us all.

Biodiversity is a clinical, technical term for this intricate inter-weaving of life that sustains us. We indigenous peoples say that we are related to this life; thus your "resources" are our relations. It is all in how you look at it.

*Indigenous Peoples have something to offer in this equation for survival ... We have common goals and responsibilities, and I say, that you, the leaders of this great hope of the world's people, the United Nations, should be working with us and not against us, for peace. We submit to you that as long as you make war against Etenoha (Mother Earth), there can never be peace."*¹

¹ Chief Oren Lyons (Onandaga Nation and Haudenosaunee Confederacy) speaking to the UN Working Group on Indigenous Populations (UNWGIP) (1997) on 20 years of indigenous peoples in the United Nations.

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FOREWORD

The report on the current state of Indigenous Peoples' Lands, Territories and Resources (LTR) was prepared by the Indigenous Peoples Major Group (IPMG) to inform the implementation of global commitments to Sustainable Development and the various related processes for transformational change. It is a summary of regional reports written by indigenous researchers and experts under the guidance of the IPMG Global Coordinating Committee to stress the importance of securing the collective land rights of indigenous peoples, an imperative to achieve sustainable development for all.

Indigenous peoples' intrinsic and reciprocal relationships with their land, territories and resources constitute the foundation of their identities and cultures, spirituality and values, health and collective well-being. Springing from these relationships with their homelands are their diverse contributions towards enriching nature, engendering diversity and maintaining balance with the natural world. Securing, renewing and nurturing these relationships with their lands, territories and resources amid unsustainable production and consumption, extractive industries and carbon-based development, marked by highly unequal power relations and social inequality, is the challenge indigenous peoples face around the world.

The legacy of 500 years of colonialism and its institutional framework of political and cultural discrimination, environmental destruction, economic marginalization and impoverishment persists in modern-day States. Indigenous peoples' lands, territories and resources were forcibly taken, exploited, divided and expropriated in the name of development. Dismantling this legacy by upholding the rights of indigenous peoples has been the challenge posed to the global community for more than 30 years of engagement with the UN system. As a result, the UN General Assembly in 2007 adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). In 2014 at the World Conference on Indigenous Peoples (WCIP), States reaffirmed their commitment to respect, promote, advance and in no way diminish the rights of indigenous peoples set forth in the UNDRIP.

Hundreds of recommendations and advice issued by the UN Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the Rights of Indigenous Peoples also emphasize the urgent need to recognize and protect the

collective rights of indigenous peoples over their lands, territories and resources in response to the worsening condition of indigenous peoples across the globe.

These UN General Assembly resolutions on indigenous peoples, along with the 2030 Agenda on Sustainable Development, constitute a strong political foundation and mandate – that include human rights obligations - for States to work in partnership with indigenous peoples to overcome inequality gaps and being left behind. At the WCIP, States made this commitment:

“We commit to establish at the national level, in conjunction with indigenous peoples concerned, fair, independent, impartial, open and transparent mechanisms to acknowledge, advance and adjudicate the rights of indigenous peoples pertaining to lands, territories and resources. Such mechanisms will be culturally appropriate and flexible, and competent to safeguard free, prior and informed consent by indigenous peoples prior to development or use of lands, territories and resources.

We commit to address the impact or potential impact of major development projects, including extractive industries, on indigenous peoples and to ensure transparency and benefit sharing. The rights of indigenous peoples regarding development of lands, territories and resources, will be incorporated into law, policies and practice.

We commit to develop, in conjunction with indigenous peoples concerned, policies, programmes and resources to support indigenous peoples’ occupations, economies, livelihoods, seeds, and food security.”

For in truth, indigenous peoples are contributing immensely in addressing the current crises of biodiversity loss and climate change mitigation and adaptation. They offer diverse and innovative solutions to these problems which they encounter daily on the ground. Their simple lifestyles and sustainable systems of resource governance and management are also invaluable in achieving sustainable development in an integrated and cohesive manner.

For their contributions to be fully realized, indigenous peoples need secure tenure over their lands, territories and resources, to freely determine their development paths and priorities consistent with self-determination, and full respect for and exercise of their collective and individual human rights. This should be a centerpiece of development strategies that will not only benefit indigenous peoples but all of humanity and the planet.

This report presents stories from around the world about how indigenous peoples are facing contemporary challenges and contributing to sustainable development. We hope it will spur more attention and actions by decision makers and development actors at the national, regional and global levels on the centrality of securing the lands, territories and resources of indigenous peoples, if we are to save the only planet we all depend on.

Joan Carling
Co-convenor
Indigenous Peoples Major Group
for the SDGs

I.

Indigenous Peoples Distribution and Legal Standing in Different Global Regions



The term “indigenous peoples” is a common denominator for more than 370 million people spread across some 90 countries around the world (DESA, 2009: 1), who through historical processes have been denied their right to control their own development. Sometimes characterized as the “Fourth World,” they are those nations and peoples who missed out in the decolonization processes, which gave birth to politically independent States in most parts of the world and who are subject to marginalization and subordination in the march to state-building and modernization.

Indigenous peoples hold their own diverse concepts of development, based on their traditional values, visions, needs and priorities. They have unique languages, knowledge systems and beliefs and possess invaluable knowledge of practices for the sustainable management of natural resources. They have special relations to and use of their traditional land, territories and resources, which are of fundamental importance for their collective physical and cultural survival as peoples.

Given the diversity of indigenous peoples, there is a broad international consensus that a universal definition is neither necessary nor desirable. Instead, the recommended approach is to identify the peoples concerned in a given country context. This is based on the fundamental criterion of self-identification as underlined in several human rights documents including the International Labor Organization (ILO) Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples.

Nevertheless, ILO Convention 169 provides a useful working definition which provides a set of subjective and objective criteria, which are jointly applied to guide the identification of indigenous peoples in a given country. According to these criteria, indigenous peoples:

- Descend from populations who inhabited the country or geographical region at the time of conquest, colonization, or establishment of current state boundaries;
- Retain some or all of their own social, economic, cultural and political institutions, irrespective of their legal status;
- Have social, cultural and economic conditions that distinguish them from other sections of the national community;
- Have their status regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- Identify themselves as indigenous peoples.
- Other characteristics highlighted by several international institutions are:
- A special relationship with land and natural resources;
- A history of oppression and ongoing conditions of non-dominance;
- Aspirations to continue to exist as distinct peoples.

These characteristics immediately underline the importance of land, territories, and resources for indigenous peoples. The territories they have traditionally occupied, which have shaped their distinct identities, livelihood practices and knowledge systems, have been submerged into nation-states that often do not respect their customary tenure systems.

While “indigenous peoples” is the common term used in international instruments, these peoples are often known in national or local contexts as adivasis, aboriginals, hill tribes, hunter-gatherers or simply by the name of the specific people. It is important to understand some of the distinct demographic and geographic characteristics of indigenous peoples in the different global regions, which frame the issues around their rights to lands, territories and resources.

TABLE 1. Population of Indigenous Peoples In Different Global Regions²

REGION/ COUNTRIES	INDIGENOUS POPULATION/ Number of Peoples	PERCENTAGE OF REGIONAL POPULATION	COUNTRIES/ STATES WITH HIGH INDIGENOUS POPULATION	COUNTRIES/ STATES WITH MAJORITY INDIGENOUS POPULATION	TEN TO FIFTY PERCENT	LESS THAN TEN PERCENT
Asia (AIPP Briefing Paper)	410 million		Laos, Indonesia, Myanmar, Nepal, Pakistan, Philippines, Malaysia, Vietnam	Laos (49) – 35-70%	Myanmar – 30-40% Indonesia – 30% Malaysia(86) – 13.8% Nepal (59) – 37.1% Pakistan(over 20)- 21-25% Philippines(110) – 10-20% Vietnam (90 with 53 officially recognised ethnic minorities – 13.23%	Bangladesh (95) – 1.8% Cambodia (24) – 1.3% China (55)– 8.4% India (705) – 8.6% Japan (2) – 1.5% Taiwan (23, 14 officially recognised) – 2.28% Thailand (over 25 – 10 officially recognised hill tribes) – 1.34%
Pacific Islands (2015)	11,840,783 More than 10 countries have less than 20,000 population	26% 70% of Pacific population is urban	Australia, Papua New Guinea, Aoteroa (NZ), Hawaii, Fiji	Wallis and Futuna, Kiribati, Vanuatu, Papua New Guinea, Marshall Islands, Tonga, Tuvalu, Solomon Islands, Samoa, Tokelau, American Samoa, Federated States of Micronesia, Cook Islands, Niue, and French Polynesia	Aoteroa (NZ) – 15% Hawaii – 10.2% Guam – 37.6% New Caledonia – 39.1% Northern Maria Islands – 34.9%	Australia – 2.5%
Latin America and Caribbean	40-50 million 650 recognised IPs 200 in voluntary isolation 100 in danger of physical or cultural extinction	7.8 – 8.3% Close to 50% in urban areas	Over 80% reside in Mexico, Peru, Guatemala and Bolivia	Bolivia – 62.2% Guatemala – 41.1%	Mexico – 15.1% Panama - 12.3% Peru – 24% Chile – 11%	Honduras – 7% Colombia – 3.4% Venezuela – 2.7% Brazil – 0.5% El Salvador – 0.2% Nicaragua – 8.9% Costa Rica – 2,4% Ecuador – 7% Paraguay – 1.8% Uruguay – 2.4%, Argentina – 2.4% and Venezuela -
North America	5.2 million in USA 573 tribes, 1,400,685 aboriginal people in Canada	2% in USA 70% live in urban areas 4.6% of population of Canada	2.9 million American Indians, Alaskan Natives and Native Hawaiian	266 American Indians live in Alaska;	Alaska is US state with highest concentration of American Indians with 19.56 %; Oklahoma– 12.9%; New Mexico- 10.7%	2% in USA 4.6% in Canada

² Based on IPMG regional reports <https://www.indigenouspeoples-sdg.org/index.php/english/all-resources/ipmg-position-papers-and-publications/ipmg-reports/national-regional-reports>.

Africa	Lack of census data Forest and desert peoples recognised as marginalised by ACPHR:		Pygmies in Central Africa; Pastoralists and forest peoples in East Africa; Hunter-gatherers in Southern Africa; Nomadic peoples in Sahara and Sahel regions			
Russia	40 peoples of the North, Siberia and Far East of Russian Federation	0.2% recognized as “indigenous minority peoples” (280,000 people) Only peoples numbering less than 50,000 recognised as indigenous	Yakuts, Buryat, Komi and Tuvans do not have indigenous status under Russian legislation	Nenets in High Arctic of Yamal Autonomous Area and Tamyra district (autonomous region until 2007): 25% Yakutia, Chukotka, Altaian peoples in part of Altai mountains Several formerly autonomous regions: Koryakia (North of Kamchatka): 50% Evenkia (Krasnoyarsk territory): 35%		
Northern Europe	127,477 Saami people Inuit – (2012) 51,349 people Greenlandic Inuit, consisting of three major groups: the Kalaallit of west Greenland, who speak Kalaallisut.	Approximately 89 percent of Greenland's population of 57,695		Norway, Sweden, Finland, Russia Greenland		

Asia²

Asia has the largest number of indigenous peoples at about 411 million. Their share in the national population varies from 0.9% in Cambodia to over 37% in Nepal. All Asian governments, with the exception of Bangladesh, voted for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the General Assembly in 2007. However, the same governments have different legal categories and terminology to identify distinct groups of peoples within their countries, which determine their legal recognition and enjoyment of rights under national law. These include hill tribes, ethnic minorities, minority nationalities, indigenous nationalities, scheduled tribes, *Adivasi*, and *Masyarakat Hukum Adat*. So far, the Philippines, Nepal, Cambodia, Japan and Taiwan have officially used the term “indigenous peoples.” Asian governments differ in their policy approaches and legal actions to comply with international laws on the rights of indigenous peoples, including UNDRIP. There are no regional human rights institutions to adjudicate these rights.

Pacific³

Based on United Nations estimates, in 2017 the entire population of the Pacific was 40,690,786, equivalent to 0.54% of the total world population, with approximately five people per square kilometer. Australia had approximately 25 million people; and the sub-regions Melanesia, 10.3 million, Polynesia 5.4 million, and Micronesia 500,000.

Indigenous peoples make up the majority of the populations of the small island States in the Pacific region. Compared to other global regions, most indigenous peoples in the Pacific constitute independent island countries, rather than politically marginal or minority populations within larger states. The exceptions are the larger countries and islands of Australia, Aotearoa (New Zealand), Hawaii, New Caledonia and Guam. The six countries with the highest populations—Australia, Papua New Guinea, Aotearoa (New Zealand), Hawaii and Fiji—have more than 95% of the total indigenous population in the region. Some islands have less than 20,000 inhabitants.

However, the legal recognition of indigenous sovereignty is still contested across the Pacific. Active independence movements continue in Bougainville, West Papua and Guam.

Seventy percent of the Pacific population is urban (28,631,308) with a yearly change of 1.43%. The median age is 32.9 years. Population growth and limited employment and business opportunities have led to significant migration from rural areas. In Melanesian countries such as Papua New Guinea, Solomon Islands, Fiji and Vanuatu, large numbers of rural people have moved to urban centers. In Polynesian countries, such as Samoa, Tonga and the Cook Islands, many have moved to other countries, particularly Aotearoa (New Zealand) because of favorable entry conditions. The

² See <https://www.indigenouspeoples-sdg.org/index.php/english/all-resources/ipmg-position-papers-and-publications/ipmg-reports/national-regional-reports/106-state-of-indigenous-peoples-land-territories-and-resources-in-asia/file>, p.2.

³ See <https://www.indigenouspeoples-sdg.org/index.php/english/all-resources/ipmg-position-papers-and-publications/ipmg-reports/national-regional-reports/107-state-of-indigenous-peoples-land-territories-and-resources-in-the-pacific/file>.

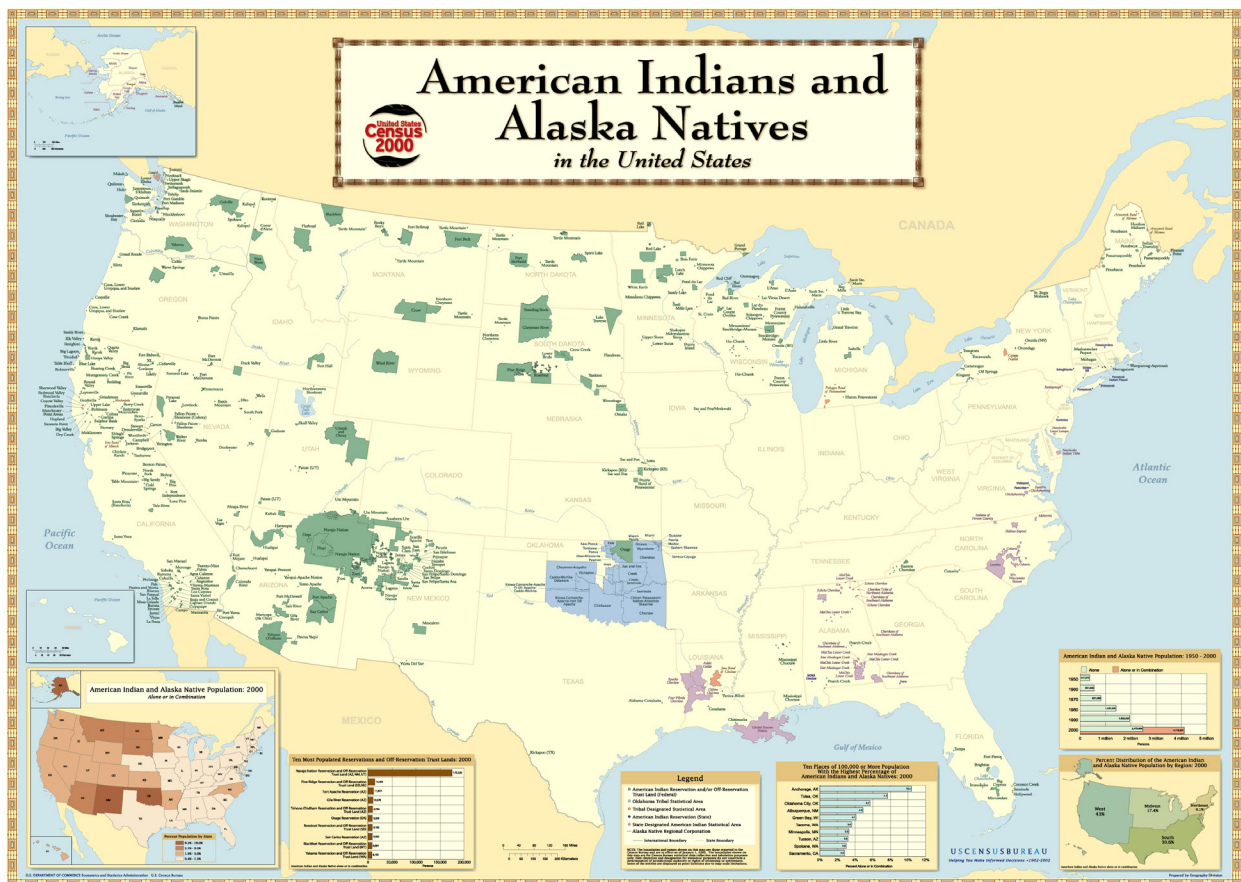
city of Auckland in Aotearoa (New Zealand) is in fact considered as the capital city of the Pacific, as it often has a higher population of Pacific Islanders living there than in their own respective countries.

