

CHAPTER 11

Indigenous Peoples: Land, Territory, Autonomy, and Self-Determination

Rodolfo Stavenhagen

While most of the chapters in this book tend to treat land the way that farmers often see it—as a productive resource—indigenous peoples tend to see land as part of something greater, called *territory*. Territory includes the productive function of land but also encompasses the concepts of homeland, culture, religion, spiritual sites, ancestors, the natural environment, and other resources like water, forests, and belowground minerals. Agrarian reform directed at nonindigenous farmers in many cases may reasonably seek to redistribute “any and all” arable land to the landless, irrespective of where the landless come from. For example, the Landless Workers’ Movement (MST) of Brazil demands and occupies land all over the country, and the members of their land reform settlements sometimes come from states far away from the land they occupy. In contrast, indigenous peoples’ movements do not demand just any land but, rather, what they consider to be *their* land and territories. Thus, closely linked to the concept of territory are the demands by organizations and movements of indigenous people for autonomy and self-determination. This chapter lays out the key issues and controversies associated with these concepts.

Land and Territory

For most indigenous peoples, survival is the major challenge in a world that has systematically denied them the right to existence as such. Historically linked to the land as the source of their main livelihood, they have long struggled to gain and keep access to this precious resource that is also the essential

element of their identity as distinct cultures and societies. Land rights are the major issue faced by native peoples around the world and are at the center of numerous conflicts involving indigenous communities, particularly as a result of globalization. The impact of new economic processes can be dramatic, as seen in agricultural modernization, for example. The widespread introduction of commercial crops for export, based on the intensive use of modern inputs (mechanization, improved grains, fertilizers, insecticides, and, more recently, genetically modified seeds) tends to displace traditional subsistence farming, on which most indigenous communities depend for their survival. Increasing production costs and the need for economies of scale favor the consolidation of larger productive units and integrated agribusiness, putting traditional farms at a disadvantage in highly competitive markets. Agricultural development policies, instead of helping small subsistence farmers overcome their handicaps, have in fact pushed the poorer peasants out of business and favored the concentration of larger agro-industrial enterprises, and they have forced the peasants to become increasingly dependent on, and therefore vulnerable to, the globalized agricultural economy. Current negotiations concerning agriculture within the framework of the World Trade Organization do not bode well for the continued existence of indigenous farming.

From time immemorial indigenous peoples have maintained a special relationship with the land, their source of livelihood and sustenance and the basis of their very existence as identifiable territorial communities. The right to own, occupy, and use land collectively is inherent to the self-conception of indigenous peoples, and, generally, this right is vested in the local community, the tribe, the indigenous nation, or group. For productive purposes land may be divided into plots and used individually or on a family basis, yet much of it is regularly restricted for community use only (forests, pastures, fisheries, etc.), and the social and moral ownership belongs to the community. While such rights are protected by legislation in some countries, powerful economic interests often succeed in turning communal possession into private property. From southern Chile and the Amazon basin to Canada's northern forests; from the tropical jungles of Southeast Asia to the bush of southern Africa, there is no longer any territory that is not coveted by some international corporation, either for its mineral wealth, its oil deposits, its pastures, tropical or hardwood forests, its medicinal plants or its suitability for commercial plantations, its hydraulic resources, or its tourist potential. Indigenous peoples are the most recent victims of globalized development, and if these tendencies continue unabated, indigenous peoples' chances of

survival will become ever weaker, their very existence as distinct societies and cultures seriously endangered.

Closely linked to the land problem is the issue of territory. Indigenous peoples have historically been rooted in specific locations, their original homelands, which in some cases constitute well-defined geographical areas. Indigenous peoples' organizations now demand the recognition and demarcation of these territories as a necessary step to ensure their social, economic, and cultural survival. The territory of the San Blas Kuna is constitutionally protected in Panama; so is that of the Yanomami in northern Brazil. The Mapuche of southern Chile and the Miskitos of Nicaragua, among many others, have been in the forefront of these struggles in their countries. The Colombian constitution of 1991 recognizes the traditional homelands of a number of indigenous groups and assures them of legal protection. Philippine legislation recognizes indigenous ancestral domains. In some Canadian provinces aboriginal title to territory is legally recognized.

Convention 169 of the International Labour Organization, adopted in 1989, calls upon states to respect indigenous lands and territories, and proclaims the right of indigenous peoples to control their natural resources. This is a most important right, because many of the current conflicts over land and territory relate to the possession, control, exploitation, and use of natural resources. In a number of countries it is the state that keeps for itself the right to control such resources, and in numerous instances multinational corporations are asserting their economic interests, unleashing complicated conflicts over ownership and use-rights with indigenous communities. In Chile, for example, one law recognizes the rights of indigenous communities to their lands, but other laws allow any private party to claim possession of subsoil and water resources on them. Under these circumstances, indigenous communities are hard put to defend their ancestral claims.

