



# THE UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES

TOGETHER WE ACHIEVE

## State of the World's Indigenous Peoples, Volume V - Rights to lands territories and resources

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### Executive Summary

The United Nations Permanent Forum on Indigenous Issues is an advisory body to the Economic and Social Council with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights. At its first session in 2002, the Forum called on the United Nations to produce a report on the state of the world's indigenous peoples to discuss issues relating to indigenous peoples in the thematic areas within the Forum's mandate. The first volume, published in 2009, covered the six mandated areas of the Permanent Forum mentioned above. Subsequent volumes have addressed indigenous peoples and health (2013), education (2017) and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (2019).

The Declaration on the Rights of Indigenous Peoples, adopted in 2007 positions the right to self-determination and rights to lands, territories and resources at its core. The right to self-determination and natural resources on indigenous peoples' lands and territories were two of the most politically charged issues when the Declaration was under negotiation. More than 10 years later, the same issues remain politicized. Articles 25 through 32 of the Declaration specifically address lands, territories and resources including indigenous people's spiritual and cultural relationship with their lands, redress and compensation, free prior and informed consent, protection of the environment, and indigenous peoples' traditional knowledge.

Indigenous peoples' relationship to their lands, territories and resources are at the heart of their identity, well-being and culture. Preservation of the environment transmitted through traditional knowledge passed down through generations is at the centre of their existence. As the world is increasingly recognizing the negative impacts of climate change and environmental degradation to health, food security and overall peace and security, the importance of indigenous knowledge and territorial rights are starting to be more fully acknowledged by wider society.

The adoption of the 2030 Agenda offers further opportunities to promote the rights of indigenous peoples to lands, territories and resources due to its integrated approach to economic, environment and social development within a human rights framework – giving space to demonstrate how indigenous stewardship of lands, territories and resources can achieve accelerated action towards implementation of several Sustainable Development Goals.





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This publication offers a wide-ranging perspective on indigenous peoples' rights to lands, territories and resources through analysis of legislation and agreements at the national and international level and through customary law. It examines both successful practices and continuing obstacles to realizing indigenous peoples' rights to lands and territories and suggests ways forward.

**Chapter one** written by Matthias Ahren, gives an overview of <sup>1</sup>international indigenous rights framework as it pertains to lands, territories and natural resources historically used by indigenous peoples. It identifies and summarizes the underlying rationale behind indigenous lands, territories and resource rights, i.e. the inherent tie between indigenous peoples' identities and the lands they have traditionally used. The chapter explains how the international indigenous corpus juris (body of law) has not only taken into account that indigenous peoples' identities are de facto interwoven with their lands; it has also expanded into the indigenous lands, territories and resource rights system. This becomes evident when analyzing the content and scope of the rights to self-determination, property and culture. The chapter focuses on these rights, which are foremost within the lands, territories and resources rights framework, and other rights that are also relevant to indigenous peoples' relationship with lands, territories and resources.

Following analysis of the international indigenous lands, territories and resources rights regime, the chapter cites examples to illustrate how domestic legal systems are increasingly incorporating indigenous lands, territories and resource rights, while at the same time noting the existing gap between the reach of these rights as enshrined in international legal sources, and their realization at grass-root levels. Addressing this implementation gap, the chapter concludes by proposing recommendations to Member States to better operationalize indigenous lands, territories and resource rights at the national level.

**Chapter two**, written by Cathal Doyle, addresses the core challenges indigenous peoples face when asserting their rights to lands, territories and resources in the context of extractive industry operations, agribusiness plantations, infrastructure development and conservation initiatives. The author offers an overview of legal advances in several jurisdictions in the protection of lands, territories and resources in the context of these challenges and addresses the limitations to their implementation in practice. The chapter addresses some of the unique features of the extractive, agribusiness, infrastructure and conservation sectors and how they hinder the realization of the rights of indigenous peoples. The chapter also highlights two closely related challenges, namely the lack of access to remedy for violations of indigenous peoples' rights

<sup>1</sup> The chapter illustrates that traditional use is undoubtedly the principal basis for indigenous peoples' rights to lands, territories and resources. The conclusions drawn are applicable, *mutatis mutandis*, also to lands, territories and resources acquired through other means.

<sup>2</sup> Permanent Forum on Indigenous Issues, Report on the seventeenth session (16–27 April 2018), UN Doc. E/2018/43-E/C.19/2018/11, para. 7





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to lands, territories and resources and the critical situation faced by defenders of these rights. The chapter concludes with recommendations aimed at tackling these challenges.