Pacific island developing economies as a whole are projected to experience an economic slowdown in coming years. In most countries, El Nino also induces drought conditions and constrains agricultural and fisheries production.

North America⁴

Indigenous peoples in the United States of America (USA) include American Indians, Alaska Natives and Native Hawaiians. According to the 2010 Census, 5.2 million people in the US identified as American Indian and Alaska Native, making up approximately 2% of the total population. Of this total, 2.9 million people identified as American Indian and Native Alaskan.

Aboriginal people in Canada, composed of First Nations, Metis and Inuit peoples, number 1,400,685, constituting 4.6% of the population. Eighty percent (80%) of the Aboriginal or First Nations population reside in Ontario and the western provinces of Manitoba, Saskatchewan, Alberta and British Columbia. In the Northwest Territories, indigenous peoples make up 51.9%



⁴ See <https://www.indigenouspeoples-sdg.org/index.php/english/all-resources/ipmg-position-papers-and-publications/ipmg-reports/national-regional-reports/105-state-of-indigenous-peoples-land-territories-and-resources-north-america/file>, p. 5-8.

of the residents; and in Nanavut, 86.3%. Nearly 50% of those who reported being “Registered Indians” lived on Indian reserves or settlements.

For many indigenous peoples in North America, the conclusion of Nation to Nation Treaties are the basis for their ongoing legal and political relationship with the settler and successor governments of the U.S. and Canada.

Latin America and Caribbean⁵

Approximately 40 to 50 million indigenous persons live in Latin American and Caribbean (LAC) countries, representing from 7.8%-8.3% of the total population. Over 80% of the indigenous population (approximately 34.4 million) reside in México, Perú, Guatemala and Bolivia, while El Salvador and Costa Rica are home to the smallest absolute indigenous populations. El Salvador, Brazil, Paraguay, Argentina, Uruguay, Costa Rica and Venezuela have the smallest national proportions of indigenous persons in the region. In other countries, such as Bolivia and Guatemala, indigenous peoples are the majority population, although the exact figures vary considerably according to sources. Almost half of all indigenous persons live in urban areas within the region.

Latin America and the Caribbean is among the world's regions making the greatest formal strides toward constitutional and legal recognition of indigenous peoples' rights to their land, territories and resources, due largely to indigenous proposals, activism and leadership. However, there are still significant gaps in current national legal frameworks and challenges to fully implement and respect indigenous rights and autonomy over their land, territories and resources, particularly when these do not align with State or business interests.

Indigenous Peoples in Latin America



ECLAC encourages the region's countries to put public policies in practice which:

- 1) are based on standards of indigenous peoples' rights
- 2) include their perspectives and contributions to the region's development
- 3) consolidate improvements in their well-being and living conditions, political participation and territorial rights
- 4) promote the construction of multicultural societies that benefit us all

ECLAC

Source: Guaranteeing indigenous people's rights in Latin America: progress in the past decade and remaining challenges, ECLAC - <http://www.cepal.org/publicaciones/default.asp?idioma=IN>

Source & elaboration: ECLAC, *Guaranteeing indigenous people's rights in Latin America: progress in the past decade and remaining challenges*.

⁵ See <https://www.indigenouspeoples-sdg.org/index.php/english/all-resources/ipmg-position-papers-and-publications/ipmg-reports/national-regional-reports/108-state-of-indigenous-peoples-land-territories-and-resources-in-latin-america-the-caribbean/file>, p.3-5.

Russia⁶

The term “indigenous minority peoples of the North, Siberia and the Far East of the Russian Federation” refers to more than 40 peoples traditionally inhabiting about two thirds of Russia’s landmass, from the Saami Kola Peninsula on the Finnish border to the Yupiq Eskimo living on the coast of Chukotka, just across the Bering strait from Alaska. Together, these peoples number just about 280,000 individuals. Only peoples numbering less than 50,000 are recognized as indigenous. Other peoples such as the Yakuts, Buryats and Tuvans, who internationally would be considered indigenous, have no such status in Russian legislation but are simply considered “peoples.” Russia has not signed ILO Convention 169 and abstained on the UNDRIP.

Russia has three framework laws adopted between 1999 and 2001 regulating the rights of indigenous peoples and communities and their land rights. These laws are largely declarative and have been modified, mostly weakening them, many times since their adoption. While enshrining use rights to certain resources and territories, they do not recognize indigenous ownership. While certain provisions exist for consultation, there is no stipulation of indigenous free, prior and informed consent (FPIC). According to federal legislation, indigenous peoples need no special permit for hunting and fishing in accordance with their traditional way of life. However, most regions have introduced highly bureaucratic procedures, which often prevent them from feeding themselves without breaking the law.

The indigenous peoples’ home regions are also the places where most of the country’s subsoil resources—oil, gas, coal, diamonds and others—are being extracted, often with devastating consequences for the indigenous communities. Some of their home regions, (Yamal, Taimyr, Chukotka) are closed zone and require secret service permission to enter them. At the same time, the local indigenous communities in these regions are tightly controlled by the State. Since 2013 the government has subjected most of the indigenous rights movement in the country to its direct control, while many independent leaders have been silenced or exiled.

The most frequent form by which the State demonstrates its commitment to the indigenous peoples is by sponsoring cultural events, such as festivals and exhibitions. However, most of Russia’s export revenues is generated through the sale of resources extracted from indigenous ancestral lands. And in this regard Russia clearly does not even come close to meeting international standards in terms of recognition of land rights, participation, consultation and consent. Talk of land rights is usually avoided as it carries the risk of being labelled “extremist” or even “separatist.”

Africa

The ancient history of human migration in Africa has produced tribal groups and communities—nomads, pastoralists, hunter-gatherers—whose way of life, attachment or claims to particular lands and ecosystems, and social and political standing in relation to other more dominant groups has resulted in their substantial marginalization within modern African states.

⁶ See <https://www.indigenouspeoples-sdg.org/index.php/english/all-resources/ipmg-position-papers-and-publications/ipmg-reports/national-regional-reports>.

Such marginalization, combined with the desire to recognize and protect both their collective and human rights and maintain their traditional lifestyles in places like Africa's equatorial rainforests, mountain ranges, the Rift Valley or the Sahara and Kalahari deserts, has led many of these peoples to self-identify as indigenous peoples in Africa consistent with emerging recognition by States within the United Nations. In the African context, communities that self-identify with the term and movement of Indigenous Peoples, based on their lived experiences of systemic marginalization, discrimination, cultural difference and self-identification are almost always nomadic pastoralists or hunter-gatherers.

The political contestation to gain recognition of indigenous peoples in different countries of Africa is a continuing one, but in 2010 the Republic of Congo became the first African State to adopt a law for the promotion and protection of the rights of indigenous peoples.

Europe/Saami

The total Sámi population is estimated to be 75,000-100,000, with the majority living in Norway. About 10,000 Sámi are in Finland. More than 60% of them now live outside the Sámi Homeland. Around 20,000-40,000 Sámi live in Sweden; these are estimated numbers because Sweden does not process data based on ethnicity. Calculations based on old reindeer owner registers and the Sámi Parliament electoral roll indicate their number at almost 50,000. However, it is not clear if they all identify themselves as Sami. In Norway, from 2011 all statistics are compiled based on alternative registers. There are presently no registers providing numbers of Saami people.

As distinct peoples, indigenous peoples claim the right to self-determination, including the right to control their own political, social, economic and cultural development. Derived from this overall right are a set of more specific rights, e.g. the rights to land and territories and to maintain governance and administrative structures. These rights are often negatively affected in the development process if an explicit rights-based approach to indigenous development is not promoted.

In all parts of the world, there is growing recognition of the importance of protecting indigenous peoples' rights as an integral element of the promotion of human rights, democracy, good governance, sustainable development and environmental protection. This global commitment was clearly expressed in 2007, when 144 governments voted in favor of the adoption of the UN Declaration on the Rights of Indigenous Peoples. The African Commission on Human and Peoples' Rights (ACHPR) has also undertaken groundbreaking work to contextualize the concept of indigenous peoples to the African region (see ACHPR, 2005). However, some governments, particularly in parts of Africa and Asia, are still reluctant to acknowledge the existence of indigenous peoples within their states, in yet another denial of these peoples' human rights.

Most indigenous peoples have highly specialized land use practices and livelihood strategies, developed over generations and embedded in knowledge and belief systems that are often undocumented and governed by customary institutions that often remain unrecognized.

II.

International Human Rights Framework on Indigenous Peoples' Rights to Lands, Territories and Resources



At the international level, indigenous peoples' rights to land and natural resources have been articulated under the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention 169. These two instruments are compatible and mutually reinforcing and define indigenous peoples' rights to lands, territories and resources under international law.

Indigenous peoples' rights are not "special" rights, and UNDRIP and ILO Convention 169 do not extend or invent any "new rights." On the contrary, the two instruments are articulations of universal human rights as they apply to indigenous peoples. This means that they contextualize universal rights, which states are bound to respect, protect and fulfil, to the situation of indigenous peoples by taking their collective aspects into account to overcome historical injustices and current patterns of discrimination that indigenous peoples face.

The UNDRIP and ILO Convention No 169 are based on the recognition of the significance and cultural and spiritual values indigenous peoples attach to their lands and territories, which go far beyond their simple monetary or productive value. As the UNDRIP preamble indicates, *"control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs."*

Further, both instruments stipulate that indigenous peoples have the right to determine their priorities and strategies for development and use of their lands, territories and resources. In general, indigenous peoples' rights to land, territories and resources must be understood in the broader context of their right to self-determination (UNDRIP art. 3), as well as their rights to property, non-discrimination, cultural integrity and development.

The centrality of the rights of indigenous peoples to lands, territories and resources is clearly illustrated in the UNDRIP, which makes 19 references on these (see e.g. sixth, seventh and tenth preambular paragraphs and arts. 8, 10, 25–26, 28–30 and 32). Of particular relevance is article 26, which reads:

1

Indigenous peoples have the right to the lands, 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 possess 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 tenure systems of the indigenous peoples concerned.

Jurisprudence

The United Nations has put in place a procedure to allow individuals to complain if they believe that their state is not fulfilling these obligations. The UN Human Rights Committee has been empowered to receive and review complaints. A number of cases it has looked at involving indigenous peoples in the past have resulted in jurisprudence recognizing indigenous rights including, among others:

- To lands, territories and resources traditionally occupied and used and to a healthy environment;
- To protection of sites of cultural and religious significance;
- To cultural and physical integrity;
- To meaningful participation in decisions that affect them;
- To maintain and use their own cultural, social and political institutions;
- To be free from discrimination and to equal protection of the law.

Indigenous peoples' rights to land are also protected by other international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and Convention on Biological Diversity (CBD).

In addition, the ILO supervisory system has made several observations on the rights of indigenous and tribal peoples to their lands, territories and resources when examining the reports on compliance with Convention No. 169. The Committee of Experts on the Application of Conventions and recommendations has consistently emphasized the importance of secure land tenure, effective consultations, and the participation of indigenous peoples in land management.

Several international instruments have relevant implicit references to land rights, including the Universal Declaration of Human Rights (art. 17, which refers to property rights), ICCPR (arts. 3 and 27) and ICERD (art. 5 and general recommendation No. 23 1997 on the rights of indigenous peoples). In monitoring compliance with provisions of specific treaties, treaty bodies have developed a sound body of jurisprudence on indigenous peoples that is relevant to land rights, particularly in relation to article 27 of the International Covenant on Civil and Political Rights. Article 27 reads: *"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."*

Also under article 27, the United Nations Human Rights Committee addresses the impact of development projects and evictions on land rights and the welfare of indigenous peoples, through the application of the principle of free, prior and informed consent as the guiding norm for compliance with a State's duty to consult. Other recent issues raised under article 27, relating to country-specific situations, involved: (a) the need for prompt demarcation of indigenous lands; (b) encouraging legislation recognizing indigenous land rights; (c) conferral of title recognition on a group as an indigenous people; (d) active protection of language; (e) effective access to land restoration processes; (f) provision of adequate resources to indigenous representative bodies; (g) effective access to justice; (h) length of negotiations; (i) strengthening indigenous education and child and family services; (j) protection of sacred areas and (k) participation in law making.

General Comment 21 of the Committee on Economic, Social and Cultural Rights, which oversees the implementation of the ICESCR, also makes reference to indigenous land rights. It states that the "strong communal dimension of indigenous peoples' cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" (UN Doc E/C.12/GC/21).

Further, Article 5 of the International Convention on the Elimination of all Forms of Racial Discrimination entitles all persons to freedom from discrimination and equality before the law, including with regards to the right to own property. General Recommendation No. 23 of the

Committee on the Elimination of Racial Discrimination (CERD) calls upon states “to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.” The CERD’s early warning and urgent action procedures are increasingly being used to address cases related to indigenous peoples’ land and resource rights, e.g., in the Philippines and Suriname.

The Americas

The American Declaration on the Rights of Indigenous Peoples adopted in 2015 by the General Assembly of the Organization of American States (OAS) acknowledges indigenous peoples’ right to cultural integrity, including the recognition and respect for their ways of life, and more specifically, their distinctive relationship with their lands, territories and resources, and their right to maintain and strengthen this relationship. Quoting Article 26 of UNDRIP, the OAS Declaration recognizes indigenous peoples’ rights to “own, use, develop and control” their lands, territories, and resources. It also introduces a new paragraph whose meaning is somewhat unclear, providing for the legal recognition of forms of property, possession, and ownership “in accordance with the legal system of each State and the relevant international instruments.” The foundation of indigenous peoples’ rights to their land lies in their traditional occupation and use of their territory, and this right exists regardless of whether it is officially recognized by the state.

In the Inter-American human rights system, indigenous and tribal peoples’ territorial rights are encompassed mainly within Article XXIII of the American Declaration of the Rights and Duties of Man (American Declaration) and Article 21 of the American Convention on Human Rights (American Convention). Although neither of these articles expressly addresses the rights of indigenous or tribal peoples, the Inter American Commission on Human Rights (IACHR) and the Inter American Court have found that both texts protect the rights that such peoples and their members have in respect to their land, territories and natural resources.

In the course of recent years, the jurisprudence of the Inter-American human rights system has contributed to developing the minimum contents of indigenous peoples’ right to communal property over their lands, territories and natural resources. This jurisprudence is based on the provisions of the American Convention and the American Declaration, interpreted in light of the provisions of ILO Convention 169, UNDRIP, Draft American Declaration of the Rights of Indigenous Peoples and other relevant sources. All of these compose a coherent corpus juris that defines the obligations of OAS Member States with regard to the protection of indigenous property rights.

The Inter American Court has repeatedly stated that the “close ties that members of indigenous communities have with their traditional lands and the natural resources associated with their culture” and the intangible and spiritual aspects of those ties must be secured by the American Convention. The jurisprudence of the Inter American Court supports the right of indigenous peoples to the ownership of their ancestral lands. In *Sawhoyamaxa Indigenous Community*, the Court held that “traditional possession of their lands by indigenous people has equivalent effects to those of a state-granted full property title” and that indigenous peoples’ traditional possession

of their ancestral lands entitles them to official State recognition of their ownership and to the registration of title to their land. The state must also establish the official boundaries to the land in consultation with the indigenous peoples to grant title to the land.⁷

The ILO Convention 169 supports this position by requiring that governments take the necessary steps to identify indigenous peoples' traditional lands and to protect "their rights of ownership and possession."

Global Recognition of Traditional Knowledge

In the deliberations to advance a universal global transformative agenda and to build synergies across multiple global processes, there is an emerging consensus about the critical contributions of indigenous peoples' traditional knowledge to sustainable development, ecosystem management, biodiversity conservation, and climate change mitigation and adaptation (Table 2).

Global Consensus on Indigenous and Local Knowledge

Paris Agreement

5. Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate. (FCCC/CP/2015/10/Add.1, Article 7, Para 5)

UN Framework Convention on Climate Change (UNFCCC) decision to adopt the Paris Agreement

'135. Recognizes the need to strengthen knowledge, technologies, practices and efforts of local communities and indigenous peoples related to addressing and responding to climate change, and establishes a platform for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner; ' (Decisions to give effect to the Agreement, Para 135)

⁷ Sawhoyamaya Indigenous Cmty., 2006 Inter-Am. Ct. H.R. No. 146, ¶ 128.

**Addis Ababa
Action Agenda
of the Third
International
Conference on
Financing for
Development**

G. Science, technology, innovation and capacity-building

117. ... At the same time, we recognize that traditional knowledge, innovations and practices of indigenous peoples and local communities can support social well-being and sustainable livelihoods and we reaffirm that indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions.