Indigenous peoples in Southeast Asia face the loss of control over land and resources due to nonrecognition of customary land rights. In most southeast Asian states there are no legal rules granting indigenous peoples the right to their land, and many indigenous peoples are threatened by logging, mining, and other exploitative activities, or by infrastructure programs (such as dams and roads) pursued by national governments. In Resolution 55/95 on Cambodia, the UN General Assembly notes that illicit logging "has seriously threatened full enjoyment of economic, social, and cultural rights by many Cambodians, including indigenous people" (United Nations 2001). A major recent development in Cambodia is the 2001 land law, which states that own-

ership of land “is granted by the State to the indigenous communities as collective ownership. This collective ownership includes all of the rights and protections of ownership as are enjoyed by private owners.”

While access to land for productive purposes (agriculture, forestry, herding, foraging) by individual members of indigenous communities is certainly of the greatest importance for indigenous people, there are other factors involved as well. Indigenous communities maintain historical and spiritual links with their homelands, geographical territories in which society and culture thrive and that therefore constitute the social space in which a culture can reproduce itself from generation to generation. Too often this necessary spiritual link between indigenous communities and their homelands is misunderstood by nonindigenous persons and is frequently ignored in existing land-related legislation.

Many argue that the recognition of indigenous territorial rights is necessary for the full protection of the rights and fundamental freedoms of indigenous peoples, whereas others seem to fear that such recognition might undermine the unity and integrity of existing states built up around them. Nevertheless, in a number of countries such rights have indeed been legislated, and experience suggests that national unity is not threatened by these developments.

In Mexico, the Zapatista uprising in 1994 put the issue of indigenous rights squarely on the national agenda, but a peace accord, signed in 1996, remained on paper. In 2001 the new government passed a constitutional reform on indigenous issues that deviated from the agreements and further stalled the peace process. Subsequently, in 2003, a number of indigenous municipalities, which earlier had declared their autonomy, created parallel government structures to promote their own vision of development as set out in the peace agreements.

At the local level, conflicts over land and resources often turn into acts of violence, and indigenous persons frequently become the victims of a corrupt and biased judiciary system. Indicators of social well-being are much lower in the indigenous rural communities than in nonindigenous urban areas, leading to massive migrations of Indians to other parts of Mexico and across the border to the United States. If carried out as announced, the Puebla Panama Plan of the governments of Mexico and Central America may further affect the potential of indigenous communities to survive as distinct cultural entities in a globalized world. Indigenous organizations demand not only respect for their culture and languages, but also for their rights to self-determination and autonomy and to full participation in the political and social process.

After a decades-long struggle for legal redress concerning ancient land rights and aboriginal title, the Inuit people of northern Canada, who had linked land claims to territorial autonomy, negotiated a political agreement with the federal government, whereby they achieved the creation, in 1999, of the self-governing territory of Nunavut. Rather than weaken national unity, this arrangement has strengthened the federal structure of Canada and met the claims and aspirations of the Inuit people.

In Panama seven indigenous peoples, the Ngöbe, Kuna, Emberá, Wounaan, Buglé, Naso, and Bri Bri, who together represent 8.3 percent of the national population, are mostly concentrated in five legally constituted territorial units (*comarcas*) that make up almost 20 percent of the country's total land area. These *comarcas* are semiautonomous regions governed by local councils and traditional governors (*caciques*).

In Guatemala, more than half of the national population is indigenous, mainly Maya, who are now officially recognized in the Peace Agreement on the Identity and Rights of Indigenous Peoples, signed in 1995 after more than thirty years of brutal civil war. Access to land and resources is nevertheless still the main problem faced by indigenous communities, which also continue to be the victims of discrimination and marginalization. Indigenous identity, extreme poverty, and poor access to educational and health services are all closely related. One of the areas in which discrimination against indigenous people is especially strong is in the administration of the justice system; despite a major effort made by the government in recent years, it is still cumbersome and inefficient. Social conflicts are often criminalized, creating dissatisfaction with the judiciary among the indigenous communities. Lynchings of suspected offenders have become commonplace in local communities where the reach of the law is absent. In many places local police forces are still controlled by members of the paramilitary groups that committed brutal atrocities during the war, and, despite the peace agreements and a supervisory mechanism set up by the United Nations, human rights violations are again on the increase.

