

Indigenous Peoples, Local Communities and tropical forests: greater justice for greater impacts

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This note calls for the rights of Indigenous Peoples and Local Communities to be recognised and implemented as a priority, regardless of their role in the conservation of forests, and for their development trajectories to be supported towards greater sustainability, based primarily on the needs they express. This major shift in perspective, underpinned by social justice, requires new approaches and positions to promote sustainable development in tropical forests.

ADOPTING THE VIEWPOINT OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES TO CONSERVE FORESTS

In recent decades, numerous studies have shown that forest communities’ territories displayed lower rates of deforestation and greenhouse gas emissions, and better protection of biodiversity, when they were officially endorsed by the State, compared to areas under governmental or private management.

The above observation forms the foundation of many civil society organisations’ advocacy and should play a greater role in informing public policy and decisions on forest ecosystem conservation, it should however be qualified. Indigenous Peoples and Local Communities (IPLCs) are not homogenous groups, and deforestation practices persist and are even spreading in some territories, notably due to the expansion of small-scale agriculture. These practices provide solutions to the immediate needs of populations,

particularly communities in the Congo basin and landless farmers in Latin America, due to economic reasons, external pressures or poor governance.

These observations call for rigorous analysis of local contexts and caution with regard to “miracle” uniform solutions, to combat deforestation and conserve tropical forests. It is above all necessary to place forest-dependent populations at the core of debates and decision-making processes, whereas their aspirations, needs and knowledge are too often neglected, or ignored.

This note advocates for a major shift in perspective: move beyond utilitarian approaches, which valorise communities solely for their role in forest conservation, and prioritise full recognition of their rights, as a matter of social justice.

Local approaches, based on the rights and needs of IPLCs, rooted in the principles of reciprocity, co-responsibility and equity, are likely to generate more profound and long-term impacts, both for the populations concerned and for the conservation of forest ecosystems.

SOCIAL JUSTICE: SECURING CUSTOMARY RIGHTS TO SUSTAINABLY MANAGE FORESTS

Recognise and secure customary rights exercised and demanded

IP LC demand respect and protection of their customary land rights because land is a matter of economic, cultural and spiritual survival for them. These groups assert that all solutions must be rooted in endogenous legitimacy and that national reforms must be inspired by customary practices rather than replacing the latter. According to these groups, solutions should come mainly from their own governance systems rather than being imposed from outside. These approaches are increasingly echoed within some international bodies, which are concerned about the multiple economic, land, climate and environmental crises affecting the main tropical forest basins and further weakening the position of forest-dependent populations. The consequences of this marginalisation are widely documented: erosion of customary systems without any credible alternatives, fragmentation of rural societies and aggravation of poverty and exclusion.

- **Better protection of the rights of IPLCs requires the implementation of a stronger framework, moving from a logic of external allocation to a logic of recognising pre-existing legitimacies**, while creating the conditions necessary for harmonious coexistence between different legal and cultural systems, with no hierarchisation. The demand does not concern total rejection of modernisation, but an approach rooted in existing practices, rather than superseding these

with external legal models that can be unsuited to local realities or representations.

- **Formalisation of customary rights, whether they are collective or individual, must be more flexible and adapted to local contexts.** Registration processes implemented to enable IPLCs to secure ownership of the land and forests they traditionally occupy and exploit are often complex and costly, and can prove to be unsuited to their realities. Community registers, territorial certificates, recognition of traditional authorities, and legal recognition of collective territories' autonomy can provide a certain level of security, but these processes must be participative, evolving and in line with the capacities and needs of Indigenous Peoples and Local Communities, and with global environmental and social changes.

Complete the transcription of international texts into national law

International instruments relating to the rights of IPLCs are not always fully transcribed into national legal frameworks due to numerous challenges, notably the non-binding nature of some instruments, the absence of detailed guidelines for their implementation, and the sovereignty and political will of States. States' limited technical and financial capacities, and the multiplicity of national normative traditions also make this transcription complex in most forest countries in central Africa, South-East Asia and Latin America. Better integration of international standards therefore requires provision of legal, institutional and financial support to the States concerned. It is also necessary to raise the awareness of IPLCs and encourage them to collaborate with all key actors (government, civil society, international institutions).

