



From Criminalization to Genuine Partnership:

Transforming Conservation Laws to Rights-based Framework



**Indigenous Peoples
Rights International**

Championing Indigenous Peoples Rights



From Criminalization to Genuine Partnership: Transforming Conservation Laws to Rights-based Framework





The Indigenous Peoples Rights International (IPRI) is a global Indigenous Peoples' organization established in 2019 in response to the grave situation of Indigenous Peoples who are increasingly being criminalized, killed, disappeared, and subjected to the worst forms of violence.

We are leading the Global Initiative to Address and Prevent Criminalization, Violence, and Impunity Against Indigenous Peoples—an Indigenous-led global effort to strengthen coordination, solidarity, and actions to prevent, respond to, and reduce acts of criminalization, violence, and impunity against Indigenous Peoples; and to provide better protection and access to justice for victims not only as individuals but as collectives or communities.



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INTRODUCTION

“My home was completely burnt by the police. I have nowhere to live. My children disappeared in the bush, and as we speak, I don’t know where they are.”

Jesica is a Maasai pastoralist from Ngorongoro in northern Tanzania. Like thousands of other Maasai families, she was told by the government to leave her ancestral land when it was declared a national park. For the global public, this might appear as a step forward for “conservation.” But for Jesica and her people, it meant the loss of their homes, their livelihoods, and their dignity. What was celebrated as an act of protecting nature turned into an act of violence against those who had cared for that land for generations.

Across the globe, environmental conservation has become an urgent priority as governments respond to biodiversity loss, climate change, and ecosystem degradation. Many states have adopted domestic conservation laws and policies that establish protected areas such as national parks, wildlife reserves, and forest conservation zones. These legal frameworks are typically justified as necessary measures to safeguard ecosystems and endangered species. But in many cases, these laws and policies adopt a “fortress conservation” approach, which regards conservation as incompatible with human presence, ignoring the fundamental rights of Indigenous Peoples living in those areas, who have preserved the ecological balance and biodiversity precisely due to their sustainable management systems and traditional knowledge.

The implementation of these policies has often resulted in serious violations of the rights of Indigenous Peoples whose ancestral lands are within or near designated conservation areas. Fortress conservation governance has frequently resulted in forced evictions, loss of livelihoods, violence, criminalization, and severe social and cultural disruption. Indigenous communities whose subsistence practices depend on hunting, fishing, gathering, or pastoralism often find themselves suddenly prohibited from accessing the very ecosystems that sustain them. In many instances, the enforcement of conservation regulations has been accompanied by militarization and surveillance. Park rangers or security forces tasked with protecting wildlife may enforce strict anti-poaching laws and land-use restrictions that criminalize everyday subsistence activities. As a result, Indigenous Peoples may face arrests, fines, or imprisonment for practices that have long been central to their cultural identity and survival.

Conservation laws intended to safeguard ecosystems have, in practice, become instruments of criminalization, framing Indigenous Peoples' presence and livelihood practices as illegal and legitimizing coercive measures that expose them to systemic violence across multiple regions of the world.

Despite increasing international recognition of Indigenous rights within conservation policy, significant gaps persist between these commitments and their translation into domestic environmental laws and policy frameworks. Conservation that excludes people fuels conflict and perpetuates injustice. By contrast, conservation that respects human rights—particularly those of Indigenous Peoples—is more effective, equitable, and sustainable. Protecting biodiversity and human dignity are not contradictory; they are inseparable.

As the Inter-American Court of Human Rights affirmed in *Kaliña and Lokono Peoples v. Suriname*: “Respect for the rights of Indigenous Peoples may have a positive impact on environmental conservation. Hence, the rights of the Indigenous Peoples and international environmental laws should be understood as complementary, rather than exclusionary, rights.”¹ Global commitments already affirm this principle.

The International Union for the Conservation of Nature (IUCN) and its members—governments, civil society organizations, and institutions—have pledged to advance a human rights-based approach to conservation grounded in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The Kunming-Montreal Global Biodiversity Framework (GBF) strengthens this by explicitly recognizing Indigenous Peoples and their territories, requiring respect for Free, Prior, and Informed Consent (FPIC) in accessing traditional knowledge, safeguarding the customary sustainable use of resources, ensuring fair and equitable benefit-sharing, and guaranteeing the full and effective participation of Indigenous Peoples in biodiversity decision-making.

These advances are promising but remain fragile unless translated into action at national and local levels, where Indigenous Peoples experience the impacts of exclusionary conservation. What is urgently needed is a coherent legal framework that aligns all environmental and conservation laws and policies with international human rights obligations. Without such coherence, commitments made in international fora risk becoming hollow promises.

The path forward is clear: conservation must move beyond its colonial legacy of exclusion and criminalization and embrace a future grounded in justice and self-determination. This requires recognizing Indigenous Peoples not as obstacles but as leaders and rights-holders and securing their lands and tenure as the foundation of global biodiversity. Achieving this begins with legal and policy reforms that resolve inconsistencies between environmental legislation and human rights protection.

1 MAKOYE, Kizito. “Indigenous groups in Tanzania become victims of land grabbing”, in *Anadolu Agency*, 13 July, 2022. <https://www.aa.com.tr/en/africa/indigenous-groups-in-tanzania-become-victims-of-land-grabbing/2635793>



Objective of the report

Despite policy-level progress toward a human rights-based approach to conservation, including the recognition and respect of Indigenous Peoples' rights, Indigenous Peoples Rights International (IPRI) continues to receive reports and complaints from Indigenous Peoples worldwide regarding violations of their fundamental human rights arising from conservation laws and policies. We have examined the impacts of protected areas in this regard, including their role as drivers of violence and criminalization against Indigenous Peoples.² Additionally, we analyzed the impacts of tourism, often linked to conservation initiatives at the domestic level on both Indigenous collective and individual rights.³

A recurring issue identified in these studies is the lack of alignment between the environmental legal framework and internationally recognized rights of Indigenous Peoples. In many cases, conservation and environmental protection laws and policies not only fail to protect these rights but also actively enable violations of these rights, resulting in the systemic criminalization of Indigenous Peoples.

To further document this, IPRI analyzed the environmental legal and policy framework in 12 countries across Africa, Asia, and Latin America to assess their consistency with international obligations on Indigenous Peoples' rights.

This report examines the relationship between environmental governance and the rights of Indigenous Peoples in biodiversity-rich countries across Asia, Africa, and Latin America. It analyzes environmental legislation, laws on Indigenous Peoples' rights, and relevant international obligations—particularly the UNDRIP—to identify legal and policy inconsistencies. It also documents the impacts of these frameworks through selected case studies, highlighting instances of violence, displacement, and criminalization of Indigenous communities. Based on this analysis, the report offers recommendations to strengthen legal harmonization and safeguards to prevent violations of Indigenous Peoples' rights in the context of environmental protection.

IPRI hopes this report contributes to the legal reforms needed at the domestic level to end the serious human rights violations arising from laws and policies that are inconsistent with the collective and individual rights of Indigenous Peoples. It calls on all actors: states, international institutions, environmental organizations, donors, and others, to commit to this goal.

2 Indigenous Peoples Rights International. *Redefining protected areas: A study on the criminalization of and human rights violations against Indigenous Peoples in conservation*, November 2021. <https://iprights.org/2022/01/04/global-report-redefining-protected-areas-a-study-on-the-criminalization-of-and-human-rights-violations-against-indigenous-peoples-in-conservation/>

3 Indigenous Peoples Rights International. *Submissions to the UN Special Rapporteur on the rights of indigenous peoples on tourism and indigenous peoples' rights*, June 2023. <https://iprights.org/index.php/en/component/content/article/submissions-to-the-un-special-rapporteur-on-the-rights-of-indigenous-peoples-on-tourism-and-indigenous-peoples-rights?catid=9&Itemid=102>

**Conservation Laws and
Policies and Indigenous
Peoples in Asia:
Indonesia, India and
Cambodia**





1. INTRODUCTION

Conservation laws and policies in Asia continue to conflict with the rights and well-being of Indigenous Peoples, resulting in human rights violations, displacement, and the erosion and loss of culture and ancestral and customary lands. State-led approaches, which are often rooted in “fortress conservation,” persist in ignoring Indigenous communities, disregarding their knowledge systems and governance structures. The establishment of protected areas has frequently led to the dispossession of Indigenous communities without their FPIC, with profound socio-economic and cultural consequences. This remains the case despite the growing recognition, within international environmental and human rights frameworks, of the need to uphold Indigenous Peoples’ rights, respect their knowledge systems, and ensure their full and effective participation in conservation efforts.

States bear the primary obligation to respect, protect, and fulfill Indigenous Peoples’ rights, including the duty to prevent and address human rights abuses by third parties, such as private companies and conservation actors. In the context of conservation, this requires States to ensure that Indigenous Peoples’ rights, particularly to their lands, territories and resources, are fully recognized and safeguarded. It also entails actively strengthening and promoting Indigenous Peoples’ own systems of conservation, including their community-based governance, subsistence economies, and traditional practices. States must guarantee that Indigenous Peoples are meaningfully consulted and able to participate in decision-making processes regarding projects and processes that may affect their rights. Where proposed projects, policies, or interventions have direct or significant impacts, States are obligated to obtain their FPIC, in accordance with international human rights standards.

This study draws on experiences from selected countries in Asia, namely Cambodia, India, and Indonesia, to examine how national environmental laws and policies, particularly those aligned with “fortress conservation” approaches, continue to undermine Indigenous Peoples’ rights in practice.



2. REGIONAL BACKGROUND

Asia is home to around 60% of the World's population and nearly two-thirds of its Indigenous population.⁴ It is the Planet's most culturally diverse region and one of its most biologically rich. Across the region, Indigenous Peoples represent over 2,000 distinct cultures and languages, inhabiting a wide range of ecosystems, from mountains and plateaus to coasts, deserts, and rainforests. Their ways of life are deeply rooted in their enduring relationships with their ancestral lands and territories, where communities have stewarded forests, rivers, reefs, rangelands, and sacred landscapes for generations. This custodianship is not merely cultural heritage; it is a living system of conservation that sustains biodiversity, stabilizes the climate, and supports the livelihoods of millions.

Southeast Asia, while covering only about 3% of the Earth's land area, harbors approximately 18% of all assessed species and contains the world's most diverse coral reef systems. The Coral Triangle alone supports about 76% of known coral species and 37% of coral-reef fish species.⁵ Yet only around 6% of the region falls under formal conservation, revealing a profound gap between biodiversity value and legal protection.⁶ Indigenous governance offers one of the most effective, yet persistently underrecognized pathways to bridge this gap. Indigenous and local marine tenure systems, customary closures, seasonal taboos, and community-led marine protected areas play a critical role in sustaining this global epicenter of marine biodiversity.

Although nearly all Asian countries except Bangladesh voted in favor of the UN-DRIP in 2007, its realization across the region remains profoundly constrained by the persistent non-recognition of Indigenous Peoples. Legal recognition in Asia is highly uneven, and the very concept of Indigenous Peoples continues to be politically contested. Many governments deliberately avoid formally recognizing the term, thereby denying acknowledgment of the distinct collective rights of Indigenous Peoples, particularly their rights to self-determination, as well as to their lands, territories, and resources. In its place, states often employ alternative classifications such as "ethnic minorities," "scheduled tribes," or "hill tribes," which dilute or exclude the full scope of rights affirmed under international law.⁷

Even in countries where legal frameworks explicitly recognize the rights of Indigenous Peoples, such as the Philippines, which enacted the Indigenous Peoples' Rights Act (IPRA) in 1997, implementation remains deeply inadequate. Indigenous communities continue to face systemic human rights violations, including land dispossession, discrimination, and the persistent denial of their right to self-determination.

⁴ Office of the High Commissioner for Human Rights (OHCHR). South-East Asia Regional Office. *Indigenous Peoples*. <https://bangkok.ohchr.org/indigenous-peoples>

⁵ PARE, Sascha. "Coral Triangle: The giant hidden 'Amazon' beneath the sea that appears somewhat resilient to climate change", in Live Science, October 10, 2025. <https://www.livescience.com/planet-earth/rivers-oceans/coral-triangle-the-giant-hidden-amazon-beneath-the-sea-that-appears-somewhat-resilient-to-climate-change>

⁶ Association of Southeast Asian Nations. ASEAN Biodiversity Outlook, November 2012. <https://environment.asean.org/fresources/detail/asean-biodiversity-outlook>

⁷ On the issue, see *Recognition of Indigenous Peoples. Report of the Special rapporteur on the rights of Indigenous Peoples, Albert K. Barume, A/HRC/60/29*, 7 August 2025.



Indigenous communities across the region maintain deep and enduring relationships with their lands, territories and resources, upon which they rely for daily sustenance, cultural continuity, and collective development. Their sustained and effective stewardship of forests and biodiversity, grounded in customary laws and practices, is evident across many countries in Asia. This intimate relationship with the natural world is not merely material, but deeply cultural and spiritual, shaping identities, belief systems, and community governance.

Among the Karen and Lisu communities in Thailand, this deep forest kinship is expressed through rotational farming systems that sustain soil fertility, protect wildlife, and ensure the regeneration of ecosystems. These communities establish clearly defined forest zones and boundaries based on collective needs and customary use, enabling a balanced and sustainable management of resources. Similarly, the Kui people of Dang Phlet village in Cambodia uphold a holistic balance among humans, animals and plants, integrating spiritual beliefs with ecological practices, and regarding the natural world as inherently sacred. These practices affirm that Indigenous stewardship in Asia is not premised on the exclusion or “locking away” of nature, but on nurturing a reciprocal, relational system of care that embodies responsibility, restraint, and a dynamic “give-and-take” relationship with their environment.

However, Indigenous Peoples’ lands and territories are subjected to intensifying and overlapping pressures from industrial methods of extraction, production and development such as large-scale mining, land conversion for industrial livestock farms or monoculture plantations, and the expansion of infrastructure and dams. At the same time, these very lands and territories are increasingly targeted for exclusionary environmental and conservation initiatives, often legitimized and enabled by domestic legislation and policy frameworks. In countries such as Indonesia, Cambodia, India, Thailand, Nepal and the Philippines, laws enacted since the 1960s on forest management and conservation, land use, and land ownership have centralized government control over natural resources, particularly forests. These laws and policies have served as the foundation for the establishment of national parks, protected areas and sanctuaries under state-led conservation programs, frequently implemented in partnership with external actors, and often at the expense of Indigenous Peoples’ rights, access, and governance systems.

Forest-dependent Indigenous Peoples, as well as those reliant on coastal and marine resources, have been forcibly evicted from conservation areas under the presumption that they are drivers of environmental degradation. In this framing, Indigenous Peoples are cast as enemies of conservation, resulting in the systematic curtailment, and in many cases, criminalization of their sustainable resource management systems and traditional livelihoods. Such evictions, coupled with prohibitions on subsistence practices within conservation zones, have led to heightened food insecurity, biodiversity erosion, and the intensification of social conflicts. Meanwhile, large-scale commercial activities such as industrial logging and commercial fishing whose operations significantly degrade ecosystems and undermine Indigenous Peoples’ rights, territories and livelihoods, continue largely unchecked, often encroaching upon and appropriating Indigenous lands and waters.

Experiences of flawed and rights-violating implementation of conservation, as enabled and reinforced by domestic laws, are widespread in Asia. To this day, conservation measures, including forms of militarized conservation, continue to be imposed in ways that infringe upon human rights and pose significant barriers to building respectful, equitable, and collaborative relationships with Indigenous Peoples. In



Nepal, the National Parks and Wildlife Conservation Act of 1973, which facilitated the establishment of protected areas and national parks such as the Chitwan National Park and Bardiya National Park, has had severe and enduring impacts on Indigenous communities. These include the restriction of access to ancestral lands and resources, criminalization of subsistence practices such as fishing and cultivation, and the widespread incidence of forced evictions, resulting in landlessness, economic marginalization and social dislocation.⁸

Similarly, Thailand's 2019 National Parks Act has further intensified violations against Indigenous Peoples by failing to recognize their land rights and traditional practices, thereby enabling increased criminalization, forced evictions, and protracted conflicts over ancestral lands. This persists despite a 2018 ruling of the Supreme Administrative Court which affirmed the Karen people as original inhabitants and ordered compensation for the destruction of their property.⁹

There is no region-wide human rights system in Asia, comparable to those established in Europe, the Americas, or Africa. This institutional gap greatly constrains the ability of people across the region, particularly Indigenous Peoples, to seek justice and accountability when national mechanisms fail. In cases where their rights are violated, especially in the context of state-backed conservation or development initiatives, avenues for redress are largely limited to domestic systems or, alternatively, to international human rights mechanisms. However, domestic justice systems are often inaccessible to Indigenous communities due to structural barriers such as language, cultural dissonance, geographic isolation, and systemic bias or discrimination. At the same time, meaningful engagement with international mechanisms is often hindered by limited resources and a lack of the necessary support. The persistence of violations against Indigenous Peoples in conservation areas underscores the urgent need for the establishment of a robust and effective regional human rights system in Asia, one that can provide accessible and enforceable protections to uphold fundamental human rights across the region.

⁸ See LAHURNIP and NIWF (2020). Also LAHURNIP et alii (2025)

⁹ See Asia Indigenous Peoples Pact. "Thailand: NIPT concerning the use of legal authority by a government agency following the decision of the Supreme Administrative Court in the case of the Karen people and the Department of National Parks, Wildlife and Plants Conservation (DNP)", 15 June 2018. <https://aippnet.org/thailand-nipt-concerning-the-use-of-legal-authority-by-a-government-agency-following-the-decision-of-the-supreme-administrative-court-in-the-case-of-the-karen-people-and-the-department-of-national-pa/>



3. IMPLEMENTATION OF CONSERVATION LAWS AND POLICIES AFFECTING INDIGENOUS TRADITIONAL LANDS, TERRITORIES, AND NATURAL RESOURCES

Certain laws and constitutional provisions in countries such as Indonesia, Cambodia, and India provide for the recognition of specific rights of Indigenous Peoples. However, rather than being acknowledged and engaged as partners in conservation, Indigenous Peoples in these contexts have often been positioned and treated as threats to it. From colonial-era forest regimes that curtailed shifting cultivation, to post-independence legislation that privileges wildlife protection over human subsistence, conservation frameworks have too often been constructed upon the exclusion, displacement, and criminalization of Indigenous and tribal communities.

India, Indonesia, and Cambodia voted in favor of the adoption of UNDRIP in 2007. They have also ratified the UN Convention on Biological Diversity and have enacted comprehensive environmental legislation that serves as a legal foundation to protect their ecosystems, biodiversity, and natural resources. However, the incorporation of the rights enshrined in UNDRIP into conservation law and policy remains limited, fragmented, and inconsistently applied. This gap has often produced a fraught and contested interface between conservation objectives and Indigenous Peoples' rights, with adverse consequences for Indigenous communities. Across Cambodia, India and Indonesia, conservation planning and enforcement continue to be predominantly top-down, with Indigenous Peoples rarely afforded meaningful participation in decision-making processes. In particular, the principle of free, prior, and informed consent is generally not required in the establishment of protected areas or in the implementation of conservation programs, further entrenching patterns of exclusion and rights violations.

The tension between conservation laws and Indigenous rights becomes most pronounced in the domain of land rights. Even where Indigenous Peoples' land rights are partially recognized in law, conservation regimes frequently supersede these rights, effectively diminishing, if not eliminating, their control over their lands, territories and resources. At the same time, existing land tenure laws impose significant barriers to formal recognition. Procedures for land titling and registration are often lengthy and highly bureaucratic, and inconsistently enforced, creating substantial disincentives for Indigenous communities to pursue legal ownership. As a result, many remain without secure tenure, rendering them particularly vulnerable to dispossession, displacement or restrictive controls imposed within conservation areas.

Across all three countries, conservation has largely been pursued through the expansion of protected area networks, with “fortress conservation” remaining the dominant management approach. This approach is inherently exclusionary and restrictive, premised on the assumption that human presence is incompatible with ecological protection. As such, Indigenous Peoples are systematically excluded from national parks, wildlife sanctuaries, nature reserves, and other designated zones. Protected area management, therefore, is defined by control and restric-

tions. It typically involves the physical demarcation and enclosure of lands and waters, the deployment of park rangers to enforce boundaries, the imposition of penalties to ensure compliance, and in many cases, the forced relocation of longtime inhabitants within and near the vicinity, including Indigenous communities whose presence predates the establishment of such protected zones.

Many protected areas are created on the traditional lands of Indigenous Peoples without their Free, Prior and Informed Consent. The implementation of the environmental legislation based on the exclusionary approach originates serious impacts and violations of Indigenous Peoples' rights:

- *Land dispossession.* When lands, forests, waters, or sacred sites are designated as protected or conservation zones, Indigenous communities lose their customary authority over territories they have long inhabited and protected. Across Asia, limited or insecure legal recognition of land rights, which are often overridden by conservation zoning, leaves Indigenous Peoples vulnerable to alienation, exclusion, and conflict. The impacts are profound: as ancestral territories anchor their history and cultural identity; dispossession drives the erosion of culture, traditional livelihoods, and access to resources essential for subsistence, healing, and spiritual life.
- *Forced eviction and displacement.* Conservation laws have driven the eviction and forced relocation of Indigenous Peoples to establish protected areas. Even without physical displacement, Indigenous communities are often deprived of their rights to engage in traditional practices, access resources, or govern their land. This undermines livelihoods and erodes self-governance, despite their continued presence.
- *Cultural and spiritual harm.* For Indigenous Peoples, land is not merely a resource but the foundation of cultural identity, spirituality, and intergenerational knowledge. Conservation laws that enable displacement without Free, Prior and Informed Consent or restrict access to sacred and ancestral sites, disrupt cultural continuity. When communities cannot practice ceremonies and rituals on their lands, cultural and spiritual loss follows. These impacts are often overlooked in conservation frameworks that fail to recognize the centrality ancestral territories in Indigenous worldviews.
- *Criminalization of customary practices and livelihoods.* Traditional practices such as hunting, fishing, shifting cultivation, and gathering non-timber forest products, are often prohibited under conservation laws. When Indigenous Peoples continue these essential activities, they risk criminalization, fines, or harassment. This not only disrupts their livelihoods but also undermines Indigenous knowledge systems and deepens inequalities.
- *Criminalization and violence.* Indigenous land defenders face harassment, arrests, or violence, when they defend their rights and lands opposing conservation-related projects. Both state and non-state actors frequently target them. State-employed rangers or private security hired by conservation agencies in national parks have been reported using violence, intimidation, and beatings against Indigenous People found within park boundaries.



Across Asia, Indigenous Peoples are actively pushing to reform or repeal conservation laws and practices that violate their collective rights. Through protests, lobbying, legislative submissions, and strategic litigation, they are advancing legal recognition and challenging harmful policies and securing important victories in some cases.

To counter exclusionary “fortress conservation,” which displaces communities and criminalizes traditional practices, Indigenous Peoples in Asia call for a shift toward rights-based, inclusive governance. The following recommendations may be considered:

- Conservation laws and policies must align with international human rights standards on Indigenous Peoples’ rights. Those that do not should be repealed or appropriately amended.
- Conservation policies should prioritize the leadership and full participation of Indigenous Peoples, recognizing the value of their traditional knowledge in land and resource management, including, support for community-led conservation initiatives aligned with their needs and rights.
- Conservation frameworks should establish benefit-sharing mechanisms to ensure Indigenous Peoples equitably benefit from the sustainable use of natural resources and to strengthen their livelihoods.
- Independent mechanisms should be established at project and national levels to investigate and address human rights violations linked to conservation, conduct regular audits of conservation practices, publish public reports, and hold responsible actors accountable.
- Where violations have occurred, affected communities must have access to justice and receive adequate, culturally appropriate compensation as defined by them. Policies should also ensure the restoration of rights, including restitution of land, access rights, and use of traditional resources.
- Efforts should be made to strengthen the negotiating capacities of Indigenous Peoples and to raise awareness among policymakers and conservation actors on the importance of respecting Indigenous rights.
- States and other actors should engage with international organizations and donors to support conservation initiatives that uphold Indigenous Peoples’ rights, including through funding, technical assistance, monitoring, and participation in global forums for sharing best practices.





Indigenous Peoples in Cambodia constitute about the 1.1 percent of the national population, with an estimated population of 200,000 to 400,000 individuals belonging to 22 groups.¹⁰ They speak 24 different languages and live in 580 communities in 15 provinces which include the larger communities of the Bunong, Jarai, Kreung, Tampuan, and others.

These Indigenous Peoples have long relied on forests, rivers, and shifting cultivation practices for their livelihoods and culture. Their cultural beliefs are deeply rooted in their ancestral lands and forests, where ceremonies are done and which are regarded as the home of their spirits. They believe that cutting trees or disturbing sacred sites will anger these spirits and bring misfortune and disaster.

Collective life is grounded in solidarity and customary law, with identity closely tied to communal land use, hunting and harvesting. Traditional practices such as swidden farming and resin tapping sustain both livelihoods and culture. As lands are passed down through generations, they forge a strong social bond, making land inseparable from their identity and its loss a profound loss of their culture. Cambodia's 2001 Land Law and 2009 Sub-Decree on Indigenous Land Registration allow for communal land titling, to secure Indigenous tenure.¹¹ However, more than two decades on, only a small number of communities have obtained land titles due to bureaucratic barriers. In addition, zoning restrictions often conflict with Indigenous land use systems, fragmenting collective territories into parcels that do not reflect concepts and traditional practices.

Quite often, Indigenous lands are subjected to encroachment, state concessions or designation as protected areas while communities are still in the process of securing collective titles.¹² For instance, in January 2025, members of the Kuy Indigenous community in Preah Vihear Province reported the clearing of approximately 1,050 hectares of ancestral forest and farmland by a private company allegedly linked to the provincial deputy governor. The area, long recognized by locals as part of their communal domain, was destroyed without consultation or compensation.¹³ The incident highlights the lack of legal protection for indigenous territories not yet covered by Collective Land Titles and the failure to enforce FPIC standards. The

¹⁰ Estimations on Indigenous population in the country vary, as disaggregated data change in different surveys and Indigenous peoples are classified by the Government by language and not ethnicity. See IWGIA (2024).

¹¹ Open Development Cambodia (ODC). *Ethnic minorities and indigenous people policy and rights*, 11 June 2024. <https://opendevelopmentcambodia.net/topics/ethnic-minorities-and-indigenous-people-policy-and-rights/>

¹² Cambodia Indigenous Peoples Alliance (CIPA) in IWGIA (2024)

¹³ NARIM, Khuon. "Kuy Indigenous Demand Resolution Over Land Dispute in Preah Vihear", in *Cambodian Journalists Alliance Association*, 4 March 2025. <https://cambojanews.com/kuy-indigenous-demand-resolution-over-land-dispute-in-preah-vihear/>



clearing has severely impacted community livelihoods, food security, and cultural ties to the land, underscoring the continued vulnerability of Indigenous territories to political and commercial exploitation. In Cambodia, Indigenous territories are located in regions of high biodiversity, particularly in the northeast provinces of Mondulakiri, Ratanakiri, and Stung Treng. Over the past two decades, the country has steadily prioritized biodiversity conservation and climate mitigation strategies, one of which is the creation of protected areas and the development of carbon offset programs under the Reducing Emissions from Deforestation and Degradation (REDD+) framework. Unfortunately, REDD+ and other initiatives have been documented to encroach on indigenous lands, and this has resulted in detrimental impacts on the Indigenous Peoples living there.

The establishment of the Southern Cardamom National Park as a REDD+ project in 2015 led to the eviction of Chong Indigenous families by Ministry of Environment rangers, gendarmes, and Wildlife Alliance staff from farmland they had long relied on. In some cases, community members were arrested and detained for months without trial following the evictions, according to judicial records.¹⁴ In June 2024, Pok Nget, a Chong indigenous farmer from Prek Svay village within the conservation zone was arrested while practicing rotational farming on his family's traditional plot. Indigenous communities had not been consulted or informed about the REDD+ boundaries, creating confusion and fear among villagers who have cultivated the area for generations. Pok Nget's arrest, carried out by environmental officials and gendarmerie officers, raised serious concern about the criminalization of traditional land use and the absence of FPIC in conservation projects.¹⁵ Moreover, eco-tourism initiatives in and around protected areas have displaced Indigenous communities, including the Bunong people in Mondulakiri province.¹⁶

The 2008 Law on Natural Protected Areas recognized Indigenous participation and traditional resource use, and its 2022 amendment reaffirmed access for customary practices, beliefs and decision making. In practice, however, protected areas have often been established without effective consultation. In 2023, a process launched in 2013 to consolidate and modernize environmental legislation culminated in the adoption of the Environment and Natural Resources Code, integrating laws on environmental protection and natural resources management (1996), protected areas (2008) and forestry (2002).¹⁷ Indigenous Peoples were not able to meaningfully participate, and their inputs were not reflected in the final Code. The new instrument refers only to "local communities," omitting Indigenous Peoples, and further restricts permitted activities across core conservation and sustainable zones within protected area. The implementation of this restrictive environmental framework has led to the criminalization of Indigenous community members for practicing their traditional livelihoods within designated protected areas.

¹⁴ HRW (2024)

¹⁵ Business and Human Rights Centre. "Cambodia: Chong indigenous people face arrests and lawsuits over rotational farming on unmarked land of protected and REDD+ areas", 3 July 2024. <https://www.business-humanrights.org/en/latest-news/cambodia-chong-indigenous-people-face-arrests-and-lawsuits-over-rotational-farming-on-unmarked-land-of-protected-and-redd-areas/>

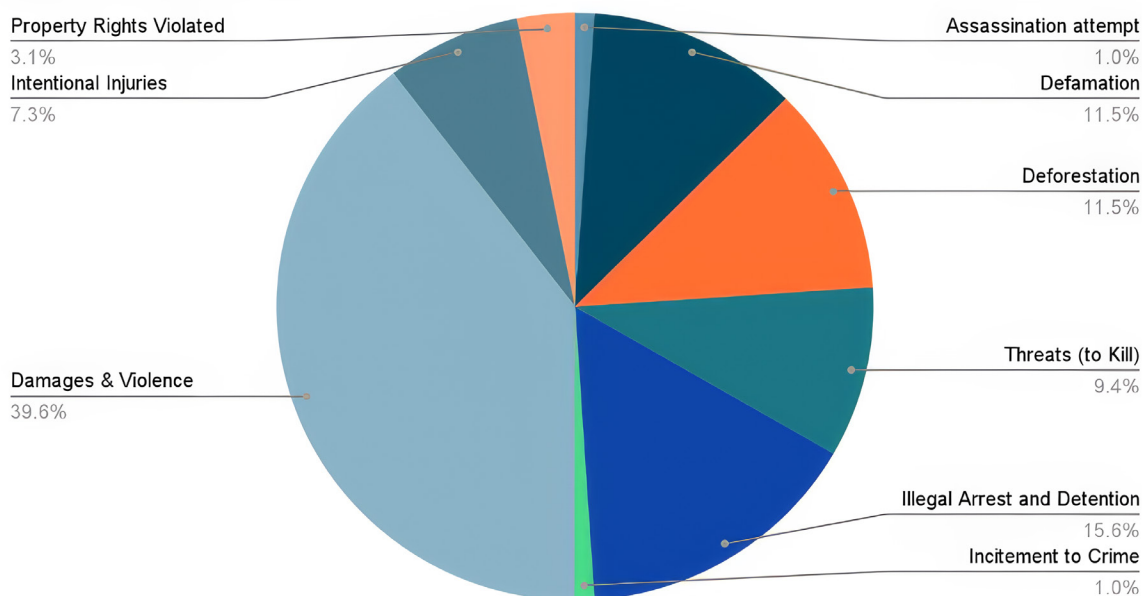
¹⁶ *Taking a walk on the wild side with Mondulakiri's eco-tourism outfits* (Southeast Asia Globe, April 2021).

¹⁷ The elaboration of the Code was part of a process of environmental governance reform supported by UNDP, UNEP and other funders, such as Japan and USAID. See: BUN, Rithy. "How Cambodia's new environmental code undermines Indigenous peoples' rights (commentary)", in *Mongabay*, 30 July 2025. <https://news.mongabay.com/2025/07/how-cambodias-new-environmental-code-undermines-indigenous-peoples-rights-commentary/>



A 2022 study by the Cambodia Indigenous Peoples' Organization (CIPO) based on data gathered between October 2021 and April 2022, found that 95 Indigenous communities were facing legal cases in eight provinces. Most cases prosecuted in local courts involved alleged violations of the Land Law, particularly claims of violence against property owners and incursions into protected areas.

Legal Cases Filed



An illustrative case of criminalization and judicial harassment under Cambodia's restrictive environmental laws is that of the Prao Indigenous people in Virak Chey National Park, an ASEAN Heritage Park. Home to diverse flora and fauna, it was declared a protected area in 1993. The forest encompasses 332,500 hectares in the provinces of Ratanakiri and Stung Treng.

In 2023, the protected area expanded from 332,500 to 405,776 hectares, overlapping with Indigenous ancestral and rotational farming lands. This has left communities at risk of losing their farm, while being charged with encroachment on their own lands, without free prior and informed consent. Around 90 Indigenous community members, including 15 Prao members of the Ta Bok community have been sued by the provincial Department of Environment in Ratanakiri.



Conclusions and Recommendations

Indigenous Peoples face serious threats from incoherent land policies, as Economic Land Concessions (ELCs) and conservation initiatives frequently violate their collective rights, drive displacement, and erode traditional livelihoods. Although Cambodia supported the UNDRIP in 2007, implementation remains weak, often subordinating customary land management to state-led development, conservation and resource extraction.

Legal mechanisms such as communal land titling formally recognize Indigenous tenure, but overlapping conservation and concession regimes continue to undermine these rights. Meanwhile, conservation and climate finance initiatives, particularly REDD+, risk perpetuating dispossession rather than empowering Indigenous Peoples as custodians of biodiversity.

The following recommendations should be considered:

- Harmonize conflicting and incoherent laws/policies that allow Economic Land Concessions (ELC) to be carved out of Indigenous Peoples' lands and territories
- Secure Land and Resource Rights by prioritizing the legal registration and collective titling of Indigenous lands, in line with the Land Law, to prevent state-sanctioned land grabbing.
- Enforce FPIC by formally incorporating the requirement for genuine FPIC in all policies affecting Indigenous territories, including consultation conducted in Indigenous languages.
- Ensure active participation in management by integrating Indigenous Peoples into the governance of protected areas, supporting, rather than replacing, their traditional systems, and recognizing them as partners in conservation.
- Strengthen transparency and accountability in conservation through robust project assessments, independent monitoring, equitable benefit-sharing, and accessible grievance mechanisms for affected communities



India does not have a comprehensive law that clearly defines Indigenous Peoples. Instead, different policies use varying terms such as “traditional forest dwellers” (Forest Rights Act), “Scheduled Tribes (Indian Constitution, and the Land Acquisition Rehabilitation and Resettlement Act), and “tribals” (Tripura Land Revenue and Land Reforms Act). While constitutional provisions and domestic laws, such as the Fifth Schedule for Central India and the Sixth Schedule for parts of northeastern India, recognize the rights to land and self-government, their implementation remains inadequate. Although India voted in favor of adopting the UNDRIP, these standards are not consistently realized in practice.

There are 705 ethnic groups officially recognized as “Scheduled Tribes,”¹⁸ comprising over 104 million people, or 8.6 percent of India’s total population. Like Indigenous Peoples, they have long depended on forests and rivers for their livelihoods, culture, and spirituality.¹⁹ Their customary systems of forest stewardship predate the modern state and have sustained biodiversity for centuries. India is one of the world’s most biodiverse countries, with ecosystems ranging from the Himalayas to coastal mangroves and tropical forests. It is also globally recognized for tiger conservation, harboring over 70 percent of the world’s remaining wild tiger population.²⁰ Through laws like the Wild Life (Protection) Act of 1972 (WLPA) and flagship initiatives such as Project Tiger, India has expanded its protected area network, to more than 100 national parks and 55 tiger reserves.²¹

India’s conservation framework has been shaped by laws and policies that prioritize wildlife and habitats over the rights and welfare of the people who have long lived within these landscapes. As a result, its approach reflects a complex and often contradictory dynamic: on one hand, legal recognition of Indigenous Peoples’ rights and stewardship; and on the other, top-down conservation practices that have led to displacement and the restriction on forest-based livelihoods. The Indian Forest Act of 1927, a colonial-era law still in force, continues to shape Indigenous Peoples’ relationship with forests. Section 26 criminalizes activities such as shifting cultivation, grazing, and tree felling in reserved forests; Section 52 empowers forest officers to seize property linked to “forest offenses;” Section 64 authorizes arrests without warrant. These provisions have long been used to penalize the customary subsistence practices of Adivasi communities, reinforcing an exclusionary model that persists despite later laws such as the Panchayats (Extension to Scheduled Ar-

¹⁸ IWGIA (2023) *The Indigenous World 2023: India*

¹⁹ IPRI (2022)

²⁰ “From nine tiger reserves in 1973 to 52 in 2022 shows commitment, says Bhupender Yadav”, *The Hindu*, July 29 2022, <https://www.thehindu.com/sci-tech/energy-and-environment/from-nine-tiger-reserves-in-1973-to-52-in-2022-shows-commitment-to-conservation-bhupender-yadav/article65697862.ece>

²¹ IRAC (2022).



1987 Forest Rights Act (FRA) and the 2006 Forest Rights Act (FRA). The Wildlife Protection Act of 1972 (WLP) established India's first comprehensive legal framework for conservation, enabling the creation of sanctuaries, national parks, and later tiger reserves. While it strengthened protection measures, it also imposed strict controls on access to forest resources, it effectively criminalizing Indigenous subsistence practices such as grazing, fishing, collecting fuelwood, honey or mahua flowers, and cultivation. The 2006 Amendment Act sought to balance tiger conservation with the recognition of forest dwellers' rights, but in practice, it has often led to relocations from "critical habitats" with Indigenous rights sidelined.²³ For Indigenous communities whose lives and identities are inseparable from their forests, this law was more than just a regulatory measure. It amounted to a denial of cultural survival and marked the onset of systematic displacement. Entire communities were treated as trespassers on their own ancestral lands, subjected to fines, arrests, and harassment by forest officials. Subsistence practices that had sustained both people and biodiversity for generations were suddenly criminalized, and those who continued them often faced state violence. In effect, "fortress conservation"—the model of protecting biodiversity by excluding human presence—was entrenched in national law.

The 2006 Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA) was a landmark law enacted to address "historical injustices." It recognizes both individual and community forest rights, vests decision-making authority in the Gram Sabha (Sec. 6), and prohibits eviction until rights are recognized (Sec. 4(5)). However, the FRA and the Panchayats (Extension to Scheduled Areas) Act (PESA) have inadequately implemented in the context of conservation. Many initiatives have disregarded Gram Sabhas decision, bypassed consent and ignored community claims. As a result, Indigenous communities have faced forced displacement, violence and criminalization. United Nations Special Procedures have repeatedly raised concerns over the failure to implement the FRA, including reports of mass evictions particularly of Scheduled Tribes, following the rejection of forest rights claims submitted under the FRA.²⁴

²² The Panchayats Extension to Scheduled Areas Act of 1996 (PESA) asserts self-governance via the Gram Sabhas (community councils) and mandates prior consent of Gram Sabhas for land acquisition and development in Scheduled Areas. Weak state-level compliance has been denounced, as State decisions override the community governance.

²³ Government of India. Wild Life (Protection) Amendment Act, 2006. https://www.ecolex.org/details/legislation/wild-life-protection-amendment-act-2006-act-no-39-of-2006-lex-faoc077854/?op=or&sortField=-score&referenceToCourtDecision=COU-143749&locale=es_ES&xpage=9

²⁴ UA IND 13/2019, 19 June 2019, Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the rights of Indigenous Peoples and the Special Rapporteur on the human rights of internally displaced persons <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24665>



The Project Tiger

Project Tiger, launched in 1973, has led to large-scale displacement of Indigenous Peoples often without genuine FPIC and/or adequate rehabilitation, leaving communities exposed to harassment, violence, and even death. Designed to protect a dwindling tiger population, estimated at around 1,900 in the early 1970s, the program established “inviolable spaces” by relocating human communities from core tiger habitats. Today, India has 55 tiger reserves across 19 states, many of which overlap with Indigenous territories. From a conservation perspective, Project Tiger is widely regarded as a success, with tiger numbers rising to 3,682 by 2023. Yet this achievement has come at significant social cost. The 2006 Amendment to the Wildlife Protection Act introduced the Critical Tiger Habitats (CTHs), defined as core areas of that must remain “inviolable” for tiger conservation. While Section 38V(4)(ii) requires that relocation occur only with the informed consent of the Gram Sabha and after the recognition and settlement of forest rights, these safeguards have often not been upheld in practice.

Totladoh village located in the core area of Pench Tiger Reserve, illustrates the severe impacts of conservation policies on Indigenous communities. In 1990, the Maharashtra Forest Department began demolishing houses without notice, and by 2002, more than 300 families were forcibly evicted by police and paramilitary forces following a High Court relocation order. Although a new settlement, New Totladoh, was later established, the state reportedly failed to provide adequate rehabilitation or secure livelihoods. Strict bans on fishing and forest use cut off traditional sources of income, leaving communities vulnerable. Villagers faced continued violence, including a 2012 incident in which forest guards used pellet gun, injuring 17 fishermen and killing one. Despite filing claims for community fishing rights in 2010 these remain unrecognized, leaving them in precarious conditions with little recourse.

The Lambada community in Telangana’s Amrabad Tiger Reserve has faced direct violence under conservation enforcement. In 2021, when community members entered the forest to collect mahua flowers, a traditional source of food and livelihood, they were attacked by forest officials. Men and women were stripped, beaten, and publicly humiliated in a brutal display of power. The community responded with protests and filed legal complaints under the Scheduled Casts/Scheduled Tribes Prevention of Atrocities Act. The incident underscores how livelihoods deeply rooted in tradition continue to be criminalized under fortress conservation.²⁵

In Achanakmar Tiger Reserve in Chhattisgarh, around 249 families, primarily from the Baiga community, were evicted in 2009 without the consent of the Gram Sabhas. Many later reported receiving only ₹50,000 of the promised ₹10 lakh in compensation. Worse, the resettlement land was barren and lacked irrigation, leaving them unable to farm or sustain their livelihoods.²⁶ The displacement not only undermined their economic security but also disrupted their cultural practices, eroding their ability to live with dignity.

²⁵ IPRI (2022)

²⁶ Ibid.



Kaziranga National Park in Assam, established in 1974, designated a UNESCO World Heritage Site in 1985, and declared a Tiger Reserve in 2007, is home to the world's largest population of the endangered one-horned rhinoceros. It also illustrated displacement carried out in the name of conservation. To expand the core areas and establish buffer zones, authorities have demolished homes and evicted villages along the park's boundaries, often with little or no compensation. Communities that relied on farming, fishing, and forest resources have been excluded from their ancestral lands and stripped of their primary livelihoods. These tensions have intensified with the growth of luxury tourism in the area.²⁷ The persistence of forced relocation is evident in recent cases. In May 2025, members of the Jenu Kuruba, Betta Kuruba, Yerava, and Paniya communities returned to their traditional villages inside Nagarhole Tiger Reserve to reclaim ancestral lands after years of being denied recognition under the FRA. Their reoccupation was met with heavy deployment of forest guards and police, drawing criticism from civil society and rights groups.

In Tamil Nadu's Mudumalai Tiger Reserve, 574 families have been relocated in phases, with tribal representatives alleging they were cheated of land and compensation. In April 2025 protesters demanded valid land titles, increased compensation, and accountability for violations of the FRA and the Scheduled Casts/Scheduled Tribes Prevention of Atrocities Act.

In Odisha's Similipal Tiger Reserve, Khadia, Kol, and Munda communities have faced repeated displacements since 2015, with further relocations planned for 2024–2025. Communities continue to resist, asserting their right to access sacred groves and burial grounds tied to their cultural identity, even as armed police have been deployed to enforce conservation restrictions. Similarly, in Karnataka's Kali Tiger Reserve, nearly 500 families were relocated between 2020 and 2025, many from buffer zones rather than core habitats, in violation of FRA provisions and NTCA guidelines. The Ministry of Tribal Affairs has since intervened, citing the illegality of these relocations.²⁸

The United Nations Committee on the Elimination of Racial Discrimination (CERD), under its 'early warning and urgent action' procedure has issued several letters to the Government of India expressing deep concern over ongoing evictions. In its letter from 12 May 2025,²⁹ the Committee referred to eviction orders issued by the NTCA across 18 States that could displace up to 450,000 people in 54 tiger reserves. It stated that such order violates domestic safeguards under the Wildlife Protection Act and FRA, citing "the lack of evidence that the activities or the presence of the tribal and Indigenous Peoples cause irreversible damage and threaten the existence of tigers and their habitat, the absence of confirmation that other reasonable options of co-existence are not available, and lack of available resettlement or alternative packages to impacted Indigenous communities." It further noted that the orders may infringe the International Convention on the Elimination of Racial

²⁷ AIPNEE (2025)

²⁸ Indigenous Rights Advocacy Centre (IRAC). Recent Cases/Developments, 2025.

²⁹ CERD/EWUAP/115thsession/2025/CS/BJ/ks, 12 Mat 2025. Available at: <https://www.ohchr.org/sites/default/files/documents/hrbodies/cerd/earlywarning/letters/cerd-ewuap-letter-115-india-2.pdf> Also MARCHI, Elisa. "UN Committee on the Elimination of Racial Discrimination presses India on tiger reserve relocations and Indigenous Peoples' rights", The University of Arizona, 03 February 2026. <https://indigenous.arizona.edu/news/un-committee-elimination-racial-discrimination-presses-india-tiger-reserve-relocations-and>



Discrimination. In response, the Government of India maintained that village relocation from core tiger habitat is conducted” on mutually agreed terms and with the informed consent of village councils,” and argued that implementation rests with state governments. On January 2026, CERD addressed another letter to the Government of India requesting updated and detailed information on measures to ensure adequate consultation, the conduct of environmental impact assessments related to the NTCA order, and safeguards to ensure that evictions comply with international human rights standards. The Committee regretted that India had failed to provide such information in its response and expressed concern over the risk of further displacements and evictions of Indigenous Peoples.³⁰

Conclusions and recommendations

Conservation in India is marked by a top-down expansion of protected areas to secure biodiversity, alongside a growing but often contested recognition of Indigenous Peoples’ rights under the Forest Rights Act of 2006. While India has made “remarkable progress” in species-specific conservation, this fortress model frequently conflicts with Indigenous communities, resulting in involuntary displacement, loss of traditional livelihoods, and cultural disruption.

Forced relocation has led to loss of rights, economic insecurity and erosion of cultural systems. A sustainable pathway for conservation in India requires integrating Indigenous Peoples’ rights into the legal framework and shifting from exclusionary models toward partnerships that support Indigenous Peoples’ stewardship.

The following recommendations should be considered:

- **Strengthen safeguards** to ensure tribal communities are not evicted from their ancestral lands without due process and proper FPIC
- **Ensure legal enforceability of land and forest rights** (e.g. FRA 2006) by limiting the of higher bureaucratic authorities to override local decisions and by streamline recognition of collective land and community forest rights
- Stop forced “voluntary” relocations by ending coercion that pushes communities out of protected areas, often leaving them with degraded land and no viable livelihood
- Shift decision-making authority from forest officials to Indigenous communities as primary stewards of forest resources, including the power to halt destructive projects or harmful “conservation” interventions
- End the criminalization of frontline defenders by halting harassment and the use of false charges to silence Indigenous voices

³⁰ CERD/EWUAP/2026/CS/BJ/ks, 19 January 2026. Available at: https://tbinternet.ohchr.org/_layouts/15/treaty-bodyexternal/Download.aspx?symbolno=INT%2FCERD%2FALE%2FIND%2F11341&Lang=en

INDONESIA



Indonesia, an archipelago of over 13,000 islands with a total area of 7 million km², has an estimated population of about 250 million people. According to Aliansi Masyarakat Adat Nusantara (AMAN, or Indigenous Peoples' Alliance of the Archipelago), approximately 50–70 million people in Indonesia are considered Indigenous Peoples.³¹ The Indonesian archipelago contains approximately 120.5 million hectares of forest, the largest in South-East Asia and the third largest globally, after the Amazon and Congo Basins. These forests are classified as production forests (55.9 million hectares), protected forests (29.5 million hectares), conservation forests (22.08 million hectares) and non-forestry development (12.8 million hectares).³²

Indigenous Peoples have inhabited these vast forests for millennia, with their cultures and livelihoods deeply intertwined with, and sustained by, their complex relationships with forest ecosystems. For Indigenous Peoples in Indonesia, land and nature are central to lives and survival. They depend on nature and view the Earth as a shared heritage that must be protected for future generations. Drawing on their own knowledge systems, they manage land through customary classification such as forbidden, areas, burial grounds, cultivated lands, and hunting territories. Natural resources hold layered meanings: religious, social, economic and political and the Earth is understood not only as a source of sustenance, but also as a foundation of identity and social status within the community.

Geographically, Indigenous Peoples in Indonesia live across forests, mountains and coastal areas. Some are nomadic such as the Polahi people in Gorontalo and the Togutil in North Maluku; while some are sedentary, including the Manggarai in East Nusa Tenggara, most Dayak groups in Kalimantan, and the Baduy in Banten. Their subsistence practices include gathering, rotational swidden farming, agroforestry, fishing, small-scale plantations and mining activities.

Indonesia voted in favour of the adoption of the UNDRIP and has made notable progress in recognizing Indigenous Peoples' rights through constitutional provisions and policies. Articles 18b (2)³³, 28I (3)³⁴ and 32 (1)³⁵ of the Indonesian Constitution affirm the rights of *masyarakat adat* (Indigenous communities) to maintain their cultural identity, traditional livelihoods, and customary systems.

³¹ International Working Group on Indigenous Affairs (IWGIA). *The Indigenous World 2023: Indonesia*, 29 March 2023. <https://iwgia.org/en/indonesia/5120-iw-2023-indonesia.html>

³² BPS. (2022). Indonesia's forest area and conservation. See: <https://www.bps.go.id/statictable/2013/12/31/1716/luas-kawasan-hutan-dan-kawasan-konservasi-perairan-indonesia-berdasarkan-surat-keputusan-menteri-lingkungan-hidup-dan-kehutanan.htm>

³³ Laws on the Right to Peaceful Assembly Worldwide. *The 1945 Constitution of the Republic of Indonesia*, [https://www.rightofassembly.info/assets/downloads/1945_Constitution_of_Indonesia_\(as_amended\)_English_translation.pdf](https://www.rightofassembly.info/assets/downloads/1945_Constitution_of_Indonesia_(as_amended)_English_translation.pdf)

³⁴ Ibid.

