

A territorial development vision oriented to indigenous peoples: a possible path



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Photo credit: Carolina Cenerini

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List of abbreviations

GIS: Geographic Information System

GPS: Geographic Positioning System

FAO: Food and Agriculture Organization of the United Nations

ICARRD: International Conference on Agrarian Reform and Rural Development

IDA: Institute for Agricultural Development

ILO: International Labour Organization

NGO: Non-Governmental Organization

PLD: Participatory Land Delimitation

PNTD: Participatory and Negotiated Territorial Development

UNPFII: United Nations Permanent Forum on Indigenous Issues

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Prologue

This paper is the result of a process that began a few years ago and reflects the path that has been followed since then: a path leading to the definition of basic principles about how to approach indigenous peoples' territorial concerns, starting from principles in the International Community that govern fair outcomes. These principles are not only based on the different United Nations declarations and charters, but also on the concrete experiences of the participants to this discussion.

The initial inspiration for this paper came from the Final Declaration of the International Conference on Agrarian Reform and Rural Development (ICARRD), held in Porto Alegre, Brazil, March 2006:

*(paragraph 14) "We recognize that policies and practices for broadening and securing sustainable and equitable access to control over land and related resources, and the provision of rural services, should be examined and revised in a manner that fully respects the rights and aspirations of rural people, women and vulnerable groups, including forest, fishery, indigenous and traditional rural communities ..."*¹.

Land and territory are two components also mentioned as priority concerns of the FAO Policy on Indigenous and Tribal Peoples², adopted in August 2010. The policy is based on international legal instruments – such as the United Nations Declaration on the Rights of Indigenous Peoples – and guides the work of FAO *vis-à-vis* this group.

On the one hand the aim of this paper is to draw attention to the discussions started in 2010 using the very rich network of contacts and participants that have contributed since that date. On the other hand the paper aims to confirm that there is a real will to follow up on land and territory issues, starting with the experiences of experts that know the subject well and have been working on it for many years.

The above principles and tools are proposed as a means to promote further discussion and integration of views that can result in specific initiatives in the field.

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¹ http://www.icarrd.org/news_down/C2006_Decl_en.doc

² <http://www.fao.org/docrep/013/i1857e/i1857e00.htm>

1. Introduction

Indigenous peoples amount to one third of the 900 million human beings who live in rural areas in extreme poverty.³ They are frequently discriminated against, and many do not enjoy full legal, social, or cultural recognition. Analysing and addressing the circumstances that affect marginalized populations such as indigenous peoples is necessary if development efforts and poverty alleviation are to have meaningful significance.

Of the variety of issues that need to be addressed, land and territorial rights are of particular concern given that indigenous peoples are subject to dispossession, displacement, and other situations of insecurity. Also of relevance is the increasing rate of environmental degradation, which threatens the resources upon which many indigenous peoples' communities depend for their survival. Indeed, indigenous and environmental issues are closely interlinked and need to be considered together.

While in many states economic growth is on the increase – especially in the Americas – the situation of indigenous peoples in these countries has not followed suit. On the contrary: while the benefits to the state derived from the exploitation of natural resources in these country are increases in GDP each year, indigenous peoples – in whose lands most of these resources are located– suffer an increasing encroachment on their territories by multinational companies.

Other factors such as climate change are threatening their territories. Indigenous peoples warned on several occasions about the serious changes that were occurring in the environment long before the international scientific community began to note the consequences of climate change. However, for several years, neither the international community nor the scientific community have taken into account such concerns even though they are, without a doubt, the most qualified observers of climactic and environmental changes.

Finally, it is important to recognize that indigenous lands have become even more attractive to governments and transnational corporations for the purposes of mining or production: so much so that in some cases they try to buy the land (or lease it long term), and in other cases simply evict resident communities, without adequate compensation that conforms to national legislation and international principles of human rights. The negative results are many and varied: first, indigenous communities find it more difficult to successfully claim the right to ancestral lands. Second, conflicts among indigenous communities themselves are exacerbated: although some are willing to sell, there are others who want to live according to traditions. Climate change and other factors not only threaten the basic subsistence requirements of indigenous communities, but also their culture, their identity and their traditional lifestyles⁴.

