



March 21, 2022

**Mr. Francisco Calí Tzay**

UN Special Rapporteur on the Rights of Indigenous Peoples

**Ref.: Call for inputs. UN Special Rapporteur report on Protected Areas and  
Indigenous Peoples' Rights, 77th session UNGA.**

Dear Special Rapporteur,

Indigenous Peoples Rights International is an indigenous-led initiative working to stop and prevent violence and criminalization against indigenous peoples and the resulting impunity.<sup>1</sup>

Within this context, IPRI has worked on the issue of conservation activities, including the establishment of protected areas, in or around indigenous traditional lands and territories, and the impacts such initiatives, when undertaken without indigenous peoples' free prior and informed consent (FPIC) and full respect for their individual and collective human rights, have on the exercise of their fundamental rights and their very survival. IPRI commissioned some country reports on the situation in this regard in Kenya, Tanzania, Democratic Republic of Congo, Thailand and Nepal.<sup>2</sup>

Due to the findings provided by indigenous organizations in these countries, we would like to respectfully request that you consider including the impacts of conservation activities on the rights of indigenous peoples in your report to the General Assembly. In this submission we would like to briefly summarize some information provided by indigenous organizations on this matter as well as some general recommendations to actors involved in conservation activities affecting Indigenous Peoples.

---

<sup>1</sup> <https://www.iprights.org/home>

<sup>2</sup> National reports are available at: Thailand: <https://www.iprights.org/resources/publications/conservation-against-customary-practices-criminalization-of-and-human-rights-violations-against-indigenous-peoples-in-thailand-s-protected-areas-and-forest-reserves>; Kenya: <https://www.iprights.org/resources/publications/indigenous-peoples-human-rights-defenders-on-the-run-country-study-on-the-criminalization-of-and-human-rights-violation-against-indigenous-peoples-in-conservation-areas-in-kenya>; Tanzania <https://www.iprights.org/resources/publications/riminalization-of-and-human-rights-violations-against-indigenous-peoples-in-conservation-in-tanzania>; Nepal: <https://www.iprights.org/resources/publications/indigenous-peoples-in-protected-areas-a-country-report-on-criminalization-and-violation-of-subsistence-occupation-and-customary-rights>; DRC: <https://www.iprights.org/resources/publications/governance-and-management-of-protected-areas-a-country-report-on-the-criminalization-of-and-human-rights-violations-against-indigenous-pygmy-peoples>. The global report, on which this submission is based, can be found at <https://www.iprights.org/home>.



## **General overview: violations of the rights of Indigenous Peoples in the context of conservation activities and the establishment of protected areas**

The establishment of protected areas that overlap indigenous lands and territories without indigenous peoples' FPIC is a violation of their internationally recognized human rights. When indigenous territories are included totally or partially under protection figures, the control and management of their lands falls under the jurisdiction of State bodies in charge of protected areas. This creates an imposed jurisdiction in violation of indigenous peoples' rights to self-determination and self-government and to their lands, territories and natural resources.

National legal frameworks in many countries lack legal recognition of indigenous peoples and their collective and individual human rights. Even in countries where there is legal recognition, the environmental legislation is often not coherent with the State's obligations regarding indigenous peoples' rights. These legal frameworks result in the criminalization of indigenous peoples when they exercise their rights over their lands, territories and resources, traditional occupations and livelihoods, and their customary practices for resource management.<sup>3</sup>

Indigenous peoples have the right to FPIC, and to participate in decision-making on issues that affect them. These rights, enshrined in international human rights law, are violated whenever protected areas are created on indigenous lands without their consent. Although many conservation organizations working with States in conservation activities argue that they conform to domestic legislation, they still have responsibilities to go beyond national requirements to ensure that they respect international human rights standards.

### *Domestic discriminatory laws*

Indigenous peoples have the right to pursue their own models of development as expression of their right to self-determination. In many instances, when their lands and territories are included in protected areas, their centuries-old sustainable traditional livelihoods and occupations are forbidden. They are criminalized and face high fines and even imprisonment when they access and use their natural resources. There are several domestic laws on conservation and land management in general that discriminate, criminalize and restrict indigenous peoples' customary practices, and traditional occupations and livelihoods inside protected areas. Some examples provided in country reports are:

- In Nepal, the National Parks and Wildlife Conservation Act, 1973 prohibits persons to occupy, clear, reclaim or cultivate any part or grow or harvest any crop, to graze

