

# SECURING LAND AND TERRITORIAL RIGHTS FOR INDIGENOUS PEOPLES



*Photo credit: M. Benav/ILC, Bolivia*

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# SECURING LAND AND TERRITORIAL RIGHTS FOR INDIGENOUS PEOPLES

The Science for Action Series is jointly coordinated by the International Land Coalition (ILC) and the Global Land Programme (GLP). It brings together key findings from research networks relevant to ILC'S ten commitments to People-Centred Land Governance. The Series facilitates exchange of knowledge between scientists, civil society, and grassroots organisations to strengthen efforts of land users, practitioners and policy-makers to bring about positive change in land governance.

This brief refers to Commitment Five, to: Respect and protect the inherent land and territorial rights of indigenous peoples, as set out in ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples, including by recognizing that respect for indigenous knowledge and cultures contributes to sustainable and equitable development and proper management of the environment.

It is based on the research of CIFOR, the Center for International Forestry Research, a member of the Consortium of International Agricultural Research Centers (CGIAR), and an ILC member.

As indigenous peoples' land and territorial rights are under threat, the International Land Coalition, the Global Land Programme, and partner groups that take a people-centered land governance approach are committed to their recognition and protection.

"Indigenous peoples have strong spiritual, cultural, social, and economic relationships with their traditional lands, but their land rights are often the most precarious."<sup>1</sup>

Today, there are 476.6 million indigenous peoples. "Indigenous peoples continue to be the poorest among the poor. They represent 18.7 per cent of the extreme poor living in 23 countries representing 83 per cent of the global indigenous population".<sup>2</sup> Only a fraction of indigenous peoples' land is protected by formally-recognised legal entitlements to the territories and resources on which they depend.<sup>3,4</sup>

## ENVIRONMENTAL AND SOCIO-ECONOMIC BENEFITS

The World Resources Institute estimates that indigenous lands hold as much as 80% of the world's biodiversity.<sup>5</sup> The estimated coverage of Indigenous and Community Conserved Areas is comparable to the 12% of the global terrestrial surface of government-managed protected

areas.<sup>1</sup> In addition, options to manage the climate emergency are intimately connected with the recognition of indigenous peoples' territorial rights. For example, territories managed by indigenous peoples suffered less than 10% of the deforestation experienced in the rest of the Brazilian Amazon, including even protected areas.<sup>6</sup>

Protecting the territorial rights of indigenous peoples can further ensure sustainable use and conservation of the resources on those lands.<sup>7</sup> Secure territorial rights over land and resources also improves regional socioeconomic dynamics and is necessary if people are to see livelihoods improvements and food security. Analysis by CIFOR confirms that securing land rights can have a positive impact on poverty and inequality and strong tenure rights have been linked with higher incomes and increased socio-economic stability, as well as reducing the difference in poverty rates between men and women.<sup>6,8</sup> Studies have thus confirmed that the formalisation of territorial rights is critical to protect the land rights of indigenous peoples. However, research has also

shown that action should be taken to “support communities after the process of [formalization] has concluded, to strengthen their capacity to manage resources, organize as a community and form federations, and fully exercise their rights”.<sup>7</sup>

## THE LEGAL FRAMEWORK

Although the legal framework for securing indigenous rights is complex, international agreements - including the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the Inter-American Convention on Human Rights, and the International Labour Organization’s Indigenous and Tribal Peoples Convention (ILO 169) - recognise indigenous peoples’ right to retain access and control over their ancestral lands and territories and their resources as a minimum standard for survival, dignity, and wellbeing. UNDRIP and ILO 169 have strong provisions to prevent displacement of indigenous peoples from their lands and territories.<sup>1</sup> As a result, there has been progress in the recognition and formalisation of territorial rights to indigenous peoples over the past few decades, particularly in Latin America.

Despite key international agreements in place, many countries still fail to formally recognise or respect the rights of indigenous peoples in their legal systems. Unpublished data from CIFOR’s Global Comparative Study on Reducing

