



## USAID ISSUE BRIEF

# TENURE AND INDIGENOUS PEOPLES

## THE IMPORTANCE OF SELF-DETERMINATION, TERRITORY, AND RIGHTS TO LAND AND OTHER NATURAL RESOURCES PROPERTY RIGHTS AND RESOURCE GOVERNANCE BRIEFING PAPER #13

### SUMMARY

Indigenous peoples (IP) often live on lands governed by customary or informal law. Securing access to these natural resources and formalizing land tenure rights is an essential foundation for vulnerable IP to maintain themselves; exercise their civil, social, cultural, political, and economic rights; and contribute to local, national, and global sustainable development (UN 2009a). Legal recognition and demarcation of tribal areas, territories, or domains are the key means for empowering IP. However, these legal protections often do not exist. Reasons include weak states, land acquisition for agriculture, infrastructure developments, biodiversity conservation, inappropriate tenure instruments, agrarian reforms, Global Climate Change (GCC) mitigation, extractive industries, and an inability to work effectively with remote IP.

Assistance to IP through strengthening tenure security requires attention to issues and limiting factors with which IP identify when they produce their own long-term plans for development (Tauli-Corpuz, Enkiwe-Abayao, and de Chavez 2010). Therefore, development efforts should address the specific needs of IP while also ensuring that well-intentioned initiatives do not inadvertently harm indigenous communities. This brief discusses the key issues, opportunities, and recommendations for strengthening land and resource rights of indigenous peoples.

### Who are indigenous peoples?

Indigenous peoples and their organizations are found in all regions of the world. In some countries, IP are called “ethnic minorities” and/or “tribal peoples.” Their social, cultural, and economic conditions distinguish them from other groups within the national community. Their status is regulated in varying degrees by their own customs or traditions, and by domestic and international law (Westra 2008), including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Convention concerning Indigenous and Tribal Peoples in Independent Countries (International Labor Organization Treaty 169<sup>1</sup>).<sup>2</sup> Key United Nations bodies addressing indigenous peoples’ issues include the Permanent Forum on

**Indigenous peoples (IP)** are any ethnic groups who inhabit a geographic region with which they have long-term historical connections.

IP are characterized by:

- Self-identification as indigenous peoples and acceptance of that identification by neighbors;
- Strong links to territories and surrounding natural resources or a history of having been removed from those lands;
- Distinct social, economic, or political systems;
- Distinct language, culture, and beliefs;
- Non-dominant groups of society; and
- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

<sup>1</sup> Relevant international conventions and treaties can be found online at University of Minnesota Human Rights Library, <http://www1.umn.edu/humanrts/instree/ainstls1.htm>.

Indigenous peoples' rights to natural resources are often contested by the dominant societies, including settlers, industry, and biodiversity conservation interests, among others. Many IP live in remote situations of high insecurity due to regional armed conflicts. They are among the most vulnerable groups in the world and can be negatively impacted by Land Titling and Property Rights projects if their issues and interests are not appropriately addressed in the design and implementation of projects, laws, and policies.

Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, and Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples.

Indigenous peoples' strengths lie in self-organizing abilities, local governance systems, local knowledge, internal accountability, and locally adapted cultures. IP seek to protect themselves and their resources against external threats by withdrawing, blockading roads to instigate dialogues and agreements with governments, and engaging in legal and other defensive actions. Their internal relationships and relationships to the environment are guided by customary law—customs that are often recognized by national governments as legitimate sources of authority. At least 104 national Constitutions have provisions recognizing customary law (Cuskelly 2010), and 32 have specific provisions on customary land tenure and resource rights. Rights of IP are increasingly protected under international law (Lynch 2011) and national jurisprudence. In some cases, international law may provide a basis for legal recourse when national law is not available to protect the rights of IP.

Regional international courts have upheld indigenous tenure rights in Latin America and Africa. The landmark ruling of the International Court of Justice's Opinion on Western Sahara in 1975 recognized that nomadic peoples have rights to ancestral territories. In 2010, the African Commission on Human and Peoples' Rights ruled that the Kenyan state had violated the human rights of Endorois by evicting them from their ancestral lands for tourism development. The Inter-American Commission on Human Rights (IACHR) recently published a compendium of laws, and there is substantial jurisprudence supporting indigenous land and resource rights in the Americas (OAS 2010), including the rights of African descendent communities as "Tribal Peoples."

