

Conservation and impact on the rights of indigenous peoples Draft

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1. Conservation and the impact on the rights of indigenous Peoples

Different studies and research around the world have shown that indigenous peoples maintain a balanced relationship with natural areas and the environment in their lands and territories. Although this is a fact, the reality is that there are different interests on the natural resources of indigenous peoples, and as a consequence, the rights of these peoples are diminished.

When speaking of interests, we do not only find the participation of large companies or States that have among their objectives the access to primary resources from lands and territories occupied by indigenous peoples. We also find actors who seek the conservation of natural resources and natural ecosystems, this in the first instance could seem to have a nuance that does not differ from the vision of indigenous peoples, but the reality is different.

The topic of conservation of natural resources, and better said conservation, from a traditional view has its roots in the positions of academics of the 1970s. These visions focused on defining that conservation experiences should be based on Pristine natural landscapes. What has meant in many cases conservation in the protection of resources, including those actors and peoples that have historically had a harmonious relationship with nature as is the case of indigenous peoples. One of the biggest challenges that indigenous peoples have faced at the time is that these ideas of conservation area schemes "without people inside" the conservation areas and has been taken up and included in the national policies of our countries. One of the first models of conservation from a traditional view has been the Yellowstone Natural Park, in the United States; where there is a clear separation between the population and access to natural resources found in that area, and where people are seen as visitors who should not remain in this space.

The other vision of conservation, advocates the inclusion of social sectors in these processes of conservation of natural areas, considering that governance through local and community institutions provides spaces for greater control of access and use of natural resources, given that central governments seldom have strength and control in these geographically distant areas of administration centers (Kaimowitz, Fauné and Mendoza, 2003). Others consider that the declaration of protected areas without local participation has negative impacts on people's livelihood, because sometimes such declaration is accompanied by forced relocations, or deny access to natural resources vital to their human needs (McShane, 2003). The two positions are valid, and even in a single country you can find protected areas that are declared and governed under one or another position.

The conflicts surrounding the definition of conservation areas originate from the different conceptions and valuation of the territory and natural resources of indigenous peoples and the State. It is necessary to remember that for the indigenous peoples the territory is a space of interrelation between the human being and nature, the Mother Earth, which is the base that ensures the human, material and spiritual reproduction that we have as differentiated peoples. On the other hand, for States, conservation is based on the benefits that these "natural assets" possess, and in this equation, human beings have no place, and above all, indigenous peoples.

This disagreement in the visions of conservation has created a huge gap in terms of management, coordination and cooperation for the construction of management schemes for integral conservation areas, between indigenous peoples and the institutions that manage these areas. There are even cases where the creation of conservation areas has led to the displacement of the population, as in the case of

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the Tuparro and Katíos National Parks in Colombia (Andrade et.al, 2006). Where indigenous peoples and Afro-descendants were displaced to buffer zones of the park, and where the entire administration remained at the disposal of the State. Currently in the Katíos Park, this situation has changed to a process that includes strategies and alliances with these actors, to create a more comprehensive management system.

These two different views on conservation have had a negative impact both in terms of justice and in terms of the livelihoods of the indigenous peoples related to access, use, and administration of the conservation areas, which are located in indigenous territories. In this context indigenous peoples, raise the right to full control of their territories on the basis that their occupation was prior to any other, and supported by the legal commitments of a historical nature and international order that States have contracted. The State, by conferring in the legal systems an allocation of general interest to the areas of special management, claims full ownership over them, or at least, the discretionary capacity to assume this domain when it deems necessary (FAO, 2008). In many cases, indigenous peoples who cannot continue to have access to their territories are faced with the lack of alternatives that ensure their survival and living conditions.

Many of the definition of conservation areas have violated the basic right of indigenous peoples to the Prior, Free and Informed Consent (FPIC), as well as the minimum participation of the affected communities in this process of creation of the areas. In this space, there are other relationships that further complicate these scenarios and foment the violation of the rights of indigenous peoples, such as: the overlap of these administrative areas with the municipal administration, the limitations of access to the areas that traditionally occupied indigenous peoples in voluntary isolation, as well as the complexity of those areas in transboundary areas that affect indigenous peoples for their mobilization and therefore for traditional cultural and social reproduction.