**Sendai Framework
for Disaster Risk
Reduction 2015–
2030
(Priority for Action
1: Understanding
disaster risk)**

24 (i) To ensure the use of traditional, indigenous and local knowledge and practices, as appropriate, to complement scientific knowledge in disaster risk assessment and the development and implementation of policies, strategies, plans and programmes of specific sectors, with a cross-sectoral approach, which should be tailored to localities and to the context;

**SIDS Accelerated
Modalities
of Action
[S.A.M.O.A.]
Pathway**

44. We call for support for the efforts of small island developing States: (c) To raise awareness and communicate climate change risks, including through public dialogue with local communities, to increase human and environmental resilience to the longer-term impacts of climate change; (Climate Change)

81. (c) To develop and strengthen national and regional cultural activities and infrastructures, including through the network of World Heritage Sites, which reinforce local capacities, promote awareness in small island developing States, enhance tangible and intangible cultural heritage, including local and indigenous knowledge, and involve local people for the benefit of present and future generations; (Culture and sport)

**The Future We
Want**

58. We affirm that green economy policies in the context of sustainable development and poverty eradication should:

(j) Enhance the welfare of indigenous peoples and their communities, other local and traditional communities and ethnic minorities, recognizing and supporting their identity, culture and interests, and avoid endangering their cultural heritage, practices and traditional knowledge, preserving and respecting non-market approaches that contribute to the eradication of poverty;

**Intergovernmental
Panel on Climate
Change (IPCC)
Summary for
Policymakers**

Adaptation planning and implementation at all levels of governance are contingent on societal values, objectives, and risk perceptions (high confidence). Recognition of diverse interests, circumstances, social-cultural contexts, and expectations can benefit decision-making processes. Indigenous, local, and traditional knowledge systems and practices, including indigenous peoples' holistic view of community and environment, are a major resource for adapting to climate change, but these have not been used consistently in existing adaptation efforts. Integrating such forms of knowledge with existing practices increases the effectiveness of adaptation.

**Intergovernmental
Platform on
Biodiversity
and Ecosystem
Services (IPBES)
Approach to
Indigenous and
Local Knowledge**

IPBES has among its operational principles the inclusion of indigenous and local knowledge throughout its work. Its fifth Plenary meeting (IPBES5) approved its approach to recognizing and working with indigenous and local knowledge (ILK), identifying steps towards its implementation, and inviting indigenous peoples and local communities and other experts to engage in IPBES activities, in particular through its participatory mechanism on ILK. International Covenant on Economic, Social and Cultural Rights Governments, stakeholders, strategic partners and others were invited to mobilize indigenous and local knowledge where such knowledge is needed but is not readily available and to increase capacities of indigenous peoples and local communities to engage in and benefit from the Platform.

III.

Regional Situation on Lands, Territories and Resources of Indigenous Peoples



While international law on the rights of indigenous peoples has been elaborated, clarified and interpreted through relevant jurisprudence in recent decades, the enjoyment of these rights by indigenous peoples in different global regions and countries varies considerably. Reports by indigenous peoples on the status of lands, territories and resources are summarized in this section. Selected case studies about critical issues and priorities identified by indigenous peoples in the different regions highlight the outcomes and actual exercise of these rights, including violations, by indigenous communities on the ground.

Asia⁸

Impacts of National Laws and Policies

In Asia only the Philippines has laws fully recognizing indigenous peoples' rights to ancestral land, territories and resources. India, Indonesia, Malaysia, Myanmar and Cambodia provide some recognition. Nepal and Japan recognize rights to cultural identity but not to land, territories and resources, and Thailand does not recognize these rights. Despite the many progressive laws and policies on land, territories and resources, their implementation is weak, marked by irregularities, or they are not enforced at all.

⁸ See <https://www.indigenouspeoples-sdg.org/index.php/english/all-resources/ipmg-position-papers-and-publications/ipmg-reports/national-regional-reports/106-state-of-indigenous-peoples-land-territories-and-resources-in-asia/file>, p. 6-16.

Range of Legal Recognition of Land, Territory and Resource Rights in some Asian Countries

Laws	Extent of recognition of LTR
Philippines	
Indigenous Peoples Rights Act (IPRA) 1997	IPRA recognizes indigenous cultural communities or indigenous peoples' ownership to their ancestral territories and provides for titling of ancestral domain. Requirement for FPIC on all developments in indigenous territories.
India	
Fifth Schedule of the Indian Constitution	No tribal land can be bought by non-indigenous persons or outsiders in areas declared as Fifth Schedule. Provides for establishment of Tribal Advisory Council in areas declared as Scheduled Areas to advise the state government on issues pertaining to the tribal peoples.
Sixth Schedule of the Indian Constitution	Customary rights of indigenous peoples in the autonomous areas are recognized and protected. Provides for creation of Autonomous District Councils (ADC) in the four states: Assam, Mizoram, Meghalaya and Tripura. ADCs have legislative, executive and judicial powers to manage the autonomous areas.
The Panchayats (Extension to the Scheduled Areas) 1996 (PESA) ⁹	PESA bestows primary powers of governance to the <i>Gram Sabha</i> (village assembly) in the Scheduled Areas (Fifth Schedule area) including prevention of land alienation and also to restore the illegally alienated land.
Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 also known as Forest Rights Act (FRA)	Forest Rights Act recognizes ownership rights, user rights, intellectual property rights of communities including forest governance rights. <i>Gram Sabhas</i> or any traditional village institution with full participation of the women can determine the community and community resource rights along with the authority to protect and manage them.
Article 371A of Indian Constitution	Gives constitutional guarantee to the Naga people of Nagaland state, their rights to customary law, culture, land and resources (ownership of surface and sub-surface resources) and its management, customary institutions, traditional judicial system (criminal and civil disputes can be settled through Naga customary law in the state court). No Act of Parliament can be made applicable without the approval of Nagaland State Legislative Assembly.
Indonesia	
Article 18b-2 of Indonesian Constitution, Act No. 5/1960 on Basic Agrarian Regulation, Act No. 39/1999 on Human Rights and MPR Decree No. X/2001 on Agrarian Reform, Act No. 27/2007 on Management of Coastal and Small Islands and Act No. 32/2010 on Environment	These laws recognize traditional communities and their customary (<i>adat</i>) rights to land within certain limitations in the Constitution of Indonesia
Malaysia	
Article 161A(5) of the Federal Constitution	State laws in Sabah and Sarawak may provide for the reservation of land for indigenous peoples or for giving preferential treatment in regards to the appropriation of land by the state.
Land Ordinance 1930	Sec 15 recognizes the Native Customary Rights (NCR) but does not recognize land under fallow period.
Burma/Myanmar	
National Land Use Policy (NLUP), 2016	This policy recognizes customary land use rights and land tenure practices of ethnic nationalities.
Cambodia	
Land Law 2001	Recognizes the rights of indigenous peoples to collective or communal land titles

⁹ The Panchayats (Extension to the Scheduled Areas) 1996 has been enacted after making suitable changes to the Panchayats Act to transform a system for the general areas of the country to the Scheduled Areas (Fifth Schedule area) having a different socio-economic as well as politico-administrative setting.

Most countries in Asia have continued to implement laws and policies introduced during colonial rule, which established state control over vast areas of lands, especially forests. The various national forest conservation and environment protection laws have adversely impacted the indigenous peoples, as they have been denied access to these reserved areas, which often overlap their customary lands such as fallow lands and forests. Large scale acquisition of lands remains a widespread concern in the context of insecure land tenure and arbitrary enforcement of laws. Moreover, governments have attempted to roll back or weaken existing laws that protect and restrict indigenous peoples' lands from being alienated.

Case Study: Legal pluralism and conflicting laws in the Philippines

The Indigenous Peoples' Rights Act 1997 is seen as among the most progressive national laws, but indigenous communities in the Philippines continue to lose their ancestral lands. The IPRA embodies many principles of international law on indigenous peoples' rights, but its implementation happens alongside multiple constructions of rights in national law. It recognizes ancestral domain based on native title but simultaneously upholds vested property rights granted before its passage into law. It affirms State ownership of all "public lands" and natural resources declared under colonial and existing land laws, thus strengthening State jurisdiction to control land and other resources. There is parallel and conflicting practice of customary laws, statutory laws and international law.

The IPRA created the office of the National Commission on Indigenous Peoples (NCIP) as its implementing agency. The primary task of the NCIP is to delineate and issue a Certificate of Ancestral Domain / Land Title (CADT/CALT) to the indigenous clans or communities. As of 2015, NCIP had awarded 158 CADTs and 258 CALTs with a total coverage of 4,323,782,722 hectares or 14% of the total land area of the Philippines. Some 557 pending applications remain. Titling procedures have been criticized for being unnecessarily costly and lengthy and lacking in cultural sensitivity. Moreover, apart from paltry budgetary allocations for the NCIP, several conflicting government policies and administrative orders cause delays in the issuance of CADT/CALT.

Various tenurial instruments issued by Philippines government agencies conflict with each other, adversely affecting indigenous peoples' lands rights and their claim for CADT. For example, Certificates of Land Ownership Award (CLOAs) issued by the Department of Agrarian Reform (DAR) to non-indigenous persons inside portions of the Buhid Mangyan's ancestral domain have negatively impacted their land rights and claim for a Certificate of Ancestral Domain Claim (CADC). Despite IPRA, other Philippine laws such as the National Integrated Protected Area System and Mining Act of 1995 have undermined ancestral land and resource rights.

Indigenous communities have right of ownership of ancestral domain based on customary laws, which theoretically includes the right to control their land and resources. Owing to the layered structure of Philippine land laws and resource use regulations, the State has the ultimate power to control the land and its resources including in ancestral domains.

Case Study: Asserting indigenous peoples' rights through litigation

In recent years, substantial jurisprudence has emerged from constitutional courts to strengthen human rights protections for indigenous communities and their rights to customary lands. Lack of law enforcement, irregularities in implementing existing legislation, and absence of consultation and consent have led to a proliferation of human rights abuses and land conflicts over land, territories and resources between indigenous communities, corporations and various state agencies. As a last resort, indigenous peoples have gone to court to assert their statutory rights and also because states are not respecting and protecting customary laws, as in the following countries.

India

The Indian Forest Rights Act (FRA) of 2006 is hailed as a progressive piece of legislation aimed at undoing the “historic injustice” committed against the forest dwelling tribal peoples and other traditional forest dwellers. The FRA stipulates free, prior and informed consent by the Gram Sabha before any forest areas are diverted for purposes such as mining or infrastructure projects. Since its enactment on January 31, 2012, a total of 3,168,478 claims have been filed across the country under the FRA. Of the total claims, 1,472,672 were rejected. In many of the cases that were thrown out, the claimants were denied a proper hearing both at the Sub-Divisional and District Level Committees. As of June 2016, the government had disapproved 2,502,723 or 60% of a total 4,182,646 filed claims.

Despite the stringent provisions provided in the Fifth and Sixth Schedules to the Constitution of India, in Jharkhand state alone, as of January 2016, 4,219 cases were pending with Schedule Area Regulation courts against land alienation from tribals to non-tribals. The number of claims filed shows the extent to which tribal peoples are losing their land, territories and resources despite existing laws. Ownership rights to land being cultivated by indigenous communities and forest dwellers, including the responsibilities and authority for sustainable use and conservation of biodiversity, are being violated.

Case Study: Conservation and the threat of Eviction of 2 Million Tribals in India

The adoption of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 is a result of a protracted struggle of tribals and forest dwellers in asserting their rights to their forestland of which they are traditionally dependent of. The Act provides for community rights and the strengthening of local self-governance of communities over their forests.

In February, this year (2019), the Supreme Court of India ordered the eviction of at least 2 million tribal and other forest-dwelling people with disproportionate adverse impacts to adivasi women including increasing their vulnerabilities to violence and abuse. Campaigners have described this as “an unprecedented disaster” and “the biggest mass eviction in the name of conservation”. The ruling is in response to the requests by Indian conservation groups to declare the Forest Rights Act “unconstitutional” on the ground that forests are relentlessly eroded by humans encroaching animal habitat. The said conservation groups reportedly include Wildlife First, Wildlife Trust of India, the Nature Conservation Society, the Tiger Research and Conservation Trust, and the Bombay Natural History Society.¹⁰ The case filed by these conservation groups is a great disservice to the tribals and this unjust decision by the Supreme Court threatens the survival and continuity of the adivasis in India.

Indonesia

Indonesia’s Constitutional Court ruling 24/200 in 2003 recognized the *kesatuan masyarakat hukum adat* (customary law societies/communities who live by law) as having legal standing and eligible petitioners. The Court accordingly accepted petitions from two indigenous communities, together with AMAN¹¹ as a supporting organization, for a review of provisions in the Forestry Laws 41/1999. One of the articles in this Law claimed that customary forests (*hutan adat*) are part of state forests, which cover about 65% of Indonesia.

On May 16, 2013 the Constitutional Court issued decision No. 35/PUU-X/2012 (MK 35) recognizing indigenous peoples as legal subjects and people with rights over land, territories and natural resources, including customary forests (AIPP 2017: 45). A landmark decision, it declared that the state must return customary forests to indigenous peoples, opening a window of opportunity to potentially secure at least 40 million hectares of customary territory. Challenges still remain, however, for implementing this decision on the ground. Regulations have to be formulated and issued at the provincial or district level including required budgets and, above all, political will of the local governments and leaders. AMAN and its members are lobbying provincial and district governments to issue such regulations in support of MK 35.

In another case, indigenous peoples filed a petition requesting the Constitutional Court to grant their demands and review some provisions of the Law on Prevention and Eradication of Forest Degradation and Forestry Law, which have become a source of criminalization and violence against indigenous communities. On December 10, 2015 the Court granted indigenous peoples and other forest dependent communities permission to collect forest products for non-commercial purposes but rejected the demand to review criminalization under these laws.

Thousands of cases have also been filed in the District Courts against private companies which have acquired land without free, prior and informed consent of affected communities. The National

¹⁰ “Disaster” as Indian Supreme Court orders eviction of “8 million” tribes people, <https://www.survivalinternational.org/news/12083>.

¹¹ AMAN (Aliansi Masyarakat Adat Nusantara), also known as the Indigenous Peoples’ Alliance of the Archipelago, is a national alliance of indigenous peoples with more than 2000 indigenous communities in Indonesia.

Land Agency noted around 8,000 land conflicts in the country in 2012. “The National Human Rights Commission of Indonesia (Komnas HAM) has recorded an increase in complaints against companies since 2010, as well as an increase in land conflicts between individuals/communities and companies, in particular large-scale plantation operators” [] “In most cases, lack of respect for and implementation of FPIC has been a root cause of ensuing land conflicts.”

Malaysia

In Malaysia most of the cases involve the acquisition of or entry into customary lands by corporations and government entities, almost always without the knowledge or consent of indigenous communities. In 2013 Sarawak recorded over 200 cases of this nature, a similar number in Sabah and a substantial number in Peninsular Malaysia.

The following case in Sabah, the longest Native Customary Rights (NCR) case between NCR holders and a palm oil developer, was settled through third party mediation in 2016. In March that year a landmark agreement was settled by the Sabah High Court between the indigenous Dusun and Sungai peoples of Tongod District and the Genting Plantations. The palm oil companies secured their permits without recognizing the Dusun and Sungai peoples’ land rights and without their free, prior and informed consent. They ignored the indigenous communities’ objections and bulldozed their forests and farmlands. They gradually expanded their operations, squeezing communities into a narrow settlement strip along the roadsides.

Through strong community mobilization and support from indigenous organizations and lawyers, the Dusun and Sungai peoples challenged the companies, the State Government and the lands office for the illegal takeover of their customary lands. The plaintiffs successfully used their distinct folklore, oral history and ways of life as living evidence of their continuous occupation and supported their testimonies with community maps. The court finally upheld the indigenous communities’ native customary rights to the disputed land. It was a significant victory for the Orang Asal in Malaysia, as this settlement acknowledges the Orang Asal’s native customary rights.

Economic Growth and Impacts on Indigenous Livelihoods

Livelihoods of indigenous peoples across Asia are rapidly changing because of the unprecedented economic growth experienced by the region (largely concentrated in urban areas), moving many countries out of low-income to middle-income countries. According to the community forestry review of RECOFTC in 2013, “poverty rates remain higher in rural areas and tend to be highest in regions with dense forests.” The increased domestic and international investments in agro-industrial crops and minerals, driving expansion into densely forested regions, are having serious implications on indigenous communities.

Subsistence lands are being converted into large-scale, capital-intensive cash crop plantations. Multiple government policies have further impoverished indigenous peoples, who continue to make up the majority of the rural poor. These policies include land concessions for plantations

or resource extraction, eviction from protected forests and conservation areas, denial of access to forests and other natural resources and land alienation. Consequently, increasing numbers of indigenous peoples are migrating to the urban areas to look for jobs, access health care and education. Their land-based livelihoods are changing, compounded by the prohibition of livelihood practices such as rotational farming or shifting cultivation.

Some indigenous families have gained from the economic growth. “Generally, livelihoods in indigenous communities have become more diversified, partly out of necessity, partly out of choice. Scarcity of land is one of the main external driving forces behind current livelihood changes, [] restrictive laws and policies, population pressures and, partly market integration lead to a reduction of land available for shifting cultivation and other forms of land use (e.g. raising cattle). Market integration encourages indigenous farmers to seize new opportunities to increase their income and improve their living conditions. Furthermore, education and mainstream media bring about changes in views and values thus livelihood preferences above all among the youth” (Erni 2015:16).

For centuries, indigenous communities have combined subsistence with market-oriented production in a so-called dual economy, such as in the combination of rice shifting cultivation and rubber production (Dove 2011: 149f). This has allowed for a high level of flexibility and livelihood security for households. “[T]here are numerous examples of innovative practices, such as combining shifting cultivation with new agroforestry practices (fruit and cashew and orchards in Cambodia, rubber gardens in Indonesia) growing high-value cash crops in shifting cultivation fields (vegetable, herbs, ginger, turmeric in India, Bangladesh)” (ibid:21-22).