Indigenous peoples depend on access to natural resources and particular landscapes for survival, to preserve a unique sense of identity, and to provide livelihoods. IP adopt diverse livelihood strategies, including nomadic herding combined with seasonal agriculture; rotating slash-and-burn agriculture combined with reliance on forest products; fishing and gathering; farming and hunting combined with trade; and other unique and complex mixes of strategies adapted to particular natural and social conditions. While the size of the land area held under customary law without official tenure protection under statutory law and titling is unknown, it may be as high as 90 percent in Africa, and covers significant areas in Asia, Pacific, and Latin America (to a lesser extent). With an estimated population of 370 million people occupying 20 percent of the world's territory, IP comprise one-third of the world's poor and live an average of 20 years less than the nonindigenous population (United Nations 2009a).

Indigenous peoples typically frame their tenure rights within their collective rights over resources managed under customary law. These rights are applied by indigenous peoples' own self-organized governance institutions that have evolved over time. These local institutions allow for the sustainable extraction and use of resources (Ostrom 2009). These rules guide the internal division of property within the groups' territories, including family rights to agricultural fields into which individuals have invested their efforts, as well as rights to grazing, fishing, and forest areas. These local governance institutions also recognize that rights to access a particular place or resource may be overlapping, depending on season and/or other factors such as age, gender, lineage, and ritual knowledge.

Indigenous peoples' tenure issues are increasingly linked to rising global issues surrounding biodiversity conservation, natural resource management, and GCC. IP often inhabit and have rights to territories that overlap or are coterminous with the remaining high biodiversity zones of the world. This overlap does not necessarily result in loss of biodiversity. Rather, studies have demonstrated that when governments commit to provide secure tenure for territories of IP, these areas provide as effective or more effective protection than state-protected areas<sup>3</sup> (Ricketts et al. 2010, Stickler et al. 2008). Efforts to mitigate GCC also seek to reduce deforestation; again, studies have shown IP-controlled territories are superior to other protected areas in preventing deforestation

<sup>2</sup> The U.S. Government (USG) recognizes the right of IP to "free, prior, and informed consultation," diverging from the UNDRIP language of "free, prior, and informed consent." The USG maintains that the use of the term "consent" privileges IP over other groups and is undemocratic in its effect on process.

<sup>3</sup> A protected area, as defined by IUCN, is "a clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural value." (Dudley 2009, p.8).

(Hayes and Ostrom 2005, Nepstad et al. 2006). IP are increasingly participating in national and global fora to represent their interests and competencies in biodiversity efforts and mitigation of GCC.

## KEY ISSUES AND OPTIONS FOR ADDRESSING ISSUES

### **Weak states fail to protect indigenous peoples.**

While indigenous peoples often live in countries that have enacted laws and policies to redress slowly post-colonial wrongs, implementation is limited by conflicts with other laws. Implementation is also hindered by weak courts and land administration systems and, in some cases, by corruption. States' weakest zones are typically in remote regions where IP live. In extreme cases, such as Colombia, IP have very strong rights to autonomous territories but cannot exercise their full rights due to armed conflict and poor citizen security (Schmidt 2009). Even these autonomous territories are often remnants of the larger areas originally granted (but not formally recognized or titled) to IP in Colombia.

“[U]nprecedented exposure and pressure, and risk to local people and their forests, is being met by unprecedented levels of local organization and political influence, providing nations and the world at large tremendous opportunity to right historic wrongs, advance rural development, and save forests. But the chaos in Copenhagen at COP15 laid bare the looming crises that the world will face if the longer-term trends of ignored rights, hunger, and climate change remain inadequately addressed...” (RRI 2010).

Conflicting laws are common in some areas. For example, the Philippines Indigenous Peoples Rights Act of 1997 (IPRA) conflicts with the Mining Act of 1995, the Fisheries Code, the Forestry Code, and the National Integrated Protected Area System. At the request of IP, the government created an Indigenous Peoples Consultative Body in 2006 to make recommendations for harmonizing IPRA and UNDRIP (UNDRIP 2007) into these conflicting laws, as well as to review the performance of the National Commission on Indigenous Peoples (NCIP) to help it to “free itself from historic inefficiency and corruption” (Ramo 2010) to improve the efficiency of awarding Ancestral Domain (AD) titles. Harmonizing laws often strengthens democracy and the more effective exercise of rights and responsibilities.