³⁵ Ibid.

Additionally, the Basic Agrarian Law of 1960 recognizes *hak ulayat* or customary land rights, granting collective rights to Indigenous communities over their traditional territories. However, these rights are conditional on alignment with national interests and higher-level laws, leaving ultimate decision-making over land use by with the state, and effectively overriding *adat*. Regulation No. 14 of 2024 (*Permen ATR/BPN No. 14 Tahun 2024*) further governs the recognition and registration of customary land rights, establishing procedures for mapping and formally registering such lands.

However, the country has yet to pass an Indigenous Rights Bill initiated and largely drafted by Indigenous Peoples groups led by AMAN. The bill seeks to formally recognize and protect the rights of Indigenous communities, particularly over their lands, forests, and governance systems. Submitted to Parliament in 2012, it has remained stalled, leaving Indigenous communities vulnerable to land confiscation and the criminalization of their traditional livelihoods.³⁶

Despite these Constitutional and legal provisions, Indigenous Peoples have long been denied recognition of their customary land rights under conservation and forestry laws, particularly those that place forest land under state control. Law No. 5/1990 on Conservation of Living Natural Resources and their Ecosystems establishes conservation areas, regulates biodiversity protection, and defines penalties for violations. While it mentions community participation, it does not recognize Indigenous Peoples' rights or roles. Instead, it centralizes state control over forests and conservation areas, disregarding customary land tenure. As a result, protected areas have been established on Indigenous lands, restricting access and criminalizing traditional practices such as hunting, fishing, and forest use. This has led to land dispossession and displacement, limited recognition of customary rights and ongoing conflicts with park authorities.

A recent amendment of Law No. 5/1990, Law No. 32/2024, further restricts Indigenous Peoples' traditional economic activities and enables conservation expansion into lands they already use and occupy. The amended law broadens conservation coverage to include nature reserves, conservation areas and ecosystems in waters, coastal areas, and small islands. It also introduces a new category, "Areal Preservasi" (Preservation Area), which may encompass Indigenous territories.

Law No. 32/2024 introduces harsher penalties, including imprisonment and fines for a wide range of activities. Article 40 penalizes activities such as taking, cutting, possessing, damaging, transporting and/or trading protected plants whether living or dead. Article 40A similarly criminalizes hunting, capturing, injuring, killing, possessing, or trading protected animals in nature reserves. Burning activities in conservation areas carry penalties of 2 to 10 years of imprisonment. These provisions do not distinguish traditional practices from illegal activities. As a result, customary practices such as the Mentawai people's ritual consumption of monkey meat, can be penalized, in the same way as poaching.

³⁶ HARIANDJA, Richaldo. "Activists file last-gasp suit as Indonesia fails again to pass Indigenous bill", in *Mongabay*, 23 April 2024. <https://news.mongabay.com/2024/04/activists-file-last-gasp-suit-as-indonesia-fails-again-to-pass-indigenous-bill/>



AMAN, together with the Indonesian Forum for the Environment (WALHI), the People's Coalition for Fisheries Justice (KIARA), and Indigenous petitioner Mikael Ane, filed a judicial review of Law No. 32/2024 before the Constitutional Court in September 2024. They argue that the law is unconstitutional, having been enacted without meaningful consultation or participation of Indigenous Peoples and affected local communities. They contend that it fails to recognize Indigenous Peoples as legal subjects in conservation, risking appropriation of customary lands and criminalization of traditional practices.³⁷ The law also lacks mechanisms for resolving conflicts between conservation policies and Indigenous livelihoods, leaving communities without formal avenues for redress.

Land Dispossession of Moa People by National Park Expansion

The ancestral lands of the Moa People, an Indigenous community in the Besoa Valley, and part of the Topo Uma, have been significantly reduced due to the expansion of Lore Lindu National Park. The Moa have long inhabited the area in South Kulawi, Sigi Regency, with ancestral territories of around 34,485 hectares, supporting subsistence farming, including cacao, coffee, and tubers. In 1993, the government designated the area as part of Lore Lindu National Park, imposing restrictions that curtailed the Moa's traditional land use.

In 2017, the Moa community applied to the Ministry of Environment and Forestry for recognition of 7,738 hectares of their customary forest under the community forestry scheme. However, by September 2021, only 1,484 hectares had been granted. This reduced land has caused economic hardship and limited access to essential resources. Park rangers have felled old cacao and coffee trees, and conservation rules restrict the harvesting of forest products. Despite partial recognition, the Moa continue to face land use conflicts and constrained access to their resources.³⁸

³⁷ ARGAWATI, Utami. *Formation of Conservation of Biodiversity and Ecosystem Law Challenged*, in Constitutional Court of the Republic of Indonesia, 7 October 2024. https://en.mkri.id/news/details/2024-10-07/Formation_of_Conservation_of_Biodiversity_and_Ecosystem_Law_Challenged

³⁸ LAHAY, Sarjan. "Fenced in by Sulawesi national park, Indigenous women make forestry breakout", in *Mongabay Indonesia*, 18 March 2024. <https://news.mongabay.com/2024/03/fenced-in-by-sulawesi-national-park-indigenous-women-make-forestry-breakout/>

Forestry laws have similarly weakened Indigenous Peoples' control over ancestral forests, contributing to displacement and marginalization in areas designated for logging or production. The 1967 Basic Forestry Law, Indonesia's first comprehensive forestry law, declared all forests under state control, including those traditionally used by Indigenous Peoples. It centralized forest governance, introduced production, protection, and conservation categories, and enabled commercial concessions on community lands. Although it nominally recognized customary rights, these were conditional on alignment with state interests and forest classifications. In practice, the law undermined Indigenous control over customary forests and exposed communities to penalties for alleged violations of forest regulations.

The 1967 Basic Forestry Law was repealed by Forestry Law No. 41 of 1999, which remains the primary framework for forest governance. The 1999 Law retains strong state control, including authority to classify forest areas, issue concessions, and regulate forest use. It defines forest areas based on government designation, often disregarding Indigenous Peoples' customary claims and longstanding ties to the land. While the law allows for the recognition of customary rights, it places the burden on Indigenous communities to prove their existence under stringent requirements. Recognition is also contingent on formal registration; until then, forests remain under state control, limiting Indigenous Peoples' ability to manage their ancestral lands.

Under the 1999 Forestry Law, violations of state-imposed regulations are penalized, including Indigenous Peoples' traditional practices such as shifting cultivation subsistence use of forest resources. In cases of overlapping land claims, outcomes often favor large scale business interests, sidelining Indigenous communities. Those has led to persistent conflicts, as many Indigenous Peoples live in and depend on forests classified under state laws, yet their tenure rights remain unrecognized.

In March 2012, AMAN, together with representatives of the Kuntu and the Kasepuhan Cisu communities, filed a judicial review of the Forestry law, arguing That key provisions were unconstitutional. At that time state forests covered about 70% of Indonesia's land area, much of it allocated for exploitation, non-forest use, conservation zones and ecosystem restoration schemes.³⁹ The resulting Constitutional Court Decision No. 35/PUU-X/2012, overturned the doctrine of state ownership of all forests, declaring that customary forests are not state forests even if previously classified as such. It affirmed Indigenous Peoples' rights to control, manage, and benefit from their customary forests.

However, implementation has been limited. According to AMAN, only 35,090 hectares have been recognized as *adat* forest, far below the estimated 40 million hectares traditionally held by Indigenous communities.⁴⁰ Recognition remains slow and complex requiring prior formal acknowledgment of the Indigenous communities through local regulation (*perda*). By the end of 2022, 148,480 hectares across 105 Indigenous territories had been officially designated as customary forest.⁴¹

³⁹ "A turning point for Indonesia's indigenous peoples", in *Down to Earth*, 7 June 2023. <https://www.downtoearth-indonesia.org/story/turning-point-indonesia-s-indigenous-peoples>

⁴⁰ BUTLER, Rhett Ayers. "In landmark ruling, Indonesia's indigenous people win right to millions of hectares of forest," in *Mongabay*, 17 May 2013, <https://news.mongabay.com/2013/05/in-landmark-ruling-indonesias-indigenous-people-win-right-to-millions-of-hectares-of-forest/>

⁴¹ IWGIA (2023) *Indigenous peoples in Indonesia*



Conclusions and Recommendations

Indonesia's legislative landscape presents significant challenges for Indigenous Peoples at the intersection of conservation laws and their inherent rights. While gains such as the 2012 Constitutional Court ruling exist, systemic barriers continue to threaten their land, livelihoods, and cultural heritage.

Current environmental laws prioritize the expansion and strict regulations of protected areas, often restricting and criminalizing traditional resource use. This has led to displacement, loss of traditional lands, and limited access to livelihoods. Moreover, these laws lack effective mechanisms for Indigenous communities to resolve conflicts between conservation policies and their rights as affirmed under the UN Declaration on the Rights of Indigenous Peoples.

The following recommendations should be considered:

- Amend Law No. 5 of 1990 on Conservation of Living Natural Resources and Their Ecosystems, to explicitly recognize **masyarakat adat** within conservation areas, including the rights to land, natural resources, and their cultural heritage, as affirmed by the Constitution. The law should incorporate provisions on free, prior informed consent (FPIC), as well as mechanisms for investigation and redress of rights violations linked to conservation policies.
- Amend Forestry law 41/1999 to align with the 2012 Constitutional Court Ruling, which affirms that customary forests are not state forests.
- Simplify regulations on the recognition of customary land rights to enable Indigenous People to secure legal ownership and protection of their territories.
- Enact the Indigenous Rights Bill to formally recognize and protect Indigenous Peoples' individual and collective rights.

REFERENCES

- Asia Indigenous Peoples Network on Extractive Industries and Energy (AIPNEE) and Greater Karizanga Land and Human Rights Protection Committee (2025) The unfolding crisis in Karizanga. A report on illegal land acquisition for luxury tourism. https://aipnee.org/wp-content/uploads/2025/09/The-Unfolding-Crisis-in-Kaziranga_GKLRPC.pdf
- Aliansi Masyarakat Adat Nusantara (AMAN), & Koalisi Organisasi Masyarakat Sipil. (2024, February 24). Surat terbuka: Tolak sertifikasi Hak Pengelolaan (HPL) di atas wilayah adat [Open letter: Rejecting the certification of Management Rights (HPL) over Indigenous territories]. Jaringan Pemantau Independen Kehutanan (JPIK). <https://jpik.or.id/surat-terbuka-tolak-sertifikasi-hak-pengelolaan-hpl-di-atas-wilayah-adat/>
- AMAN. (2022). 'Discriminatory' and 'debilitating' obstacles in Indonesian laws hinder recognition and protection of Indigenous Peoples' rights – Issues submitted to UN Treaty Body. <https://www.aman.or.id/index.php/news/read/Press%20Release>
- ASEAN Centre for Biodiversity. (n.d.). ASEAN biodiversity outlook. <https://environment.asean.org/fre-sources/detail/asean-biodiversity-outlook>
- Badan Pusat Statistik (BPS). (2022). Luas kawasan hutan dan kawasan konservasi perairan Indonesia berdasarkan surat keputusan Menteri Lingkungan Hidup dan Kehutanan. <https://www.bps.go.id/stat-tictable/2013/12/31/1716/luas-kawasan-hutan-dan-kawasan-konservasi-perairan-indonesia-berdasar-kan-surat-keputusan-menteri-lingkungan-hidup-dan-kehutanan.htm>
- Business & Human Rights Resource Centre. (n.d.). Cambodia: Chong Indigenous people face arrests and lawsuits over rotational farming on unmarked land of protected and REDD+ areas. <https://www.business-humanrights.org/en/latest-news/cambodia-chong-indigenous-people-face-arrests-and-lawsuits-over-rotational-farming-on-unmarked-land-of-protected-and-redd-areas/>
- Butler, R. A. (2013, May 17). In landmark ruling, Indonesia's indigenous people win right to millions of hectares of forest. Mongabay. <https://news.mongabay.com/2013/05/in-landmark-ruling-indonesias-indigenous-people-win-right-to-millions-of-hectares-of-forest/>
- Butler, R. A. (2023, December 14). Traditional small farmers burned by Indonesia's war on wildfires. Mongabay. <https://news.mongabay.com/2023/12/traditional-small-farmers-burned-by-indone-sias-war-on-wildfires/>
- Cambodia Indigenous Peoples Organization. (2021, October 23). National report on demographic and socio-economic status of Indigenous peoples in Cambodia. <https://cipocambodia.org/natio-nal-report-on-demographic-and-socio-economic-status-of-indigenous-peoples-in-cambodia/>
- CamboJA News. (2025, July). Indigenous communities fear Cambodia's new Environmental Code threatens their land rights. <https://cambojanews.com/indigenous-communities-concerned-new-en-vironment-code-undermines-their-rights/>
- CamboJA News. (n.d.). Kuy Indigenous demand resolution over land dispute in Preah Vihear. <https://cambojanews.com/kuy-indigenous-demand-resolution-over-land-dispute-in-preah-vihear/>
- Cambodia Development Resource Institute (CDRI). (n.d.). Strengthening community-based ecotourism: Studies on CBET in Cambodia—Benefits and governance risks. https://cdri.org.kh/storage/pdf/PB%202021,%205_Community-Based%20Ecotourism_1637159539.pdf
- Chhuonvuoch. (2024, June 11). Ethnic minorities and Indigenous people policy and rights. Open Development Cambodia. <https://opendevelopmentcambodia.net/topics/ethnic-minorities-and-indige-nous-people-policy-and-rights/>
- Constitutional Court of the Republic of Indonesia. (2024, October 7). Formation of conservation of biodiversity and ecosystem law challenged. https://en.mkri.id/news/details/2024-10-07/Formation_of_Conservation_of_Biodiversity_and_Ecosystem_Law_Challenged
- Down to Earth. (2013, June 7). A turning point for Indonesia's indigenous peoples. <https://www.downtoearth-indonesia.org/story/turning-point-indonesia-s-indigenous-peoples>



Forest Watch Indonesia. (2024, April 24). Tuntut aksi adat malah dipolisikan: Dayak Kualan X Mayawana. <https://fwi.or.id/tuntut-aksi-adat-malah-dipolisikan-dayak-kualan-x-mayawana/>

Government of India. (1927). The Indian Forest Act, 1927.

Government of India. (2006). The Wild Life (Protection) Amendment Act, 2006.

Hayat. (2024, May 7). Pro-business parties accused of holding back Indonesia's Indigenous rights bill. Mongabay. <https://news.mongabay.com/2024/05/pro-business-parties-accused-of-holding-back-in-donesias-indigenous-rights-bill/>

Human Rights Watch. (n.d.). Carbon offsetting casualties: REDD+ projects, criminalization, and Indigenous impacts in Cambodia. <https://www.hrw.org>

Human Rights Watch (2024) Carbon Offsetting casualties. Violations of Chong Indigenous Peoples's Rights in Cambodia Southern Cardamom REDD+ Project. <https://www.hrw.org/report/2024/02/29/carbon-offsettings-casualties/violations-chong-indigenous-peoples-rights>

Indigenous Peoples Rights International (IPRI). (2022). The Adivasis push back for their rights. <https://iprights.org/2022/04/01/the-ativasis-push-back-for-their-rights/>

Indigenous Rights Advocacy Centre (IRAC). (2022). Briefing paper: India – Impacts of tiger reserves on Indigenous peoples. https://irac.in/wp-content/uploads/2022/12/India-Impacts-of-tiger-reserves-on-indigenous-peoples_Final_Print_Version.pdf

Indigenous Rights Advocacy Centre (IRAC). (2025). Recent cases/developments. <https://irac.in/>

Indigenous Rights Advocacy Centre (IRAC), & Indigenous Peoples Rights International (IPRI). (2022).

The impact of militarization on the rights of Indigenous peoples: India.

International Work Group for Indigenous Affairs (IWGIA). (2024). The Indigenous World 2024: Cambodia. <https://iwgia.org/en/cambodia.html>

International Work Group for Indigenous Affairs (IWGIA). (2024). The Indigenous World 2024: Indonesia. <https://www.iwgia.org/en/indonesia/>

International Work Group for Indigenous Affairs (IWGIA). (2023). Indigenous peoples in Indonesia. In The Indigenous World 2023. <https://iwgia.org/en/indonesia/5120-iw-2023-indonesia.html>

International Work Group for Indigenous Affairs (IWGIA). (2023). The Indigenous World 2023: India. <https://www.iwgia.org/en/india/5117-iw-2023-india.html>

Japan Tropical Forest Action Network (JATAN). (2023). Violated Indigenous customary lands and serious social conflicts: Land grabbing by PT Mayawana Persada in West Kalimantan, Indonesia. <https://en.jatan.org/archives/4407>

Jacobson, P. (2024, April 23). Activists file last-gasp suit as Indonesia fails again to pass Indigenous bill. Mongabay. <https://news.mongabay.com/2024/04/activists-file-last-gasp-suit-as-indonesia-fails-again-to-pass-indigenous-bill/>

Jong, H. N. (2023, May 12). Indonesia's recognition of customary forests remains sluggish, groups say. Mongabay. <https://news.mongabay.com/2023/05/indonesias-recognition-of-customary-forests-remains-sluggish-groups-say/>

LAHURNIP and NIWF (2020) Violation of Indigenous peoples' Human Rights in Chitwan national park of Nepal. Submitted to Independent panel of experts – WWF Independent review. <https://www.lahurnip.org/uploads/project/file/17.-violation-of-indigenous-peoples-human-rights-in-chitwan-national-park-of-nepal,-feb-2020.pdf>

LAHURNIP et alii (2025) Human rights situation of Indigenous Peoples in Nepal. Submission to the Universal Periodic Review of Nepal. <https://www.ohchr.org/en/hr-bodies/upr/np-stakeholders-info-s51>

Live Science. (n.d.). Coral Triangle: The giant hidden Amazon beneath the sea that appears somewhat resilient to climate change. <https://www.livescience.com/planet-earth/rivers-oceans/coral-triangle-the-giant-hidden-amazon-beneath-the-sea-that-appears-somewhat-resilient-to-climate-change>



Mane, Y. (2022, April). Case study of Indigenous peoples complaints in judiciary. Cambodia Indigenous Peoples' Organization.

Mongabay. (2024, July 24). In Cambodia, Indigenous villagers lose forest and land amid carbon offset project. <https://news.mongabay.com/2024/07/in-cambodia-indigenous-villagers-lose-forest-land-amid-carbon-offset-project/>

Mongabay. (2024, December). Indonesia's Indigenous communities sidelined from conservation. <https://news.mongabay.com/2024/12/indonesias-indigenous-communities-sidelined-from-conservation/>

Mongabay. (2025, July). How Cambodia's new Environmental Code undermines Indigenous peoples' rights. <https://news.mongabay.com/2025/07/how-cambodias-new-environmental-code-undermines-indigenous-peoples-rights-commentary/>

Mongabay Indonesia. (2024, March). Fenced in by Sulawesi national park, Indigenous women make forestry breakout. <https://news.mongabay.com/2024/03/fenced-in-by-sulawesi-national-park-indigenous-women-make-forestry-breakout/>

Mongabay. (2021, October). Indigenous group faces eviction for 'New Bali' tourism project in Sumatra. <https://news.mongabay.com/2021/10/indigenous-group-faces-eviction-for-new-bali-tourism-project-in-sumatra/>

Office of the United Nations High Commissioner for Human Rights (OHCHR). (n.d.). Indigenous peoples. <https://bangkok.ohchr.org/indigenous-peoples>

OMCT SOS Torture Network. (2010). Cambodia: Forced evictions of Indigenous families from their ancestral lands. https://www.omct.org/site-resources/legacy/action_file_khm_230210_desc.pdf

Uch, C. (2018). Impact of government policies and corporate land grabs on Indigenous people's access to common lands and livelihood resilience in Northeast Cambodia. *Land*, 7(4), 123. <https://doi.org/10.3390/land7040123>

Pulitzer Center. (2024). Cambodia's carbon offset project undermines Indigenous rights. Republished from Mongabay. <https://pulitzercenter.org>

Qeios. (2023). Saving the forest: Socio-ecological repercussions of a REDD+ project in Cambodia [Preprint]. <https://www.qeios.com>

Simarmata, R. (2021). The formation of customary law related to the use of natural resources in the Lore Lindu region. https://www.academia.edu/65908334/The_Formation_of_Customary_Law_Related_to_the_Use_of_Natural_Resources_in_the_Lore_Lindu_Region

Southeast Asia Globe. (2021, April). Taking a walk on the wild side with Mondulkiri's eco-tourism outfits.

The Hindu. (2022, July 29). From nine tiger reserves in 1973 to 52 in 2022 shows commitment, says Bhupender Yadav. <https://www.thehindu.com/sci-tech/energy-and-environment/from-nine-tiger-reserves-in-1973-to-52-in-2022-shows-commitment-to-conservation-bhupender-yadav/article65697862.ece>

University of Arizona Indigenous Peoples Law & Policy Program. (n.d.). UN Committee on the Elimination of Racial Discrimination presses India on tiger reserve relocations. <https://indigenous.arizona.edu/news/un-committee-elimination-racial-discrimination-presses-india-tiger-reserve-relocations-and>

World Bank. (n.d.). Cambodia Sustainable Landscape and Ecotourism Project (P165344). <https://www.worldbank.org>



CAMBODIA

Relevant domestic legal framework	Environmental laws and policies	Assessment of the law/policy in the light of State domestic and/or international obligations on the rights of Indigenous Peoples
Cambodian Constitution 1993		<p>Lack of specific recognition of Indigenous Peoples</p> <p>The Cambodian Constitution has general provisions for human rights and non-discrimination but lacks adequate provisions for the protection of the rights of Indigenous peoples in the country.</p> <p>The national law primarily grants rights to "Khmer citizens"</p>
Cambodia Land Law, 2001 Policy on Registration and Right to Use Indigenous Communal Land in Cambodia Sub-decree No. 83 and the National Policy on Development of Indigenous Peoples. Cambodia Land Law 2012		<p>The Land Law aims to secure land rights for Indigenous communities by defining their status and communal tenure. However, obtaining land titles is slow and burdensome. While the framework partially recognizes these rights through Indigenous Communal Land Titles (ICLT), communities face significant barriers in securing them due to bureaucratic inefficiencies, corruption, and encroaching development projects.</p> <p>Article 25 recognizes Indigenous residential and agricultural areas, while Article 26 enables collective ownership, preventing the transfer to outsiders. To support communal land titling, the government adopted the Policy on Registration and Right to Use Indigenous Communal Land in Cambodia, along with Sub-decree No. 83 and the National Policy on Development of Indigenous Peoples.</p> <p>Implementation of the Law has been inconsistent, leading to conflicts. It also lacks safeguards to protect Indigenous land from concessions and excludes some traditional lands from communal titles.</p>



Law on Environment Protection and Natural Resources Management 1996

The Law aims to:

- Protect environmental quality and public health by controlling pollution.
- Require environmental impact assessments before project approval
- Ensure sustainable management of natural resources.
- Promote public participation in environmental protection.
- Address actions that harm the environment.

However, Indigenous Peoples were largely excluded from the crafting of these environmental policies.

Law on Forestry 2002

This law establishes a framework for forest management, harvesting, usage, development, and conservation, including provisions for the use of forests by registered indigenous peoples.

Law on Protected Areas 2008

This law establishes protected areas and national parks but has been criticized for excluding Indigenous Peoples from managing their ancestral lands. Despite their long stewardship, Indigenous communities have little say in management of protected areas, often resulting in evictions, restrictions on traditional practices, and land grabs.

2019 Sub-Decree on Environmental Impact Assessment (EIA)

It requires all major development projects conduct an Environmental Impact Assessment (EIA) to identify potential environmental and social risks. However, its implementation is undermined by a lack of transparency.

The assessment process involves limited community consultation, and insufficiently considers Indigenous Peoples rights, particularly in large-scale agricultural or industrial projects.



Environment and Natural Resources Code 2023

It consolidates and modernizes environmental legislation, repealing the 1996 Law on Environmental Protection and Natural Resource Management.

The law seeks to modernize environmental protection and natural resource management by consolidating existing regulations and introducing new frameworks on climate change, biosafety, waste management, and a green economy. Key provisions include establishing environmental trusts, strengthening penalties for violations, and integrating environmental costs into economic activities.

However, an article in Mongabay notes that during the lengthy development of environmental laws, including the Environment and Natural Resources Code of 2023, Indigenous organizations and communities were not adequately involved, limiting their ability to raise concerns about their rights, culture, and traditional livelihoods.

The Law undermines the rights of Indigenous communities to manage their traditional lands and resources

Indigenous Peoples' groups argue that the Code undermines their rights to manage traditional lands and resources. They also warn that merging "Indigenous Communities" with the broader category "Local Community" could dilute their distinct rights and increase conflicts with development projects.

Facilitation of for-profit-driven conservation models.

The Code may facilitate market-driven conservation models, such as carbon credit schemes, which can restrict Indigenous Peoples' access to their ancestral territories and undermine their traditional livelihoods.



INDONESIA

Relevant domestic legal framework	Environmental laws and policies	Assessment of the law/policy in the light of State domestic and/or international obligations on the rights of Indigenous Peoples
<p>1945 Constitution of the Republic of Indonesia</p>		<p>The Constitution of Indonesia recognizes Masyarakat Adat (identified as Indigenous Peoples) in Articles 18B(2) (rights over customary lands), 28I (3) (cultural identity).</p> <p>The <i>O'Hongana Manyawa's</i> customary forests remain unrecognized by the government, while mining licenses overlap with their Indigenous lands. Resettlement has been carried out forcibly or under pressure, often without securing land rights.</p>
<p>Basic Agrarian Law, No 5 of 1960</p> <p><i>(Undang-Undang Pokok Agraria No. 5 Tahun 1960)</i></p>		<p>The Law aims to establish a unified legal framework for land rights in Indonesia, promote land distribution and social justice; and empower villages as self-governing entities. It recognizes various forms of land tenure, including customary (ulayat) rights where they still exist, while placing all land under State control. Foreign ownership of land is restricted.</p> <p>While the agrarian law recognizes customary or “adat” law, it ultimately vests final authority over land in the State, creating conflicts with Indigenous communities' communal land rights.</p>
	<p>Law No. 5/1990 on Living Natural Resources and their Ecosystems</p>	<p>The law establishes conservation areas; regulates protection of wildlife, plants, and habitats; and defines penalties for violations.</p> <p>The law restricts community access to nature reserves, criminalizes Indigenous land management practices within them, and established protected areas in territories traditionally occupied by Indigenous Peoples.</p>
	<p>Environmental Protection and Management Law no. 32 (UUPPLH) of 2009</p>	<p>This Act is Indonesia's primary environmental framework law.</p> <p>It covers environmental rights and obligations, strategic environmental assessment (SEA/AMDAL), permits, pollution control, prevention and restoration of environmental damage, and sanctions.</p> <p>It reinforces “polluter pays” principle and promotes community participation.</p> <p>However, it has been criticized for prohibiting and criminalizing Indigenous land management practices.</p>



Law No. 6 of 2014 on Villages

The Law strengthens village autonomy by recognizing villages as self-governing entities

It enhances local governance and rural development by defining village institutions (e.g., village head, BPD), granting authority to manage village funds, and promoting community participation in planning.

Enables creation of Village-Owned Enterprises (BUMDes).

However, implementation has been weak, and the law lacks detailed provisions on Indigenous territories.

Government Regulation No. 28/2011 on Management of Protected Areas

Articles 26 and 34 establish strict conservation zones within protected areas where activities, including traditional hunting, foraging, farming, and other subsistence practices, are strictly prohibited.

Restricts community land use and prohibits traditional livelihood practices, such as hunting and gathering, in Indigenous territories within conservation zones.

Law No. 27/2007 on Coastal and Small Islands Management (amended by Law No. 1/2014)

Regulates the sustainable use of coastal zones and small islands, including reclamation, zoning plans, and community rights, including indigenous coastal communities.

Indigenous coastal communities have long governed marine resources under customary law, which is not formally recognized in this law.

- Weak recognition of Indigenous coastal territorial rights
- Customary rights threatened by the Coastal Water Concession System (HP-3)
- No Free, Prior, and Informed Consent (FPIC)
- Coastal zoning (RZWP3K) often excludes indigenous peoples
- No protection for Indigenous cultural and sacred marine sites

Environmental protection prioritized over Indigenous rights.



Law No. 32/2014 on Marine Affairs

The law does not explicitly recognize customary marine tenure or the traditional rights of Indigenous Peoples to manage and access marine areas.

Article 18 vests national and regional authorities with control over Indonesia's Exclusive Economic Zone (EEZ) and territorial waters, including the power to regulate activities, issue licenses, and impose restrictions on marine resource use.

Government marine regulations can restrict Indigenous Peoples' access to traditional fishing areas and marine resources, undermining their livelihoods and food security.

Law No. 41/1999 on Forestry (amended by Law No. 19/2004 and later integrated into Job Creation Law 2020)

Customary land rights remain at risk, as customary forest areas are still treated as public lands, with the state exercising control over Indigenous territories in state forest zones.

This persists despite the **2012 Constitutional Court Ruling** on customary forests, which affirmed that customary forests are not state forests, yet the law has not been revised to reflect the ruling.

Any activity deemed contrary to state-imposed forest management regulations, including Indigenous Peoples' traditional practices such as shifting cultivation or livelihood use of forest, is subject to penalties.

Overlapping land claims often favor corporations and large-scale business interests, marginalizing Indigenous Peoples. This has led to conflicts, as many of Indigenous communities depend on forests classified under these laws for their livelihoods, yet their tenure rights remain unrecognized.



**Regulation No. 14 of 2024
(Permen ATR/BPN No. 14
Tahun 2024)**

Permen 14/2024, regulates the recognition and registration of customary land rights (*hak ulayat*), aiming to provide administrative clarity and legal protection for customary law communities. It defines *hak ulayat* and *masyarakat hukum adat* and establishes procedures for mapping and registering customary lands, subject to local government verification.

While intended to strengthen land administration, it retains significant structural weaknesses regarding Indigenous Peoples (*Masyarakat Hukum Adat, MHA*), particularly in recognition, mapping, participation, and protection from dispossession.

Specifically, the law presents the following issues:

- Recognition of Indigenous land is subject to prevailing local government approval
- Indigenous lands are not protected when classified as "state land"
- No Free, Prior, and Informed Consent (FPIC)
- Limited requirements for participatory mapping
- Land registration processes are highly bureaucratic
- Dispute resolution mechanisms do not recognize customary law
- Ongoing conflicts with mining, plantations, forestry and infrastructure projects remain unresolved
- Land consolidation (*Konsolidasi Tanah*) may displace Indigenous People
- No specific safeguards for Indigenous women
- Weak protection against land grabbing, fraud, and overlapping land registration

Law No. 32/2024

The law expands the scope of conservation areas and introduces a new category, Preservation Area, which may include lands occupied or used by Indigenous Peoples.

Burning activities in conservation areas are subject to stricter regulations and heavier penalties, including imprisonment of 2-10 years. This restricts and criminalizes traditional forest use and practices.



INDIA

Relevant domestic legal framework	Environmental laws and policies	Assessment of the law/policy in the light of State domestic and/or international obligations on the rights of Indigenous Peoples
	<p>Sixth Schedule of the Indian Constitution (1950) <i>[Articles 244(2) and 275(1)]</i></p>	<p>The Sixth Schedule provides constitutional safeguards for self-governance and cultural protection of tribal communities in the Northeast, but its autonomy is unevenly applied and constrained by state and central interventions.</p> <p>It establishes Autonomous District Councils (ADCs) and Regional Councils in Assam, Meghalaya, Tripura, and Mizoram, with legislative, judicial, executive, and financial powers over specified subjects. It aims to preserve tribal culture, land ownership, customary laws, and governance, ensuring grassroots decision-making and development.</p> <p>The Councils can regulate land use, forest management, cultural preservation, and local resource governance, aligning with Indigenous self-determination principles.</p> <p>In practice, state governments often override ADC powers, leading to limited autonomy and political conflicts.</p> <p>Some tribal areas in the Northeast (e.g., Manipur, Arunachal Pradesh, Nagaland) are excluded, creating unequal protection across Indigenous populations.</p>
<p>Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989</p>		<p>It intends to prevent atrocities, discrimination and hate crimes against scheduled castes and scheduled tribes. It provides for special courts, strengthens protections, and mandates rehabilitation for the victims.</p>
<p>Panchayati Raj Act (73rd CAA, 1992)</p>		<p>It institutionalizes local self-government (Gram Panchayats and Gram Sabhas), but meaningful control in tribal areas hinges on PESA operationalization (see below)</p> <p>Establishes a uniform three-tier Panchayati Raj system; Gram Panchayats plan and implement local socio-economic development and are accountable to Gram Sabhas.</p> <p>In Scheduled Areas, PESA-compliant rules are necessary to ensure Indigenous decision-making prevails over top-down development.</p>



**The Panchayats
(Extension to Scheduled
Areas) Act, 1996 (PESA
Act, 1996)**

The law operationalizes self-governance in Scheduled Areas via the Gram Sabha, including prior consent for land acquisition and resettlement; undercut by weak state-level compliance.

It mandates Gram Sabha authority to safeguard traditions, culture, community resources, and customary dispute resolution; prior consent is required for acquisition and rehabilitation in Scheduled Areas.

It advances decentralization of forest/resource governance and recognition of Adivasi collective rights.

The Law reflects UNDRIP standards on participation and FPIC in local decision-making, but realization depends on robust state rules and practice.

**Scheduled Tribes and Other
Traditional Forest Dwellers
(Recognition of Forest Rights)
Act, 2006 (FRA, 2006)**

The FRA is rights-recognition law that centers Gram Sabha authority and redresses “historical injustice,” yet faces inconsistent implementation and friction with conservation regimes.

It recognizes individual, community, and community forest resource (CFR) rights; empowers Gram Sabhas to determine and govern those right and sets strict conditions before modifying/relocating rights from critical wildlife habitats, including completed recognition, proof of irreversible harm, explored coexistence, and free, informed consent of Gram Sabhas.

On the ground, delays, rejections, and parallel forest/conservation procedures often sideline recognized rights.

**Environment (Protection) Act,
1986**

EIA Notification, 2006

Broad environmental rule-making powers and EIA procedures exist, yet project-level exemptions and weak consultation can erode Indigenous participation and safeguards.

The law empowers the Centre to set standards, regulate siting/hazardous wastes, and notify eco-vulnerable areas.

The EIA framework includes exemptions and reduced public scrutiny for some categories, including in regions near international borders, dampening meaningful input from ST communities.

To meet international standards on participation/FPIC (UNDRIP) and access to information, EIA practice needs stronger, earlier, and locally accessible consultation.



**Wild Life (Protection) Act, 1972
(WLP Act 1972)**

The WLPA established a strong legal framework for wildlife conservation, but by criminalizing customary forest use, it marginalizes Scheduled Tribes.

It prioritizes species and habitat protection through creation of sanctuaries and national parks but offers no recognition of Indigenous/customary rights.

It criminalizes subsistence activities such as grazing, fishing, fuel wood collection, and shifting cultivation. The law treats traditional livelihood practices as poaching or encroachment and has resulted in widespread displacement and loss of access to forests for STs, with limited or no rehabilitation.

The Act reflects a "fortress conservation" model that prioritizes wildlife over community rights, later challenged and partly addressed by the Forest Rights Act, 2006, which sought to restore recognition of forest dwellers' rights. However, continued reliance on the WLPA without fully integrating safeguards under the FRA/PESA leaves gaps between domestic law and international obligations on Indigenous Peoples' rights.

**Wild Life (Protection)
Amendment Act, 2006**

The Amendment sought to balance tiger conservation with recognition of forest dwellers' rights, but in practice, relocations from "critical habitats" often sidelined Scheduled Tribes' rights.

The Act requires states to identify and notify critical tiger habitats (CTHs) to be kept "inviolable," but mandates that such decisions must not affect the rights of Scheduled Tribes and other forest dwellers unless conditions were strictly met.

Safeguards under Section 38V require proof that coexistence is not possible, preparation of resettlement packages, and free, prior consent of Gram Sabhas before relocation, aligning in principle with FPIC. In practice, these safeguards are poorly implemented, with Gram Sabha consent often bypassed or treated as a formality, and relocation packages failing to ensure livelihoods or cultural continuity. While the Amendment was an improvement on earlier "fortress conservation" models, the gap between law and implementation has left many ST communities vulnerable.



Project Tiger (1973-present)

Project Tiger has been central to species conservation in India, but its “inviolable area” approach has led to large-scale displacement of Scheduled Tribes, often without genuine consent or adequate rehabilitation.

Launched in 1973, Project Tiger created tiger reserves by declaring core/critical habitats to be people-free zones, prioritizing species survival over community presence.

Since inception, thousands of Tribal families have been displaced, often with incomplete or inadequate resettlement packages (e.g., lack of promised land, schools, or healthcare). Communities remaining in buffer areas face restrictions on farming, grazing, fuel wood collection, and fishing. It has undermined subsistence livelihoods and cultural practices.

Gram Sabha consent and due-process protections (later mandated under FRA 2006 and WLPA Amendment 2006) are frequently ignored or only partially implemented in relocation processes.

NTCA directives ordered relocation of 64,801 families from 591 villages inside Critical Tiger Habitats (CTHs), despite FRA requiring Free, Prior and Informed Consent (FPIC) of Gram Sabhas before resettlement.



Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act, 2013)

The LARR Act marks progress by incorporating consent, social impact assessments, and special safeguards for Scheduled Tribes. However, weak implementation and broad exemptions continue to undermine its protective potential.

- First land acquisition law to formally recognize STs' unique vulnerabilities and link acquisition to rehabilitation and resettlement (R&R).
- Mandates Social Impact Assessments (SIA) to evaluate impacts on livelihoods and culture prior to acquisition; requires disclosure and public hearings.
- Requires consent of 70% of affected families for PPP projects and 80% for private projects, with emphasis on Gram Sabha consent in Scheduled Areas (Section 41).
- Provides that resettlement of STs should preferably occur within the same Scheduled Area to preserve cultural identity and continuity.
- Includes additional development plans for ST communities, safeguards against land alienation, and guarantees for housing and livelihoods in resettlement sites.
- Implementation gaps remain significant: SIAs are often superficial; Gram Sabha consent is bypassed; and promised resettlement and rehabilitation (R&R) benefits (housing, jobs, amenities) are delayed or unmet.
- Exempts key projects (e.g., defence, infrastructure, linear projects like highways), weakening safeguards.
- In practice, land acquisition sometimes proceeds without resolving claims under Forest Rights Act (2006), creating legal conflicts and further marginalizing ST rights.



Indian Forest Act (IFA), 1927

The IFA consolidated colonial forest laws that vested ownership in the state, severely restricting Scheduled Tribes' customary access and livelihoods and laying the foundation for long-term dispossession later challenged by rights-based legislation.

It has contributed to systemic displacement, harassment, and human rights violations against STs, including violence, arrests, and reported sexual harassment of tribal women in enforcement contexts.

- Classifies forests into reserved, protected, and village categories, granting the state broad control over access, use, and management.
- Effectively criminalizes subsistence practices of STs such as collecting fuel wood, honey, tendu leaves, and shifting cultivation—treating them as offences or “encroachment.”
- Replaces community ownership and common property regimes with state control, undermining customary laws and tenure systems.
- Institutionalizes forests as state-controlled economic resources, erasing Indigenous custodianship.

National Forest Policy, 1952

The 1952 Forest Policy prioritizes state control and revenue extraction from forests, leading to the widespread alienation of Scheduled Tribes from their customary lands and livelihoods.

It treats forests primarily as state economic resources for timber and revenue, sidelining traditional subsistence and cultural uses, criminalizing shifting cultivation and community tenure systems, and undermining customary governance.

Accelerated dispossession and displacement of Scheduled Tribes, as their communal ownership was replaced by state property regimes.



Forest (Conservation) Act, 1980

The FCA curbed large-scale forest diversion but reinforces centralized state control, often clashing with Scheduled Tribes' customary rights and rights-based laws like the FRA (2006).

- Requires prior approval of the central government approval for the de-reservation or diversion of forests for non-forest use
- Helps slow rampant deforestation but reinforced an exclusionary framework by prioritizing conservation and state oversight over community rights.
- Scheduled Tribes, who depend on forests for subsistence, faced restrictions on cultivation, grazing, and livelihoods without recognition as rights holders.
- Conflicts with the rights-based approach of FRA 2006, which later acknowledge the "historical injustice" faced by forest dwellers.
- Indigenous communities have often been displaced or denied access when forests are diverted for dams, mining, or industry, without proper settlement of their claims.

National Forest Policy (NFP), 1988

The NFP 1988 marked a progressive shift by recognizing the symbiotic relationship between forests and forest-dependent communities, including Scheduled Tribes, but its rights-based commitments have been unevenly implemented.

- Departs from earlier state-centric, revenue-oriented policies (1952, IFA 1927) by emphasizing conservation, ecological stability, and community welfare.
- Recognizes that the life, livelihoods, and cultural survival of tribal and other forest-dependent communities are closely linked to forests.
- Promotes community involvement in forest protection, regeneration, and management, laying the foundation for participatory models such as Joint Forest Management (JFM).
- Acknowledges dependence on minor forest produce (NTFPs) and emphasizes ensuring access to fuel wood, fodder, and forest resources.
- In practice, state control largely persists, and JFM often treated communities as "assistants" rather than rights-holders, limiting meaningful empowerment.
- Anticipated later reforms such as the Forest Rights Act (2006), which formally recognized the rights of STs.



Biological Diversity Act of 2002

The Act provides a framework for conservation and benefit-sharing, but protections for Scheduled Tribes' traditional knowledge and resource rights remain limited due to weak implementation and lack of strong safeguards for Indigenous control. Procedural rather than empowering, it recognizes community roles through Biodiversity Management Committees (BMCs) and seeks to ensure equitable sharing of benefits from biological resources and associated knowledge

In practice, Access and Benefit-Sharing (ABS) mechanisms are weak, with agreements often excluding or marginalizing ST communities, while decision-making is dominated by state boards and national authorities.

Scheduled Tribes face barriers such as limited legal literacy, lack of technical support, and weak recognition of customary laws, restricting their effective control over access to resources.

The Act does not explicitly guarantee FPIC for STs.

Project Rhino / Indian Rhino Vision 2020 (IRV 2020)

National Rhino Conservation Strategy (2019)

While IRV 2020 seeks to secure rhino populations, its implementation around Kaziranga often sidelines IP rights and livelihoods.

- The project aims to expand rhino population by relocating them across protected areas to reduce extinction risks.
- In Kaziranga, enforcement included "shoot-at-sight" anti-poaching policies that disproportionately affects local tribal communities accused of poaching.
- Restrictions on fishing, fuel wood collection, grazing, and shifting cultivation eroded subsistence livelihoods of Scheduled Tribes dependent on Brahmaputra floodplains.

The 2019 Strategy formalized a scientific, DNA-based framework for rhino protection but gave limited attention to Indigenous rights in Kaziranga and similar landscapes. It continued a top-down conservation model without addressing livelihood restrictions or recognizing community forest resource rights.



**Eco-Sensitive Zone (ESZ)
Notification 2016 (Kaziranga)**

The ESZ framework aims to buffer protected areas like Kaziranga from harmful development, but in practice has imposed severe livelihood restrictions on Scheduled Tribes without adequate safeguards or consent. While intended for ecological protection, the lack of participatory governance and exclusion of Indigenous voices has led to marginalization and rights violations in Kaziranga.

- Declared 422 sq. km around Kaziranga as an ESZ, restricting land use, agriculture, construction, and infrastructure development.
- These restrictions disproportionately affect STs who depend on the Brahmaputra floodplains for fishing, farming, grazing, fuel wood collection, and shifting cultivation.
- It reflects a “fortress conservation” model that criminalizes traditional livelihoods rather than integrating co-management with Gram Sabhas.

Impacts of Domestic Conservation Laws and Policies on the Rights of Indigenous Peoples: Cameroon, Democratic Republic of Congo, Namibia and Tanzania

By Enchaw Gabriel Bachange





1. INTRODUCTION

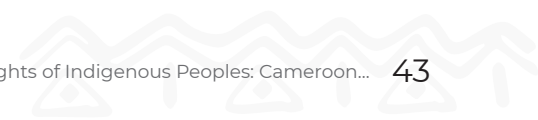
In contemporary Africa, domestic conservation laws and policies still reflect colonial systems that adversely impact on the rights of Indigenous Peoples to their ancestral lands and territories. In this study, land is understood in a broader, more holistic way, not just as agricultural land- as defined by domestic conservation laws and policies of Cameroon, the Democratic Republic of Congo (DRC), Namibia and Tanzania which are influenced by Western legal systems. Except for customary protected areas, formal protected area systems started in Cameroon in 1932 (Mozogo Gokoro Reserve and the Bénoué Reserve), in DRC in 1925 (Virunga National Park), in Namibia in 1907 (Game Reserve 2, later known as Etosha National Park) and in Tanzania in 1895 (Selous Game Reserve). State-led conservation in these four countries and across Africa began during colonization. Even today, even conservation laws in independent African countries still carry foreign influences⁴² and often in conflict with the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).⁴³

In Africa, Indigenous Peoples include hunter-gatherers and pastoralist/agro-pastoralist communities living in different regions across the continent. The challenges faced by Indigenous Peoples in Cameroon, DRC, Namibia and Tanzania, are closely tied to the controversy about their recognition in Africa as well as to exclusionary conservation laws their foreign contents, and how they are implemented. Except for the DRC and Cameroon which are beginning to recognize the 2003 work of the African Commission on Human and Peoples' Rights (ACHPR), Namibia and Tanzania have not yet included the concept of Indigenous Peoples in their conservation laws and policy. Since 2003, many African Indigenous organizations, experts, and various non-governmental organizations (NGOs) have joined voices to raise awareness of the existence of Indigenous groups in the continent and to look into the many human rights violations they endure.

Although Cameroon, DRC, Namibia, and Tanzania are party to some international treaties on Indigenous Peoples' rights, commitment in Namibia and Tanzania is still dismal as their national laws do not clearly recognize Indigenous Peoples or their rights. All four countries supported the adoption of UNDRIP in 2007, but none have ratified the International Labour Organization Convention No 169 on the rights of Indigenous and tribal peoples in independent countries ('ILO Convention

⁴² Ngwasiri, 2001. So far in Cameroon, each time State bureaucrats were called upon to effect land tenure reform, they thought of nothing better than leaning over backwards and lifting from past European texts, which did not have much in common with the problem that reforms were supposed to address at a given time.

⁴³ ACHPR and IWGIA, 2005



169') despite ongoing lobbying and advocacy efforts. These countries are party to the Convention on the Elimination of Racial Discrimination, the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights, as well as the African Charter on Human and Peoples' Rights. In these four countries, international law takes priority over national laws. Because of this, Indigenous Peoples use these frameworks to defend their identity and rights, especially in the face of conservation-related violence and criminalization.

In 2022, DRC showed proof of meaningful commitment with the promulgation of Law No. 22/030 of 15 July 2022 for the protection and promotion of the rights of Indigenous Pygmy Peoples. In 2024, Cameroon passed Law No. 2024-008 of July 2024 on forestry and wildlife, which shows some recognition of the concept of Indigenous Peoples. Despite these laws, Indigenous Pygmy Peoples in DRC and Forest Indigenous Peoples in Cameroon still face strict "fence and fine" conservation policy.

Colonial era laws have influenced conservation policies in Cameroon, DRC, Namibia and Tanzania, prioritizing legal control over local legitimacy and excluding Indigenous Peoples from participating in their design. The contents of such conservation laws and policies are not in harmony with UNDRIP. How these laws are implemented, and the State's disregard of its international commitments to Indigenous Peoples' rights, exposes Indigenous Peoples including the Baka, Bagyeli/Bakola and Bedzang of Cameroon, the Batwa, Bambuti and Bacwa of DRC, the San of Namibia, and the Hadzabe, Maasai and Barabaig of Tanzania to violence and criminalization with impunity. Except for DRC, absence of specific domestic legal instruments on Indigenous Peoples, scales-up a replication of such injustices.⁴⁴ Violence and criminalization stifle them from using their indigenous knowledge systems, beliefs and practices to continue caring for, monitoring and stewarding their ancestral lands and territories valued now only for conservation.

Gaps between global commitments and national conservation laws in Cameroon, DRC, Namibia and Tanzania, especially those promoting people-free protected areas harm Indigenous Peoples and damage biodiversity and ecosystems. There really is no success story of fortress conservation. A shift toward including African Indigenous Peoples in conservation will guarantee human welfare, biodiversity abundance and ecosystem health.

The methodology for this review study was a desk exercise for qualitative data collection. Phase 1 was bibliometric and focused on the identifying relevant data sources. We obtained the constitutions and conservation laws and policies of Cameroon, DRC, Namibia and Tanzania along with key international legal instruments such as UNDRIP, ILO Convention 169, and the African Charter on Human and Peoples' Rights (ACHPR), as well as ACHPR studies and publications from NGOs like the International Working Group for Indigenous Affairs (IWGIA), and various scholars. National conservation laws and policies were reviewed to identify gaps with the UNDRIP, challenges faced by Indigenous Peoples, and their exclusion from conservation. Meaningful conclusions were drawn as per the situation in each of the four countries and recommendations made.

⁴⁴ IWGIA, 2019.

2. CAMEROON



2.1 Indigenous Peoples in Cameroon. General background.

Self-identified Indigenous Peoples in Cameroon are Mbororo Pastoralists, Bedzang of Ngambe Tika in the Centre Region, and Baka and Bagyeli/Bakola found in the Upper-Nyong Boumba Ngoko Divisions of the East Region of Cameroon, the Dja-and-Lobo Division, and the Ocean Division of the South Region of Cameroon. The term “Pygmy” is rejected by forest-dwelling Indigenous Peoples in Cameroon because it is derogatory and refers to their physical stature. Instead, they prefer to be identified by their own ethnic names: Baka, Bagyeli/Bakola and Bedzang.

