



THE UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES

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Backgrounder

Indigenous peoples' collective rights to lands, territories and resources

Indigenous peoples have deep spiritual, cultural, social and economic connections with their lands, territories and resources, which are basic to their identity and existence itself. Their tradition of collective rights to lands and resources – through the community, the region or the state -- contrast with dominant models of individual ownership, privatization and development.

There is growing recognition that advancing indigenous peoples' collective rights to lands, territories and resources not only contributes to their well-being but also to the greater good, by tackling problems such as climate change and the loss of biodiversity. Indigenous lands make up around 20 per cent of the earth's territory, containing 80 per cent of the world's remaining biodiversity – a clear sign that indigenous peoples are the most effective stewards of the environment.

In a few countries, progress has been made in realizing indigenous peoples' rights to lands, territories and resources. Examples include:

- In Australia, more than 20 per cent of the land is legally owned by indigenous peoples under native title and statutory land rights schemes -- most of it in remote areas.
- In Canada, the largest aboriginal land claims agreement between the government and the native Inuit people led to the creation of Nunavut in 1999, a homeland for Canada's Inuit.
- The Republic of the Congo in 2011 became the first African country to adopt a specific law on the rights of indigenous peoples, including the preservation of pre-existing land tenure of indigenous peoples in the absence of land titles.
- India's Forest Rights Act 2006 includes the rights of scheduled tribes to forest lands under individual or common occupation through village assemblies and requires the consent of the community for their resettlement.
- Indonesia's Constitutional Court in 2013 restored the rights of indigenous communities over their customary forests, which were earlier considered "State forests."
- In New Zealand, the Treaty of Waitangi in Aotearoa retains the collective and individual rights of the Maori over their lands, forests, fisheries and other properties, with a permanent Tribunal established in 1975 to consider any breach of the Treaty.
- In Norway, the Finnmark Land Rights Act 2005 established a Commission and a Tribunal to consider and conclude on land rights claims from indigenous Sami and others.
- In Panama, five regions (comarcas) are recognized based on indigenous peoples' constitutional rights, while Law 72 also sets out special procedure for awarding collective title to the lands of indigenous peoples not within comarcas since 2008.
- The Russian Federation in 2001 adopted a law on Territories of Traditional Nature Use, a federal law affording a form of recognition to indigenous peoples' land tenure.
- Other countries, such as Colombia and the United States, have set aside tracts of lands or territories for indigenous collective control.





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Challenges

In many countries, however, the collective rights of indigenous peoples are not recognized, or the necessary procedures -- such as resource mapping, demarcation and titling – are not being completed. And even where indigenous peoples have obtained legal protection or title deeds to their lands and resources, a lack of enforcement of laws as well as contradictory laws frequently result in a *de facto* denial of the rights of indigenous peoples. More importantly, State or business entities often undertake projects, such as dams, highways, mining or logging, mono cropping or bio fuel plantations, without obtaining indigenous peoples' free, prior and informed consent.

Despite positive decisions in courts and human rights bodies for land and resource rights of indigenous peoples, issues of dispossession of land and resources, forced removal or relocation, denial of land rights and accompanying violence are a reality for indigenous communities around the world. Human rights defenders protecting their rights and their lands, territories and resources are often victims of violence.

Without full recognition and implementation of their rights to their lands, territories and resources, it is unlikely that indigenous peoples will benefit from the 2030 Agenda for Sustainable Development which aims to “leave no one behind.”

International frameworks

The collective rights of indigenous peoples to lands, territories and resources are firmly embedded in the United Nations Declaration on the Rights of Indigenous Peoples (Articles 3 and 26) as well as in the International Labour Organization's Indigenous and Tribal Peoples Convention No. 169 and its predecessor Convention No. 107.

Other international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination have implicit references to indigenous peoples' rights to lands, territories and resources.

Regional human rights mechanisms in Africa and the Americas have also affirmed indigenous peoples' collective rights to lands, territories and resources. Similarly, the UN Guiding Principles on Business and Human Rights include the responsibility of businesses to respect the rights of indigenous peoples and remedy for any abuse.

The United Nations Permanent Forum on Indigenous Issues, since its establishment in 2000 has repeatedly called upon States to take effective measures to halt land alienation in indigenous territories, provide financial and technical assistance for indigenous peoples to map the boundaries of their communal lands, finalize legal and policy frameworks for the registration of collective titles, and adopt national legislations with the principle of free, prior and informed consent of indigenous peoples when involving their territories, lands and natural resources. The Forum has also called for more efforts from the UN system towards establishing mechanisms at international and country levels for ensuring respect for the rights of indigenous peoples.

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