The promotion of transparency and freedom of information can open doors for reform processes that enable IP and others to exercise their legal rights. In India, IP and their allies have supported the implementation of the 2006 Forest Act by using the Right to Information Act of 2005 (RTI). The 2006 Forest Act recognizes tribal rights to forested territories in remote, contested regions, and includes recognition of the rights of nomadic tribes. The Forest Act has been used to grant land titles and forest rights to tribals living inside protected areas (TNN 2011). The RTI is a civil society tool in India and elsewhere that may help fight corruption, better ensure that public budgets are accountably executed, and provide information essential for IP struggling to defend their lands. Hundreds of thousands of RTI applications have created remarkable changes in transparency and yielded changes in land rights for IP (PNS 2011, Sahoo 2010, Singh 2010).

### **Poorly functioning land markets and some large-scale land acquisitions threaten indigenous peoples.**

Without secure tenure to land and water, IP can easily lose their legal rights to natural resources by the stroke of a pen. This is a rising threat. In an analysis of rising land demands, a World Bank study (World Bank 2010) predicts that 6 million hectares of additional land will be brought into agricultural production by 2030, primarily in Sub-Saharan Africa and South American dry forest—both areas high in IP population. In Southeast Asia, oil palm plantation expansion into forested areas has often come into conflict with indigenous rights (Colchester 2010). The World Bank study concludes that some investors have taken advantage of the lack of legal protection for local communities to force people off their lands.

When the land and resource rights of IP are not recorded, recognized, and enforced, these groups can be dispossessed or evicted. Lack of capacity in land administration agencies, lack of transparency and corruption, and insufficient participation of vulnerable groups in land deals create situations that exacerbate conflicts. In Africa, chiefs have signed away rights to land without consulting their constituents. This alarming situation highlights the need to build good governance controls and assist local people to protect their land and resource rights. One method for meeting these challenges is to adopt community mapping practices. Many such examples now exist. In Indonesia, USAID supported a community mapping program that involved community members “signing” maps with their fingerprints to signal agreement with border demarcations. These maps were later used as evidence to support indigenous peoples’ rights and to cancel land sales that had been negotiated by community leaders without the knowledge of their constituents.

### **Agrarian reform can be a double-edged issue for indigenous peoples.**

Agrarian reform can be a threat to indigenous rights when land redistribution and registration programs fail to take into account pre-existing indigenous rights. When agrarian reform pushes poor farmers into indigenous lands because other lands are not available, farmers and IP are left to fight over weak rights. In the Philippines, for example, where much agricultural land is held by agroindustry and not available to poor farmers, indigenous lands have sometimes been titled in favor of invading settler families by the Department of Agrarian Reform even as IP await issuance of Certificates of Ancestral Domain (Tolentino 2010).

There may be disruptive changes in land rights assignment and policies as agrarian reform progresses. In Bolivia, for example, a series of different titling programs for indigenous lands have successively replaced one another since the 1980s. In 2010, under yet another new Bolivian Constitution, the Lands of Original Communities (TCO) titles processed and awarded by the Land Reform agency since the 1990s were abruptly transformed into Territories of Original Indigenous Peasants (TIOC). Lowland IP worry this change will allow outsiders to settle in their indigenous territories. The TIOC has also shifted the framework from serving as a tenurial instrument to being an instrument delimiting autonomous governance, which itself has yet to be defined after the previous laws establishing representation and decentralization were annulled (Cameron 2010).

### **Population pressure and the expansion of infrastructure.**

Conservation refugees are best documented in Africa.

- 600,000 refugees in Chad (Dowie 2006, 2009).
- 100,000 in Kenya and Tanzania in the past 30 years (Dowie 2006, 2009).
- 120,000 (5 percent of the population) displaced since 1990 plus an additional 170,000 facing displacement in Nigeria, Gabon, Cameroon, Republic of Congo, Equatorial Guinea, and Central African Republic. These refugees are being moved into lands already occupied and managed by 250,000 people (Schmidt-Soltau 2005).
- 30,000 forced from Kibale Forest Reserve and Game Corridor in Uganda (Colchester 2010).
- Additional IP have been removed from Central Kalahari Game Reserve, Chobe National Park, Etosha National Park, Moremi Game Reserve, Tsodilo Hills World Heritage Site, West Caprivi Game Park, Wankie National Park, and Gemsbok National Park (Hitchcock 2005).