2. Good practices of conservation with indigenous peoples

There is a diversity of conservation models throughout the world, in addition to state management of protected area systems, there are also areas managed by local, provincial governments, co management arrangements, communal conservation areas, etc. (IUCN, 2003). In Nicaragua there are 76 protected areas that are integrated into the National System of Protected Areas (SINAP), of which 61 are natural reserves, which have a category of flexible conservation, since they allow the use of natural resources for the benefit of the local populations, provided that such use is based on the management plan designed for the reserve (Barahona, 2007). The fact that the institutional configuration in the administration of the protected areas is varied, allows the local population to find spaces to participate in the management and management of the protected areas. According to Barahona (2007), the Ministry of the Environment and Natural Resources (MARENA), is only in charge of the administration of 15 protected areas of the 76 declared ones, and in 11% of cases there is shared management with private sectors or with organizations civil and municipal.

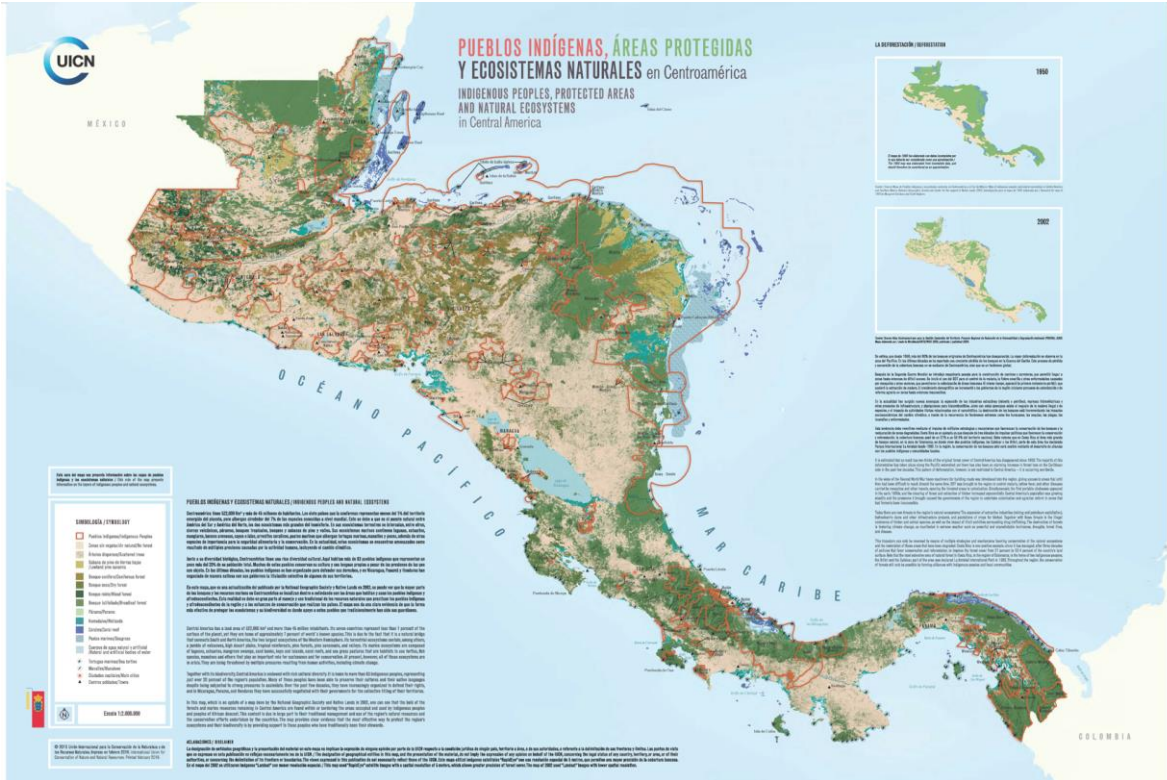
Protected areas are considered to be one of the most effective instruments for the conservation of biodiversity in-situ. In the last 15 years in Latin America the territorial coverage within protected areas has doubled, according to FAO (2008) this is related not only to the protected extension but also to the number of areas and categories of annex (more than 70 different denominations).