BOX 1: SECURING THE RIGHTS OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES IN FOREST BASINS: A WIDE DIVERSITY OF CONTEXTS

In central Africa, the transcription and securing of the rights of IPLCs are hindered by the collision between colonial heritage, modern law and customary practices. This complex situation is a source of uncertainties, conflicts and exclusion, in particular for Indigenous Peoples, rural communities and women. Land and land-use planning reforms, initiated in recent decades have not yet resolved these contradictions. On the contrary, they are often heightened by inequalities and fragmentation, in a context of weak governance.

In Indonesia, recognition of the rights of IPLCs through different social forestry models has been achieved incrementally since 1995, but with an important stage involving recognition by the Constitutional Court in 2013 of customary peoples' right over their forests

and the removal of these forests from the State's domain. This decision formalised the rights of IPLCs to a much greater extent than anything that had been hitherto achieved.

In the Colombian Pacific, law 70 of 1993 made it possible to formalise and legally recognise the collective territories of Afro-Colombian communities, facilitating collective management of the territory and of community forests. In parallel, in Colombian Amazonia, collective management experiences in indigenous communities, or in cooperatives for farming communities, provide solutions in a context where there is no clear legal recognition of customary rights and where land-use planning modes are complex and superimposed.



Mintom, Cameroon, May 2024 (Alejandra Salgado)

- **The transcription of international standards is a necessary condition, but it is insufficient to enable Indigenous Peoples and Local Communities to exercise their rights.** Efforts to formalise these rights via tools such as community forests, communal forests, concessions and protected areas have generated mixed results in the three tropical forest basins, particularly in the Congo basin and in Brazilian Amazonia. Assessments of these formal models for management of forest resources and land — which are often designed, funded and coordinated externally — raise fundamental questions on the effectiveness of current approaches. These unequal results do not reflect an inherent failure of community approaches, but rather the mismatch between the regulatory frameworks imposed and local socio-cultural realities. They also point to the need for a more coherent and participative approach for the recognition and operationalisation of the rights of IPLCs.
- **It is essential to ensure that legal regimes and implementation laws at national level fully reflect the demands and practices of IPLCs — if they are fully compatible with the respect of human rights — and that they are drawn up, refined and clarified in collaboration with IPLCs, in line with the principle of free, prior and informed consent (FPIC).** Expansion and consolidation of successful models, their inte-

gration in national policies, and the establishment of participative monitoring and evaluation systems must also be envisaged to sustainably strengthen exercise of rights over the long term.

Strengthen the effectiveness of rights

The rights of IPLCs are framed by a range of legal instruments, which can be binding or flexible. International law notably recognises the right to remedy, reparation and access to information in the event of a violation of human rights or international humanitarian law. These standards constitute a minimal framework, however, as things stand today, they cannot guarantee the effective implementation of rights.

- **States must play a central role in compliance with standards and mechanisms enacted in their national law.** For example, Colombia introduced compulsory prior consultation for any project affecting indigenous or afro-descendent territories. However, very often, the effectiveness of these mechanisms depends largely on political will and local power relationships. States should serve as examples and demand that companies assume their legal liability in the event of a violation of forest communities' rights (possibility of legal proceedings against them, notably as part of duty of care).

- **Strengthening decentralised and devolved state institutions is necessary to ensure the effective implementation of rights, recognition of responsibilities in the event of violation, and the safety of communities. This strengthening is also necessary to promote the approaches adapted,** similar, for example, to community initiatives in the Democratic Republic of Congo (DRC) based on the use of traditional authority structures and recognition of legal pluralism, combining customary systems and statutory frameworks. However, these local successes are constantly threatened by external pressures calling exercise of rights into question, such as the expansion



Banten, Indonesia, December 2023 (Manuel Boissière)

of cash crop cultivation, extractive industries, capture of land and financing by the elite, and the arrival of “neo-rural” actors. In light of these limits, it is necessary to advocate for an integrated approach, combining legal accountability and institutional strengthening, and tackling the profound causes of rights violations.