When farmers have sufficient land and secure tenure, they can further enhance innovation and diversification, and market access can improve food security and overall well-being of the community. But there are many indigenous farmers who have suffered because they have been resettled, have sold off or been tricked out of their land because of poverty, as in Laos and Cambodia. They became seasonal farmers or landless laborers; eventually they lose their food security.

Pacific Region¹²

In most countries of the Pacific Islands, customary land under customary authority remains the dominant land tenure form. It represents more than 80% of the total land area in most countries. Countries with more than 80% of customary lands include the Cook Islands, Fiji, Marshall Islands, Niue, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tuvalu, Vanuatu. The size of customary land of the total land area is 97% in Papua New Guinea, 90% in Vanuatu, 88% in Fiji, 87% in the Solomon Islands, 81% in Samoa. While public and freehold land represents only a small proportion of a country’s land area, it is often located in the most productive and accessible places and usually supplied with infrastructure for economic and social development.

¹² See <https://www.indigenouspeoples-sdg.org/index.php/english/all-resources/ipmg-position-papers-and-publications/ipmg-reports/national-regional-reports/107-state-of-indigenous-peoples-land-territories-and-resources-in-the-pacific/file>, p. 7-13.

The following table shows the distribution of land by system of tenure in the Pacific region.

Land Distribution by Tenure System

	Public	Freehold	Customary
Cook Islands	Some	Little	95%
Fiji	4%	8%	88%
Federated States of Micronesia	35%	<1%	65%
Kiribati	50%	<5%	>45%
Marshall Islands	<1%	0%	99%
Nauru	<10%	0%	>90%
Niue	1.5%	0%	98.5%
Palau	Most	Some	Some
Papua New Guinea	2.5%	0.5%	97%
Samoa	15%	4%	81%
Solomon Islands	8%	5%	87%
Tokelau	1%	1%	98%
Tonga	100%	0%	0%
Tuvalu	5%	<0.1%	95%
Vanuatu	2%	0%	98%

Source: (AusAID, 2009)

1

Access to land primarily stems from birth into a kinship group.

2

Groups based on kinship or other forms of relationship are the main landholding (or 'owning') units.

3

The main land-using units are individuals or small household units.

4

Men, particularly chiefs, elders or senior men within the customary group, have the main say in decisions over the group's land matters.

5

As well as being a source of power, land is a focus for many social, cultural and spiritual activities.

6

The customary groups usually have ways to accommodate the land needs of anyone accepted into the group. Outsiders—for example, refugees from tribal fights—are sometimes adopted and gain the privileges of group membership.

7

Land can be transferred only within existing social and political relationships.

8

Rights to access land are constantly adjusted to take account of changes in group membership—some groups increasing and some dying out—and the need to redistribute land.

Examples of Customary Land Rights

Usage rights

Rights to use land for traditional purposes, including:

- hunting, fishing, growing crops, grazing animals or collecting food
- manufacturing materials, artifacts or other natural products from resources of the area
- erecting a residence and other infrastructure
- learning and communicating cultural, natural and spiritual knowledge, traditions and practices of the area.

Transfer rights

Rights to transfer land, or specific rights to use land, to other people, including:

- through inheritance or membership of the customary group
- through negotiation and agreement with another customary group or an outsider.

Customary land is land which was traditionally owned by indigenous communities and administered in accordance with their customs, while statutory tenure was usually introduced during the colonial period. The characteristics of customary tenure systems are significantly different from those of public or freehold forms of tenure.

Most Pacific countries have Constitutions or legislation that recognize the authority of customary groups to manage their ancestral land in accordance with their traditions and customary law. The governments have tended to avoid interfering with them in terms of how they allocate rights, manage the land and keep records. Some ways for governments to legally empower customary land governance include: create legal mechanisms to recognize customary groups; formally recognize land ownership of customary groups through a process of recording or registration; facilitate leasing of customary land in a way that fairly distributes benefits between landowners and leaseholders; establish regulations and institutions that support, assist and protect customary landowners during negotiations with governments and investors; and support both customary and formal institutions in resolving different kinds of land disputes.

Distinct customary systems of tenure have evolved on thousands of different islands and areas within the Pacific region. The various aspects of customary tenure—inheritance, allocation of usage rights, dispute settlement and recordkeeping, for example—are managed by customary groups according to their own unique processes, which are often linked to underlying social and spiritual beliefs. Although customary land tenure systems vary greatly across the Pacific region, they share some common features with the following main characteristics:

Customary tenure has successfully met the basic needs of people in the Pacific region, and land has come to represent an important safety net in terms of the subsistence lifestyle of many peoples.

More recently, customary forms of authority in some areas of the Pacific have been weakening due to increased interaction with outsiders such as governments, democratic institutions, and religion. Globalization has also had an impact through external actors with new ways of using land, including large-scale harvesting of timber and minerals, agribusiness, roads and other infrastructure, and tourism. New ideas and opportunities for customary groups to benefit from their land can mean that customary authority is less effective in regulating the behavior of group members or their leaders.

Changes in customary authority can reduce land tenure security for some members of customary groups and strengthen it for others—for example, when land deals take place without the consent of all landowning members of the group. Historically in the Pacific region, such changes have tended to reduce women's access to land. Loss of authority can also weaken processes for resolving disputes involving customary land, so that disputes remain unresolved for a long time.

Land fragmentation and cross-ownership

The Cook Islands and Aotearoa (New Zealand) have attempted to create a register of individual customary landowners. Both countries use an equal inheritance rule, whereby children inherit equally the registered lands of their parents. This system has created problems of fragmentation and cross-ownership. Small plots of land now have hundreds or thousands of owners, and any one person may have ownership rights in a large number of small plots of land. The equal inheritance system has corrupted the traditional practice of rights to land being contingent on residence and participation in the community. It has changed the land systems from being flexible and effective in allocating rights and managing land to being unworkable.

Highly fragmented landownership can create a vicious cycle. This is because the greater the dilution of ownership, the lower the incentive for people to dispose of land to enable consolidation of ownership. As fragmentation increases, the value of each shareholding shrinks and so do the benefits of disposing of the land. The scope and complexity of the ownership structure increase and so do the costs and effort required to bring the owners together to consolidate ownership.

North America¹³

“They made us many promises, more than I can remember, but they never kept but one; they promised to take our land and they took it.”

- Chief Red Cloud, Oglala Lakota

Treaty Rights

For many indigenous peoples in North America, the conclusion of Nation to Nation Treaties remain and are the basis for their ongoing legal and political relationship with the settler and successor governments of the United States and Canada. Treaties were predicated on good faith, respect, consent, and the “mutual recognition of government systems, leadership and decision-making structures and processes.”¹⁴

But once the settler governments of Canada and the U.S. were established, they adopted laws, policies and court decisions that allowed further appropriation of land and water, forced relocations and treaty abrogation. They also curtailed the legal authority of Indigenous Nations to protect their traditional lands, resources, sacred places, eco-systems and traditional livelihoods. Many Indigenous Nations were relegated to much-diminished land bases known as reserves and reservations, while others were left with no legal status or recognized land whatsoever. A review of legislation in the U.S. and Canada highlights how treaty rights have been progressively violated and abrogated.

¹³ See <https://www.indigenouspeoples-sdg.org/index.php/english/all-resources/ipmg-position-papers-and-publications/ipmg-reports/national-regional-reports/107-state-of-indigenous-peoples-land-territories-and-resources-in-the-pacific/file>, p. 7-13.

¹⁴ Andrea Carmen and Chief Wilton Littlechild presentation to the UN High Commissioner for Human Rights. Geneva. July 2012. “Treaties and original spirit and intent: An historic overview, a new framework and decent advances for conflict resolution, redress of violations and restoration of just and respectful relations”. (HR/GENEVA/SEM/NGOs/2012/BP.15). The entire report provides a comprehensive analysis of the history of treaty making, the extent and scope of violations, the treaty rights being advocated for at the International Level, and successes gained through International mechanisms and presentations to expert bodies.

Legal Framework undermining Treaty Rights

Year	Law
United States of America	
1787	U.S. Constitution signed recognizing Treaties as the “Supreme Law of the Land”
1823-1832	Marshall decisions giving rise to the “Trust Relationship” and the concept of “Domestic Dependent Nations”
1851	Creation of the Indian Reservation system resulting in severely diminished land bases for Tribal Nations
1871	Congress ends U.S. treaty making with Indigenous Nations
1872	General Mining Act fails to recognize indigenous peoples’ rights and continues to impede legal efforts by indigenous peoples to protect sacred areas and resources from destructive mining practices
1887	Dawes Act breaks collective lands of indigenous peoples into privately held “allotments” and opening the “left over” land for private purchase by non-indigenous settlers
1934	Indian Reorganization Act created elected tribal governments
Canada	
1871-1921	Treaties 1 – 11 concluded between the Crown and Indigenous Nations
1876	Indian Act placed indigenous (aboriginal) lands and governance structures under direct control of Canadian government
United States and Canada	
2007	Both U.S. and Canada vote against the adoption of the UN Declaration on Rights of Indigenous Peoples in the UN General Assembly
2010	The U.S. expresses qualified support for the UN Declaration on the Rights of Indigenous Peoples on December 16, 2010
2010 and 2016	Canada expresses qualified support for the UN Declaration on the Rights of Indigenous Peoples on November 12, 2010; the Trudeau government announced its nearly unqualified support in May 2016

The U.S. and Canada to date have not established just, participatory and fair processes to address, adjudicate and correct treaty and land rights violations. Many of the cases, policies and issues identified by indigenous peoples in North America can be traced back to treaty violations and misuse of federal, state, provincial or corporate authority to privilege resource extraction at the expense of the ecological, environmental, cultural, spiritual and physical well-being of indigenous peoples. Across North America, government policies and laws have facilitated the seizure, development, and/or occupation of indigenous territories, sacred areas and ancestral lands without the free, prior and informed consent of affected indigenous peoples.

As such, the lands, territories and resources of indigenous peoples in North America remain under threat from continued exploitation from extractive industries and, in some cases, environmental movements establishing parks and other protected and conserved areas on their traditional lands and use areas, resulting in forcible removals and lack of access to subsistence resources.

Examples of Current Treaty Violations in U.S. and Canada

Issue	Rights Violated, <i>inter alia</i>
Standing Rock-Dakota Access Pipeline <u>Description:</u> <i>Standing Rock Sioux Tribe and other parties to the 1868 Fort Laramie Treaty exercising federal and treaty rights to prevent the construction of the Dakota Access oil pipeline underneath Lake Oahe</i>	<ul style="list-style-type: none"> • Violation of UN Declaration on the Rights of Indigenous Peoples and other international human rights standards, including the right to free, prior and informed consent • Violations of the International Convention on the Elimination of all forms of Racial Discrimination • Violation of the Treaties of 1851 and 1868 • Excessive force carried out against human rights defenders • Violation of the Human Rights to Water, Culture and Sacred Sites • Lack of redress and response using “domestic remedies”
First Nations Canada-Tar Sands Development and Keystone XL <u>Description:</u> No. 6, No. 7, and No. 8 Treaty stand for the protection of traditional territories, hunting territories, sacred sites, and fragile ecosystems impacted by the Tar Sand development	<ul style="list-style-type: none"> • Violation of UN Declaration on the Rights of Indigenous Peoples and other international human rights standards, including the right to free, prior and informed consent • Violation of No. 6, No. 7, and No. 8 Treaty rights including rights to hunt, fish, gather and subsist on treaty territory • Violation of the human right to water • Lack of redress and response using “domestic remedies”

In Canada, mineral mining and timber clear cutting have continued unabated for decades in many parts, including Treaty territories. On top of this, the greatest target for resource exploitation today is the Athabasca Oil Sands (“Tar Sands”) in Treaty No. 6, 7 and 8 territories. Tar Sands is the second largest such deposit in the world with an estimated 170 billion barrels of crude oil in reserve. Despite Canada’s stated commitment to uphold the UN Declaration on the Rights of Indigenous Peoples and its obligations as a party to the UN Paris Agreement on Climate Change, it continues to pursue its energy development policy.

In 2008, Treaty 6, 7 and 8 First Nations Chiefs representing 44 First Nations communities from Alberta called for a moratorium on Tar Sands expansion. They requested for watershed and development plans to be approved by the First Nations and for their concerns over potential impacts to subsistence and treaty rights to be resolved. Nevertheless, continued expansion of the Tar Sands operations remains a priority to the Canadian government to the detriment of the cultural, treaty, hunting, fishing and other subsistence rights, environmental health and safety, and economic well-being of the First Nations Peoples near the development site and downstream from the source of the contamination.

Case Study: Poverty among indigenous peoples in U.S. and Canada

American Indian and Alaskan Natives suffer from the highest poverty rate among any race in the United States at 28.3% below the poverty line compared to the U.S. national average of 15.5%. In 2013 the U.S. Census Bureau's American Community Survey (ACS) reported the median income on reservations was \$29,097, compared to the White median income of \$58,270.

For some tribes, the economic situation is even more dire. For example, a U.S. Census Bureau's 2014 study found that more than 52% of residents in Oglala Lakota, the largest of Pine Ridge's three counties, lived below the poverty line. In 2010 the poverty threshold for a family of four with two children was \$22,113. Some reservations in Washington, California, Wisconsin, Michigan, North Dakota, South Dakota, Arizona and New Mexico fare worse, with more than 60% of residents living in poverty. Five of the lowest per capita incomes in the country are found on reservations. Allen, South Dakota on the Pine Ridge Reservation had the lowest per capita income in the country at \$1,539 per year.

Poverty Rates in Ten Largest Reservations based on 2010 U.S. Census			
Reservation	Location	Poverty Rate (%) (Families with Children)	Poverty Rate (%) (Individuals)
Navajo Indian Reservation	Arizona, New Mexico, and Utah	46.5	42.9
Uintah and Ouray Indian Reservation	Utah	54.4	20.2
Tohono O'odham Indian Reservation	Arizona	44.3	46.4
Cheyenne River Indian Reservation	South Dakota	42.3	38.5
Standing Rock Indian Reservation	South Dakota and North Dakota	41.2	40.8
Crow Indian Reservation	Montana	31.5	30.5
Wind River Indian Reservation	Wyoming	22.6	20.9
Pine Ridge Indian Reservation	South Dakota	52.8	53.5
Fort Peck Indian Reservation	Montana	58.5	35.3
San Carlos Indian Reservation	Arizona	52.6	50.8
National Average		9.2	12.4

As in the U.S., indigenous peoples in Canada remain severely marginalized economically. In 2011 the employment rates of Aboriginal peoples aged 25 to 64 who did not have a certificate, diploma or degree was 37.3% (First Nations), 52.6% (Métis) and 44.9% (Inuit), while the overall unemployment rate that year was 7.2%.

Median Income of Individuals aged 25-64 based on 2011 National Household Survey of Canada (Rounded to nearest \$1,000)

Indigenous Peoples	<i>First Nations</i>	<i>Metis</i>	<i>Inuit</i>	<i>National Average</i>
No certificate, diploma or degree	\$14,000	\$20,000	\$20,000	\$72,240
Postsecondary credential	\$32,000	\$40,000	\$43,000	\$80,940

Case Study: Lack of access and protection of sacred sites and landscapes

The piecemeal seizure of indigenous peoples' land and resources has detrimentally impacted the ability of indigenous peoples to protect sacred places, landscapes, waters, and subsistence foods, which they have traditionally used for ceremonial and cultural practices. The loss of access to sacred sites represents a violent disruption of cultural, ceremonial, medicinal and traditional subsistence practices. Many sacred sites are land formations and waterways that contain significant ecosystems and biodiversity and also encompass places of creation, renewal, coming of age, passage and other cultural rites that tie the identity of indigenous peoples to their ancestral territories.

Examples of Current Cases involving Loss and/or Destruction of Sacred Sites

Campaign	Description
Protect San Francisco Peaks	"San Francisco Peaks" is a mountain located in Flagstaff, Arizona held sacred by 12 different tribes in the southwest. Access for prayer and ceremonial purposes has been disrupted by the development of a commercial ski resort. Further ecological and cultural damage will be caused by the city of Flagstaff's approval of reclaimed wastewater to produce artificial snow.
Protect Mount Taylor	Mount Taylor is a sacred mountain located in Grants, New Mexico held sacred by the Navajo Nation, Hopi Tribe, and Pueblos of Acoma, Laguna and Zuni. The tribes advocated for a "traditional cultural property" designation as a strategy to protect the mountain from proposed uranium mining and other forms of industrial development under U.S. energy development policies.
Stand with Mauna Kea	Mauna Kea is Hawaii's tallest mountain held sacred by indigenous Hawaiians. Construction of a multi-billion-dollar telescope to expand the observatory activities on the summit threatens the ability of indigenous Hawaiians to access the summit for ceremonial practices and to protect sacred burial grounds.
Save the Salmon	This is an international movement to protect the salmon from damming, mining, climate change and river contamination by indigenous peoples with strong cultural connections to salmon. "We affirm that all birthing places are sacred, including the great rivers and small streams where the salmon spawn, and the oceans where they live and grow."