Table 1: Protected Areas in Latin America and the Caribbean

Sub region	Total extension sub region / hectares	Numer of Protected Areas	Total extension /hectareas	% Protection extention
<i>Central America and Mexico</i>	248.440.800	686	30.979.461	12,5

Caribbean	17.359.100	318	3.325.222	18,0
South America	1.709.079.100	1.153	177.852.301	10,4
TOTAL	1.974.879.000	2.157	212.156.984	10,7

The map on Indigenous Peoples, protected areas and natural ecosystems in Centromérica from IUCN, shown an overlap between the areas that States have defined as protected areas and the territories and lands of indigenous peoples. It is clear to say here that the idea of the conservation of natural resources is an idea external to the indigenous peoples and therefore has its effects on how these areas are managed and managed, often leaving aside the indigenous peoples and even violating the rights of these peoples over the possession and management of these areas.



The analysis of the map shows a huge variety of information and data, but among the most outstanding are:

- In the Central American region there are 63 indigenous peoples who live on an area of 202,017 km² on land and 80,308 km² at sea, especially in the Caribbean.
- Central America has a land extension of just over 522,000 km², of which 38% (202,017 km²) is occupied and used by indigenous peoples.
- 59% of the total coral reefs, including the Great Mesoamerican Barrier Reef, 24% of the mangrove forests and 71% of the seagrasses are located in the areas of use and occupation of these towns, as well as the 27% of sea turtle nesting areas and 65% of manatee sightings.

These data reflect the importance of conserving these marine ecosystems working together with indigenous peoples, not only for the supply of food, but also as an ecosystem service that helps capture carbon and reproduce marine species.

In South America, there are different forms of overlap of Protected Areas and Indigenous Territories, one of these examples is the Indigenous Territory of the Isiboro Sécur National Park (TIPNIS) in Bolivia, the

Pinawai Nature Reserve in Colombia or the Lauca National Park in Chile, where almost the entire surface is owned by indigenous peoples. Although there is no precise information on the overlap of protected areas and indigenous territories, it should be noted that in recent decades different actors have developed actions to process historical information, statistics and georeferencing the territories, which makes it possible to have more clarity on the dynamics that are given in this subject. For example, only in Brazil, 55 cases of overlaps of conservation units (UC) on indigenous territories have been identified, in Bolivia there are 10 protected areas that are located around 44 communal lands of origin (titled and demanded), of these 5 are fully overlapping, 9 partial and 30 are in buffer zones (FAO, 2008).

In Colombia, of the 52 protected areas that make up the National Parks System, 16 overlap with more than 50 reservations and reservations of more than thirty indigenous peoples. In Ecuador, 16 of the 36 protected areas of the National System have been created in indigenous lands and territories. In Mexico it is estimated that 57 protected areas of the 160 protected areas are inhabited by communities that belong to 36 of the 62 indigenous peoples of the country. In Paraguay there are 6 protected areas that overlap the living spaces of the Ache, Mbya Guaraní and Guaraní Ñandeva communities; as well as the Ayoreo people who are in a situation of voluntary isolation.

These data only show us the importance that protected areas have taken for conservation in our region, as well as in other regions of the world. And the challenges we face as indigenous peoples in terms of consolidating our human and ancestral rights of territorial self-determination. But above all, it is important to identify the opportunities that we could resume. Since there are experiences where States seek to share the responsibility for the conservation of these protected areas with other actors, to achieve a better level of efficiency in their management and conservation. That the current context marked by greater threats, interests and economic pressures on natural resources.

- **Good Practices**
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Intercultural co-management between the State and the Mapuche Communities in the Lanín National Park, Argentina

The Mapuche people, originally from the area that currently corresponds to the Lanín National Park, has occupied this territory for hundreds of years. It is home to approximately 500 Mapuche families (2,500 people) who belong to the communities of Aigo, Lefimán, Ñorquinko, Lafkenche, Raquithué, Curruhuinca and Cayún. The population is dedicated to transhumant and seasonal livestock, afforestation and recently to tourism.