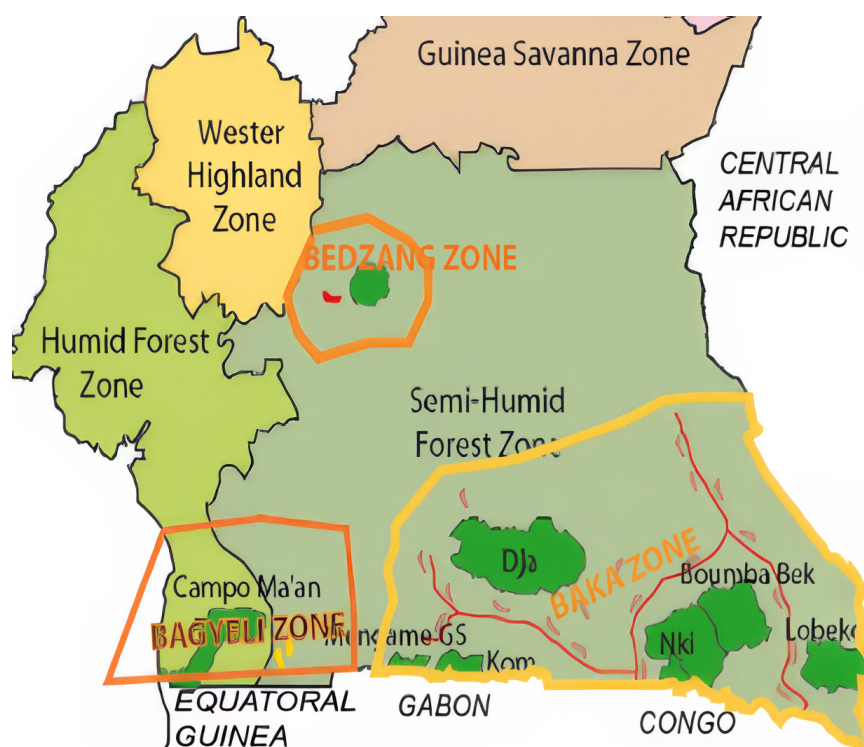


Fig.2.1.1: Spatial distribution of FIPs in Cameroon

The Constitution of Cameroon (Law No 96/06 of 18 January 1996), does not expressly recognize Indigenous Peoples even though groups like the Baka, Bagyeli/Bakola and Bedzang as well as Mbororo Pastoralists identify as Indigenous under UNDRIP (Article 3) and ILO Convention 169 (Article 2). However, item 2 of the Preamble of the Constitution generally refers to “minority and indigenous populations” without specifications.⁴⁵

In Cameroon, all land belongs to the State (Article 1 of Ordinance n° 74-1 of 6 July 1974) and its domestic conservation laws and policies have shaped an uneasy co-existence of Indigenous Peoples and conservation projects.⁴⁶ The loss of customary land rights due to eviction and subsuming of forests Indigenous Peoples under Bantu communities is a source of competing over land use and disrespect for their traditional symbols and cultural practices contrary to the provisions of Article 34 of UNDRIP.⁴⁷ Bantu mainstream communities claim customary legal rights to the land they occupy, while Forests Indigenous Peoples claim legitimate rights to the same territory because they were forcibly resettled there by the government.

Testimonies indicate that Baka communities in Grand Djoum have had farms they developed seized by Bantu, and are often punished with impunity even in front of their families when they fail to meet imposed labor demands at the stipulated time.⁴⁸ Similarly, Njengi sacred forests established in their resettlement sites to sustain ancestral practices have been partly or entirely destroyed by logging, Bantu encroachment, or agricultural concessions. In Abing, a Njengi forest was cleared for oil palm, while in Mfem II, much of it was absorbed into the Djoum Council Forest, and the remainder converted into Bantu farmland.

Cameroon has continued a sedentarization policy from colonial times, but early efforts failed to move forest Indigenous Peoples away from their ancestral lands. This first phase was imposed by the French colonial administration before 1950 and was championed in Grand Djoum⁴⁹ by the then Divisional Officer Ekongolo Nlate Albert. During this phase, the administration succeeded to lure only Bantu local communities to migrate and settle along roadsides with the same customary tenure rights as in their previous sites.⁵⁰ On the contrary, forest Indigenous Peoples and hunters/gatherers never yielded and remained in their ancestral lands and territories.

⁴⁵ Preamble of the Constitution of Cameroon Law n°96/06 of 18 January 1996.

⁴⁶ Ordinance n° 74-1 du 6 Juliet 1974, Article 1... *L'Etat est le gardien de toutes les terres*. The State is the custodian of all lands.

⁴⁷ *UNDRIP, Article 34*. Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

⁴⁸ Martin Paul Nsamba, personal communication. 2019

⁴⁹ A collective name for Djoum, Mintom and Oveng Sub-divisions (Enchaw & Njobdi, 2013)

⁵⁰ Althabe, 1965; Joiris, 1998 and Hattori, 2014



In the second phase of sedentarization, driven by the creation of protected areas, multiple stakeholders worked to evict forests Indigenous Peoples, using incentives, persuasion, and coercion.⁵¹ This process involved the French colonial administration in Grand Djoum, white missionaries and Bantu leaders who had formed alliances with the Baka through trade and farm labor.⁵² Evicted Indigenous Peoples lost their customary land rights, unlike the Bantu, and were absorbed into Bantu villages. This process amounts to forced assimilation and contradicts Articles 8.1 and 8.2 of UNDRIP. The place known as Minko'o II is originally called Minko'o Pk-weke Boungue in Baka language or Minko'o Ngul Ntangane in Bantu. Both means "force of the white." White in this context may mean the Catholic Missionaries who were implicated in the process or the Administration headed by the Divisional Officer or both (Enchaw and Njobdi, 2013:23).⁵³

While the Bantu village communities are recognized as administrative entities and their chiefs as auxiliaries of the administration,⁵⁴ communities of Baka, Bagyeli/Bakola and Bedzang are christened *hameaux pygmées* or *campements* (Pygmy hamlets or encampments) and not villages as contained in the Council Development Plans of all the councils in the administrative units where forest Indigenous Peoples are found.

Cameroon's current Premier, Dr. Joseph Dion Ngute expressed concern that structural and legal challenges hinder the recognition of Indigenous land rights in the country.⁵⁵ According to him, these challenges, though defined nowhere, must be overcome first before the land rights of Indigenous Peoples can be recognized.⁵⁶

⁵¹ Schmidt-Soltau, and Brockington, 2007

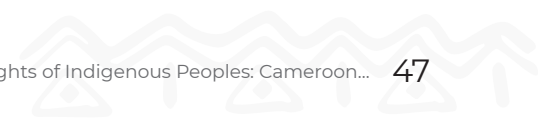
⁵² Althabe, 1965

⁵³ In Africa, administrative procedures and institutions that were different from the customary, which were communitarian in character, were associated with the whites.

⁵⁴ Article 3 para.3 and Article 20 of Decree No 77/245 of July 15, 1977. This decree classifies traditional chiefdoms into first, second and third classes in order of importance.

⁵⁵ During the Regional Sensitisation Seminar on the Rights of Indigenous Populations/Communities in Central Africa, that took place 13–16 September 2006 in Yaounde.

⁵⁶ ACHPR, 2006:14 and GoC, 2009




2.2 Conservation laws and policies and the rights of Indigenous Peoples

Conservation laws and policies in Cameroon include:

- Law No. 94/1 of January 1994 established regulations on forestry, wildlife and fisheries and later revised as Law No. 2024-008 of July 2024 focusing on forestry and wildlife regulations
- Decree No 95/531/PM of 23 August 1995 sets the procedure for implementing the forests system
- Ordinance n° 74-1 of 6 July 1974 sets land tenure regulations.
- Decree No. 95-466-PM of 20 July 1995 sets the conditions for the implementation of Wildlife Regulations
- Decree No 77/245 of July 15, 1977, sets the conditions for the organization of traditional chiefdoms in Cameroon
- Arrêté conjoint no 00122/MINFI/MINAT/du 29 Avril 1998 fixant les modalités d'emploi des revenus provenant de l'exploitation forestière et destinées aux communautés villageoises riveraines
- *Arrêté Conjoint N°05 20 MINATD/ MINFI/ MINFOF DU 03 Juin 2010* fixant les modalités d'emploi et de suivi de la gestion des revenus provenant de l'exploitation des ressources forestières et fauniques destinées aux Commune et aux communautés villageoises riveraines.

Cameroon has recently revised Law No 94/1 of January 1994 on forestry, wildlife and fisheries regulations. The new version, Law N°. 2024-008 of July 2024, now covers only forestry and wildlife, leaving out fisheries. Cameroon's laws including this recent one, do not make significant changes to the rights of indigenous Baka, Bagyeli/Bakola and Bedzang to their ancestral lands and territories or to the lands of Bantu, which they currently occupy after eviction and relocation. The recent law refers to "indigenous populations" instead of "minority or vulnerable populations." This may suggest that the Government of Cameroon is beginning to recognize the concept of "Indigenous Peoples."



Article 3(1) of Decree No 95/531/PM provides that all human activities in national parks, the ancestral lands and territories of forests Indigenous Peoples, are strictly prohibited. This served as the driving force of eviction of Indigenous Peoples from such newfound biodiversity hotspots, to make way for protected areas. Such eviction is without their Free, Prior and Informed Consent contrary to Article 10 of UNDRIP.⁵⁷

Under international pressure, Cameroon's laws set aside 30 percent of the national territory as protected areas for biodiversity conservation.⁵⁸ Unfortunately biodiversity conservation hotspots in the Centre, East and South Regions of Cameroon overlap with the ancestral lands and territories of the Baka, Bagyeli/Bakola and Bedzang Peoples. The push to set aside 30 per cent of the land risks creating conservation laws and policies that conflict with international human rights obligations protecting Indigenous Peoples.⁵⁹

The creation of protected areas in the Cameroonian part of the TRIDOM has resulted in the eviction of Baka, Bagyeli/Bakola and Bedzang from their ancestral lands and territories.⁶⁰ These protected areas include Dja Faunal Reserve (1950), which became a Biosphere Reserve in 1981 and finally the Dja World Heritage site in 1987; the Nki National Park (2005); Boumba Bek National Park (2005); Lobeke National Park (2001); Campo Ma'an National Park (2000), and the Mengame Gorilla Sanctuary (1980s-2008) (fig. 2.1). Other conservation and land use allocations that affect the rights and lives of forests Indigenous Peoples include Council Forests, forest management units (UFAs), community forests (CFs), the Chad-Cameroon pipeline and mining and agro-industrial concessions.

⁵⁷ *UNDRIP, Article 10*: Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the Free, Prior and Informed Consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

⁵⁸ *Law No 94/01 of 20 January 1994, Article 22 (1.)* Permanent forests shall cover at least 30% of the total area of the national territory and reflect the country's ecological diversity.

⁵⁹ Nguiffo, Kenfack and Mballa, 2009.

⁶⁰ A trans frontier conservation area extending to Campo Ma'an National Park and Dja World Heritage site in Cameroon, Minkébé National Park in Gabon and Odzala National Park in the Republic of Congo (UNDP, GEF & MINFOF, 2017). It covers 178,000 km², or 10% of the Congo Basin Forest (CBF).

- Evicted Baka from Dja World Heritage site and Mengame Gorilla Sanctuary were relocated and subsumed under Bantu villages in Grand Djoum, made up of Djoum and Mintom, against Article 8(1) of UNDRIP.⁶¹ Those who were relocated along the Sangmelima-Djoum road axis traced their origin in Mabé in Dja Reserve. From Mabé they moved to Ndeneyat and finally to Miatta in Djoum. From Miatta, some others were taken to the Mintom-Djoum road axis to Ando'o and part to Mintom.⁶²
- Baka evicted from around the Mengame Gorilla Sanctuary traced their origin to Obangue close to River Kom in Cameroon and River Ayina along the Cameroon-Gabon boundary. They later moved to Solia (a fruit trees site), and then, to Bangui (an iroko dominated site) within the same forest. During the second sedentarization phase linked to protected areas, they were displaced to Oveng-Djoum road axis and to Mintom.

- The creation of Campo Ma'an National Park in 2000 led to the eviction of Bagyeli/Bakola IPs from Dipikar Island and its environs, their ancestral lands and territories. The National Park started first as two separate units, a Campo Reserve (2°09'–2°53' N, 9°48'–10°25' E), created in 1932, and a Ma'an Forest Plantation (990 km²) created under Decree No. 80/417 of October 10, 1980 for the conservation of *Aucoumea klaneae*, a high economic value logging species. On December 03, 1999, the Campo Reserve unit and the Ma'an Forest Plantation unit were combined to form Campo Ma'an GEF/Biodiversity Project under Decree No. 91/A/MINEF/DAJ for the preservation and management of the Campo Ma'an biodiversity.⁶³ All the forest-dwelling Indigenous Peoples were absorbed into Bantu host communities and lost their customary land rights.

⁶¹ Article 8 (1). Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

⁶² Nguiffo, Kenfack and Mballa, 2009.

⁶³ Owono, 2001.



The Government of Cameroon focuses on conservation laws and policies that lack inputs from Indigenous Peoples and do not align with international human rights obligations.⁶⁴ “It’s a decree from the Cameroonian Prime Minister that says a national park is created at such and such a place, from point A to point B, without the people who live there ever having been involved.”⁶⁵

Under pressure from the World Bank, the Government of Cameroon, integrated logging concessions and national parks into its development agenda.⁶⁶ Cameroon often lacks the capacity to create and manage protected areas, so it relies on external organizations that have little understanding of Indigenous Peoples’ deep ties to their ancestral lands. These organizations use “funding baits” to shape conservation laws and their implementation, which are often enforced in a policing manner.

Impact assessments required under Decree No. 95/466D, creating Campo Ma’an Reserve, which could have ensured participation of the Bagyeli/Bakola, at an early stage, were ignored by WWF-Central Africa. By 2000, the reserve was turned into a national park, allowing the external funder to impose strict rules banning prohibiting access and use of natural resources. This fortress conservation approach worsened the lives of local communities, especially the hunter-gatherer Bagyeli.⁶⁷

2.3 Impacts of the implementation of conservation laws and policies on forest Indigenous Peoples in Cameroon

Cameroon wildlife conservation laws and their interpretation and enforcement have become a source of violence and criminalization of forest Indigenous Peoples, carried out with impunity.

2.3.1 Impacts on livelihoods

Game guards employed by WWF under the ECOFAC program often target Indigenous Peoples with violence and criminalization, instead of pursuing large-scale poachers coming from towns who have strong political and financial influence. As noted by IWGIA, Forest Indigenous Peoples have become the “soft targets” of eco-guards.

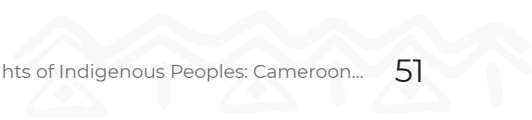
The way game guards apply the law is a major concern for two reasons. First, they often do not have access to the legal texts, and even if they do, they struggle to interpret them, leading to arbitrary enforcement. Second, they fail to distinguish between poaching and traditional subsistence hunting, which is also used for rituals among the Baka. Yet Decree N°. 95-466-PM of 20 July 1995 defines poaching as ‘the act of practicing the slaughter and capture of whichever species of wild animals for

⁶⁴ The simple argument in favor of that exclusionary approach has been provided by testimonies collected in 2022 by Josiane Kouagheu, a Rainforest Investigations Fellow. “When Africa was divided up at the Berlin Conference in 1884-1885, no Africans were present. We’re doing the same thing with the parks,” Messe says.

⁶⁵ Kouagheu, 2022.

⁶⁶ IWGIA, 2020.

⁶⁷ Owono, 2001.



commercial gain.’ The clause ‘for commercial gain’ is fundamental and does not allow for the hounding of Indigenous persons, even in their kitchens.⁶⁸ By treating traditional subsistence hunting as poaching, game guards criminalize Indigenous Peoples who kill class C animals for food and an elephant (Class A) a year for Njengi rituals.⁶⁹

Ironically, outsiders come into Cameroon’s forests to hunt these protected animals⁷⁰ in the framework of sports hunting.⁷¹ They accuse Indigenous persons of crimes, even though they recruit them as guides or ask them to maintain their weapons after hunting expeditions. In communities along the Yokadoma-Moloundou road, like Mambele, Dioula, and Nguilili, which are adjacent to the Lobéké National Park, the inhabitants reported abuses when caught in the forest or carrying even a Class C animal, including confiscation of their catch, insults and threats. “If the guards find you, even with just one antelope (unprotected animal), they beat you and make you take your clothes off.”⁷²

As hunter-gatherers and collectors, forests Indigenous Peoples in Cameroon hunt, fish and forage as a means of survival and as part of their user rights.⁷³ Thus, the confiscation of meat hunted under user rights is nothing but criminal. Some eco-guards go further, confiscating Baka’s wild honey which the most valued gift of the forest, simply to assert their power and show control.⁷⁴

2.3.2 Impacts on health

Forest Indigenous Peoples rely on forest and forest-based resources for healthcare while enjoying limited access to healthcare facilities and health service delivery. Worse still, the National Participatory Development Program (PNDP) that formerly provided healthcare services to Bagyeli has halted its activities,⁷⁵ which may have very serious impacts on their survival. Thus, Bagyeli right to health, as reflected in Article 29 (3) of UNDRIP, is not respected or implemented.⁷⁶

⁶⁸ Nguiffo, 2008

⁶⁹ The contrarian situation is true in Nigeria where forestry officials grant a waiver to the local people of Bachamas and Mbulla to use one manatee a year for rituals even though it is a protected species (Osemeobo, 2016).

⁷⁰ See Order No. 0648/MINFOF of 18 December 2006 that classifies animals into Class A, B and C for protection. Class A are totally protected, Class B are partially protected and Class C are not protected. This order is in application of the provisions of Article 78 of Law No. 94/01 of 20 January 1994 to lay down Forestry, Wildlife and Fisheries Regulations as well as Article 14 of Decree 95/466 of 20 July 1995 to determine the conditions for the implementation of the Wildlife Regulations.

⁷¹ Sports hunting licence for big game Article 35(2c) of Decree No. 95/466/PM of 20 July 1995

⁷² Warren & Baker, 2019

⁷³ Article 8(1) of Law No.94/01

⁷⁴ Kouagheu, 2022

⁷⁵ PCD of Niète, 2013:46

⁷⁶ *UNDRIP, Articles 29.3*. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.



2.4. The legal exclusion of forests Indigenous Peoples from the acquisition of community forests and community hunting zones (ZICGCs)

In both the old and revised laws, Indigenous Peoples are excluded from community forestry and community-managed hunting areas (ZICGCs). Community forests also cannot be created in permanent forest zones, which overlap with Indigenous ancestral lands.⁷⁷

Decree No. 95-466-PM (Article 2(19)) states that community hunting areas (ZICGCs) should, in principle, benefit local and Indigenous communities. However, neither Law No.94/01 nor its implementing decrees clearly explain how Indigenous Peoples can access, acquire, and manage community forests and ZICGCs. The revised law (Section 3(78)) defines a ZICGC as a forest area granted on concession to one or more interested local communities, with a management agreement with the wildlife administration. In practice, however, Indigenous communities are not legally recognized and are often treated as having no formal leadership. Since eligibility depends on recognized customary and user rights, this effectively excludes Indigenous Peoples from accessing the areas.

Community forests and ZICGCs are managed by the Community Forest Management Institution (CFMI) and the Committee for the Valorization of Wildlife Resources (COVAREF), respectively. Unfortunately, Indigenous Peoples are seldom elected to these institutions, only a few of them have been included without their consent. Baka Chief of Minko'o II alleged to have been elected as a member of Minko'o, Akongtangan and Djop (MAD) CFMI without his knowledge just to make it seem like the Baka were involved. All CFMIs offices are also located in Bantu villages.

⁷⁷ Section 3(78) and Section 37(1)

2.5 Conclusions and recommendations

It seems that Cameroon has finally acknowledged the concept of Indigenous Peoples, as Law N°. 2024-008 of July 2024 on forestry and wildlife regulations mentions the term “indigenous”. While this law is promising, it also seems to come too late. Key issues such as dialogue between Baka, Bagyeli/Bakola and Bedzang, and Bantu communities and the situation of Indigenous Peoples who have been absorbed into Bantu societies should have been addressed first, including provisions for their return to their ancestral lands and territories. Although the law was passed in 2024, it does not reflect real change in attitudes, a shift away from viewing them merely as ‘minority and vulnerable groups,’ or proper recognition of Indigenous Peoples whose existence is still widely overlooked, even in higher education.

It is recommended that:

1. The Government of Cameroon should promulgate a specific law on Indigenous Peoples
2. The Government should organize inter-community dialogues between the Bantu and forest Indigenous Peoples to demarcate and recognize lands allotted to them in their current resettlement sites
3. Law No. 2024-008 of July 2024 on forestry and wildlife regulations should be disseminated and effectively implemented
4. Cameroon should ratify ILO Convention 169.

3. DEMOCRATIC REPUBLIC OF CONGO (DRC)



3.1. Indigenous Peoples in DRC. General background.

The Democratic Republic of Congo (DRC) hosts Africa's first National Park, Virunga National Park (1925). While the Constitution does not explicitly recognize Indigenous Peoples, its Preamble affirms respect for international human rights instruments, and Article 51(2) commits the State to protect vulnerable and minority groups,⁷⁸ reinforced by Articles 123(16) and 203(25). The DRC also supported the adoption of UNDRIP in 2007. On this basis, groups such as the Batwa, Twa, Cwa, Mbuti, Bambuti, Bashwa, Bambote, Efe, Babenga, Balumbo, Basoa, and Babuluku self-identify as Indigenous Peoples. However, the State's failure to fulfill its obligations under Article 51 has resulted in continued violations of their rights, with many treated as second-class and merely "vulnerable" citizens.⁷⁹

In the DRC, Indigenous Peoples, referred to as Indigenous Pygmy Peoples, are present in 21 of the 26 provinces, except Congo Central, Kwilu, Kwango, Kinshasa and Lualaba.⁸⁰ They primarily inhabit forested areas such as the Ituri Rainforest and surrounding regions, and are widely regarded as the first inhabitants, living in nomadic and semi-nomadic groups. Their distribution varies by region: Batwa, Batswa, Batoa, Balumbe, Bilangi, Bafonto Samalia, and Bone Bayeki in Equateur; Batsa, Batwa, Bamone, and Bakengele in Bandundu; Bambuti, Baka, Efe, and Bambeleketi in Orientale; Bashimbi, Bamboté, and Bakalanga Katanga; Batwa (Batswa) the Kasai provinces; and Batwa (Batswa), Bambuti, Bayanda, Babuluku, Banwa, Bambuti, Bambote in North Kivu, South Kivu and Maniema. Other groups, including Aka and Bambenga, are found along the northwest frontier with the Republic of Congo and in the Ubangi and Equateur regions.⁸¹ (fig. 3.1).

⁷⁸ Il [Etat] assure également la protection et la promotion des groupes vulnérables et de toutes les minorités.

⁷⁹ IWGIA and IFAD, 2022

⁸⁰ IPRI, 2021

⁸¹ Rainforest Foundation, 2020

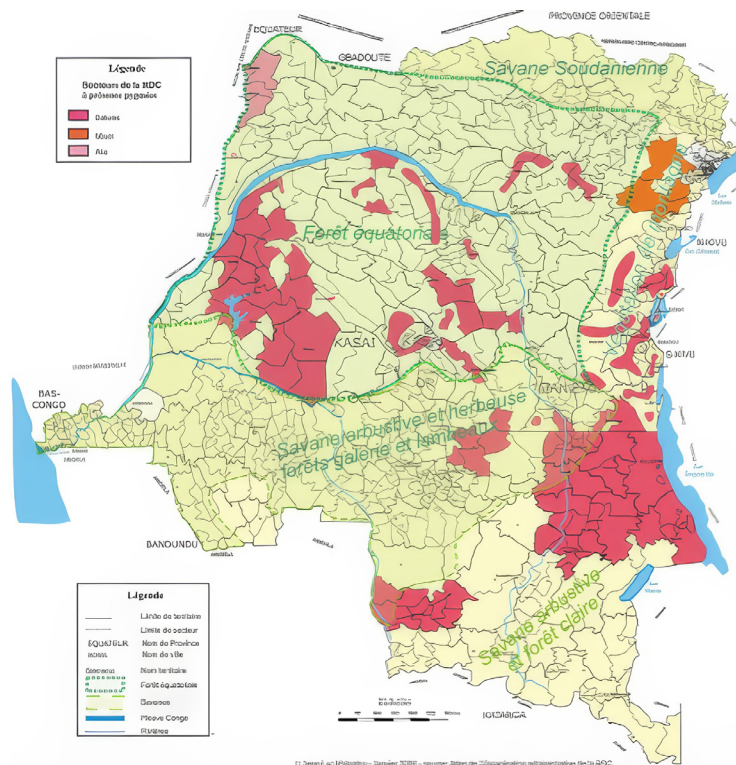
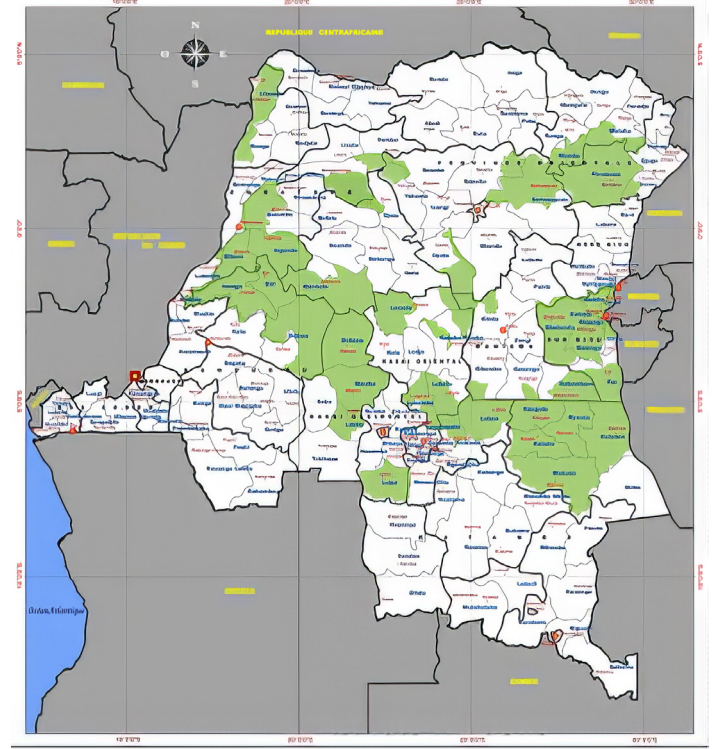



Fig. 3.1: Areas where Indigenous Pygmy Peoples are found in DRC

Source: Rainforest Foundation (2020) and IPRI (2021)



Indigenous ancestral lands and territories in the DRC largely overlap with the country's richest biodiversity hotspots, making them prime targets for *in situ* conservation. Protected areas include national parks, biosphere reserves, wildlife and nature reserves, scientific reserves, community reserves, and hunting reserves, covering 324,290 km², or 13.83% of the national territory. Several have been internationally recognized as [UNESCO](#) World Heritage Sites or biosphere reserves, or as wetlands of international importance under the Ramsar Convention (UNEP-WCMC⁸², 2020). Among these are 10 national parks, including Garamba National Park (5000 km²), Kahuzi-Biega (KBNP) (6689 km²), Kundelungu (8236 km²), (8879 km²), Maiko (10886 km²), Mangroves Marine (216 km²), Salonga (SNP) (17,140 km²), Upemba (13674 km²), and Virunga (VNP) (7769 km²) (Rainforest Foundation, 2020; IPRI, 2021 and Oakland Institute, 2024). These parks, particularly the KBNP, SNP and VNP, have been major drivers of violations of Indigenous Pygmy Peoples' rights.⁸³

3.2. Conservation laws and policies and the rights of Indigenous Peoples

Domestic conservation laws and policies that have direct impact on the existential realities of Indigenous Peoples in DRC include:

- Law No 73-021 of July 20, 1973, on the General Regime of Property, Land Tenure, Real Estate and Securities
- Law No.11/2002 of August 29, 2002, on Forestry Code
- Law No. 14/003 of February 11, 2014, on Conservation of Nature
- Law No. 33-2020, July 8, 2020, on Forest Code
- Decree No. 018 of 2014 and Ministerial Decree No. 025/CAB/MIN/ECN-DD/CI/00/RBM/2016 (National Strategy for Community Forestry)
- Provincial Decree N°24/279/GP/SK of 18 November 2024 that orders the protection and prohibition of occupation, invasion, exploitation, commercialization and transport of forest and mining resources from the PNKB.

⁸² The UN Environment Program-World Conservation Monitoring Centre
⁸³ IPRI, 2021

The DRC is the only country among those studied with a specific law on Indigenous Peoples' rights: Law No 22/030 of 15 July 2022 on, on the protection and promotion of the rights of Indigenous Pygmy Peoples. This marks a paradigm shift toward community forest and community based natural resource management, promoting Indigenous participation in the creation, implementation, and management of protected areas.⁸⁴ However, as a recent law, its positive impact are not yet fully evident. Despite its 8 chapters and 62 articles, challenges remain in its dissemination, interpretation, and understanding, as well as in shifting the practices of policy implementers, particularly rangers/eco-guards, and provincial authorities. Effective implementation also remains limited, reflecting broader gaps in enforcing constitutional provisions.

Although Article 61 repeal all prior provisions contrary to the law, aligning domestic legislation will take time.⁸⁵ It is therefore concerning that newer legal instruments remain inconsistent with this law, as well as with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the July 2024 decision of the African Commission on Human and Peoples' Rights (ACHPR), recognizing Batwa rights to their ancestral territories in Kahuzi-Biega. This includes Provincial Decree N°24/279/GP/SK of 18 November 2024, which mandates the protection of the PNKB and prohibits occupation, invasion, exploitation, commercialization and transport of forest and mining resources from the park.⁸⁶

Article 45 of the same law provides that Indigenous Pygmy Peoples will participate in the definition of the priorities and strategies for the use and control of lands and resources they traditionally possess, occupy or use.⁸⁷ However, this wording suggests that the State retains primary control over defining these priorities and strategies. This mirrors the situation in Cameroon, where the State determines permitted uses in community forests through simple Management Plans. The issue is particularly critical given that Indigenous Pygmy territories remain largely undelimited, while the expansion of protected areas continues, often driven by sustained external donor funding and influence.

Thus, despite the law's adoption, there remains a high risk that Indigenous Pygmy Peoples will continue to face forced eviction from their ancestral lands. Their traditional hunting, which is central to their user rights, may still be conflated with poaching, increasing violence and criminalization. This is particularly concerning since hunting is not explicitly addressed in Law N°. 22/030 of 15 July 2022, although Article 2 (9) identifies Indigenous Pygmy Peoples as hunter-gatherers.⁸⁸ As a result, access to fauna and fish resources continues to be governed by earlier legislation, such as the Forestry Code (Law N°011/2002 of 29 August 2002) and Law N ° 14/003 on Nature Conservation, which remain key drivers of fortress conservation in the DRC.


⁸⁴ IWGIA and IFAD (2024)

⁸⁵ Article 61. All prior provisions inconsistent with this Act are hereby repealed

⁸⁶ For instance, on 12 December 2024, Minority Rights Group (MRG) noted with dismay that a *recent Provincial Decree N°24/279/GP/SK* of 18 November 2024 orders the protection and prohibition of occupation, invasion, exploitation, commercialization and transport of forest and mining resources from the PNKB. Also, <https://reliefweb.int/report/democratic-republic-congo/drc-provincial-decree-may-legitimize-violence-against-batwa-indigenous-peoples>

⁸⁷ Article 45. Indigenous Pygmy peoples participate in setting priorities and strategies for the development, use, and management of the lands and resources they own, occupy, or traditionally use.

⁸⁸ Pygmy indigenous peoples: hunter-gatherer groups who generally live in the forest, identify themselves as such, and distinguish themselves from other Congolese peoples through their cultural identity, way of life, deep connection to nature, and indigenous knowledge.



Although Articles 36 and 39 of the Forestry Code recognize and regulate albeit restrictively traditional user rights to non-timber forest products, these rights are often not respected in practice. Following evictions from Virunga and Kahuzi-Biega National Parks in 2021, affected communities received land plots too small to sustain their livelihoods and have little or no access to park resources, contrary to Article 28(2) of UNDRIP.⁸⁹ In Kahuzi-Biega, the Congolese Nature Conservation Institute (ICCN), manages the parks, allows access only one day per week firewood collection, insufficient for daily needs such as cooking or building homes.⁹⁰

3.3. Impacts of the implementation of conservation laws and policies on Indigenous Peoples in the DRC

The creation of protected areas in the DRC and the laws governing their management and access to resources pose a serious threat to the survival and way of life of Indigenous Pygmy Peoples.

The implementation of these conservation laws has led to forced displacement and failed to safeguard the welfare of Indigenous Pygmy Peoples after eviction. Displaced communities are often resettled on Bantu customary lands, where they face exploitation working on farms or for PNKB officials for as little as CFA500 (0.89 USD) per day, far below the legal minimum wage of CDF 14.500 (5.08 USD).⁹¹ In many cases, Bantu assume control over them, allowing settlement only upon payment of customary fees to local chiefs. When these payments cease, conflicts arise.

A case in point is the 2013 conflict between Indigenous Pygmy communities and the Luba Bantu in Tanganyika Province, triggered when Indigenous Pygmy refused to subject to their Bantu "masters" and stopped paying customary fees.⁹² The conflict escalated as the Luba allied with a Mayi-Mayi militia against them. Following the failure of mediation efforts (under the Whakatane Mechanism) initiated in 2014 by the Forest Peoples Programme (FPP) and *Centre d'Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables* and the non-fulfillment of commitments, 40 displaced Batwa families in Kalehe Territory returned to their ancestral lands within the Park to rebuild villages.⁹³ This led to renewed violence, with over 33,000 Indigenous Pygmy displaced by 2017.⁹⁴

⁸⁹ Art.28(2) Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

⁹⁰ IWGIA and IFAD, 2022

⁹¹ Lyamahesana, 2013

⁹² IWGIA and IFAD, 2022

⁹³ Oakland Institute, 2024

⁹⁴ DGPA, 2017

Conservation in the DRC often appears driven by revenue generation and job preservation rather than biodiversity or community welfare, with Indigenous Peoples bearing the heaviest burden. In February 2015, four young women from the village of Boonga, suspected of fishing within the SNP, were reportedly beaten, tortured (their breasts tied up and pulled with a string) and gang raped by eco-guards from the Watsikengo ICCN Station, near the Iyenge River. The assault was reportedly supervised by the station head.⁹⁵

State authorities and international conservation NGOs have adopted a militarized model based on “people-free wilderness.” Fostering a pro-violence conservation approach that criminalizes Indigenous Peoples. World Wide Fund for Nature (WWF) has been criticized for downplaying abuses by its agents, describing them as “unfortunate,” but isolated incidents– “a few bad apples.” Recent incidents underscore this vulnerability. On 11 May 2024, Mr. Gloire Willy Maroba was killed and three other Batwa were wounded by a Wazalendo militia member, illustrating the heightened risks faced by Indigenous Pygmy Peoples despite their role in environmental stewardship (Minority Rights Group, MRG, 2024).⁹⁶

⁹⁵ See Rainforest Foundation UK and APEM, *Severe Human Rights Abuses Reported In And Around Salonga National Park, Democratic Republic Of Congo*, November 2018. [https://www.rainforestfoundationuk.org/wp-content/uploads/2021/10/severe-human-rights-abuses-reported-salonga-national-park.pdf#:~:text=Rape%20and%20sexual%20violence%20in%20February%202015%2C,near%20the%20Iyenge%20River%20\(inside%20the%20park\)](https://www.rainforestfoundationuk.org/wp-content/uploads/2021/10/severe-human-rights-abuses-reported-salonga-national-park.pdf#:~:text=Rape%20and%20sexual%20violence%20in%20February%202015%2C,near%20the%20Iyenge%20River%20(inside%20the%20park))

⁹⁶ Also, mentioned in the report by Forest Peoples Programme: IPRI, DRC || *Governance and management of protected areas: A country report on the criminalization of, and human rights violations against Indigenous Pygmy Peoples*, 4 September 2021. <https://iprights.org/2021/09/04/drc-governance-and-management-of-protected-areas-a-country-report-on-the-criminalization-of-and-human-rights-violations-against-indigenous-pygmy-peoples/>

The main conservation donors in the DRC include Germany's Reconstruction Credit Institute (KfW), German Corporation for International Cooperation (GIZ), USAID's Central African Regional Program for the Environment (CARPE), US government's US Fish and Wildlife Service (USFWS), and the European Commission's Ecosystèmes Forestiers d'Afrique Centrale (ECOFAC).

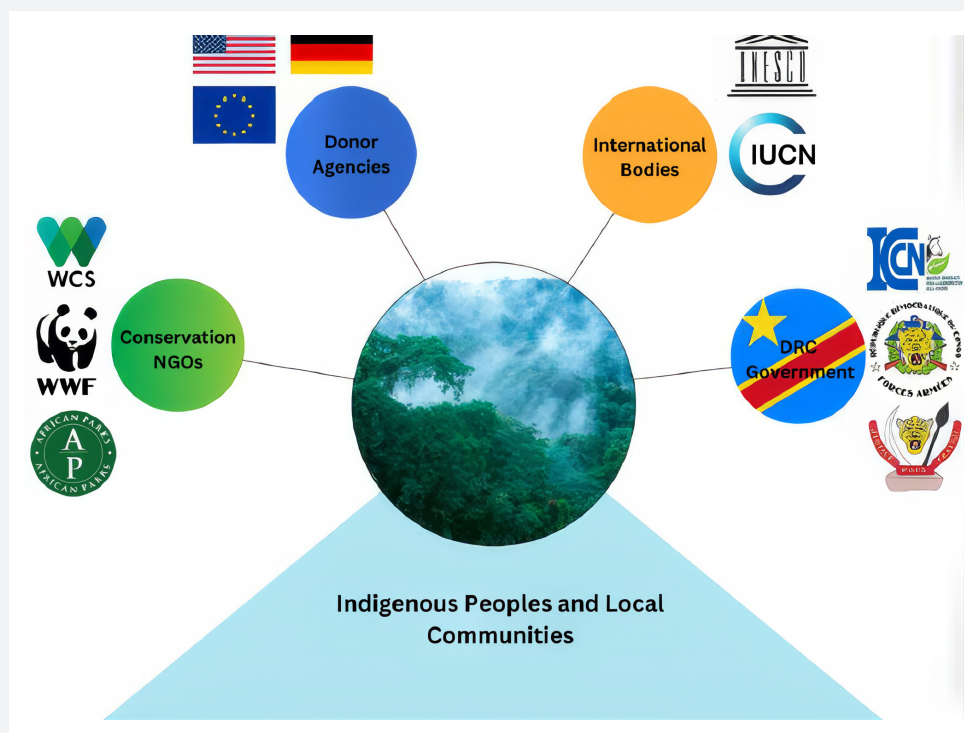


Figure 3.3.1. Stakeholders in DRC's Conservation Foundation that manages Virunga National Park

Source: Adopted from Oakland Institute (2024:13)

The main international conservation NGOs operating in the DRC are World Wildlife Fund for Nature (WWF) and Wildlife Conservation Society (WCS). Other actors African Parks, which co-manages Garamba National Park with ICCN, and Virunga Foundation, which manages Virunga National Park Major donors tend to channel support through large NGOs, which receive about 85% of international conservation funding, while local and Indigenous communities receive only around 1%.

Numerous cases of violence and criminalization of Indigenous Pygmy Peoples have been documented.⁹⁷ Since 2018, a violent conflict has persisted between Batwa communities and PNKB guards, despite mediation initiatives. The park authorities accuse the Batwa of illegal occupation, charcoal production, and attacks on guards, while many Indigenous Peoples maintain that their lands were taken during the creation and expansion of the park and demand restitution.

According to a 2022 investigation by Minority Rights Group (MRG), rangers at KBNP in the DRC are allegedly responsible for a campaign of violence aimed at expelling Indigenous Pygmy Peoples from the park.⁹⁸ Corroborating these findings, Africa News reported that “Indigenous Batwa Peoples living on their ancestral lands are being killed, maimed and raped by park guards of the KBNP.”⁹⁹ The MRG report, based on “almost 600 sources, including more than 550 eyewitnesses,” documented that between 2019 and 2021, park guards and army soldiers jointly attacked Batwa villages inside the park for at least a week using heavy weaponry.¹⁰⁰ As the chief of a Bantu village near Bugamanda stated:

*The park guards came and tried to force the pygmies to flee. When they refused, the park guards started shooting. We could hear their bombs detonating from here. This continued every day for almost the whole week [...]. We received an overwhelming number of pygmies fleeing into our village.*¹⁰¹


⁹⁷ Oakland Institute, 2024

⁹⁸ Minority Rights Group, DRC: *Respecting indigenous peoples' rights ruled key in fighting climate crisis*, 29 July 2024. <https://minorityrights.org/batwa-ruling/>

⁹⁹ Africa News, 2022:1

¹⁰⁰ Minority Rights Group, *'They came to purge the forest by force'*, 5 April 2022. <https://minorityrights.org/they-came-to-purge-the-forest-by-force/>

¹⁰¹ Oakland Institute, 2024:20



The same source reported that at least 20 people were killed, 15 raped, and hundreds forcibly displaced in attacks allegedly planned and approved by park leadership, with financial and material support from foreign governments and international organizations.

Between late 2020 and early 2021, IPRI reported multiple incidents of violence and criminalization affecting Indigenous Pygmy Peoples in the DRC involving national parks eco-guards, armed groups, and neighboring communities:

On 30 November 2020, three Batwa men were killed and several others injured outside PNKB when a Batwa-led protest was violently suppressed by law enforcement; A FARDC soldier was also killed in the incident. Between 30 November and 31 December 2020, eco-guards from PNKB and SNP were implicated in the killing of five Batwa men, the injury of several others, the rape of an Indigenous woman, and the torture of three others. On 28 December 2020, five SNP eco-guards were convicted of serious crimes against four women (one case of rape and four of torture), and on 31 December 2020, five PNKB eco-guards were found guilty of murder, assault and battery against two Indigenous men.

From 1 to 5 February 2021, 67 Indigenous Persons, including children, women, and men, were killed in Monkoto village, Bianga sector, Monkoto territory, Tshuapa province within SNP. Similarly, from 4 to 17 April 2021, five Indigenous Pygmy (women and men) were killed near KBNP in Cirimo Village, Mubugu grouping, Kalehe territory in South Kivu Province, by Rwandan Hutu (Nyatura). In the same area, 206 Indigenous Pygmy were injured and lacked access to health care. On May 22, 2021, Mr. Lusombo Kamangu and Mastaki Kamala from Busisi Village, Walikale territory, were illegally arrested and detained for defending their land.

From February 1 to 5, 2021, 1,215 houses belonging to Indigenous Peoples were burned down in the villages of Bakako, Manga, Sambwankoy, Inkanjab, Ilemba, Bombelenge B, Bondongo, Ikolombo, and Bokongolifale (Bianga sector, Monkoto Territory, Tshuapa Province) by Bantu neighbors, displacing 20,130 people. On 27 March 2021, seven Indigenous Pygmy collecting dead wood in Virunga National Park (VNP) (Biganiro, Nyiragongo territory, and Mutambara, Masisi territory) were arrested, accused of collaborating with poachers, and detained in the ICCN Prison in Kibati before being transferred to Rumangabo. On 18 April 2021, five Indigenous Pygmy from Mudja were arrested by eco-guards, in collaboration with the army, while searching for medicinal plants in the same park.¹⁰²

¹⁰² IPRI, DRC || *Governance and management of protected areas: A country report on the criminalization of, and human rights violations against Indigenous Pygmy Peoples*, 4 September 2021. <https://iprights.org/2021/09/04/drc-governance-and-management-of-protected-areas-a-country-report-on-the-criminalization-of-and-human-rights-violations-against-indigenous-pygmy-peoples/>

3.4. Legal exclusion of Indigenous Pygmy Peoples from acquiring and managing Community Forest Concessions

Although the term “Indigenous Peoples” is accepted and endorsed by the Government of DRC, the Mbuti, Baka and Batwa continue to face difficulties accessing their ancestral lands and natural resources due to persistent ethnic conflicts and human rights violations.

The DRC has established a legal framework enabling the allocation of forest concessions to local communities, including Indigenous Pygmy communities. This includes Decree No. 018 of 2014 and Ministerial Decree No. 025/CAB/MIN/ECN-DD/CI/00/RBM/2016 (National Strategy for Community Forestry) which set out procedures for allocating and managing forest concessions. In addition, Law No. 22/030 on the protection and promotion of Indigenous Pygmy Peoples’ rights recognizes their rights to lands, territories, and resources, including forests. Despite the framework, the realization of these rights remains limited in practice due to persistent barriers such as lack of awareness, corruption, conflicts, displacement, non-recognition of customary law, and exclusionary domestic legislation.¹⁰³

Following the National Strategy for Community Forestry (SNFC) and pursuant to Article 2(8) of Law N° 14/003, local and Indigenous communities are acquiring Community Forest Concessions (CFCLs).¹⁰⁴ These CFCLs aim to provide land, social, economic, and cultural stability. As of 2023, Indigenous Peoples in 14 of the 21 Provinces have secured 166 CFCLs, covering to secure 3,298,270 hectares of their land and territories. The DRC government has mapped, secured, and recognized these areas in those provinces. However, in the remaining seven provinces where Indigenous Peoples also live, significant barriers continue to prevent access to CFCLs.¹⁰⁵ Despite the existence of Law N° 22/030 and the validation of the SNFC, the acquisition and management of community forest concessions by Indigenous Pygmy communities remains a herculean effort.

¹⁰³ IWGIA, 2024

¹⁰⁴ Rainforest Foundation UK, *A National Strategy For Community Forestry In Democratic Republic Of Congo*, March 2018. <https://www.rainforestfoundationuk.org/media.ashx/a-national-strategy-for-community-forestry-2018.pdf>

¹⁰⁵ IWGIA and IFAD, 2022



3.5. Conclusion and recommendations

Extant conservation legislation in the DRC, at both at national and provincial levels, shows that the Government continues to operate a model it does not fully control, limiting a shift toward community-led conservation that would promote and protect Indigenous Pygmy Peoples' rights while sustaining biodiversity and ecosystem health.

Despite the promulgation of Law No. 22/030 on the protection and promotion of Indigenous Pygmy Peoples' rights which recognizes their rights to their lands, territories, and resources, including forests, the 2024 Provincial Decree N°24/279/GP/SK reverts to an exclusionary fortress conservation approach, particularly around the PNKB. This decree, which is inconsistent with constitutional provisions, domestic law, and international obligations, should be revoked and its authors held accountable. It revives a model of conservation aimed at creating "people-free wilderness" areas, disregarding Indigenous land and resource rights, undermining their livelihoods, and ultimately enabling the degradation of forest ecosystem that have long been sustained through traditional methods.

It is recommended that:

1. Law N° 22/030 of 15 July 2022 on the protection and promotion of the rights of Indigenous Pygmy Peoples should be widely disseminated, including among Indigenous communities, clearly understood by policy implementers (e.g. park rangers and law enforcement), and effectively implemented.
2. Conduct capacity-building activities among Indigenous Peoples on the law's provisions to strengthen awareness of their rights and obligations.
3. The creation of protected areas must ensure the full participation of Indigenous Pygmy Peoples and respect for their rights to their ancestral lands, territories, resources, culture, and traditions.
4. Government of the DRC should promote, with Indigenous communities, conservation initiatives beyond conventional protected areas that have positive impacts on biodiversity.
5. Law No. 23/027 of 17 October 2023 on the protection and responsibility of human rights defenders should be effectively implemented to address violations committed by, among others, the government, companies, armed groups, poachers and rangers.
6. Provisions of international human rights and environmental treaties ratified by the Government should be integrated into conservation policies, with funding mechanisms ensuring the Free, Prior and Informed Consent of Indigenous Pygmy Peoples and the full respect of their rights.
7. Equitable revenue sharing mechanisms from the management of Protected Areas should be established for the benefit of Indigenous Peoples.
8. Provincial Decree N°24/279/GP/SK of 18 November 2024 should be suspended.

4. NAMIBIA



4.1 Indigenous Peoples of Namibia. General background.

The Indigenous Peoples of Namibia include various San groups, the Ovatie, Ovahimba, Ovatjimba and others such as the Ovazemba, Damara, Nama, and the distinct Nama subgroup of the Topnaars (!Aonin). Together, Indigenous Peoples constitute less than 3% of the country's population, which exceeded 3.2 million in the 2023 census. The San (Bushmen) number between 28,000 and 35,000, approximately 1.04% and 1.33% of the national population, although some estimates suggest a higher figure. They include the Khwe, the Hai||om, the Ju|'hoansi and ǀKao ||Aesi (southern Ju|'hoansi), the!Xun, the Naro, and the !Xóö.¹⁰⁶ While the Constitution of Namibia prohibits discrimination under Articles 10(2) and 95(1),¹⁰⁷ it does not specifically recognize Indigenous Peoples' rights, and no national legislation directly addresses them.¹⁰⁸ Nonetheless, the Constitution affirms that all treaties binding upon Namibia, as well as "general rules of public international law," form part of domestic law. Namibia is a party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination, as well as the African Charter on Human and Peoples' Rights. To demonstrate its commitment to respecting Indigenous Peoples' rights, Namibia voted in favor of UNDRIP, although it has yet to ratify ILO Convention No. 169.¹⁰⁹

As in many sub-Saharan African countries, most protected areas in Namibia overlap with the ancestral lands and territories of Indigenous Peoples. National parks include areas historically used, and in some cases, still occupied by San communities. The largest San communities are found in the Otjozondjupa, Caprivi, Ohangwena, and Oshikoto regions. In Otjozondjupa and Caprivi, many San communities continue to rely on hunting and gathering, reflecting their strong connection to ancestral lands. Despite clear indications under international and common law that San groups hold rights to lands and resources within the Etosha and Bwabwata National Parks, the Government has yet to recognize these.¹¹⁰

¹⁰⁶ IWGIA, 2025

¹⁰⁷ *Article 10(2) of the Namibian Constitution*. No persons may be discriminated against on the grounds of sex, race, color, ethnic origin, religion, creed or social or economic status.

¹⁰⁸ IWGIA, 2014

¹⁰⁹ Anaya, 2013

¹¹⁰ Anaya, 2013



4.2 Conservation laws and policies and the rights of Indigenous Peoples

Conservation laws and policies in Namibia include:

- Nature Conservation Ordinance No. 4, 1975
- Nature Conservation Amendment Act No. 5, 1996
- Controlled Wildlife Products and Trade Act, 2008
- National Policy on Community Based Natural Resource Management

Namibia became the first African country to incorporate environmental protection into its Constitution.¹¹¹ The Ministry of Environment and Tourism (MET) introduced policy reforms enabling rural communities to benefit from wildlife through the establishment of conservancies.¹¹² This community-based conservation model empowers communities to manage wildlife and tourism. Since becoming operational in 1998, conservancies have generated significant gains, with community income rising from less than N\$1 million to over N\$150 million by 2019. However, the Hai//om San Indigenous Peoples have largely been excluded from these benefits due to their lack of recognition as a distinct community.

