



Between aspiration and reality

Despite the pledge by the 2030 Agenda for Sustainable Development to “leave no-one behind”, even today, a disproportionately high number of indigenous people live in poverty. One of the reasons for this is their limited access to productive assets. Our author gives an overview of the forces that have shaped the land and resource rights of these people and explains why the existing conventions and declarations of securing these rights often do not take effect.

By Rick de Satgé

Currently, there are some 477 million Indigenous people (IP) living in 70 countries world-wide, who together make up about six per cent of the total world population. Their lives are being changed by forces and events over which they have little control. Indigenous people across the world face mounting threats which simultaneously impact on their livelihoods and the health of the planet. Global competition for land, grazing, timber and minerals are rapidly diminishing the vital natural resources on which the health of all depends. Estimates vary as to the amount of land managed by IP. According to the United Nations and their Food and Agriculture Organization (FAO), IP utilise 22 per cent of the global land surface. A 2018 spatial overview of the global importance of indigenous lands for conservation calculated that IP land amounted to 37 per cent of all remaining natural lands across the Earth. Significantly much of this land is rich in biodiversity.

Seeing the big picture

IP custodianship of this land is increasingly recognised to be of global significance – particularly when we locate it in a wider historical perspective. The world we live in has been completely redrawn over the last 300 years. In 1700 there were just 600 million people living on the planet. For the previous 3,000 years living standards had largely remained unchanged. Between the 16th and 19th centuries enormous social and demographic changes resulted from slavery, colonial conquest and dispossession. Some 12.5 million people indigenous to Africa were enslaved and forcibly transported to the Americas. The geographies of existing polities and their territories were erased as colonial powers contested with each other to grab land and established new states with new boundaries.

In the post war era of the 20th century waves of economic and social change triggered by technological innovation, mass industrialisation and information technology raised living standards, albeit highly unequally, sharply increasing population growth. Today there are more than eight billion people living in the world. Since 2007, more people live in towns and cities than in rural areas. Cities are growing at unprecedented speed, with 34 megacities world-wide, each of them home to more than ten million people.

Economies powered by fossil fuels have triggered concatenating climate change. IP, the majority of whom live in remote and fragile

environments, have found their livelihoods and resource base threatened. Mounting pressures on land and natural resources have major implications for IP and rural communities, whose rights are often easily brushed aside, despite the pledge by the 2030 Agenda for Sustainable Development to “leave no-one behind”.

Who qualifies to be regarded as an “indigenous person”?

How do we distinguish between indigenous people, local communities and everyone else? The diversity of indigenous groupings and the many landscapes they occupy makes definition difficult. This is further complicated by the ways in which the social outlines of both IP and local communities become increasingly blurred by their interactions over time.

Broadly speaking, IP are descended from populations with long uninterrupted geographical histories prior to conquest or colonisation, and who continue to retain at least some of their own social, economic, cultural and political institutions.

Better known Indigenous Peoples include:

- Aborigines of Australia
- Inuit people of Greenland and Arctic regions
- Maori people of New Zealand
- Métis people of Canada
- Native American peoples
- Saami people of Northern Europe
- San and the Batwa from Southern and Central Africa
- Tuareg from the Sahel

In addition, in Latin and Central America, there are several hundred indigenous groupings whose identities are not widely known. Brazil has some 305 indigenous ethnic groupings speaking 274 languages. In Guatemala, IP comprise 43.75 per cent of the population. A country like Colombia also has numerous indigenous groupings accounting for 13.6 per cent of the population.

The massive global upheaval associated with the transatlantic slave trade between the 16th and 19th centuries raises difficult questions about the dating of the timestamp associated with the definition of IP. Millions of peoples indigenous to Africa were enslaved and forcibly transported as a precursor to full-scale colonial conquest and annexation. This brutal process erased their claims to indigeneity,



A young Native American.

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A Tuareg from Mali.

Photo: Jörg Böhling

identity, space and place in their motherland, while enlarging definitions of community in the lands where they were settled.

What secures the rights of IP?

The first Indigenous and Tribal Populations Convention was drafted by the International Labour Organization (ILO) in 1959. The thrust of the 1959 Convention was that IP needed to be assimilated into “modern society”. Article 12 sought to protect the land rights of IP, preventing their removal from their habitual territories without free consent. However, it created wide spaces of exception “in accordance with national laws and regulations for reasons relating to national security, or in the interest

of national economic development, or of the health of the said populations”.

The 1959 Convention was replaced by the 1989 Indigenous and Tribal Peoples Convention (No. 169) which came into force on the 5th September 1991. Article 2 states that “Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity”. The Convention also specifically focuses on land rights. Article 14 recognises “the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy”. Further it requires that governments take measures “to safeguard the right of the peoples including nomadic pastoralists and shifting cultivators to use lands not exclusively occupied by them”.

In practice, many countries have shied away from the complex task of trying to disentangle conflicting and overlapping rights in land. Recognising the rights of vulnerable minorities is a highly political process. Conflicts of interest influence how the land and resource rights of indigenous people – mainly nomadic and semi nomadic pastoralists, forest dwellers and hunter gatherers – should be distinguished from settled agrarian communities who access land through customary tenure systems.

By January 2022, only 23 countries had ratified the 1989 Convention, leaving many of the world’s IP without specific legal protection. In 2007, the UN General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This is a non-legally binding treaty which envisions how the rights of IP should be protected. Article 26 articulates the rights of IP to the lands, territories and resources which they have traditionally owned or occupied. Article 10 specifies the need to secure their free, prior and informed consent (FPIC) before carrying out any activity that affects their ancestral lands, territories and natural resources within them.