Competing demands for land come from the agriculture sector. Other factors that increase demand for land are the rise of developing world populations and the creation of new infrastructure to improve access to markets, facilitate trade, and promote economic growth. The new road and energy networks being built by investments coordinated by the Initiative for the Integration of Regional Infrastructure in South America (IIRSA)<sup>4</sup> to increase agricultural exports to Asia, for example, make it easier for settlers, merchants, and illegal loggers to clear forests and settle in indigenous territories. Even in cases where IP have recognized land and resource rights, national governments may fail to act to enforce their territorial rights. In Madre de Dios, Peru, for example, the regional IP organization FENEMAD is singlehandedly fighting small-scale illegal loggers invading indigenous titled lands. These loggers are invading indigenous peoples' lands by following the new transoceanic highway built as part of the IIRSA development plan that threatens virtually all IP in South America through interlinked set of dams, canals, and multiple routes to the Pacific crisscrossing highly fragile, biodiverse, and mainly indigenous lands of the Amazon basin and Gran Chaco. In Madre de Dios, new immigrants add new challenges to FENEMAD's ongoing efforts to protect Amarakaeri Communal Reserve from petroleum exploration. While Brazil has enforced restrictions on roads and other developments that could affect indigenous reserves as demonstrated where historical sequences of satellite images show the progressively stark deforested border at the protected edge of the forested Xingu IP reserve (Stickler, Kellendorfer, Walker, Soares, Rodrigues, and Dietsch 2008), most recently the Brazilian government has supported construction of an upriver hydroelectric dam which will flood Xingu IP reserve and displace Juruna, Xikrín, Arara, Xipaia, Kuruaya, and Kayapó IP communities from their territory (IACHR 2011).

### **Biodiversity conservation threatens indigenous peoples' land rights by creating or expanding protected areas.**

Twelve percent of the Earth is held as government-controlled protected areas (20 million square kilometers). This includes 40 percent of rural lands in some African nations (Veit, Nshala, and Odhiambo 2007). More areas are being declared to meet the new 17 percent global target for terrestrial protected areas and other area-based

<sup>4</sup> IIRSA is a coordinated capital investment plan for South America, financing energy and telecommunication networks, highways, and deep canals crisscrossing Latin America, linking the most remote areas via transportation hubs to Atlantic and Pacific ports.

conservation measures established at the 2010 Convention on Biological Diversity Conference of the Parties (CBD COP) in Nagoya (CBD 2010). In Africa, state-led conservation has a history of violating due process rights of local occupants, forced resettlements, destruction of property and farms, and even torture and extrajudicial killings (Alcorn and Royo 2007, Duffy 2010, Neumann 2004). Estimates have placed the global number of conservation refugees at 130 million, many of them IP (Geisler 2002, 2003; Geisler and de Sousa 2001). If the people currently “illegally” using protected area resources had their resource access restricted, the number of conservation refugees would run into the hundreds of millions.

In Botswana, for example, water rights of the San people have been restricted as a means to force them to leave the Central Kalahari Game Reserve. The San won a court battle to protect their access rights to these resources. However, the Botswanan government has been slow to protect these rights (Hitchcock 2009). In Nepal, where 59 different IP constitute 37 percent of the population, the UN Human Rights Rapporteur’s 2009 country report (Anaya 2009) identified violations, including extrajudicial killings, in and around national parks due to conservation policies and recommends that these policies be revised to incorporate attention to the rights of indigenous peoples. Nepal’s protected areas were created in indigenous peoples’ territories without their consent (Stevens 2010). This issue is also being addressed in post-apartheid South Africa and other African countries. IP often continue to exercise their collective rights to their traditional resources despite the criminalization of their activities, which further increases their vulnerability. The 2004 International Union for the Conservation of Nature (IUCN) World Parks Congress “Durban Action Plan” (IUCN 2004), supported by subsequent IUCN Congress Resolutions (IUCN 2008)<sup>5</sup>, recommended that a Truth and Reconciliation Commission be established to address rights to lands alienated for protected areas.

Alternative solutions abound; lessons from the development of community conservancies (Hitchcock 2006, Hitchcock and Babchuck 2007) in Namibia and Botswana may be useful for developing more robust land and resource rights for Ethiopian Mursi (Muchemi 2009) and other semi-pastoralists who now struggle to maintain land rights and manage wildlife (Mwangi and Ostrom 2009, Robinson and Berkes 2010). IUCN’s new protected area category of “Indigenous and Community Conserved Areas” can be appropriate where the rights of IP are relatively weak. In Latin America and the Pacific, where IP have stronger rights, other mechanisms can be used to assist IP to integrate biodiversity conservation into their land-use and life plans. For example, the Bolivian Tacana Indigenous Organization’s collaboration with local government associations and conservation organizations in and around Madidi National Park has steadily built local governance capacity in a conflict-ridden environment.

