

# **INTER-AGENCY SUPPORT GROUP ON INDIGENOUS PEOPLES' ISSUES**

**THEMATIC PAPER towards  
the preparation of the  
2014 World Conference on  
Indigenous Peoples**

## **LANDS, TERRITORIES AND RESOURCES**

## **Thematic Paper on Lands, Territories and Resources**

The United Nations Inter-Agency Support Group (IASG) on Indigenous Issues aims to strengthen cooperation and coordination among UN agencies, funds, entities and programmes on indigenous peoples' issues and to support the UN Permanent Forum on Indigenous Issues. It also seeks to promote the effective participation of indigenous peoples in relevant international processes.

At its annual meeting held in October 2013, the IASG decided to develop a set of collaborative thematic papers to serve as background information and analysis on key issues to contribute to the process and preparations for the World Conference on Indigenous Peoples.

The preparation of each paper was led by one or more agencies with inputs from other IASG members. The papers do not present or represent formal, official UN policy positions. Rather, they reflect the collective efforts of the Inter-Agency Support Group to highlight selected key issues and to provide substantive materials to inform the Conference, with a view to contributing to the realization of the rights of indigenous peoples.

*\*The chair of the IASG rotates annually amongst the participating agencies. The Support Group has been chaired by the United Nations Children's Fund (UNICEF) until the end of the 13th session of the Permanent Forum on Indigenous Issues in May 2014. The Office of the High Commissioner for Human Rights (OHCHR) is currently holding the chair of the Group. The Secretariat of the Permanent Forum on Indigenous Issues acts as co-chair of the Support Group.*

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## Key messages

### **Values, knowledge, livelihoods and sustainable development**

Lands, territories and resources have particular cultural and spiritual significance and value for indigenous peoples; they constitute the basis for the continued existence of their societies. The vast majority of the world's genetic resources are found on indigenous peoples' lands, and their specialized livelihood practices and traditional ecological knowledge contribute significantly to low-carbon sustainable development, biodiversity conservation, sustainable use of biodiversity and maintaining genetic diversity. Hence, indigenous peoples are key actors for the post-2015 development agenda.

### **Inherent rights to lands, territories and resources**

Indigenous peoples have inherent rights to the lands, territories and resources that they have traditionally occupied, owned or used. These rights are set out in the United Nations Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169 concerning Indigenous and Tribal Peoples, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, and other international and regional instruments. Over the last decades, many States have made important progress to recognize and protect the diverse customary tenure and sustainable production systems upon which indigenous peoples' livelihoods depend. Such systems can encompass both collective and individual rights, as well as different categories and levels of access and rights, including those for women. Such constructive arrangements can serve as inspiration for those States, where challenges remain.

### **Displacement, land grabbing and conflicts over land**

Many indigenous peoples remain extremely vulnerable to land grabbing, forced displacement, sedentarization and involuntary resettlement in contexts where their customary practices, tenure systems and use of ecosystems and biodiversity are not yet recognized or subjected to discriminatory regulations or prohibition. The lack of formal State recognition of traditional tenure systems marginalizes indigenous peoples further from the dominant society and leaves them more vulnerable to rights abuses. When families are displaced, the worst affected are indigenous women and girls who become at risk of violence, exploitation and abuse. In a number of countries, those defending indigenous peoples' human rights, including land and environmental rights, are facing harassment, threats and killings. Prevention of such situations is an essential element of the observance of international human rights and should be addressed through equitable and culturally appropriate access to justice, involving the establishment of effective justice mechanisms, which provide for appropriate penalties and remedies.

### **Free, prior and informed consent**

In order to avoid the adverse impacts of imposed development, indigenous peoples should be able to determine their own priorities and strategies for development, in accordance with their values, aspirations and needs. This is increasingly being acknowledged by States, development agencies and private sector actors, and addressed through efforts to ensure indigenous peoples' free, prior and informed consent to policies and projects affecting them and their lands, territories and other resources, including intellectual property and traditional knowledge. Extra effort is needed to ensure adequate participation of remote and mobile communities and all population groups such as women and youth. Numerous policies and guidelines have been developed to

that effect, but implementation by many States remains weak. Therefore positive experiences and good practices should be documented, shared and scaled-up and out.