- **It is essential to strengthen the capacity of IPLCs to engage the ad hoc mechanisms of the United Nations and to ensure monitoring of the implementation of recommendations generated by periodic universal examinations of indigenous issues.** These mechanisms play an essential role in highlighting violations and exert pressure on States to guarantee that rights are respected. Some of these mechanisms could be extended to Local Communities and the creation of new international mechanisms on collective remedies would make it possible to close legal loopholes, in line with the Guiding principles for land administration, which insist on the importance of legitimate, accessible and effective remedies.
- **Curbing impunity also requires making the rights of Indigenous Peoples and Local Communities justifiable at supranational level.** This necessitates mobilising the political will of the greatest possible number of States so that the project for a “binding treaty” on multinational companies’ respect of fundamental rights, being worked on by an intergovernmental group mandated by the Human Rights Council, leads to the establishment of a compulsory jurisdiction tribunal, contrary to the International Court of Justice Tribunal, which has optional jurisdiction, to ascertain and sanction these violations. With the exception of war crimes, crimes against humanity and genocide, international law only has judges to protect the economic interests of the most powerful economic agents (trade and investment law). It is urgent that this serious loophole be closed.
- **Furthermore, the commitments enshrined in bilateral or multilateral agreements and cooperation programmes are still insufficiently known and exploited by IPLCs, whereas they offer clear potential to secure their rights.** Instruments such as the Voluntary Partnership Agreements (VPA) or REDD+ projects to combat deforestation include provisions which make it possible to call upon the services of independent mediators or auditors in the event of contractual obligations being violated by the European Union’s partner countries, providing additional levers to protect rights and resolve conflicts. In addition, a growing number of companies have implemented Social and Environmental Responsibility policies that can be used both to strengthen respect of the customary rights of IPLCs and propose formal complaint mechanisms in the event of abuses.



Laranjituba e África Community, Brazil, March 2024 (Alejandra Salgado)

CO-CONSTRUCTING LOCAL RESPONSES AND INTERNATIONAL GOVERNANCE WITH NETWORKS REPRESENTING THE INTERESTS OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

Go further than simple consultation

Indigenous Peoples and Local Communities today are represented within several international bodies dealing with their rights, enabling them to defend their rights and draw up proposals to address local and global challenges. However, the majority of IPLCs ignore the existence of these mechanisms and the fact that they are represented in such bodies. In practice, their participation is often limited to a formal consultation during land reforms, and planning or development projects. Their consent may also be susceptible to corruption or threats.

To achieve a real change of perspective, it is essential to move from consultation to co-construction, strengthening the capacities of IPLCs and ensuring their effective

participation in the definition, assessment and prioritisation of their own needs and solutions.

- **Moving from consultation to co-construction constitutes a paradigm shift aiming to recognise the autonomy and knowledge of IPLCs, guarantee equity of their rights and improve the effectiveness of shared concrete solutions that directly concern them.** This approach requires a major shift in perspective aimed at creating real spaces of collaboration, discussion and exchange in order to build on these groups' experiences and knowledge. It also requires the development of a qualified and contextualised understanding of the challenges faced by IPLCs, taking external perceptions and biases into account, and keeping in mind that these groups do not need "saviours", but rather need partners who are committed, transparent and prepared to clarify their motivations and their agendas.
- **Co-construction must take the demands of IPLCs into account, such as self-determination and economic autonomy, as well as their cultural and historic specificities.** In concrete terms, initiatives must support the capacity of communities to decide on their priorities, manage their resources, reap their benefits and actively participate in the design and

implementation of policies and programmes that concern them. This collaborative approach **requires understanding and recognition of the logics that are specific to communities**, valorisation of their traditional knowledge, and integration of local populations' knowledge in the sustainable management of resources. Better recognition of the legitimacy of this knowledge, these institutions or these aspirations does not make them a new model for forest management or protection, it aims to rebalance the role and influence of IPLCs in the process of co-construction with the other stakeholders in the future of these territories.