---

<sup>3</sup> Among the principal challenges that indigenous peoples continue to face globally are difficulties in gaining legal recognition of collective ownership over their ancestral lands, especially when these have already been declared protected territories. National legislation is often contradictory to laws on conservation and forestry and international law that state the rights of Indigenous Peoples, and the authorities responsible for enforcing the different laws frequently fail to coordinate (A/71/229, Report of the Special Rapporteur on the rights of indigenous peoples. Conservation and indigenous peoples' rights. 29 July 2016)



any domestic animal or bird, or feed water to it; to cut, clear, fell, remove or block trees, plants, bushes or any other forest resources, or do anything to cause any forest resources dry, or set it on fire, or otherwise harm or damage it; and to cause damage to forest resources or wildlife or birds or any land. These prohibited activities are directly and indirectly related to indigenous peoples' traditional occupations and livelihoods and they are subject to punishment with up to ten years of imprisonment or a fine of up to one million NRS (approx. USD 8,000). It also allows for warrantless arrest provided that the authorized person believes with reasonable ground that the person being arrested violated the Act. It specifies that if the alleged offender resists arrest or attempts to escape, the arresting officer may "resort to the use of arms [and] may open fire aiming, as far as possible, below the knee, and if the offender or the accomplice dies as a result of such firing, it shall not be deemed to be an offense." In general, the Act restricts indigenous peoples' access to protected areas. Their mere presence in protected areas is viewed with suspicion by park authorities. Access is given only to those who are able to secure specific permits for any of the following activities: hunting, and collection of specimen and/or gathering of any natural resources. However, permits are granted more to tourism-related developments such as construction of hotels, lodges, public transportation, and other similar activities through a contract.

- In Thailand, the 2019 National Park Law imposes severe penalties to those convicted of encroachment including up to 20 years in prison and payment of two million Thai Baht (around USD 66,000) in fines. This is a clear case of criminalization of indigenous peoples exercising their right to practice their traditional occupations and sustainable resource management systems in their customary lands that have been designated as national parks without consulting them or obtaining their FPIC. Likewise, the National Parks Department reported that from October 2020 to June 2021, there were 1,244 legal cases filed for violating the 2019 Protected Areas Laws. These were charges of encroachment of forest areas, causing forest fire, logging and collecting non-timber forest products, and wildlife poaching in national parks, wildlife sanctuaries and non-hunting areas.
- In Kenya, the Forest Conservation and Management Act no. 34 of 2016 provides for the establishment, development and sustainable management, including conservation and rational utilization of forest resources for the socio-economic development of the country. Sections 46 and 47 provide that local communities can participate in forest management. However, section 39 of the same law provides for the declaration of natural reserves and prohibits community livelihood activities such as grazing, fishing, hunting and honey collection. It further requires people to obtain permission and pay fees to access these resources. This Act has been used many times to deprive forest communities of their livelihoods through eviction where the government refers to them as encroachers or illegal settlers. Also, under Wildlife Conservation and Management Act of 2013, a person who engages in hunting for subsistence commits an offence and is liable of conviction to paying a fine and/or imprisonment.
- In Tanzania, the Wildlife Conservation Act No. 5 of 2009 provides for responsibilities and restrictions to local communities, users and other beneficiaries of wildlife



resources. It outlaws hunting without permission, but permission is only given to commercial hunters. In general, environmental legislation allows nature-based tourism, commercial hunting, scientific education and research, but strictly regulates Indigenous Peoples' access and use of these preserved areas. Indigenous Peoples are criminalized for hunting for food, grazing their livestock, and practicing subsistence cultivation within and around these preserved areas.

### *Evictions, forced displacement and 'war by conservation'*

Generations of indigenous peoples have experienced and continue to experience forced evictions from their customary lands due to the establishment of protected areas and other conservation "figures of authority." Forced displacement from their traditional lands and territories is a particularly gross violation of the rights of indigenous peoples to their lands and territories that has exponential impacts on all of their fundamental human rights. Dispossession of their lands and territories causes serious and irreparable damages to their survival identity and ways of life. The intergenerational transmission of their cultural values, knowledge and customary practices of using and managing their lands and natural resources is disrupted and adversely affected. Their displacement from their customary lands has led to food insecurity, poverty, health problems, and the destruction of their subsistence economy based on mutual cooperation, to name a few. This desperate situation pushes displaced indigenous peoples to be dependent on state welfare programs and/or humanitarian projects, affecting their dignity and wellbeing.