### **Imposition of statutory law and inappropriate devolution may threaten indigenous peoples.**

Legal rights are too often devolved or created without taking customary systems into account, or those rights fail to embrace legal pluralism in appropriate ways. When statutory rules are imposed over customary law and practice, this tends to undermine existing systems and has the unintended consequence of creating a tragedy of open access that marginalizes indigenous peoples.

The issues and solutions vary according to the country and subregion. Conflicts arise in weak states where customary authorities and rights not protected and where the state lacks legitimacy and capacity to administer land (as in Afghanistan and Pakistan’s tribal areas). In Vietnam’s ethnically diverse Dak Lak province, conflicts generated by a pilot forest devolution initiative could have been avoided by incorporating more inclusive resource-sharing arrangements adapted to customary rights and responsibilities in accord with historical relationships (Sikor and Thanh 2007). A pilot study in Brazil, Democratic Republic of Congo, Ghana, Sri Lanka, Tanzania, and Vietnam (Moore, Griebler, and Baig 2010) illustrates the issues and a model process for participatory assessment of options for improving the application of customary and statutory law in mutually supportive ways.

The legal solutions constructed over centuries to incorporate customary land rights into modern systems in European countries, such as Norway (Berge 2007) and Switzerland (Intercooperation 2010), offer insights into alternatives for addressing such issues as protecting lineage interests in individually titled lands, competencies of public bureaucracies and customary authorities for enforcing land laws, and issues surrounding individual interests in collectively held land. In many situations, settlers have long co-existed with IP who prefer to include the settlers in land allocation and titling processes so that conflicts can be avoided. In northern Argentina, for example, when IACHR responded to the complaints of IP by mediating negotiations with the Argentinean government to assign lands rights to IP, it was necessary to assist criollo settlers to develop a representative organization with which the indigenous organization could negotiate division of the 650,000 hectares of fiscal lands given to the IP by the

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<sup>5</sup> The USG refrained from deliberation and voting on Resolution 4.048, issuing the following statement: “State and agency members of the United States refrained from engaging in deliberations on this motion and took no national government position on the motion as adopted for reasons given in the U.S. General Statement on the IUCN Motions Process.”

government. This was due to the fact that Lhaka Honat, the organization of the IP representing 40 Wichi communities, wanted to share the land with their longtime criollo neighbors (Alcorn, Zarzycki, and de la Cruz 2010).

Water, forests, and land are viewed as an integrated whole from an indigenous customary law perspective, mirroring ecologists' perspectives on the interdependent ecological linkages among water, wetlands, and forests (Blumenfeld et al. 2009).

Water is increasingly associated with land conflicts and overarching political tensions (Boelens 2009). The Masai, and other pastoral IP that live across large swathes of Kenya and Tanzania, depend on scarce and seasonal water resources for their cattle and livelihoods. Wildlife tourism, national parks, private ranches, and other competing demands on the ecosystems in and near the Rift valley have pushed Masai groups off their traditional lands and away from water for their cattle herds. The Masai, who were forcibly ejected from their traditional Kukuena Farm land in Western Arusha, Tanzania, achieved a minor victory against a U.S. safari tour operator for violating their rights by harassing, beating, and subjecting them to extrajudicial arrest when they attempted to access their traditional water sources (Minority Rights 2011). Although the UN's Committee on the Elimination of Racial Discrimination (CERD) in March 2009 requested a curtailment of harassment, most African cases fail to get outside attention (Johnston 2011).

Around the world, conflicts arise from upriver uses that impact downriver indigenous peoples' drinking water, agriculture, and fishing resources. In transboundary situations in Bolivia and Argentina, IP have attempted, without success, to participate in Pilcomayo Master Plan and contribute their knowledge (Alcorn, Zarzycki, and de la Cruz 2010). In the Andean region, irrigation organizations of IP are struggling to defend their water rights within legal and policy systems that marginalize them (Boelens, Guevara-Gil, and Panfichi 2010). With the Australian National Water Commission's support to reduce conflicts, Aborigines have established the Indigenous Community Water Facilitator Network to act as a catalyst to ensure that indigenous interests are articulated, encouraged, and incorporated into water policy decisions, management plans, and water allocations in conjunction with other stakeholders (NAILSMA 2008). Water and land are respected as integral to indigenous peoples' territories under Philippines law IPRA 1997; traditional ocean fishing territories are recognized aspects of Ancestral Domains, along with rivers, land, forest, and subsoil resources. However, enforcement is weak and conflicting laws undermine the exercise of these rights.