## **Impact of climate change**

Global inaction to reduce greenhouse gas emissions erodes the ability of indigenous peoples to remain resilient in an increasingly unpredictable and unstable climate. Further, ill-informed climate mitigation and adaptation policies, which do not take into account indigenous peoples' rights to lands, resources, participation and consent, increase their vulnerability. Indigenous peoples' rights, unique worldviews, traditional knowledge and sustainable resource management strategies must be built into climate change-related responses at local, national and global levels, including in climate change mitigation initiatives such as 'Reducing Emissions from Deforestation and Forest Degradation', also known as REDD+.

## Summary

Indigenous peoples' societies are dependent upon the lands, territories and resources that they traditionally use. Their traditional knowledge and practices contribute significantly to biodiversity conservation and low-carbon sustainable development. Indigenous women, in particular, play an important role in the food security of their families and communities and are also critical for ensuring the provision of clean water. The contributions and rights of indigenous peoples have been recognised in a series of international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), ILO Convention No. 169 concerning Indigenous and Tribal Peoples, the Convention on Biological Diversity (CBD), and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. Positive experiences generated in the implementation of these instruments can be used to inform and inspire initiatives in areas where challenges remain. For example, a number of States are yet to recognise collective rights to lands, territories and resources that are traditionally used for non-sedentary practices such as pastoralism, shifting cultivation and hunting and gathering. Similarly, preservation and protection of traditional knowledge of indigenous peoples is often of secondary priority when governments consider embarking into private-public partnerships under the CBD/ Nagoya Protocol on Access and Benefit Sharing regimes. Of particular importance is the implementation of the principle of free, prior and informed consent, which avoids the imposition of development initiatives with adverse impacts. Current processes to mitigate and adapt to climate change and to define the global development agenda beyond 2015 constitute key opportunities for including and addressing indigenous peoples' needs and priorities related to lands, territories and resources.

## Land is life

Indigenous peoples comprise approximately 5.000 distinct peoples<sup>1</sup> with unique languages, cultures, institutions and traditions, including customary land tenure and resource management systems. Most indigenous peoples have highly specialized land use practices and livelihood strategies developed over generations. These are embedded in knowledge and belief systems that are often undocumented and are governed by customary institutions that remain unrecognized by many States. In the midst of the financial, environmental, and climatic crises facing humanity, there is growing recognition of the contribution of indigenous peoples' traditional knowledge to sustainable low-carbon development, ecosystem management, biodiversity conservation, and climate change adaptation. For example, there is ample scientific evidence that pastoral systems based on mobility and diversity of livestock are supportive of a healthy ecosystem, and complementary to other land uses such as wildlife conservation.<sup>2</sup>

The particular cultural and spiritual significance that indigenous peoples attach to their lands and territories goes far beyond their simple monetary or productive value. Their territories sustain their economies and the very fabric of both their individual and collective lives. As indicated in the preamble of the United Nations Declaration on the Rights of Indigenous Peoples: "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". Hence, securing indigenous peoples' rights to their lands, territories and resources is crucial for their continued existence as distinct peoples and to maintain their livelihoods. Consequently, as the world moves to define the post-2015 development agenda, it is crucial that the link between poverty reduction, rights to land, territories and resources, food security and sustainable development is acknowledged by all actors and addressed and adequately reflected in development goals, targets and indicators.

## Inherent rights to lands, territories and resources

As enshrined in the UN Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169 and the recently adopted Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (Voluntary Guidelines), indigenous peoples have inherent rights to the lands, territories, and resources that they have traditionally occupied, owned, or used: This includes the right to own, use, develop, and control these resources. Consequently, it is the traditional occupation or use that is the basis for their land rights, and not the eventual State recognition or registration of these rights. A first crucial step, in order to avoid adverse impacts and related legal and reputational risks, is to identify the scope and extent of indigenous peoples' lands, territories and resources in a given context.

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<sup>1</sup> See DESA, 2009.

<sup>2</sup> Niamir-Fuller, M. *et.al.* 2013. "Co-existence of wildlife and pastoralism on extensive rangelands: competition or compatibility?" *Pastoralism, Volume 2, Issue 1*. <http://www.pastoralismjournal.com/series/WP>.

A number of States, indigenous peoples and associated development partners have made considerable progress in terms of identifying, demarcating, recognising and protecting lands and territories. For example, significant progress has been made with regards to constitutional and legal recognition of indigenous peoples' land rights in parts of the Americas, the Arctic, Australia and the Pacific. Likewise, countries in Asia, and to some extent Africa, are increasingly recognising and addressing indigenous peoples' rights and traditional land tenure. Formal recognition has paved the way for comprehensive participatory programmes to map, demarcate, and title indigenous lands and territories as well as increasing indigenous autonomy by recognizing territorial and local governance institutions. Some land titling programmes have afforded opportunities to indigenous women to access and control land, although success rates vary by country. Innovative ways have been found to title collective lands of pastoralists, thus allowing a continuing of the mobility of livestock, which is necessary for a healthy rangeland, as well as ensuring sustainable livelihoods for all.