The UNHCR Principles on internal displacement remind States that they are "under a particular obligation to protect against displacement the Indigenous Peoples, minorities, peasants, pastoralists, and other groups with a special dependency on and attachment to their lands."<sup>4</sup> FPIC of indigenous peoples is a prerequisite for displacement as provided in UNDRIP and ILO Convention 169. If forced displacement has occurred, indigenous peoples have the right to remedy, including restitution and compensation for the lands and resources lost and, where possible, the option to return to their lands. Compensation should preferably take the form of lands, territories and resources equal in quality, size and legal status to the ones they have lost. The CBD's program of work on protected areas requires the FPIC of indigenous peoples for resettlement due to the establishment of protected areas. Furthermore, it points out that the establishment, management and monitoring of protected areas should take place with the full and effective participation of, and full respect for the rights of, indigenous peoples.<sup>5</sup>

In spite of this, national reports illustrate the persistence of evictions and forced displacement linked to the establishment of protected and conservation areas. The Special Rapporteur on Human Rights and Environment noted that "[c]onflicts between communities and agencies implementing fortress conservation abound, as do reports of

---

<sup>4</sup> United Nations Office for the Coordination of Humanitarian Affairs. Guiding Principles on Internal Displacement. September 2004. (<https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>)

<sup>5</sup> Convention on Biological Diversity. Protected Areas, Article (8) a to e. 7th Conference of the Parties to CBD. April 13, 2004. (<https://www.cbd.int/doc/decisions/cop-07/cop-07-dec-28-en.pdf>)



arbitrary detention, confiscation of property, forced labor, illegal searches, threats, intimidation, assault and battery, rape and other sexual violence, torture, and extrajudicial killings. The most egregious abuses are often attributed to militarized conservation regimes involving heavily armed eco-guards hired by governments to combat poaching and illegal wildlife trade, sometimes with the support of government soldiers. In these ways, conservation measures fail to adopt a rights-based approach and violate human rights including the rights to life, self-determination, development, health, food, water and sanitation, a healthy environment, education, freedom from discrimination, and cultural rights.”<sup>6</sup>

Wildlife reserves management is increasingly employing armed guards that often attack ‘softer targets’ (e.g. local and indigenous communities who live near the protected area) instead of more powerful perpetrators of environmental destruction and wildlife trade. This phenomenon is described as the militarization of conservation, which has also been termed as ‘war by conservation.’<sup>7</sup> It was noted in the Nepal country report that the National Parks and Wildlife Conservation Act, 1973 and associated regulations do not have any provision for the involvement of the army in protected areas. However, there are 188 Nepali Army posts established in 12 of the 22 protected forests. The twelve battalions and army units with around 6,778 troops have been policing the forest areas measuring around 9,767 km<sup>2</sup>. Majority of the human rights violations in national parks involve the Nepali Army.

IPRI country reports report many cases of violence and criminalization against indigenous peoples in protected areas. Some incidents reported just within the period of January 2020 to June 2021 prove the persistence and scale of the violence:

- In the Democratic Republic of Congo (DRC), two incidents of killings involving five Indigenous Batwa men were reported. Three of them were killed after a protest was violently dispersed by the Congolese Institute for the Conservation of Nature and the Armed Forces of the DRC. The other two were killed by eco-guards of the Kahuzi-Biega National Park. Two separate incidents of criminalization involved twelve Indigenous Pygmy people. Seven of them were arrested while searching for dried wood in the Virunga National Park and accused as accomplices of poachers. The other five were also arrested in the same park while searching for medicinal plants.
- In Kenya, there were reports on around a dozen arrests and trumped-up charges against indigenous defenders from Ogiek and Maasai communities, and series of violent evictions of the Sengwer community.
- In Tanzania, there were reports on two incidents of violent evictions resulting in the burning of 23 settlements and the death of a four-year-old girl; an incident of

<sup>6</sup> Policy Brief No.1. Human rights-based approaches to conserving biodiversity: equitable, effective and imperative. A policy brief from UN SR on Human Rights and the Environment, David R. Boyd and Stephanie Keened. August 2011.

<sup>7</sup> See: Lewis, J. How ‘Sustainable’ Development Ravaged the Congo Basin. *Scientific American*.2020; Duffy, Rosaleen. "Waging a war to save biodiversity: the rise of militarized conservation." *International Affairs* 90, no. 4 (2014); Duffy, Rosaleen. "War, by conservation." *Geoforum* 69 (2016).





criminalization of two members of the Maasai community; and two incidents of abuse of power by armed wardens resulting in the suicide of a young pastoralist and the destruction of property and confiscation of 135 cattle belonging to a group of Maasai young men grazing their livestock.