Towards the end of the 20th century, the relationship between the Administration of National Parks (APN) and the Mapuche community began to change, as it was previously marked by expulsion and the violation of their rights. After an intense institutional debate in order to promote the adoption of a new paradigm in relation to the management of protected areas, for which it is necessary to integrate local communities to the management of the areas and the benefits of conservation, one of the the most successful experiences, that of co-management between the Mapuche communities and the APN, for the management of the Lanín National Park. This experience is developed from the confluence of three processes: (a) Transformations in the legal and political framework in the field of indigenous rights and nature conservation, nationally and internationally; (b) The incipient recognition of rights and the flexibility of the practices in the PN Lanín; and (c) the consolidation of the organizations of the Mapuche people. The co-management model implemented since 2000 is the result of the convergence of these three processes, combined with an acute political, social and institutional crisis unleashed at the end of 1999 at the national and local levels. In this framework, co-management is the product of the first "intercultural" approach between the APN and the Mapuche people of Neuquén.

The operation of this co-management has an organizational structure in three levels. The first level is the Management Committee APN-CMN (Neuquén Mapuche Confederation), the highest institutional instance of resolution, debate and global policy agreements. The second level is given by the Co-Management Area. This represents the daily and continuous space of co-management in the Intendance of the Lanín Park. Its activity covers the political-administrative sphere and its resolutions are of an executive nature. The third level is formed by the Local Management Committees. The local level instance assumes and resolves in a primary form the problems or specific issues of each community.

The success of this tool to reconcile conservation and indigenous rights will depend to a large extent on the development, mobilization and consolidation of the political organizations of the Mapuche People and the commitment they acquire with conservation.

Fuente: Carpinetti, Bruno. 2007. Administración de Parques Nacionales de Argentina (APN)

Katíos National Park and the Indigenous Peoples Guna Dule and Afrodescendants Colombia

The Katíos National Natural Park was created as a conservation area in the year of 1973 and in 1994 UNESCO gave it the category of World Natural Heritage. This National Park is located in the northwestern region of Colombia and borders Panama, specifically with the Darien Park, and together they were defined as a Biosphere Reserve due to the importance of interconnection with the natural areas of Central America.

The definition of this park as a natural area, implied the forced displacement of the indigenous and Afro-descendant peoples who lived inside the park to buffer zones, where they have had great impacts on their livelihoods, culture and spirituality.

Under the State administration, the park faced a degradation of the ecosystem due to the reconversion of soils, social conflicts with indigenous communities and Afro-descendants resettled outside the park, and the lack of capacity of the States to exercise a safe environmental management, as well as the constant threats of the entrance of mega projects inside the park. In response to these challenges, the Colombian State asked UNESCO to define this area as an "area in danger", to solve the situation that put it at risk. Developed a scheme of corrective measures through a "Action Plan" that focused on improving vigilance, strengthening personnel, coordinating with the armed forces, generating increased use and management of resources with Afro-descendant communities and indigenous peoples, as well as recognizing the rights of indigenous peoples over lands and territories, use and access to resources, managing coordinated work with other actors such as mayorships and strengthening the advocacy process so that mega projects do not enter the area.

It has been defined that one of the main pillars for good joint management is working with communities and see beyond a space that can not be touched, defining a route to achieve the goals of good configuration and management of the area protected

Fuente: Parques Nacionales Naturales Colombia (2016) Parque Nacional Natural Los Katíos en: <https://www.youtube.com/watch?v=84u90a6qA6k>

Cayos Miskitos: The Management of the Maritime Platform Nicaragua

The Biological Reserve of the Cayos Miskitos and the Immediate Coastal Belt, was created in 1991. Under the precepts that it constitutes a natural heritage of the Caribbean region of the country and of humanity in general, and that it possesses an ecological richness which should be managed for the subsistence and benefit of the indigenous peoples of the region. That this definition of protected area guarantees the right of autonomy of the population of the Atlantic Coast, through the rights that the Constitution and the laws grant.

The Reserve has a management plan, where zoning has been defined, including an area of absolute conservation defined by the importance of the intangible resources found in that area linked to the indigenous cosmogony. In addition, it is the communities that develop the self-management process of the natural area.