## **Dispossession, land grabbing and conflicts over land continue in some areas**

Globally, there is increasing pressure on land resources, including due to privatization and individualization of land ownership, large-scale land acquisitions for palm oil, biofuels and other forms of commercial mono-crop agriculture, extractive industries and infrastructure projects, as well as establishment of protected areas and game reserves in the cases where this happens without consultation and consent. In spite of the progress made through the recognition of indigenous peoples' rights in international instruments, indigenous peoples remain vulnerable to dispossession and land grabbing.

A frequent problem is the existence of overlapping and contradictory legislation, and policies that hamper the effective implementation of indigenous peoples' rights, even in countries where such rights are reflected in national constitutions and legislation. In other parts of the world, domestic laws and policies are yet to be reformed or implemented. This, for example, is the case in contexts where land laws exclusively recognize sedentary forms of land use. Consequently, the traditional land and resources of nomadic, pastoralist, hunter-gatherer and shifting cultivators may appear available for other intensive use. This explains why many forest-dwelling indigenous peoples, particularly in Africa and Asia, do not hold titles to land. In such cases, lack of recognition of indigenous peoples' land rights, discriminatory and negative attitudes towards their traditional livelihoods, lack of political and economic interests, excessive bureaucratic and administrative steps for recognition of land rights, combined with limited information and data on their situation, contribute to creating a situation of extreme vulnerability. In the case of pastoralists, the traditional practice of "overlapping" rights on land and its resources (where there is seasonal variation in access rights to the same land, water body, or other resources) is essential to the viability of the system. Yet, modern forms of mapping, demarcation and titling do not have the tools to accommodate such complexity in tenure regimes. Some indigenous communities located in areas facing diminishing water sources and worsening climatic conditions are confronted with inter-communal conflicts, involving the use of weapons and resulting in worsening security of families.



In extreme cases, limited access to justice and lack of redress or grievance mechanisms in relation to violation of land rights is aggravated by political repression, militarization, persecution and extra-judicial killings of indigenous land defenders.

## Free, prior and informed consent

History provides too many examples of imposed developments undertaken without proper consultations, which have undermined indigenous peoples' livelihoods or even displaced them from their lands. In order to avoid such situations, the international framework stipulates that indigenous peoples should be consulted and their free, prior and informed consent given to any legislative or administrative measures, including projects, that will affect their lands, territories, resources and livelihoods. This fundamental principle has gained momentum as an intrinsic element of democratic governance and inclusive development, which contributes to conflict-prevention, as well as ownership and sustainability of development results. Recently, a number of States, UN agencies, development banks, donors and private sector actors have embraced this principle in their policies and operational guidelines, and it is reflected in the United Nations Development Group (UNDG) Guidelines for country-level planning and programming, as well as in the CBD Akwé: Kon Guidelines. Initial implementation experiences are encouraging and have led to collaborative governance, joint decision-making and positive development outcomes.

However, experience also suggests that lack of official recognition of indigenous peoples and their traditional lands and territories, as well as weak institutional capacity, difficulties of communication, including with women's groups who tend to be marginalized in such processes, constitute major obstacles to adequate implementation of the free, prior and informed consent principle in a number of countries. Hence, there is need and potential for documenting and sharing experiences and good practices in order to inform, inspire and scale-up efforts to overcome reluctance, establish adequate frameworks and build institutional capacity for implementation.

## Government commitments

The UN Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169 and the Voluntary Guidelines, in a comprehensive and complementary manner, reflect the commitment of governments to protect indigenous peoples' rights to lands, territories and resources.