During the VII Session of the UN Permanent Forum on Indigenous Issues, held in May 2008, FAO and others UN agencies were encouraged to promote the recognition of territorial rights and empowerment for indigenous peoples. Article 69 of the VII Session Report declared the following:

“The Permanent Forum encourages FAO and other relevant agencies to favour and promote in member countries the acknowledgement and improvement of land tenure legal frameworks to recognize indigenous peoples' land rights. The Forum recommends that FAO and other

³ IFAD. 2008. Indigenous peoples: valuing, respecting and supporting diversity. <http://www.ifad.org/pub/factsheet/ip/e.pdf>.

⁴ GFBV. 2009 <http://www.gfbv.it/2c-stampa/2009/091207de.html>

relevant United Nations agencies support activities for participatory delimitation and titling where the legal framework recognizes indigenous land rights. FAO should pay special attention to indigenous peoples' customary laws regarding land.”⁵

FAO is committed to responding to this recommendation and the provisions to which it makes reference. In order to be of relevance to indigenous peoples, any initiative in land rights and territorial development must pay close attention to those peoples' world vision. Without this sensitivity, any intervention will necessarily be the antithesis of the very meaning of 'indigenous'. At the same time, however, the feasibility and sustainability of indigenous land entitlements (and, indeed, entitlements and rights in other resource sectors) will depend on their accordance with the legal and administrative framework of the State in which they reside.

The importance given by international organizations and States to considering the legal context, and to ensuring legal protection to the land, territories and resources of indigenous peoples, has been a source of numerous lengthy discussions. These discussions have made the issue a priority on the global agenda, its importance being underlined by the United Nations Declaration on the Rights of Indigenous Peoples⁶. Parallel to this process, the International Labour Organization (ILO) adopted Convention No. 169 – concerning Indigenous and Tribal Peoples in Independent Countries – and for the first time under international law recognized that indigenous land rights derive from rights and customary measures. The Convention outlined measures to be taken to prevent persons outside those indigenous populations from taking advantage of their customs. Article 17/3 reads:

"Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.”⁷

The purpose of this document is to promote a dialogue about land issues between FAO and its member countries, indigenous peoples, the Permanent Forum and other interested organizations. It outlines a number of basic principles of a methodological approach for indigenous peoples' territorial recognition, starting from the consideration that a simple legal recognition is often not sufficient to improve living conditions for these communities. A more open reflection on the delicate theme of 'development' is also promoted and sought. These principles are based on experiences from FAO's Land and Water Division (NRL) that are meant to start a first exchange of concepts and ideas.

FAO has increasingly recognized the deep relationship between land and indigenous peoples, as expressed in the words of former Director General Jacques Diouf:

“Land is, always has been and always will be, an essential economic asset in rural societies but its monetary value is not the only, or even the most important, consideration for many millions of people. For indigenous peoples, land is the basis of their identity; it is their home and that of their ancestors, their pharmacy, and their place of work and leisure. In most societies land means power, status, and membership of a social class. For many women, their autonomy depends on it.

⁵ UNPFII VII Session Report <http://social.un.org/index/IndigenousPeoples/UNPFIIISessions/Seventh.aspx>

⁶ 2007. http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

⁷ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100897.pdf

In the final analysis, land means belonging to a place and to a culture. This is why when speaking about landless men and women we are talking about people without a past, without a present and without a future.”⁸

For indigenous peoples, land is a fundamental asset because it is the source of their economic livelihood *and* the basis of their social, cultural, and spiritual identity. The relationship between man and nature is integral to the indigenous peoples’ cosmovision, and their well-being is contingent upon the existence of a healthy balance between these two. Indigenous peoples therefore seek a degree of autonomy in the territories in which they reside.

However, in most cases of territorial management, land has been treated as a marketable commodity administered through individual ownership and subject to trade-related transactions; these often alienate indigenous peoples’ claims. Western definitions of private property and land development are therefore frequently at odds with indigenous peoples’ beliefs and practices. Rather than viewing land as a possession, indigenous peoples see it as a space through which communal livelihoods, values and autonomy take shape. The difficulty of integrating such a cosmovision within the administrative and legal structures of the State has led to numerous problems, and is a challenge that remains unsolved in part.

FAO has tested and implemented a **participatory land delimitation approach** in countries such as Mozambique, Angola, Chile, and Guinea Bissau.⁹ These experiences have helped to identify some initial elements that will help to answer these challenges. The key elements are: building trust; dialogue; negotiation; agreement with inhabitants through a validation process in the context of spatial recognition. In essence it is a process of empowerment through which community members play their social, economic and political roles, in the hope that they will manage their natural resource development according to their own perspective and their value criteria.