This is a comanagement model, based on the importance of local development, the recognition of traditional knowledge. And the importance of the integration of the own community members in the process of management.

Fuente: IUCN (2005) Estado de la Gestión Compartida de Áreas Protegidas en Nicaragua. Resumen.

Shared management could be an option for the consolidation of the rights of indigenous peoples in conservation experiences. However, there are still many challenges in this scheme, which derive from the weak or null articulation between jurisdictions, competences and responsibilities between the parties. This situation has resulted in serious problems of governance and control of the shared space that is manifested in aspects such as those mentioned below that are added to the conflicts identified in previous paragraphs:

- Absence of clear procedures and mechanisms to regulate the participation of indigenous peoples in decision-making on protected areas that overlap in their territories and / or in adjacent areas. Participatory processes have not been adapted to the cultural specificities and organizational forms of the group, which has made effective and legitimate representation impossible in several cases;
- It is necessary to clearly delimit the competences of each of the parties in the shared management of protected areas. There is an absence of adequate mechanisms and instruments to regulate, plan and control the use of resources in a shared manner; as well as to implement processes of accountability on the management of the areas.

3. Conservation standards and policies

The construction of models of management of conservation, begin forced by the struggles and demands of indigenous peoples, as well as the achievements in terms of recognition of their specific rights. It has also been important that indigenous peoples have been able to raise their voices and have disseminated their contributions in the conservation of biological biodiversity.

Reviewing the situation in different areas we can observed:

- There are a series of laws and regulations on protected areas, or on forest management that do not recognize the rights of indigenous peoples.
- Lack of coherence or inconsistency between the laws. The state rights over the subsoil have taken precedence over indigenous and human rights; on environmental rights; and on the conservation of

protected areas, which has caused serious socio-environmental and cultural impacts and has an impact on the loss of control and management of indigenous territories and protected areas, both by the communities and officials responsible for the protection of protected areas. administration and conservation of these spaces.

- Secondary standards in favor of indigenous peoples have been harshly questioned by the indigenous organizations themselves, considering that they do not give them sufficient guarantees in the face of the threats that these peoples face.

- Additionally, although legal frameworks are important, there are great challenges in terms of implementation.

Policies for the legal recognition of indigenous lands and territories and their relation to conservation. It is the axis of the demands of the indigenous peoples, the legal recognition of the possession of lands and territories, based on ancestral possession and property, access, control and management, as well as water resources, flora and fauna. Autonomy, self-determination to exercise our own forms of government, and the right to decide the destination as peoples, which is associated with other rights, such as: full participation, consultation and prior informed consent, both in the activities that is carried out in their lands and territories, as in relation to their traditional knowledge and an equitable distribution of benefits (Barragán, L and Escobar, M., 2003).

In this way and as a consequence of the indigenous struggles and advances in the legislation, the recognition of rights over the ancestral lands and territories of the indigenous people has been one of the most important advances in Latin America. Where property titles have been granted over large territorial extensions. The modalities of recognition of land rights in Latin America are diverse; however, in very broad terms the following have been identified:

Degrees that recognize in perpetuity the collective ownership of lands with the capacity to apply their own forms of government (as in Colombia, Panama, Ecuador, Peru, Bolivia, Paraguay and Nicaragua)

Degrees that recognize indefinitely the right of usufruct over renewable lands and natural resources and maintain their own systems of internal government (Brazil and Costa Rica, for example); and,

Community qualifications in the framework of agrarian legislations or in others of the Civil Code in which indigenous administration options are not granted, but they are given the same treatment as individual owners or peasants (as in Honduras) , Chile, Argentina and in Ecuador prior to the enactment of the 1998 Constitution).

According to recent information, it is known that there are more than 60 groups or indigenous peoples that remain without contact in several countries of the Amazon Basin (Brazil, Bolivia, Colombia, Ecuador, Peru and Venezuela) and the Gran Chaco (Bolivia and Paraguay). These are small groups that have managed to survive in very isolated areas far from the population centers. Additionally, there are Peoples in Initial Contact who, due to external pressures or endogenous reasons, leave their state of permanent isolation and begin to establish some kind of relationship with other social sectors.