4.3 Impacts of the implementation of conservation laws and policies on Indigenous Peoples in Namibia

Namibia is among the leading countries in Africa and globally to have achieved the target of placing 30% of land under protection. In practice, more than 40% of Namibia's land is designated as protected in national parks, communal conservancies, community forests, and private nature reserves.¹¹³

¹¹¹ Article 95(l) of the Namibian Constitution is the primary article relevant to environmental protection. It mandates the State to actively promote and maintain the welfare of the people by adopting policies focused on preserving Namibia's ecosystems, essential ecological processes, and biological diversity, and on using living natural resources sustainably.

¹¹² *Article 24A (1) of the Nature Conservation Amendment Act No. 5 of 1996*: Any group of persons residing on communal land and which desires to have the area which they inhabit, or any part thereof, to be declared a conservancy, shall apply therefore to the Minister in the prescribed manner (...).

¹¹³ IUCN, 2024

NATIONAL DESIGNATION	NO.
Communal conservancy	79
Community forest	33
Concession	7
Forest Reserve	1
National Part	19
Private Reserve	2
Marine Protected Area	1

Table 4.3.1: National designations of protected and conserved areas in Namibia (95.95%)

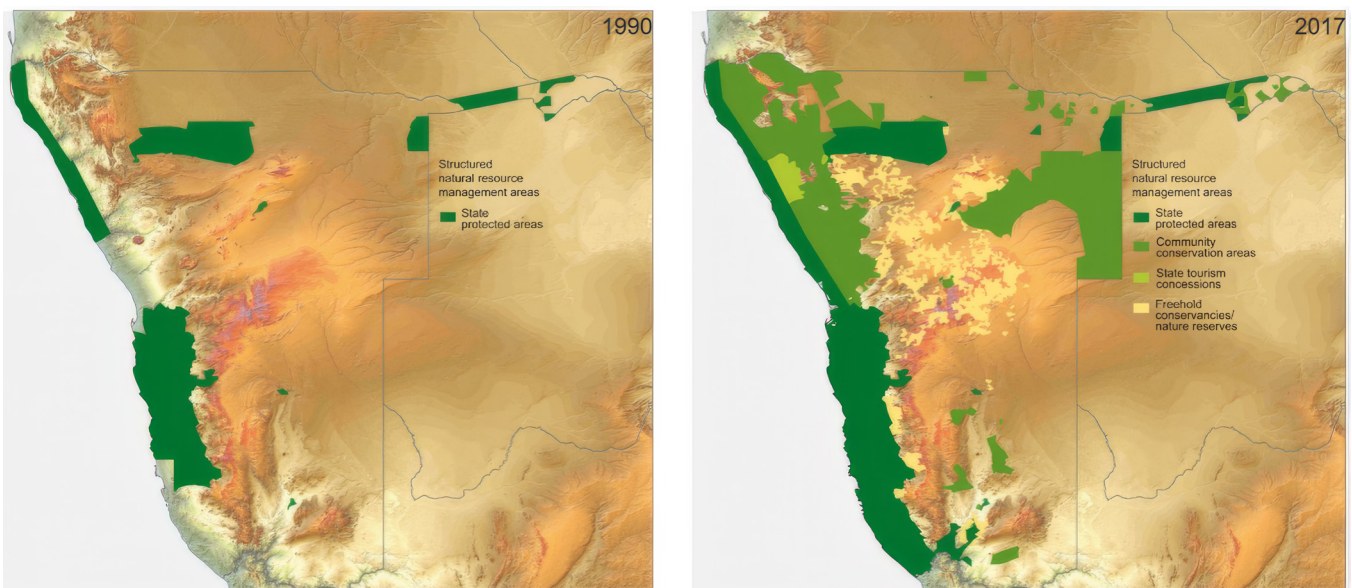


Fig. 4.3.2: Evolution of protected areas in Namibia (1990-2017)

Source: NACSO, 2017

The Namibian Association of Community Based Natural Resource Support Organisation (NACSO) reports that, at independence in 1990, less than 30% of Namibia's territory was under protected areas. By 2017, this had increased significantly to 43.87%, following sustained reforms in conservation laws and policies. These reforms, leading to the establishment of Etosha and Bwabwata National Parks, game reserves, and conservancies (fig. 4.3.2), have had, and continue to have severe existential impacts on San Indigenous Peoples. The implementation of conservation laws has resulted in nonrecognition of their rights, including land loss and displacement, erosion of traditional livelihoods unequal benefit-sharing, restricted access to resources and services, violence and criminalization, gender-based violence, and broader patterns of discrimination and marginalization. These impacts are especially acute in waiting camps, which serve as temporary relocation sites for displaced Indigenous Peoples.

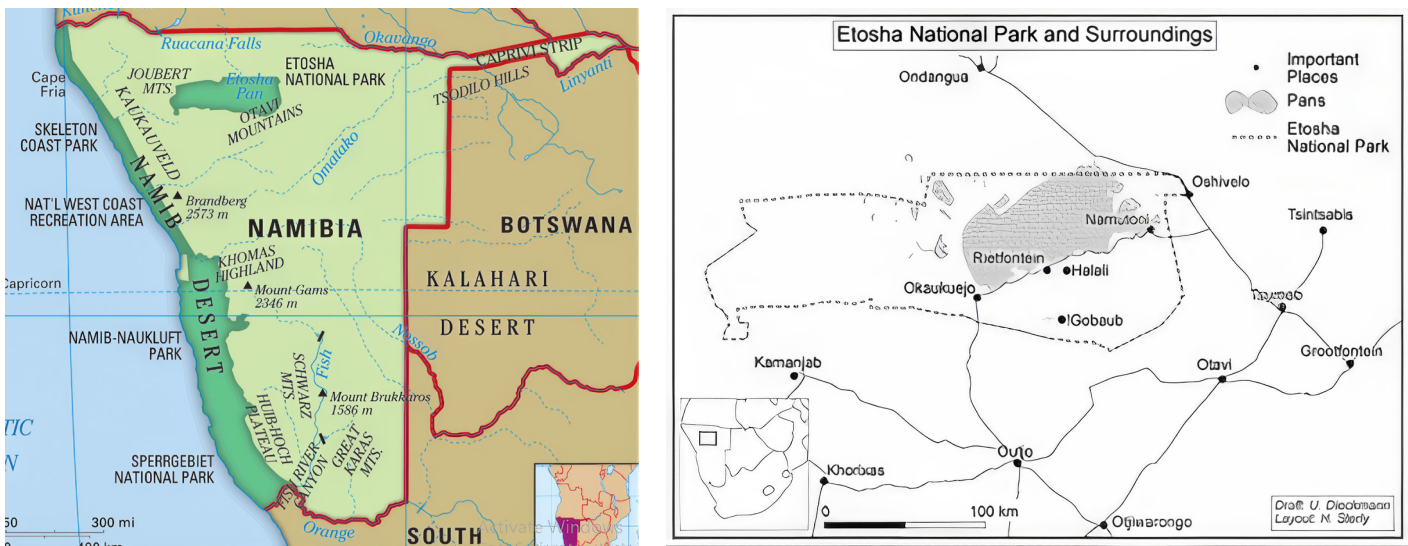


Fig.4.3.3: Protected areas in Namibia

The impact of conservation legislation on San communities in Namibia is complex and multifaceted. The establishment of Etosha National Park in the 1920s by the German colonial administration, now one of the country's premier tourist attractions, led to the forced eviction of San communities.¹¹⁴ The restrictions imposed under this legal framework are harsh and inconsistent with Article 10 of UNDRIP.¹¹⁵

The eviction of the Hai//om San from Etosha National Park, began in the 1950s, terminating earlier arrangements that allowed access to the park for hunting and gathering. Many of those evicted are now landless and awaiting resettlement or

¹¹⁴ Section 18 (1a, e-h) of Nature Conservation Ordinance No4 of 1975: Notwithstanding anything ..., no person shall without the written permission of the Executive Committee: (a) enter or reside in a game park or a nature reserve; (e) introduce any animal into or permit any live-stock or domestic animal to enter a game park or a nature reserve; (f) remove from a game park or a nature reserve any animal, whether dead or alive, or any part of an animal, other than an animal lawfully introduced into such game park or nature reserve; (g) pick any indigenous plant in a game park or a nature reserve; (h) chop, cut or destroy any tree in a game park or a nature reserve.

¹¹⁵ UNDRIP, Article 10: Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

have been relocated to commercial farms that lack the size and ecological quality of their ancestral lands, contrary to Article 8(2) of UNDRIP. Government actions have effectively sought to “erase” the Hai//om connection to Etosha National Park. What remains are only traces, such as signposts bearing Hai//om names for watering holes, gathering places or other culturally significance sites.

After their eviction from the parks, some San communities remain in “waiting camps” still awaiting resettlement. In these isolated sites, they often lack access to education, healthcare, and social services, limiting their ability to participate in the formal economy and exercise their rights. Many communities report encroachment by other groups onto their lands and the exploitation of natural resources, leading to conflict and violence. These conditions disproportionately affect women, exposing them to domestic and sexual violence while access to support services remains limited. Persistent discrimination further deprives Indigenous Peoples of basic services and meaningful participation in decision-making, deepening marginalization and vulnerability.¹¹⁶

As protected areas expand, increasing numbers of San are removed from their ancestral lands without their Free, Prior and Informed Consent and are denied access to the lands of host communities. The lands or farms allocated to them are often imposed and do not match the quality, size and legal status of their ancestral territories. When communities refuse forced relocation to farms purchased by the Ministry of Environment and Tourism (MET), they forfeit eligibility for tourism benefits, which are limited to those who accept relocation. Moreover, the Hai//om proposal to establish a tourism lodge within Etosha National Park under concession was rejected by MET, on the grounds that only Namibia Wildlife Resorts, a State-owned enterprise, may operate lodges in protected areas., This is despite evidence that San subsistence practices, using locally made hunting tools, exert minimal pressure on wildlife.¹¹⁷ The Government should review its decision and allow the Hai//om San to operate a tourism lodge within the Etosha National Park under their current tourism concession.

The San People maintain a strong cultural attachment to their traditional lands within protected areas, particularly with Etosha National Park in the Kunene Region and Bwabwata National Park spanning the Caprivi and Kavango regions, where they live or have historically lived. This connection is increasingly threatened. In Etosha, the Government of Namibia, through the MET, is encouraging San communities in Okaukuejo to relocate to resettlement farms adjacent to the park. The justification given is that they make “too much noise.” particularly “wailing during funerals,” which is said to disturb tourists and wildlife. As stated by the Minister: “We must protect the tourists ... they pay a lot of money.” As in the DRC, conservation in Namibia appears to prioritize tourism revenue and wildlife over people, with San Hai//om Indigenous Peoples bearing the brunt of these policies.¹¹⁸

¹¹⁶ Hitchcock, 2019

¹¹⁷ Anaya, 2013

¹¹⁸ Anaya, 2013



The situation of San communities evicted from Etosha National Park mirrors that measures in the park have transformed the Khwe's environment, restricting access to resources and disrupting traditional livelihoods, including cultural practices such as the *epeme* dance, leading to displacement and marginalization. Testimonies indicate that Khwe San communities evicted from BNP now face even worse conditions than before earlier government interventions. These date back to 1938, when the Southwest Africa Administration (SWAA) declared West Caprivi a livestock- and Native-free zone, allowing only the “already resident Bushmen” to remain.¹¹⁹

Bwabwata National Park (BNP) is divided into a large multiple-use area and three core conservation zones: Kwando (east), Buffalo (west), and Mahango (across the Kavango River). The Mahango core area is not part of Khwe ancestral land, and its residents are not subject to the same restrictions. By contrast, the predominantly Khwe population in the multi-settlers who occupy Khwe ancestral lands without consent, are not subject to comparable restrictions. This has created a “two worlds” situation influenced by the Mbukushu Traditional Authority. In the western parts of BNP, land allocation and tenure for homesteads and fields remain governed by customary rights ensuring relatively secure individual use. However, in the Kavango East portion of the park, these customary rights are not respected. The Khwe experience insecure tenure as the Mbukushu Traditional Authority permits new settlers to encroach on ancestral lands and even seize fields, undermining Khwe livelihoods.¹²⁰

4.4 Legal exclusion of the San Khwe from acquiring Conservancies

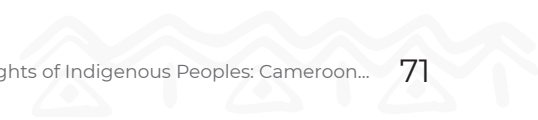
In recent years, the Government of Namibia has shown greater openness to developing measures than enable San participation in the management been uneven some San groups facing discrimination in access to conservancies and recognition of traditional authorities. While certain conservancies have delivered positive outcomes, others have deepened existing inequalities, leading to displacement and hardship. The definition of “traditional community” eligible to apply for conservancies, as well as the determination of boundaries, remains a critical issue for the San.¹²¹

Rights to and control over land are closely linked to collective identity and distinct cultural traditions in both international law and Namibian legislation, including the Traditional Authorities Act No. 25 of 2000. Section 1 of the Community Courts Act 10 of 2003 defines a “traditional community” as “an Indigenous, homogenous, endogamous social grouping of persons comprising of families deriving from exogamous clans which share a common ancestry, language, cultural heritage, customs and traditions, recognizes a common traditional authority and inhabits a common communal area; and includes the members of that community residing outside

¹¹⁹ Boden, 2020. SWAA 2267 A 503/1-7: Letter of Native Commissioner in Rundu, 24th September 1952, National Archives of Namibia.

¹²⁰ Boden, 2020

¹²¹ Jones, 1999



the common communal area.”¹²² Although the Khwe are Indigenous Peoples¹²³ and meet the domestic definition of “traditional community,” they are not recognized under the Traditional Authorities Act No. 25. This lack of recognition restricts their ability to participate in decision-making processes concerning their ancestral land, territories and resources. Their situation is further compounded by historical dispossession and ongoing marginalization by the Government, other ethnic groups and even other San groups.¹²⁴

Nearly all six major San groups in Namibia have had their traditional authorities recognized, with the Khwe San as the sole exception.¹²⁵ Their first application for recognition, submitted in 1997, was rejected the Ministry of Environment and Tourism (MET), and a subsequent application was also unsuccessful.¹²⁶ Following their eviction from Bwabwata National Park, the Khwe were subsumed under the Mbukushu Traditional Authority as part of a mainstream host community, and are no longer recognized as a distinct traditional community. This mirrors the conservation-related challenges faced by evicted Baka, Bagyeli/Bakola and Bedzang Indigenous Peoples in Cameroon.

The Khwe continue to face contestation with the Mbukushu Traditional Authority over land, resources, and political power. These competing interests hinder Khwe efforts to establish conservancies, particularly as the Mbukushu Traditional Authority, under which they have been subsumed, does not represent their interests. Instead, discriminates against the Khwe and actively resists the recognition of their own traditional authority.¹²⁷ Their inability to secure and enforce land and resource rights within the BNP, further undermines their capacity to establish and manage conservancies.¹²⁸ As of 2024, the situation remains marked by significant, ongoing, and escalating conflict over land rights, jurisdiction, and recognition in the park.

¹²² Section 1 of Community Courts Act 10 of 2003: “traditional community” means an indigenous, homogenous, endogamous social grouping of persons comprising of families deriving from exogamous clans which share a common ancestry, language, cultural heritage, customs and traditions, recognizes a common traditional authority and inhabits a common communal area; and includes the members of that community residing outside the common communal area.

¹²³ In the accepted definition of the United Nations, the Khwe are an Indigenous People as there is historical continuity between them and pre-colonial societies that developed on their territories, and they consider themselves to be distinct, are a non-dominant sector of society, and are determined to preserve, develop and transmit to future generations their ancestral territories, ethnic identity, and cultural and social practices (Boden, 2020).

¹²⁴ Jones, 1999

¹²⁵ UN Human Rights Council, *Report of the Special Rapporteur on the rights of Indigenous Peoples, James Anaya. Addendum. The situation of indigenous peoples in Namibia*, 25 June 2013. <https://un.arizona.edu/search-database/situation-indigenous-peoples-namibia#:~:text=53%20Nearly%20all%20of%20the%20six%20major, reapplied%20for%20recognition%20since%20then%20without%20success>

¹²⁶ The Minister of Environment and Tourism has the legal discretion to either approve or reject such recognition applications (Section 5(3)(1)(a)(i)(ii)(iii) and (b) of Traditional Authorities Act No. 25 of 2000): Notwithstanding subsection (2) if in respect of application referred to in subsection (1) the Minister is of the opinion that (a) (i)...(ii) such group of persons do not constitute an independent traditional community inhabiting a common communal area detached from another community...(iii)...(b) that there are no reasonable grounds for recognising such group of persons as a separate traditional community, the Minister shall advise the President accordingly.

¹²⁷ Anaya, 2013

¹²⁸ Boden, 2020



4.5 Conclusions and recommendations

Indigenous Peoples in Namibia have long experienced conservation-related injustices persist today. Since independence in 1990, the Government has made notable progress addressing some of the harmful legacies of colonialism and apartheid. However, several groups, including the San, Himba, Ovazemba, Ovatie and Ovati-jimba, have yet to benefit equitably from conservation and conservancy initiatives. The eviction of the San Hai//om from Etosha National Park without sustainable resettlement reflects a failure for both communities and conservation outcomes. Similarly, the non-recognition of the Khwe's traditional authority and their status as communities limits their ability to access ancestral lands and territories, and to establish conservancies, effectively excluding them from conservation processes.

It is recommended that:

1. Namibia should reform protected-area laws and policies that prohibit San Peoples, particularly the Khwe in Bwabwata National Park and the Hai//om in Etosha National Park, from securing rights to lands and resources they have traditionally occupied and used.
2. The Government should recognize the land rights of the San Indigenous Peoples and guarantee that those residing within national parks can remain, with secure tenure over the lands they occupy.
3. The Government should strengthen San participation in park management, through concessions or other constructive arrangements, and review restrictions on traditional subsistence and cultural practices to ensure consistency with international human rights standards on the rights of Indigenous Peoples.
5. Access to and management of concessions should not be limited to Hai//om groups that opt to move to relocate to resettlement farms.
6. Commitments made to Indigenous communities should be fulfilled, and effective benefit-sharing mechanisms established.
7. The Government of Namibia should enact specific legislation on Indigenous Peoples.

5. TANZANIA



5.1 Indigenous Peoples in Tanzania. General background.

While Tanzania voted in favor of the adoption of UNDRIP, it does not formally recognize the existence of Indigenous Peoples within its borders, despite being home to 125-130 ethnic groups according to unofficial records.¹²⁹ Four of these groups, the hunter-gatherer Akiye (5,268) and Hadzabe and the pastoralist Barabaig (87,978), and Maasai (430,000), have organized and continue to advocate for recognition as Indigenous Peoples.

The Hadza or Hadzabe (Wahadzabe in Swahili), are a relatively small hunter-gatherer Indigenous group in Tanzania numbering between 1,200 and 1,300 people. They are primarily based in Baray, an administrative ward in Karatu District in south-west Arusha Region, And live around the Lake Eyasi basin in the Central Rift Valley and in the neighboring Serengeti Plateau.¹³⁰ Their forced eviction and relocation have been influenced by the Ngorongoro Conservation Area. The Maasai are pastoralists living in northern and central Tanzania near the African Great Lakes. Their forced eviction and relocation have been driven by Serengeti National Park and Ngorongoro Conservation Area. Even in the relocated sites, they continue to face social injustices, as promises are often unfulfilled and benefit-sharing remains discriminatory between them and other affected communities. The Barabaig are also a pastoralist Indigenous group with a semi-nomadic lifestyle, found in the plains at the foot of Mount Hanang and in villages near Lake Eyasi.

The Constitution of Tanzania in its articles 12(1&2) and 13(1, 2&4) prohibits discrimination and ensures equality before the law, ensuring equal protection and treatment for all.¹³¹ Notwithstanding these provisions, the Constitution does not mention Indigenous Peoples, reflecting the non-adoption and lack of endorsement of the concept. Furthermore, Tanzania has no specific legislation that recognizes or addresses Indigenous Peoples' rights.

Country-level conservation laws and policies have reinforced the historical inadequacies of colonial practices that marginalized Indigenous communities' traditional land use of in favor of wildlife conservation. Areas legally designated for conservation and tourism hunting by the MNRT and the National Environment

¹²⁹ IWGIA 2025

¹³⁰ Marlowe, 2010


¹³¹ *Article 12(1)*. All human beings are born free, and are all equal.

Article 12(2). Every person is entitled to recognition and respect for his dignity.

Article 13(1). All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law.

Article 13(2). No law enacted by any authority in the United Republic shall make any provision that is discriminatory either of itself or in its effect.

Article 13(4). No person shall be discriminated against by any person or any authority acting under any law or in the discharge of the functions or business of any state office.



Management Council (NEMC), including the Serengeti National Park, Ngorongoro Conservation Area, Massawa Game Reserve, Ruaha National Park, and Tarangire National Park, overlap with the ancestral lands and territories of the Maasai, Barabaig, and Hadzabe.

5.2 Conservation laws and policies and Indigenous Peoples' rights

- In the absence of formal recognition, and with current policies rooted in colonial-era practices, the situation of Indigenous Peoples in Tanzania remains precarious colonial conservation approaches in Tanzania and across Africa have long marginalized Indigenous Peoples by prioritizing wildlife conservation over traditional land use. This legacy has shaped domestic conservation laws and policies that remain inconsistent with international legal instruments protecting Indigenous Peoples' rights. such as the UNDRIP. Wildlife Conservation Act (No. 5 of 2009). An Act to make better provisions for the conservation, management, protection and sustainable utilization of wildlife and wildlife products; to repeal the Wildlife Conservation Act Cap.283 and to provide for other related matters
- Forest Reserve Act No. 14 of 2002. An Act to provide for the management of forests, to repeal certain laws relating to forest and other related matters.
- Ordinance No. 12 of 26th June 1959 Establishment, control and management of National Parks

Indigenous Peoples' traditional rights to access and use wildlife resources were effectively terminated through the transfer of ownership and user-rights from Indigenous communities to the State. This shift was formalized through State authority to enact conservation laws and policies inherited from colonial rule. At independence, Tanzania largely adopted these colonial conservation approaches uncritically, conflating traditional, largely sustainable, hunting practices with poaching.¹³²

¹³² Kideghesho, 2014.

A critical review of Tanzania's domestic conservation laws and policies shows that wildlife tourism is a central pillar of the Government's development agenda, with little regard for Indigenous Peoples, their participation, or equitable benefit-sharing. Tourism contributes significantly to the economy, accounting for 17.5% of the country's gross domestic product, and employing 11% of the labor force, yet Indigenous Peoples remain largely excluded.¹³³ It generates billions of dollars annually (Fig. 5.2.1).

In principle, Indigenous communities in Tanzania are central to tourism development as hosts, providers, beneficiaries, guardians of resources, and landowners. However, they face significant barriers to participation, including lack of representation, limited access to information and capacity building, and weak benefit-sharing mechanisms. Decisions on conservation and land use are often made without meaningful consultation or the free, prior, and informed consent of affected Indigenous communities. conservation legislation in Tanzania is largely oriented towards tourism, wildlife and habitat protection for challenges faced by the Hadzabe hunter-gatherers and Maasai Pastoralists.

The Hadzabe maintain a strong attachment to their ancestral lands and territories. The Government of Tanzania's pilot villagization program (1964-65) failed to settle them permanently, as many returned to their ancestral lands where they continue to assert their customary land rights. The program was widely perceived as an attempt to forcibly assimilate them into mainstream village communities and undermine their customary tenure.


In 2011, the Hadzabe community at Qangdet Village in Karatu District, Arusha Region, secured a Certificate of Customary Rights of Occupancy (CCRO) over 23,000 hectares of land. This collective title, granted to the Hadzabe and six neighboring communities, recognizes their authority over land use decisions and protects the area from external interference with their traditional practices.

Notwithstanding this protection, the President retains the authority to declare the land, like any other area in Tanzania, a Game Reserve.¹³⁴ Similarly, the certificate does not prevent the Minister of Natural Resources and Tourism (MNRT) from exercising legal prerogatives to designate all or part of the area as a Game controlled area.¹³⁵

¹³³ National Bureau of Statistics, 2023; Tanzania National Parks, n.d.

¹³⁴ Section 4(1) Part IV of the Wildlife Conservation Act of 2009

¹³⁵ Section 16(1) Part IV of the Wildlife Conservation Act of 2009



Year	Revenue generated (TZS)	Amount to PC (TZS)	%
2006/07	23,654,477,418	703,336,140	2.97
2007/08	37,932,745,667	1,250,000,000	3.30
2008/09	34,707,691,761	1,250,000,000	3.60
2009/10	37,547,163,307	1,250,000,000	3.33
2010/11	50,015,976,586	1,250,000,000	2.50
2011/12	58,892,893,675	1,250,000,000	2.12
2012/13	60,457,222,560	1,400,000,000	2.32
2013/14	61,335,252,286	2,000,000,000	3.26
2014/15	60,231,470,328	2,753,000,000	4.57
2015/16	70,790,401,176	2,680,000,000	3.79
2016/17	104,080,561,695	2,700,000,000	2.59

Fig. 5.2.1: Tourism revenue in Tanzania

Tanzania has been criticized for discriminatory policies against Indigenous Peoples, particularly those leading to forced evictions and displacement from their ancestral lands. Implemented under the guise of conservation and tourism development, these policies undermine Indigenous livelihoods, culture, and human rights.¹³⁶ Despite the rhetoric of community-based conservation, the wildlife sector remains largely under State control, and its promise benefits remain elusive.¹³⁷ Benefit-sharing mechanisms, such as those under the Environmental Management Act No. 20 of 2024, are often determined without the input of Indigenous Peoples, who instead bear the impacts of their implementation.¹³⁸ This raises serious concerns about equity, as any benefits provided are typically minimal, and not commensurate with the loss of land and resources.¹³⁹

¹³⁶ Melubo, 2017

¹³⁷ Kiwango, 2020

¹³⁸ Makoye, 2024

¹³⁹ Testimonies from the Hadzabe communities in Ngorongoro Conservation Area and the Greater Serengeti Ecosystem (GSE) (Kegamba et al. 2024) depict lack of substantial benefit-sharing from tourism and CBC as concerns IPs.

An unnamed Hadza man from Eyasi within the NCA recorded a video in Swahili criticizing the government and tour operators making unilateral decisions about tourism in Hadzabe areas and using their lands without sharing the benefits. He noted that while the government and tour operators charge tourists thousands of dollars, Hadza individuals working as guides receive only USD 10 per day

On 10 April 2024, 135 households relocated from the Ngorongoro Conservation Area to Msomera Village in Handeni District, Tanga Region, issued a press release stating that the Government had failed to fulfill its commitments, including the provision of houses and adequate land for grazing, settlement and agriculture, as agreed compensation for their relocation.¹⁴⁰

5.3 Impacts of conservation laws and policies on Indigenous Peoples in Tanzania

Tanzania is home to some of the world's most renowned national parks and conservation areas, which continue to expand and attract large numbers of tourists.¹⁴¹ The rapid growth of national parks, game reserves, game controlled areas, wildlife management areas (WMAs) and Ramsar sites (fig. 5.2.2) reflects the evolution of domestic conservation laws and policies and their implementation, often to the detriment of Indigenous Peoples.

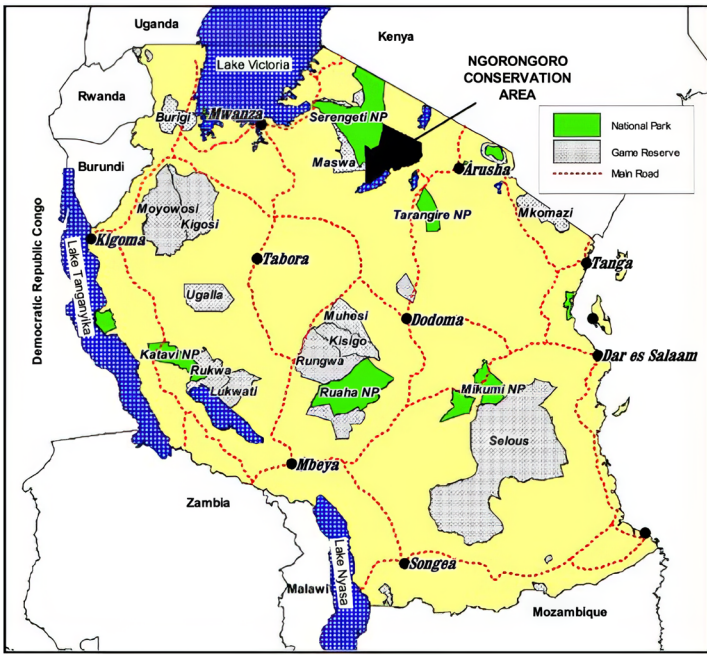
Government policies that prioritize conservation and tourism development over the existential realities of Maasai, Barabaig, and Hadzabe have sparked widespread outrage. Vast areas of Indigenous ancestral lands and territories are being appropriated by the Government of Tanzania through the MNRT and private tourism investors, under legal frameworks such as Ordinance No. 12 of 26 June 1959, which in Section 3, empowered the Governor to override customary rights and exclude Indigenous Peoples from designated areas;¹⁴² and Section 15(1&2) of the Wildlife Conservation Act of 2009.¹⁴³ These restrictions on access to protected areas, even for Indigenous communities with longstanding customary, constitute a form of discrimination that undermines their ability to sustain traditional livelihoods and cultural practices.

¹⁴⁰ (IWGIA, 2025:124)

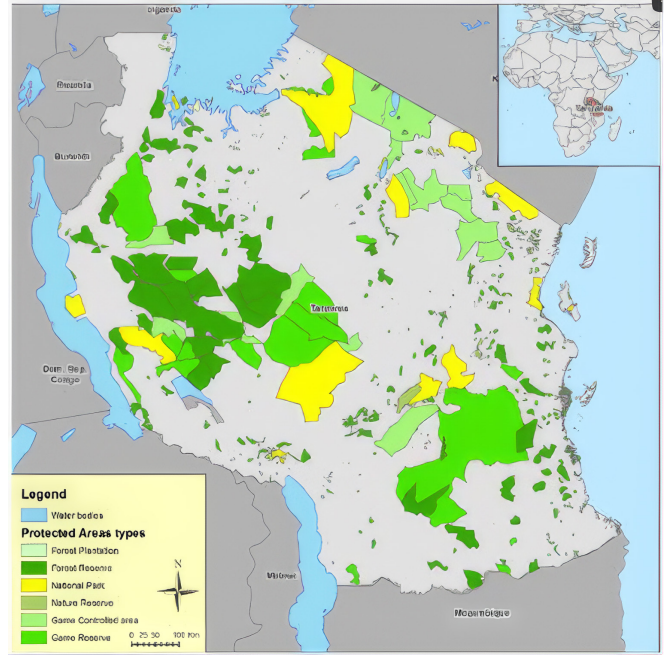
¹⁴¹ Gizachew et al. 2020

¹⁴² *Section 3 of Ordinance No. 12 of 1 July 1959*: The Governor may, with the consent of the Legislative Council, by proclamation in the Gazette, declare any area of land to be a national park for the purposes of this Ordinance.

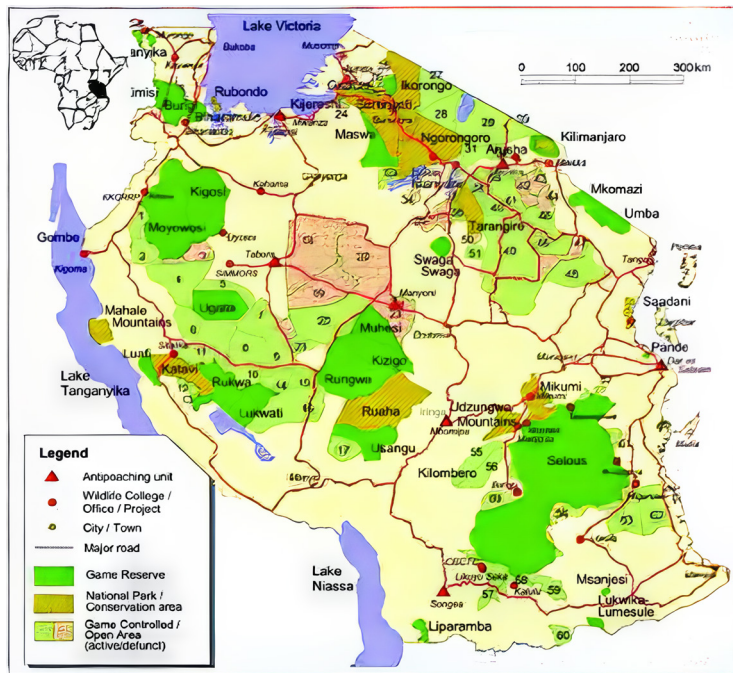
¹⁴³ *Section 15(1&2) of Wildlife Conservation Act No. 5 of 2009*: 1) Any person other than a person travelling through the reserve along a highway or designated waterway shall not enter a game reserve except by and in accordance with the written authority of the Director previously sought and obtained. 2) Any person who contravenes any provision of this section... commits an offence and on conviction shall be liable to a fine... not exceeding three years or to both.



2010



2010



2020

Figure 5.2.2: Evolution of National Parks, game reserves, and conservation areas in Tanzania

Source: Tanzania National Parks Website.

This approach to conservation has led to forced evictions, stripping the Maasai, Hadzabe, and Barabaig of access to resources, disrupting their traditional ways of life and fueling conflict (Makoye, 2024). These evictions have also caused land dispossession among other communities to accommodate relocated Indigenous Peoples. Compensation provision under SubPart 3(156) of the Land Act No. 4 of 1999 and the Village Land Act No. 5 of 1999 are not often upheld, particularly for Indigenous Peoples.¹⁴⁴

This form of forced assimilation, characterized by a tripodal dynamic (eviction from conservation areas, dispossession of other communities in non-conservation areas, and resettlement of evicted Indigenous Peoples on the relocation land) has frequently generated conflicts. The displacement of pastoralists, particularly Datoga and Masaai from the Serengeti National Park and Ngorongoro Conservation Area, continues to threaten Hadzabe lands.¹⁴⁵ In August 2024, tensions arose between the Hadzabe and farmers from Singida Region who encroached on land allocated to the Hadza community in Domanga Village in Mbulu District.¹⁴⁶ More broadly, the Hadzabe continue to face encroachment from agriculture and pastoralism, losing land to farming and cattle grazing.¹⁴⁷

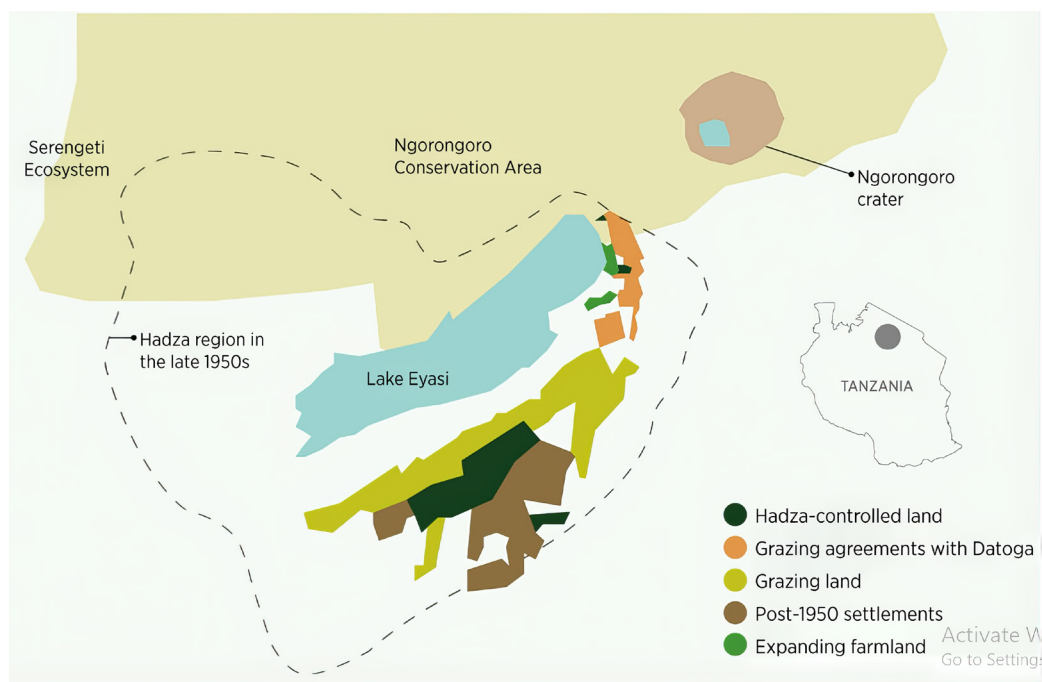


Figure 5.2.3. Location of the Ngorongoro Conservation Area in Tanzania (NCAA, 2010)

¹⁴⁴ On 29 November, residents living in Msomera, the settlement site for displaced communities, staged protests accusing the authorities of dispossessing them of their land and assigning it to people migrating from Ngorongoro Conservation Area (IWGIA, 2025:123).

¹⁴⁵ Jones, 2022

¹⁴⁶ IWGIA, 2025

¹⁴⁷ Makoye, 2024



Conservation-induced violence and criminalization of Indigenous Peoples in Tanzania are largely rooted in both the substance of conservation laws and policies and the way they are implemented. These frameworks, which fail to align with the rights and lived realities of the Maasai, Hadzabe, and Barabaig instead expose them to violence and criminalization. The policing approach to enforcing conservation legislation lacks a human rights perspective, resulting in the criminalization of Indigenous Peoples and the perpetuation of violence against them. The implementation of Tanzania's strategy, including revised framework for Wildlife Management Areas (WMAs), has caused significant suffering for the Maasai, Hadzabe, and Barabaig with little or no access to justice.¹⁴⁸ Moreover, the formal regulation of hunting, particularly sport hunting provisions under (Section 45(1, 2&3) of Wildlife Conservation Act No. 5 of 2009), effectively criminalizes the traditional subsistence practices of Hadzabe hunter-gatherers, exposing them to violence and prosecution.

The Maasai, Hadzabe, and Barabaig have reportedly experienced widespread human rights violations, including illegal arrests, detention, and harassment linked to conservation-related activities, often carried out with impunity. Despite its role in alleged abuses against the Maasai community in Loliondo, Otterlo Business Corporation (OBC), a United Arab Emirates company, has continued to operate with State support, contributing to significant suffering and trauma among affected individuals and their families.¹⁴⁹

Eviction of the Maasai remain widespread, with the Government continuing to pursue such policies. On 18 January 2024, the Tanzanian Government announced plans to forcibly remove 100,000 Maasai pastoralists from the Ngorongoro Conservation Area.¹⁵⁰ Jesica Murani, a resident of Ngorongoro in northern Arusha, described the violence she experienced during a campaign by authorities to clear Maasai communities for protected areas: "My home was completely burned by the police. I have nowhere to live. My children disappeared into the bush, and as we speak, I don't know where they are," she said.¹⁵¹ Similarly, John Kishimba, a Hadzabe indigenous resident near Ruaha National Park (RUNAPA) recounted being confronted on his farm by park rangers who accused him of encroaching on park boundaries for poaching. He stated: "They punched me in the face, dragged me with my arms tied behind my back. They wanted me to admit I'm a poacher. They beat me a lot and crushed my left leg. As you can see, I am still limping."¹⁵²

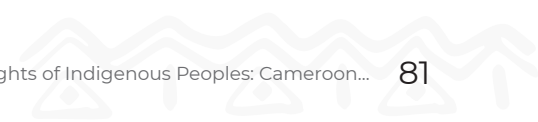
¹⁴⁸ Military operations are being used to evict Indigenous Peoples from their ancestral lands, leading to loss of property, numerous arrests, forced displacements, injuries and deaths (Stiles, 1995).

¹⁴⁹ IWGIA and IPRI, 2023

¹⁵⁰ IWGIA, 2025

¹⁵¹ (Makoye, 2024)

¹⁵² See: MAKOYE, Kizito, "Country face balancing act as eco-policies threaten Indigenous Peoples", in *Down to Earth*, 04 June 2024. <https://www.downtoearth.org.in/africa/fortress-conservation-in-tanzania-country-faces-balancing-act-as-eco-policies-threaten-indigenous-peoples-biodiversity>



5.4 Legal exclusion of the Maasai, Hadzabe, and Barabaig from acquiring conservancies in Tanzania

In Tanzania, administrative units include wards, villages and hamlets or camps. Villages, which are registered and have legal status, function as the lowest level of government and directly shape the daily lives of community members. This structure, however, does not accommodate Hadzabe camps and some Maasai communities.

Hadzabe communities are not traditionally registered within Tanzania's village system, as their social organization is egalitarian and lacks formal chiefs or leaders. As a result, they are effectively excluded from the village system (Section 4(c) of Forest Reserve Act No. 14 of 2002) and from the mandatory consultations between the president and local authorities prior to declaring land as a game reserve (Section 4(1) Part IV of the Wildlife Conservation Act of 2009). Similarly, they are excluded from consultations conducted by the MNRT when designating game-controlled areas (Section 16(1) Part IV of the Wildlife Conservation Act of 2009). Consequently, game reserves and game-controlled areas are often established within their ancestral lands without their Free, Prior, and Informed Consent.

The Tanzania Wildlife Conservation Act of 2009, together with subsequent policies and practices, has played a key role in excluding the Hadzabe from hunting blocks and other traditional land uses (Part VII Section 38(5a-d)). Both the Act and its implementation have restricted access to resources and ancestral territories, undermining the Hadzabe's way of life. Government actions have also enabled the conversion of areas such as the Loliondo Game Control Area into game reserves, further limiting access to traditional hunting and gathering grounds and weakening occupancy rights of Indigenous Peoples. Moreover, Section 45(1, 2&3) of the Act which governs access to wildlife by traditional communities, fails to recognize hunting practices of the Hadzabe. Their use of unlicensed traditional hunting tools and their practice of taking only limited game for subsistence, not for trophies, are effectively criminalized.¹⁵³ Meanwhile, their lands are increasingly allocated for sport hunting, reinforcing a pattern of systematic exclusion that deepens their marginalization.

In January 2024, the MNRT published its "revised strategy" for Wildlife Management Areas (WMAs) for 2023-2033, identifying 47 actors in its "Stakeholder Analysis," ranging from private hunting associations to international conservation and development organizations – but excluding local communities and Indigenous Peoples.¹⁵⁴ The strategy disregards their traditional practices and overlooks their rights in favor of expanding international tourism and commercial hunting.

¹⁵³ This gloomy situation has been succinctly captured as "The Hadzabe of Tanzania: People and Land in Trouble" (Stiles, 1995).

¹⁵⁴ IWGIA, 2025



Indigenous Peoples have been excluded from the conservation arena on the assumption that they lack specialist knowledge and formal training.¹⁵⁵ Between 2005 and 2013, the number of wildlife management areas (WMAs) under the Government of Tanzania steadily increased while the number granted Conservation Area Authority status under the decentralized community-Based Conservation policy, declined (fig. 5.4.1).

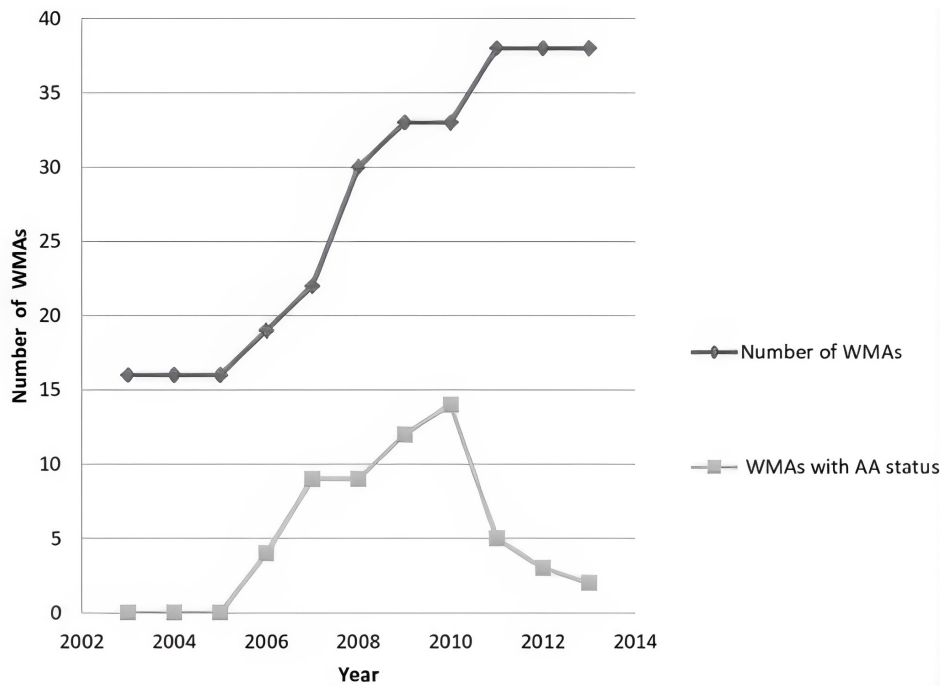
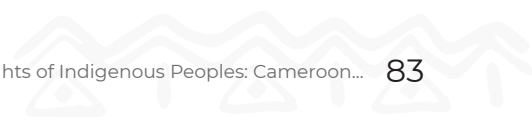


Figure 5.4.1: Evolution of WMAs in Tanzania 2005-2013

¹⁵⁵ The proceedings of a Community-based Conservation Workshop in Tanzania held in 1994 under the theme 'Planning and Assessment for Wildlife Management (PAWM)', organized by the Department of Wildlife, Dar es Salaam, Tanzania, stipulates on page 1 that: *The conservation of wildlife and wild places calls for specialist knowledge and trained manpower and money, and we look to other nations to co-operate with us in this important task-the success or failure which not only affects the continent of Africa but the rest of the world as well* (Minister of Natural Resources and Tourism, Honorable Juma Hamad Omar, 1994:1).



5.5 Conclusions and recommendations

Tanzania's conservation model is fortress in character and practice, with strong emphasis on sport hunting has led to land alienation, forced evictions without consent, and increased damage to the property and lives of Indigenous Peoples. The Government prioritizes wildlife and sport hunting for foreign revenue over the rights and welfare of the Maasai, Hadzabe, and Barabaig Peoples. The continued expansion of national parks and designation of game reserves on their ancestral lands and territories result in dispossession, as well as heightened violence and criminalization. This approach also carries negative consequences for wildlife in the Ngorongoro Conservation Area and other game reserves.

It is recommended that:

1. The Government of Tanzania should enact conservation laws and policies that recognize and respect Indigenous Peoples' rights to their ancestral lands and territories and enable them to define their own development priorities within protected areas. Existing legislation should be amended accordingly.
2. Conservation initiatives must ensure the full inclusion and participation of Indigenous Peoples at all stages of planning and implementation, including securing aligned to support environmental stewardship while upholding Indigenous Peoples' rights.
3. Effective benefit-sharing mechanisms should be established to ensure Indigenous communities receive fair compensation for the loss of lands and resources and to sustain their livelihoods.
4. Conservation efforts should prioritize locally driven approaches developed in partnership with Indigenous communities, recognizing and valuing their Indigenous knowledge systems and expertise.



REFERENCES

- ACHPR and IWGIA (2005). Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities: Submitted in accordance with the "Resolution on the Rights of Indigenous Populations/Communities in Africa".
- ACHPR (2006). Report of the Regional Sensitisation Seminar: The Rights of Indigenous Populations/Communities in Central Africa 13–16 September 2006, Yaoundé – Cameroon. Available at <https://www.achpr.org> Retrieved 02/01/2021
- ACHPR and IWGIA (2006). Indigenous Peoples in Africa: The forgotten peoples? The African Commission's work on Indigenous Peoples in Africa. ISBN: 87-91563-24-0
- Africanews (2022). Crimes against Indigenous People in DRC National Park: rights group. Available at <https://www.africanews.com/2022/04/07/crimes-against-indigenous-people-in-drc-national-park-rights-group/>. Retrieved 02/06/2025.
- Althabe, G. 1965. Changements sociaux chez les Pygmées Baka de l'est Cameroun. Cahiers d'Etudes Africaines, 5 (20): 561-592.
- Anaya, J. (2013). Report of the Special Rapporteur on the rights of indigenous peoples on the situation of indigenous peoples in Namibia for the UN General Assembly/Human Rights Council by James Anaya in 2013. Available at <https://unsr.jamesanaya.org> Retrieved 02/06/2025.
- Boden, G. (2020). Land and resource rights of the Khwe in Bwabwata National Park, Chapter 11. Available at <https://www.lac.org.na/>. Retrieved 04/06/2025.
- Cayuella, S. (2021). Les Pygmées, un peuple exclu de leur propre écosystème. Available at <https://www.natura-sciences.com/comprendre/pygmees-peuple-rdc-exclu-foret.html> Retrieved 30/05/2025.
- Corbett, A and Daniels, C. (1996). Legislation and Policies Affecting Community-Based Natural Resources Management in Namibia. Available at <https://www.lac.org.na/> Retrieved 04/06/2025.
- Cultural Survival (2021). Observations on the State of Indigenous Human Rights in Tanzania Prepared for United Nations Human Rights Council: Universal Periodic Review March 2021. Available at www.cs.org/ Retrieved 03/06/2025.
- Dieckmann, U. (2003). The Impact of Nature Conservation on the San: A Case Study of Etosha National Park. Available at <https://www.researchgate.net/publication/343628228>. Retrieved 01/06/2025
- DGPA, (2017) Les peuples Autochtones Pygmées en RDC : l'état de leurs droits et la situation dans la Province du Tanganyika ». Rapport alternatif au Rapport périodique de la République Démocratique du Congo au Comité des Droits de l'Homme
- Enchaw, G., & Njobdi. (2013). A collective name for Djoum, Mintom and Oveng Sub-divisions.
- Forest Peoples Programme. (n.d.). Governance and management of protected areas: A country report on the criminalization of, and human rights violations against Indigenous Pygmy Peoples. [https://www.iprights.org/images/articles/resources/DRC%20Governance%20and%20management%20of%20protected%20areas/DRC%20Full%20Report%20\(ENG\)%20FINAL.pdf](https://www.iprights.org/images/articles/resources/DRC%20Governance%20and%20management%20of%20protected%20areas/DRC%20Full%20Report%20(ENG)%20FINAL.pdf)
- Gizachew, B., Rizzi, J., Shirima, D. D. and Zahabu, E. (2020). "Deforestation and Connectivity among Protected Areas of Tanzania". In *Forests*, 11(2), 170; <https://doi.org/10.3390/f11020170> Available at <https://www.mdpi.com/> Retrieved 06/06/2025
- Gondola, Ch. Didier (2002). *The History of Congo*. Westport, Connecticut: Greenwood Press. ISBN 0-313-31696-1.
- Hattori S. 2014. *Current issues facing the forest people in southeastern Cameroon: the dynamics of Baka life and their ethnic relationship with farmers*. African Study Monographs Suppl. 47:97–119.
- Hitchcock, K. R. (2019). "The Impacts of Conservation and Militarization on Indigenous Peoples: A Southern African San Perspective". *Human Nature*, <https://doi.org/10.1007/s12110-019-09339-3> Available at <https://resourceafrica.net/> Accessed 01/06/2025.