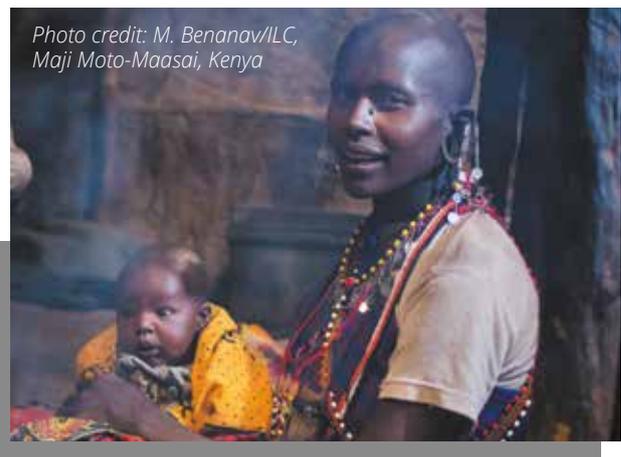


Photo credit: M. Benanav/ILC, Maji Moto-Maasai, Kenya

Deforestation and Forest Degradation (REDD+) shows strong biases in relation to the term ‘indigenous’ in the policy arena, and many policy makers go out of their way to avoid its use. As of 2016, only 21 countries (Bangladesh, Bolivia, Burkina Faso, Cambodia, Cameroon, Chad, Djibouti, Ethiopia, Gambia, Ghana, Guatemala, Mongolia, Namibia, Nepal, Nigeria, Senegal, Sudan, Tanzania, Togo, Uganda, and Zambia) had transparent commitments to implement land and resource tenure initiatives to indigenous peoples and local communities as part of their Intended Nationally Determined Contributions.<sup>9,10</sup> However, this group of nations does not include some of the countries with the highest rates of deforestation, and represent only 13% of global tropical and sub-tropical forest area.<sup>8</sup> ▶

## UNDERSTANDING THE CONTEXT

Successfully supporting land and territorial rights for indigenous peoples in disputed territories requires a clear understanding of the local context and its interaction with other levels and arenas of governance.<sup>11</sup> Important contextual aspects to consider when addressing indigenous peoples’ land and territorial rights include:

- The traditional use and management of territories by indigenous peoples is often at odds with the way in which legal systems are structured.
- Control of these lands was historically based on competition for power and profits between indigenous peoples’ groups and government-backed organisations with a vested interest in disputed lands; conflict between these groups has grown as resource limitations, climate change and environmental degradation have increased.<sup>6</sup>
- There are also conflicts among indigenous peoples’ groups and between indigenous and non-indigenous local communities and migrants.<sup>12</sup>
- Conservation areas and indigenous peoples’ groups often have conflicting claims to the same land. A recent article published by CIFOR estimates that, in terms of equity, between 50% and 80% of the land managed by indigenous peoples overlaps conservation areas.<sup>13</sup>
- The rights of women to land and territory remains a major ongoing source of concern.<sup>14</sup>
- The politics and historical conflicts embedded in existing rules and systems for organising, categorising, labelling and merging indigenous peoples’ groups.

## FINDING SOLUTIONS

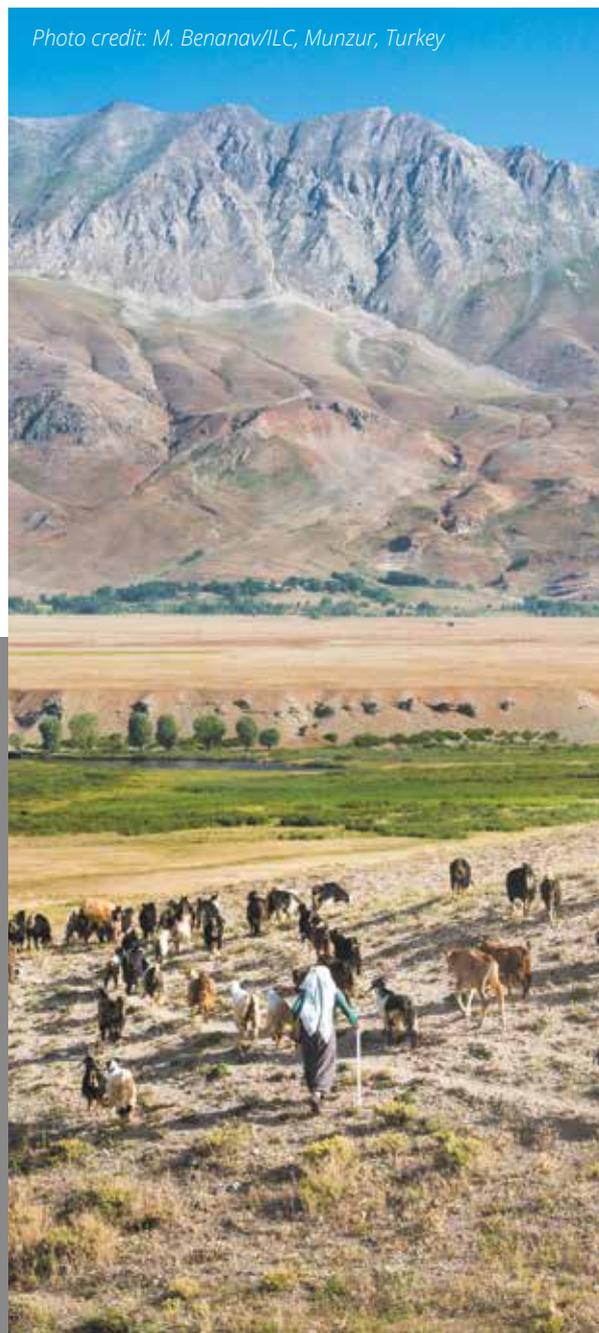
Although titling is critical, many governments see issuing the title or certificate as the end rather than the beginning of a process to support secure rights, sustainable resource management and local livelihoods. Research has identified some practical actions to support indigenous peoples to secure and manage their land and territorial rights. The following section outlines some of the possible steps.<sup>15</sup>