- In Nepal, From January 1, 2020 to June 24, 2021, there had been 22 incidents of harassment, abuse, and torture within Chitwan National Park. These incidents of human rights violations affected 536 individuals: 35 of them are Dalit, 139 are indigenous men, and 397 are indigenous women. All the women were found within the perimeters of the park collecting vegetables and ghongi, a kind of snail, which is a popular dish particularly significant to Indigenous Tharu Peoples. Also, in Bardia National Park, on May 11, 2021, Soma Sonaha, 35, and Fulram Sonaha, 40, were arrested and detained by the Army at the Thakurdwara Army Camp for illegal fishing. These violations are common to other national parks and protected areas in Nepal.
- In Thailand, 85 Indigenous Karen, including 20 women, were illegally detained and 22 of them were charged with encroachment, construction, clearance, seizure, possession and other acts of degrading or changing the natural state of Kaeng Krachan Forest Complex without permission. There are 1,244 legal cases related to encroachment of forest areas, causing forest fire, logging and collecting non-timber forest products, and wildlife poaching under the 2019 Protected Areas laws. Protected areas in the country are home to around 2,000 indigenous communities.

### *Obstacles to access justice*

Indigenous peoples in most countries of the world confront severe difficulties to access ordinary justice and therefore to exercise their rights to remedy and redress when their human rights have been violated. Obstacles to access ordinary justice have been analyzed by regional and international human rights bodies. These range from physical difficulties (to avail of ordinary justice services due to geographical distance), to cultural obstacles (language, lack of understanding of the legal system), and to power-imbalance (lack of resources for legal counsel). Discrimination against indigenous peoples within the justice system are also evident in country reports.

Moreover, in many instances, when indigenous peoples have managed to file their claims in national or regional Courts and obtained decisions that uphold their rights, there is a high degree of State non-compliance. This situation makes particularly important the existence of adequate mechanisms of complaint and redress.

### *Lack of benefit sharing*

The revenues from conservation through trade of carbon credit as part of the Reducing Emission from Deforestation and Forest Degradation (REDD+) projects and tourism, as shown in the country reports, do not benefit indigenous peoples in many countries. In most cases, they are unaware of the extent of the economic gains of the state and



international conservation institutions. These gains are at the expense of Indigenous Peoples' loss of their lands and the resources therein, and violations of their individual and collective rights. Further, these revenues do not necessarily transform into adequate and indigenous-led programs to address the challenges of impoverishment, lack of quality education or healthcare services, among others. Indigenous peoples' situation is worsened by existing government corruption and underlying discrimination by the government, the media, and the society against them and their way of life.

### **Summary of general conclusions and recommendations**

In the last decades, indigenous peoples' active participation at the international level in the human rights and environmental arenas has resulted in the recognition of their fundamental human rights and of their central role to achieve the global goals of biodiversity conservation, fight against climate change and sustainable development. New policies and mechanisms have been adopted by the conservation community with the framework of a human-rights approach to conservation, incorporating the respect for the rights of Indigenous Peoples in the context of their actions and activities. Domestic legislation and measures in several countries are promoting support for indigenous peoples' own conservation initiatives in the exercise of their self-determination and self-government.

Nevertheless, the new conservation paradigm has yet to be translated from paper or expression of commitment into reality or practice. Models of fortress conservation persist. Protected areas and other conservation figures imposed on indigenous lands and territories that consider Indigenous Peoples as squatters in their own lands are still a source of egregious human rights violations. These include forced displacement, killings, torture and destruction of their property and resources, and violence against indigenous women as shown in the reports commissioned by IPRI in several countries in Asia and Africa.

Compounded with racism and discrimination, lack of access to justice and the lack of accessible complaint and redress mechanisms, the ongoing criminalization and violence against Indigenous Peoples in protected areas need to be urgently addressed by all actors involved. It is paramount and urgent to ensure that a human rights-based approach to conservation and environmental protection is adopted and properly implemented. This should be coupled with strong and effective accountability mechanisms at different levels to end the criminalization of and prevent the human rights violations of indigenous peoples in the context of conservation. International conservation organizations and other actors which have declared support and commitment to a human rights approach to conservation need to act to make this a reality on the ground.