Indigenous Peoples Rights International (2021). *Governance and management of protected areas in the Democratic Republic of Congo: A country report on the criminalization of and human rights violations against Indigenous Pygmy Peoples*. November 2021. Baguio City, Philippines. Available at <https://www.iprights.org/> Accessed 01/06/2025.

IUCN (2024). *STATE OF PROTECTED AND CONSERVED AREAS REPORT SERIES NO.1: Country Profiles, Namibia*. Available at <https://portals.iucn.org/> Retrieved 03/06/2025

IWGIA (2014). *Namibia: Discussion on the report of the Special Rapporteur on the situation of indigenous peoples*. Available at <https://iwgia.org>. Retrieved 03/06/2025. IWGIA (2019). *Indigenous World 2019: Cameroon*. By Hawe Bouba for IWGIA. Available at <http://www.iwgia.org> Retrieved 29/12/2020.

IWGIA (2019). *Indigenous World 2019: Democratic Republic of Congo*. By Patrick Kulesza for IWGIA. Available at <https://iwgia.org/en/democratic-republic-of-congo/3500-iw2019-drc>. Retrieved 30/05/2025

IWGIA (2019). *Indigenous World 2019: Namibia*. By Robert Hitchcock and Ben Begbie-Clench for IWGIA. Available at <https://iwgia.org/en/namibia/> Retrieved 30/05/2025.

IWGIA (2020). *Violence, corruption, and false promises: Conservation and the Baka in Cameroon* <https://iwgia.org/en/cameroon/3791-violence,-corruption,-and-false-promises-conservation-and-the-baka-in-cameroon.html>

IWGIA and IFAD (2022). *Country Technical Note on Indigenous Peoples' Issues, DRC*. Available at <https://www.ifad.org/>. Retrieved 13/06/2025.

IWGIA and IPRI (2023). *Submissions to the UN Special Rapporteur on the rights of indigenous peoples on tourism and indigenous peoples' rights*. Available at <https://iwgia.org/en/documents-and-publications/documents/publications-pdfs/english-publications/709-iwgia-ipri-report-submissions-to-the-unrip-on-tourism-and-indigenous-peoples-rights-eng-2023/file.html> Retrieved 05/06/2025

IWGIA (2024). *The Indigenous World 2024: Democratic Republic of the Congo (DRC)*. Available at <https://iwgia.org/en/democratic-republic-of-congo/5350-iw-2024-drc.html> Retrieved 15/06/2025

IWGIA (2025). *The Indigenous World 2025, 39th Edition*. Available at <https://iwgia.org/> Retrieved 07/06/2025.

Joiris, V. 1998. *La chasse, la chance, le chant: aspects du syst`eme rituel des Baka du Cameroun*.

Free University of Brussels: Ph.D. Dissertation.

Jones, B. T. B. (1999). *Policy lessons from the evolution of a community-based approach to wildlife management, Kunene Region, Namibia*. *Journal of International Development*, 11(2), 295–304.

Kouagheu, J. (2022). "Dans le sud-est du Cameroun, les Baka sont marginalisés au nom de la protection de la nature". Pulitzer Center. <https://pulitzercenter.org/fr/stories/dans-le-sud-est-du-cameroun-les-baka-sont-marginalises-au-nom-de-la-protection-de-la-nature>

Kegamba, J. J. Sangha, K. J., Sangha, K. K., Wurm, S. A. P., Kideghesho, J. R. and Garnett, T. S. (2024). *The influence of conservation policies and legislations on communities in Tanzania*. Available at <https://link.springer.com/> Retrieved 01/06/2025

Kiwango, A. W., Hans C. Komakech¹, C. H., Thadeo M. C. Tarimo, C. M. T. and Martz. L. (2015). *Decentralized Environmental Governance: A reflection on its role in shaping Wildlife Management Areas in Tanzania*. Available at <https://www.google.com/>. Retrieved 06/06/2025.

Lake, J. (2013). *"Economy" in Africa South of the Sahara*, edited by Europa Publications and Iain Frame, Routledge. ISBN 1-85743-659-8.

Lyamahesana, K. J-C. (2013). *Les Pygmées riverains des aires protégées: Des peuples soumis aux nouvelles formes d'esclavage. Cas du Parc National de Kahuzi-Biega en République Démocratique Congo*. 2013.



Loyombo, W. and Sinafasi, A. (2017). *Les peuples autochtones de la RDC Histoire d'un partenariat The Indigenous Peoples of The DRC Story of a Partnership*. Available at <https://www.inspectionpanel.org/sites/www.inspectionpanel.org/files/publications/The%20Indigenous%20People%20of%20DRC-Story%20of%20a%20Partnership.pdf>. Retrieved 12/06/2025

Magubira, P (2017). "History as Hadzabes Secure Title Deed". Available at <https://www.thecitizen.co.tz/news/History-as-Hadzabes-secure-title-deed/1840340-3509122-bv3dbfz/index.html> Retrieved 01/06/2025.

Makoye, K. (2024). *Fortress Conservation in Tanzania: Country faces balancing act as eco-policies threaten indigenous peoples & biodiversity* (downtoearth.org.in). Available at <https://justconservation.org/>. Accessed 01/06/2025.

Marlowe, F. W. (2010). *The Hadza: Hunter-Gatherers of Tanzania*. Berkeley: Univ. California Press. ISBN 978-0-520-25342-1.

Melubo, K. (2017). Tanzania tourism policy review conference: 11-12 April 2017, Arusha, Tanzania. *Anatolia*, 28(4), 595-597. Available at <https://doi.org/10.1080/13032917.2017.1347737>. Retrieved on Retrieved 05/06/2025.

Ministry of Environment and Tourism (MET) (2013). *National Policy on Community Based Natural Resource Management, Namibia*. Available at <https://www.npc.gov.na/>. Retrieved 03/06/2025.

Minority Rights Group (2024). *DRC: Provincial Decree may legitimize violence against the Batwa Indigenous Peoples*. Available at <https://minorityrights.org/batwa-provincial-decree/>. Retrieved 15/06/2025.

Minority Rights Group International. (2024, July 29). *DRC: Respecting Indigenous peoples' rights ruled key in fighting climate crisis*. <https://minorityrights.org/batwa-ruling/>

Mirindi, L. P. (2020). *Le droit saisi d'en-bas: les frémissements des droits des Pygmées sur leurs forêts ancestrales en République démocratique du Congo*. Available at <https://orcid.org/>. Retrieved 05/06/2025.

NACSO (2017). *The state of Community Conservation in Namibia: A summary of the Annual Report*. Available at <https://conservationnamibia.com/>. Retrieved 04/06/2025.

National Bureau of Statistics Tanzania. (2023). The 2023 international visitors' exit survey report. <https://www.nbs.go.tz/uploads/statistics/documents/en-1741009437-TTSS%202023%20Report.pdf>

Nguiffo, S. (2008). "De la légalité à la légitimité foncière: Pistes pour une meilleure protection de l'environnement". En O. Barrière & A. Rochegudew (Eds.), *Foncier et environnemental en Afrique: Des acteurs au(x) droit(s)* (pp. 157–186). Éditions Karthala.

Nguiffo, S., Kenfack., P.E., Mballa., N. (2009). Lands Rights and the forest peoples in Africa: Historical, legal and anthropological perspectives. No.2: Historical and contemporary land laws and their impacts on Indigenous Peoples lands rights.

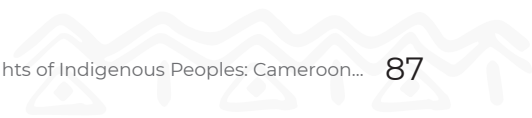
Ngwasiri, C.N. (2001). "European legacy of land legislation in Cameroon". In Lambi and Eze (eds). *Readings in Geography*. Bamenda, Unique Printers, 2001. pp 341-348.

Oakland Institute (2024). *From abuse to power ending fortress conservation in the Democratic Republic of Congo*. Available at <https://www.oaklandinstitute.org/> Retrieved 12/06/2025

Owono, C. J. (2001). Cameroon – Campo Ma'an: The extent of Bagyeli Pygmy involvement in the development and Management Plan of the Campo Ma'an technical operational unit (UTO). Case study 8. Available at <https://www.forestpeoples.org> Retrieved 29/12/2020.

Phoebe, B., Brown, J. C., Jarvis, M. A., Robertson, A. and Rooyen, V. L. (1998). Extending the Namibian protected area network to safeguard hotspots of endemism and diversity. In *Biodiversity and Conservation* 7, 531-547.

PIDP/SHIRIKA LA BAMBUTI (2021). *Peuples Autochtones Pygmées: Vers une Reconnaissance Légale en République Démocratique du Congo par PIDP/SHIRIKA LA BAMBUTI, 2021 "Indigenous Pygmy Peoples: Towards a Legal Recognition in the Democratic Republic of Congo"*.



Pyhälä, A., Orozco, A. O. and Counsell, S. (2016). Protected areas in the Congo Basin: Failing both People and Biodiversity? London, Rainforest Foundation UK.

Rainforest Foundation UK. (2018). A national strategy for community forestry in the Democratic Republic of Congo. <https://www.rainforestfoundationuk.org/media/ashx/a-national-strategy-for-community-forestry-2018.pdf>

Rainforest Foundation (2020). Situation des peuples autochtones pygmées en République Démocratique du Congo. Available at <http://www.dgpardc.org/>. Retrieved 04/06/2025.

Rainforest Foundation UK. (2021). Severe human rights abuses reported in Salonga National Park. <https://www.rainforestfoundationuk.org/wp-content/uploads/2021/10/severe-human-rights-abuses-reported-salonga-national-park.pdf>

Raper, P. (2009). The ethnonyms 'Bushman' and 'San'. Available at <https://scholar.ufs.ac.za/>. Retrieved 30/05/2025

Schmidt-Soltau, K. and Brockington, D. (2007). Protected Areas and Resettlement: What Scope for Voluntary Relocation? World Development Elsevier Ltd. Vol. 35, No. 12, pp. 2182–2202.

Schmidt-Soltau, K. (2009). Is the displacement of people from parks only 'purported' or is it real? In conservation and society 7(1). Pp. 46-55. Retrieved from <https://www.conservationandsociety.org>. 16/07/2023.

Seth, J. (2022). Threats to the Hadzabe and Why We Should Care." Environment & Society Portal, Arcadia (Spring 2022), no. 8. Rachel Carson Center for Environment and Society. doi:10.5282/rcc/9413. ISSN 2199-3408. Available at <https://www.environmentandsociety.org/>. Retrieved 01/06/2025.

Stiles, D. (1995). The Hadzabe of Tanzania: People and Land in Trouble. Periodical: Kenya Past and Present. Issue: 27. Pages: 39-44. Available at <https://www.africabib.org/>. Retrieved 04/06/2025

Tchatchou, B., Sonwa, D.J., Ifo, S. & Tiani, A.M. (2015). Deforestation and forest degradation in the Congo Basin: State of knowledge, current causes and perspectives. Occasional Paper 144. Bogor, Indonesia: CIFOR.

UNEP-WCMC (2020). Protected Area Profile for Democratic Republic of Congo from the World Database of Protected Areas, June 2020. Available at: www.protectedplanet.net. Retrieved 12/06/2025

United Nations. (2007). United Nations Declaration on the Rights of Indigenous Peoples. https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

Van Schalkwyk, D., McMillin, W. K., Witthuhn, C. R. and Hoffman, C. L. (2010). The Contribution of Wildlife to Sustainable Natural Resource Utilization in Namibia: A Review. Sustainability, 2, 3479-3499; doi:10.3390/su2113479. Available at <https://www.researchgate.net/>. Accessed Jun 01 2025.

Warren, T. & Baker, K. 2019. *WWF's Secret War: WWF Funds Guards Who Have Tortured And Killed People*. BuzzFeed News

CAMEROON

Relevant domestic legal framework

Environmental laws and policies

Assessment of the law/policy in the light of State domestic and/or international obligations on the rights of Indigenous Peoples

Law No. 96-6 of 18 January 1996 to amend the 1972 Constitution.

- Lack of recognition of the existence of Indigenous Peoples

The 1996 Constitution of Cameroon, paragraph 5 point 2 of the Preamble states that *'[t]he State shall ensure the protection of minorities and shall preserve the rights of indigenous populations in accordance with the law.'*

The vague use of "Minorities or Indigenous populations" in Cameroon hindered the adoption of specific laws and policies on the rights of self-determined Indigenous Peoples in Cameroon.

Decree No 77/245 of July 15, 1977 to lay down conditions for the organization of traditional chiefdoms in Cameroon.

- Discriminatory treatment of Indigenous Peoples, non-recognition of Indigenous authorities and government structures

Article 3 para.3 states that *'third level of chiefdom corresponds to the villages or neighborhoods in the rural areas and neighborhoods in the urban areas'* (*La chefferie de 3ème degré correspond au village ou quartier en milieu rural, et au quartier en milieu urbain*)

Because Indigenous Peoples' communities are classified as hamlets or encampments rather than villages, their authorities are not recognized as traditional chiefdoms, depriving them of rights including ownership and management of community forests as do Bantu communities.

**Law No.94/01 of 20
January 1994 to lay
down forestry, wildlife
and fisheries regulations**

**Decree No 95/531/PM
of 23 August 1995 to lay
down the procedure for
implementing the forests
system**

- Loss of customary land rights. Eviction with neither consultation nor Free, Prior and Informed Consent.

Art 22(1) of the Law states that permanent forests shall cover at least 30% of the total area of the national territory and reflect the country's ecological diversity.

Art 8 (1) states that '[w]ithin the context of this law, logging or customary right means the right which is recognized as being that of the local population to harvest all forest, wildlife and fisheries products freely for their personal use, except the protected species, recognizing user rights.

Article 26(3). *These user rights shall be maintained in national forests with the exception of closed areas and areas where regulations have been adopted by the Minister of Forests, or the Minister of Mines in accordance with the regulations governing quarries.*

This legal provision highlights the loss of forest user rights of Indigenous Peoples. By defining customary rights as those recognized for the local population, it effectively excludes Indigenous Peoples whose customary rights have been subsumed under Bantu classification. As a result, they are denied user rights both in agroforestry zones (non-permanent forest estate) and within their ancestral lands and territories.

Article 3(1) of Decree No 95/531/PM provides that all human activities in national parks are strictly prohibited.

To establish protected areas, the Baka, Bagyeli/Bakola and Bedzang Peoples were evicted from their ancestral lands in and around Lobeke, Nki, Boumba-Bek, and Campo Ma'an National Parks and Dja World Heritage Reserve. These evictions occurred without their Free, Prior and Informed Consent.

Decree No. 95-466-PM of 20 July 1995 on procedures for implementing wildlife regulations.

- Exclusion of Indigenous communities in the acquisition of community forests and ZICGCs.
- Criminalization of traditional subsistence and cultural activities.

This decree implements Law No. 94/1 of 20 January 1994 and regulates, among others, sport hunting licenses and ZICGCs.

It defines poaching as: '*the act of practicing the slaughter and capture of whichever species of wild animals for commercial gain*'. In practice, however, traditional subsistence hunting is often conflated with poaching, leading game guards to criminalize Indigenous Peoples who hunt class C animals for consumption or an elephant (Class A) annually for Njengi rituals.

Similarly, according to Article 2(19) of Decree, ZICGCs are to guarantee, in principle, benefits to local and Indigenous communities. Unfortunately, neither Law No.94/01 nor its two decrees of application, sufficiently describe the mechanisms through which Indigenous Peoples could acquire and manage community forests and ZICGCs.

Article 2(19) further provides that ZICGCs should, in principle, benefit local and Indigenous communities. However, neither Law No. 94/01 nor its implementing decrees clearly outline how Indigenous Peoples can access, manage, or benefit from community forests and ZICGCs.

The revised law defines a ZICGC in Section 3(78) as an area within the permanent and/or non-permanent forest estate granted to one or more local communities under a management agreement with the wildlife administration. However, because Indigenous communities lack legal recognition and eligibility is based on customary and user rights, Indigenous Peoples are effectively excluded accessing community forests and ZICGCs.

Decree No. 95/466D creating Campo Ma'an Reserve and Decree 2000/004/PM creating Campo Ma'an National Park (CMNP)

- The establishment of the Campo Ma'an Reserve violated the Bagyeli Peoples' rights to their lands, territories and natural resources. They were neither involved in decision making nor was their free prior and informed consent obtained. Its conversion into a national park further restricted their access to natural resources within their traditional lands.

The creation of the Campo Ma'an National Park, supported by new funding mechanisms enabled the imposition of strict rules prohibiting access to the protected area and the use of its natural resources. This severely impacted local populations, particularly the hunter-gatherer Bagyeli, whose dependence on forest resources is central to their livelihoods and basic rights, including health. Required impact assessments under Decree No. 95/466D were not conducted, and affected Indigenous Peoples were neither consulted nor allowed to participate in decision-making.

By 2000, the reserve had been converted into a national park, further reinforcing restrictions on access and resource use.

Arrêté conjoint no 00122/MINFI/MINAT/ du 29 Avril 1998 fixant les modalités d'emploi des revenus provenant de l'exploitation forestière et destinées aux communautés villageoises riveraines.

- Discrimination and exclusion of Indigenous Peoples from benefits of forest exploitation and hunting

Indigenous forest communities are excluded from receiving 10% of forestry royalties from commercial logging in forest management units (UFAs) and 10% of taxes from commercial hunting. These benefits are instead allocated to village communities adjacent to hunting zones (ZIGs), effectively excluding Indigenous Peoples.

Arrêté Conjoint N°05 20 MINATD/ MINFI/ MINFOF DU 03 JUIN 2010 Fixant les modalités d'emploi et de suivi de la gestion des revenus provenant de l'exploitation des ressources forestières et fauniques destinés aux Commune et aux communautés villageoises riveraines

**Decision N° 0098/D/
MINFOF/SG/DF/SDFC
of 12 February 2009
adopting the *Manual
laying down Procedures
for the Attribution and
Community Forests
management Norms***

- Non-recognition of Indigenous Peoples' land and resource rights and their exclusion from community forests and hunting zones (ZICGCs)

The decree defines eligible communities (under Article 27(2)) of Decree no 95/531/PM, as those that hold and exercise customary rights within the forest area applied for.

Since the exercise of customary land rights is a precondition for eligibility, Indigenous Forest Peoples, many of whom have been evicted from their ancestral lands and subsumed under Bantu village communities, are effectively excluded. Without recognized or exercised customary rights over adjacent forests, they cannot apply for community forests or access community hunting zones (ZICGCs).

DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

Domestic legal framework on the rights of indigenous peoples

Environmental laws and policies

Assessment of the law/policy in the light of State domestic and/or international obligations on the rights of Indigenous Peoples

Constitution of DRC 18 February 2006

- Non recognition of Indigenous Peoples in the Constitution

The Preamble of the Constitution reaffirms the commitment to respecting the provisions of all international instruments on human rights.

Art. 51 of the Constitution refers to *groupes vulnérables et de toutes les minorités*. 'Minorities and vulnerable groups' refer to no particular persons and brings confusion.

Law No. 22/030 of 15 July 2022 on the protection and promotion of the rights of Indigenous Pygmy Peoples/ Loi n°22/030 du 15 juillet 2022 portant protection et promotion des droits des peuples autochtones pygmées

The Law entered into force in 2023 and is a landmark in the recognition of the rights of Indigenous Pygmy Peoples and their cultural identity in the country. Their contribution in the protection of forests and biodiversity is also recognized. It mandates the granting of their FPIC for any project that may affect their traditional lands and resources.

Legal inconsistencies remain, as environmental and mining legislation has not been harmonized with the Law.

Law N°011/2002 of August 29, 2002 on Forestry Code /Loi N°011/2002 du 29 août 2002 portant Code Forestier

- Forced displacement and non-compliance of conditions in voluntary displacement
- Discrimination

Evictions in and around protected areas are widespread, some presented as voluntary, but many forced. Promises of compensation are rarely fulfilled and benefit-sharing remains inadequate. Following evictions from Virunga and Kahuzi-Biega National Parks, Indigenous Pygmy Peoples were allocated land, however, the plots are too small to sustain their livelihoods, and they have little to no access to resources within the parks.

Although Articles 36 and 39 of the Law recognize and regulate – albeit restrictively - traditional user rights to non-timber forest products, these rights are often not respected in practice for Indigenous Pygmy Peoples. While Article 22 of Law N°011/2002 allows local communities to request part or all of a protected forest as a customary forestry concession, Indigenous Peoples face significant barriers in realizing this right.

The Government is not yet fully engaged in respecting the **Decision of African Commission on Human and Peoples' Rights (ACHPR) from July 2024**, which recognised Batwa's right to their ancestral territories in Kahuzi-Biega.

**Law N ° 14/003 of
February 11, 2014 on
Conservation of Nature**

- Displacement and loss of access to resources

The law allows for the expansion of protected areas into the ancestral lands of IPPs in DRC without their consent. This has led to forceful displacement and loss of access to forest resources on which the IPPs depend.

**Decree No. 018 of 2014
And Ministerial Decree
No. 025/CAB/MIN/ECN-
DD/CI/00/RBM/2016
(National Strategy for
Community Forestry)**

The decree establishes procedures for allocating and managing forest concessions for local communities, including Indigenous Pygmy communities. Through Community Forest Concession titles (CFCLs), Indigenous Peoples can apply to secure perpetual legal rights over the land and resources. However, The processes of mapping and titling remain ongoing.

**Provincial Decree
N°24/279/GP/SK of
18 Nov. 2024** orders
the protection and
prohibition of occupation,
invasion, exploitation,
commercialization
and transport of forest
and mining resources
from the Kahuzi-Biega
National Park

- Prohibition of activities and access to traditional lands and resources

This Decree, adopted after Law N°. 22/030 of 15 July 2022, is inconsistent with both law and the provisions of UNDRIP. It has driven the eviction of Indigenous Peoples from Kahuzi-Biega National Park and enabled violence and criminalization against them.



NAMIBIA

Domestic legal framework on the rights of indigenous peoples	Environmental laws and policies	Assessment of the law/policy in the light of State domestic and/or international obligations on the rights of Indigenous Peoples
<p>The Constitution of Namibia of 21 March 1990</p>		<ul style="list-style-type: none"> • Non recognition of Indigenous Peoples <p>While Articles 10(2) and 95(1) of the Constitution of Namibia prohibit discrimination, they do not specifically recognize the rights of Indigenous Peoples, and no national legislation explicitly addresses them.</p>
	<p>Nature Conservation Ordinance N^o. 4 of 20 June 1975. To consolidate and amend the laws relating to the conservation of nature; the establishment of game parks and nature reserves; the control of problem animals; and to provide for matters incidental thereto.</p>	<ul style="list-style-type: none"> • Denial of land and resource, cultural, livelihood rights. Forced displacement and criminalization of San Indigenous Peoples <p>The implementation of this Ordinance has led to land loss and displacement of San Peoples, erosion of traditional livelihoods, unequal benefit sharing, and limited access to resources and services. It has contributed to violence and criminalization, gender-based violence and ongoing discrimination and marginalization.</p> <p>The legislation further prohibits entry into or residence within game parks or a nature reserve (Section 18 (1a, e-h), as well as related activities.</p>
	<p>Nature Conservation Amendment Act No. 5 of 4 June 1996. To amend the Nature Conservation Ordinance, 1975, so as to provide for an economically based system of sustainable management and utilization of game in communal areas; to delete references to representative authorities; and to provide for matters incidental thereto.</p>	<p>The Act allows for the creation of community conservancies (art. 24A (1): <i>Any group of persons residing on communal land and which desires to have the area which they inhabit, or any part thereof, to be declared a conservancy, shall apply therefore to the Minister in the prescribed manner</i>). However the lack of recognition of some Khew communities and their authorities prevents them from applying.</p>
<p>Traditional Authorities Act N^o. 25 of 2000</p>		<ul style="list-style-type: none"> • Discrimination, non-recognition of Indigenous Peoples own government structures <p>Khwe San groups are treated as acephalous communities by the Namibian Authorities, as their traditional leaders have not been formally recognized. This discriminatory treatment excludes them from owning game in conservancies, where ownership is vested under customary law through recognized traditional leaders.</p>

TANZANIA

Domestic legal framework on the rights of indigenous peoples

Environmental laws and policies

Assessment of the law/policy in the light of State domestic and/or international obligations on the rights of Indigenous Peoples

Constitution of Tanzania

- Non recognition of Indigenous Peoples

The Constitution of Tanzania makes no reference to Indigenous Peoples, hindering the adoption of specific legislation to recognize and protect their rights.

Wildlife Conservation Act No. 5 of 2009. An Act to make better provisions for the conservation, management, protection and sustainable utilisation of wildlife and wildlife products; to repeal the Wildlife Conservation Act Cap.283 and to provide for other related matters.

- Non recognition of Indigenous Peoples' rights to lands and resources, forced displacement, violence and criminalization

This Act grants the President of Tanzania broad powers to declare any area a Game Reserve without requiring the consent of affected communities. Even lands where some Hadzabe have hold Certificate of Customary Rights Occupancy (CCRO) remain highly vulnerable. The Act also gives the Minister of Tourism, Natural Resources and Environment discretionally authority to declare such areas as Game Reserves. While consultations with local authorities are provided prior the Presidential declaration, participation requires legal recognition, which many communities lack.

Access to protected areas is restricted for Indigenous communities despite their traditional rights to use them. The Law imposes a formal, sport hunting framework that conflicts with the customary hunting and grazing practices of the Maasai, Hadzabe, and Barabaig. Its application not only causes hardship, but also criminalizes traditional livelihoods, exposing these communities to violence and prosecution.

Unable to align their practices with safari hunting regulations, the Maasai, Hadzabe, and Barabaig are treated *persona non grata* in and around game reserves. Military operations are then used to evict from their ancestral lands, resulting in loss of property, arrests, forced displacements, injuries and deaths.

Ordinance No. 12 of 26th June 1959
Establishment, control and management of National Parks

- Non recognition of land and resources rights

This Tanzanian legislation prioritizes wildlife conservation and tourism over the rights of the Maasai, Barabaig, and Hadzabe. Under Ordinance No. 12 of 26th June 1959, vast tracts of Indigenous ancestral lands have been appropriated by the Government through its Ministry of TNRE and private tourism investors. Section 3 grants the Governor powers to override customary rights and exclude Indigenous Peoples from newly designated areas.

The Governor may, with the consent of the Legislative Council, by proclamation in the Gazette, declare any area of land to be a national park for the purposes of this Ordinance.

Forest Reserve Act No. 14 of 2002. An Act to provide for the management of forests, to repeal certain laws relating to forest and other related matters

- Discrimination, non-recognition of Indigenous Peoples own governing structures

Hadzabe communities are not recognized within Tanzanian Village System and therefore cannot own village forests or be granted Village Forest status under this legislation.



**Environmental and
Conservation Laws and
Policies and their Impact
on Indigenous Peoples'
rights in Latin America:
Case studies from
Guatemala, Colombia,
Ecuador, and Peru**

By Leonardo J. Alvarado





1. INTRODUCTION

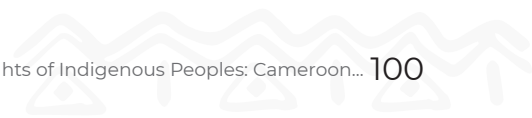
This study, prepared for Indigenous Peoples Rights International (IPRI), analyzes the impacts of environmental and conservation laws and policies on Indigenous Peoples' rights in Guatemala, Colombia, Ecuador, and Peru. It forms part of a broader series on biodiversity-rich regions across Asia-Pacific, Africa, and Latin America, through which IPRI expands prior research to highlight the criminalization and other human rights violations linked to conservation.¹⁵⁶ Drawing on analysis of these four countries, the study identifies key trends and issues affecting Indigenous Peoples. Despite the region's rich cultural diversity, biodiversity, and notable legal advances in Indigenous rights, the implementation of these laws and policies has, in many cases, led to serious rights violations.

A major issue is the establishment of protected areas overlapping Indigenous lands and territories. At the same time, weak environmental regulation allows extractive or similar activities to proceed, often without adequate monitoring or sanction, despite their incompatibility with both environmental objectives and Indigenous rights. Chapter 1 sets the context across the four countries, highlighting biodiversity-rich regions in Mesoamerica and the Amazon, and the overlap between Indigenous territories and protected areas, underscoring the urgent need to safeguard Indigenous lands, resources, and rights. Chapter 2 reviews key international instruments and jurisprudence on Indigenous Peoples' rights, providing the analytical framework for assessing each country's situation and corresponding human rights obligations in the context of conservation.

Chapter 3 examines the legal frameworks of Guatemala, Colombia, Ecuador, and Peru, focusing on the recognition and protection of Indigenous rights to lands, territories, natural resources, participation, free, prior, and informed consent, self-government, and self-determination. It also analyzes environmental and conservation laws and policies, supported by case studies that illustrate their impacts and challenges.

The study concludes with recommendations to strengthen the protection of Indigenous Peoples' rights in environmental regulation and conservation across Latin America.

¹⁵⁶ See The Indigenous Peoples Rights International. *Redefining protected areas: A study on the criminalization of and human rights violations against Indigenous Peoples in conservation*. November 2021. <https://iprights.org/2022/01/04/global-report-redefining-protected-areas-a-study-on-the-criminalization-of-and-human-rights-violations-against-indigenous-peoples-in-conservation-2/>



2. ENVIRONMENTAL CONSERVATION AND PROTECTION OF INDIGENOUS PEOPLES' RIGHTS IN THE MESOAMERICAN AND AMAZON REGIONS

The four countries are in biodiversity-rich regions —Mesoamerica and the Amazon—making respect for the rights of the Indigenous Peoples, who have long inhabited and conserved these areas, globally significant. As noted by the former Special Rapporteur on the Rights of Indigenous Peoples, “there is a remarkable spatial overlap between the traditional lands of Indigenous Peoples and the areas with the highest levels of biological diversity.” Traditional Indigenous territories, covering around 22% of the planet's surface, coincide with areas that contain 80% of the world's biological diversity. It is estimated that 50% of the world's protected areas have been established on lands traditionally occupied and used by Indigenous Peoples, a proportion that is even higher in the Americas, reaching over 90% in Central America.¹⁵⁷

The Mesoamerican region is critical to global biodiversity. Despite covering less than 0.5% of the planet's land area and 2% of its forests, it hosts 7% to 10% of all known life forms and 17% of all terrestrial species, with high endemism.¹⁵⁸ However, it also faces some of the world's highest deforestation rates, losing 0.43% of forests annually between 1990 and 2015, which is over 10 million hectares. Much of this occurred in countries with significant Indigenous populations, including Mexico, Honduras, Nicaragua, and Guatemala.¹⁵⁹ Key drivers include extractive industries, infrastructure expansion, biofuel plantations, illegal logging, and drug trafficking.¹⁶⁰

There is a strong correlation between Indigenous presence and ecosystem conservation: the most intact and biodiverse areas in Mesoamerica are often found within Indigenous territories, even as Indigenous Peoples are excluded from official conservation measures.¹⁶¹ Fifty-one percent of forests remain inhabited by Indigenous Peoples; and 39% (9.6 million hectares) of the 948 protected areas across seven Central American countries overlap with Indigenous territories.¹⁶²

¹⁵⁷ UN General Assembly. *Report of the Special Rapporteur of the Human Rights Council on the rights of Indigenous Peoples*, Victoria Tauli-Corpuz A/71/229 (July 29, 2016), para. 14. <https://docs.un.org/es/A/71/229>

¹⁵⁸ Comisión Económica para América Latina y el Caribe (CEPAL)/ Fondo para el Desarrollo de los Pueblos Indígenas de América Latina y el Caribe (FILAC). *Los pueblos indígenas de América Latina – Abya Yala y la Agenda 2030 para el Desarrollo Sostenible. Tensiones y desafíos desde una perspectiva territorial* Project Documents (LC/TS.2020/47), Santiago, 2020, p. 107, citing CEPF (Critical Ecosystem Partnership Fund) (2004), “Ecosystem Profile, Northern Region of the Mesoamerican Biodiversity Hotspot, Belize, Guatemala, Mexico.” <https://repositorio.cepal.org/server/api/core/bitstreams/7a735a11-beec-406d-ba2d-2dc1ee752834/content>

¹⁵⁹ *Ibid.* p. 108, citing International Union for Conservation of Nature (IUCN) “Mapeo de Pueblos Indígenas, Áreas Protegidas y Ecosistemas Naturales en Centroamérica” [Mapping of Indigenous Peoples, Protected Areas, and Natural Ecosystems in Central America], 2016. <https://iucn.org/es/news/mexico-central-america-and-caribbean/201609/mapeo-de-pueblos-indigenas-areas-protegidas-y-ecosistemas-naturales-en-centroamerica>. According to the source, Costa Rica was the only country in the region that escaped this trend after implementing a clear biodiversity conservation and reforestation policy, thereby increasing its forest area from 21% to 54% of the country's total area.

¹⁶⁰ *Ibid.*

¹⁶¹ International Union for Conservation of Nature (IUCN) “Mapeo de Pueblos Indígenas, Áreas Protegidas y Ecosistemas Naturales en Centroamérica”, 2016. <https://iucn.org/es/news/mexico-central-america-and-caribbean/201609/mapeo-de-pueblos-indigenas-areas-protegidas-y-ecosistemas-naturales-en-centroamerica> cited in CEPAL/FILAC Report, *supra* note.

¹⁶² *Ibid.*



In the Amazon, this overlap highlights the importance of Indigenous rights for climate mitigation. Indigenous territories cover 28.5% of the region; protected areas 25.5%, with a 5.1% overlap, bringing the total area under both to 49% of the Amazon's surface.¹⁶³

Forest loss in the Amazon basin has been severe: between 1985 and 2023, 88 million hectares of which 12.5% of forests were lost. About 94% of this occurred outside Indigenous territories and protected areas, compared to 3% in protected areas and 4.3% in Indigenous territories.¹⁶⁴ Despite this, biodiversity and the livelihoods remain under significant threat, with 51% of protected areas and 48% of Indigenous territories facing moderate to high pressure from agricultural expansion, illegal logging, extractive industries, and infrastructure projects.¹⁶⁵

This situation is exacerbated by climate change, marked by “decreased precipitation, rising temperatures, shorter rainy seasons, and more frequent and intense droughts, fires, and floods.”¹⁶⁶ Despite these pressures, Indigenous Peoples play a critical role in forest preservation and emission mitigation. Indigenous territories and protected areas store about 58% of the Amazon basin's soil carbon.¹⁶⁷ An estimated 100 to 185 Indigenous Peoples in isolation and initial contact (PIACI) live in the Amazon, mainly in Brazil, Peru, Colombia, and Ecuador, making their protection critical. In Peru and Ecuador alone, PIACI reserves cover approximately 82,319 km², the measures adopted to safeguard PIACI rights are examined further below.¹⁶⁸

These realities underscore the need to align environmental conservation policies with Indigenous Peoples' rights. As discussed in the next chapter, the four countries, like most Latin American states, have committed to recognizing and protecting Indigenous Peoples' lands, territories, natural resources, ways of life, self-governance systems, and territorial management. Upholding these rights is essential, as essential to effective environment protection and climate change mitigation.

¹⁶³ Josse, C., Tupinambá, R., et. al. *Áreas Protegidas y Territorios Indígenas: Pilares para Alcanzar las Metas de Conservación en La Amazonía* [Protected Areas and Indigenous Territories: Pillars for achieving conservation goals in the Amazon] Policy Brief. Scientific Panel for the Amazon, United Nations Sustainable Development Solutions Network, New York, USA (2024), p. 5. https://esp-policy-briefs.sp-amazon.org/241022%20PA%20and%20IT%20PB_Digital%20%28Spanish%29.pdf

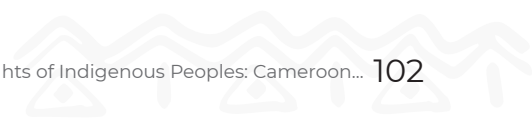
¹⁶⁴ Ibid, p. 6, citing Mapbiomas Amazonia (2024). *Coberturas y Uso de Suelo 1985-2023*, Colección 6.0 https://ecociencia.org/wp-content/uploads/2024/09/Factsheet_Amazonia_6.0_final.pdf

¹⁶⁵ Ibid, pp. 7-10.

¹⁶⁶ Ibid., p. 11.

¹⁶⁷ Ibid, p. 4.

¹⁶⁸ Ibid., p. 5.



3. INTERNATIONAL INSTRUMENTS AND JURISPRUDENCE ON THE RIGHTS OF INDIGENOUS PEOPLES

Normative developments on Indigenous Peoples' rights within the universal and inter-American human rights systems have significantly shaped Latin America. This section outlines key international standards binding most States in the region, including those examined in this study, covering rights to lands, territories, and natural resources; participation, consultation, and free, prior, and informed consent; as well as self-government and self-determination. States must integrate these standards and obligations into the design and implementing environmental conservation laws and policies.

Latin American has the highest number of ratifications of Convention No. 169, including the four countries covered by this study.¹⁶⁹ As the first international instrument addressing Indigenous Peoples' rights, has driven significant legislative and jurisprudential advances across the region.¹⁷⁰

Most Latin American states voted in favor of adopting the United Nations Declaration on the Rights of Indigenous Peoples in 2007.¹⁷¹ As noted by the ILO, its provisions and those of Convention 169 "are compatible and mutually reinforcing, covering the same areas."¹⁷² While the Declaration explicitly recognizes the right to self-determination, which is absent from Convention 169, the latter affirms key rights that give effect to it. As members of the Organization of American States (OAS), these States must also consider the standards and jurisprudence developed by the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACourtHR) under the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man. It is also important to highlight the American Declaration on the Rights of Indigenous Peoples, adopted by OAS States through the General Assembly in 2016.¹⁷³

¹⁶⁹ ILO, *Convention on Indigenous and Tribal Peoples*, 1989 (No. 169). https://normlex.ilo.org/dyn/nrmlx_es-/?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID%2CP12100_LANG_CODE:312314%2Ces; and ILO Normlex, Ratification of C 169 https://normlex.ilo.org/dyn/nrmlx_es-/?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312314. Convention 169 was ratified by Colombia in 1991, Peru in 1994, Guatemala in 1996, and Ecuador in 1998.

¹⁷⁰ See in general, ILO, *Aplicación del Convenio no. 169 de la OIT por tribunales nacionales e internacionales en América Latina. Una compilación de casos* [The application of Convention No. 169 by national and international courts in Latin America: a compilation of cases. Geneva: ILO, 2009. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@gender/documents/publication/wcms_758297.pdf

¹⁷¹ UN, *Declaración de las Naciones Unidas sobre los derechos de los Pueblos Indígenas*, https://www.un.org/esa/socdev/unpfii/documents/DRIPS_es.pdf adopted by the General Assembly on September 13, 2007, Res. 61/295. Colombia initially abstained from voting in favor of its adoption, but then in 2009 declared its support for it. See, UNHCR, E"l ACNUR da la bienvenida a la decisión de Colombia de apoyar la Declaración de la ONU sobre los Derechos de los Pueblos Indígenas" [UNHCR welcomes Colombia's decision to support the UN Declaration on the Rights of Indigenous Peoples], April 29, 2009. <https://www.acnur.org/noticias/historias/el-acnur-da-la-bienvenida-la-decision-de-colombia-de-apoyar-la-declaracion-de-la>

¹⁷² ILO, *Los derechos de los pueblos indígenas y tribales en la práctica. Una guía sobre el Convenio 169 de la OIT* [The rights of Indigenous and tribal Peoples in practice: a guide to ILO Convention No. 169] - Geneva: ILO, 2009, p. 26. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40dgreports/%40dcomm/%-40publ/documents/publication/wcms_126163.pdf

¹⁷³ OAS, *Declaración Americana sobre los Derechos de los Pueblos Indígenas* [American Declaration on the Rights of Indigenous Peoples], AG/RES. 2888 (XLVI-0/16) 2016. <https://www.oas.org/es/sadye/documentos/res-2888-16-es.pdf>



Regarding these legal sources, the jurisprudence of the IACourtHR clarifies that Indigenous Peoples' territorial rights and the State's duty of protection under Article 21 of the American Convention must be interpreted "in light of the provisions of ILO Convention 169, and the United Nations and American Declarations on the Rights of Indigenous Peoples, together with domestic laws and other international instruments, forming a *corpus juris* that defines the States' obligations to protect Indigenous property rights."¹⁷⁴

A. Lands, territories, and natural resources

Regarding the Indigenous territorial rights, ILO Convention No. 169 provides that States shall respect the special importance of Indigenous Peoples' relationship with their lands or territories including its collective dimensions. The Convention clarifies that "lands" includes the broader concept of territory, "which covers the total environment occupied or used by the people."¹⁷⁵

ILO Convention 169 obliges States to identify lands traditionally occupied by Indigenous Peoples and ensure effective protection of their property and possession rights, including through procedures to resolve land claims.¹⁷⁶ It also provides that Indigenous Peoples' rights "to the natural resources pertaining to their lands shall be specially safeguarded," including their right to participate in the use, management, and conservation of these resources.¹⁷⁷

For its part, the UN Declaration on Indigenous Peoples affirms Indigenous Peoples' right "to the lands, territories, and resources that they have traditionally owned, occupied, or used or acquired," and requires States to recognize and protect these with due respect for "the customs, traditions, and land tenure systems" of the peoples concerned.¹⁷⁸ Article 25 further recognizes their right "to maintain and strengthen their distinctive spiritual relationship" with these lands, waters, and resources, and to uphold responsibilities to future generations.¹⁷⁹

The UN Declaration on the Right of Indigenous Peoples affirms Indigenous Peoples' right "to redress," including restitution or, where not possible, "fair and equitable compensation" for lands, territories and resources taken, without their Free, Prior and Informed Consent. It further provides that, unless otherwise agreed, compensation should be in lands of equal in quality, size and legal status, or in monetary or other appropriate forms.¹⁸⁰

¹⁷⁴ Inter-American Court of Human Rights. *Caso Comunidad Indígena Maya Q'eqchi' Agua Caliente Vs. Guatemala. Fondo, Reparaciones y Costas. Sentencia de 16 de mayo de 2023* [Case of the Maya Q'eqchi' Agua Caliente Indigenous Community v. Guatemala. Merits, Reparations, and Costs. Judgment of May 16, 2023]. Series C No. 488, para. 200. https://www.corteidh.or.cr/docs/casos/articulos/seriec_488_esp.pdf

¹⁷⁵ Convention 169, supra note, Articles 13 and 14.

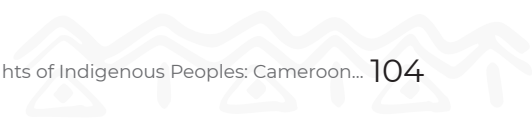
¹⁷⁶ Convention 169, supra note, Article 14.

¹⁷⁷ Convention 169, supra note, Article 15.

¹⁷⁸ United Nations Declaration on the Rights of Indigenous Peoples, Article 26.

¹⁷⁹ United Nations Declaration on the Rights of Indigenous Peoples, Article 25.

¹⁸⁰ United Nations Declaration on the Rights of Indigenous Peoples, Article 28.



In line with these instruments, the jurisprudence of the Inter-American Human Rights System affirms that the right to property under the American Convention includes Indigenous communal property. The Inter-American Court of Human Rights has emphasized that: 1) traditional possession of ancestral territories is equivalent to State- recognized ownership; 2) it entitles Indigenous Peoples to official recognition and registration; 3) loss of possession without fault retain ownership rights even without legal title, unless lands were legitimately transferred to third parties in good faith; 4) States must delimit, demarcate, and grant collective title to ancestral territories; and 5) where lands were transferred in good faith, communities have the right to restitution or lands of equal size and quality.¹⁸¹

The American Declaration on the Rights of Indigenous Peoples affirms Indigenous Peoples' right "to conserve, restore, and protect the environment and to sustainably manage their lands, territories, and resources." It further recognizes their right to the conservation and protection of the environment and the productive capacity of these areas. States are required to establish and implement support to ensure such conservation and protection, without discrimination.¹⁸²

The American Declaration on the Rights of Indigenous Peoples also recognizes Indigenous Peoples' right in voluntary isolation or in initial contact to remain so and live according to their cultures. It requires States to adopt, with their participation, measures to recognize and protect and integrity.¹⁸³ States must consider the UN Guidelines for the Protection of Indigenous Peoples in Isolation and Initial Contact, which set out key principles such as non-contact, self-determination, territory, and culture.¹⁸⁴

¹⁸¹ See, in this regard, Inter-American Court of Human Rights. *Caso Pueblo Indígena U'wa y sus miembros Vs. Colombia. Fondo, Reparaciones y Costas. Sentencia del 4 de julio de 2024*. [Case of the U'wa Indigenous People and Members Thereof v. Colombia. Merits, Reparations, and Costs. Judgment of July 4, 2024]. Series C No. 530, para. 27, and corresponding footnotes. https://www.corteidh.or.cr/docs/casos/articulos/seriec_530_esp.pdf

¹⁸² American Declaration on the Rights of Indigenous Peoples, Article XIX.

¹⁸³ American Declaration on the Rights of Indigenous Peoples, Article XXVI.

¹⁸⁴ See in this regard, OHCHR. *Directrices de Protección para los Pueblos Indígenas en Aislamiento y Contacto Inicial de la Región Amazónica, el Gran Chaco y la Región Oriental de Paraguay: Resultados de las Consultas Realizadas por ACNUDH en la Región: Bolivia, Brasil Colombia, Ecuador, Paraguay, Perú y Venezuela [UN Guidelines on the Protection of Indigenous Peoples in Isolation and Initial Contact in the Amazon Region, the Gran Chaco and the Eastern Region of Paraguay : Result of consultations conducted by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela]*, (2012). <https://acnudh.org/wp-content/uploads/2012/03/Directrices-de-Protección-para-los-Pueblos-Indígenas-en-Aislamiento-y-en-Contacto-Inicial.pdf>



B. Free, prior, and informed consultation and consent

International standards recognize Indigenous Peoples' right to consultation and Free, Prior, and Informed Consent (FPIC). The UN Declaration on the Rights of Indigenous Peoples, requires States to consult and cooperate in good faith “through their own representative institutions” to obtain FPIC before adopting measures affecting their lands, territories, and resources, including extractive activities and protected areas.¹⁸⁵ The Inter-American System also recognizes consultation as a right derived from the American Convention on Human Rights grounded in Indigenous Peoples' relationship with their territories, and their right to participate in decisions on natural resource use.

To ensure meaningful participation, consultations States must be conducted through representative institutions, with accessible information provided in appropriate languages and in ways that respect Indigenous customs, governance systems, and worldviews.¹⁸⁶ The IACourtHR has further clarified that in large-scale projects with significant impacts, States must not only consult but obtain FPIC in accordance with Indigenous customs and traditions.¹⁸⁷

A key component of consultation is the conduct of social and environmental impact studies. ILO Convention 169 requires that such studies be carried out, “in cooperation with the peoples concerned,” to assess social, spiritual, cultural, and environmental impacts and that their results guide decision-making.¹⁸⁸ The IACourtHR considers these studies an essential safeguard to ensure that restrictions on Indigenous property rights do not threaten their survival. They must be conducted by independent, technically competent bodies under State supervision, in line with international standards, prior to project approval, and must assess cumulative impacts¹⁸⁹ ensuring Indigenous Peoples' informed participation throughout.

¹⁸⁵ United Nations Declaration on the Rights of Indigenous Peoples, Articles 19 and 32.

¹⁸⁶ See, in this regard, Inter-American Court of Human Rights. *Caso Pueblo Indígena U'wa y sus miembros Vs. Colombia. Fondo, Reparaciones y Costas. Sentencia del 4 de julio de 2024*. [Case of the U'wa Indigenous People and Members Thereof v. Colombia. Merits, Reparations, and Costs. Judgment of July 4, 2024]. Series C No. 530, paras. 168-177. 27, and corresponding footnotes. https://www.corteidh.or.cr/docs/casos/articulos/seriec_530_esp.pdf

¹⁸⁷ Inter-American Court of Human Rights. *Caso del Pueblo Saramaka vs. Surinam. Sentencia del 28 de noviembre de 2007. (Excepciones Preliminares, Fondo, Reparaciones y Costas)*. . Serie C No. 172. [Case of the Saramaka People v. Suriname . Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172], para. 134. https://www.corteidh.or.cr/docs/casos/articulos/seriec_172_esp.pdf

¹⁸⁸ Convention 169, art. 7.3.

¹⁸⁹ Inter-American Court of Human Rights. . Judgment of June 27, 2012. Series C No. 245, paras. 205, 206.

C. Indigenous Peoples' Rights in the context of conservation areas

The IACourtHR has addressed restrictions on Indigenous collective property arising from protected areas. In *Kaliña and Lokono Peoples v. Suriname*, it stressed the need to reconcile conservation with Indigenous use of traditional territories, recognizing that Indigenous practices, grounded in sustainability and close relationships with nature, show that “respect for the rights of Indigenous Peoples can have a positive impact on environmental conservation.” The affirmed that Indigenous rights and environmental protection are complementary,¹⁹⁰ requiring a) effective participation, b) access to and use of traditional territories, and c) equitable benefit-sharing consistent with conservation and the protection of Indigenous Peoples' dignity and cultural identity.¹⁹¹

These rights must be applied through the lens of self-determination. The UN and American Declarations on the Rights of Indigenous Peoples affirm Indigenous Peoples' right to “freely determine their political status and pursue their development, including to autonomy or self-government.”¹⁹² While ILO Convention 169 does not explicitly reference self-determination, it establishes participation, consultation, and self-management as key mechanisms for its realization.¹⁹³

D. Other relevant standards – Escazú Agreement

In addition to instruments and jurisprudence on Indigenous Peoples' rights, States must also consider broader human rights and environmental frameworks. The Escazú Agreement (2018) is the key regional reference. Initially adopted by 16 countries, it has since been ratified by 18 States including Ecuador (2021) and Colombia (2024), while Peru and Guatemala signed it in 2018.¹⁹⁴

The Escazú Agreement benefits people in Latin America and the Caribbean, particularly vulnerable groups, by ensuring access to timely and adequate information, meaningful participation in environmental decision-making, and access to justice when these rights are violated. Measures are created for facilitation and enforcement of rights.¹⁹⁵

¹⁹⁰ Inter-American Court of Human Rights. Judgment of November 25, 2015. Series C No. 309, para. 173.