### *DEVELOP A FIT-FOR-PURPOSE LEGAL AND MANAGEMENT FRAMEWORK*

Taking measures to understand the context and history of a particular area – as outlined above – helps to identify and prepare well for conflicts that may arise.<sup>6</sup> It also requires a radical change in the existing system, including a comprehensive monitoring and evaluation system for all national commitment to international agreement and capacity for all actors. This issue has been tackled by members of the ILC network and their allies at local, national and international levels. Analysis highlights that promoting mechanisms for transparency and informed consent can help protect indigenous peoples' land and territorial rights.<sup>6</sup> This is particularly helpful for addressing the impact of large-scale land investments.

A more inclusive and effective governance process is possible when representatives elected by indigenous communities form working partnerships with government bodies. This approach is exemplified at the Amarakaeri Communal Reserve in Madre de Dios in the Peruvian Amazon, where ECA-Amarakaeri, an indigenous organization representing ten local indigenous communities, work cooperatively in partnership with SERNANP, the Peruvian Protected Areas Service, to ensure effective land governance.<sup>16</sup> This example highlights how working with influential actors within governments or legal systems and finding commonalities between government and indigenous agendas enable the development of a fit-for-purpose legal and management framework. Central to this development is recognising the responsibility of different government agencies in assuring tenure rights and ensuring that each agency has the correct mandate and resources needed to fulfil their responsibilities.<sup>7</sup>

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There is also the potential to use the 'soft law' commitments, including safeguard policies, of international financing institutions, UN agencies, bilateral donors, and sectoral policies, as well as voluntary guidelines and frameworks (such as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests, and the African Land Policy Framework and Guidelines) that help to promote indigenous peoples' rights.<sup>1</sup> These mechanisms assist organisations and groups who advocate for indigenous peoples' rights to have more control and influence over recognition, titling or certification processes.

Photo credit: M. Benanav/ILC, Maji Moto-Maasai, Kenya



### ENSURING THE RIGHT PEOPLE BENEFIT

Economic pressures from external private groups or companies, sometimes with support of the government, remain a real threat to indigenous land rights. Once legal rights have been established, ensuring the intended (indigenous) beneficiaries gain from these changes is essential. A direct approach to address the factors causing tenure insecurity is important in order to prevent pressures on communities or conflicts that might prevent them from benefitting from their recognised rights.<sup>7</sup> This can be done by placing restrictions on financial gains of non-indigenous groups, together with incentives. This is exemplified in the Amazon Fund's promotion of the sustainability and conservation of Amazonian forests in Brazil, Paraguay, Bolivia and other surrounding countries, where it works to prevent, monitor and combat deforestation.<sup>17</sup> Additionally, a clear roadmap should be developed to ensure that benefits reach their intended targets.<sup>6</sup>

Significant government investment is needed to support the implementation and securing of land and territorial rights. Powerful external actors find and exploit loopholes to take control of resources, 'land grabbing' at the expense of local indigenous populations.<sup>10</sup> Given the role that government can play in support of these external actors, and at the same time the importance of government for supporting, funding and defending community rights, allies and champions are needed from both inside government and from NGOs, to build strong leaders and advocacy networks, as well as to develop policies tailored to the specific context

of each region and community. This work must be done alongside indigenous organisations, which have the institutional structure and representativity to articulate across different levels.<sup>7</sup>

At the same time, attention also needs to be paid to differentiation within indigenous communities. It cannot be assumed that these communities are homogenous or egalitarian, and elite capture can be a problem.<sup>18</sup> In addition, some groups may have less power in terms of land rights or decision-making, such as women, youth, minority ethnic groups or recent migrants. ►

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## A HUMAN RIGHTS-BASED RESPONSE TO ENVIRONMENTAL PROTECTION AND CLIMATE CHANGE

Studies show that the world's indigenous peoples and local communities (up to 2.5 billion women and men) have historically used over 50% of the world's land area, but legally own just one-fifth.<sup>4</sup> The World Resources Institute reports that at least 24% of the carbon stored above ground in the world's tropical forests is in the collectively-managed lands of indigenous peoples and local communities.<sup>4</sup> A significant amount of land is therefore under the care of indigenous peoples, and there is increasing evidence of the value that securing indigenous rights over land and resources provides in regards to global attempts to address the climate emergency.