### **Global Climate Change and Global Climate Change mitigation threaten indigenous peoples.**

GCC is predicted to bring more extreme conditions to marginal lands where IP are significant sectors of the population. Pastoralists and semipastoralists may face droughts that create food and water shortages for themselves and their livestock. IP dependent on fisheries may be forced to adapt to fish die-offs and changes in species composition of their catches. Coastal IP will be particularly hard hit by sea level rises in Asia and the Pacific. IP who depend on forests may need to adapt to increased loss of resources due to fires and die-off. Competition for fresh water resources may result in river deviation for irrigation and dams that will especially impact indigenous peoples' lands and resources in South America, Africa, and southern Asia. GCC may also trigger new migrations of settlers in search of land and resources into remote indigenous areas. REDD+ and other projects and policies intended to reduce or mitigate GCC can threaten IP and their tenurial rights. Continuation of colonial restrictions on slash-and-burn agriculture and other traditional resource management activities (Alcorn 2010a); tree plantations for carbon sequestration; biofuel schemes; carbon rights assigned to others; biodiversity conservation areas; and financial mechanisms/transfers that provide incentives, subsidies, or loans for biofuel production are all competing land uses. Additionally, policy changes resulting in reallocation of authorities' responsibilities and/or budgets among ministries can marginalize the

In Philippines, USAID has supported indigenous peoples' land rights for over 20 years. Over 70 distinct IP live in remote areas and have been impacted by armed revolutionary resistance due to their remote geographic locations. In the late 1980s, USAID support began with studies and eventually the promulgation of a Department of Environment and Natural Resources (DENR) administrative order that laid out the details of process for AD claims even though AD did not exist in law. USAID then provided special GPS equipment for preparation of claims in order for IP to comply with the details of the Administrative Order. When over 1 million hectares had been claimed through the DENR process, government moved to define AD with the IPRA, including ancestral waters. IPRA was passed in 1997. In 2010, USAID continued to support the development of indigenous peoples' land-use plans for ADs, focusing on strengthening indigenous organizations' capacity and engagement with government using law to resolve conflicts. Application of the law continues to face challenges and creates maturing jurisprudence for guiding future application of the law which now enjoys widespread support and recognition by industry and citizens alike.

authority of those with indigenous peoples' constituencies.

Global analyses have demonstrated that forest degradation is inversely related to the level of local, collective action in managing and protecting a forest (Chhatre and Agrawal 2009, Ostrom and Nagendra 2006). Opportunities to stabilize forests and promote carbon equilibrium are high in South American forests under the control or claim of IP, situations where populations are sparse, and 40 percent of absorption of carbon from fossil fuels is believed to occur (an estimated forest-based mitigation potential of 21 metric tons of CO<sub>2</sub> per year). In Africa, Asia, and Central America, opportunities for collaboration with IP in situations that could make significant contributions to reducing global warming may be lost if strategies are not identified to empower IP communities to participate in mitigation efforts and share benefits from such projects. Appropriate engagements with IP, including recognition of indigenous peoples' land tenure and resource rights, are key to long-term REDD+.

### Peoples living in voluntary isolation are especially vulnerable.

#### United Nations' guidance on land rights of "uncontacted" IP

...Two types of land should be given special protection for the benefit of indigenous peoples in isolation and in initial contact.

(A) Lands and territories of indigenous peoples in isolation and in initial contact: those that enable such peoples to maintain their ways of life and in which they have historically lived or travelled. Outsiders should be strictly forbidden to enter or to carry out any type of activity in these lands. (B) Buffer zones: lands surrounding the lands of indigenous peoples in isolation and in initial contact (United Nations, 2009b).

The United Nations offers guidance for governments regarding IP living in voluntary isolation (uncontacted people), who by virtue of their strict isolation from outsiders and the high danger of death from infections if contact does occur are unable to represent themselves or hold titles. States that are party to international conventions have obligations to establish and maintain reserves for their protection in accord with the obligations incurred under the International Labour Organization (ILO) Convention 169 and other relevant international conventions (Alcorn 2006, Alcorn and Royo 2007, UN 2009b). Additional complications arise if uncontacted IP are living in areas over which private titles have been issued, because their inability to represent themselves does not fit established processes for resolving claims and compensating private holders whose lands are returned to IP in accord with established domestic laws, norms, and regulations.

