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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 often live on lands governed by customary tenure and other community agreements. Securing access to these natural resources and formalizing land tenure rights is an essential foundation for vulnerable indigenous peoples to maintain their livelihoods; 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 indigenous peoples. However, legal protection often does 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 indigenous peoples.

Assistance to indigenous peoples through strengthening tenure security requires attention to issues and limiting factors with which indigenous peoples identify when they produce their own long-term plans for development (Tauli-Corpuz et al., 2010). Therefore, development efforts should address the specific needs of indigenous peoples while ensuring that well-intentioned initiatives do not inadvertently harm these 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, indigenous peoples 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 169¹).² Key United Nations bodies addressing indigenous peoples’

Indigenous peoples comprise any ethnic group who inhabits a geographic region in 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.

¹ Relevant international conventions and treaties can be found online at the University of Minnesota Human Rights Library, <http://www1.umn.edu/humanrts/instrree/ainstds1.htm>.

issues include the Permanent Forum on 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' rights to natural resources are often contested by the dominant societies, including settlers, industry, and biodiversity conservation interests, among others. Many indigenous peoples 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 peoples' strengths lie in self-organizing abilities, local governance systems, local knowledge, internal accountability, and locally adapted cultures. Indigenous peoples 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 tenure—customs that are often recognized by national governments as legitimate sources of authority. At least 104 national constitutions have provisions recognizing customary practices (Cuskelly, 2010), and 32 have specific provisions on customary land tenure and resource rights. Rights of indigenous peoples 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 indigenous peoples.

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." The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* further underscore this point, "In the case of indigenous peoples and their communities, States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments" (FAO, 2012: 12.7).

Indigenous peoples depend on access to natural resources and particular landscapes to survive, to preserve a unique sense of identity, and to provide livelihoods³. Indigenous peoples adopt diverse livelihood strategies, including nomadic herding combined with seasonal agriculture; slash-and-burn rotational 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 regimes 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, the Pacific, and Latin America (to a lesser extent). With an estimated population of 370 million people occupying 20 percent of the world's territory, indigenous peoples 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 tenure. 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

² The U.S. Government recognizes the right of indigenous peoples to "free, prior, and informed consultation," diverging from the UNDRIP language of "free, prior, and informed consent." The U.S. Government maintains that the use of the term "consent" privileges indigenous peoples over other groups and is undemocratic in its effect on process.

³ The FAO Voluntary Guidelines underscore the importance of acknowledging these values: "State and non-state actors should acknowledge that land, fisheries and forests have social, cultural, spiritual, economic, environmental and political value to indigenous peoples and other communities with customary tenure systems" (2012: 9.1.)

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. Tenure rights for women and adolescents under customary traditions are often quite limited, inhibiting the ability of women and young girls to reap the benefits of tenure security. The Voluntary Guidelines call for "effective participation of all members, men, women and youth, in decisions regarding their tenure systems should be promoted through their local or traditional institutions, including in the case of collective tenure systems" (FAO, 2012: 9.2). These local governance institutions also recognize that rights to access a particular place or resource may be overlapping, depending on seasonal 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. Indigenous peoples 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. In fact, territories under secure tenure of indigenous peoples are often better protected than those under state control⁴ (Ricketts et al., 2010; Stickler et al., 2008). Efforts to mitigate GCC also seek to reduce deforestation; again, studies have shown indigenous people-controlled territories are superior to other protected areas in preventing deforestation (Hayes and Ostrom, 2005; Nepstad et al., 2006). Indigenous peoples 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 may 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 indigenous peoples live. In extreme cases, such as Colombia, indigenous peoples 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 indigenous peoples in Colombia.

"Unprecedented 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 indigenous peoples, 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) and 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 indigenous peoples and others to exercise their legal rights.⁵ In India, indigenous peoples and their allies have supported the implementation of the 2006 Forest Act by using the Right to Information Act of 2005 (RTI). The

⁴ 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).

⁵ Other effective governance measures include consulting indigenous peoples and encouraging their participation; applying checks and balances, limiting the arbitrary use of power; addressing conflicts of interest; and adopting clear rules and regulations (FAO, 2012: 6.9).

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 tribal people living inside protected areas (Tamil News Network 2011). The RTI is a civil society tool in India and elsewhere that may help fight corruption, ensure that public budgets are accountably executed, and provide information essential for indigenous peoples struggling to defend their lands. This exemplifies one of the Voluntary Guidelines, which recommends that states document and publicize information on “the nature and location of land, fisheries and forests used and controlled by the community” (FAO, 2012: 9.8). Hundreds of thousands of RTI applications have created remarkable changes in transparency and yielded changes in land rights for indigenous peoples (Pioneer News Service, 2011; Sahoo, 2010; Singh, 2010).