To this end, IPRI would like to propose the following recommendations:

States should:



- Immediately stop forced evictions and displacement of Indigenous Peoples from their traditional lands and territories overlapped by State or private protected areas and provide adequate remedy for those who have been displaced.
- Adopt all the necessary legal, policy and administrative measures to respect, protect and ensure the human rights of Indigenous Peoples, including their right to self-determination and their rights to their lands, territories and natural resources.
- Align their national environmental and conservation laws and policies with international human rights standards on the rights of Indigenous Peoples, including the UN Declaration on the Rights of Indigenous Peoples, ILO Convention 169, UN Convention on the Elimination of All Forms of Racial Discrimination, and UN Convention on the Elimination of All Forms of Discrimination Against Women. This includes the review of policies and guidelines relating to designation and management of national parks and conservation areas in indigenous territories without their FPIC; and repeal of laws that discriminate and criminalize indigenous peoples' traditional occupations and management of their lands and resources.
- Comply with their duty to consult and obtain the FPIC of indigenous peoples before the adoption of any conservation initiative, including the establishment of protected areas overlapping or affecting indigenous lands and territories.
- Adopt the necessary measures to ensure adequate remedy for indigenous peoples who have lost their lands, territories and resources due to the establishment of protected areas, including restitution as provided in international human rights standards on the rights of indigenous peoples.
- Establish effective mechanisms to ensure access to justice for the victims of criminalization, human rights violations and violence against women and children linked to conservation initiatives, including for those who have been unjustly imprisoned, who paid stiff penalties, and those forcibly displaced or who have lost their livelihoods as a result of the implementation of a top-down conservation approach.
- Comply with the relevant decisions of the Inter-American and African regional Human Rights Courts regarding the rights of indigenous peoples affected by conservation activities.





- Support indigenous peoples' own initiatives and sustainable conservation practices and establish real partnerships with indigenous peoples to work together in the common goals of sustainable and equitable conservation

#### Intergovernmental organizations:

- UNESCO should properly implement its policies and guidelines regarding the respect for the rights of Indigenous Peoples. In particular, it shall reform the Operational Guidelines for the Implementation of the World Heritage Convention to align them fully with UNDRIP and ensure that Indigenous Peoples' free, prior and informed consent has been obtained before the declaration of any World Heritage Site that may affect them, as reiteratively recommended by UN human rights bodies and experts.
- Intergovernmental organizations, including UNEP and UNDP, should ensure that the rights of Indigenous Peoples are respected and protected before supporting any conservation activity affecting them. They should also ensure that adequate and accessible complaint mechanisms are available for Indigenous Peoples at all levels. UN agencies involve in conservation projects shall have a clear policy of zero tolerance to human rights violations

#### Conservation organizations shall:

- Fully adhere to, and effectively implement a human rights-based approach to conservation including the full respect for the rights of indigenous peoples as enshrined in UNDRIP and relevant international human rights standards.
- Ensure that the free, prior and informed consent of indigenous peoples has been obtained before engaging in any conservation initiative with States or other partners that affects indigenous peoples' lands, territories and resources.
- Establish culturally adequate complaint and redress mechanisms that will allow for the prompt and effective response in cases of criminalization, violence and any human rights violations affecting indigenous peoples as a result of conservation activities and take measures to actively work to prevent such violations. This should include particular measures to address violence against indigenous women and girls.
- Conduct participatory assessments and review their management of protected areas and national parks that overlap with indigenous peoples' customary lands to address long-standing issues of affected indigenous communities in relation to the protection and exercise of their rights, including cases of violence against indigenous women.
- Establish equitable partnerships with indigenous peoples including indigenous women, to ensure their meaningful participation in decision-making in relation to



conservation measures, programs and targets. Conservation organizations need to prioritize support to indigenous peoples' own initiatives for the conservation of their lands, territories and biodiversity; and provide the needed support to indigenous women in enhancing their roles and contributions in the protection of the environment as well as addressing their needs and aspirations.

- Establish effective mechanisms for the fair sharing of benefits and costs of conservation activities, fully respecting indigenous peoples' rights and aspirations.

The conservation community as a whole:

- States and non-state actors including donors, shall commit to the prevention of any further violations of indigenous peoples' rights in conservation activities, and establish and strengthen partnership with indigenous peoples for effective actions to conserve biodiversity, combat climate change and advance sustainable development for all.
- Ensure that the implementation of new conservation targets, particularly the 30x30 Initiative, fully respects the rights of indigenous peoples. The conservation community should consider that indigenous peoples do already comply with the 30/30 target, and should support indigenous governance and control over their lands, territories and natural resources as the most effective way to achieve this goal.
- Establish an independent monitoring body for compliance to human rights obligation and commitments of states and conservation organizations to observe zero tolerance for human rights violations including the individual and collective rights of Indigenous Peoples. This independent body shall conduct monitoring and investigations and publish an annual report of its observations, findings and recommendations.

###