¹⁹¹ Inter-American Court of Human Rights, *Case of the Kaliña and Loko Peoples*, supra note, para. 181.

¹⁹² United Nations Declaration on the Rights of Indigenous Peoples, Articles 3 and 4.

¹⁹³ ILO, *Los derechos de los pueblos indígenas y tribales en la práctica. Una guía sobre el Convenio 169 de la OIT* [The rights of Indigenous and tribal Peoples in practice: a guide to ILO Convention No. 169] - Geneva: ILO, 2009, p. 26. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40dgreports/%40dcomm/%40publ/documents/publication/wcms_126163.pdf

¹⁹⁴ ECLAC. Principle 10 Observatory in Latin America and the Caribbean. Ratifications available at: <https://observatoriop10.cepal.org/es/tratado/acuerdo-regional-acceso-la-informacion-la-participacion-publica-acceso-la-justicia-asuntos>.

¹⁹⁵ ECLAC. *Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean* (LC/PUB.2018/8/Rev.1). Preface, p. 8. ENG version at <https://treaties.un.org/doc/Treaties/2018/03/20180312%2003-04%20PM/CTC-XXVII-18.pdf>



The Escazú Agreement benefits people in Latin America and the Caribbean—especially vulnerable groups—by ensuring access to timely and adequate information, meaningful participation in environmental decision-making, and access to justice when these rights are violated.¹ It also establishes measures to facilitate and enforce these rights.²

An example relevant to Indigenous Peoples is Article 5 which requires States to “facilitate access to environmental information for persons or groups in vulnerable situations,” providing assistance from request to delivery and ensuring equal access and participation.¹⁹⁶ The Agreement also obliges States to support the active, timely, and effective participation of vulnerable groups¹⁹⁷ in line with Indigenous rights standards, and to ensure access to justice through “mechanisms for redress,” including restitution, restoration, compensation, and guarantees of non-repetition.¹⁹⁸ It includes protections for environmental human rights defenders.¹⁹⁹

4. TRENDS AND ISSUES IN LATIN AMERICA IN RELATION TO ENVIRONMENTAL CONSERVATION AND ITS IMPACT ON INDIGENOUS PEOPLES’ RIGHTS: THE CASES OF GUATEMALA, COLOMBIA, ECUADOR, AND PERU

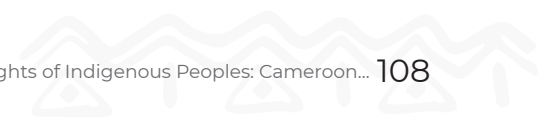
This section analyzes the domestic legal frameworks of Guatemala, Colombia, Ecuador, and Peru in relation to Indigenous Peoples’ rights, alongside environmental and conservation laws that affect them. These countries reflect broader regional challenges including violations of territorial rights, lack of prior consultation, overlap of protected areas with Indigenous lands, and weak enforcement that allows harmful activities which are issues addressed in cases before the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. These decisions also highlight gaps in national legislation that must be addressed

¹⁹⁶ Ibid., art. 5.3.

¹⁹⁷ Ibid., arts. 7.14, 7.15.

¹⁹⁸ Ibid., art. 8.3.g.

¹⁹⁹ Art. 9, *Human rights defenders in environmental matters*



A. GUATEMALA



Territorial rights of Indigenous Peoples in the national legal framework

According to the 1985 Constitution of Guatemala, human rights treaties and conventions accepted and ratified by Guatemala take precedence over domestic law.²⁰⁰ Thus, Guatemala's international obligations should reinforce and strengthen constitutional and legislative protections related to Indigenous Peoples' lands and rights.

The Constitution recognizes diverse ethnic groups, "including Indigenous groups of Mayan descent," and "recognizes, respects, and promotes their ways of life, customs, traditions, forms of social organization, the use of Indigenous dress by men and women, languages, and dialects" (Article 66). It also mandates special protection for lands held under communal or collective tenure (Article 67) and provides that the State shall, through special programs and appropriate legislation, allocate state lands to indigenous communities for their development." (Article 68).

The recognition, regularization, and restitution of Indigenous lands were included in the 1995 Agreement on Identity and Rights of Indigenous Peoples,²⁰¹ part of the 1996 Peace Accords which the State committed to implement through Decree No. 52-2005.²⁰² The Agreement also addresses Indigenous participation, customary law, and cultural rights. However, as noted by the Special Rapporteur on the Rights of Indigenous Peoples in 2018, limited compliance, particularly on land rights, has undermined progress in agrarian reform, political participation, and reconciliation, and "is at the root of many of the current violations of the rights of Indigenous Peoples."²⁰³

²⁰⁰ Political Constitution of the Republic of Guatemala (1985), art. 46. <https://www.cijc.org/es/NuestrasConstituciones/GUATEMALA-Constitucion.pdf>

²⁰¹ UN. Guatemala. *Acuerdo sobre identidad y derechos de los pueblos indígenas* [Agreement on Identity and Rights of Indigenous], March 31, 1995. https://defensores.org.gt/wp-content/uploads/1.01-Acuerdo_Sobre_Identidad.pdf

²⁰² Congress of the Republic of Guatemala. *Decreto No. 52-2005*, [Decree No. 52-2005, Framework Law on the Peace Agreements], September 7, 2005. https://pdba.georgetown.edu/Security/citizenssecurity/Guatemala/leyes/Ley_Marco_Acuerdos_de_Paz_Decreto_52-2005.pdf

²⁰³ UN Human Rights Council. *Informe de la Relatora Especial sobre los derechos de los pueblos indígenas sobre su visita a Guatemala*. [Report of the Special Rapporteur on the rights of Indigenous Peoples on her visit to Guatemala]. A/HRC/39/17/Add.3 (August 10), paras. 17-18. <https://documents.un.org/doc/undoc/gen/g18/246/46/pdf/g1824646.pdf?OpenElement>



Subsequent laws sought to address land issues. The 1999 Land Fund Law created FONTIERRAS to facilitate access to land and support sustainable rural development,²⁰⁴ while the 2005 Cadastral Information Registry Law created the Cadastral Information Registry (RIC) for maintaining and updating the national cadaster. in coordination with the General Property Registry.²⁰⁵

The law defines communal lands as those “owned, possessed, or held by Indigenous or peasant communities as collective entities,” including lands formally registered to the State or municipalities but traditionally held communally.²⁰⁶ It mandates the RIC to recognize and declare such lands, issue certifications, and, where appropriate, order registration. In doing so, the RIC must comply with the Constitution and ILO Convention 169.²⁰⁷

However, these regulatory developments have not ensured effective mechanisms for Indigenous Peoples to secure recognition of their lands, territories, and natural resources in line with international standards. As noted by the Special Rapporteur on the Rights of Indigenous Peoples, “Guatemala lacks a legal framework and adjudication mechanisms that recognize and enforce the collective property rights of indigenous peoples in accordance with their traditional land tenure systems.”²⁰⁸

This was reaffirmed by the IACourtHR in *Maya Q'eqchi' Agua Caliente Community v. Guatemala* (2023), which found that the lack of domestic legislation and effective remedies left the community’s collective property rights, unprotected.²⁰⁹ Despite decades of efforts to secure title, the State failed to recognize the collective, inalienable nature of their lands, allowing overlap with a mining concession.²¹⁰

The Court found that Guatemala’s existing legal framework is insufficient to ensure legal certainty for Indigenous collective property rights, as it lacks procedures tailored to their recognition and protection.²¹¹ As reparation, the State must adopt the legislative and other measures to guarantee collective ownership and the permanent use and enjoyment of lands “without external interference,” ensuring legal certainty, access to necessary natural resources, and Indigenous Peoples’ autonomy in accordance with their traditions and governance systems.²¹² The ruling highlights the need for structural reforms. As noted by the Special Rapporteur, weak protection amid unequal land distribution, insecure tenure, inadequate registration systems, and lack of dispute mechanisms, has enabled the titling of ancestral

204 Congress of the Republic of Guatemala, *Ley del Fondo de Tierras, Decreto No. 24-99* [Land Fund Law , Decree No. 24-99], June 16, 1999, Article 2. <https://faolex.fao.org/docs/pdf/gua17251.pdf>

205 Congress of the Republic of Guatemala. Decreto 41-2005. *Ley de Registro de Información Catastral* [Law on the Cadastral Information Registry]. June 15, 2005. Articles 1, 2. https://portal.ric.gob.gt/sites/default/files/2019-09/ley-del-ric-version-con-portada_0.pdf

206 Law on the Registry of Cadastral Information, *supra* note, Article 23.y.

207 *Ibid.*, Article 65.

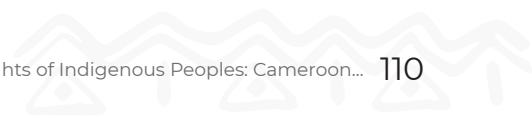
208 UN. Report of the Special Rapporteur on the rights of Indigenous Peoples on her visit to Guatemala, para. 29.

209 Inter-American Court of Human Rights. *Caso Comunidad Indígena Maya Q'eqchi' Agua Caliente Vs. Guatemala. Sentencia del 16 de mayo de 2023. Fondo, Reparaciones y Costas* [Case of the Maya Q'eqchi' Agua Caliente Indigenous Community v. Guatemala . Merits, Reparations, and Costs. Judgment of May 16, 2023]. Series C No. 488, para. 1. *Quotes in English are unofficial translations of the Spanish text of the ruling.* https://www.corteidh.or.cr/docs/casos/articulos/seriec_488_esp.pdf

210 Inter-American Court of Human Rights. *Case of the Maya Q'eqchi' Agua Caliente Indigenous Community v. Guatemala*, *supra* note, paras. 180-189.

211 Inter-American Court of Human Rights. *Case of the Maya Q'eqchi' Agua Caliente Indigenous Community v. Guatemala*, *supra* note, paras. 360.

212 Inter-American Court of Human Rights. *Case of the Maya Q'eqchi' Agua Caliente Indigenous Community v. Guatemala*, *supra* note, paras. 362.



lands to third parties.²¹³ This is further compounded by the granting of extractive, energy, agro-industrial, infrastructure, and conservation licenses without prior consultation or consent.

Another consequence is rising social conflict, including the criminalization of Indigenous Peoples defending their lands, and forced evictions, often occur in protected areas or lands claimed by the State or private actors.²¹⁴ This reflects inconsistencies between environmental regulations and Guatemala's international obligations, particularly regarding territorial rights, consultation and FPIC, and self-determination. The following section briefly examines environmental impact assessments and protected areas.

Regulations on environmental assessments

The 1986 Law on Environmental Protection and Improvement aims “to ensure the maintenance of ecological balance and environmental quality” and the “prevention, regulation, and control of any activities that cause environmental degradation and contamination.”²¹⁵ It requires that “any project, work, industry, or any other activity likely to affect natural resources, the environment, or national heritage, undergo a prior environmental impact assessment study, conducted by qualified experts and approved by the competent authority [now the Ministry of Environment and Natural Resources].”²¹⁶

²¹³ UN. Report of the Special Rapporteur on the rights of Indigenous Peoples on her visit to Guatemala, para. 30.

²¹⁴ UN. Report of the Special Rapporteur on the rights of Indigenous Peoples on her visit to Guatemala, para. 45.

²¹⁵ Congreso de la República de Guatemala. *Ley de Protección y Mejoramiento del Medio Ambiente* [Law on Environmental Protection and Improvement], Decree No. 68-86 (1986), articles 11, 12.b. https://observatorio10.cepal.org/sites/default/files/documents/gt_-_ley_68-86_de_proteccion_y_mejoramiento_del_medio_ambiente_1986.pdf

²¹⁶ Ibid., Article 8.



Case study: Gaps in safeguarding Indigenous rights in environmental impact assessments

The Ministry of Environment and Natural Resources (MARN) regulates environmental impact assessments through the Regulation on Environmental Assessment, Control, and Monitoring (RECSA), adopted in 2003 and repeatedly amended, making it vulnerable to shifting government priorities.²¹⁷ While it promotes broadest participation in the design of plans, programs, and actions on environmental and natural resource issues,²¹⁸ public engagement is limited to high- and moderate risk projects (Categories A and B1).²¹⁹ Participation under RECSA includes publishing notices in widely circulated newspapers within the project's area of influence, in Spanish and, where applicable, the predominant local language, to inform the public of submitted environmental instruments.²²⁰

Project proponents must submit documentation of the participatory methodology, such as "interviews, surveys, workshops, assemblies, or working meetings, adapted to the linguistic context of the area."²²¹ They must also prepare a participation guide detailing public communication, conflict management, and community involvement across project phases. Public input is considered in determining appropriate environmental control measures before the final decision.²²²

Under the current RECSA, interested parties may submit comments or objections within 20 days from the eighth day after publication of the EIA notice. Proponent are informed of objections to strengthen their submissions,²²³ and MARN considers these in its final decision.²²⁴ Projects in protected areas also require a favorable opinion from CONAP and compliance with its safeguards.²²⁵ In participation often resembles company-led promotion, with limited disclosure of impacts or mitigation measures.²²⁶ Indigenous communities are frequently informed only once projects begin,²²⁷ falling short of international standards on prior consultation and FPIC, which require meaningful participation in decision-making.

217 See, in this regard, Colectivo Madre Selva, "Procesos de aprobación de proyectos hidroeléctricos y vulnerabilidades que afectan la transparencia" [Approval processes for hydroelectric projects and vulnerabilities affecting transparency] (2018), pp. 7, 40. <https://madreselva.org.gt/wp-content/uploads/2020/08/Informe-sobre-la-gestion-de-proyectos-hidroelectricos-9-julio-2018.pdf>

218 MARN, Government Agreement Number 148-2024. Reforms to the Regulations on Environmental Assessment, Control, and Monitoring, Government Agreement Number 137-2016 of the President of the Republic. September 25, 2024, art. 1. Available on the MARN website: <https://www.marn.gob.gt/>

219 MARN, Government Agreement Number 137-2016. July 11, 2016, article 43 <https://www.marn.gob.gt/Multimedios/4739.pdf>; Colectivo Madre Selva. *Procesos de aprobación de proyectos hidroeléctricos y vulnerabilidades que afectan la transparencia* [Hydroelectric project approval processes and vulnerabilities affecting transparency] (2018), p. 7. <https://madreselva.org.gt/wp-content/uploads/2020/08/Informe-sobre-la-gestion-de-proyectos-hidroelectricos-9-julio-2018.pdf>

220 MARN, Government Agreement Number 148-2024, Article 20, which amends Article 44 of the previous RECSA.

221 MARN, Government Agreement Number 137-2016. July 11, 2016, Article 43. <https://www.marn.gob.gt/Multimedios/4739.pdf>

222 Ibid.

223 MARN, Government Agreement Number 148-2024, Article 21, which modifies Article 45 of the previous RECSA.

224 MARN, Government Agreement Number 137-2016. July 11, 2016, Article 47. <https://www.marn.gob.gt/Multimedios/4739.pdf>

225 MARN, Government Agreement Number 148-2024, Article 4.C.32, 4.C.33.

226 Colectivo Madre Selva, *supra* note, p. 37.

227 Ibid, p. 36.

Environmental impact studies are conducted by consulting firms²²⁸ hired by project proponents raising concerns about objectivity due to the lack of State involvement. As a result, they are often treated as administrative formalities rather than effective tools for improving environmental and social outcomes.²²⁹

Beyond technical assessments to incorporate a human rights perspective, evaluating impacts on economic, social, cultural, and environmental rights, including water, food security, livelihoods, housing, and cultural and spiritual dimensions, particularly for Indigenous Peoples. They should also assess cumulative impacts arising from multiple projects or activities within a given area.²³⁰

A key gap is the lack of recognition of Indigenous territorial rights in environmental assessments. MARN requires proof of property ownership, or alternatively leases or contracts, which in contexts of insecure land tenure fails to protect Indigenous Peoples facing dispossession.²³¹ Authorities must recognize and safeguard traditional tenure, possession, and collective land use systems²³² to prevent violations of territorial and consultation rights in projects such as hydroelectric and mining concessions, and to reduce conflict and criminalization.

228 MARN, Government Agreement Number 148-2024, Article 4.

229 Colectivo Madre Selva, *supra* note, pp. 40-1.

230 See in this regard, Madre Selva Collective, *supra* note, pp. 30-1.

231 Colectivo Madre Selva, *supra* note, pp. 38-39.

232 *Ibid.*



Regulations on Protected Areas

The 1989 Protected Areas Act declares biodiversity conservation through protected areas a national priority, establishing categories such as national parks, biosphere reserves, multiple-use reserves, natural and cultural monuments.²³³ It also creates the Guatemalan System of Protected Areas (SIGAP), with the National Council for Protected Areas (CONAP) as the highest coordinating authority.

The law requires that the declaration of a protected area be based on a CONAP-approved technical study assessing the physical, social, economic, cultural, and environmental conditions, as well as impacts on local populations.²³⁴ Minimum requirements include boundaries, biophysical and sociocultural analyses, resources and species, human settlements, land tenure, management category, and buffer zones.²³⁵ If recommended, a bill is submitted for its legal creation.²³⁶

CONAP administers protected areas directly or through delegated agreements with public or private entities. In areas with private land, “the owners or possessors... shall be responsible for its management” in accordance with the Guatemalan System of Protected Areas (SIGAP) rules or may delegate this responsibility.²³⁷ Regulations prohibit new settlements in strictly protected areas (e.g., national parks, biological reserves, core areas of biosphere reserves); where settlements exist, “mechanisms will be sought” to align them with conservation goals, or relocation will be arranged.²³⁸ Inhabitants must comply with rules set by the managing authority,²³⁹ and CONAP may grant concessions subject to category-specific restrictions.²⁴⁰

However, the legal framework does not explicitly recognize Indigenous Peoples or their rights in the designation and management of protected areas, nor their role as key conservation actors. Criteria for establishing protected areas should therefore incorporate Indigenous rights in line with international standards, including recognition of customary tenure systems and the State’s obligations to protect territorial rights, particularly in contexts of insecure land tenure.

This also requires addressing complex cases, such as Indigenous communities displaced by armed conflict. For example, the Q’eqchi communities of Xyaál Kóbé, Sa’job’ché, and Sa’kok’pur were forcibly displaced in the 1970s. and upon return, found their lands designated as Laguna de Lachúa Natural Park. The 1989 Protected Areas Law barred their return, and they were not consulted despite some holding historical title predating the park.²⁴¹ Such cases reflect broader human rights violations linked to the implementation of conservation laws and policies, as discussed below.

²³³ Congress of the Republic of Guatemala, *Ley de Áreas Protegidas* [Protected Areas Act], Decree No. 4-89, January 10, 1989, Articles 2, 8. <https://faolex.fao.org/docs/pdf/gua60538.pdf>

²³⁴ Protected Areas Law, Article 11.

²³⁵ Presidencia de la República de Guatemala. *Reglamento de la Ley de Áreas Protegidas, Acuerdo No. 759-90* [Regulations of the Protected Areas Law, Government Agreement No. 759-90], August 22, 1990, Article 11. <https://faolex.fao.org/docs/pdf/gua60539.pdf>

²³⁶ Protected Areas Act, Article 12.

²³⁷ Regulations of the Protected Areas Act, Article 18.

²³⁸ Regulations of the Protected Areas Act, Article 24.

²³⁹ Ibid.

²⁴⁰ Ibid., Articles 27, 28.

²⁴¹ UN, Letter of Allegation sent by various special procedures to the Government of Guatemala - AL GTM 4/2019 (July 22, 2019), p. 5. <https://www.make-the-shift.org/wp-content/uploads/2021/07/guatemala-desalojos-forzosos.pdf>



Case study: Laguna Larga community in the Maya Biosphere Reserve

Laguna Larga is a multicultural community of about 111 families from the Maya Q'eq-chi', Ch'orti', Mam, Achi, Kaqchikel, and Ladino settled in the Maya Biosphere Reserve (Petén) since the early 2000s due to colonization policies, land scarcity, and displacement from armed conflict. The community relied on subsistence farming, livestock, and backyard animal husbandry, and expressed interest in sustainable forestry.²⁴² Located in a "multiple use" zone near the Mexican border, Laguna Larga was recognized by the State through public services, a primary school and its Community Development Council. It also engaged the State, alongside other communities, through an Alternative Proposal for the Comprehensive and Sustainable Development of Communities Affected by the Declaration of Protected Areas.²⁴³

On June 2, 2017, Laguna Larga's 450 inhabitants were forcibly displaced following a mass eviction order and the deployment of nearly 1,500 security personnel including police, army, the Nature Protection Division (DIPRINA) and CONAP. To avoid violence, residents fled hours before the operation, and relocated to El Desengaño in Campeche, Mexico.²⁴⁴

In September 2017, the Inter-American Commission on Human Rights (IACHR) granted precautionary measures, citing "inhumane and degrading conditions," including lack of water, electricity, and sanitation, with families living in makeshift shelters."²⁴⁵ It ordered measures to protect life and integrity, prevent violence, ensure dialogue toward a durable solution, agree on actions with the community, and investigate the events.²⁴⁶ The eviction was carried out under a court order following a complaint by CONAP. The State argued that protected areas law prohibits settlements in multiple-use zones, preventing land tenure recognition or the community's return.²⁴⁷

The Laguna Larga case reflects a broader eviction policy in Petén, with around 125 pending cases. Evictions, previously suspended for over a decade, due to legal proceedings, were rapidly reactivated, reportedly under pressure from economic interests linked to monoculture, mining, hydroelectric, oil, tourism, and carbon credit projects.²⁴⁸ Those resisting have faced criminalization, including charges of "usurpation" or "aggravated usurpation."²⁴⁹ It highlights how conservation regulations in the Maya Biosphere Reserve fail to account for Indigenous land tenure realities shaped by displacement, and overlook community-led efforts toward sustainable, conservation-aligned development. The State has made little effort to reconcile conservation objectives with its international obligations on Indigenous rights.

²⁴² CEPAL/FILAC report, supra note, p. 162.

²⁴³ IACHR. *Medida Cautelar No. 412-17. Pobladores desalojados y desplazados de la Comunidad Laguna Larga respecto de Guatemala* [Precautionary measure No. 412-17. Evicted and displaced residents of the Laguna Larga Community in Guatemala], September 8, 2017, paras. 5, 8. <https://www.oas.org/es/cidh/decisiones/pdf/2017/36-17MC412-17GU.pdf>

²⁴⁴ *Ibid.*, paras. 1, 7.

²⁴⁵ *Ibid.*, para. 28.

²⁴⁶ *Ibid.*, pp. 10, 11.

²⁴⁷ *Ibid.*, para. 15.

²⁴⁸ *Ibid.*, para. 22, and footnote 6.

²⁴⁹ *Ibid.*, para. 23 and corresponding footnote.

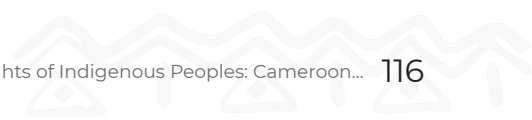


While Indigenous Peoples face criminalization and weak recognition of their territorial rights, State action has been insufficient to address the presence of organized crime groups in protected areas. In the Maya Biosphere Reserve, incursions by illegal armed groups increased in 2024, driving fires and deforestation, and exposing governance gaps.²⁵⁰ Efforts to address these threats must not justify further violations of Indigenous rights. Communities note that while they are prosecuted for residing in protected areas, extractive and agribusiness operations often proceed with limited oversight. With no response to their Alternative Development Proposal, and the rejection of reform bill 6358,²⁵¹ affected communities remain in legal uncertainty, with limited protection and ongoing risk of eviction, undermining recognition of their collective rights and participation in sustainable management.²⁵²

250 RADWIN, Maxwell. "El crimen organizado ejerce una presión sin precedentes sobre la selva tropical más grande de Guatemala" [Organized crime puts unprecedented pressure on Guatemala's largest rainforest], in *Mongabay* (June 7, 2024). <https://es.mongabay.com/2024/06/crimen-organizado-ejerce-presion-sobre-selva-tropical-guatemala/>

251 Un Nuevo Sol Rebelde. "Habitamos y Resistimos: Comunidades denuncian criminalización y exclusión en Áreas Protegidas" [We Live Here and We Resist: Communities Denounce Criminalization and Exclusion in Protected Areas], in *Mesoamerican Community Radio Network* (August 5, 2025). <https://www.radioscomunitarias.info/habitamos-y-resistimos-comunidades-denuncian-criminalizacion-y-exclusion-en-areas-protegidas/>

252 "Comunidades de Laguna del Tigre y Sierra de Lacandon, rechazan dictamen desfavorable sobre iniciativa de ley" [Communities of Laguna del Tigre and Sierra de Lacandón reject unfavorable ruling on bill], in *Mesoamerican Community Radio Network* (September 4, 2024). <https://www.radioscomunitarias.info/comunidades-de-laguna-del-tigre-y-sierra-de-lacandon-rechazan-dictamen-desfavorable-sobre-iniciativa-de-ley/>



B. COLOMBIA



Territorial rights of Indigenous Peoples in the national legal framework

The Constitution of Colombia “recognizes and protects the ethnic and cultural diversity of the Colombian nation,” and affirms the inalienable, imprescriptible, and unseizable nature of the communal lands of ethnic groups.²⁵³ It also recognizes Indigenous Peoples' authority to exercise jurisdiction within their territories. Indigenous territories are constituted as autonomous territorial entities, governed by councils organized according to their customs, with powers to manage their affairs, design development policies and ensure the conservation of natural resources.²⁵⁴

Article 330 provides that natural resource exploitation in Indigenous territories must occur “without detriment to the cultural, social, and economic integrity” of Indigenous communities, and requires the Government to ensure their participation in related decisions.

Law 160 of 1994 established the National System for Agrarian Reform and Rural Peasant Development, providing for land allocation to create, expand, and reorganize Indigenous reserves.²⁵⁵ This is regulated by Decree 2164 of 1995,²⁵⁶ while Decree 1397 of 1996 created the National Commission on Indigenous Territories (CNTI) as a dialogue and monitoring mechanism between Indigenous Peoples and the State.²⁵⁷ Additional measures address territorial rights in the context of armed conflict. Law No. 1448 of 2011²⁵⁸ and Decree Law 4633 of 2011, establish a framework for protection, reparation, and restitution recognizing Indigenous Peoples as collective rights holders,²⁵⁹ and acknowledging territory itself as a victim of the conflict.

²⁵³ Constitución Política de Colombia [Political Constitution of Colombia], 1991, Articles 7, 63.330 and Articles 246, 286, 287. <https://pdba.georgetown.edu/Constitutions/Colombia/colombia91.pdf>

²⁵⁴ Ibid., Article 330.


²⁵⁵ Congress of Colombia, *Ley 160 de 1994*, Articles 38.b, 85-87. https://www.acnur.org/fileadmin/Documentos/Pueblos_indigenas/ley_160_1994_col.pdf

²⁵⁶ Presidencia de Colombia. *Normas reglamentarias. Resguardos Indígenas. Decreto 2164 de 1995. Reglamento de Tierras para Indígenas* [Decree 2164 of 1995]. Land regulations for Indigenous Peoples, partially regulating Chapter XIV of Law 160 of 1994 in relation to the allocation and titling of land to Indigenous communities for the establishment, restructuring, expansion, and reorganization of Indigenous reserves in the national territory. https://www.acnur.org/fileadmin/Documentos/Pueblos_indigenas/decreto_2164_1995_col.pdf?view=1

²⁵⁷ *Decreto No. 1397 de 1996* [Decree No. 1397 of 1996], creating the National Commission on Indigenous Territories and the Permanent Roundtable for Consultation with Indigenous Peoples and Organizations, and enacting other provisions. <https://faolex.fao.org/docs/pdf/col24891.pdf>

²⁵⁸ Official Gazette, Law 1448 of 2011, which establishes measures for the care, assistance, and comprehensive reparation of victims of the internal armed conflict and other provisions. June 10, 2011. https://www.unidad-victimas.gov.co/wp-content/uploads/2024/05/10.-Ley_1448_2011.pdf

²⁵⁹ Decree Law on Victims No. 4633 of 2011, which establishes measures for assistance, care, comprehensive reparation, and restitution of territorial rights to victims belonging to Indigenous Peoples and communities, art. 1. <https://www.acnur.org/fileadmin/Documentos/BDL/2014/9739.pdf>



Decree 2333 of 2014 establishes mechanisms to protect and secure lands ancestrally occupied by Indigenous Peoples,²⁶⁰ allowing communities to request provisional measures against dispossession, eviction, or third-party interventions.²⁶¹ Decree 632 of 2018 sets transitional rules for Indigenous territories in non-municipalized areas of Amazonas, Guainía, and Vaupés, recognizing them as special political-administrative entities²⁶² governed by Indigenous Councils. These authorities exercise economic, environmental, and cultural governance based on their life plans, within national law and coordination frameworks.²⁶³

Indigenous Peoples' Rights in relation to protected areas and environmental matters

The Constitution of Colombia guarantees the right of all persons to a healthy environment and mandates community participation in decisions affecting it. It also obliges the State to protect environmental diversity and regulate the use of natural resources to ensure their sustainable development, conservation, restoration, or replacement.²⁶⁴

Decree 622 of 1977 provides that the declaration of a national park is compatible with the establishment of an Indigenous reserve. Where Indigenous-inhabited areas are included for ecological or biogeographical reasons, "a special regime must ensure the community's permanence and its right to use renewable natural resources."²⁶⁵

Law 99 of 1993, which created the Ministry of the Environment and the National Environmental System, requires territorial entities including Indigenous territories, to "exercise environmental functions in a coordinated manner." This includes participation in departmental plans and programs on environmental management and renewable natural resources, with Indigenous Territories assigned the same environmental roles and responsibilities as municipalities.²⁶⁶

Decree 1275 of 2024 strengthens the recognition of Indigenous Peoples in environmental governance by regulating the role of Indigenous territories and enhancing the authority of their institutions. It allows Indigenous authorities to issue regulations on the protection and management of natural resources and territories, pro-

²⁶⁰ Decree 2333 of 2014, which establishes mechanisms for the effective protection and legal security of lands and territories occupied or possessed ancestrally and/or traditionally by Indigenous Peoples. November 19, 2014. <https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1437757>

²⁶¹ Organización Nacional Indígena de Colombia (ONIC). "Diez preguntas para entender el decreto 2333 de 2014 que protege los territorios ancestrales" [Ten questions to understand Decree 2333 of 2014, which protects ancestral territories]. <https://onic.org.co/sitio/comunicados-onic/2501-diez-preguntas-para-entender-el-decreto-2333-de-2014-que-protege-los-territoriosancestrales>

²⁶² Decree 632 of 2018, which establishes the fiscal and other regulations necessary to put into operation the Indigenous territories located in non-municipalized areas of the departments of Amazonas, Guainía, and Vaupés. April 10, 2018, Article 3.

²⁶³ Decree 632 of 2018, Article 5.

²⁶⁴ Political Constitution of Colombia, Articles 79, 80.

²⁶⁵ Decree 622 of 1977, "Whereby Chapter V, Title II, Part XIII, Book II of Decree-Law No. 2811 of 1974 on the 'national park system'; Law 23 of 1973 and Law 2 of 1959 are partially regulated." March 16, 1977, Article 7. <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=8265>

²⁶⁶ Law 99 of 1993, "creating the Ministry of the Environment, reorganizing the public sector responsible for the management and conservation of the environment and renewable natural resources, organizing the National Environmental System (SINA), and enacting other provisions." Articles 63, 65, 67. <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=297>

vided these are more stringent than existing standards, and requires other authorities to respect them.²⁶⁷ Within the frameworks, preference is given to Indigenous regulatory systems, alongside Constitution principles and national and international jurisprudence recognizing their role as political, administrative, environmental, and jurisdictional authorities.²⁶⁸

Indigenous and state environmental authorities must jointly establish mechanisms based on coordination, complementarity, and respect for Indigenous autonomy and knowledge systems to ensure ecosystems and territorial protection.²⁶⁹ Within their territories, Indigenous authorities exercise complementary powers including issuing and implementing environmental regulations, managing resources, and sanctioning community members under their own justice systems. For infractions by non-Indigenous persons, State authorities must coordinate with Indigenous authorities to impose sanctions and environmental restoration measures. Indigenous authorities may also plan, budget, and administer resources for their environmental functions.

Decree 488 of 2025, establishes fiscal and operational rules for Indigenous territories and their coordination with other territorial entities, reinforcing Constitutional principles and rights. It affirms that Indigenous Territories operate according to their own knowledge systems, traditions; guarantees their rights to define development priorities; and upholds cultural and environmental diversity, self-determination, and the primacy of their own regulatory systems. It also introduces the principle of “cultural objection,” allowing Indigenous Peoples to oppose third-party initiatives within their territories based on their knowledge systems, as an expression of their autonomy and the right to safeguard their survival.²⁷⁰

Autonomy and self-determination take effect upon issuance of an administrative act formalizing the intercultural agreement by the Ministry of the Interior, following territorial delimitation, a census, and registration of the Indigenous Council.²⁷¹ The Decree affirms the powers of Indigenous Territories to establish their internal governance based on their Law of Origin, and to define and implement policies through their Life Plans,²⁷² which express their vision of life and guide the exercise of autonomy, resource management, and public functions.²⁷³

The Decree outlines the powers of Indigenous Territories in land use planning; their own education and health systems; the strengthening of Indigenous jurisdiction; and financing.²⁷⁴ It also requires coordination with other levels of government based on principles of concurrence, complementarity, and interdependence.²⁷⁵ Despite these advances in territorial rights, autonomy, and environmental governance, significant challenges remain in effectively exercising these rights in practice.

²⁶⁷ Ministry of Environment and Sustainable Development. *Decreto No. 1275 de 2024* [Decree No. 1275 of 2024], October 15, 2014. "Establishing the rules required for the functioning of Indigenous territories in environmental matters and the development of the environmental competencies of Indigenous authorities and their effective coordination with other authorities and/or entities," Article 3.H. <https://www.minambiente.gov.co/wp-content/uploads/2024/12/01.-Decreto-1275-de-2024.pdf>

²⁶⁸ Decree 1275 of 2024, art. 3.J.

²⁶⁹ Decree 1275 of 2024, art. 5.

²⁷⁰ Ministry of the Interior. *Decreto 0488 de 2025* [Decree 0488 of 2025], May 5, 2025. "Whereby the necessary fiscal regulations and others relating to the functioning of Indigenous territories and their coordination with other territorial entities are enacted," Article 4: Principles. <https://www.mpcindigena.org/biblioteca/decreto-0488-de-2025/>

²⁷¹ See, in this regard, Decree 0488 of 2025, articles 5-12.

²⁷² Decree 488 of 2025, Article 14.

²⁷³ Decree 488 of 2025, Article 20.

²⁷⁴ Decree 488 of 2025, Articles 22-36

²⁷⁵ Decree 488 of 2025, Article 39.



Case study: The U'wa people before the Inter-American Court of Human Rights

In June 2024, the Inter-American Court of Human Rights ruled in *U'wa Indigenous People and its members v. Colombia*. The case concerned the State's failure to effectively protect the U'wa people's right to ancestral property, including the lack of full title to their territory and the implementation of oil, mining, tourism, and infrastructure projects without prior consultation. It was also alleged that, despite complaints and appeals against these projects, the U'wa lacked an effective remedy to safeguard their right to collective property and other rights recognized in the American Convention on Human Rights.²⁷⁶

For decades, the U'wa people have sought recognition of their full ancestral territory as a single reserve. However, reserve-establishment processes have been slow and ineffective, undermining their right to use and enjoy their lands, particularly due to incomplete titling and the granting of concessions to third parties.

Another issue was the creation of El Cocuy National Natural Park (PNNC) in 1977, which overlaps with about 135,000 hectares of U'wa ancestral territory later recognized as part of their reserve.²⁷⁷ Managed by the National Parks Directorate, the park has limited the U'wa's environmental authority and ability to exercise governance. The U'wa also reported inadequate State control over tourism-related impacts, including access to sacred areas and pollution from wastewater, which threaten both their environment and cultural integrity.²⁷⁸

The State proposed co-administration of El Cocuy PNNC, but the U'wa people rejected it. In 2016, a provisional agreement prohibited the entry of tourists and unauthorized persons into the Park,²⁷⁹ and the State reported measures to ensure U'wa access to the overlapping territory.

The Inter-American Court found that the U'wa have not had consistent participation in the administration of the PNNC, but only limited involvement through specific agreements. Key decisions such as management plans, strategic vision, entrance fees, and tourism and education functions, were adopted without their participation, and their worldview was not considered. The Court also found no evidence that the U'wa have benefited from the park's administration.²⁸⁰

²⁷⁶ Inter-American Court of Human Rights. *Caso Pueblo Indígena U'wa y sus miembros Vs. Colombia. Fondo, Reparaciones y Costas. Sentencia del 4 de julio de 2024*. [Case of the U'wa Indigenous People and Members Thereof v. Colombia. Merits, Reparations, and Costs. Judgment of July 4, 2024]. Series C No. 530, para. 1. https://www.corteidh.or.cr/docs/casos/articulos/seriec_530_esp.pdf

²⁷⁷ Inter-American Court of Human Rights. Case of the U'wa Indigenous People, para. 144.

²⁷⁸ Ibid., paras. 92, 93.

²⁷⁹ Ibid., paras. 92, 93.

²⁸⁰ Ibid., paras. 155, 156.

The Court concluded that Colombia failed “to guarantee the effective participation of Indigenous Peoples in the administration of protected natural areas,” undermining their rights to collective property and participation.²⁸¹ It also found that the State allowed third-party ecotourism in areas of cultural and spiritual significance to the U'wa, constituting a violation of their cultural right, with no evidence of adequate protective measures .”²⁸²

The Court found violations of Articles 21 (collective property), 23 (political participation), and 26 (including cultural rights) of the American Convention. It also held the State responsible for ineffective territorial titling, failure to conduct prior consultations on extractive activities, violations of freedom of expression, self-determination, and children's rights linked to the repression of protests, and omissions in responding to judicial appeals by the U'wa.

The U'wa case reflects broader challenges in other protected areas, where unregulated tourism, implemented without Indigenous consultation, has harmed ecosystems and sacred sites. Similarly, in Serranía de Chiribiquete National Park, overflights pose serious risks to Indigenous Peoples living in voluntary isolation.²⁸³

In the U'wa case, the Inter-American Court echoed concerns that, despite legal recognition of collective property, Indigenous Peoples in Colombia face ongoing barriers to securing effective territorial protection and determining land use due to strong third-party interests. It also highlighted shortcomings in reserve-establishment processes, where allocated lands often fail to reflect actual needs, compounded by weak guarantees of prior consultation for extractive and other activities.²⁸⁴ Progress on reserve formalization remains limited. As of June 2024, 889 reserves had been established, while 1,228 requests were recorded, (502 complete and 726 incomplete), including 676 for establishment, 506 for expansion, 45 for re-organization, and one for restructuring.²⁸⁵

This backlog highlights that recognition and protection of Indigenous territories remain unresolved. It must also be considered alongside other challenges such as deforestation, highlighting the need to strengthen Indigenous participation in forest management and protection.

281 Ibid., para. 156.

282 Ibid., para. 285.

283 National Parks (Colombia). “En riesgo continuo por el ecoturismo: la realidad de las áreas protegidas en el Amazonas” [Under constant threat from ecotourism: the reality of protected areas in the Amazon]. April 16, 2025. <https://www.parquesnacionales.gov.co/sala-prensa/noticias/en-riesgo-continuo-por-el-ecoturismo-la-realidad-de-las-areas-protegidas-en-el-amazonas/>

284 Ibid., paras. 23-29.

285 Comisión Nacional de Territorios Indígenas (CNTI). “Balance sobre la formalización y acceso a la propiedad colectiva de los pueblos indígenas en el año 2020” [Assessment of the formalization and access to collective property rights for Indigenous Peoples in 2020]. 23 November 2022. <https://www.cntindigena.org/balance-sobre-la-formalizacion-y-acceso-a-la-propiedad-colectiva/>



Case study – Deforestation and other threats in Indigenous territories and protected areas

According to the Attorney General's Office (May 2025), 88,808 hectares were deforested in the Colombian Amazon between October 2024 and March 2025, alongside 1,107 kilometers of new forest roads, many in or near national parks such as Chiribiquete, La Macarena, Nukak, Farallones de Cali, and Barí. linked to illicit crops, and agricultural expansion.²⁸⁶ While the Ministry of Environment and Sustainable Development reported a 33% decrease in early 2025 deforestation (27,052 hectares compared to 40,219 in the same period), annual figures show a worsening trend, rising from 79,000 hectares in 2023 to 107,000 in 2024. Deforestation within 14 national natural parks, declined by 54% due to containment measures, yet 13 hotspots persist particularly in Meta, Guaviare, Caquetá, and Putumayo.²⁸⁷

The CNTI reports that Indigenous territories in the Colombian Amazon are among the most affected by deforestation. Following the 2017 Final Peace Agreement, Colombia recorded its highest deforestation rates (2013-2021), with 219,973 hectares lost, 65.33% (144,147 hectares) in the Amazon.²⁸⁸ Forest loss has been particularly severe in northwestern Amazon reserves, including Tinigua (36,016 ha), Nukak Maku (10,184 ha), Llanos del Yarí-Yaguará II (9,380 ha), La Esperanza – Uysthaya (7,550 ha), and Motilón-Barí (7,357 ha).²⁸⁹

The main drivers of deforestation nationwide include land grabbing, agricultural expansion, mining, logging, road infrastructure, agribusiness, drug trafficking, and other illegal economies. In Guaviare, where much of the territory consists of protected areas and Indigenous reserves, 17 territorial formalization requests were recorded in 2022, many still pending. Deforestation persists across municipalities with unresolved claims, particularly in San José del Guaviare which accounts for most requests.²⁹⁰ Since the 2017 Peace Agreement, illegal armed groups have expanded control for coca cultivation in biodiverse areas, intensifying forest loss.²⁹¹

Indigenous territories have seen a sharp rise in illicit coca cultivation, from 143,000 ha in 2020 to 204,000 ha in 2021.²⁹² That year, 52% of coca crops were located in priority conservation areas, including national parks, forest reserves, Indigenous territories, and Afro-Colombian lands.²⁹³ This trend reflects the absence of an effective State response to the structural drivers of conflict and environmental degradation and noted by the CNTI.

²⁸⁶ Office of the Attorney General. "Procuraduría reporta más de 88.000 hectáreas deforestadas y 1.107 kilómetros de vías ilegales en seis meses en la Amazonía colombiana" [Attorney General reports more than 88,000 hectares deforested and 1,107 kilometers of illegal roads in six months in the Colombian Amazon], May 20, 2025. <https://www.procuraduria.gov.co/Pages/procuraduria-reporta-mas-88000-hectareas-deforestadas-1107-kilometros-vias-ilegales-seis-meses-amazonia.aspx>

²⁸⁷ "Deforestación en la Amazonía cayó 33% en el primer trimestre" [Deforestation in the Amazon fell by 33% in the first quarter], in La Silla Vacía, June 5, 2025. <https://www.lasillavacia.com/en-vivo/deforestacion-en-la-amazonia-se-redujo-un-33-en-el-primer-trimestre/>

²⁸⁸ Observatory of Indigenous Peoples' Territorial Rights (ODTPI)/CNTI. *Territorio en Riesgo: efectos de la deforestación en territorios indígenas* [Territory at risk: Effects of deforestation on Indigenous territories], 2023, pp. 56-70. <https://www.cntiindigena.org/wp-content/uploads/2023/06/informe-deforestacion.pdf>

²⁸⁹ For more information, see *Ibid.*, pp. 56-64.

²⁹⁰ *Ibid.*, p. 117.

²⁹¹ *Ibid.*, p. 94.

²⁹² *Ibid.*, p. 94.

²⁹³ *Ibid.*, p. 96 citing United Nations Office on Drugs and Crime (UNODC) – Integrated Illicit Crop Monitoring System (IICS) 2021.

Post-Peace Agreement efforts improve conditions for populations affected by armed conflict have fallen short, failing to reduce violence, poverty, or institutional neglect. Instead, violence and illegal activities have intensified, particularly in rural, Indigenous, and Afro-Colombian areas. There has been little progress in implementing key AFP commitments especially on comprehensive rural reform and addressing illicit crops, leaving gaps in land tenure formalization, support for family farming, and viable economic alternatives.²⁹⁴

In response to deforestation and the reconfiguration of armed groups after the Peace Agreement, the State deployed military operations (2018 – 2022) in environmentally sensitive areas. However, these measures have often targeted environmental defenders, peasants, and Indigenous people rather than major deforestation networks.²⁹⁵ According to INDEPAZ, from 2016 to mid-2025, 1,791 social leaders have been killed, including 351 Indigenous leaders defending their communities' rights.²⁹⁶

These dynamics have reinforced longstanding mistrust and conflict, driven by militarization and reprisals against park officials and Indigenous authorities, while undermining Indigenous-led participatory conservation.²⁹⁷ This highlights the urgent need to address Indigenous Peoples' claims to ancestral territories and to strengthen their role in monitoring deforestation and conservation efforts. For years, forestry policies excluded Indigenous Peoples from deforestation responses.²⁹⁸ Recognition came only in 2018, with the "Bosques Territorios de Vida" (Forests Territories of Life) strategy, which emphasized territorial governance and Indigenous knowledge.²⁹⁹ Subsequent decrees (632 of 2018, 1275 of 2024, and 488 of 2025) further strengthen Indigenous autonomy and their role in environmental governance, including coordination with State institutions to address deforestation.

²⁹⁴ Ibid., p. 95.

²⁹⁵ Ibid., pp. 139-141.

²⁹⁶ Observatory of Human Rights and Conflicts – INDEPAZ. Viewer of murders of individuals, leaders, and human rights defenders in Colombia 2016–2024. Available at: <https://indepaz.org.co/observatorio-de-derechos-humanos-y-conflictividades/>.

²⁹⁷ Ibid., p. 141.

²⁹⁸ Ibid., pp. 25-31.

²⁹⁹ See MINAMBIENTE, IDEAM. *Bosques, Territorios de Vida. Estrategia Integral de Control a la Deforestación y Gestión de los Bosques* [Forests Territories of Life: Comprehensive Strategy for Deforestation Control and Forest Management], 2018. <https://www.minambiente.gov.co/wp-content/uploads/2021/10/Estrategia-Integral-de-control-a-la-Deforestacion-y-Gestion-de-los-Bosques.pdf>

C. ECUADOR



Territorial rights of Indigenous Peoples in the national legal framework

The 2008 Constitution of Ecuador is among the most progressive in the region, defining the State as intercultural and plurinational, and recognizing Indigenous, Afro-Ecuadorian and the Montubio peoples. It also enshrines the rights of nature (Pacha Mama) and adopts *sumak kawsay* (good living) as a guiding principle. Article 417 provides that international human rights instruments are directly applicable, based on the principles of pro human being and non-restriction of rights.

Article 57 recognizes 21 collective rights of Indigenous Peoples, including: the inalienable and indivisible nature of their communal lands; the right to maintain and obtain title to ancestral territories; and participation in the use, management, and conservation of natural resources. It also affirms rights to protect biodiversity and traditional environmental practices, to participate in State conservation programs; and not to be displaced. Special protections are granted to Indigenous Peoples in voluntary isolation, whose territories are declared intangible, with State obligations to safeguard their lives and self-determination. The article further guarantees participation in public decision-making State and the right to free, prior, and informed consultation on resource-related activities, although the Constitution allows State decisions to proceed even without consent.³⁰⁰

The Constitution also guarantees participation in environmental governance, requiring community involvement in planning, oversight and decision-making on activities with environmental impacts. Any state decision affecting the environment must be consulted with affected communities; where there is majority opposition, the final decision must be justified by the competent authority in accordance with the law.³⁰¹

Article 171 recognizes the right of Indigenous authorities to exercise jurisdiction based on their own laws and traditions within their territories. The Constitution also established decentralized autonomous governments,³⁰² and allows Indigenous and Afro-Ecuadorian Peoples to form territorial constituencies with equivalent powers, grounded in interculturality plurinationality, and collective rights.³⁰³ The national system of protected areas includes state, community, and private subsystems, with State oversight and encouragement of Indigenous participation in their management.³⁰⁴

³⁰⁰ Constitución de la República de Ecuador [Constitution of the Republic of Ecuador], 2008, art. 57. https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf

³⁰¹ Ibid., art. 395.3, 398.

³⁰² Constitution of the Republic of Ecuador. 2008. Art. 238.

³⁰³ Ibid., art. 257.

³⁰⁴ Ibid., art. 405.

While the extractive activities are generally prohibited in protected and intangible areas, exceptions may be authorized by the Presidency and approved by the National Assembly with the possibility of a referendum.³⁰⁵ Despite strong Constitutional protections, subsequent legislation has been ineffective in securing Indigenous territorial rights.

The 2016 Organic Law on Rural Lands and Ancestral Territories assigns land delimitation and titling to State authorities, including in protected areas, where coordination with environmental authorities is required and activities must follow management plans.³⁰⁶ Although it provides for sanctions for environmental harm,³⁰⁷ the law has been criticized for inadequate consultation with Indigenous Peoples, and for procedures that lack an intercultural approach and fall short of international standards.³⁰⁸

The creation of Indigenous territorial districts is regulated by the 2010 Organic Code of Territorial Organization, Autonomy, and Decentralization (COOTAD). It allows parishes, cantons, or provinces with majority Indigenous, Afro-Ecuadorian, and Montubio populations to adopt this system through a consultation approved by at least two-thirds of voters.³⁰⁹ The initiative to establish these constituencies may be led by the communities themselves or by the relevant decentralized autonomous government.