Effective recognition and protection of indigenous peoples' tenure rights will, in most cases, require a combined set of legislative and policy developments, as well as innovative procedures and mechanisms for identification, demarcation, titling (or other official recognition) of indigenous peoples' lands, along with adequate mechanisms for access to justice and penalties for unauthorized intrusion. The inter-dependence of livelihood systems and tenure regimes need to be better understood, in order to prevent the recognition and protection of tenure rights from inadvertently and negatively impacting the production system, livelihoods and ecosystems of indigenous peoples. Some countries have included mechanisms to resolve tenure issues in national reconciliation processes, while others

embrace this in the broader context of non-discrimination, social justice and human rights. The Voluntary Guidelines provide a framework and a renewed impetus for addressing indigenous peoples' rights in countries where implementation remains weak and indicate a series of steps, which States should consider:

- ✓ Adapt policy, legal and organizational frameworks to recognize indigenous peoples' customary production and tenure systems and procedures for transmission of land rights, for example, by protecting systems of collective use and management. Tenure policies and laws should take into account the social, cultural, spiritual, economic and environmental values of land, and be elaborated with the full and effective participation of concerned communities, including vulnerable and marginalized members.
- ✓ Identify, document and publicize information on the nature and location of indigenous peoples' lands, territories and customary resource access rights. This process must necessarily be undertaken with the full participation and consent of the indigenous peoples concerned and be based on their traditional occupation, ownership or use of lands and resources.
- ✓ Protect indigenous peoples from the unauthorized use of their lands or territories by others.
- ✓ Establish adequate procedures within the national legal system to resolve land claims, and respect and promote customary approaches used by indigenous peoples to resolve tenure conflicts within and between communities.
- ✓ Ensure the effective participation of women in all processes and decisions affecting indigenous lands, territories and resources.
- ✓ Provide technical and legal assistance to concerned indigenous peoples and communities to participate in the development of tenure policies, laws and projects in non-discriminatory and gender-sensitive ways. Environmental, social and economic safeguards must be applied.

## Traditional knowledge and sustainable practices

There is a considerable overlap between indigenous peoples' lands and territories, and areas of high biological diversity. The vast majority of the world's genetic resources are found on indigenous peoples' lands, and a considerable part of the global biodiversity survives within Indigenous and Community Conserved Areas (ICCAs).

This correlation is not coincidental, but is due to the application of traditional knowledge and the customary sustainable use of biological resources over centuries, including in the context of traditional occupations, such as pastoralism, hunting and gathering and shifting cultivation. Such practices occur universally, and although in some cases they are still misrepresented and/or misinterpreted as environmentally negative and subjected to discriminatory regulation and prohibition, there is a growing understanding of the potential role of traditional occupations and practices within the context of a transition towards green economies and the achievement of sustainable development outcomes. This is the case of ecosystems such as dry-lands, where pastoralism often constitutes the most resource efficient, economically viable, culturally appropriate and sustainable land use system. Such

systems have also adapted over the centuries, including adopting modern technologies of communication and mobility, and have a potential to meet modern needs such as low-carbon production and low-fat diets.

Recognizing the importance of indigenous peoples' traditional knowledge and sustainable practices, the CBD stipulates that the 193 contracting Parties respect, preserve and maintain knowledge, innovations and practices of indigenous communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity (Article 8(j)) and protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements (Article 10(c)). The Parties to the CBD have acknowledged the profound connection between the knowledge, innovations and practices of indigenous peoples and security of land tenure by the inclusion of land tenure under the four indicators adopted to measure status and trends in traditional knowledge, under target 18 of the 2001-2020 CBD strategic plan.

With regards to customary sustainable use, the Parties to the Convention are poised to adopt a global plan of action at its twelfth meeting (October 2014). The objective of this plan of action is to promote, within the framework of the Convention, a just implementation of Article 10(c) at local, national and international levels, and to ensure the full and effective participation of indigenous and local communities at all stages and levels of its implementation.

Another encouraging development is the establishment of the Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES) in 2012, to assess the state of the planet's biodiversity, its ecosystems and the essential services they provide to society. IPBES acknowledges the importance and relevance of indigenous peoples' traditional knowledge related to sustainable management of ecosystems and advocates an open and equal dialogue between scientists and traditional knowledge-holders.