How can and should existing states coexist with the notion of indigenous territories? Are these notions incompatible? To what extent is the idea of legally recognized indigenous homelands a necessary ingredient for the full enjoyment of the range of rights by indigenous peoples? How can constructive arrangements be found between the legitimate concerns of states regarding territorial integrity and national unity, and the equally legitimate concerns of

indigenous peoples regarding their collective survival as peoples linked to the earth in myriad ways within an international system made up of sovereign states? These are still open and debated questions, and answers will vary by region and country. While there are a number of practical experiences that illustrate the problems involved, more research is needed to address the particular issues, which are frequently controversial in public discourse.

Social Organization, Local Government, Customary Law

Cultural identities are sustained not only by a discrete list of aspects that members of a cultural group carry along as they go through life. In fact, these elements may vary from individual to individual and they may, and frequently do, change over time. So it is not the contents of a culture that defines any group's identity. It is rather in the field of social organization that identities are wrought and sustained. To the extent that a system of social relations defines the identity of each individual member and that individual's link to the group as a whole, the social institutions and relationships characteristic of a given community are the necessary frame of reference for any thriving culture. Indigenous communities know this well because when they claim the right to maintain their social organization in the face of the pressures of the wider society, they are actually appealing for the preservation of their culture.

Too often the larger society has taken the stance that indigenous social institutions are contrary to the national interest or, worse, are morally reprehensible. This position was taken for a long time by the dominant institutions within colonial empires. The question is frequently debated whether adherence to indigenous communal institutions may lead under certain circumstances to the violation of individual human rights (for example, the rights of women and girls).

Local community organization is often upheld by adherence to a generally accepted system of customs and mores or customary law, which in numerous countries is not accorded any formal legal recognition and may in fact be considered as competing with the formal state legal system. Do community members who accept the norms of unwritten customary law stand in violation of a country's legal system? Does the application of customary law violate nationwide legal norms? Yet what about situations in which the application of positive law entails a violation of community norms and customs? Might that not constitute a violation of human rights as well?

These issues are dealt with in different ways by individual states (and by different scholars), and the various solutions run from some form of accepted legal pluralism to the absolute rejection by the official legal system of any kind of indigenous customary law, with a number of possibilities in between. Under what circumstances might the application of indigenous legal systems (customary law) threaten internationally accepted standards of individual human rights? And conversely, under what circumstances could the limitation or elimination of indigenous customary law violate the human rights of members of indigenous communities? These are complex issues about which there is much debate and little agreement, but which need to be addressed objectively and without bias.

Since time immemorial, local communities have evolved some form of local government within the structure of a wider polity into which they have been integrated as a result of historical events. Indigenous communities are no exception. Throughout history, local communities have struggled to defend their autonomy against outside encroachment, sometimes successfully, sometimes not. To the extent that indigenous people were incorporated into state structures not of their own choosing during times of colonization or the expansion of the modern nation-state, their local forms of government were modified or adapted to suit the interests and needs of the state, creating tensions that have often led to conflict and violence.

Indigenous organizations seek to preserve or regain the right to local (and sometimes regional) self-government; they consider this right to be part of the fundamental freedoms that international law accords to all peoples. Through negotiations and treaties, constitutional reform or special legislation, indigenous peoples have been able in numerous instances to establish agreements with states regarding this right to self-government. In other cases, however, this has not been possible, and national- or regional-level government units still take it upon themselves to administer the affairs of indigenous communities. Indigenous affairs ministries, departments, or bureaus often have specific mandates to that effect, and local indigenous governments must deal with these institutions rather than with those of the national political or administrative system in general. Indigenous organizations may consider this to be a form of discrimination, whereas governments argue that such arrangements are designed for the protection of indigenous people themselves, in keeping with their best interests (as defined by the state).

Recognizing these issues, the Draft Declaration on the Rights of Indigenous Peoples states in Article 33: "Indigenous peoples have the right to promote,

develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognized human rights standards.”

Poverty, Standards of Living, Sustainable Development

As already noted, indigenous people are very often found among the poorest strata in society, and their levels of living are considered to be substandard in many respects. Studies have shown high levels of infant mortality, lower than average nutritional levels, lack of public services, difficulty of access to social welfare institutions, lower than average delivery of the services provided by such institutions, inadequate housing and shelter, and other indicators associated in general with the idea of human development. While poverty and extreme poverty are widespread all over rural and urban Latin America, where development has been highly unequal and the benefits of economic growth concentrated at the upper end of the social and economic scale, the indigenous peoples are mainly concentrated at the lower income levels. The World Bank reported in the 1990s that “the living conditions of the indigenous people were abysmal, and that their poverty was persistent and severe, especially when compared to those of the non-indigenous population” (Psacharopoulos and Patrinos 1994, 206–7).