Latin America and the Caribbean¹⁵

In Latin America and the Caribbean, the tenure of land, territories and natural resources has been highly unequal, marked by the concentration of land in a few hands and land dispossession of indigenous peoples. The colonial history of land, territories and resources shaped the complexities of the current state of tenure for indigenous peoples.

During the Colony,¹⁶ land distribution was divided into three categories: 1) royal land or land held by the Crown (*realengo*); 2) communal land or land for common use; and 3) land belonging to the private domain or private land. Communal land was in turn split into jurisdictional land, privately leased land and corporative land. These last three categories were intended for public benefit in the form of churches, hospitals, and municipal buildings, among other amenities. Some communal land was made up of *ejidos* intended solely for agricultural work or livestock, or to meet the needs of the *cabildo* (town council). Such land was used collectively and “legalized” in the colonization process, and the king acknowledged some indigenous peoples’ ancestral possession rights.

Private land was divided into individual land and family-owned land. Indigenous peoples could have communal land and private family-owned land, but the right to land possession was not the same as ownership. The former referred to the right to use the land and natural resources, and the latter meant recognition of possession by means of a “supporting title,” which was legally valid. Throughout the 17th and 18th centuries, indigenous peoples in Latin America and the Caribbean gradually lost Crown-held land as it was appropriated and seized by the Spanish and Portuguese.

Following political independence in Latin American and the Caribbean in the 19th century, republican governments enacted laws and decrees to support liberal reforms that helped to consolidate the system of *haciendas* (large landed estates usually used for farming) and *fincas* (estates). They also encouraged the integration of foreign businesses and immigrants from places like England, the United States and Germany to carry out infrastructure, mining and agro-industrial projects. To achieve these changes, the republics of Latin America and the Caribbean continued to dispossess indigenous peoples of their land and territories, relegating them to marginal land or exploiting them as semi-enslaved laborers in fincas, ranches, or cities that were expanding with the arrival of migrants from rural areas.

In general, land tenure was based on the concentration of large expanses of land (*latifundios*) in the hands of a few families or businesses (*latifundistas*), and the existence of a multitude of peasant and indigenous families with ever smaller plots of land (*minifundios*). The latter sold their labor to provide for their basic needs or to acquire some land, sometimes as tenant farmers living on the estates where they worked for mestizo, ladino, or foreign owners. The extreme concentration of land, territories and resources in just a few hands and the exploitation of indigenous peoples—both legacies of the Colony that liberal reforms exacerbated—were crucial triggers for the revolutionary movements and armed conflicts that took place in Latin America and the Caribbean throughout the 20th century.

¹⁵ See <https://www.indigenouspeoples-sdg.org/index.php/english/all-resources/ipmg-position-papers-and-publications/ipmg-reports/national-regional-reports/108-state-of-indigenous-peoples-land-territories-and-resources-in-latin-america-the-caribbean/file>, p. 6-22.

¹⁶ The Colony commonly refer to the colonial period in Latin American history.

The tenure of land, territories and resources in Latin America and the Caribbean can be organized schematically into general categories (Van Dam 1999): public (protected areas, national security, infrastructure, badlands, or untouchable land); private (*latifundios*, farming companies, small-scale producers, subsistence peasants, or speculative investors); communal (indigenous peasant communities, agricultural cooperatives or indigenous territories in varying states of legal recognition) or landless (laborers, pickers, small tenants, invaders, or large-scale investors who lease all the factors of production). Historically, fertile land was seized, leaving rural indigenous families with reduced or zero access to their ancestral lands, territories and resources to meet their basic needs and causing social unrest.

Since 1980 profound changes have occurred in tenure structures of land, territories and resources in Latin America and the Caribbean. Governments in the region dismantled the land reform programs they implemented in previous decades to create land markets with titling mechanisms and modernized institutions in charge of land issues (e.g. land registries). In keeping with the neoliberal ideology of the time, the official position was that these State actions would promote more efficient land use, greater legal security over property ownership, and better redistribution of land due to free market dynamics. As a result, there was a regional movement towards the subdivision of communal or associative land and territories. This pressure to go from collective to individual land facilitated the expansion of a land market under a neo-liberal regime.

Simultaneously, advancements in the legal framework related to indigenous rights to land, territories and resources embraced what various researchers have called “neoliberal multiculturalism.” This is a system of governance that recognizes on paper indigenous peoples’ ethnic identity and cultural, political and economic rights, including their right to self-determination and possession of their land, territories and resources. The mechanization and modernization of agriculture in Latin America have also affected, on the one hand, the use and preservation of land, territories and resources. On the other, these have affected the working relationship between indigenous peoples and peasants who produce for themselves and local markets, and large landowners who focus on making profits in the international market.

Furthermore, globalization has brought to the foreground once again the exploitation of raw materials in the region for export to the world economy, jeopardizing the survival and self-determination of indigenous peoples by dispossessing them of their ancestral lands, territories and resources. In practice, these developments have had a negative impact on indigenous peoples by enabling new privatizations and extractive projects by national or foreign companies on their lands, territories and resources without their prior consultation or consent. For these and other reasons, in the last three decades indigenous organizations, authorities, and social and political movements have exerted pressure on regional, national and international scales to earn for themselves the recognition and implementation of their land, territory and resource rights.

Fifteen of the 25 countries that have ratified ILO Convention 169 are in Latin America and the Caribbean. Countries like Argentina, Chile, Colombia, Costa Rica, Ecuador and Bolivia have reformed their political constitutions to incorporate international conventions and treaties on indigenous peoples’ rights, and in several cases “even recognize the collective nature of indigenous people (an essential aspect of the right to land)” (Aylwin, 2014, p. 281; 2007, p. 2).

These reforms recognized the multicultural, plurinational, or pluriethnic nature of the State (e.g. Colombia, México, Perú, Bolivia, and Ecuador); the customary law of indigenous peoples (e.g. Colombia, México, Perú, and Ecuador); their rights to political representation (e.g. Colombia and Venezuela); and the right to self-governance or autonomy in different ways such as “reserves, indigenous territorial entities, indigenous territorial circumscriptions and municipalities” (e.g. Bolivia, Ecuador, Panamá, México, Perú, and Nicaragua) (Aylwin, 2014, p. 77).

Three kinds of self-governance or autonomy operate in the region: regional, municipal and territorial. An example of the first is the creation of the North and South Caribbean Coast Autonomous Regions in Nicaragua, the second is exemplified by the “indigenous municipalities” of Bolivia and Ecuador, and an example of the third is the “indigenous *comarcas* in Panamá, the indigenous reserves (*resguardos*) in Colombia, communal lands of origin in Bolivia, and communal titles and governance institutions in Nicaragua. In Nicaragua, “21 collective land titles have been approved, recognizing that 30% of the country’s territory is under the administration of communal/territorial indigenous governments” (Feiring, n.d., p. 63).

Case Study: Conflicts due to extractive industries in Latin America

The reversion to economies dependent on exportation of raw materials has enabled Latin America to receive a significant percentage of the world’s direct foreign investment and mining exploitation projects. The region accounted for 30% of global direct foreign investment in mining in 2013 and between 30% and 40% of the world’s gold and silver projects. As for copper, ECLAC (2015) notes that the region received more than 50% of projects globally, with Perú and Chile being especially prominent.

Map 1. Latin America and the Caribbean: conflicts due to extractive, mining, and hydrocarbon projects in indigenous territories 2010-2013.



Source: Economic Commission for Latin America and the Caribbean (ECLAC), based on the registry of extractive industry projects in indigenous territories. Support Project for the United Nations Special Rapporteur on Indigenous Peoples, University of Arizona. Cited in Altomonte and Sánchez, 2016: 226. *Note:* The boundaries and names that figure on this map do not imply support or official acceptance by the United Nations.

Case Study: Wixárika (Huichol) people in México

The Wixárika (or Huichol to use the Spanish name) people number about 44,000 and live in central western México in the states of Jalisco, Nayarit, Durango and Zacatecas. The semi desert of the northwestern part of the state of San Luis Potosí, known as Wirikuta, is a sacred place for the Wixárika and an integral part of their cosmogonic worldview, being the origin of creation and the home of the Cerro Quemado volcano where they believe the sun was born. Each year Wixárika communities go on a pilgrimage to Wirikuta, making the same journey as their spiritual ancestors and performing a ritual in which they consume the peyote cacti that grow in the area to achieve another level of spiritual communication and vision. Aside from its cultural and spiritual importance for the Wixárika, Wirikuta is home to a high biological diversity of different species of cacti, golden eagles, and endemic flora and fauna that are at risk of extinction. Furthermore, Wirikuta is an area rich in deposits of gold, silver and other minerals.

This natural and cultural wealth has been the focus of conflicts between the Wixárika people and various transnational mining companies mainly from Canada. In 2010 the government granted 22 concessions to the Canadian company First Majestic Silver Corp for 6,326 hectares, 70% of which is located within the Wirikuta Reserve where it is illegal to do polluting activities. In 2011 the government awarded another concession for 59,678 hectares within the Wirikuta Natural Protected Area – almost half their whole territory – to the Canadian company Revolution Resources for the Universo megaproject. These actions entail pollution risks for the water sources used by the Wixárika and other local peoples and may destroy the sacred sites of Wirikuta and the Cerro Quemado through surface silver and gold mining.

The Wixárika people began a path of mobilization, awareness raising, advocacy and lobbying around the world to get the Mexican government to revoke the mining concessions and to respect the 2008 Pact for the Preservation and Development of the Wixárika Culture and to implement the San Luis Potosí state government's Natural Protected Area Management Plan. The management plan stresses that "sustainable use of natural resources to guarantee a fair share for the Huichol people must be ensured, and it is prohibited to dump polluting waste and alter the landscape and surface and underground water courses." (Proceso 1805) The Wixárika complain that local and federal officials did not conduct prior consultations and that by awarding mining concessions, "they have not properly taken into account the environmental or cultural value of the Wirikuta region." For them, defending Wirikuta is a fight for the region's biological balance and the preservation of the whole planet.

Case Study: Agribusiness affecting peoples in voluntary isolation

Ayoreo-Totobiegosode people in Paraguay

The indigenous Ayoreo are the last uncontacted people in the south of the American continent outside the Amazon. The Totobiegosode are the most isolated subgroup among the Ayoreo people, and they live in the Chaco, a large expanse of forest that extends from Paraguay to Bolivia and Argentina. The Ayoreo-Totobiegosode have maintained an autonomous lifestyle and hunt animals, sow and harvest plants and wild honey, and use forest materials to build houses and make clothes and tools. However, the Ayoreo-Totobiegosode have been threatened by outside forces, most recently the growth of the cattle frontier in western Paraguay and destruction of forests that support the people. In 1979 and 1986, for example, members of the U.S. New Tribes Mission (NTM) organized “manhunts” to forcibly expel Ayoreo-Totobiegosode people from the forest. Several Ayoreo-Totobiegosode died from disease during these incidents following initial contact.

The Chaco area of Paraguay, where the Ayoreo-Totobiegosode people live, has the highest rates of deforestation in the world. This is because, despite the suspension of their licenses, three companies including Yaguarete Porá from Brazil have appropriated the land, territories and resources of the Ayoreo-Totobiegosode people. Currently, one of the greatest threats is Yaguarete Porá’s plan to deforest the heart of Ayoreo territory to introduce thousands of heads of livestock, leaving a small section as a private natural reserve.

For these reasons, contacted Ayoreo-Totobiegosode members have organized themselves for over two decades to avoid further dispossession of their land, territories and resources. According to Tagüide Picanerai, spokesman for the Totobiegosode community, they hope to recover and preserve the territories that have been stolen from them. In 2016 the Inter-American Commission on Human Rights ordered injunctive relief and asked the Paraguayan State to curb tree felling in the Chaco to “avoid the continuity of deforestation in recognized territory and prevent third parties from entering this land, one of the last untouched areas of the Paraguayan Chaco.” The government and the Ayoreo-Totobiegosode have begun to engage in dialogue on how to protect their territory through land titling and regularization but have not come to any agreements to date.

Case Study: Belo Monte Dam in Brazil

The Brazilian government is in the last phase of building the Belo Monte hydroelectric dam in the Xingu River in the Amazon. Belo Monte is part of the Growth Acceleration Program, which entails building several dams and roads in the Amazon (Survival International, 2017a). Upon completion, Belo Monte will be the third largest dam in the world, larger than the Three Gorges dam in China in both size and volume. Costing at least \$13 billion and with a production capacity of 11,233

MW, the dam is estimated to displace at least 20,000 indigenous persons along the Xingu River in the state of Pará. It jeopardizes the territories, water sources and fish stocks that sustain the local peoples, such as the Kayapo, Arara, Yudjá, Araweté, Kayapo, Asurini and Parakanã peoples. Further, it threatens the well-being of other uncontacted peoples by destroying their territories and introducing new illnesses against which they have no immune defenses.

The Kayapo have opposed the dam for 30 years, concerned that the project's approval will open the door to many more dams in other Amazonian rivers such as the Tapajós, Teles Pires and Araguaia-Tocantins, which will transform the rainforest and their land, territories and resources. At the end of 2016, the Inter-American Commission on Human Rights agreed to consider a complaint claiming that the Brazilian government and Norte Energia, the owner of the dam, failed to take measures to protect the indigenous communities affected by its environmental impacts (Watts, 2016). Local and international organizations have called for the project license to be suspended, as indigenous peoples were not consulted and studies on the environmental impact are incomplete (Survival International, 2017a).

Russia¹⁷

Land rights guaranteed by federal law and their non-implementation

Rights of indigenous minority peoples of the North, Siberia and the Far East are reflected in particular in the federal laws No. 166-FZ *"On fishing and conservation of aquatic biological resources"* of 22 December 2004, *"On hunting and the preservation of hunting resources"* and *"On introducing changes to certain legislative acts of the Russian Federation"* dated 24 July 2009, No. 209-FZ, as well as the Land, Forest, Water and Tax codes and other laws. These laws specify their application as "the North, Siberia and the Far East." As a result, certain rights do not apply to indigenous minority peoples of the Caucasus, the Volga region and North-West of Russia included in the Unified Register of indigenous minority peoples of the Russian Federation from 2000.

The 1999 federal law "On guarantees of rights of indigenous minority peoples" stipulates that in places of their traditional settlement and traditional economic activities, indigenous peoples and their associations have the right to use lands of various categories free of charge as needed for the exercise of their traditional subsistence activities and traditional crafts. The law also guarantees the rights of indigenous minority peoples to participate in controlling the use of such land, e.g. by extractive industries, to participate in decision making regarding the protection of their original habitat, traditional nature resources use and way of life, including through participation in environmental and ethnological expert studies of extractive projects in places of their traditional residence and traditional activities.

¹⁷ See <https://www.indigenouspeoples-sdg.org/index.php/english/all-resources/ipmg-position-papers-and-publications/ipmg-reports/national-regional-reports>.

It further secures their right to participate in decision making regarding land allocations for the construction of facilities unrelated to traditional economic activities in places of their subsistence activities. The section “On Guarantees” stipulates that indigenous peoples have the right *“to be compensated for damages caused to their primordial habitat [...] by economic activities of organizations of all forms of ownership or physical persons.”*

In 2001 Federal Act No 49-FZ “On Territories of Traditional Nature Resource Use of Indigenous Minority Peoples of the North, Siberia and the Russian Far East” was adopted. According to this law, so-called Territories of Traditional Nature Resource Use (TTNRU) can be established in places of traditional residence and economic activities of indigenous peoples by decision of federal, regional and local authorities on the basis of proposals from members of indigenous peoples and their communities. Since 2001 more than 500 TTNRU were created by regional and local authorities, but none of them is entirely legitimate, because, in accordance with the Land Code, *“the boundaries of TTNRUs are to be determined by the Government of the Russian Federation.”*

Since 2001 the federal government did not “determine” the boundaries of any TTNRU that regional and local authorities had established and did not create any TTNRU itself. Of the 26 regions inhabited by indigenous peoples of the North, TTNRU were established only in the following five: Nenets and Khanty-Mansi Autonomous Areas (okrugs), Irkutsk region (oblast), Sakha Republic (in Russian: Yakutia) and Khabarovsk territory (krai). In the other regions, authorities routinely deny indigenous peoples’ requests for the formation of TTNRU, usually citing regulatory gaps in the procedure for setting them up.

Unfortunately, the dismantling of the indigenous peoples’ rights framework began simultaneously with its adoption. In 2001 the same year that the federal parliament adopted the law on Territories of Traditional Nature Resource Use, it adopted a new version of the federal Land Code. The new version failed to recognize indigenous land tenure by excluding a provision recognizing the right of indigenous peoples to use land free of charge for the purpose of exercising their traditional subsistence activities. After 2012 this process has been accelerated by numerous changes to the Land Code of the Russian Federation and to other regulatory and legal instruments, as well as their being disregarded or interpreted in bad faith by executive powers.

A federal action plan adopted by the federal government envisaged law and policy reform to bring coherence to legislation affecting indigenous land rights and to move forward the process of demarcating indigenous “Territories of Traditional Nature Resource Use”. The 2009-2012 Action Plan for the implementation of the Federal Outline for the Sustainable Development of Indigenous Minority Peoples of the North, Siberia and the Far East foresaw the closing of the regulatory gaps as well as the formation of a pilot TTNRU of federal status. Sadly, the federal action plan’s targets all remain unfulfilled pledges.