The process requires support from at least 10% of the constituency's inhabitants or an absolute majority of the relevant government authorities.³¹⁰ Once established, Indigenous territorial constituencies assume the regulatory powers of the corresponding level of government.³¹¹

COOTAD provides those ancestral territories of Indigenous, Afro-Ecuadorian, and Montubio Peoples within protected natural areas shall continue to be communally occupied and administered, in accordance with their ancestral knowledge and practices and aligned with national conservation policies. It also requires the State to adopt mechanisms to expedite the recognition and legalization of these territories.³¹²

The Special Rapporteur on Indigenous Peoples noted that progress in establishing Indigenous territorial districts has been limited due to the complexity of the process, lack of State support and their subordination to the administrative division and procedures.³¹³

305 Ibid., art. 407.

306 National Assembly – Ecuador. *Ley Orgánica de Tierras Rurales y Territorios Ancestrales* [Organic Law on Rural Lands and Ancestral Territories], 2016, arts. 77-80. <https://www.gob.ec/sites/default/files/regulaciones/2021-01/DocumentoLey-Organica-Tierras-Rurales-Territorios-Ancestrales.pdf>

307 Ibid., art. 84.

308 UN. *Visita al Ecuador. Informe de la Relatora Especial sobre los derechos de los pueblos indígenas* [Report of the Special Rapporteur on the rights of Indigenous Peoples: Visit to Ecuador], A/HRC/42/37/Add.1 (July 4, 2019), para. 22. <https://docs.un.org/es/A/HRC/42/37/Add.1>

309 *Código Orgánico. Organización Territorial, Autonomía, Descentralización* [Organic Code on Territorial Organization, Autonomy, and Decentralization], 2010, Article 94. https://www.gob.ec/sites/default/files/regulaciones/2021-01/Documento_Codigo-Organico-Organización-Territorial-Autonomia-Descentralización.pdf

310 Ibid., art. 95.

311 Ibid., art. 7.

312 Ibid., art. 100.

313 UN. *Visita al Ecuador. Informe de la Relatora Especial sobre los derechos de los pueblos indígenas* [Report of the Special Rapporteur on the rights of Indigenous Peoples: Visit to Ecuador], A/HRC/42/37/Add.1 (July 4, 2019), para. 23. <https://docs.un.org/es/A/HRC/42/37/Add.1>



Indigenous Peoples' rights in environmental legislation

The 2017 Organic Environmental Code regulates constitutional environmental rights and establishes a Community Subsystem within the National System of Protected Areas, allowing communes, communities, Peoples, and nationalities to have areas formally recognized by the State the National Environmental Authority defines the criteria for such designation. It also provides that communities are responsible for administering activities under each area's management plan, while the Authority sets administrative mechanisms and supports the development of these plans.³¹⁴

The Environmental Code provides for coordination between Indigenous Peoples and decentralized governments in managing protected areas, recognizing Indigenous rights to sustainably use natural resources in line with their traditional practices and approved management plans.³¹⁵ It allows for the legalization of lands held prior to protected area designation, including free allocation to Indigenous Peoples where requirements are met. While extractive activities are generally prohibited in protected areas and intangible zones, exceptions may be authorized under the Constitution on grounds of national interest.³¹⁶

Communes, communities, Peoples, and nationalities may submit proposals for forest resource management and conservation to the National Environmental Authority, in line align with the Code. It also clarifies that non-commercial, traditional use of wildlife and forest products for subsistence and cultural purposes is not considered a violation, subject to quotas set by Authority.³¹⁷

³¹⁴ *Código Orgánico del Ambiente* [Organic Code of the Environment], Official Register No. 983 (2017), art. 45. https://www.gob.ec/sites/default/files/regulations/2018-09/Documento_Código-Orgánico-Ambiente.pdf

³¹⁵ *Ibid.*, art. 48.

³¹⁶ *Ibid.*, art. 54.

³¹⁷ *Ibid.*, art. 315.



Case study: Challenges for the protection of the Tagaeri and Taromenane Indigenous Peoples in voluntary isolation

In September 2024, the Inter-American Court of Human Rights issued its first ruling Indigenous Peoples in voluntary isolation (PIAV) in *Tagaeri and Taromenane Indigenous Peoples v. Ecuador*. The case violations linked to extractive projects affecting their territories and way of life, as well as violent incidents involving the deaths of community members and the lack of protection for two girls. The Court also highlighted contradictions in Ecuadorian law, which prohibits extractive activities in protected and intangible areas but allows exceptions through declarations of national interest.

The Tagaeri and Taromenane Peoples, part of the Waorani people and living in voluntary isolation, have long inhabited the Yasuní region. Yasuní National Park was established in 1979 over much of their ancestral territory, and in 1999, the Tagaeri-Taromenane Intangible Zone (ZITT) was created to protect them, prohibiting extractive activities.³¹⁸ However, its delimitation was delayed until 2007, when a buffer zone was also established; the ZITT was later expanded following a 2019 referendum.³¹⁹ Despite these protections, the State authorized oil activities in parts of Yasuní, through a declaration of national interest in 2013, excluding the ZITT. Subsequent approvals of environmental studies and contracts for seismic exploration in nearby areas proceeded on the basis that these zones lay outside the ZITT, despite concerns over the presence of PIAVs.³²⁰

The Court held that any exceptions to the prohibition on access to or exploitation of PIAV territories must be clearly established in law and aimed at protecting their rights or addressing exceptional emergencies. It emphasized that such measures must be proportionate and must not undermine their right to remain uncontacted, in line with the precautionary principle.³²¹

The Court found that the State failed to act with due diligence in delimiting the ZITT, as required by the 1999 decree. The inter-institutional commission was created five years later, and delimitation was completed in 2007, undermining the protection of the PIAV's territorial rights.³²²

The Court emphasized that the ZITT's boundaries must be expanded, as they do not reflect the mobility of PIAV, exposing them to extractive risks. It held that protection measures must be dynamic, respect mobility and cultural characteristics, uphold the principle of no contact and territorial integrity, and guarantee the decision to remain in isolation. Where other Indigenous Peoples may be affected, prior consultation must be ensured in line with established standards.³²³

³¹⁸ Inter-American Court of Human Rights. *Caso Pueblos Indígenas Tagaeri y Taromenane Vs. Ecuador, Excepción preliminar, Fondo, Reparaciones y Costas*. [Case of the Tagaeri and Taromenane Indigenous Peoples v. Ecuador. Preliminary Objection, Merits, Reparations, and Costs]. Judgment of September 4, 2024. Series C No. 537, paras. 108, 109. https://corteidh.or.cr/docs/casos/articulos/seriec_537_esp.pdf


³¹⁹ *Ibid.*, paras. 111-113.

³²⁰ *Ibid.*, paras. 116-130.

³²¹ *Ibid.*, para. 207.

³²² *Ibid.*, para. 212.

³²³ *Ibid.*, para. 215.



Regarding the declaration of national interest for oil exploitation in blocks 31 and 43, the Court noted that, although the ZITT was excluded, activities in surrounding areas still posed risks. It found that the the precautionary principle was not upheld, as reports of PIAV presence were not in considered and no adequate safeguards ensured the principle of no contact. Consequently, the State violated the PIAV's right to collective property and self-determination.³²⁴

The Court also took note of the results of a popular consultation held in August 2023 in which the majority voted to keep oil in block 43 underground. While it did not assess the constitutionality of the consultation, it emphasized that maintaining the oil underground, given its proximity to the ZITT, helps guarantee its intangibility, and therefore the property and right to self-determination of the PIAV.³²⁵

The Court further observed that oil concessions have triggered additional pressures, including logging and third-party incursions. Despite some State efforts, enforcement has been ineffective, with ongoing illegal activities such as logging, continuing to threaten the no contact principle and the integrity of PIAV territories.³²⁶

The Court found that these conditions violated the rights to collective property and self-determination of the Tagaeri and Taromenane Peoples and other PIAV in the western Ecuadorian Amazon. Given the interdependence of their rights, it also determined violations of their rights to health, food, housing, a healthy environment, cultural identity, and a dignified life, under Article 26 of the American Convention.³²⁷

The Inter-American Court of Human Rights ordered several reparations including continued investigations into the violent events and accountability for those responsible; the creation of a Technical Commission to evaluation the Tagaeri and Taromenane Intangibility Zone; and the adoption of measures to implement the 2023 referendum to keep oil in Block 43 underground. It also required the State to submit annual reports on compliance with protection measures for Peoples in voluntary isolation under the IACHR Precautionary Measures.

³²⁴ Ibid., para. 227.

³²⁵ Ibid., para. 228.

³²⁶ Ibid., para. 239.

³²⁷ Ibid., paras. 239, 317.



Case study: Organic Law on the Recovery of Protected Areas and Promotion of Local Development

In June 2025, Ecuador's President submitted a draft "Law for the Recovery of Protected Areas and Promotion of Local Development," which was approved a month later after being classified as an "economic emergency." The proposal cited the need for increased conservation resources amid the growing presence of organized crime linked to illegal mining, logging, smuggling, and drug trafficking. The law seeks to expand economic opportunities, particularly tourism, by mobilizing financing and attracting private investment.

The law seeks to conserve natural heritage by promoting public and private investment in protected area management, generating employment, supporting local development through responsible ecotourism activities; and strengthening security to prevent illegal activities.³²⁸ It authorizes the National Environmental Authority to regulate protected areas, and allows their management through contractual arrangements with national or international private actors.³²⁹ These arrangements may cover tourism services, public access, environmental services, protection and scientific research, with specific requirements to be defined in the laws' Regulations.³³⁰

The law has been criticized for failing to recognize Indigenous Peoples and their collective rights within protected areas. At least 10 Indigenous, Afro-Ecuadorian, and Montuvio nationalities, covering over 2 million hectares could be affected by the proposed private management model.³³¹ Critics argue it reinforces a longstanding disregard for Indigenous rights and promotes a model that treats the State as the owner of protected areas for economic use. Its adoption as an urgent economic measure also bypassed broad debate and prior consultation, despite directly affecting Indigenous territories.³³²

The recognition of Indigenous territorial rights in protected areas remains unresolved, compounded by the lack of prior consultation in their designation. As Amazon Frontlines noted when the bill was presented:

"The bill [...] threatens to further complicate the situation. The aim of the bill is to allow private actors to take charge of the management and administration of protected areas, which directly conflicts with the collective rights of Indigenous Peoples to exercise their authority in their territories, develop their own forms of coexistence and their own laws, and promote their own biodiversity management practices."³³³

³²⁸ Presidency of the Republic of Ecuador. *Ley Orgánica de Recuperación de Áreas Protegidas y Promoción del Desarrollo Local* [Organic Law on the Recovery of Protected Areas and Promotion of Local Development] (2025), art. 3. <https://www.teleamazonas.com/uploads/files/2025/06/14/PROYECTO-DE-LEY-ORGANICA-DE-RECUPERACION-DE-AREAS-PROTEGIDAS-Y-PROMOCION-DEL-DESARROLLO-LOCAL.pdf>

³²⁹ Ibid., art. 4.

³³⁰ Ibid., art. 5.

³³¹ Amazon Frontlines. "Technical analysis of the draft bill 'Law for the Recovery of Protected Areas and the Promotion of Local Development'", June 2025. <https://amazonfrontlines.org/chronicles/the-bill-for-the-recovery-of-protected-areas-promotes-the-privatization-of-natural-heritage-and-threatens-the-territories-and-autonomy-of-indigenous-peoples/>

³³² Ibid.

³³³ Ibid.



Indigenous Peoples' territorial rights in the national legal framework

The 1993 Constitution of Peru guarantees the right to private or communal land ownership and recognizes the legal existence and cultural identity of the Peasant and Native Communities—terms used for Indigenous Peoples of the Sierra and Amazonia, respectively. These communities have autonomy over their organization, communal work, land use and disposal, and their economic and administrative affairs. It also establishes that their land rights are imprescriptible.³³⁴

The property rights of rural and Indigenous communities are further developed in specific legislation. The 1978 Law on Indigenous Communities and Agrarian Development in the Jungle and Jungle Edge, together with its regulations, establishes the framework for recognizing Indigenous lands and for identifying forest areas granted to communities for use (*cesión de uso*).³³⁵

The 1987 General Law on Rural Communities applies to coastal, highland, and riverine communities, regulating members' rights and duties, internal organization, communal property, and economic activities.³³⁶

The 1987 Law declaring the demarcation and titling of rural community territories a matter of national necessity and social interest establishes procedures to address the lack of land titles.³³⁷ It was amended in April 2025 by Law No. 32293 to include residents of informal settlements established between 2004 and 2015 in the

³³⁴ Constitución Política del Perú [Political Constitution of Peru] (1993), arts. 88, 89. https://cdn.www.gob.pe/uploads/document/file/198518/Constitucion_Politica_del_Peru_1993.pdf?v=1594239946

³³⁵ Ley de Comunidades Nativas y de Desarrollo Agrario de la Selva y Ceja de Selva [Law on Native Communities and Agricultural Development in the Jungle and Jungle Edge]. Decree Law No. 22175 (1978). <https://www.pj.gob.pe/wps/wcm/connect/fbb50c804c7e5783adf4efe93f7fa794/Decreto+Ley+22175+Ley+de+Comunidades+Nativas+y+desarrollo+agrario+de+las+regiones+de+la+Selva+y+Ceja+de+Selva.pdf?MOD=AJPERES&CACHEID=fbb50c804c7e5783adf4efe93f7fa794>; see also Ombudsman's Office – Peru. *El largo camino hacia la titulación de las comunidades campesinas y nativas* [The long road to titling rural and Indigenous communities]. (2018), p. 11. <https://www.defensoria.gob.pe/wp-content/uploads/2019/01/Informe-de-Adjuntía-Nº-002-2018-DP-AMASPPI-PPI.pdf>.

³³⁶ Ley No. 24656. *Ley General de Comunidades Campesinas* [Law No. 24656. General Law on Peasant Communities], 1987. https://www2.congreso.gob.pe/sicr/cendocbib/con3_uibd.nsf/1DAB0BF2E43B-8FBB0525797B006DE3C0/%24FILE/1_LEY_24656_Ley_General_Comunidades_Campesinas_SPIJ.pdf. Ombudsman's Office – Peru. *El largo camino hacia la titulación de las comunidades campesinas y nativas* [The long road to titling rural and Indigenous communities]. (2018), p. 10. <https://www.defensoria.gob.pe/wp-content/uploads/2019/01/Informe-de-Adjuntía-Nº-002-2018-DP-AMASPPI-PPI.pdf>

³³⁷ Law 24657 – Declares the Demarcation and Titling of the Territory of Rural Communities to be of National Necessity and Social Interest (1987). See also Ombudsman's Office – Peru. *El largo camino hacia la titulación de las comunidades campesinas y nativas* [The long road to titling rural and Indigenous communities]. (2018), p. 10. <https://www.defensoria.gob.pe/wp-content/uploads/2019/01/Informe-de-Adjuntía-Nº-002-2018-DP-AMASPPI-PPI.pdf>

formalization process.³³⁸ This reform has raised concerns due to the lack of prior consultation, its disregard for the imprescriptible nature of communal lands, and the risk of facilitating dispossession by non-members occupants with precarious claims.³³⁹

The Ministry of Agriculture and Irrigation oversees the recognition and titling of Indigenous communities, including the development of plans, strategies, directives, and guidelines for the physical and legal formalization of property. The Ministry of Culture may issue guidelines for recognizing Indigenous communities, while regional governments are responsible for implementing the administrative procedures that guarantee these property rights.³⁴⁰

The titling of Indigenous communities in Peru remains slow. The Ombudsman's Office has highlighted excessive administrative requirements, noting that “there is a cumbersome regulatory framework that is more than 30 years out of date, requiring communities to go through more than 20 steps to secure their rights.”³⁴¹ As of 2017, 1,139 rural communities and 631 native communities were still awaiting titling. Among those already titled, 61.5% of rural communities and 93.3% of Indigenous communities lacked georeferencing.³⁴² The Ombudsman's further warned that the absence of expedited titling processes “can be exploited by various illegal activities in areas where there is no state presence, leaving communities and their members completely defenseless. Similarly, the legal uncertainty affecting communities allows private actors to obtain rights to carry out other activities in the same areas in the short term, giving rise to disputes that hinder communal recognition and titling.”³⁴³

Regarding economic activities, Law No. 26505 of 1995 promotes private investment across national territory, including in rural and Indigenous communities. It requires prior agreement with landowners for mining and hydrocarbon activities and allows for easements to facilitate exploration and exploitation.³⁴⁴ The law also affirms that decisions of community general assemblies must be respected: “To dispose of, encumber, lease, or exercise any other act on communal lands in the Sierra or Selva, the agreement of the General Assembly with the affirmative vote of no less than two-thirds of all members of the Community shall be required.”³⁴⁵

338 Law No. 32293 amending Law 24657 (2025). <https://busquedas.elperuano.pe/dispositivo/NL/2388515-1>

339 LABÁN Martínez, Pável. “¿Formalizando el despojo territorial? Alcances de la modificatoria a ley que declara de necesidad nacional e interés social el deslinde y la titulación del territorio de las comunidades campesinas” [Formalizing territorial dispossession? Scope of the amendment to the law declaring the demarcation and titling of the territory of peasant communities to be of national necessity and social interest], Legal Defense Institute. April 12, 2025. https://www.idl.org.pe/ley-24657-formalizando-el-despojo-territorial-alcances-de-la-modificatoria-a-ley-que-declara-de-necesidad-nacional-e-interes-social-el-deslinde-y-la-titulacion-del-territorio-de-las-comunidade/#_ftn1

340 Ombudsman's Office – Peru. *El largo camino hacia la titulación de las comunidades campesinas y nativas* [The long road to titling rural and Indigenous communities]. (2018), p. 16, 17. <https://www.defensoria.gob.pe/wp-content/uploads/2019/01/Informe-de-Adjuntía-Nº-002-2018-DP-AMASPPI-PPI.pdf>

341 *Ibid.*, p. 8.

342 *Ibid.*, p. 6.

343 *Ibid.*, pp. 8, 9.

344 *Ley de la inversión privada en el desarrollo de las actividades económicas en las tierras del territorio nacional y de las comunidades campesinas y nativas*. LEY Nº 26505 [Law No. 26505 – Law on private investment in the development of economic activities on national territory and in rural and Indigenous communities] (1995), art. 7. [https://www2.congreso.gob.pe/sicr/cendocbib/con3_uibd.nsf/81E9AE-CEAA373C630525797B006E1D01/\\$FILE/4_LEY_26505_LEY_INVERSIÓN_PRIVADA_ACTIVIDADES_ECONOMICAS_COMUNIDADES_CAMPESINAS_SPIJ.pdf](https://www2.congreso.gob.pe/sicr/cendocbib/con3_uibd.nsf/81E9AE-CEAA373C630525797B006E1D01/$FILE/4_LEY_26505_LEY_INVERSIÓN_PRIVADA_ACTIVIDADES_ECONOMICAS_COMUNIDADES_CAMPESINAS_SPIJ.pdf)

345 *Ibid.*, art. 11.



In 2011, Peru became the first country to adopt a prior consultation law —Law No. 29785, recognizing the right of Indigenous or Native Peoples to consultation under ILO Convention 169. The Law applies to “legislative or administrative measures that directly affect their collective rights, physical existence, cultural identity, quality of life, or development” as well as to “national and regional development plans, programs, and projects that directly affect these rights.”³⁴⁶ It establishes guiding principles such as timeliness, interculturality, good faith, flexibility, absence of coercion or conditioning, and timely information.³⁴⁷ The consultation process includes seven stages: identification of the measure, identification of affected Indigenous Peoples, publicity of the measure, internal evaluation by the Indigenous Peoples, dialogue, and decision.³⁴⁸ The objective is to reach agreement or consent between the State and Indigenous Peoples; however, the final decision rests with the competent state authority, which must take into account their collective rights.³⁴⁹

Evaluations of the early implementation of the Consultation Law show growing dissatisfaction among Indigenous Peoples. A key concern is the persistence of asymmetrical power relations with the State. In practice, consultations do not allow for changes to investment project conditions, and the measures subject to consultation are defined unilaterally by the State particularly in relation to mining activities.³⁵⁰

In 2006, Law No. 28736 was enacted to protect Indigenous Peoples in isolation and in initial contact, establishing a special cross-sectoral regime to safeguard their rights, particularly to life and health, and to ensure their existence and integrity.³⁵¹ The law mandates the creation of Indigenous reserves in areas they occupy or traditionally access.³⁵² These reserves are declared intangible, prohibiting settlements by outsiders and any activities other than the ancestral practices of their inhabitants. The law also prohibits granting rights to use natural resources, however, it allows that “if a natural resource susceptible to use is located and its exploitation is a public necessity for the State, it shall proceed in accordance with the law.”³⁵³

³⁴⁶ Congress of the Republic – Peru. *Ley No. 29785. Ley del Derechos a la Consulta Previa a los Pueblos Indígenas u Originarios, reconocido en el Convenio 169 de la OIT* [Law No. 29785 – Law on the right to prior consultation of Indigenous or native Peoples, recognized in Convention 169 of the International Labor Organization (ILO)], September 7, 2011, art. 2. https://leyes.congreso.gob.pe/Documentos/ExpVirPal/Normas_Legales/29785-LEY.pdf

³⁴⁷ *Ibid.*, art. 4.

³⁴⁸ *Ibid.*, art. 8.

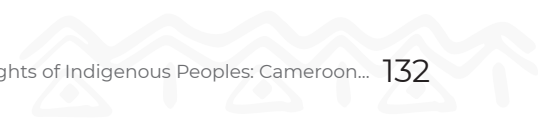
³⁴⁹ *Ibid.*, arts. 3, 15.

³⁵⁰ See LEYVA, Ana. “Consúltame de verdad: Aproximación a un balance de la consulta en el Perú en los sectores minero e hidrocarburífero [Consult me for real: An assessment of consultation in Peru in the mining and hydrocarbon sectors]. Oxfam/CooperAcción. 2018. <https://cooperaccion.org.pe/publicaciones/consultame-de-verdad-aproximacion-a-un-balance-sobre-consulta-previa-en-el-peru-en-los-sectores-minero-e-hidrocarburifero/>

³⁵¹ *Ley No. 28736. Ley para la protección de pueblos indígenas u originarios en situación de aislamiento y en situación de contacto inicial* [Law No. 28736 – Law for the protection of Indigenous or native peoples in isolation and in initial contact], (2006), art. 1. <https://cdn.www.gob.pe/uploads/document/file/3057865/Ley%20N%2028736.pdf.pdf>

³⁵² *Ibid.*, art. 4.f.

³⁵³ *Ibid.*, art. 5.



Indigenous Peoples' rights in environmental legislation

The 2005 General Environmental Law requires that the rights of Indigenous Peoples, peasant communities, and native communities be safeguarded in the design and implementation of environmental policy, particularly in land use planning.³⁵⁴ It mandates consultation processes for the use of natural resources on Indigenous lands, ensuring protection of their rights and the establishment of benefits and compensatory measures for the use of their resources, knowledge, or territories. It further provides that Indigenous Peoples “have a preferential right to the sustainable use of natural resources within their duly titled lands, except in the case of State reserves or exclusive or exclusionary rights of third parties, in which case they are entitled to a fair and equitable share of the economic benefits that may derive from the use of such resources.”³⁵⁵

The 1997 Law on Protected Natural Areas prioritizes the traditional uses and ways of life of Indigenous and peasant communities within and around protected areas, respecting their self-determination where compatible with conservation goals, and promoting their participation in management.³⁵⁶ It also recognizes communal reserves for the conservation of flora and fauna for the benefit of neighboring rural populations, where communities may use and commercialize resources under approved management plans.³⁵⁷

The Regulations of the Protected Natural Areas Law state that their implementation must recognize, protect, and promote the social, cultural, religious, spiritual, and economic values and practices of rural and Indigenous communities in line with ILO Convention No. 169.³⁵⁸ The creation of protected areas requires a prior technical opinion from National Service for Protected Natural Areas, and must include consultation processes with affected populations. For Indigenous and rural communities, consultation must follow Convention 169, be conducted through their representative organizations, and use appropriate local languages.³⁵⁹ Protected areas may be established on communal lands only with the free, prior, and informed consent of the owners of those properties, with their fundamental rights explicitly recognized.³⁶⁰ Where Peoples in isolation or initial contact are present, safeguards for their property and other acquired rights must also be ensured.³⁶¹

354 Congress of the Republic – Peru. *Ley No. 28611, Ley General del Ambiente* [Law No. 28611 – General Environmental Law], (2005), art. 70. <https://www.minam.gob.pe/wp-content/uploads/2017/04/Ley-Nº-28611.pdf>

355 *Ibid.*, art. 72.

356 Congress of the Republic of Peru. *Ley No. 26834. Ley de Áreas Naturales Protegidas* [Law No. 26834 – Law on Protected Natural Areas (1997), art. 31. <https://www.minam.gob.pe/wp-content/uploads/2017/04/Ley-Nº-26834.pdf>

357 *Ibid.*, art. 22.g.

358 *Decreto Supremo n.º 038-2001-AG. Reglamento de la Ley de Áreas Naturales Protegidas* [Supreme Decree No. 038-2001-AG. Regulations of the Law on Protected Natural Areas], (2001), art. 9. <https://www.acnur.org/fileadmin/Documentos/BDL/2008/6758.pdf>

359 *Ibid.*, arts. 43, 43.1.

360 *Ibid.*, art. 43.2.

361 *Ibid.*, art. 43.3.



Case study: Demarcation of the Kichwa territory in the Cordillera Azul National Park and the Cordillera Escalera Regional Conservation Area

Despite the legal recognition of Indigenous territorial rights in Peru, Kichwa organizations filed a constitutional lawsuit against national and regional authorities, including the Ministry of Agricultural Development and Irrigation (MIDAGRI), the Ministry of the Environment, the National Service of Natural Protected Areas (SERNANP), and regional bodies in San Martín, seeking the demarcation of their ancestral territory overlapping with the Cordillera Azul National Park (PNCAZ) and the Cordillera Escalera Regional Conservation Area (ACR-CE). In May 2025, the Second Civil Court of Tarapoto (Superior Court of Justice of San Martín) ruled in their favor, marking a significant judicial recognition of the compatibility between Indigenous territorial rights and environmental protection in protected areas.

The defendant institutions refused to demarcate Kichwa territory, arguing that Indigenous lands cannot be recognized within protected areas, as these are part of the national heritage and cannot be granted to third parties, and that such recognition would jeopardize environmental and biodiversity protection.³⁶² Since these areas were established without prior consultation, Kichwa communities have been systematically excluded from participation and decision-making, undermining their systems of territorial governance. This has led to a series of restrictions on access to resources, criminalization, intimidation, and conditioning of the population to continue their practices throughout the years of management of these PNAs.³⁶³ In its May 2025 ruling, the Court held that no national laws or ministerial resolutions restrict the demarcation of Indigenous territories due to the existence of Protected Natural Areas. It relied on the Protected Areas Law and its Regulations, the Constitution, and other norms, as well as ILO Convention 169 and the jurisprudence of the Inter-American Court of Human Rights

Addressing claims that Kichwa territorial rights conflict with the intangibility of protected areas, the Court emphasized that Indigenous Peoples “by their very nature precede the Declaration of Protected Natural Areas...” noting that both the Cordillera Escalera Regional Conservation Area (2005) and the Cordillera Azul National Park (2021), were established long after the existence of these communities.³⁶⁴ Accordingly, it held that territorial demarcation cannot be denied solely due to overlap with protected areas. It ordered the issuance of a resolution approving demarcation, with resource use governed by the Protected Natural Areas Law, its Regulations, and other applicable norms. The Court further affirmed that “the coexistence of the protected

³⁶² GAVANCHO León, Cristina. *Nueve claves jurídicas de la sentencia que ordena la delimitación del Territorio Kichwa, superpuesto al PNCAZ y al ACR-CE San Martín* [Nine legal key points of the ruling ordering the demarcation of the Kichwa Territory overlapping with the PNCAZ and ACR-CE San Martín], Legal Defense Institute (May 2025), p. 16. <https://www.idl.org.pe/wp-content/uploads/2025/05/NUEVE-CLAVES-JURIDICAS-DE-LA-SENTENCIA-QUE-ORDENA-LA-DEMARCAION-DEL-TERRITORIO-KICHWA-SUPERPUESTO-AL-PNCAZ-Y-ACR-CE-EN-SAN-MARTIN-Cristina-Gavancho.pdf>

³⁶³ VALDERRAMA Zevallos, Miguel. *Conservación sin los pueblos indígenas. El caso de los territorios kichwa en las zonas de la Cordillera Escalera y la Cordillera Azul, en San Martín* [Conservation without Indigenous Peoples. The case of the Kichwa territories in the Cordillera Escalera and Cordillera Azul areas in San Martín]. Lima: Forest Peoples Programme, CODEPISAM, CEPKA, FEPIKECHA, FEPIKBHSAM. (2022), p. 23. <https://www.forestpeoples.org/fileadmin/uploads/fpp/migration/documents/Conservation%20Without%20Indigenous%20Peoples%20-%20Spanish%20report.pdf>

³⁶⁴ Second Civil Court of Tarapoto of the Superior Court of Justice of San Martín. File 01146-2023-0-2208-JR-CI-02. Judgment of May 12, 2012, Sec. 4.14. https://www.idl.org.pe/wp-content/uploads/2025/05/res_2023011460142757000554565-1.pdf

area and the right of Indigenous Peoples to the demarcation of their territories are not opposed but complementary."³⁶⁵

The Court ordered the defendant institutions to coordinate the demarcation of the Kichwa territory overlapping the Cordillera Azul National Park and the Cordillera Escalera Regional Conservation Area. However, under Article 11 of the Native Communities Act, forested portions of community territory are granted only in use. This diverges from international standards, which recognize rights to lands, territories, and resources based on their traditional use and occupation, regardless of land classification. The ruling notes that the issue was not challenged by the plaintiffs, as "Peruvian legislation only recognizes the property rights over lands suitable for livestock and agriculture, and only grants use rights over lands suitable for forestry. As a result, the vast majority of the lands of the native Amazonian communities are titled with transfer of use." Accordingly, "the objective is to provide legal certainty to Indigenous territory that does not currently appear in any land registry, which prevents its effective protection."³⁶⁶

Notwithstanding the above, legislative reforms are needed to align the recognition of Indigenous Peoples' lands, territories, and natural resources with international standards. The implementation of existing laws must likewise comply with these standards.

³⁶⁵ Ibid.

³⁶⁶ GAVANCHO León, Cristina. *Nueve claves jurídicas de la sentencia que ordena la delimitación del Territorio Kichwa, superpuesto al PNCAZ y al ACR-CE San Martín* [Nine legal key points of the ruling ordering the demarcation of the Kichwa Territory overlapping with the PNCAZ and ACR-CE San Martín], Legal Defense Institute (May 2025), p. 25. <https://www.idl.org.pe/wp-content/uploads/2025/05/NUEVE-CLAVES-JURIDICAS-DE-LA-SENTENCIA-QUE-ORDENA-LA-DEMARCAACION-DEL-TERRITORIO-KICHWA-SUPERPUESTO-AL-PNCAZ-Y-ACR-CE-EN-SAN-MARTIN-Cristina-Gavancho.pdf>



Case study: Situation of Indigenous Peoples in isolation and initial contact: Mashco Piro, Yora, and Amahuaca

In December 2024, the Inter-American Commission on Human Rights (IACHR) brought a case before the Inter-American Court of Human Rights concerning violation of the rights of the Mashco Piro, Yora, and Amahuaca Peoples in voluntary isolation and initial contact, linked to logging, mining, and illegal extractive activities.³⁶⁷

In this case, the State has acknowledged the presence of these Peoples and established various reserves and legal categories across their territories, such as the Madre de Dios Territorial Reserve, the Mascho Piro Indigenous Reserve, the Murunahua Territorial Reserve, and the Alto Purús National Park, affording differing levels of protection. However, the IACHR found that, despite these measures, the presence of Indigenous Peoples in voluntary isolation across overlapping legal categories reflects the State's failure to ensure the full integrity of their territories and to adequately recognize their collective property rights.³⁶⁸

In the case of the Madre de Dios Territorial Reserve, the movement and settlement patterns, and cultural practices of the Mashco Piro Peoples have not been adequately considered.³⁶⁹ Created in 2002 to protect Peoples in voluntary isolation in the Department of Madre Dios, the Reserve has been undergoing a recategorization process since 2014 to become an Indigenous Reserve, in line with the protection and intangibility standards of Law 28736 (2006). However, this recategorization remains incomplete.

As part of the categorization process, a 2016 study by the World Wildlife Fund Peru identified the need to expand the reserve, given the continued presence of Indigenous Peoples in isolation beyond its current boundaries. These unprotected areas overlap with zones of third-party activity, including active forestry concessions placing these Peoples at risk.³⁷⁰ State authorities argued that such concessions should be maintained as acquired third parties' rights. However, this position conflicts with Indigenous property rights and the principles of non-contact and self-determination, while disregarding the heightened vulnerability of these Peoples to contact with external actors.³⁷¹

A key concern raised by the IACHR is that Peruvian law does not provide for buffer zones around Indigenous or territorial reserves. This gap allows concessions and projects to be authorized in adjacent areas without safeguards to prevent serious impacts on the life and integrity of Indigenous Peoples in voluntary isolation and initial contact.³⁷² As a result, there have been repeated sightings of Mashco Piro members along the banks of the Alto Madre de Dios River. The IACHR links this increased exposure to growing pressure from illegal logging and hydrocarbon activities within and around their territory, despite it being an Indigenous reserve, putting these Peoples at heightened risk.³⁷³

³⁶⁷ IACHR. "Press Release No. 305/24. Peru: IACHR submits case to the Inter-American Court of Human Rights for violations of the rights of Indigenous Peoples in voluntary isolation". December 4, 2024. https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2024/305.asp&utm_content=country-per&utm_term=class-corteidh

³⁶⁸ IACHR. *Informe n.º 397/22. Caso 13.572. Admisibilidad y fondo. Pueblos indígenas Mashco Piro, Yora y Amahuaca. Perú* [Report No. 397/22. Case 13.572. Admissibility and Merits. Mashco Piro, Yora, and Amahuaca Indigenous Peoples. Peru], December 31, 2022, para. 123. https://www.oas.org/es/cidh/decisiones/Corte/2024/PE_13.572_ES.PDF

³⁶⁹ *Ibid.*, para. 127

³⁷⁰ *Ibid.*, paras. 55, 56.

³⁷¹ *Ibid.*, para. 154.

³⁷² *Ibid.*, para. 130.

³⁷³ *Ibid.*, para. 131.


Regarding the intangibility of Indigenous reserves under Law 28736 and the exception allowing resource exploitation on grounds of "public necessity," the IACHR held that such limitations may be justified only if they do not endanger Indigenous Peoples' subsistence or undermine their traditions and customs. Given the situation of Peoples in isolation, and in light of the principles of non-contact and self-determination, the IACHR stressed that any intervention must be strictly exceptional and aimed at their protection or the safeguarding of essential rights. Measures driven by economic exploitation that conflicts with their subsistence are not permissible.³⁷⁴

The Commission noted that the presence of illegal loggers and the granting of extractive concessions in PIAV territory affect not only collective property but also pose disproportionate risks to their physical survival and cultural rights.³⁷⁵ For these reasons, it concluded that the State is responsible for violation of the rights to judicial guarantees, freedom of expression, collective property, political participation, judicial protection, and cultural rights under the American Convention. The reparations recommended by the IACHR included:

- Identifying and correctly delimiting the lands and territories of the Mashco Piro, Yora, and Amahuaca Peoples, ensuring legal protection equivalent to full ownership, and promptly completing the recategorization of the Madre de Dios Reserve as an Indigenous Reserve with intangible status.
- Establishing buffer zones and adopting protective measures so that these are treated as part of Indigenous territory, preventing economic activities within them.
- Reviewing concessions that overlap with or may affect PIACI territories and adopting corrective measures to guarantee collective ownership, including strict adherence to the principles of no contact and prior consultation.
- Strengthening oversight and control of illegal mining and logging activities in the Madre Dios region.

³⁷⁴ Ibid., para. 135.

³⁷⁵ Ibid., para. 159.



Adopting regulatory measures to align the exceptions under Law 28736 with inter-American standards and providing training for judicial authorities on PIACI rights are key recommendations.³⁷⁶ The case of the Mashco Piro, Yora, and Amahuaca Peoples highlights the limited implementation of Law No. 28736, particularly in establishing Indigenous reserves. Since 2006, only two Indigenous reserves (Yavarí Tapiche and Katataibo Norte y Sur) have been created, while five territorial reserves exist in Cusco, Madre de Dios, and Ucayali, of which only three (Isconahua, Mashco Piro, and Murunahua) have been upgraded to Indigenous reserves. Despite these measures, protection remains insufficient, as PIACI territories continue to face pressures from deforestation, oil exploitation, coca cultivation, and road expansion.³⁷⁷

There has also been a rise in campaigns by groups seeking to deny the existence of PIACI and undermine their rights, while delegitimizing Indigenous organizations that defend them, to advance extractive activities in the Amazon. These efforts include legal actions and legislative proposals to weaken protections, as well as the criminalization of Indigenous organizations through complaints and prosecutions.³⁷⁸

The lack of protection of Indigenous territories in the Peruvian Amazon has been exacerbated by the expansion of organized crime and drug trafficking. Coca production, which began in the 1970s, has steadily increased and intensified over the past decade. This occurs in a context of insecure land tenure for many Amazonian Indigenous Peoples. Although most communities have titles and demarcated lands, around 717 remain without titles. Among those titled, the State often recognizes only a part of their property territory the vast majority, which are forests, are granted through a contract of assignment in use. Added to this is the fact that many communities do not have their boundaries georeferenced."³⁷⁹

This context has enabled the expansion of drug trafficking into Indigenous territories, with significant environmental impacts. A study found that coca cultivation in 14-19 micro-basins reached 92,784 hectares in 2023, up from 80,681 in 2021, and 61,277 in 2020. In 2023, 14% of this area (approximately 13,054 hectares), was located in 274 native communities, affecting 22 of the 51 Amazonian Indigenous Peoples.³⁸⁰ Around 500 clandestine airstrips operate in the Amazon, many within collectively owned Indigenous forest areas.³⁸¹ Coca cultivation has also been identified within the Kakataibo North and South Indigenous Reserve (416 hectares), created in 2021 to protect Peoples in isolation. It further affects at least three other Peoples in isolation whose territories are still undergoing reserve creation processes.³⁸²

³⁷⁶ Ibid., para. 184 and Recommendations.

³⁷⁷ QUISPE Mamani, Maritza, and CASSIA Córdova, Adán. "A 17 años de aprobada la Ley N° 28736, ley para la Protección de Pueblos Indígenas u Originarios en Situación de Aislamiento y en Situación de Contacto Inicial: ¿Cuánto se ha avanzado en la protección de estos pueblos en el Perú? [Seventeen years after the approval of Law No. 28736, the Law for the Protection of Indigenous or Native Peoples in Isolation and in Initial Contact: How much progress has been made in protecting these Peoples in Peru?]", in *Pólemos*. May 30, 2023. <https://polemos.pe/a-17-anos-de-aprobada-la-ley-no-28736-ley-para-la-proteccion-de-pueblos-indigenas-u-originarios-en-situacion-de-aislamiento-y-en-situacion-de-contacto-inicialcuanto-se-ha-avanzado-en-la-protec/>

³⁷⁸ Ibid.

³⁷⁹ SOBERÓN, Ricardo. *El narcotráfico en los territorios indígenas de la Amazonía peruana. Rutas, repercusiones y políticas erradas* [Drug Trafficking in Indigenous Territories of the Peruvian Amazon. Routes, Impacts, and Misguided Policies]. AIDSESP, ORAU, Instituto del Bien Común, Amazon Watch (2025), p. 19. https://ibcperu.org/wp-content/uploads/2025/06/Narcotraficoindigenas_.pdf

³⁸⁰ Ibid., pp. 25, 28.

³⁸¹ Ibid., p. 26.

³⁸² Ibid., p. 28.

The invasion of communal territories by settlers, often linked to criminal networks, frequently occurs with the complicity of local or regional authorities that grant permits for settlements or extractive activities.³⁸³ This has led to violence and killings of land and environment defenders; since 2020, 27 defenders, mostly Indigenous leaders, have been murdered, 17 in cases linked to drug trafficking.³⁸⁴ National and regional anti-drug strategies have proven ineffective and have not been developed with the participation of affected Indigenous Peoples. These policies focus on alternative livelihoods for coca-growing sectors and conservation measures in protected areas but fail to address the need to secure Indigenous territorial rights and provide legal certainty as a key response to the expansion of illicit activities in the Amazon.³⁸⁵

5. CONCLUSIONS AND RECOMMENDATIONS

Each country examined in this study faces distinct challenges in recognizing and protecting Indigenous Peoples' rights within environmental and conservation frameworks. On one hand, constitutions and legislation formally recognize Indigenous Peoples and provide mechanisms for securing their lands. These frameworks are reinforced by international instruments and jurisprudence that define State obligations regarding lands, territories, natural resources, cultures, ways of life, self-government, and self-determination.

In principle, these national and international frameworks provide a strong basis for respecting and protecting Indigenous Peoples' rights within environmental regulation and conservation. The presence of Indigenous Peoples in highly biodiverse areas and well-preserved territories should encourage States and conservation actors to recognize and protect their rights. However, all countries face challenges in reconciling State-led environmental and conservation priorities with Indigenous rights, even where laws and policies formally acknowledge their compatibility.

Below is a summary of key observations for each country, along with recommendations that are also relevant to other countries in the region.

As illustrated by Guatemala, environmental assessments for extractive, energy, and infrastructure projects must address not only technical impacts but also the full range of economic, social, cultural, and environmental rights of Indigenous Peoples, including cumulative impacts. They must also ensure the independence and impartiality of impact studies.

The challenges are heightened where Indigenous land rights remain uncertain, underscoring the need to recognize and protect traditional tenure and collective land use within assessment processes.

³⁸³ Ibid., p. 38.

³⁸⁴ Ibid., p. 39.

³⁸⁵ Ibid., pp. 45-46, 54 (Recommendations).



Environmental assessment and licensing processes must ensure meaningful public participation in line with international standards, such as the Escazú Agreement. For Indigenous Peoples, they must include prior consultation aimed at obtaining free, prior, and informed consent, while respecting their right to define their own development priorities, make decision through their representative institutions, and exercise self-government and self-determination.

The State's duty to consult Indigenous Peoples also applies to the creation of national parks, biosphere reserves, and other protected areas. These processes must recognize Indigenous presence and territorial rights, whether established or claimed. As with extractive projects, States should resolve Indigenous claims to titling, delimitation, and demarcation before establishing protected areas, and work in coordination with communities to achieve conservation objectives, drawing on their traditional knowledge.

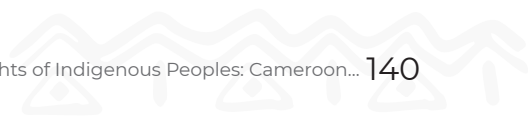
This is essential to address a recurring issue in Guatemala and other countries: the criminalization and forced displacement of Indigenous Peoples living in designated protected areas. It requires reforms in criminal and environmental law to prevent such practices.

While conservation areas often restrict Indigenous Peoples' rights to their lands, territories, and resources, and may even lead to displacement, environmental laws in several countries do not impose similar limits on extractive activities that undermine conservation goals. Weak oversight and enforcement have further enabled environmental harm and violations of Indigenous rights. In line with international standards on Indigenous Peoples' rights including the Escazú Agreement, States must protect territorial and environmental rights and ensure access to justice for violations linked to business activities affecting Indigenous Peoples.

These issues persist even in countries where laws recognize Indigenous Peoples' rights to maintain their lands and manage resources within protected areas. In Ecuador and Peru, for example, intangible zones or reserves for Peoples in isolation and initial contact still allow exceptions for extractive activities on grounds of public or national interest. Stronger protections are needed, grounded in the principles of non-contact and respect for self-determination. Environmental conservation frameworks must therefore integrate the protection of Indigenous territorial rights as a core objective.

In Colombia, despite advanced legal frameworks recognizing Indigenous environmental rights, implementation remains limited. In the case of the U'wa and other Peoples, coordinated action is needed to protect sacred sites within protected areas, including stronger recognition of territorial and consultation rights in their creation and management.

In Peru, laws promote Indigenous participation and require prior consultation in establishing protected areas. However, the Kichwa case shows that authorities may still block land in such areas. Although the courts affirmed the compatibility of Indigenous rights and conservation, land rights remain limited to *cesión de uso* for forests, highlighting the need for reforms aligned with international standards and their application in judicial remedies. In Guatemala and Colombia, the legacy of armed conflict further complicates land rights. In Guatemala, some Indigenous Peoples were displaced and their lands converted into protected areas, while others were resettled in areas later designated as protected. Environmental frameworks must address these realities, ensure Indigenous Peoples can remain



on these lands with full rights recognition, and support their active role in conservation and sustainable management.

In Colombia, the reconfiguration of non-state armed actors following the Peace Agreement continues to hinder the resolution of Indigenous territorial claims, including land restitution. At the same time, rising deforestation has further affected Indigenous territories. Addressing these challenges requires coordinated action with the full participation of Indigenous Peoples, with a priority on securing legal certainty over their land tenure.

Another factor affecting both state action and Indigenous Peoples' rights across the four countries is the presence of illegal armed actors, organized crime, and drug trafficking in Indigenous territories, including those overlapping with protected areas. Indigenous Peoples must be meaningfully involved in designing responses to these threats. Ensuring legal security over their lands and territories, including within conservation areas, should be a central priority.

The presence of illegal actors in protected areas does not justify a state's failure to uphold its human rights obligations. In Ecuador, the Law for the Recovery of Protected Areas, adopted without prior consultation under an economic emergency, raises serious concern by allowing private management of protected areas. These risks undermining Indigenous Peoples' collective rights to lands, territories, and resources, as well as their autonomy, self-government, and biodiversity management. It may also lead to criminalization of traditional practices, deepen legal insecurity, and exclude Indigenous Peoples from decision-making.

Given the risks of exclusion, legal uncertainty, and criminalization, it is essential to recognize and support Indigenous-led conservation initiatives, including community-managed areas and co-management frameworks grounded in their laws, life plans, and worldviews. Examples include the Achuar's initiative in Ecuador to establish the Achuar System of Conservation and Ecological Reserves (SACRE),³⁸⁶ and the joint environmental management of Tayrona and Sierra Nevada de Santa Marta National Parks with the Arhuaco, Kogui, Wiwa, and Kankuamo Peoples.³⁸⁷ These models should be strengthened and replicated. Environmental governance must not exclude or criminalize Indigenous Peoples but integrate their rights and leadership. Only through full recognition of these rights can conservation be fair, legitimate, and sustainable.

³⁸⁶ VALLEJO, María. "Los Achuar están en el proceso de creación de la primera área protegida indígena del Ecuador" [The Achuar are in the process of creating Ecuador's first Indigenous protected area], World Wildlife Fund. April 27, 2017. https://www.panda.org/wwf_news/?321652/Los-Achuar-estan-en-el-proceso-de-creacion-de-la-primera-area-protegida-indigena-del-Ecuador

³⁸⁷ PNN, Gonawindúa Tayrona Organization, Kogui Malayo Arhuaco Reserve, Amazink. *Jaba Nimakeiومان: Una pedagogía del territorio del Parque Nacional Tayrona* [Jaba Nimakeiومان: A pedagogy of the Tayrona National Park territory] (2022). https://www.parquesnacionales.gov.co/wp-content/uploads/2023/08/Cartilla_Jaba.pdf



REFERENCES

Amazon Frontlines. Technical analysis of the draft bill “Law for the Recovery of Protected Areas and the Promotion of Local Development.” June 2025. <https://amazonfrontlines.org/chronicles/the-bill-for-the-recovery-of-protected-areas-promotes-the-privatization-of-natural-heritage-and-threatens-the-territories-and-autonomy-of-indigenous-peoples/>

Ana Leyva. *Consúltame de verdad: Aproximación a un balance de la consulta en el Perú en los sectores minero e hidrocarburífero* (Consult me for real: An assessment of consultation in Peru in the mining and hydrocarbon sectors). Oxfam/CooperAcción. 2018. <https://cooperaccion.org.pe/publicaciones/consultame-de-verdad-aproximacion-a-un-balance-sobre-consulta-previa-en-el-peru-en-los-sectores-minero-e-hidrocarburifero/>

American Declaration on the Rights of Indigenous Peoples, Article XIX.

American Declaration on the Rights of Indigenous Peoples, Article XXVI.

Art. 9, *Human rights defenders in environmental matters*

CEPAL/FILAC report, *supra* note, p. 162.

Colectivo Madre Selva, “Procesos de aprobación de proyectos hidroeléctricos y vulnerabilidades que afectan la transparencia” [Approval processes for hydroelectric projects and vulnerabilities affecting transparency] (2018), pp. 7, 40. <https://madreselva.org.gt/wp-content/uploads/2020/08/Informe-sobre-la-gestion-de-proyectos-hidroelectricos-9-julio-2018.pdf>

Constitution of the Republic of Ecuador. 2008. Art. 238.

Congress of the Republic of Guatemala. Decree 41-2005. Law on the Cadastral Information Registry. June 15, 2005. Articles 1, 2. https://portal.ric.gob.gt/sites/default/files/2019-09/ley-del-ric-version-conportada_0.pdf

Convention 169, art. 7.3.

Congress of the Republic of Guatemala, Land Fund Law, Decree No. 24-99, June 16, 1999, Article 2. <https://faolex.fao.org/docs/pdf/gual7251.pdf>

Congress of Colombia, Law 160 of 1994, Articles 38.b, 85-87. https://www.acnur.org/fileadmin/Documentos/Pueblos_indigenas/ley_160_1994_col.pdf

Communities of Laguna del Tigre and Sierra de Lacandón reject unfavorable ruling on bill. (September 4, 2024). <https://www.radiocomunitarias.info/comunidades-de-laguna-del-tigre-y-sierra-de-lacandon-rechazan-dictamen-desfavorable-sobre-iniciativa-de-ley/>

CNTI, Status of formalization in Colombia as of June 21, 2024. <https://www.cntindigena.org/balance-sobre-la-formalizacion-y-acceso-a-la-propiedad-colectiva/>

Congress of the Republic of Guatemala. Decree No. 52-2005, Framework Law on the Peace Agreements, September 7, 2005 https://pdpa.georgetown.edu/Security/citizenssecurity/Guatemala/leyes/Ley_Marco_Acuerdos_de_Paz_Decreto_52-2005.pdf

Congress of the Republic – Peru. Law No. 29785 – Law on the right to prior consultation of Indigenous or native Peoples, recognized in Convention 169 of the International Labor Organization (ILO). September 7, 2011, art. 2. https://leyes.congreso.gob.pe/Documentos/ExpVirPal/Normas_Legales/29785-LEY.pdf

Congress of the Republic – Peru. Law No. 28611 – General Environmental Law (2005), art. 70. <https://www.minam.gob.pe/wp-content/uploads/2017/04/Ley-N°-28611.pdf>

Congress of the Republic of Peru. Law No. 26834 – Law on Protected Natural Areas (1997), art. 31. <https://www.minam.gob.pe/wp-content/uploads/2017/04/Ley-N°-26834.pdf>

Decree 632 of 2018, Article 5.