Poorly functioning land markets and some large-scale land acquisitions may threaten indigenous peoples

Without secure tenure to land and water, indigenous peoples 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 (2010) predicts that six million hectares of additional land will be brought into agricultural production by 2030, primarily in sub-Saharan African and South American dry forests—both areas high in indigenous peoples 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 indigenous peoples are not recorded, recognized, and enforced, these groups can be dispossessed or evicted (see FAO, 2012: 17.1 through 17.5). 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. The Voluntary Guidelines suggest that, “provisions for different parties to conduct prior independent assessments on the potential positive and negative impacts that those investments could have on tenure rights, and food security” (FAO, 2012: 12.10). 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. In accordance with the Voluntary Guidelines, 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 (FAO, 2012: 6.5.).

Conservation refugees are best documented in Africa.

- 600,000 refugees in Chad (Dowie, 2006 and 2009).
- 100,000 in Kenya and Tanzania in the past 30 years (Dowie, 2006, and 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-Soltan, 2005).
- 30,000 forced from Kibale Forest Reserve and Game Corridor in Uganda (Colchester, 2010).
- Additional indigenous peoples 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).

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 preexisting indigenous rights. When agrarian reform pushes poor farmers into indigenous lands because other lands are not available, farmers and indigenous peoples are left to fight over weak rights. In the Philippines, 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 indigenous peoples 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 indigenous peoples 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

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. While the FAO Voluntary Guidelines (12.7) call for consultative processes before the initiation of investment projects that will affect indigenous tenure rights, the extent and effectiveness of consultation varies tremendously. The new road and energy networks built by investments coordinated by the Initiative for the Integration of Regional Infrastructure in South America (IIRSA)⁶ 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 indigenous peoples 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 indigenous peoples organization, FENEMAD, is singlehandedly fighting small-scale illegal loggers invading indigenous titled lands. These invasions into indigenous peoples' lands follow the new transoceanic highway built as part of the IIRSA development plan, which threatens indigenous peoples in South America through interlinked set of dams, canals, and multiple routes to the Pacific. The highway crisscrosses 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 the 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 indigenous peoples reserve (Stickler et al., 2008), most recently the Brazilian government has supported construction of an upriver hydroelectric dam which will flood Xingu indigenous peoples reserve and displace Juruna, Xikrin, Arara, Xipiaia, Kuruaya, and Kayapó indigenous peoples communities from their territory (IACHR, 2011).

Biodiversity conservation may threaten 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 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 indigenous peoples (Geisler, 2002 and 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 Botswana government has been slow to protect these rights (Hitchcock, 2009). In Nepal, where 59 different indigenous peoples 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

⁶ 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.

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. Indigenous peoples 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),⁷ 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 indigenous peoples are relatively weak. Additionally, the Voluntary Guidelines suggest a number of safeguards for avoiding infringing on or extinguishing tenure rights when establishing conservation areas (FAO, 2012: 7.1, 7.2, 8.2, and 8.7).

In Latin America and the Pacific, where indigenous peoples have stronger rights, other mechanisms can be used to assist indigenous peoples 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.

Statutory law and inappropriate devolution may threaten indigenous peoples

Legal rights are too often devolved or created without considering customary systems, or those rights fail to embrace legal pluralism in appropriate ways. When statutory rules are imposed over customary tenure norms and practices, this tends to undermine existing systems and has the unintended consequence of creating a tragedy of open access that marginalizes indigenous peoples while simultaneously exacerbating conflict.⁸

The issues and solutions vary according to the country and sub-region. 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 the Congo, Ghana, Sri Lanka, Tanzania, and Vietnam (Moore, Griebner, 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 coexisted with indigenous peoples 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 indigenous peoples by mediating negotiations with the Argentinean government to assign lands rights to indigenous peoples, 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 indigenous peoples by the government. This was because Lhaka

⁷ The U.S. Government did not vote 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."

⁸ The Voluntary Guidelines suggest that states "respect and promote customary approaches used by indigenous peoples and other communities with customary tenure systems" (FAO, 2012: 9.11).

Honat, the organization of the indigenous peoples 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 tenure 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 indigenous peoples 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 Kukenya 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, indigenous peoples 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 indigenous peoples 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 IPRA 1997; traditional ocean fishing territories are recognized aspects of AD, along with rivers, land, forest, and subsoil resources. However, enforcement is weak and conflicting laws undermine the exercise of these rights.

In the Philippines, USAID has supported indigenous peoples' land rights for over 20 years. Over 70 distinct indigenous populations 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 for indigenous populations 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.