Parallel to field work, FAO works with governments to adapt and improve their political and legal systems, so that the customary rights both of local communities and indigenous peoples are enshrined in the countries’ laws.

This is what will eventually lead, at the end of the process, to the community obtaining a certificate or land title. However, even though this formal recognition is important, experience suggests that it is not enough. In practice it has sometimes been found that regulatory frameworks relating to security of tenure, and the adoption of customary laws for self determination within that framework, are not linked in any way with territorial development policies. This then excludes indigenous peoples from the dynamics of economic development. It is important that free and informed prior consultations are carried out with indigenous peoples, and that the developmental law is analysed *vis-à-vis* the life plans and expectations for development and environmental conservation that indigenous communities regard as crucial to their permanence in their territory.

For this reason, security of land tenure is only a first step towards a broader security and food sovereignty¹⁰. This is why FAO’s Land and Water Division is also considering a more general

⁸ FAO Director General at the International Conference on Agrarian Reform and Rural Development (ICARRD), Brazil, March 2006, <http://www.asharq-e.com/news.asp?section=2&id=3900>.

⁹ FAO. 2009. *Participatory Land Delimitation: an innovative method for securing rights acquired through customary and other forms of occupation* ftp://ftp.fao.org/docrep/fao/012/ak546e/ak546e00.pdf

¹⁰ And, as a final aim, towards the realization of the right to food, through respect for and the protection of all rights (civil, political, social, economic and cultural) equally, interconnectedly and interdependently. As such, the realization of any right

framework, as expoused in the paper, *The Future of our Land*¹¹, and in the methodological focus being used for Participatory and Negotiated Territorial Development)¹².

Given the scope of interests and opinions that are included in this dynamic, the document is aimed both at internal actors, and external actors such as policy makers, NGOs and indigenous community organizations. Greater sensitivity to the land rights of indigenous peoples is required on the part of government authorities and private actors, at the same time as it is necessary to increase awareness and reflection of the same within FAO itself.

depends intrinsically on other rights being guaranteed. By the same token, achieving the guarantee of one right necessarily means that other rights are also guaranteed.

¹¹ FAO. 1999. *The Future of Our Land: Facing the challenge*.

¹² FAO. 2005. *Participatory and Negotiated Territorial Development* http://www.fao.org/sd/dim_pe2/pe2_050402a1_en.htm

2. Key concepts

a) Indigenous People

There are several definitions for indigenous peoples:

(I) The UN definition, as it appears in the 1981 *Study on the Discrimination Against Indigenous Peoples* by Mr Martínez Cobo for the UN Economic and Social Council, (focussing mainly on indigenous peoples in the Americas, Australia and the Pacific), says:

*“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.”*¹³

In short, indigenous peoples are the descendants of those who historically have lived in an area that was later conquered by a foreign power.

(II) The definition in Article 1 of Convention 169 of the International Labour Organization (ILO), dealing with the working rights of indigenous and tribal peoples, suggests that indigenous peoples are:

*“(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”*¹⁴

(III) The definition given by the World Bank (operational guideline 4. 20, 1991) says:

*“Indigenous people can be identified in particular geographical areas because of the presence in different measures of the following characteristics: a) implication with ancestral territories and natural resources in these regions; b) auto identification and identification by others as members of a different cultural group; c) an indigenous language, different from the National language; d) presence of social and political institutions; and e) production is mainly oriented towards self-subsistence.”*¹⁵

FAO recognizes that the indigenous peoples of the world are culturally different, at the same time as they share some common values and perceptions, such as pursuing the same objective in terms of claiming certain rights and autonomy that should be internationally recognized. These similarities can be expressed by certain principles: for example, the principles of self-

¹³ <http://social.un.org/index/IndigenousPeoples/Library/Mart%C3%ADnezCoboStudy.aspx>

¹⁴ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>

¹⁵ <http://www.indianlaw.org/sites/default/files/resources/MDB%20WorldBank%20OD420.pdf>

determination, free prior and informed consent, and other fundamental rights that have been made by indigenous representatives and which are at the core of the United Nations Declaration, as well as other international legal and policy instruments.