In 2015, with several legislative amendments, indigenous peoples' rights to land underwent significant changes towards their extinguishment.

Since 2015 major changes in the Land Code have weakened indigenous peoples' right to participate in decision making regarding their ancestral land and limit entitlement to compensation for expropriation of property, which does not include customarily used or inhabited land. Recent appeals against the issuing of licences over indigenous land to oil companies have been rejected, because the federal government has never formally designated the land as indigenous "Territory of Traditional Nature Use," something it should have done according to the law.

Disregard for indigenous land rights is also reflected in programs like the "Far Eastern Hectare." Through the program, the government tries to stimulate migration from central Russia to the sparsely populated Far East by handing out free land, very often at the expense of indigenous peoples and without their consent and regard for their legal rights.

Allocating land for resources extraction on territories traditionally occupied by indigenous peoples has become much easier

The authorities, through a simple decision, can seize land plots that have been licensed to subsoil users, such as extractive industries, without bidding. Consent of the land users is not required in these cases. If the land plots had been used by indigenous peoples based on customary land rights without formal recognition and if they are not registered in the unified state register of real estate, they will not be compensated. In accordance with the new rules for land withdrawal, users who had been using the land free of charge are not entitled to compensation.

Frequent changes in rules to access hunting, fishing and gathering resources

Indigenous peoples' right to access and use resources is affected by a host of laws and regulations on hunting, fishing, on non-profits, taxation and others. While a fundamental legal principle is that indigenous peoples have the first choice right to fishing and hunting grounds and should be allowed to hunt and fish without applications, permits and vouchers, the reality is they have to cope with a jungle of regulations that heavily restrict their ability to feed themselves according to their customs and traditions.

A typical line of conflict in all those cases is that indigenous communities argue according to the letter of the law, while administrations refer to the provisions of regulatory instruments passed by sectoral agencies. In most cases, courts will rule in favor of the latter.

A root cause of the legal stagnation and slow erosion of indigenous rights is the successful lobbying by local vested interests and states. Any positive change would require recognition that indigenous peoples are first and foremost collective rights-holders, implying a profound change of political culture. Overall, the current authoritarian direction of Russian politics is not conducive to such a change needed for a genuine improvement of the land rights situation.

Case study: Violations of right to priority access to the animal world

After article 39 of the federal law “On fishing” giving indigenous peoples non-competitive access to fishing areas was repealed in 2008, agreements for provision of fishing areas began to be concluded only on the basis of commercial tenders for the right to lease up to 25 years. The law “On hunting” as adopted in 2009 likewise allowed access to hunting areas only on the basis of commercial tenders for 49-year leases. Indigenous communities now are forced to participate in commercial tenders for their own traditional hunting grounds and to try to win against commercial hunting businesses. As indigenous communities cannot compete financially, they have not been able to win tenders. After these changes, a huge number of fishing and hunting grounds were grabbed by private businesses.

It is worse in the area of fishing, fish being the staple food for most indigenous peoples. The framework laws on indigenous peoples recognize the concept of “traditional fishing” without the need for permits and applications. However, in many regions, indigenous peoples are subject to administrative regulations that prescribe exactly how and when they have to apply, who can fish, how much, what species, where, with what gear and so forth. Consequently, indigenous peoples freely exercising their right to traditional fishing in order to feed themselves and their communities are, in practice, increasingly a rare exception.

Case Study: Changes regarding compensation for losses due to withdrawal of land plots from TTNRU

A norm has been removed from Article 12 of the law, which had stipulated that in case of land withdrawal, the state had to provide equivalent substitute land and natural objects to the indigenous peoples affected. Article 12 is now called “Withdrawal of land plots and other distinct natural objects located within the boundaries of Territories of Traditional Nature Resource Use.” Article 12 reads: *“The withdrawal of land plots and other distinct natural objects located within the boundaries of Territories of Traditional Nature Resource Use for state or municipal needs is carried out in accordance with the civil and land legislation. Persons belonging to minority peoples, and obshchinas of indigenous peoples are provided with compensation for property taken from them for public or municipal purposes.”* However, their ancestral lands, which they customarily use free of charge, are not considered property, and thus are not entitled to compensation.

Thus, with the amendments to the land legislation and the federal law on TTNRU, the government has completely abolished the rights of indigenous minority peoples to free-of-charge land use in places of their traditional residence and economic activities, to participate in oversight of these territories, and to be compensated for damage to their ancestral lands set out in the federal law “On guarantees of the rights of indigenous minority peoples.” It has also withdrawn from its role in the interaction between indigenous communities and business enterprises for whose benefit land is allocated in indigenous territories, based on licenses issued by government agencies.

These changes breach both the government's own duty to protect indigenous peoples' land rights and the corporate responsibility to respect them. These undermine the protection of indigenous peoples' ancestral territories and traditional ways of life enshrined in Article 72 of the Russian Constitution. Further, they violate international principles and standards reflected primarily in ILO Convention 169 and UN Declaration on the Rights of Indigenous Peoples as well as in other international instruments.

Indigenous Peoples and Migration and Urbanization

Multiple pressures (growing populations, lack of social services and job opportunities) are accelerating migration to cities by indigenous peoples. In some regions, including North America, Latin America and Caribbean and the Pacific, a majority of indigenous peoples live in urban areas. However, important linkages are kept with home villages and indigenous cultures persist and are revitalized even for those living in cities.

Indigenous Women, Youth and Children

Indigenous elders, women, youth and children are important members of indigenous societies for their roles in caring and managing their land and waters and for their contributions in fostering community health, cultural vitality and community solidarity. Their distinct knowledge, innovations and practices are central to intergenerational cultural transmission and renewal. At the same time, they also experience specific problems and vulnerabilities due to age or gender discrimination and require focused attention and support.

Indigenous women engendering nature and culture in Latin America and Caribbean

In Latin America and the Caribbean, indigenous peoples are custodians of complex ecosystems and a wide range of natural resources, including water sources, forests, arable land, jungles, mountains, amphibians, birds, mammals, herbs, mineral deposits, and others. For example, the Rivas department located in the Pacific southern region of Nicaragua is home to four indigenous groups of Nicarao, descendants of the Nahuátl and Chorotega ethnic groups of México and Guatemala, with an estimated population in 2005 of 11,113 people. The area has timber resources and tourist attractions. To manage their forests, the Nicarao have rangers who fight fires, illegal felling and out-of-season hunting. Forest management is also closely linked to their traditional knowledge, practices, and life ways. In this regard, the differential role of Nicarao women is particularly notable, as they grow trees, vegetables, and medicinal plants to cure illnesses, preserve and develop their culture, and provide food security for their families and communities.

Likewise, the Zenú women in Colombia use their critical knowledge of natural resources and cultural practices in the meaningful space of the front yard, or *patio*, which survives despite fragmentation of their ancestral territories over the past three centuries. The Zenú de San Andrés de Sotavento reserve is located in the Caribbean region of Colombia. Although the Zenú people possessed a land title for 83,000 hectares of land dating from the colonial era, their territory was broken up, first by the Spanish State and later by the newly established and strengthened Colombian State in the republican era.

Zenú women interact in three fundamental ways with the biodiversity of their land to contribute to the survival and well-being of their people: 1) the Zenú front yard is used for raising small animals, fruits and vegetables for food and to involve children in learning activities; 2) dozens of wild and cultivated medicinal plants are used to support the indigenous health system; and 3) wild palms for the production of cultural materials such as construction goods, dyes, ornamentation, firewood and artisanal creations incorporating centuries-old patterns. Such practices are vital contributions to sustainable agriculture with organic composting, seed selection for greater biodiversity, auto-consumption rather than market dependency, and support for bee populations, among many benefits. They also help maintain, reproduce and transmit Zenú identity and culture to future generations.

Land loss in Asia and fate of indigenous women

Indigenous women bear a heavy brunt of land loss and denial of access to forests and other natural resources. They have a close relationship with the land as primary providers of food for the family and the community. Although women and men are both involved in agriculture and other productive work, women in general make up the main labor force in the farm. For instance in Nepal where 38% of the population are indigenous peoples, women make up two-thirds (66%) of the agricultural labor force. Despite this huge number, a mere 8% of them are estimated to own land.

Traditionally, indigenous women had equal access to and control over collective land and natural resources; some indigenous communities in South and Southeast Asia have land ownership rights. The women have conserved and propagated many varieties of seeds and have detailed knowledge about the forest products they collect and use. They are the keepers of very varied knowledge systems, including of ecosystems management and technologies, locally-adapted seed varieties and medicinal plants. For example, Karen women in Thailand continue to grow at least 40 different food varieties in their swidden fields.

However, land and forest loss and diminishing control over shared resources resulting from government sponsored development projects are undermining their role and contributions to sustainable development and food security. Increased resources scarcity, environmental hazards and disasters further impact their reproductive health. They are forced to seek other livelihoods away from their community, becoming more vulnerable to sexual and other forms of violence.

The loss of access to resources increases indigenous women's economic dependence on men and weakens their status in society. Stories documented by Asia Indigenous Peoples Pact (AIPP) from indigenous women in Cambodia, India and Indonesia showed that it is the indigenous women who suffer severe impacts of dispossession and displacement from their land. "Almost entire

communities were forcibly transformed economically, from land owners and self-sufficient forest gatherers and farmers to low-paid factory workers” They could not go to the forest to gather herbs, tend to their livestock, work in the fields, or collect clean water due to harassment by the company security forces.

Northeast India: What future for indigenous youth?

The general trend among the indigenous youth is that they are leaving their home and community for education, work, or due to conflict. They are uprooted at a young age from their homes for schooling in the urban centers and towns. And at a later age, because of inadequate higher education and job opportunities, a large number move to the cities and metros. In this process they lose out on intergenerational transfer of indigenous knowledge and values from their parents and elders.

Prevailing conflicts in some places such as Assam, Nagaland and Manipur states in the Northeast region of India also push the youth to leave to try to make a living elsewhere. Life prospects for youth have become complex with few job options at home, rising expectations and exposure to other values including consumerism.

However, despite the difficulties confronting the youth in particular and indigenous communities in general, their strong connections to their lands and territories, culture and institutions continue to be important, including for the youth diaspora. Even if they live far away in the big cities, they always come home for the important events as members of the community.

The Tangkhul Naga from Northeast India, for instance, maintain their identity even in the cities and bring up their children in their own culture and language. If they lost their territories and villages, where would they return to bring their children home? They need their villages for their identity. For the Tangkhul, their identity is intact because they have their home villages. Security of land and territories is vital not just for those living in the village for their livelihood but for the identity of indigenous peoples wherever they live. It means their cultural survival.

North America: Disproportionate impacts on women and children

Pollution and Exposure to Toxics

Extractive industries and the loss and/or contamination of traditional lands and territories have cascading impacts on the social, political and cultural fabric of indigenous communities that weigh most heavily on the rights and quality of life of indigenous women and children. The full intergenerational impacts are still unknown. With regards to exposure to environmental toxins, there is a growing body of evidence that women’s reproductive health is uniquely impacted. In the case of the Navajo Birth Cohort Study, results show that women exposed to uranium contamination can pass on the exposure to their fetus, resulting in children being born with elevated levels of uranium in their bodies.

In a 2012 submission to UN Permanent Forum on Indigenous Issues Expert Group Meeting entitled “Indigenous Women and Environmental Violence,” authors Andrea Carmen and Viola

Waghiyi argued that, “the severe and ongoing harm caused by environmental toxics to Indigenous women, girls, unborn generations and Indigenous Peoples, requires immediate attention. These toxics include pesticides and other Persistent Organic Pollutants, as well as chemicals produced by extractive industries, military installations and weapons testing, waste dumping and incineration, industrial processes, all phases of uranium mining, milling and waste storage.”

Physical and Sexual Violence

In addition to the threats from toxic exposure, indigenous women are disproportionately affected by physical and sexual violence. In Canada, the epidemic has led to a movement for justice for Missing and Murdered Indigenous Women (#MMIW). Sex trafficking of indigenous women, girls, and children have been shown to rise around energy extraction activities, which bring workers from all over to otherwise rural areas, housed in what has been dubbed “man camps”. In *Out of Sight, Out of Mind: Gender and Indigenous Rights and Energy Development in Northeast British Columbia, Canada*, Amnesty International documents how energy development and the accompanying man camps has led to increased costs of living, drug and alcohol use, racism, and violence against indigenous women and girls.

In the U.S., most Indigenous Tribes lack the resources and the jurisdiction to prosecute non-Indians for criminal acts including sexual violence and exploitation linked to extractive enterprises despite the reauthorization of the Violence Against Women Act (VAWA) on March 7, 2013, which included a new section, title IX “Safety for Indian Women”. This is because the new prosecutorial authority afforded by the addition of title IX pertains only to federally recognized tribes with a federally recognized land base, and only when the crime is committed within that recognized territory. This has created a breeding ground for a social endemic that has radically transformed the quality of life for indigenous women and children in impacted indigenous communities.

Crisis of youth suicides and self-harm

As a result of resource colonization in both U.S. and Canada, indigenous peoples continue to lose their sacred sites, traditional food systems, and biologically diverse ecosystems. The consequences include increased inequality, exposure to environmental toxins, loss of cultural heritage and practices, and loss of identity—with particularly dire impacts on indigenous youth and young adults. In Canada suicide and self-injury have been identified as the leading causes of death for indigenous youth and adults up to age 44. The suicide rate for First Nations males aged 15–24 years is 126 per 100,000 compared to 24 per 100,000 for non-Aboriginal males. The First Nations female suicide rate is 35 per 100,000 compared to five per 100,000 for non-Aboriginal females. For Inuit, these numbers are comparable.

In 2016, Eliza Racine analyzed comparable data from a 2012 Indian health service study that showed U.S. Native American youth are “three and a half times more likely to commit suicide compared to other groups”. In 2015, the Pine Ridge reservation declared a state of emergency when 14 youth took their lives within an 8 month time-frame with many tribes seeing the same epidemic and rise in suicide and self-harm leading to death. Despite this, funding to address this epidemic has been sparse, with only 43 federally recognized tribes able to access funding that has been insufficient for undoing generations of trauma.

The social and cultural fabric of these children’s communities have been severely disrupted, leading to the sense of hopelessness that is leading so many young to take their lives. In 2015

Mark Kaplan, a professor at University of California Los Angeles (UCLA), co-authored a study that determined that poverty closely related to suicide rates. On the international level, it is widely accepted that biodiversity loss is linked to conditions of poverty. Indigenous peoples offer solutions that demonstrate how both issues can be tackled simultaneously with investment in nurturing traditional ecological practices and knowledge, or utilizing cultural frameworks to address socio-economic problems. To understand their alternatives, it is important to understand the relationship indigenous peoples have to their landscapes and the unique impacts they suffer from with the loss of biodiversity.

Indigenous Land, Environment and Human Rights Defenders

Being at the frontline of defending local ecosystems and ways of life is increasingly exposing indigenous peoples and local communities to human rights violations, as evidenced by community leaders and activists harmed while defending their communities and forests. In 2016 more than 1,000 people in 25 countries were murdered, harassed, imprisoned or intimidated while fighting for their communities' rights. Of 281 recorded deaths, half involved people who were defending their land and homes.

According to Global Witness' Defenders of the Earth report, nearly 40% of slain defenders of human rights were indigenous peoples defending their rights to their land and the environment. In Brazil alone, 50 environmental defenders were murdered in 2015, the highest number in any country in the world for that year. In Colombia, the public ombudsman reported more than 100 killings of human rights defenders in 2016 and a further 52 deaths in the first six months of 2017.

On top of killings, violent land conflicts in deforestation zones are linked to attacks on forest communities. In Indonesia, human rights and land defenders suffer assaults causing physical harm and psychological trauma. Vocal leaders who challenge illegal logging, monocultures, mines, dams or road projects are the subject of extrajudicial killings or murder by henchmen, gangsters and goons working for farming and plantation interests or narco-agricultural cartels.

Worldwide, the total number of victims is probably much higher as reliable information on crimes against human rights defenders is not available for many countries, and the shocking figures available are likely to be underestimates. Local journalists who seek to expose illegal deforestation, rights abuses and links to organized crime receive death threats to their families, leading to a 'conspiracy of silence' in local and national media (e.g. in Paraguay). Other common tactics include the malicious use of lawsuits and unfounded criminal procedures against indigenous defenders that Canadian, U.S., and European transnational companies have frequently filed and funded to hinder or forestall these leaders' activism and advocacy.

The increasing violence against indigenous human rights and environmental defenders is a global trend, as underlined by UN Special Rapporteur on the Rights of Indigenous Peoples Victoria Tauli-Corpuz in her latest reports to the Human Rights Commission and the General Assembly. As the underlying causes of land conflicts remain unresolved, the number of indigenous leaders killed continues to grow.

IV.

Underlying Issues



A review of the regional reports on the state of land, territories and resources of indigenous peoples around the world has highlighted the following significant issues:

Absence of statutory recognition and legal personality as indigenous peoples

- Legal recognition of indigenous peoples in many countries in Asia and Africa continues to be contested and unresolved. This lack of legal standing and legal personality constitutes a major challenge towards the pursuit and enjoyment of collective and individual rights as indigenous peoples.
- Without legal standing, indigenous peoples are denied rights to their land, territories and resources, cultural identity and recognition, self-determined development, access to justice and other human rights.