The United Nations offers guidance on human rights protections for uncontacted peoples in the Amazon and Chaco of South America (UN 2009b). Most of the world's remaining uncontacted peoples live in South American forests (Brackelaire 2006). Brazil has protected 11.3 million hectares of forest for uncontacted IP; globally, other countries, including Paraguay, have lagged in executing their responsibilities under international law (Amotocodie, Unión de Nativos Ayoreo de Paraguay [UNAP], International Work Group for Indigenous Affairs [IWGIA] 2010). For example, while Ecuador and Peru established "no touch" areas for uncontacted IP, they nonetheless come into conflict with loggers and settlers both inside and outside their "official" reserved area boundaries.

### Extractive industry increasingly threatens indigenous peoples.

Arguably the greatest source of conflict between IP and outsiders relates to the extractive industry. Forested lands are often under state ownership, and states grant concessions for logging and plantations to businesses. These grants are superimposed on the customary lands of indigenous peoples and often fail to recognize customary rights IP have exercised.

IP are additionally threatened by petroleum and mining industry (Tebtebba and FPP 2006) authorized by national governments. Cases of mining threatening the food security of IP have been documented in Philippines (Working Group on Mining in Philippines, 2009). Violent confrontations are not uncommon (e.g., the 2009 incident in Bagua was triggered by the Peruvian government's unwillingness to seek consent of the IP for petroleum companies to enter Amazonian territories). IP in Latin America, Asia, and Africa, while not categorically opposed to mining, are struggling to hold companies and governments accountable for the negative impacts of mining and petroleum/gas extraction on indigenous territories and waters, yet the global demand for oil, gas, and minerals drives this business. Continuing efforts to assist mining companies to improve their engagement with IP have met with limited success (Herbertson et al. 2009, Richardson 2007). In Peru, water contamination from mines continues to stir conflicts (Servindi 2009). In Guatemala, land acquisitions for mines have directly affected the livelihoods of thousands of indigenous families (van der Sandt 2009, Anaya 2011) and subsequently contaminated the rivers of San Miguel Ixtahuacán with arsenic 26 times those of World Health Organization (WHO) standards (Van de Wauw, Evens, and Machiels 2010). In Philippines alone, between 2001 and 2006, there were 800 extrajudicial killings associated with protests against mining (Doyle, Wicks, and Nally 2007).

## CONCLUSIONS AND RECOMMENDATIONS FOR STRATEGIC INTERVENTIONS

The vulnerability of indigenous peoples increases when their land and resource tenure is not respected. A large body of experience and guidance provides the basis for strategic recommendations that can improve human development outcomes for IP. To apply the following strategic recommendations most effectively in any local situation, it is essential to maintain awareness of evolving the land issues of indigenous peoples at global and national levels. Land and resources are the number one concern for IP, and internet resources are available for tracking evolving situations.<sup>6</sup>

### **Support locally generated efforts to strengthen indigenous peoples' land and natural resource rights.**

Provide assistance to strengthen indigenous peoples' organizations, their constituencies, and legal support organizations, so that IP can represent themselves as laws, policies, and economies change during the transitional turbulence of evolving democracies. The process for achieving and consolidating legal and policy reforms is lengthy; strategic support at particular junctures can catalyze forward progress that strengthens local civil society to engage in the necessary vigilance to protect and exercise the rights that have been won while advancing.

Support for democratic governance can provide collateral support to specific laws and policies in order to ensure that the larger governance framework includes space for significant participation of indigenous peoples. Support for studies and manuals laying out the legal frameworks and tools available for use by indigenous peoples and their support organizations can be helpful if combined with capacity building in advocacy and application of the laws (Read and Cortesi 2001).

### **Incorporate collective tenure into land policy as an appropriate alternative for indigenous peoples.**

Unless there is a demand by affected groups, individual title may not be the best solution for IP and other rural groups. Assist governments and IP to assess the current tenure situation, including overlapping interests, in order to recognize rights and identify indigenous peoples' institutions in ways that will reduce conflicts (Bavikatte and Jonas 2009, Galudra et al. 2010) and support the choices of IP (Charters and Stavenhagen 2009).