Strengthen the capacities and representativeness of Indigenous Peoples' and Local Communities' networks

In some regions, the political organisation of IPLCs is the result of lengthy struggles for self-determination. It is based on federated customary structures, with effective and renewable mandates, which confer strong legitimacy.

These organisations not only ensure political representation of communities; they sometimes play an additional role by providing basic services when the State is absent. In others, the IPLCs networks are more recent and often they emerged at the initiative of external actors. They bring together entities that are sometimes less locally rooted, whose representation mandates can be unclear and whose governance is fragile.

- **To consolidate support for and confidence in networks representing IPLCs, it is essential to invest over the long term, horizontally rather than top-down, in strengthening of their organisational and technical capacities** (financial management, internal accountability mechanisms), while respecting the values and customary practices underpinning their legitimacy, and keeping in mind the particularities and diversity at the foundation of forest communities. Balance must therefore be sought between the necessary representativeness of IPLCs in accordance with recognised standards (inclusion of women and young people, extent and scale of representation), and the inherent diversity of IPLCs, which must also be conserved. Lastly, support must also aim to facilitate interregional exchanges, in order to promote mutual learning and transmission of knowledge. Developing spaces of dialogue between networks, public authorities and other stakeholders is likely to strengthen their institutional recognition and consolidate their role in the governance of territories and natural resources.

STEERING LEGITIMATE LOCAL DEVELOPMENT TRAJECTORIES TOWARDS GREATER SUSTAINABILITY

Fund initiatives addressing the needs and wishes of Indigenous Peoples and Local Communities, even if they are not aimed directly and immediately at forest protection

IPLCs have numerous funding needs in order to safeguard their rights, (advocacy, formalisation procedures, implementation of systems to monitor the territory, conducting FPIC, legal assistance, etc.), guarantee or maintenance of their livelihoods and essential needs (access to food, health, education, etc.), and jointly construct and defend their projects for community life. Yet they benefit from only a tiny fraction of amounts allocated under climate and biodiversity finance. According to Rainforest Foundation Norway, less than 1 % of world climate finance arrives directly in Local Communities, an observation confirmed by the Forest Tenure Funders Group. This situation points to a blatant contradiction: while IPLCs manage and protect a considerable portion of tropical forests across the world, they remain largely excluded from financial flows intended for conservation and climate action.

- **Promotion of sustainable, fair and permanent income-generating value chains is a major lever** of long-term development over and above external institutional funding, and it must be strongly supported. These sustainable value chains are often geared towards distant markets which are often difficult to reach for many IPLCs. One of the objectives is to build national value chains that are sensitive to the environmental, social and economic conditions experienced by small producers, while at the same time responding to increasing aspirations among urban consumers in developing countries to green, fair consumption. The fight against poverty, inequalities and the absence of alternatives in forest territories is often the best way to reduce pressures on forests.

Fund differently

- **Traditional institutional funding mechanisms must evolve to include simplified procedures to access funding, specifically for Indigenous Peoples and Local Communities.** One of the main challenges faced by IPLCs concerns donors' administrative requirements and eligibility criteria, which severely limit these groups from directly accessing funding. In the majority of cases, these funds transit through a chain of intermediaries: UN agencies, international NGOs and technical operators. This reduces effi-



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ciency, encumbers management and marginalises IPLCs in strategic decisions. A critical review of institutional funding is needed. It is not just a question of funding climate or conservation projects, it is also about recognising IPLCs as holders of rights, experts and strategic partners in environmental governance.

- **IPLCs must be able to define what constitutes fair sharing of benefits with local authorities, businesses and other stakeholders.** There must be agreement on establishing balanced partnerships based on mutual respect, where IPLCs are fully involved in decisions on funding upstream, and no longer just passive recipients at the end of the pro-

cess. In Indonesia for example, social forestry models include partnerships with the government or the private sector, which enable IPLCs to better negotiate, in their favour, distribution of the benefits of conservation or village plantations.