Continued discrimination and marginalization of indigenous peoples in decision making

- Underlying biases towards settled agriculture in modern-day States has resulted in serious discrimination against hunter-gatherers and forest peoples in Africa. The same is true for pastoralists and shifting cultivators in Southeast Asia.
- Nation-building has been pursued at the expense of indigenous peoples and cultural diversity, where indigenous rights are considered as security threats to the unitary state.
- Lack of citizenship is experienced by indigenous groups and individuals in Thailand, Namibia, Cameroon, some suffering modern-day slave-like conditions (Batwa, San).

Lack of secure land tenure continues to be the main problem facing indigenous peoples around the world

- The formal recognition of indigenous peoples' land rights and security of tenure over their customary lands continues to be a major challenge.
- Displacement of indigenous peoples from their land, territories and resources is continuing, particularly by national parks and protected areas in Africa and by agricultural expansion in Latin America.
- Large-scale land acquisition for oil palm expansion in Southeast Asia is a major threat which is spreading to all regions.
- There has been a rollback in laws in some regions (Latin America and Caribbean) and even extinguishment of indigenous rights in Russia.

Legal pluralism and conflicting land laws

- The parallel co-existence and conflicting practice of international law, national legislation and indigenous customary law is a reality in the countries where indigenous peoples live. The reality of legal pluralism requires national mechanisms for fair, transparent, independent, impartial and open adjudication of the rights of indigenous peoples pertaining to lands, territories and resources.
- Treaty rights of indigenous peoples in the USA and Canada have been continuously abrogated, leaving only small pockets of lands in reservations.
- The advent of neo-liberal laws and policies in the 80s and 90s accelerated takings of customary lands and resources, the break-up of collective tenures in favor of individual ownership, and the privatization of common resources for corporate investments in minerals, energy, water and forests. This has exacerbated the highly unequal tenures in Latin America and extreme concentration of ownership of land, territories and resources in the hands of a few. This situation has triggered social movements for land and indigenous peoples' rights in many countries.
- In the smaller Pacific island states, respect for customary land is recognized by law. Policies to promote individual titles recognizing family ownership in Cook Islands and New Zealand has led to a problem of land fragmentation and cross-ownership and uncertainty over land investments.
- Indigenous and local communities' customary lands cover more than 50% of the world's area, but only 10% of these ancestral claims are legally recognized. It is estimated that over 90% of land in Africa is undocumented.

International customary law and jurisprudence

- International law in recent decades has affirmed indigenous peoples' rights to lands, territories and resources based on "native title" or aboriginal and customary law. But many national laws on land, territories and resources, including forest laws affecting indigenous peoples are carry-overs from colonial rule, which subsume customary lands under State or public lands.
- Jurisprudence from international, regional and national courts has further clarified the specific applications of indigenous land rights vis-à-vis national laws, many of which were promulgated during the colonial period and fail to apply emerging international customary law on indigenous peoples' rights.

Economic growth and impoverishment of indigenous peoples

- Mainstream development approaches are not human rights-based and the practice of strategic, environmental, social and cultural impact assessments have been seriously flawed or ineffective in protecting indigenous peoples' rights and welfare.
- Water rights have become a major catalyst for modern conflicts in an era of climate change and growing concern for the unsustainable overuse and ongoing contamination of the world's precious and limited aquifers. Up to 36% of American Indian and Alaska Native homes lack access to adequate sanitation facilities and 6.5% of those homes lack access to safe drinking water compared to less than 1% of American homes. And 46% of systems serving indigenous populations did not meet health safety requirements.
- In Canada 160 drinking water advisories warning residents not to consume the water due to contamination in 114 First Nation communities were reported in 2016. Other First Nations communities lack any running drinking water at all, relying only on trucks and cisterns from unregulated water sources, while many First Nations households rely on well water, which is often contaminated.
- State policy privileges industrial agriculture and commercial investments over traditional livelihood systems like hunting, gathering, rotational farming and pastoralism. Industrial tree plantations for pulp and paper have displaced traditional occupations such as resin tapping and harvesting in Indonesia.
- In Latin America, there has been a return to economies dependent on exportation of raw materials, posting significant global investment in mining projects; in 2015 the region received more than 50% of projects globally, Peru and Chile being especially prominent.
- In Russia, several legislative amendments have severely undermined indigenous peoples' land and traditional resource use rights towards their extinguishment. This includes lack of compensation for loss of lands under traditional resource use.

Land conflicts and violations of free, prior and informed consent

- Violations of indigenous peoples' customary law and tenure rights to land, territories and resources are a primary source of conflicts on indigenous lands in all regions. These underlying conflicts in laws manifest in high numbers of land conflicts on indigenous peoples' homelands.
- Government economic development plans and private sector investments on energy, mining and extractive industries, agricultural expansion, forests and conservation, tourism, infrastructure and investment, including "green economies" are seriously impacting the land, territories and resources of indigenous peoples.
- Accountability of governments and businesses to uphold human rights obligations and commitments is a major challenge.
- Despite policy commitments by governments and the private sector to respect Free, Prior and Informed Consent, evidence from community experiences from all the world highlight its non-implementation, making FPIC a paper promise which is not being honored.

Serious impacts of land and water rights violations

- The impacts of extractive and energy industries—mining, hydrocarbons, dams—continue to impose serious impacts on indigenous peoples and communities in all regions and for the rest of the world.
- Indigenous peoples in voluntary isolation in Latin America are in severe danger of their territories being overcome by commercial developments such as oil, gas and agricultural expansion in Brazil, Peru and other Amazon basin countries.
- Exclusionary or fortress conservation which breaks the ties of indigenous peoples with their lands has led to extreme poverty for displaced communities like the Batwa and other Pygmy peoples in the Congo Basin.
- Alberta's tar sands produce some of the world's dirtiest oil with 3-4 times greenhouse gas emissions per barrel than the production of regular crude oil. Due to its size, scale and location, the tar sands also represent a global threat. Canada's tar sands ranked fifth of the 14th largest carbon intensive projects in the world.
- Sacred sites of indigenous peoples, encompassing places of creation, renewal, coming of age, passage and other cultural rites are not respected by economic and other infrastructure developments, causing violent disruption of cultural, ceremonial, medicinal and traditional subsistence practices. Many sacred sites are land formations and waterways containing significant ecosystems and cultural sites that bind indigenous peoples to their ancestral territories.

Lack of access to justice and adjudication mechanisms

- In recent years, substantial jurisprudence has emerged from constitutional courts to strengthen human rights protections for indigenous communities and their rights to customary lands. Lack of law enforcement and irregularities in the implementation of existing legislation and absence of consultation and consent has led to a proliferation of human rights abuses and land conflicts over land, territories and resources between indigenous communities, corporations and various state agencies. As a last resort, indigenous peoples have gone to court to assert their statutory rights but also because states are not respecting and protecting customary laws.
- Indigenous peoples face serious obstacles in pursuing remedial measures and access to justice in national courts, eg. North America and Russia in the absence of clear and fair national laws and adjudication procedures. This is particularly difficult in addressing violations of treaty rights in the USA and Canada.
- Criminalization of indigenous peoples and human rights defenders—disproportionate numbers of indigenous human rights and environmental defenders are being killed because of their defense of lands and territories.

V.

Conclusions and Ways Forward



Indigenous peoples are at the frontlines of the global crises of poverty and marginalization, climate change impacts, biodiversity and cultural diversity loss.

In all global regions, they are among the most economically and socially deprived populations and politically marginalized in the countries where they live. Climate change impacts such as extreme weather events, drought, melting ice, sea water rise and species shifts are seriously impacting indigenous territories and ecosystems in the Arctic, Pacific, tropical forests, drylands and mountains, increasing the vulnerability of indigenous peoples.

Nonetheless, indigenous peoples secure most of the remaining biological and cultural diversity on Earth, being custodians of important ecosystems and species and cultural landscapes. Their lands and waters are major contributors to ecosystem and social resilience at this time of rapid global change.

Surviving at the frontlines of the social and ecological crises, indigenous peoples are also uniquely placed as central contributors to contemporary solutions and vital actors in the global transformation agenda on sustainable development, biodiversity conservation and climate change mitigation and adaptation.

Water Harvesting in the Sahel

Water is life for the diverse indigenous peoples living in the Sahel region and is at the center of social, cultural, economic, animal and botanical activity. Local indigenous techniques adapted to the local carrying capacity have been used successfully for countless generations to conserve and protect the soil and water. For example, Mossi farmers in Burkina Faso build rock bunds and stone terraces. The Dogon of Mali construct a basin system in the fields, which is effective in conserving rainfall. The Hausa in Niger's Ader Doutchi Maggia use rocks bunds and construct small weirs using sticks, grain stalks and earth to divert flood water over their fields. Farmers in the Yatenga region of Burkina Faso use a water harvesting technique called *zay*, which conserves and slows down excess run-off with the use of rock bunds. This system is used to help rehabilitate degraded, barren and crusted soils (Reij et al. 1988).



Stone bunds for soil and water harvesting in the Sahelian countries of North Africa.

Securing Collective Community Tenure Rights

Positive developments have been made in international human rights standards setting for the rights of indigenous peoples to lands, territories and resources, including regional human rights mechanisms in Africa and the Americas. The Permanent Forum on Indigenous Issues at its Seventeenth session in 2018 welcomed such positive developments, including the recent decision of the African Court on Human and Peoples' Rights in the case of Ogiek community in Kenya. The Forum encourages indigenous peoples and States to engage further with the regional mechanisms and implement their decisions effectively.¹⁸

National Human Rights Institutions addressing Violations of Land Rights of Indigenous Peoples

The ASEAN Intergovernmental Commission on Human Rights (AICHR) operates in Southeast Asia, but it does not have the mandate to receive and act on human rights violations in the region. It is national human rights institutions (NHRIs) that are increasingly addressing violations of the land rights of indigenous peoples. Indigenous communities and human rights organizations have used NHRIs as a channel for filing complaints.

In Malaysia, between 2005 and 2010, the National Human Rights Commission of Malaysia (SUHAKAM) received over 1,100 complaints alleging various forms of human rights violations to lands under native customary rights. Sabah had the highest number at 814, followed by Sarawak at 229, and 45 in Peninsular Malaysia. In 2011, SUHAKAM launched its first national enquiry on land rights of the Orang Asal. The Commission made significant recommendations based on the UNDRIP, including FPIC to improve the current status of land rights for indigenous peoples in Malaysia.

Similarly, the National Human Rights Commission of Indonesia (Komnas HAM) conducted its first national enquiry into the violation of indigenous peoples' land rights in 2014. Komnas HAM collected around 140 formal complaints from seven regional hearings, highlighting the issue of unauthorized land grabbing by big timber companies with major interests in oil palm plantations. Numerous companies were operating without permits, using the police to brutalize and intimidate indigenous communities. Moreover, the government has not registered the various indigenous peoples living in the forest. The Commission made various recommendations, including a licensing system for natural resource exploitation based on FPIC principles.

At the regional level, the 7th Regional Conference on Human Rights and Agribusiness in South East Asia¹⁹ issued a resolution calling for a range of measures aimed at securing real change in land tenure recognition and security. The resolution calls for accessible mechanisms to map and register customary lands, to provide clarity of ownership, for business models of plantations to stop pressures on communities to surrender their lands, both by promoting alternative production models and alternative financing models.

¹⁸ Permanent Forum on Indigenous Issues, seventeenth session, New York, 16-27 April 2018, draft report, Discussion on the theme "Indigenous Peoples' Collective Rights to Lands, Territories and Resources" (Agenda Item 8), para 3.

¹⁹ Press Release. Pontianak Statement. 24 October 2017. <http://www.forestpeoples.org/sites/default/files/documents/PONTIANAK%20STATEMENT%20ON%20HUMAN%20RIGHTS%20AND%20AGRIBUSINESS%20IN%20SOUTHEAST%20ASIA%20final%20with%20recs.pdf>.

A number of states have recognized the collective rights to lands, territories and resources with constitutional or legal protections or through adjudications, constructive agreements with indigenous peoples, and administrative programs. Countries that have taken steps in this direction include Bolivia, Ecuador, Aotearoa (New Zealand), Canada, Denmark, Norway, the Philippines, Indonesia and the Republic of Congo. In other countries, such as Colombia, Australia and U.S., tracts of lands and/or territories have been set aside for indigenous collective control. The Permanent Forum welcomed the progress made in those countries in that regard, while emphasizing that, even in those countries, a wide gap remains between formal recognition and implementation of laws and policies that are supposed to ensure these rights.

Actions by National and Local Governments

El Salvador has laws related to land access and conservation - e.g. Law on Natural Protected Areas (2005) and Basic Law on Agrarian Reform (1980) - but neither mentions indigenous peoples nor their rights over their land, territories and resources. Another example is the prohibition of metal mining in El Salvador, a country that became, in March 2017, the first country in the world to pass a law prohibiting all manner of mining activity due to environmental and health concerns (Natural, 2017).

While El Salvador has not ratified ILO Convention 169, it did vote in favor of the UN Declaration on the Rights of Indigenous Peoples in 2007. In 2014 the Legislative Assembly added Article 63 to the country's Constitution which recognized the existence of indigenous peoples in El Salvador and committed the State to adopting policies that will maintain and develop their ethnic and cultural identity, cosmovision, values and spirituality (Lemus, 2014). Furthermore, the municipalities of Izalco and Nahuizalco passed ordinances in 2012 and 2011, respectively, to officially recognize the indigenous peoples who live there; guarantee them a series of rights to self-determination, communal lands, culture and protection from discrimination; and to recognize their communities' ancestral authorities as "legitimate and valid representatives of their interests before the City Council" (Hernández Moncada, 2017, pp. 145-146).

State representatives in El Salvador also participated in advancing the elaboration of a National Plan of Indigenous Peoples around five main areas: strengthening internal indigenous structures; land, territory and autochthonous production systems; reforming the legal framework in accordance with international law on indigenous rights; intercultural policies for health, housing and education; and redirecting State institutions to adapt to the new relationship framework ("Presentan avances", 2016, by Betty Pérez, Coordinator of the Salvadoran National Indigenous Council [CCNIS for its Spanish acronym]).

Recent experience in the Colombia Amazon demonstrates that innovative partnerships between indigenous peoples, government land agencies and civil society organizations can help advance and unblock pathways to legally secure indigenous territories. In the case of the Uitoto (Muina+), more than 0.5 million hectares of old growth rainforest received title in 2017 under two Indigenous Reserve (*resguardo*) boundary extensions adjacent to a deforestation hotspot. This major achievement has been made due to concerted efforts seeking title extension made by the Resguardo Councils, the regional collective Association of Traditional Indigenous Authorities (CRIMA), using socioeconomic studies, surveys and demarcation work provided by NGOs, and with civil society advocacy support to press the National Lands Agency to fast track the application and remove institutional blockages.

With the support of civil society, the indigenous Amazonian Kayapo in Brazil have successfully conserved 105,000 square kilometers of tropical forests in a frontier zone characterized by heavy deforestation, through decades of fighting encroachment by illegal gold miners, mahogany loggers and ranchers. They also led an environmental movement to pressure the World Bank to stop loans for the construction of a mega-dam project on the Rio Xingu, which would have flooded and destroyed parts of their territory. This is an example of how building alliances with indigenous peoples and investing in the capacity building and empowerment of the rightful indigenous owners of the forest can result in large-scale conservation of the world's richest ecosystems.

Mobilization by indigenous peoples are important drivers for reform and transformation in many countries and regions.

Huni Kui Collective Action and Territorial Management in the Amazon

"We express our rejection of the threat represented primarily by illegal logging, narco-trafficking and the imposition of petroleum lots, forest concessions and the exploitation of other resources, as well as by road projects to our territories and the territorial Corridor. In this regard, we commit ourselves to strengthening our alliance to face these threats and we demand that the authorities of Perú and Brazil comply with the application of national laws and international instruments that guarantee our individual and collective rights, and environmental protection."

One response to the situation of external threats to indigenous territories was the mobilization by the Huni Kuĩ and other indigenous peoples who live in the Amazon along the Perú-Brazil border near the Brazilian state of Acre. Since 1983 the Huni Kuĩ have achieved the demarcation and legal recognition of three indigenous Kaxinawá Lands comprised of 32 villages with a population of 2,622 people. In 1996 the Forestry Agents (AAFI for their Portuguese acronym) began to undertake demarcation campaigns of indigenous lands. From these collective efforts, the Huni Kuĩ created their own Territorial and Environmental Management Plan containing aerial maps, descriptions of the diverse natural resources in their territory, their relationship with their surroundings, and guidelines for good governance practices.

As AAFI Josias Mana Kaxinawá said, through steps like creating the Plan, “We are taking care of the hunting, fishing, and other important resources for our survival and for a better quality of life. We are also diversifying our way of producing food, like, for example, the production of fruits, vegetables, and the raising of wild and domesticated animals within the villages. We are studying and understanding the environmental and indigenous legislation for the defense of our land and to contribute to the improvement of our country.”