The importance of human rights-based responses to climate change issues is now being recognised by key international agreements, such as the Paris Agreement and the 2030 Agenda for Sustainable Development.<sup>19</sup> Different studies by CIFOR reveal how land and territorial rights are critical to support climate change mitigation efforts. This includes an awareness that tenure arrangements determine rights and responsibilities under schemes for REDD+ and investing in securing the collective land rights of indigenous peoples is a cost-effective measure toward climate change mitigation.<sup>6,20</sup> For example, the benefits for lowering carbon emissions as a result of indigenous and local community management of titled forests, have been estimated at between \$523 billion and \$1.165 trillion over the next 20 years in Brazil alone; the cost of titling those forests stands at just a few dollars per hectare.<sup>21</sup>

Secure land and resource rights are also one of the key components of ensuring that indigenous peoples are supported in their efforts to conserve ecosystems and habitats.<sup>6</sup> By aligning the agendas of indigenous peoples and conservation groups, together with promoting education on the conservation value of traditional land and resource management, a human rights-based response to climate change can be set into action. From CIFOR's perspective, an important step to achieving this is that the conservation sector increases its engagement in and support for tenure reforms as a global conservation priority.<sup>6</sup>

### INDIGENOUS WOMEN'S LAND RIGHTS

Indigenous women face important challenges, even in cases when collective rights are legally recognised. As women's rights are often tied to their relationships with male relatives, they can be marginalised if local arrangements limit their access and control over resources. As a result, women tend to participate much less than men in decisions regarding the management of territorial lands and resource use.<sup>13</sup> Thus, their ability to benefit depends not only on whether existing laws protect their territorial rights, but can also be affected if discriminatory local norms restrict their ability to benefit from these rights. Research has identified that the particular interests and needs of women and other more vulnerable groups must be recognised, understood and addressed with sensitivity. Peru's policies and legislation are a good example of the challenges, as government efforts aim at approaching land and territorial rights from an intercultural perspective.<sup>22</sup>

Assuring gender equality in the recognition of territorial rights is important and, according to CIFOR scientists, governments and practitioners need to develop mechanisms that enhance indigenous women's and ensure inclusive participation.<sup>16</sup> This should include clear provisions and practices that indicate how women will be incorporated in implementation processes. One of the ways to do this is to develop a well-defined roadmap and guidelines to incorporate women's voices and concerns so they actively participate in the design and implementation of initiatives, and ultimately receive the benefits associated with those rights.<sup>6</sup> In addition, support for existing or emerging indigenous women's organisations, in terms of training and funding, provides an opportunity to support indigenous women's roles in land and territorial rights negotiations and management.<sup>1</sup> ●

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M. Benanav/ILC, Bolivia



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## LOOKING TO THE FUTURE

There are clear benefits to be gained from securing land and territorial rights for indigenous peoples and moving towards more inclusive, equitable management of these lands and resources. Research has identified a number of mechanisms that can be drawn on to support a more effective delivery, including:

- Focus on dialogue, negotiations and conflict transformation, as well as assist governments and management institutions in understanding and carrying out appropriate action.
- Explore and understand the interrelationships between indigenous peoples' groups, government agencies and other stakeholders, including align the agendas of indigenous peoples and conservation groups.
- Use 'soft law' commitments and voluntary guidelines or frameworks which provide leverage for advocacy and promotion of indigenous peoples' rights.<sup>1</sup>
- Identify and address structural issues that hinder implementation of actions that aim at recognising and protecting indigenous rights including historical conflicts and also inequity within legal and regulatory systems.<sup>21</sup>
- Promote education on the conservation value of indigenous land and resource management.<sup>6</sup>
- Develop a well-defined roadmap, guidelines and budget to empower indigenous women and address social differentiation.<sup>6</sup>
- Seek support in the form of allies and champions to build strong leadership and advocacy networks.<sup>7</sup>
- Monitor progress - learning and adjusting strategies as needed.

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- Cruz-Burga, Z., Monterroso, I., Larson, A. M., Valencia, F., Saldaña, J. (2019). The impact of formalizing rights to land and forest, CIFOR InfoBrief, (242), pp. 1-7
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## REFERENCES

For a full list of references please refer to the Annex - [End Notes](#)

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