What has been done and what can be done? The International Labour Organization’s Convention 169 states in Article 7.1: “The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.” Unfortunately, for many reasons, this does not always occur. In September 2003 a Korean farmer killed himself in front of the posh convention center in Cancun, Mexico, where the World Trade Organization was deciding the fate of hundreds of millions of poor peasants—among them most of the world’s indigenous peoples. The unrestricted tearing down of tariffs on agricultural and food products demanded by the leaders of the most powerful economies, together with continued high subsidies that rich countries pay their own farmers, has sentenced millions of poverty-stricken farmers in poor countries to a slow death. Unless the principles of Convention 169 are adhered to and implemented, the condition of poor indigenous farmers the world over will only deteriorate further.

Recent experience has shown that economic growth must go hand in hand with social concerns if the results are to be effective and make a difference in the lives of individuals and communities. A new approach seems to be taking hold in international discourse: human rights–centered sustainable development, meaning that unless development can be shown to improve the livelihoods of people within a framework of the respect for human rights (to be distinguished from the legal rights of a citizen of a country, since these do not currently address many rights issues), it will not produce the desired results. This approach may be of particular importance to indigenous peoples whose human rights have frequently been neglected when not actually impaired by traditional economic development approaches.

Political Representation, Autonomy, Self-Determination

Indigenous self-organization has made considerable progress over the years. From the local level to the regional, national, and international levels, indigenous peoples' associations have become social and political actors in their own right, as witnessed by their continuing participation in the yearly sessions of the Working Group on Indigenous Peoples (WGIP). They speak with many voices, but on the fundamental issues of their human rights, their objectives and their aspirations are usually in remarkable agreement. In some countries they are now recognized as legitimate partners and interlocutors of governments and other social sectors on the national scene. In other countries the going has been more difficult; their organizations may not be officially recognized, and their human right to free association may not be completely respected. To the extent that the rights of indigenous peoples themselves are sometimes neglected and ignored within existing power structures, their organizations and other human rights advocacy associations that take up their cause may also become victims of abuses and be denied adequate protection under the law. Numerous communications to this effect have been addressed over the years to the UN Office of the High Commissioner on Human Rights (UNHCHR), the ILO Committee of Experts, and, among others, the Inter-American Commission of Human Rights.

Beyond respect for their human rights, indigenous organizations also claim the right to political representation *qua* indigenous peoples at the national level, an issue that may or may not be compatible with existing political structures. More insistent has been the demand for some kind of autonomy, and in a number of countries this has been achieved, whereas in others

it is not contemplated in current legal arrangements. A case in point is the constitution of the Philippines, which recognizes the right of Muslim and Cordillera peoples to self-determination in the form of autonomy, while the latter are still awaiting the creation of their autonomous region (Daoas 1995, 80, 97–107).

One of the more controversial topics surrounding the human rights and fundamental freedoms of indigenous peoples concerns the much-debated right of peoples to self-determination. In their statements to international forums, indigenous representatives demand the recognition of their right to self-determination as peoples. Equally insistently, some states argue that such a right should not extend to the indigenous. The concept of self-determination is closely linked to the use of the term “peoples.” There does not appear to be a clear and unequivocal definition of this term in any of the multiple international legal instruments that have been adopted over the last half century nor, for that matter, in national legislation. Without a clear definition that may command a broad consensus, it is not obvious what the debate is really all about. In political science and legal literature the term is usually linked to all the citizens of an existing state, whereas in more sociological texts the notion of a people refers to certain commonalities, shared identities, and identifications.

The principle of the right of peoples to self-determination has been present in international debates for almost a century, and the current claims to this right by indigenous organizations is only the latest instance of its use in the expanding debate about human rights. Whereas some national constitutions do indeed refer to the right of self-determination of indigenous peoples (for example, Mexico’s polemical reformed constitution of 2001), other legislations avoid it, and the controversy relates to the meaning given to the term in both international and national law. Chile’s congress, for example, has voted against several initiatives that would constitutionally recognize the country’s indigenous peoples as such. Africa provides another example of conceptual difficulties. In 1981 the Organization of African Unity approved the African Charter on Human and Peoples’ Rights, and yet nowhere is the term “peoples” defined. Specialists continue to debate whether the term should apply only to all citizens of a given state or whether it has other applications as well (such as regarding indigenous peoples). It is this debate that is holding up the adoption of the Declaration on the Rights of Indigenous Peoples in the United Nations.

Obviously, then, when we speak of potential policies concerning indigenous peoples, land tenure, and territory, the issues of land versus territory, autonomy, and self-determination must necessarily receive priority.

PART THREE

Agrarian Reform:
Alternatives and Resistance