The question of who indigenous people really are or are not has always been difficult to answer. Some countries affirm that they don't have indigenous people within their borders, yet some groups who live in those same countries – speaking a different language and having their own culture – consider themselves indigenous: that is, indigenous to the land on which they live, where they struggle to actively defend their culture and the right to use that land and its resources¹⁶.

b) Land and territory

It is those who live on the land and interact with it that define the term 'land'. Their perception of 'territory' helps them to establish a common identity and facilitates the realization of their own particular life strategies and projects¹⁷.

The plurality of actors with different interests and values, sometimes in conflict with each other, influences the dynamics of their interrelationship within this common territory that they share. Territory is a social product¹⁸: as such, it is not only a geographically-limited administrative area, but could be also be less clearly defined spaces that share similar aims and characteristics, e.g. culture, language or concerns about marginalization.

We need to look further to find a more integrated focus, beyond a simple rural view of indigenous territories. Increasingly, territory is more and more an open concept that is continuously evolving; the actors involved in it may also be different from those in the past. When we speak of territorial actors, we are talking about indigenous peoples, about peasants with and without land, about other rural producers, the private sector, institutions, civil society, and so forth. All of these groups strongly influence territorial dynamics.

c) The arena for dialogue

Territory can be seen as an arena where different actors express their interests and world views, and where they are in contact with other actors, entering into conflict and/or negotiation and/or agreements. Here there will clearly be an asymmetry of power in which the rights of weak actors are not always respected or taken into consideration. These asymmetries are also sometimes practical, e.g. in terms of access to information and expertise. These 'misunderstandings' can either lead to disagreement or even violent conflict. By contrast, when appropriate prior conditions are in place, disputes can be solved and may even result in solid and long-lasting agreements.

What interests us, therefore, is how to avoid high levels of disagreement and conflict, and at the same time stimulate an open 'space' for dialogue, in which all actors can sit around a table and engage in negotiations, freely expressing their own ideas and interests, their particular perceptions of problems, and their desired outcomes. Two fundamental conditions are necessary to obtain this: on the one hand, asymmetries of power have to be reduced and on the other hand, trust between all negotiating parties needs to be built.

¹⁶ <http://www.cinu.org.mx/prensa/especiales/indigenas/#5>

¹⁷ FAO. 2005. Participatory and Negotiated Territorial Development http://www.fao.org/sd/dim_pe2/pe2_050402a1_en.htm

¹⁸ Schejtman A. 2009 Desarrollo territorial rural. Seminario FAO. Santiago, Chile.

It is unclear whether undertaking such a process will actually result in an agreement, but at least through this approach the will exists to aim to increase social cohesion.

It is clear that these are not easy conditions to put in place and they are not something that can be achieved overnight: they involve processes that take a lot of time and effort. In the majority of developing (and developed) countries, it is very difficult to build or rebuild relationships of trust that have been broken for a variety of different reasons. Efforts are needed to rebuild trust, which is indispensable to the successful implementation of developmental action that is genuinely inclusive.

3. Basic principles for the recognition of indigenous territorial rights

On the basis of FAO's past experiences, a number of basic principles have been identified and proposed as the fundamental building blocks upon which a methodological framework for the recognition of indigenous peoples' territorial rights can be built. These suggest an approach that is:

- **stakeholder-based:** recognizes the heterogeneity of stakeholder interests and visions of the territory.
- **territorial:** based on territories as spatial units of analysis, shaped by the social and historical relations existing between stakeholders and their territory.
- **dynamic:** offers an understanding of and learning from the complexity of a changing environment in order to support positive patterns of change, and help to mitigate negative patterns.
- **systemic:** takes into account the complexity of a territory and the interdependencies within and between territories.
- **multi-sectorial:** integrates environmental, social, economic, political, and cultural dimensions of the stakeholders' visions of their territory.
- **multi-level:** promotes integration at different territorial levels and scales in the system of governance.
- **participatory and negotiated:** offers a concept of the territory as a negotiation arena in order to strengthen dialogue and mutual trust, and to increase bargaining power.
- **modest:** recognizes the usefulness of different disciplines, tools, and methods; selects priority areas for intervention; identifies modest territorial projects, the elements of which are merely: one objective and minimal results and indicators.¹⁹

Starting from this perspective, here are some related considerations.

First, considering what the phrase 'stakeholder-based' really means, it is fundamental to start searching for a deeper understanding, both anthropological and sociological, of indigenous peoples, initiating an open dialogue with them before undertaking any developmental activity.