Global climate change adaptation and mitigation policies and programs may threaten indigenous peoples

GCC is predicted to bring more extreme conditions to marginal lands where indigenous peoples are significant sectors of the population. Pastoralists and semi-pastoralists may face droughts that create food and water shortages for themselves and their livestock. Indigenous peoples dependent on fisheries may be forced to adapt to fish die-offs and changes in species composition of their catches. Coastal indigenous peoples will be particularly hard hit by sea level rises in Asia and the Pacific. Indigenous peoples 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 affect 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+(or Reducing Emissions from Deforestation and Forest

Degradation-the plus indicates beyond reducing degradation, with an emphasis also on increasing forest conservation and forest carbon stocks) and other projects and policies intended to reduce or mitigate GCC can threaten indigenous peoples 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 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 (Chatre 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 indigenous peoples, 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 CO₂ per year). In Africa, Asia, and Central America, opportunities for collaboration with indigenous peoples in situations that could make significant contributions to reducing global warming may be lost if strategies are not identified to empower indigenous communities to participate in mitigation efforts and share benefits from such projects. Appropriate engagements with indigenous peoples, including recognition of indigenous peoples' land tenure and resource rights, are key to long-term REDD+.

United Nations' guidance on land rights of "uncontacted" indigenous peoples:

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).

Peoples living in voluntary isolation are especially vulnerable

The United Nations offers guidance for governments regarding indigenous peoples 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 Labor Organization (ILO) Convention 169 and other relevant international conventions (Alcorn, 2006; Alcorn and Royo, 2007; United Nations, 2009b). Additional complications arise if uncontacted indigenous peoples 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 indigenous peoples 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 (United Nations, 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 indigenous peoples; 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 indigenous peoples, they nonetheless come into conflict with loggers and settlers both inside and outside their "official" reserved area boundaries.

Extractive industries increasingly threaten indigenous peoples

Arguably the greatest source of conflict between indigenous peoples and outsiders relates to the extractive industries. 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 that indigenous peoples have exercised.

Indigenous peoples are additionally threatened by petroleum and mining industries (Tebtebba and Forest Peoples Programme, 2006) authorized by national governments. Cases of mining threatening the food security of indigenous peoples have been documented in Philippines (Working Group on Mining in Philippines, 2009). Violent confrontations are not rare (e.g., the 2009 incident in Bagua was triggered by the Peruvian government's unwillingness to seek consent of the indigenous peoples for petroleum companies to enter Amazonian territories). Indigenous peoples 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 indigenous peoples have so far 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 significantly above 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).

For the past 20 years, USAID has provided low-level support for participatory indigenous land use mapping around the world to put indigenous populations on the map. This helps 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 indigenous populations 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.

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 indigenous peoples. To apply the following strategic recommendations most effectively in any local situation, it is essential to maintain awareness of evolving land issues of indigenous peoples at global and national levels. Land and resources are the primary concern for indigenous peoples, and Internet resources are available for tracking evolving situations.⁹

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 indigenous peoples can represent themselves as laws, policies, and economies change during the transitional turbulence of evolving democracies.¹⁰ 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.

⁹ Key global websites for updated news on indigenous peoples' land issues and conflicts include <http://indigenouspeoplesissues.com/> and <http://intercontinentalcry.org/>.

¹⁰ Strengthening the capacity of implementing agencies and organizations in decision making and governance is one of the primary objectives of the Voluntary Guidelines (FAO, 2012: 1.2.4, 9.2.).

Support for democratic governance can provide collateral support to specific laws and policies to ensure the larger governance framework includes space for significant participation of indigenous peoples (FAO, 2012: 4.10). 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 indigenous peoples and other rural groups. Assist governments and indigenous peoples to assess the current tenure situation, including overlapping interests, 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 indigenous peoples (Charters and Stavenhagen, 2009).

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

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

The Voluntary Guidelines suggest that states take "measures to prevent undesirable impacts on local communities, indigenous peoples and vulnerable groups that may arise from...land concentration and abuse of customary forms of tenure. 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 an assessment of potential negative impacts on indigenous peoples land rights when considering policy and financial support for conservation incentive programs (Wolman, 2004).

Build support for indigenous peoples' land and natural resource tenure into REDD+ and other global climate change investments

The fact that so many indigenous peoples inhabit threatened forests suggests the need to enhance the collaboration of indigenous peoples in efforts to protect forest resources. An important step in this process should be supporting efforts to formalize the land and natural resources rights indigenous peoples hold in these areas (Freudenberger and Miller, 2010). Indigenous peoples 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 (FAO, 2012: 23.3.).

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 indigenous peoples. A test case in Brazil has determined that indigenous peoples 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, (Grupo de Trabalho Amazonico) 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 indigenous peoples and other vulnerable groups' development. Assist indigenous 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, de Chavez, 2010; FAO, 2012: 5.3).

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

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

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