FPIC also applies to local communities, requiring them to be involved in decision-making on how the land and natural resources they hold in common should be utilised. Meaningful implementation of FPIC principles is reported to be slow and uneven. Critiques of FPIC implementation highlight alleged “window dressing” where state- and corporate-initiated consultations are used to legitimise development initiatives, while frequently sowing division amongst IP and local communities.

The rush for resources

Global economic growth in the 20th and 21st centuries has been accompanied by soaring ecosystem costs due to unsustainable changes in land use and dependence on polluting fossil fuels. CO₂ emissions topped 40 billion tons per annum in 2022, up from 6 billion tons in 1950, triggering catastrophic climate change. While global action is being taken to combat this, alternative technologies underpinning clean renewable energy also have human and environmental costs. The clean energy transition depends on the rapid exploitation of critical minerals and rare-earth elements. By 2060, global natural resource extraction is forecast to have increased by 60 per cent. Solutions favouring the industrialised North have significant impacts in the Global South.



Having a documented land right is not automatically perceived as providing security.

The accelerating demand for critical minerals places indigenous groups under enormous pressure to approve new mining projects. Frequently, such approvals are given without the free, prior and informed consent of indigenous groups. Numerous examples show how FPIC requirements can be diluted or evaded in practice.

Peru

Peru ratified the Indigenous and Tribal Peoples Convention of 1989 on the 2nd February 1994. IP representatives immediately pushed for the promulgation of a binding legal framework requiring that they were consulted before any decisions were taken which affected their rights in land. These demands were consistent with the 1993 Constitution, which recognised the collective rights of indigenous communities and their territories. However, ten years elapsed before the passing of the Amazon Investment Law. This required that IP be consulted before development activities were approved. Critics identified loopholes undermining the effective implementation of

this law. It was further argued that consultation processes do not in themselves guarantee informed consent. A draft Framework Act on Indigenous Peoples in 2005 was more specific about consultation provisions, but this was never passed. It was only in 2011 that Peru finally enacted the Law on the Right to Prior Consultation of Indigenous or Original Peoples (Law No. 29785).

Despite significant progress towards the recognition of IP rights, questions remain about the adequacy of consultation processes with IP in Peru: Who qualifies to be consulted? How are local communities represented? How should the consultation process unfold? Who makes the final decision resulting in approval, redesign or outright rejection of proposed development initiatives?

The DRC

The Democratic Republic of the Congo has reserves which amount to half of the world's known cobalt resources. Amnesty International has documented how the expansion of mining has resulted in communities losing their farm land and being forced from their homes. The Indigenous Batwa people have also been dispossessed due to land disputes and the granting of titles to agricultural and mining companies. The promulgation of protected areas has often excluded Indigenous Peoples and communities from their customary lands. Following a 14 year campaign waged by a network of 45 indigenous organisations, a law to protect and promote the rights of indigenous people in the DRC was finally signed by the President in 2022. This provides the legal basis for IP to claim their FPIC rights and secure compensation. However, it remains to be seen how actively and effectively this law will be implemented.

Mongolia

A mining boom in Mongolia has seen the development of what will be the world's third largest gold and copper mine. However, researchers report that the state has delegated some of its roles to the private sector. This has led to selective application of key norms and left local nomadic communities with little voice in decisions over the mine's development and its impact on their livelihoods.

Canada

In Canada, the Future Minerals Working Group has shown that while Indigenous Peoples hold constitutionally recognised rights to land containing valuable critical mineral resources, outdated legislation from the 19th century remains on the statute books which

effectively overrides their rights. This contradiction is currently awaiting resolution from a high-level court case.

Protecting community land rights – a challenging task

Both UNDRIP and the Convention on Biological Diversity (CBD) emphasise the importance of recognising the contribution of indigenous knowledge to achieving global sustainability goals. In 2022, the International Panel on Climate Change (IPCC) identified the recognition of land rights both of IP and local communities (IPLCs) as one of five priority areas. The 2012 Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) sets out global norms to secure the land rights of communities holding land and accessing resources through customary tenure systems. While the rights of IP and local communities holding land in common are receiving increasing recognition, many obstacles still need to be overcome before these rights can be fully realised.

In Africa, up to 78 per cent of the land is held under customary tenure. How local communities access and hold land often eludes processes designed to formalise land rights. This is because tenure security/insecurity is context specific and attempts to standardise social relations frequently run into problems. The content of rights and the norms informing land holding systems is in constant flux. Even in countries where there has been substantial investment in land rights formalisation, subsequent transactions may revert to the informal. While Rwanda was the first country in Africa to complete country-wide first-time registration of land rights, recent data suggests that five years later, 87 per cent of subsequent rural land transactions remain informal. Further there is evidence from the wide ranging Prindex survey that having a documented land right is not automatically perceived as providing security. It has been argued that formalisation and documentation of land rights do not in themselves guarantee tenure security and in highly unequal societies may even facilitate elite capture.

Overall IP and community relations to the land are shaped by widely differing local histories of land acquisition and dispossession. They are the product of the complex interplay between social values, customary and statutory law, political contestation, poverty, inequality, relative power and climate vulnerability. It is these foundational factors to which we must

attend if we are to make progress in protecting the land rights of IP and local communities, while simultaneously protecting natural resources critical for the health and sustainability of the planet.

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A Saami woman from Norway.

Photo: V. Belov/ shutterstock.com



A Bushman woman from South Africa.

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