Reflecting on what 'dynamic' means, it is important to consider the capacity of indigenous people to adapt to a social and environmental context. The indigenous movement in Latin America goes so far as to claim that the western model of development has been a predator, feeding on the human and cultural resources of the world. This viewpoint offers a powerful mental construct in terms of cosmovision, spirituality and social organization, as well as the skills and strategies used by indigenous peoples to survive under conditions of extreme adversity and pressure. Their elasticity and capacity for adaptation offers industrial societies a very important lesson, yet we can only learn this lesson ourselves if we are respectful and

¹⁹ FAO. 2005. Participatory and Negotiated Territorial Development http://www.fao.org/sd/dim_pe2/pe2_050402a1_en.htm

open to dialogue²⁰. Understanding the complexity of environmental change is also essential to grasping the dynamics of land and territory.

4. A facilitation team

FAO's approach is to facilitate a meeting of cultures, after initial disagreements have become evident. This means addressing the issue of indigenous peoples from the standpoint of promoting common ground and mutual respect; this in turn raises the question of what kind of capabilities are needed to promote this type of approach.

The objective is to understand who the actors in a certain territorial space are, what their conflicts of interest are, and what needs must be satisfied. Considering this, FAO and other organizations dealing with indigenous peoples place significant emphasis on the need to include a facilitation team that can act as a mediator during the process of negotiation. The idea is to find people who have a variety of skills, including:

- cultural mediation skills
- knowledge of local issues and culture
- interpretative skills
- skills in the psychology of relationships
- listening and communication skills²¹.

We should not forget that indigenous peoples are often excluded from any type of social participation, civil and political, i.e. they are invisible actors. The role of the facilitation team is to make them visible, recognizing their existence and supporting them in negotiating their rights. This requires taking into account the values of indigenous peoples, and balancing those with the interests of governments and the people those governments represent. A broad and comprehensive spatial analysis needs to be developed.

As an example, a recent project developed by FAO in Costa Rica is instructive. In collaboration with the Institute of Agrarian Development (IDA), this was a territorial development project aimed at strengthening the institutional capacity of civil society and local governments to support the training of regional action groups. In this context different diagnoses were made in the northern territory of the country. Via in-depth analysis and inclusive work on the part of the facilitating team, the presence of a group of Maleku people who lived in the area was brought to attention. They were included in the training process, and thanks to their deep knowledge of the territory, a more comprehensive and useful historical picture of the area emerged.

It was clear from this experience that a project facilitation team needs to develop a very specific agenda for action that takes into consideration the role of indigenous peoples in a territory. In any setting, facilitators need to be well-informed about the community context, the social dynamics, the political forces that influence the parties, the economic relationships, and each party's religious and cultural status. They should also be able to understand and interpret indigenous peoples' symbolism, rites and the significance of mother nature to them.

²⁰ Deruyttere, A. 2001. Indigenous peoples, globalization and development with identity: some strategic reflections. InterAmerican Development Bank, Department of Sustainable Development.

²¹ FAO. 2007. Territorial Facilitation for Participatory and Negotiated Territorial Development

This is not to suggest that the approach to collecting information should be overly intrusive, but rather that an inquisitive team in search of the necessary information is needed. A vision of the situation needs to be constructed via an iterative process, gradually building up a complete picture of the situation.

It is important to gather general information about the community in terms of its history and characteristics, and the power dynamics that influence community life. Key sources of this information will be local, religious and charismatic leaders, political authorities, local entrepreneurs, and medical and educational professionals.

External information that is relevant to the life of the community also needs to be provided by those who best understand it. For example, information about the existing legal system: the laws, rules, policies and practices that are already in place, whether at local, district or provincial level. In this way, the community will appreciate the social and judicial implications of the established norms that affect it²².

²² ASPBAE. 2007. Indigenous Peoples' Poverty Alleviation. Community Action Tool. Mumbai, India

5. Tools to guarantee an effective inclusive process

a) Participatory Land Delimitation

1) What does delimitation mean?

Delimitation is essentially a process of self-identification by a community, in spacial and socio-economic terms. Local actors explain to the technical team where their boundaries with the neighbouring community are. During the process they make the case for their right to use this land: a right acquired by the fact of their long-standing occupation of it. All of this information is transferred to a cadastral map; when there is adequate legislation in place, the authorities can proceed with the issuance of a certificate or title to the territory on behalf of the community.