In the current moments, both face situations of extreme vulnerability and humanity runs the risk of extinction. The places where they live are characterized by being very rich in biodiversity and being in good condition. Many of these isolated groups live in protected areas, especially in large national parks, as well as in indigenous territories. It can well be said that protected areas have contributed, to a large extent, to the existence of these groups and that these peoples, in turn, are the repositories of a wealth of knowledge about the ecosystems in which they live, helping to conserve these Sites rich in biological diversity.

However, there is a general lack of policies, measures or plans specifically oriented to guarantee the protection of these peoples in protected areas and only in recent years has this tendency tends to change. The underlying problem is that these same spaces are also rich in other natural resources such as oil, gas and minerals and, therefore, they are coveted areas for exploration and industrial exploitation and for

other activities such as timber extraction and illicit trade in species of fauna and flora. All this places isolated peoples in situations of great fragility in the face of possible contacts and even, as has happened on several occasions, to terrible acts of violence.

Another important characteristic is that almost all isolated groups live in border areas between countries, which has led to the generation of certain cross-border protection initiatives that have not yet acquired the necessary strength to achieve the protection of these peoples against the threats they face. Different organizations (such as the UN, OAS, COICA, IUCN, the same Alliance and others supporting the rights of indigenous peoples such as IWGIA and Rainforest Norway) have emphasized that the desire for isolation must be considered as a fundamental human right, which it must be respected and supported through the development of measures that make it possible to consolidate the conditions that allow the lives of these peoples in situations of isolation.

4. Recommendations

- The processes of protection and conservation, should integrate the active and proactive participation of indigenous peoples. It is necessary to promote actions in conjunction with local actors that take up the traditional knowledge and knowledge of natural resource management as well as the existing human capital among indigenous peoples.

- The shared management model implies co-responsibility between two actors, so it is necessary to strengthen their capacities. Indigenous peoples must have strong institutions that organize the use of resources, conservation and the equitable distribution of benefits.

- Disaggregated data on the number of experiences in the management of protected areas of indigenous peoples is necessary.

- Protective actions are urgently needed from different perspectives that involve the implementation of integrating policies that combine human rights (related to the environment and indigenous rights) with the conservation of strategic ecosystems. It is up to the States to adopt effective measures that put a stop to the threats of the definitive disappearance of these peoples, who are the most vulnerable of the entire planet. Without a doubt, create the conditions

- Respect the will of the peoples in isolation and their lives, recognizing that their survival depends on the right to their territory, therefore actions should be promoted to guarantee their life and property of the land.

- For indigenous territories in which there are no protected areas that form part of the National Systems, it is proposed to establish a category of protected indigenous territory that ensures conservation and good use spaces, over which representative indigenous organizations have jurisdiction, management and administration own, in the regulatory framework of the State.

- The category of protected indigenous territories should be adjusted to the needs of the great diversity of indigenous groups (from isolated peoples to those who cultivate consumer products and others of international demand).

- Promote the development of awareness in the political subjects about the importance of the protected areas and neighboring indigenous territories between countries and promote together (the institutions of protected areas and indigenous peoples), conversations with other institutions and ministries responsible for relations between the States (Chancellery and Ministry of Defense, mainly).

- Conduct meetings and dialogue processes between the institutions of protected areas and indigenous communities, which allow the encounter between different visions regarding the management of the conserved spaces.

- Undertake regional exchanges of experiences on the procedures, methodologies and tools used for the integration of life plans and management plans, knowing that life plans cover broader themes than those that correspond to management plans.
- Respect the sacred sites identified in protected areas that are related to the spirituality of the indigenous peoples. Collect information on experiences related to their protection and take stock of the situation of sacred sites in protected areas in the countries of the region.
- Promote mechanisms that allow the full exercise of the participation of indigenous peoples in the decision-making bodies of the State regarding protected areas and conservation. This includes dialogue mechanisms to achieve conservation agreements within the framework of the exercise of the right to self-determination.

4. Reviseted Literature

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