Over the past decade, the Huni Kuĩ have also built organizational alliances by, among other actions, participating in bi-national meetings with representatives of indigenous lands from Brazil (Jordão, Baixo Jordão, Seringal Independência, Kaxinawá from Rio Humaitá, Kampa and Isolados from Rio Envira, Kaxinawá/Ashaninka from Rio Breu, and Apolima Arara) and Perú (Comunidades Nativas Oori e Koshireni); indigenous organizations from Perú (Aconadiyshi, ORAU, AIDSESP) and Brazil (AKARIB, AARIB, AMAAIAC); and representatives of Perú’s Ministry of Culture and National Service of State-Protected Natural Areas (SERNANP for its Spanish acronym). Through this action, they share experiences and create ideas for broader territorial management, food and physical security, biodiversity actions, and defense strategies against incursions by extractive companies and illicit economic activities on their land, territories and resources, and the mistreatment of uncontacted and recently contacted indigenous peoples. In October 2016, leaders of these indigenous groups met to formulate a bi-national management plan integrating the communities of the Yurúa, Breu and Amonya Rivers of the region.

At the global level, the establishment of the Land Tenure Facility (LTF) in 2017 to fund community mapping and land titling work is another potentially positive example of international collaboration in support of community tenure rights. This fund allows direct applications from indigenous peoples and forest communities to finance their land tenure work and collective actions to obtain legal recognition of their lands and forests.

Community participatory mapping and land demarcation are important tools for securing, safeguarding and strengthening community governance over land, territories and resources. Across the world indigenous peoples and local communities have been increasingly deploying a variety of approaches, tools and technologies to generate data that are relevant and important to them – concerning their territories, external threats, as well as the state of well-being in their communities. These data are often used for internal information and governance purposes, but also for wider communication and sharing (at national, regional and global levels) to showcase positive changes or threats to indigenous lands and livelihoods.

Asserting Land Rights through Land Demarcation in Asia

Indigenous peoples have initiated participatory and community-led mapping to assert their rights and protect their lands and territories. Community mapping is emerging as an increasingly important tool to demarcate and claim land in the Philippines, Indonesia, Thailand, Cambodia, Malaysia and India.

In Malaysia, indigenous peoples used mapping as an effective evidence tool in court claims of native customary rights. In the Philippines, the indigenous Tagbanua community in Palawan obtained their Certificate of Ancestral Domain Title for 22,284 hectares of land and marine waters, the first ever ancestral waters claim after years of persistent struggle. They produced a map and ancestral land management plan for the recognition and maintenance of a Community Conserved Area in Coron and Dalian islands.

Indigenous support organizations such as PAFID²⁰ have helped to map and survey at least ten land titles and nearly 250,000 hectares of traditional land, while 145 indigenous communities have used participatory 3-dimensional modeling (P3DMs)²¹ to delineate the boundaries of their domain and to define their own management zones, generate their own spatial information, and present their unique perspective on their ancestral lands. In the lobby against Sagittarius Mining Inc. (SMI) operations in the B'laan ancestral domain in South Cotabato, indigenous communities used P3DM successfully to generate critical data to counter SMI experts' arguments in the review of the company's environmental impact assessment (AIPP 2017:83-84).

In Thailand where indigenous communities mostly live in protected forests and are vulnerable to being evicted, the indigenous peoples used P3DMs to negotiate with sub-district and forest officials for possible collaborative management of the forests so they can continue to occupy and use their lands which have become protected areas.



²⁰ Philippine Association for Intercultural Development (PAFID), an NGO which is actively providing mapping services to indigenous communities in the Philippines.

²¹ Participatory 3D modelling (P3DM) is a community-based mapping method which integrates local spatial knowledge with data on elevation of the land and depth of the sea to produce stand-alone, scaled and geo-referenced relief models.

In Indonesia, in the absence of a national mechanism to identify and map indigenous communities' territories, AMAN along with several NGOs set up the Indigenous Territory Registration body (BRWA) in 2011. To date, there are no official data about the existence of indigenous peoples and customary lands in Indonesia. The Ministry of Forestry claims 187 million hectares as state forest of the country's total forest area of 191 million hectares. (AIPP 2017:47).

Since 2012, AMAN has been submitting data and information to the government on the indigenous peoples and their customary territories. As of November 2016, BRWA registered as many as 703 maps²² of indigenous territories covering a total area of 8.3 million hectares (IWGIA 2017:339). However, despite continued lobbying and meetings with the government and Presidential Decree No. 9 of 2015, no significant policy response has come from the ministries and agencies receiving the maps. The Decree introduced the one map policy to solve overlapping land claims. AMAN decided in 2014 for each of its 110 local chapters to map the customary lands of at least two indigenous communities. By the end of 2017, about 220 customary areas (around 2.2 million hectares) would have been delineated (AIPP 2017:49).

In Burma indigenous communities are mapping their ancestral territories in Shan, Chin, Karen and Karenni states with the help of civil society organizations such as POINT, KARUNA, and Chin Human Rights Organization.

Besides being a useful tool for advocacy and to reclaim their lands, the process of inclusive and rights-based approach to community mapping has been empowering to the indigenous communities in many ways: 1) it creates unity among the community behind territorial defense, 2) it enables intergenerational transfer of knowledge about their territory and 3) though territorial demarcation may sometimes lead to conflicts, in most cases it helps to find a lasting solution to existing boundary conflicts.

The Local Biodiversity Outlooks (2016) pointed to several favorable trends, both on the ground and in policy. First, recognition of and respect for traditional knowledge and customary sustainable use is increasing. Second, real progress is being made in bringing traditional and scientific knowledge together on the ground to improve natural resource management, partly through the use of innovative technologies. There is also an improved flow of information between local and global networks. (LBO p11)

²² The finalized maps consist of general as well as specific information on indigenous territories, land usage, profiles of the indigenous communities including their history, tenure system, governance customary laws (AIPP 2017:49).

Community Based Monitoring and Information Systems in the Pacific

A growing number of Pacific community monitoring initiatives are contributing to decision making at local, national and international levels. In Aotearoa (New Zealand), the Kauri Dieback Joint Management Programme, with the Tangata Whenua Roopu (indigenous peoples group), have championed the design of a framework to enable the use of cultural indicators in the surveillance and monitoring of Kauri Dieback. This is to ensure that a wholistic, kauri ecosystem approach can be taken and is currently being piloted in three communities. (Shortland & Chetham, 2013)

In Hawaii the Kama'aha Educational Institute has developed a project called '*Aimalama*', which utilizes the *Kaulana Mahina* (Hawaiian Moon Calendar) to empower Hawaiian communities to prepare and adapt to the changing climate. The subsequent 2015 Aimalama Lunar Conference brought together peoples of Hawaii and the Pacific who are revitalizing lunar practices to share lunar methodologies with one another and build a regional community of practice. (Initiative, 2015)

Cultural Impact Assessments

Cultural Impact Assessments are often used as tools to assess the effects of developments on indigenous communities. One example was produced by a tribe of Aotearoa (New Zealand) regarding an application for an aquatic herbicide reassessment by the Environmental Protection Authority. Through providing evidence of the effects of the proposal, the Ngati Hine were able to demonstrate the adverse impacts on the waterways within their catchments on their cultural and spiritual relationship. Therefore the Environmental Protection Authority made a decision that no use of the herbicide was to take place without the full and effective participation of Ngati Hine communities (Shortland T. , 2012).

Combining Scientific Knowledge and Traditional Knowledge

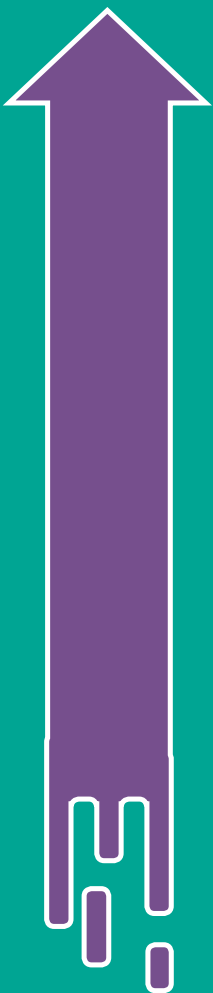
While traditional and cultural approaches to environmental management in the South Pacific predate western environmental management methods by centuries, scientific monitoring techniques also add to, rather than substitute for, traditional and customary approaches. The most effective approach to environmental management is a combination of customary practices and traditional knowledge with scientific methods of assessment and monitoring of environmental sustainability. This has proven to yield successful results, for example in the village of Ucunivanua in Venata, Fiji. After implementing scientific monitoring of fish and bivalves in the village coastal area and adjusting harvesting when counts were low, the women who are the gatherers of the bivalves are able to collect twice as many oysters in the same amount of time, compared to before the monitoring began. This demonstrable benefit has ensured that the environmental monitoring program continues. (Sutton, 2017)

International Solidarity

In 2016, a group of organizations—convened by the International Land Coalition, Oxfam and the Rights and Resources Initiative—launched a global call to action to secure indigenous and community land rights. While indigenous peoples and local communities customarily claim and manage over 50% of the world's lands, only 10% of their lands are legally recognized. As a result, at least 40% of the world's land surface is subject to a massive tenure crisis and vulnerable to land grabbing by more powerful actors to create large plantations or fossil-fuel projects, hydroelectric dams, tourism, speculation or conservation. This is a serious human rights crisis, which also threatens and undermines humanity's ability to achieve sustainable development, end poverty and fight climate change.

Land Rights Now: A Global Call to Secure Indigenous and Community Land Rights

THE CHANGE WE WANT



We want a world where Indigenous Peoples and local communities have their land rights secured, are at the center of sustainable development, and can decide on their own future. We want a world where women have equal rights to land and equal participation to governance. We want a world of justice where human rights are protected for all.

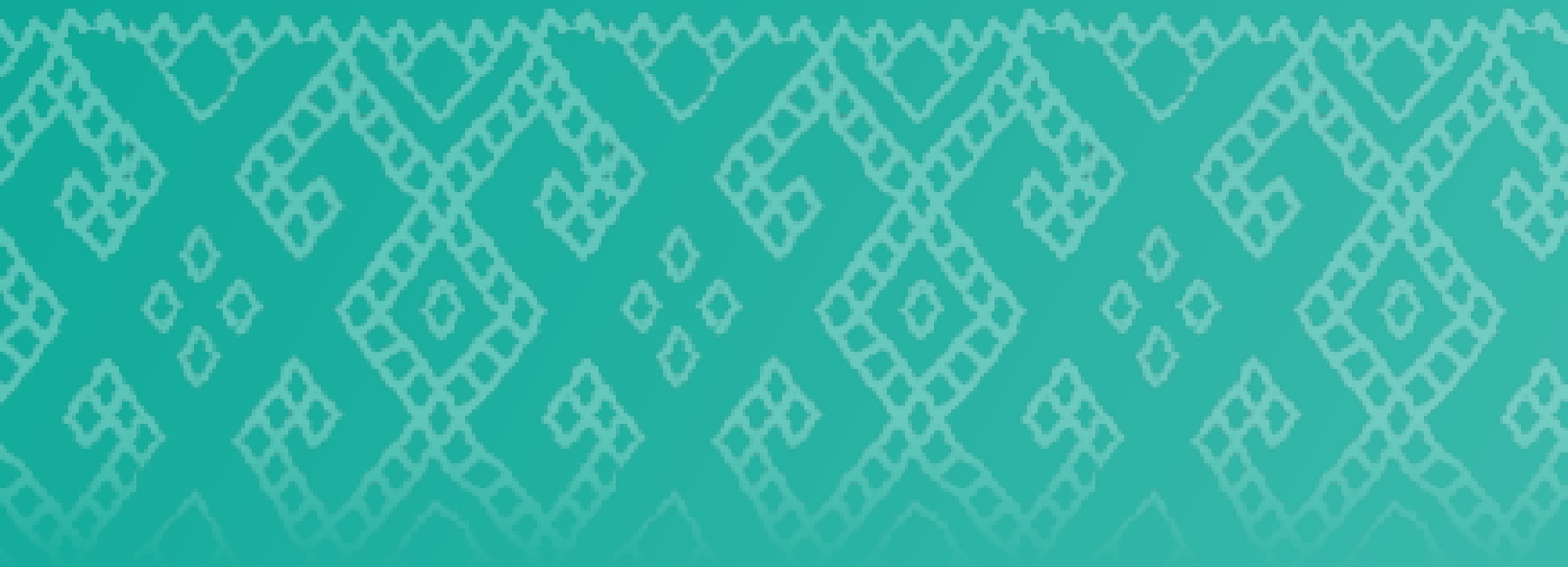
This requires bold political leadership and change in the behavior of governments, Parliaments, corporations, national and financial institutions, national and international civil society, and citizens across the world.

Land Rights Now mobilizes and engages active citizens, media, communities and organizations worldwide to promote and secure the land rights of Indigenous Peoples and local communities everywhere. The target is to double the global area of land legally recognized as owned by Indigenous Peoples and local communities by 2020.

Since the worldwide launch of the “Global Call to Action on Indigenous and Community Land Rights Campaign” on 2 March 2016, many indigenous peoples’ organizations and other civil society organizations in Asia have joined the Campaign for the recognition and protection of indigenous peoples and local communities’ collective land rights. The Asia regional campaign was launched in Yangon on 12 March 2016 participated in by 60 indigenous delegates from 12 countries. During the launch, Joan Carling, former Secretary General of the Asia Indigenous Peoples Pact stated, “This campaign is our collective struggle to demand our collective land rights. It is a mobilization of global efforts and energies to demand the land rights of 370 million indigenous peoples in the world, which largely consist of indigenous peoples in Asia... The Sustainable Development Goals will never be achieved without the recognition of indigenous peoples’ collective land rights and their crucial roles and contribution towards the sustainability of our Mother Earth.”

VI.

Recommendations



States should honor their commitments made at the World Conference on Indigenous Peoples to respect, promote and advance and in no way diminish the rights of indigenous peoples including those set out in the United Nations Declaration on the Rights of Indigenous Peoples, as well as the recommendations and advice issued by the UN Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, and the Special Rapporteur on the Rights of Indigenous Peoples.

The regional reports on the status of the land, territories and resources of indigenous peoples around the world provide further bases for the following global recommendations:

1

Full implementation of the UN Declaration on the Rights of Indigenous Peoples and the domestication of relevant international human rights instruments addressing indigenous peoples' rights in consultation and cooperation with the indigenous peoples concerned through their own representative institutions.

2

Implement the recommendations made to each country by Treaty Bodies, Special Rapporteurs and the Universal Periodic reviews, which capture key concerns and salient issues remaining unresolved in different countries.

3

Undertake constitutional, legal and policy reform to formally recognize indigenous peoples living within State boundaries and to reform political constitutions to affirm the multiethnic, multicultural, or multinational nature of the State.

4

Acknowledge legal pluralism and seek to reconcile customary laws, national laws and international human rights laws. Governments and concerned agencies should accord equal respect and recognition for customary laws and institutions.

5

Recognize and secure customary land tenure. National level mechanisms should be established to adjudicate the rights of indigenous peoples pertaining to lands, territories and resources, and respecting their customary tenure rights.

6

Uphold Free, Prior and Informed Consent. Adhere to the principle and right to free, prior and informed consent of indigenous peoples in any actions that may impact their lives, rights and interests. Governments, indigenous peoples and civil society organizations should organize joint workshops on FPIC, including government agencies and private sector actors to increase awareness on the human rights based approach to the rights of indigenous peoples to land, territories and resources.

7

Support strategies for indigenous self-determined development, community resource management and respect for traditional occupations and livelihoods. States also need to address the needs of indigenous peoples in urban settings: needs for employment, social services and support for cultural identity and community.

8

Promote community participatory mapping of land, territories and resources. Governments should collaborate with indigenous peoples to map, demarcate and register customary lands.

9

Review the status of natural parks and protected areas overlapping or affecting indigenous land, territories and resources in close collaboration with the peoples involved. Conservation policies and strategies must recognize and uphold indigenous peoples' rights and contributions as custodians of much of the world's biodiversity and address outstanding reparations and restitution concerns for harms done in the name of conservation.

10

Respect for traditional knowledge, innovations and practices and cultural diversity as a rich source of solutions to contemporary social and ecological crises, consistent with global consensus to respect diverse knowledge systems and values.

11

Regulate and monitor the private sector for human rights compliance. Domestic and overseas businesses operating and impacting on indigenous territories and means of existence should diligently exercise their responsibilities to respect indigenous peoples' rights, to upgrade their understanding and practices and adopt protocols to ensure non-complicity in any violations of indigenous land rights.

12

Demographic information and data disaggregation. Collect and systematize up-to-date demographic information about the indigenous peoples based on the principle of self-identification. National and global statistics require disaggregated data to capture social inequalities and discrimination affecting indigenous peoples, women and other marginalized groups.

13

Ensure full and effective participation of indigenous peoples, including elders, women and youth in the 2030 Agenda for Sustainable Development and related national strategies on biodiversity and climate change. This includes decision making about action plans, mechanisms and budget allocations to ensure their maximum contributions towards implementation.

14

Prioritize direct funding in support of indigenous peoples' self-determined development, life plans and collective actions through their own governance institutions; this should include support to make their own community maps and monitoring systems.

15

Support for capacity building and training needs identified by indigenous peoples.

16

End the criminalization of indigenous peoples and human rights defenders. States must address the alarming trend of criminalization, harassment and violence against indigenous rights and environmental defenders, investigate these crimes and hold accountable those responsible for these human rights violations.



IPMG website: www.indigenouspeoples-sdg.org



communications@indigenouspeoples-sdg.org



Indigenous Peoples Major Group on the SDG



@IPMGSDG

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