## Impact of climate change

Indigenous peoples often possess sophisticated traditional knowledge regarding weather patterns, including complex adaptive responses towards cycles of climatic variability. However, the adverse impacts of climate change are increasingly threatening their economic, social and cultural survival, particularly in small-island, high-altitude, desert and Arctic areas, when, for example, water resources dry out or decreasing predictability of weather conditions undermines traditional knowledge and cultural notions of causal relationships. In the worst cases, climate change may lead to a definite disruption of some traditional livelihoods, for example in some low-lying Pacific islands where climate change is likely to cause relocation and associated loss of cultural heritage. While mobile pastoralism provides a relatively stronger buffer than crop cultivation to increasing variability and unpredictability of climate change, it is nevertheless impacted severely by the increasing aridity predicted for dry lands.<sup>3</sup> Many indigenous peoples face restrictions when pursuing their traditional coping and adaptation strategies, such as increasing mobility, and their rights

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<sup>3</sup> World Initiative on Sustainable Pastoralism. ([www.iucn.org/wisp](http://www.iucn.org/wisp))

and priorities are not always adequately considered in the context of national climate change adaptation policies, strategies and programmes. This calls for urgent governance responses that acknowledge the value of indigenous peoples' traditional knowledge and diverse coping strategies, and respect their right to practice their traditional livelihoods in the context of climate change adaptation plans and programmes.

Indigenous peoples have long practiced sustainable forest management resulting in conservation, and are, therefore, key actors in the context of REDD+ programmes, which aim to create positive incentives to protect forests in developing countries. Partnerships with indigenous peoples have the potential to achieve multiple benefits from forest conservation; however the new value placed on forests carbon stocks also carries a potential threat to indigenous peoples' access and control of their traditional lands. Land tenure is often addressed in a limited manner in the context of REDD+, and many programmes are implemented in countries with poor governance and/or weak recognition of indigenous peoples, which creates a high degree of uncertainty as to who has the right to benefit from REDD+ projects. The Cancún Agreements under the UN Framework Convention on Climate Change (UNFCCC) comprise social and environmental safeguards, which stipulate respect for the rights and traditional knowledge of indigenous peoples and local communities. The proper application of these safeguards is crucial to ensure recognition of indigenous peoples' land and resource rights, and avoid the risk that REDD+ could lead to the restriction of access to forest resources or even the displacement of communities, if alienation of carbon rights leads to land grabbing.

## Read more

- Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women - A call to action based on an overview of existing evidence from Africa, Asia Pacific and Latin America (UNFPA, UNICEF, UN Women, ILO, OSRSG/VAC): <http://www.unfpa.org/public/home/publications/pid/14405>
- Convention on Biological Diversity, Article 8(j), traditional knowledge, innovations and practices: <http://www.cbd.int/traditional/>
- Convention on Biological Diversity: Akwé-Kon Guidelines: <http://www.cbd.int/doc/publications/akwe-brochure-en.pdf>
- Department of Economic and Social Affairs: State of the World's Indigenous Peoples, 2009: [http://www.un.org/esa/socdev/unpfii/documents/SOWIP\\_web.pdf](http://www.un.org/esa/socdev/unpfii/documents/SOWIP_web.pdf)
- Indigenous Peoples' Rights to Lands, Territories and Resources, International Land Coalition, 2013: <http://www.landcoalition.org/publications/ilc-publishes-study-indigenous-peoples'-rights-lands-territories-and-resources>
- ILO Convention No. 169 concerning Indigenous and Tribal Peoples in independent countries <http://www.ilo.org/indigenous/lang--en/index.htm>
- UN Declaration on the Rights of Indigenous Peoples: [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)
- UN Special Rapporteur on the Rights of Indigenous Peoples: <http://www.ohchr.org/en/issues/ipeoples/srindigenouspeoples/pages/sripeoplesindex.aspx>
- UNDG Guidelines on Indigenous Peoples' Issues: [http://pro169.org/res/materials/en/general\\_resources/UNDG%20Guidelines,%20indigenous%20peoples.pdf](http://pro169.org/res/materials/en/general_resources/UNDG%20Guidelines,%20indigenous%20peoples.pdf)
- UN-REDD Programme Guidelines on Free, Prior and Informed Consent: [http://www.un-redd.org/Stakeholder\\_Engagement/tabid/55630/Default.aspx](http://www.un-redd.org/Stakeholder_Engagement/tabid/55630/Default.aspx)
- Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security: <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>

## Acronyms

<b>CBD</b>	Convention on Biological Diversity
<b>ICCAs</b>	Indigenous and Community Conserved Areas
<b>ILO</b>	International Labour Organization
<b>IPBES</b>	Intergovernmental Platform on Biodiversity and Ecosystem Services
<b>REDD+</b>	Reducing Emissions from Deforestation and Forest Degradation
<b>UNDG</b>	United Nations Development Group
<b>UNDRIP</b>	United Nations Declaration on the Rights of Indigenous Peoples
<b>UNFCCC</b>	United Nations Framework Convention on Climate Change