**Avoid creating conflicting claims** that arise from neglecting the rights of IP through titling and agrarian reform programs for settlers and resettlement of refugees, while also being alert to the interests of IP in reaching equitable settlements with settlers that live amongst IP communities.

### **Work with conservation organizations to enhance recognition of and respect for indigenous peoples' land tenure and resource rights.**

Create a checklist for reviewing decisions to continue conservation projects when development programs are closed due to armed conflict, coups, or other unstable situations that create pressures to ignore human rights (Alcorn 2006, Springer and Alcorn 2007). Support an independent inspection mechanism for assessing conflicts and complaints against biodiversity conservation activities (including protected areas, certified forestry, and other conservation-linked activities), particularly those in Africa (Lynch 2010). Assess alternatives for directly funding indigenous peoples' and others' organizations to enhance long-term sustainability of biodiversity conservation and reduce conflicts (Alcorn 2010b). Work with national governments to reform conservation policies and practices to prevent human rights abuses associated with protected areas and redress past wrongs. Include assessment of potential negative impacts on IP land rights when considering policy and financial support for conservation incentive programs (Wolman 2004).

For the past 20 years, USAID has provided low-level support for participatory indigenous land use mapping around the world to put IP on the map to prevent inappropriate plans being imposed from the top down without consideration of indigenous peoples' customary rights and land uses for their food security and livelihoods. The significant return on this long-term, low-level investment is now visible in Indonesia, in the new Papua provincial "low-carbon" development plan, which, for the first time in Indonesian history, will include IP plans within the provincial land use plan rather than top-down imposition of the state's plans. The goal of the people, supported by Special Autonomy Law 21 of 2001, is to maintain 25 million hectares of tropical forest, 85 percent of the province land area, in collaborative co-management between indigenous communities and state forest management, based on indigenous land use patterns. The plan also includes guidelines for official delineation of boundaries between communities' lands.

<sup>6</sup> Key global websites for updated news on IP land issues and conflicts are <http://indigenouspeoplesissues.com/> and <http://intercontinentalcry.org/>.

### **Build support for indigenous peoples' land and natural resource tenure into REDD+ and other Global Climate Change investments.**

The fact that so many IP inhabit threatened forests suggests the need to enhance the collaboration of IP in efforts to protect forest resources. An important step in this process should be supporting efforts to formalize the land and natural resources rights IP hold in these areas (Freudenberger and Miller 2010). IP should, to the extent possible, be consulted regarding the full range of REDD+ activities, including traditional projects and technical assistance; policy development; and interventions involving fund transfers originating from, or flowing among, national governments, nongovernmental organizations (NGOs), trust funds, multilateral development banks, private corporations, and/or civil society associations.

More specifically, States should consider certain policy initiatives: a) exempt the slash-and-burn agriculture of indigenous peoples from GCC restrictions, and b) evaluate options for carbon property rights for IP. A test case in Brazil has determined that IP can have rights over carbon, and the Suruí REDD pilot project in Brazil (248,147 hectares) offers guidance for REDD+ project and policy development (Olander, Borges, and Narayamoga 2010). The Metareilá Association (Suruí) is the project proponent; the assisting NGOs are project partners. Any decision about transfer or sale of carbon credit rights is to be formalized in a separate contract developed using the traditional decision-making processes of Suruí clans. The four clans are working together to implement the carbon project as part of their 50-Year Plan for development based on traditional knowledge and resources. Indigenous territories in the Amazon include 21.7 percent of Brazilian Amazon forest and 27 percent of the Brazilian Amazon's carbon stocks (Olander, Borges, and Narayamoga 2010). This case offers a valuable example; the guidelines, developed by a civil society process led by Imaflor and GTA, are adaptable to other countries (Reddsocioambiental 2011). Because international conservation NGOs are major intermediaries for REDD and other GCC programs that will operate in indigenous peoples' territories, it is critical to ensure NGO compliance with attention to indigenous peoples' land and forest rights.

### **Integrate indigenous peoples' land tenure and resource rights into related food security, livelihood, and governance programs.**

Tenure is a necessary but insufficient condition for IP and other vulnerable groups' development. Assist IP communities to map their resources and create long-term plans that will support their initiatives for self-determined development that ensures their food security and their recognized human rights (Griffiths and Anselme 2010; Tauli-Corpuz, Enkiwe-Abayao, and de Chavez 2010).

### **Support indigenous customary tenure, access, and allocation of water rights in policies and projects.**

Assist IP to participate in water policy and other planning processes in ways that will be respected by the established dominant interests.

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