Decree 2164 of 1995. Land regulations for Indigenous Peoples, partially regulating Chapter XIV of Law 160 of 1994 in relation to the allocation and titling of land to Indigenous communities for the establishment, restructuring, expansion, and reorganization of Indigenous reserves in the national territory. https://www.acnur.org/fileadmin/Documentos/Pueblos_indigenas/decreto_2164_1995_col.pdf?view=1

Decree 632 of 2018, which establishes the fiscal and other regulations necessary to put into operation the Indigenous territories located in non-municipalized areas of the departments of Amazonas, Guainía, and Vaupés. April 10, 2018, Article 3.

Decree No. 1397 of 1996, creating the National Commission on Indigenous Territories and the Permanent Roundtable for Consultation with Indigenous Peoples and Organizations, and enacting other provisions. <https://faolex.fao.org/docs/pdf/col24891.pdf>

Decree Law on Victims No. 4633 of 2011, which establishes measures for assistance, care, comprehensive reparation, and restitution of territorial rights to victims belonging to Indigenous Peoples and communities, art. 1. <https://www.acnur.org/fileadmin/Documentos/BDL/2014/9739.pdf>

Decree 2333 of 2014, which establishes mechanisms for the effective protection and legal security of lands and territories occupied or possessed ancestrally and/or traditionally by Indigenous Peoples. November 19, 2014. <https://www.suin-juriscal.gov.co/viewDocument.asp?ruta=Decretos/1437757>

Decree 622 of 1977, "Whereby Chapter V, Title II, Part XIII, Book II of Decree-Law No. 2811 of 1974 on the 'national park system'; Law 23 of 1973 and Law 2 of 1959 are partially regulated." March 16, 1977, Article 7. <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=8265>

ECLAC. Principle 10 Observatory in Latin America and the Caribbean. Ratifications available at: <https://observatoriop10.cepal.org/es/tratado/acuerdo-regional-acceso-la-informacion-la-participacion-publica-acceso-la-justicia-asuntos>.

ECLAC. Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (LC/PUB.2018/8/Rev.1). *Preface*, p. 8. ENG version at <https://treaties.un.org/doc/Treaties/2018/03/20180312%2003-04%20PM/CTC-XXVII-18.pdf>

Economic Commission for Latin America and the Caribbean (ECLAC)/Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean (FILAC), "The Indigenous Peoples of Latin America - Abya Yala and the 2030 Agenda for Sustainable Development: tensions and challenges from a territorial perspective", Project Documents (LC/TS.2020/47), Santiago, 2020, p. 107, *citing* CEPF (Critical Ecosystem Partnership Fund) (2004), "Ecosystem Profile, Northern Region of the Mesoamerican Biodiversity Hotspot, Belize, Guatemala, Mexico." <https://repositorio.cepal.org/server/api/core/bitstreams/7a735a11-beec-406d-ba2d-2dc1ee752834/content>

ECLAC/FILAC Report, "Indigenous Peoples of Latin America - Abya Yala and the 2030 Agenda for Sustainable Development: tensions and challenges from a territorial perspective", p. 108 (<https://repositorio.cepal.org/server/api/core/bitstreams/7a735a11-beec-406d-ba2d-2dc1ee752834/content>), *citing* International Union for Conservation of Nature (IUCN) "Mapping of Indigenous Peoples, protected areas, and natural ecosystems in Central America", 2016. <https://iucn.org/es/news/mexico-central-america-and-caribbean/201609/mapeo-de-pueblos-indigenas-areas-protegidas-y-ecosistemas-naturales-en-centroamerica> According to the source, Costa Rica was the only country in the region that escaped this trend after implementing a clear biodiversity conservation and reforestation policy, thereby increasing its forest area from 21% to 54% of the country's total area.

IACHR. Precautionary measure No. 412-17. Evicted and displaced residents of the Laguna Larga Community in Guatemala, September 8, 2017, paras. 5, 8. <https://www.oas.org/es/cidh/decisiones/pdf/2017/36-17MC412-17GU.pdf>

International Union for Conservation of Nature (IUCN) "Mapping of Indigenous Peoples, Protected Areas, and Natural Ecosystems in Central America", 2016 cited in CEPAL/FILAC Report, *supra* note. <https://iucn.org/es/news/mexico-central-america-and-caribbean/201609/mapeo-de-pueblos-indigenas-areas-protegidas-y-ecosistemas-naturales-en-centroamerica>

Inter-American Court of Human Rights. Case of the U'wa Indigenous People and its Members v. Colombia. Merits, Reparations, and Costs. Judgment of July 4, 2024. Series C No. 530, paras. 168-177, 27, and corresponding footnotes. https://www.corteidh.or.cr/docs/casos/articulos/seriec_530_esp.pdf



Inter-American Court of Human Rights. Case of the Saramaka People v. Suriname . Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, para. 134. https://www.corteidh.or.cr/docs/casos/articulos/seriec_172_esp.pdf

Inter-American Court of Human Rights. Case of the Maya Q'eqchi' Agua Caliente Indigenous Community v. Guatemala . Merits, Reparations, and Costs. Judgment of May 16, 2023. Series C No. 488, para. 1. https://www.corteidh.or.cr/docs/casos/articulos/seriec_488_esp.pdf *Quotes in English are unofficial translations of the Spanish text of the ruling.*

Inter-American Court of Human Rights. Case of the Maya Q'eqchi' Agua Caliente Indigenous Community v. Guatemala, supra note, paras. 180-189.

Inter-American Court of Human Rights. Case of the Maya Q'eqchi' Agua Caliente Indigenous Community v. Guatemala, supra note, paras. 360.

Inter-American Court of Human Rights. Case of the Maya Q'eqchi' Agua Caliente Indigenous Community v. Guatemala, supra note, paras. 362.

Inter-American Court of Human Rights. Case of the Maya Q'eqchi' Agua Caliente Indigenous Community v. Guatemala . Merits, Reparations, and Costs. Judgment of May 16, 2023. Series C No. 488, para. 200. https://www.corteidh.or.cr/docs/casos/articulos/seriec_488_esp.pdf

Inter-American Court of Human Rights, Judgment of June 27, 2012. Series C No. 245, paras. 205, 206.

Inter-American Court of Human Rights, Judgment of November 25, 2015. Series C No. 309, para. 173.

Inter-American Court of Human Rights, Case of the Kaliña and Loko Peoples, supra note, para. 181.

Inter-American Court of Human Rights. Case of the U'wa Indigenous People and its Members v. Colombia. Merits, Reparations, and Costs. Judgment of July 4, 2024. Series C No. 530, para. 1. https://www.corteidh.or.cr/docs/casos/articulos/seriec_530_esp.pdf

Inter-American Court of Human Rights. Case of the U'wa Indigenous People, para. 144.

National Parks (Colombia). Under constant threat from ecotourism: the reality of protected areas in the Amazon. April 16, 2025. <https://www.parquesnacionales.gov.co/sala-prensa/noticias/en-riesgo-continuo-por-el-ecoturismo-la-realidad-de-las-areas-protegidas-en-el-amazonas/>

Inter-American Court of Human Rights. Case of the Tagaeri and Taromenane Indigenous Peoples v. Ecuador. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 4, 2024. Series C No. 537, paras. 108, 109. https://corteidh.or.cr/docs/casos/articulos/seriec_537_esp.pdf

IACHR. Report No. 397/22. Case 13.572. Admissibility and Merits. Mashco Piro, Yora, and Amahuaca Indigenous Peoples. Peru. December 31, 2022, para. 123. https://www.oas.org/es/cidh/decisiones/Corte/2024/PE_13.572_ES.PDF

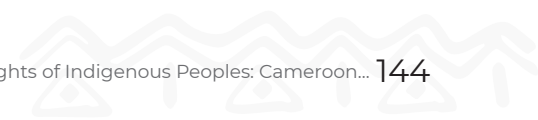
IACHR. Press Release No. 305/24. Peru: IACHR submits case to the Inter-American Court of Human Rights for violations of the rights of Indigenous Peoples in voluntary isolation. December 4, 2024. https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2024/305.asp&utm_content=country-per&utm_term=class-corteidh

ILO, Convention on Indigenous and Tribal Peoples, 1989 (No. 169); and ILO Normlex,. Convention 169 was ratified by Colombia in 1991, Peru in 1994, Guatemala in 1996, and Ecuador in 1998. https://normlex.ilo.org/dyn/nrmlx_es/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID%2CPI2100_LANG_CODE:312314%2Ces

ILO, The application of Convention No. 169 by national and international courts in Latin America: a compilation of cases. Geneva: ILO, 2009. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@gender/documents/publication/wcms_758297.pdf

ILO, The rights of Indigenous and tribal Peoples in practice: a guide to ILO Convention No. 169. - Geneva: ILO, 2009, p. 26. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40dgreports/%40dcomm/%40publ/documents/publication/wcms_126163.pdf

ILO, The Rights of Indigenous and Tribal Peoples in Practice: A Guide to ILO Convention No. 169. - Geneva: ILO, 2009, p. 26. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40dgreports/%40dcomm/%40publ/documents/publication/wcms_126163.pdf



Josse, C., Tupinambá, R., et. al. Protected Areas and Indigenous Territories: Pillars for achieving conservation goals in the Amazon. Policy Brief. Scientific Panel for the Amazon, United Nations Sustainable Development Solutions Network, New York, USA (2024), p. 5. <https://www.sp-amazon.org/es>

La Silla Vacía. Deforestation in the Amazon fell by 33% in the first quarter. June 5, 2025. https://www.lasillavacia.com/en-vivo/deforestacion-en-la-amazonia-se-redujo-un-33-en-el-primer-trimestre/?utm_source=substack&utm_medium=email

Observatory of Indigenous Peoples' Territorial Rights (ODTPI)/CNTI. Territory at risk: Effects of deforestation on Indigenous territories. 2023, pp. 56-70 <https://www.cntindigena.org/wp-content/uploads/2023/06/informe-deforestacion.pdf>

Law on the Registry of Cadastral Information, supra note, Article 23y.

Law 99 of 1993, "creating the Ministry of the Environment, reorganizing the public sector responsible for the management and conservation of the environment and renewable natural resources, organizing the National Environmental System (SINA), and enacting other provisions." Articles 63, 65, 67. <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=297>

Law on Native Communities and Agricultural Development in the Jungle and Jungle Edge. Decree Law No. 22175 (1978) <https://www.pj.gob.pe/wps/wcm/connect/fbb50c804c7e5783adf4efe93f7fa794/Decreto+Ley+22175+Ley+de+Comunidades+Nativas+y+desarrollo+agrario+de+las+regiones+de+la+Selva+y+Ceja+de+Selva.pdf?MOD=AJPERES&CACHEID=fbb50c804c7e5783adf4efe93f7fa794>; see also Ombudsman's Office – Peru. The long road to titling rural and native communities. (2018), p. 11. <https://www.defensoria.gob.pe/wp-content/uploads/2019/01/Informe-de-Adjuntía-Nº-002-2018-DP-AMASPPI-PPI.pdf>

Law No. 24656. General Law on Peasant Communities. 1987. https://www2.congreso.gob.pe/sicr/cendocbib/con3_uibd.nsf/1DAB0BF2E43B8FBB0525797B006DE3C0/%24FILE/1_LEY_24656_Ley_General_Comunidades_Campesinas_SPIJ.pdf

Law 24657 – Declares the Demarcation and Titling of the Territory of Rural Communities to be of National Necessity and Social Interest (1987). <https://docs.peru.justia.com/federales/leyes/24657-apr-13-1987.pdf>

Law No. 32293 amending Law 24657 (2025). <https://busquedas.elperuano.pe/dispositivo/NL/2388515-1>

Law No. 26505 – Law on private investment in the development of economic activities on national territory and in rural and Indigenous communities (1995), art. 7. [https://www2.congreso.gob.pe/sicr/cendocbib/con3_uibd.nsf/81E9AECEAA373C630525797B006E1D01/\\$FILE/4_LEY_26505_LEY_INVERSIÓN_PRIVADA_ACTIVIDADES_ECONOMICAS_COMUNIDADES_CAMPESINAS_SPIJ.pdf](https://www2.congreso.gob.pe/sicr/cendocbib/con3_uibd.nsf/81E9AECEAA373C630525797B006E1D01/$FILE/4_LEY_26505_LEY_INVERSIÓN_PRIVADA_ACTIVIDADES_ECONOMICAS_COMUNIDADES_CAMPESINAS_SPIJ.pdf)

Law No. 28736 – Law for the protection of Indigenous or native peoples in isolation and in initial contact (2006), art. 1. <https://cdn.www.gob.pe/uploads/document/file/3057865/Ley%20Nº%2028736.pdf.pdf>

Mapbiomas Amazonia (2024). Collection 6 of Annual Series of Land Cover and Land Use in Amazonia, 1985-2023. https://ecociencia.org/wp-content/uploads/2024/09/Factsheet_Amazonia_6.0_final.pdf

MARN, Government Agreement Number 148-2024. Reforms to the Regulations on Environmental Assessment, Control, and Monitoring, Government Agreement Number 137-2016 of the President of the Republic. September 25, 2024, art. 1. Available on the MARN website: <https://www.marn.gob.gt/>

MARN. Government Agreement Number 137-2016. July 11, 2016, article 43 <https://www.marn.gob.gt/Multimedios/4739.pdf>; Colectivo Madre Selva, "Hydroelectric project approval processes and vulnerabilities affecting transparency" (2018), p. 7. <https://madreselva.org.gt/wp-content/uploads/2020/08/Informe-sobre-la-gestion-de-proyectos-hidroelectricos-9-julio-2018.pdf>

MARN. Government Agreement Number 137-2016. July 11, 2016, Article 47. <https://www.marn.gob.gt/Multimedios/4739.pdf>

MARN, Government Agreement Number 148-2024, Article 4.C.32, 4.C.33.

MARN, Government Agreement Number 148-2024, Article 20, which amends Article 44 of the previous RECSA.



Maxwell Radwin. Organized crime puts unprecedented pressure on Guatemala's largest rainforest. Mongabay (June 7, 2024). <https://es.mongabay.com/2024/06/crimen-organizado-ejerce-presion-sobre-selva-tropical-guatemala/>

MINAMBIENTE, IDEAM. Forests Territories of Life: Comprehensive Strategy for Deforestation Control and Forest Management. 2018. <https://www.minambiente.gov.co/wp-content/uploads/2021/10/Estrategia-Integral-de-control-a-la-Deforestacion-y-Gestion-de-los-Bosques.pdf>

Constitution of the Republic of Ecuador. 2008, art. 57.

María Vallejo. The Achuar are in the process of creating Ecuador's first Indigenous protected area. World Wildlife Fund. April 27, 2017. https://wwf.panda.org/wwf_news/?321652/Los-Achuar-estan-en-el-proceso-de-creacion-de-la-primera-area-protegida-indigena-del-Ecuador

Maritza Quispe Mamani and Adán Cassia Córdova. Seventeen years after the approval of Law No. 28736, the Law for the Protection of Indigenous or Native Peoples in Isolation and in Initial Contact: How much progress has been made in protecting these Peoples in Peru? Pólemos. May 30, 2023. <https://polemos.pe/a-17-anos-de-aprobada-la-ley-no-28736-ley-para-la-proteccion-de-pueblos-indigenas-u-originarios-en-situacion-de-aislamiento-y-en-situacion-de-contacto-inicialcuanto-se-ha-avanzado-en-la-protec/>

Miguel Valderrama Zevallos. Conservation without Indigenous Peoples. The case of the Kichwa territories in the Cordillera Escalera and Cordillera Azul areas in San Martín. Lima: Forest Peoples Programme, CODEPISAM, CEPKA, FEPIKECHA, FEPIKBHSAM. (2022), p. 23. <https://www.forestpeoples.org/fileadmin/uploads/fpp/migration/documents/Conservation%20Without%20Indigenous%20Peoples%20-%20Spanish%20report.pdf>

Ministry of Environment and Sustainable Development. Decree No. 1275 of 2024. October 15, 2024. "Establishing the rules required for the functioning of Indigenous territories in environmental matters and the development of the environmental competencies of Indigenous authorities and their effective coordination with other authorities and/or entities," Article 3.H. <https://www.minambiente.gov.co/wp-content/uploads/2024/12/01.-Decreto-1275-de-2024.pdf>

Ministry of the Interior. Decree 0488 of 2025. May 5, 2025. "Whereby the necessary fiscal regulations and others relating to the functioning of Indigenous territories and their coordination with other territorial entities are enacted," Article 4: Principles. <https://www.mpcindigena.org/biblioteca/decreto-0488-de-2025/>

National Assembly – Ecuador. Organic Law on Rural Lands and Ancestral Territories. 2016 arts. 77-80. <https://www.gob.ec/sites/default/files/regulations/2021-01/DocumentoLey-Organica-Tierras-Rurales-Territorios-Ancestrales.pdf>

OAS, American Declaration on the Rights of Indigenous Peoples , AG/RES. 2888 (XLVI-O/16) 2016. <https://www.oas.org/es/sadye/documentos/res-2888-16-es.pdf>

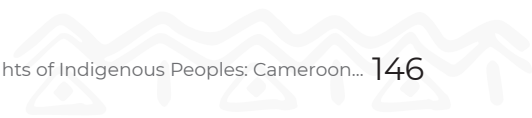
Official Gazette, Law 1448 of 2011, which establishes measures for the care, assistance, and comprehensive reparation of victims of the internal armed conflict and other provisions. June 10, 2011. https://www.unidadvictimas.gov.co/wp-content/uploads/2024/05/10.-Ley_1448_2011.pdf

Office of the Attorney General. Attorney General reports more than 88,000 hectares deforested and 1,107 kilometers of illegal roads in six months in the Colombian Amazon. May 20, 2025. <https://www.procuraduria.gov.co/Pages/procuraduria-reporta-mas-88000-hectareas-deforestadas-1107-kilometros-vias-ilegales-seis-meses-amazonia.aspx>

OHCHR. UN Guidelines on the Protection of Indigenous Peoples in Isolation and Initial Contact in the Amazon Region, the Gran Chaco and the Eastern Region of Paraguay : Result of consultations conducted by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela (2012). <https://acnudh.org/wp-content/uploads/2012/03/Directrices-de-Protección-para-los-Pueblos-Indigenas-en-Aislamiento-y-en-Contacto-Inicial.pdf>

ONIC. Ten questions to understand Decree 2333 of 2014, which protects ancestral territories. <https://onic.org.co/sitio/comunicados-onic/2501-diez-preguntas-para-entender-el-decreto-2333-de-2014-que-protege-los-territoriosancestrales>

Observatory of Human Rights and Conflicts – INDEPAZ. Viewer of murders of individuals, leaders, and human rights defenders in Colombia 2016–2024. Available at: <https://indepaz.org.co/observatorio-de-derechos-humanos-y-conflictividades/>.



Organic Code of the Environment. Official Register No. 983 (2017), art. 45. https://www.gob.ec/sites/default/files/regulations/2018-09/Documento_Código-Orgánico-Ambiente.pdf

Organic Code on Territorial Organization, Autonomy, and Decentralization. 2010, Article 94. https://www.gob.ec/sites/default/files/regulations/2021-01/Documento_Codigo-Orgánico-Organización-Territorial-Autonomia-Descentralización.pdf

Ombudsman's Office – Peru. The long road to titling for peasant and Indigenous communities. (2018), pp. 16, 17. <https://www.defensoria.gob.pe/wp-content/uploads/2019/01/Informe-de-Adjuntía-Nº-002-2018-DP-AMASPPI-PPI.pdf>

Olga Cristina del Rocío Gavancho León. Nine legal key points of the ruling ordering the demarcation of the Kichwa Territory overlapping with the PNCAZ and ACR-CE San Martín. Legal Defense Institute (May 2025), p. 25. <https://www.idl.org.pe/wp-content/uploads/2025/05/NUEVE-CLAVES-JURIDICAS-DE-LA-SENTENCIA-QUE-ORDENA-LA-DEMARCAACION-DEL-TERRITORIO-KICHWA-SUPERPUESTO-AL-PNCAZ-Y-ACR-CE-EN-SAN-MARTIN-Cristina-Gavancho.pdf>

Pável Labán Martínez. Formalizing territorial dispossession? Scope of the amendment to the law declaring the demarcation and titling of the territory of peasant communities to be of national necessity and social interest. Legal Defense Institute. April 12, 2025. https://www.idl.org.pe/ley-24657-formalizando-el-despojo-territorial-alcances-de-la-modificatoria-a-ley-que-declara-de-necesidad-nacional-e-interes-social-el-deslinde-y-la-titulacion-del-territorio-de-las-comunidade/#_ftn1

PNN, Gonawindúa Tayrona Organization, Kogui Malayo Arhuaco Reserve, AmazinK. Jaba Nimakeiuman: A pedagogy of the Tayrona National Park territory (2022). https://www.parquesnacionales.gov.co/wp-content/uploads/2023/08/Cartilla_Jaba.pdf

Political Constitution of the Republic of Guatemala (1985), art. 46. <https://www.cijc.org/es/NuestrasConstituciones/GUATEMALA-Constitucion.pdf>

Political Constitution of Colombia, 1991, Articles 7, 63.330 and Articles 246, 286, 287. <https://pdba.georgetown.edu/Constitutions/Colombia/colombia91.pdf>

Political Constitution of Peru (1993), arts. 88, 89. https://cdn.www.gob.pe/uploads/document/file/198518/Constitucion_Politica_del_Peru_1993.pdf?v=1594239946

Protected Areas Act, Article 12.

Presidency of the Republic of Ecuador. Organic Law on the Recovery of Protected Areas and Promotion of Local Development (2025), art. 3. <https://www.teleamazonas.com/uploads/files/2025/06/14/PROYECTO-DE-LEY-ORGANICA-DE-RECUPERACION-DE-AREAS-PROTEGIDAS-Y-PROMOCION-DEL-DESARROLLO-LOCAL.pdf>

Regulations of the Protected Areas Law, Government Agreement No. 759-90, August 22, 1990, Article 11. <https://faolex.fao.org/docs/pdf/gua60539.pdf>

Regulations of the Protected Areas Act, Article 18.

Regulations of the Protected Areas Act, Article 24.

Ricardo Soberón. Drug Trafficking in Indigenous Territories of the Peruvian Amazon. Routes, Impacts, and Misguided Policies. AIDSEP, ORAU, Instituto del Bien Común, Amazon Watch (2025), p. 19. https://ibcperu.org/wp-content/uploads/2025/06/Narcotraficoindigenas_.pdf

Second Civil Court of Tarapoto of the Superior Court of Justice of San Martín. File 01146-2023-0-2208-JR-CI-02. Judgment of May 12, 2012, Sec. 4.14. https://www.idl.org.pe/wp-content/uploads/2025/05/res_2023011460142757000554565-1.pdf

Supreme Decree No. 038-2001-AG. Regulations of the Law on Protected Natural Areas (2001), art. 9. <https://www.acnur.org/fileadmin/Documentos/BDL/2008/6758.pdf>

United Nations Declaration on the Rights of Indigenous Peoples, Article 28.

See, in this regard, Inter-American Court of Human Rights. Case of the U'wa Indigenous People and Members Thereof v. Colombia. Merits, Reparations, and Costs. Judgment of July 4, 2024. Series C No. 530, para. 27, and corresponding footnotes. https://www.corteidh.or.cr/docs/casos/articulos/seriec_530_esp.pdf



UN, United Nations adopted by the General Assembly on September 13, 2007, Res. 61/295. https://www.un.org/esa/socdev/unpfii/documents/DRIPS_es.pdf

Colombia initially abstained from voting in favor of its adoption, but then in 2009 declared its support for it. See, UNHCR, UNHCR welcomes Colombia's decision to support the UN Declaration on the Rights of Indigenous Peoples , April 29, 2009. <https://www.acnur.org/noticias/historias/el-acnur-da-la-bienvenida-la-decision-de-colombia-de-apoyar-la-declaracion-de-la>

United Nations Declaration on the Rights of Indigenous Peoples, Articles 19 and 32.

United Nations Declaration on the Rights of Indigenous Peoples, Articles 3 and 4.

UN. Report of the Special Rapporteur of the Human Rights Council on the rights of Indigenous Peoples, Victoria Tauli-Corpuz . A/71/229 (July 29, 2016), para. 14. <https://docs.un.org/es/A/71/229>

UN. Guatemala. Agreement on Identity and Rights of Indigenous , March 31, 1995. https://defensores.org.gt/wp-content/uploads/1.01-Acuerdo_Sobre_Identidad.pdf

UN. Report of the Special Rapporteur on the rights of Indigenous Peoples on her visit to Guatemala . A/HRC/39/17/Add.3 (August 10), paras. 17-18. <https://documents.un.org/doc/undoc/gen/g18/246/46/pdf/g1824646.pdf?OpenElement>

UN. Report of the Special Rapporteur of the Human Rights Council on the rights of Indigenous Peoples, Victoria Tauli-Corpuz . A/71/229 (July 29, 2016), para. 14. <https://docs.un.org/es/A/71/229>

UN. Report of the Special Rapporteur on the rights of Indigenous Peoples on her visit to Guatemala, para. 29.

UN. Report of the Special Rapporteur on the rights of Indigenous Peoples on her visit to Guatemala, para. 30.

UN. Report of the Special Rapporteur on the rights of Indigenous Peoples on her visit to Guatemala, para. 45.

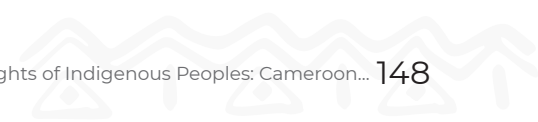
Law on Environmental Protection and Improvement, Decree No. 68-86 (1986), articles 11, 12.b. https://observatoriop10.cepal.org/sites/default/files/documents/gt_-_ley_68-86_de_proteccion_y_mejoramiento_del_medio_ambiente_1986.pdf

UN, Letter of Allegation sent by various special procedures to the Government of Guatemala - AL GTM 4/2019 (July 22, 2019), p. 5. <https://www.make-the-shift.org/wp-content/uploads/2021/07/guatemala-desalojos-forzosos.pdf>

Un Nuevo Sol Rebelde. We Live Here and We Resist: Communities Denounce Criminalization and Exclusion in Protected Areas. Mesoamerican Community Radio Network (August 5, 2025). <https://www.radioscomunitarias.info/habitamos-y-resistimos-comunidades-denuncian-criminalizacion-y-exclusion-en-areas-protegidas/>

UN. Report of the Special Rapporteur on the rights of Indigenous Peoples: Visit to Ecuador. A/HRC/42/37/Add.1 (July 4, 2019), para. 22. <https://docs.un.org/es/A/HRC/42/37/Add.1>

UN. Report of the Special Rapporteur on the rights of Indigenous Peoples: Visit to Ecuador. A/HRC/42/37/Add.1 (July 4, 2019), para. 23. <https://docs.un.org/es/A/HRC/42/37/Add.1>



COLOMBIA

Relevant Environmental Laws and Policies

Affected Rights

Assessment in the Light of State Obligations on the Rights of Indigenous Peoples

Decree 622 regulating the National Parks System (1977) provides that the declaration of a national park is not incompatible with the establishment of an indigenous reserve.

If, for ecological and biogeographical reasons, an area inhabited by Indigenous Peoples is to be included in the National Natural Parks System, "a special regime for the benefit of the Indigenous population shall be established, according to which the permanence of the community and its right to the economic use of renewable natural resources shall be respected."

In the case of the U'wa Indigenous People v. Colombia, the Inter-American Court of Human Rights found that the establishment of the El Cocuy National Natural Park in U'wa territory, violated U'wa people's rights to property and participation. The Court held that the State failed ensure their effective participation in the park's administration and allowed third parties to damage their environment and sacred sites.

Inter-American Court of Human Rights, Kaliña and Lokono Peoples v. Suriname (2015):

Indigenous Peoples' rights and international environmental standards must be understood as complementary and not mutually exclusive. In order to achieve such compatibility, the following criteria must be observed as part of the guarantee of Indigenous Peoples: a) effective participation, b) access to and use of their traditional territories, and c) receipt of benefits from conservation.

The regulations on protected areas recognize the compatibility between Indigenous Peoples' rights and environmental protection. However, the application of these and other conservation regulations must, in practice, guarantee the effective participation of Indigenous Peoples in the administration of protected areas. To this end, more recent regulations such as **Decree 1275 of 2024** could be implemented in a complementary manner. This decree establishes the rules for the functioning of Indigenous territories in environmental matters and the development of the environmental competencies of Indigenous authorities and their effective coordination with other authorities and/or entities.

Law 160 of 1994, Art. 85.6:

"Territories traditionally used by nomadic, semi-nomadic, or itinerant farming Indigenous Peoples for hunting, gathering, or horticulture, located in forest reserve areas at the time this law comes into force, may only be used for the establishment of Indigenous reserves, but their occupation and use shall also be subject to the requirements established by the Ministry of the Environment and the provisions in force on renewable natural resources."

Document CONPES-2834-MinEnvironment-DNP-UPA.

Forest Policy (1996): "Taking into account that a large part of the country's forests are located in Indigenous reserves or on land collectively awarded to black communities, aspects related to land tenure and forest ownership will be reviewed, and management and administration schemes will be proposed in accordance with the conditions of each region and type of property." (pp. 9, 10).

Although forestry regulations and policies recognize Indigenous reserves and allow for the use or management of forest resources within Indigenous territories, in practice, they require greater and more meaningful participation of Indigenous Peoples in state-led conservation, monitoring, and prevention of deforestation affecting their territories and protected areas.

This gap is especially pronounced in territories that remain unrecognized making the delimitation, demarcation, and titling of Indigenous lands a critical priority for the protection of forests, particularly in regions such as the Amazon.

State responses to deforestation, including increased military presence, have failed to target the armed groups responsible. Instead, they have led to the military and judicial persecution of Indigenous defenders.

It is necessary to implement key regulations such as the 2018 Comprehensive Strategy for Deforestation Control and Forest Management (EICDGB) "Bosques Territorios de Vida" (Forests Territories of Life), which recognizes the need to strengthen the territorial governance of ethnic groups, as well as peasant and rural communities that depend on forests. The strategy also emphasizes incorporating their knowledge and perspectives to address deforestation in Colombia.

To this must be added **Decrees 632 of 2018, 1275 of 2024, and 488 of 2025** regarding Indigenous autonomy and the role of Indigenous authorities in environmental issues and their coordination with state institutions.

ECUADOR

Relevant Environmental Laws and Policies

Affected Rights

Assessment in the Light of State Obligations on the Rights of Indigenous Peoples

Constitution of the Republic of Ecuador (2008):

Art. 57. Establishes the irreducible and intangible nature of the territories of peoples in voluntary isolation, and the State shall adopt measures to guarantee their lives, self-determination, and willingness to remain in isolation.

Art. 407.- The extraction of non-renewable resources in protected and intangible areas including forestry, is prohibited. Exceptionally, exploitation may proceed upon a reasoned request by the Presidency and a declaration of national interest by the National Assembly, which, may also call a referendum.

Organic Environmental Code (2017), Art. 50.- Within the National System of Protected Areas, it permits the legalization of land held prior to a protected area's declaration of under certain conditions; in the case of Indigenous Peoples, lands may be granted free of charge, subject to compliance with applicable requirements.

Article 54. Extractive activities involving non-renewable resources are prohibited within the National System of Protected Areas and in intangible areas, including forestry, except as permitted by the Constitution, in which case the relevant provisions of this Code apply.

As noted in the Case of the Tagaeri and Taromenane Indigenous Peoples v. Ecuador (Inter-American Court of Human Rights 2024), despite the establishment of the Tagaeri-Taromenane Intangible Zone (ZITT) in favor of Indigenous Peoples in voluntary isolation (IPVA), the government requested a declaration of national interest to authorize oil exploitation, which would have allowed exploitation in the ZITT buffer zone.

The Inter-American Court found that the State failed to exercise due diligence in delimiting and protecting the property rights of the IPVA in the ZITT. It further held that "the precautionary principle was not adequately guaranteed, since information on sightings of IPVA in the territories where oil activities were to be carried out was not taken into account and no evidence was provided that measures had been taken to ensure that the activities to be carried out safeguarded the principle of no contact. Therefore, it is considered that the State violated the IPVA's right to collective property and, consequently, their right to self-determination."

Taromenane v. Ecuador (2024):

In assessing the State's obligations regarding the communal property of the IPVA, the Court held that any limitation such as exceptions to prohibitions on access to and exploitation of intangible territories, must be clearly established by law and aimed at enhancing protection of IPVA rights or addressing exceptional emergencies. Such measures must also be proportionate to their nature and potential impact on the IPVA's way of life, ensuring respect for the right to non-contact, in line with the precautionary principle.

American Declaration on the Rights of Indigenous Peoples (2016), Art. XXVI:

recognizes the right of Indigenous Peoples in voluntary isolation or in initial contact to remain in that condition and to live freely and in accordance with their cultures. States "shall, with the knowledge and participation of Indigenous Peoples and organizations, adopt appropriate policies and measures to recognize, respect, and protect the lands, territories, environment, and cultures of these peoples, as well as their life and individual and collective integrity."

UN Guidelines for the Protection of Indigenous Peoples in Isolation and Initial Contact in the Amazon Region, the Gran Chaco and the Eastern Region of Paraguay (2012):

Develops the principles and rights of these peoples, such as the principle of non-contact, self-determination, territory, and culture.

Law on the Recovery of Protected Areas and Promotion of Local Development (2025):

Article 3.- Purpose.- This Law aims to conserve the country's natural heritage by promoting public and private investment in programs that strengthen the Protected Area management of, generate decent employment in surrounding communities, diversify local economies, and support local development through responsible ecotourism; while ensuring the security of these areas by preventing illegal activities or criminal economies.

Art. 4.- The National Environmental Authority shall develop regulations related to protected areas, which may be managed "through contractual mechanisms for intervention, administration, and operation by the private sector, national or international; or other mechanisms permitted by current legal regulations."

Art. 5.- Contractual mechanisms for intervention, administration, and operation. The intervention, administration, and operation of protected areas by private actors shall be governed by contracts with the competent public authority and must be justified by lawful purposes such as: tourism services, public enjoyment of natural heritage, environmental services, environmental protection, scientific research, or other activities defined by the Regulations.

The Law does not recognize the presence of Indigenous Peoples within existing protected areas, nor does it acknowledge their collective rights.

It reinforces the longstanding disregard for these rights advancing a model of environmental governance that treats the State as the owner of protected areas with broad authority to freely dispose of them for economic purposes.

Framed as an urgent measure for economic recovery, the Law was adopted without prior consultation with Indigenous Peoples whose territories overlap with protected areas, despite its direct impact on their rights.

The involvement of private actors would further disadvantage Indigenous Peoples whose territorial rights remain unrecognized within protected areas, while undermining their rights to self-government and self-determination.

United Nations Declaration on the Rights of Indigenous Peoples (2007), Article 19. "States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them."

Inter-American Court of Human Rights, Kaliña and Lokono Peoples v. Suriname (2015), The rights of Indigenous Peoples and international environmental standards must be understood as complementary and not mutually exclusive. In order to achieve such compatibility, the following criteria must be observed as part of the guarantee of indigenous peoples: a) effective participation, b) access to and use of their traditional territories, and c) receipt of benefits from conservation.



GUATEMALA

Relevant Environmental Laws and Policies	Affected Rights	Assessment in the Light of State Obligations on the Rights of Indigenous Peoples
<p>Regulations on Environmental Assessment, Control, and Monitoring (RECSA) (Government Agreements 137-2016, 148-2024).</p> <p>These regulations establish public participation in environmental assessment processes for category A projects (high potential environmental impact or risk) or B1 projects (moderate potential environmental impact or risk).</p> <p>The project proponent must announce the submission of an environmental instrument to the Ministry of Environment and Natural Resources (MARN) through a widely circulated national and regional newspaper. They must also submit documentation of the participatory methodology, which may include "interviews, surveys, workshops, assemblies, and/or meetings, taking into account the linguistic community and the relevance of the project's area of influence."</p> <p>In informing the population, public opinions and observations are considered "in order to analyze the appropriate environmental control measures prior to issuing the final resolution."</p> <p>Interested individuals or legal entities may submit comments, including their opposition, within 20 days from the eight day following publication of the notice on the environmental impact study.</p> <p>Environmental impact studies must be prepared by an environmental consulting firm.</p>	<p>The process established under RECSA does not meet international standards on differentiated prior consultation with Indigenous Peoples, as it fails to ensure engagement through their representative institutions and appropriate procedures to obtain their free, prior, and informed consent.</p> <p>The RECSA participation process fails to adequately recognize the rights of Indigenous Peoples to their lands, territories, and natural resources, as well as their rights to consultation, and free, prior, and informed consent, and other internationally recognized protections.</p> <p>Environmental consulting firms are contracted by project proponents, undermining their independence and impartiality in violation of international standards.</p> <p>As a result, hydroelectric, mining, and agro-industrial projects that violate Indigenous territorial rights and their rights to consultation and consent of, while also fueling social conflict and the criminalization of Indigenous Peoples.</p>	<p>United Nations Declaration on the Rights of Indigenous Peoples, (2007), Article 19: "States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them."</p> <p>Convention No. 169 on Indigenous and Tribal Peoples, (1989), art. 7.3. "Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities."</p> <p>Inter-American Court of Human Rights, case of the Kichwa Indigenous People of Sarayaku v. Ecuador (2012). Social and environmental impact studies must be conducted by independent, technically capable entities under State supervision . These studies must follow international standards and best practices, respect the traditions and culture of Indigenous Peoples, and be completed prior to the granting of the concession [...] One aspect to be addressed is the cumulative impact of existing projects, as well as the projected impacts of proposed ones.</p>

Protected Areas Law (1989).

The official declaration of a protected area must be based on a technical study approved by the National Council for Protected Areas, which analyzes the physical, social, economic, cultural, and environmental characteristics and conditions in the proposed area and the effects of its creation on the overall life of its population, Art. 11.

Regulations of the Protected Areas Act (1990).

It establishes that in the case of strictly protected conservation areas such as national parks, biological reserves, or core areas of biosphere reserves, no new human settlements will be permitted. If settlements exist in these areas, "mechanisms will be sought to make them compatible with the management of the area. If these conditions are not met, the relocation of these settlers will be arranged."

The regulations on protected areas do not recognize Indigenous Peoples or their rights within the process for declaring protected areas, nor do they acknowledge their role as conservation actors in managing territories that overlap with their lands.

Requirements for proposing protected areas should consider not only settlement characteristics, but also the rights of Indigenous Peoples in accordance with international standards.

In the case of the Laguna Larga community in the Maya Biosphere Reserve, the environmental authority applied regulations to prohibit human settlements in multiple-use areas, thereby justifying the eviction and criminalization of Laguna Larga residents and other indigenous communities living in protected areas.

United Nations Declaration on the Rights of Indigenous Peoples (2007), Article 19: "States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them."

Inter-American Court of Human Rights, Kaliña and Lokono Peoples v. Suriname (2015):

Indigenous Peoples' rights and international environmental standards must be understood as complementary and not mutually exclusive. In order to achieve such compatibility, the following criteria must be observed as part of the guarantee of Indigenous Peoples: a) effective participation, b) access to and use of their traditional territories, and c) receipt of benefits from conservation.



PERU

Relevant Environmental Laws and Policies

Affected Rights

Assessment in the Light of State Obligations on the Rights of Indigenous Peoples

Law on Protected Natural Areas (1997), Art. 31.

Article 31.- The administration of protected areas prioritize safeguarding the traditional uses and ways of life of the native and ancestral peasant communities respecting their self-determination in so far as these are compatible with conservation objectives. The State shall also promote their participation in achieving the purposes and management of Protected Natural Areas.

Regulations of the Protected Natural Areas Act (2001).

Article 43.- Consultation procedures for their creation.

43.1 The process for establishing or definitively categorizing a Protected Natural Area must be based on transparent consultation with affected local population, including Indigenous and/or peasant communities, in accordance with the procedures set out in "Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries" of the International Labor Organization (ILO). In such cases, participation must take place through their representative organizations and, as far as possible, in the most relevant local language.

43.2 Protected Natural Areas may be established or definitively categorized on communal property, provided that the prior, free, and fully informed consent of the owners of such property has been obtained, whose fundamental rights are explicitly recognized in the creation provision [...].

Despite the recognition of Indigenous Peoples' territorial rights in Peruvian environmental regulations, significant challenges remain in ensuring their effective implementation in practice.

In the case of the Kichwa communities, whose ancestral territories overlap with the Cordillera Azul National Park and the Cordillera Escalera Regional Conservation Area, national and regional authorities refused to demarcate their territory. They argued that the demarcation within protected areas is not possible, as these are heritage areas where third-party rights cannot be granted, and claimed that recognizing Indigenous territories would threaten environment and biodiversity.

The establishment of these protected areas without prior consultation, together with the stance of State authorities, violated the territorial rights of the Kichwa people, excluding them from decision-making spaces, restricting access to their traditional lands and natural resources, and leading to the criminalization of their activities.

The May 2025 ruling of the Superior Court of Justice of San Martín affirmed that "the existence of the protected area and the right of Indigenous Peoples to demarcate their territories are not opposed but complementary," and ordered the demarcation of Kichwa territory within these areas. However, under the Native

The case of the Kichwa communities affected by the Cordillera Azul National Park and the Cordillera Escalera Regional Conservation Area highlights ongoing challenges in implementing the provisions protected natural areas regulations, particularly in ensuring respect for Indigenous Peoples' rights to consultation and self-determination in their establishment.

Inter-American Court of Human Rights, *Kaliña and Lokono Peoples v. Suriname* (2015)

The Court affirmed that Indigenous rights and international environmental standards are complementary, not mutually exclusive. To ensure this, the following criteria must be upheld: a) effective participation, b) access to and use of their traditional territories, and c) receipt of benefits from conservation.



43.3 Where there are reasonable indications of the existence of human groups in voluntary isolation or in initial or sporadic contact, the provisions for the creation of the Protected Natural Area safeguard their property rights and other acquired rights.

The 1978 Law on Native Communities and Agrarian Development in the Jungle and Jungle Edge and its Regulations: Establish the regulatory framework for the recognition of native communities' lands and the identification of lands suitable for forestry that are transferred to these communities for use.

Communities Act, forest areas are classified as "transfer of use," rather than titled as Indigenous property, unlike lands suitable for livestock and agriculture. As a result, the legal framework on Native Communities and protected areas falls short of fully recognizing Indigenous rights to lands, territories, and natural resources in line with international standards, particularly for forest areas.

The case of the Kichwa communities affected by the Cordillera Azul National Park and the Cordillera Escalera Regional Conservation Area highlights ongoing challenges in implementing the provisions protected natural areas regulations, particularly in ensuring respect for Indigenous Peoples' rights to consultation and self-determination in their establishment.

Inter-American Court of Human Rights, *Kaliña and Lokono Peoples v. Suriname* (2015) The Court affirmed that Indigenous rights and international environmental standards are complementary, not mutually exclusive. To ensure this, the following criteria must be upheld: a) effective participation, b) access to and use of their traditional territories, and c) receipt of benefits from conservation.

Law No. 28736 for the protection of indigenous or native peoples in isolation and in initial contact (2006):

The Law mandates the establishment of indigenous reserves to be based on areas occupied and traditionally accessed by these peoples.

These reserves are intangible, prohibiting settlements by non-Indigenous populations and restricting activities to the ancestral customs and practices of their inhabitants. While the law bars the granting of rights for exploitation of natural resources, it provides that "in the event that a natural resource susceptible to exploitation is located and its exploitation is necessary for the public good of the State, the law shall be followed" (Arts. 4, 5).

The implementation of this law has been slow, particularly in resolving requests for the creation of Indigenous reserves.

The case of the Mascho Piro, Yora, and Amahuaca peoples illustrates delays in recategorizing their lands as Indigenous reserves and securing their intangible status. As the IACHR noted, "the presence of Indigenous Peoples in voluntary isolation in areas with different legal categories demonstrates that the State has not guaranteed the full integrity of their territories and, consequently, has not duly recognized their collective property title."

There is also concern over the "public necessity" exception allowing natural resource exploitation within intangible reserves.

The IACHR warned that illegal logging and extractive concessions in these territories not only affect communal property but pose disproportionate risks to physical survival and cultural rights. As such, the State bears responsibility for violations of rights to judicial guarantees, freedom of expression, collective property, political participation, judicial protection, and cultural integrity under the American Convention.

Inter-American Court of Human Rights Case of the Tagaeri and Taromenane Indigenous Peoples v. Ecuador (2024):

In assessing the State's obligations regarding the communal property of the IPVA, the Court held that any limitation such as exceptions to prohibitions on access to and exploitation of intangible territories, must be clearly established by law and aimed at protecting IPVA rights or addressing exceptional emergencies. Such measures must also be proportionate in light of their impact on the IPVA's way of life, ensuring respect for the right to non-contact, in accordance with the precautionary principle.

American Declaration on the Rights of Indigenous Peoples (2014), Art. XXVI:

recognizes the right of Indigenous Peoples in voluntary isolation or initial contact to remain in that condition and live freely in accordance with their cultures. It further states that States "shall, with the knowledge and participation of Indigenous Peoples and organizations, adopt appropriate policies and measures to recognize, respect, and protect the lands, territories, environment, and cultures of these peoples, as well as their life and individual and collective integrity."

UN Guidelines on the Protection of Indigenous Peoples in Isolation and Initial Contact in the Amazon Region, the Gran Chaco, and Eastern Paraguay (2012): These guidelines develop the principles and rights of these peoples, such as the principle of non-contact, self-determination, territory, and culture.



SUMMARY, CONCLUSION AND RECOMMENDATION

This report by Indigenous Peoples Rights International (IPRI), based on an analysis of **11 biodiversity-rich countries across Asia, Africa, and Latin America**, reveals a persistent contradiction in global conservation. While the international community—through the Kunming-Montreal Global Biodiversity Framework (GBF)—has committed to a human rights-based approach recognizing Indigenous Peoples’ leadership and rights, realities on the ground show the continuation, and in many cases intensification, of harmful conservation practices.

Across all regions, conservation laws and policies remain largely rooted in a **“fortress conservation” model**—one that excludes Indigenous Peoples from our customary lands, criminalizes our livelihoods, and legitimizes violence, displacement, systemic discrimination including against Indigenous women.

The GBF marks an important global commitment, including recognition of Indigenous Peoples’ roles, respect for traditional knowledge, and the requirement for Free, Prior and Informed Consent (FPIC). However, rather than transforming conservation, its implementation is, in many contexts, reinforcing the very models it seeks to reform.

In practice, the global push to expand protected areas—particularly under the **30x30 target**—has accelerated the designation of conservation zones on Indigenous territories without **recognition of land rights, FPIC, or meaningful participation**. This reflects not an unintended consequence, but the persistence of national legal frameworks misaligned with international human rights standards.

The report documents how **laws and policies across countries directly enable the criminalization of Indigenous Peoples**, including:

- **Forest and wildlife laws** that criminalize traditional practices such as hunting, fishing, grazing, and shifting cultivation
- **Protected area laws** that restrict access to ancestral lands and impose penalties, arrests, or imprisonment
- **Forestry and land classification systems** that place Indigenous territories under state control unless formally recognized through burdensome procedures
- **Conservation and climate finance initiatives** that restrict land use and result in harassment, arrests, and displacement

Across contexts, these frameworks share common features: **lack of FPIC, weak or absent recognition of land rights recognition, top-down governance, and coercive or militarized enforcement**.

Rather than strengthening Indigenous leadership, current GBF implementation risks **legitimizing rights violations under a global conservation agenda**. This exposes a fundamental gap—not in commitments, but in **their translation into national laws, policies, and practice**.

The evidence is clear: Conservation imposed without rights is unjust and ineffective.

Indigenous Peoples' territories overlap with some of the most biodiverse ecosystems on Earth, sustained through Indigenous governance systems for generations. Yet conservation continues to marginalize and criminalize these systems.

The core challenge lies not in the ambition of global biodiversity goals, but in the **failure to address structural injustices embedded in conservation governance**. Without legal reform, accountability, and full respect for Indigenous Peoples' rights, the GBF risks perpetuating the harms it seeks to resolve.

The path forward requires a shift from exclusionary, target-driven conservation to a **rights-based approach grounded in Indigenous self-determination, land security, and leadership**.

Key Recommendations

1. To Governments

- Align GBF implementation with **UNDRIP**, ensuring full legal recognition of Indigenous Peoples' rights to lands, territories, and resources
- **Ensure policy coherence** across environmental, land, resource, development, and business frameworks affecting Indigenous Peoples
- Make **FPIC mandatory and enforceable** in all conservation and biodiversity actions.
- **Review and reform conservation, forestry, and land laws** that criminalize Indigenous livelihoods
- **Halt forced evictions and criminalization** linked to protected area expansion, including under the 30x30 target.
- Secure **collective land tenure** as the foundation of effective conservation.
- Establish **independent monitoring and accountability mechanisms** for conservation-related human rights violations.



2. To Conservation Organizations and Donors

- Ensure that **GBF-related funding does not support fortress conservation** or projects leading to displacement, criminalization, or militarization.
- Shift investments toward **Indigenous-led conservation and territorial governance systems**.
- **Adopt zero -tolerance for human rights violations** and institutionalize **due diligence and FPIC**.
- Provide **direct access to funding** for Indigenous Peoples, reducing reliance on intermediaries.
- Strengthen **transparency, independent monitoring, and grievance mechanisms**.
- **Collaborate** with Indigenous Peoples in ways that respect their rights, knowledge, and conservation practices

3. To Indigenous Peoples and Our Organizations

- Engage in and influence **national GBF implementation processes (e.g., NBSAPs)** to ensure alignment with Indigenous Peoples rights
- **Monitor, document and report conservation-related rights violations**.
- Advance and scale **Indigenous-led conservation models** and strengthen rights-based partnerships
- Build **regional and global solidarity** to challenge harmful conservation practices.
- Continue asserting **self-determination and governance over lands and territories**.

As Indigenous Peoples, we have protected biodiversity for generations—not through exclusion, but through coexistence, reciprocity, responsibility, and respect.

For the Global Biodiversity Framework to succeed, it must move beyond commitments and ensure that conservation—in law and practice no longer harms those who have long sustained the Earth. Only by securing Indigenous Peoples' rights can biodiversity be secured.