**Chapter three** written by Jérémie Gilbert examines implementation of indigenous peoples' rights to lands, territories and resources. The analysis goes beyond looking at the simple proclamation in law or administrative measures, as these can remain far from reality on the ground. As noted by the UN Permanent Forum on Indigenous Issues, although many States have started to recognize indigenous land rights in legislation “there remains a wide gap between formal recognition and actual implementation.”<sup>2</sup> Indeed, “in countries in which such rights are recognized, they are not fully implemented, or procedures for the implementation of those rights, such as land or resource mapping, demarcation and titling, have often not been completed, suffer significant delays or are shelved.”<sup>3</sup> However, looking beyond the significant implementation gap, it appears that implementation is taking place on multiple-levels, and often via initiatives led by indigenous peoples themselves. This chapter delves into those examples in greater depth.

**Chapter four** written by Naomi Lanoi, focuses on the status of indigenous women and their rights to lands, territories and resources, where indigenous women play a pivotal role as central actors in the traditional relationship indigenous peoples have with the land. Through an in-depth analysis of international and regional legal and policy documents, the chapter discusses frameworks and tools that provide recognition and protection of indigenous women's rights to land, while also highlighting gaps.

Using case studies, the chapter provides a synthesis of the central role of indigenous women in the promotion and protection of indigenous peoples' rights to lands, territories and resources and, too often, the high costs faced by them. While indigenous women are the main custodians of food, water and traditional knowledge from the land, their legal status related to land rights are hampered by gender discrimination and poverty-related barriers. At the same time, indigenous women are often on the front lines in defending the land and environment and highly vulnerable to violence, abuse and murder.

**Chapter five**, written by Prabindra Shakya, examines how indigenous peoples' rights to lands, territories and resources are reflected in the 2030 Agenda and its implementation and reporting processes. The chapter details the developments in ideas about sustainable development and rights of indigenous peoples in the Agenda's predecessors from the “Rio Summit” of 1992 and Agenda 21 to the Millennium Development Goals of 2000. The chapter also looks beyond the direct issue of land and resource ownership to examine the linkages to other SDGs whose outcomes are also significantly dependent on the way lands and resources are managed such as food security, environmental protection and climate change. The chapter also explores the ways in which the UN system, Member States and indigenous peoples have responded through policies and programmes and participation in the SDG implementation and reporting processes.

<sup>2</sup> *Ibid.*





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## Author profiles

Mattias Åhrén is a Professor of Law (PhD) at the Arctic University of Norway. He holds Master of Law (LLM) degrees from the Universities of Stockholm and Chicago. Åhrén has written extensively on indigenous peoples' rights internationally, and his academic publications include *Indigenous Peoples' Status in the International Legal System* (Oxford University Press, 2016). In addition, Åhrén has substantial practical experiences from working with Sami and indigenous rights internationally, including in the negotiations on the UN Declaration on the Rights of Indigenous Peoples.

Cathal Doyle is Senior Lecturer and LLM Programme Leader at Middlesex University London School of Law, where he previously held a Leverhulme Trust Early Career Research Fellow. He has published books, chapters, articles and reports on indigenous peoples' rights, and acted as an advocate on behalf of indigenous groups and a technical expert for the UN Special Rapporteur on the rights of indigenous peoples. He sits on the Board of Forest Peoples Programme and the International Work Group on Indigenous Affairs and is a founding member of the European Network on Indigenous Peoples.

Jérémie Gilbert is a Professor of Human Rights Law. He has worked with several indigenous communities across the globe and regularly serves as a consultant for several international organisations and non-governmental organisations supporting indigenous peoples' rights. As a legal expert, he has been involved in providing legal briefs, expert opinions and carrying out evidence gathering in several cases involving indigenous peoples' land rights

Naomi Lanoi Leleto is the Programme Coordinator for Global Indigenous Grant making; and Coordinator for the East Africa Advisory Board at the Global Greengrants Fund (GGF) where she shares collective learning about inclusive grant making that supports the rights, self-determination, and environmental work of Indigenous Peoples. Prior to joining GGF, Naomi worked as the Women Land Rights Programme officer at the Kenya Land Alliance. She has an M.A. in Legal Studies from the Indigenous Peoples Law and Policy Program at the University of Arizona and an MBA from Jomo Kenyatta University of Agriculture and Technology.

Prabindra Shakya is a human rights activist belonging to the indigenous Newar community of Nepal. He has been engaged in promoting and protecting the rights of indigenous peoples and marginalized communities, including in post-conflict transitional justice processes, for over a decade. He currently coordinates the Community Empowerment & Social Justice Network in Nepal that he founded and has previously worked with different human rights organizations in the country. He graduated in Master of Arts in Inter-Asia NGO Studies from Sungkonghoe University in South Korea in 2011.