- **Better coordination between donors, operators, NGOs, and the private sector at all levels requires sharing of information and data relating to projects and initiatives supported, which are legion, but also pooling of resources, knowledge and good practices.** It is also necessary to facilitate access to information for IPLCs on available funding. In a context of significant budget cutbacks in the international solidarity

BOX 2: TERRITORIAL COMMUNITY FUNDS

The Dema Fund in Brazil, the Podaali Fund in Amazonia and the Mesoamerican Territorial Fund are some examples: managed by indigenous organisations, they fund the defence of territorial rights, institutional strengthening and sustainable economic activities. These experiences demonstrate that community funding, because it is based on endogenous governance and in-depth knowledge of territories, is more responsive and better suited to local needs than traditional mechanisms.

In South-East Asia, a similar dynamic is emerging with the NUSANTARA Fund, led notably by the

Indigenous Peoples' Alliance of Nusantara, and also in central Africa, with the Network of Indigenous Peoples and Local Populations for the Sustainable Management of Forest Ecosystems in Central Africa, which works to achieve the implementation of regional funds managed directly by and for communities.

Although they are more recent and not yet widespread, these mechanisms constitute a promising way to strengthen the financial and political autonomy of IPLCs, and to reduce their dependence on funding managed by external actors.

and development cooperation sector, this collaborative approach would make it possible to increase the impact of funding and ensure that resources actually reach the communities that need them most.

- **Alternative solutions are emerging, such as direct management of funding by Indigenous Peoples and Local Communities or by their representative networks, in order to reduce the number of intermediaries and increase local management of financial resources.** There is a growing number of innovative initiatives led directly by IPLCs — often with the support of NGOs or foundations — to promote direct funding. In Latin America, territorial community funds are being developed as alternatives to traditional channels. These funds, rooted in local governance structures, enable fairer redistribution of resources while at the same time strengthening communities' power to make decisions on their territories. They favour funding models based on local needs and priorities — forest protection, defence of rights, economic initiatives and transfer of knowledge — where community choices directly guide investments. This approach requires strengthening of the techni-



Lombok, Indonesia, December 2023 (Manuel Boissière)

cal and financial management skills of IPLCs, and implementation of effective mechanisms to monitor and control the use of funding. The empowerment of IPLCs in project management does not preclude the implementation of systems to ensure traceability of funds and sanctions in the case of defective management. ●

SUMMARY

Demanding full consideration of the rights, knowledge, capacities and aspirations of Indigenous Peoples and Local Communities (IPLCs) regarding the forest ecosystems surrounding them does not guarantee conservation of these ecosystems. It is primarily a matter of social justice. This policy brief calls for a major shift in perspective: make the recognition and protection of the rights of IPLCs a priority, regardless of their environmental and climate contribution.

The application of greater social justice necessitates better representation of IPLCs in decision-making bodies, no

matter what their scale. Numerous efforts are made to strengthen existing networks or roll out new ones, but much remains to be done for these actors to be aware of these systems and become involved in them. More also needs to be done to achieve a truly co-constructed, balanced debate, extending beyond top-down or symbolic approaches.

Lastly, greater social justice relies on a funding effort for initiatives addressing the needs of IPLCs, even if these initiatives are not aimed directly and immediately at forest protection. Funding suited to the needs and capacities of local populations, and the existence of fair and sustainable value chains can be powerful levers to promote a shared vision and shared use of forests.

BACKGROUND

This policy brief is the result of collective reflection undertaken following the completion of two projects on the subject, funded by the Forest Committee. The CIRAD/FERN/DOCIP consortium conducted a comparative analysis of national legal provisions, support programmes and practices

around the rights of Indigenous Peoples and Local Communities in four countries (Cameroon, Colombia, Congo and Indonesia). The AGTER/AGCT/TINTA consortium conducted reflection on needs and conditions of access to funding by forest communities, through travelling workshops held in Brazil and Cameroon.

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