Local actors know better than anyone the story behind the occupation of their land. They also know the uses to which it is put, what resources to use and when, which groups or individuals have stronger or weaker family ties, the extent of political organization in the vicinity, etc. It is therefore logical that local actors should be considered the principle protagonists in the process of identifying and defining 'the community' itself, and in so doing making the case for demonstrating their land use rights, and establishing the boundaries of these rights.

Fundamentally, the aim of the technical team is to facilitate this process. Members of the team work with the community, supporting it in the production of the data that is essential in proving their right to use the land and to define its borders. The team also plays an important role in validating this data with the indigenous community's neighbours. This is an obligatory step in the delimitation process, and the active participation of the other communities is fundamental.

Awareness and sensitivity are a critical first step. The process implies various meetings in order to provide the community with general information about territorial laws, and, in particular, information about the delimitation of community territory. The entire community needs to understand why they should 'delimit' their land and what this really means in practice. By the same token it is important to take enough time to discuss and think over the necessity of delimitation, without the presence or influence of external actors. A common agreement needs to be found in which it is the community itself that starts the process of delimitation, not the facilitator nor the supporting agency.

Participatory mapping using GPS and GIS have been widely applied to indigenous areas since the 1980s, and a number of indigenous organizations and NGOs continue to use these technologies. In recent years, a number of lessons have been learned from different results obtained in the field. Among the most important are:

- Maps should be drawn up on the basis of full consensus, agreement and control by the community involved.
- Members of the community should be involved at all stages of the mapping process, from the decisions about what information should be considered relevant information, to the manner in which these decisions are registered on the base maps.
- As far as possible, land use as well as land limits should be registered. The original indigenous names of the areas should be used, as well as the indigenous names for categories of land use and vegetation types.

- Ensure that all generations are involved. The elderly are often the best informed about areas of historical and cultural relevance. Similarly, involve men and women in the mapping process: they tend to use natural resources in different ways. As such, their involvement in the decision-making process could be carried out first as separate gender groups, but later they could be brought together to contribute to the discussion as one group.
- When there are two or more ethnic groups in the same area, all of these should be involved in the mapping process. All groups have rights: therefore taking into account the rights of one group only may end up creating a mechanism that leads to conflict.
- Involve neighbouring communities in defining boundaries. Neighbouring communities may have ‘open boundaries’ in which some land-use activities are permitted in an area apparently controlled by the other community, and vice versa. In many cases it is not possible to define clear boundaries between one community and another.
- Ensure that the draft maps are checked and approved by community members and their neighbours²³.

Most of these recommendations are part of the methodology known as ‘Participatory Land Delimitation’ (PLD), a tool that FAO has been using in several of its field programmes on territorial recognition.

All activities relating to territorial delimitation and territorial development must necessarily include a strong element of real participation and extensive consultation to build consensus. Elements such as the ecological, historical and political-economic dimensions need to be taken into account to achieve a correct and comprehensive understanding of the territorial system and customary law. Given that the actors are numerous and often in conflict, social dialogue and participatory assessment are essential.

2) Methodological synthesis for the participatory delimitation of lands and territories

A methodology for the delimitation of community territories requires:

- (i) (Self) identification by the local community
- (ii) Demonstrating that the local community has acquired its land rights through long-term occupation, according to common law
- (iii) The identification of the boundaries of these rights.

Different field initiatives developed in Angola²⁴, Mozambique and Guinea Bissau can be regarded as the basis for this methodology²⁵. A positive case study that demonstrates how a participatory inclusive process involving different territorial actors resulted in territorial delimitation acceptable to all parties is that of the Kuna people of Panama.

Today, most of the Kuna live in Panama, a country that has offered them a safe haven, bestowing on them rights and freedoms recognized by law. In this ‘host’ country, the Kuna’s revolts of 1925 and 1930 – a response to the pressures generated by foreign businessmen on their territories – resulted in this indigenous group gaining the status of ‘reserve’ and then

²³ Colchester, M. 2010. Free, Prior and Informed Consent. Making FPIC work for forest and peoples

²⁴ Cenerini, C. 2007. Access to information and institutions. Tales from Angola: San Land Rights in Huila Province, FAO-NRLA, Roma <http://www.fao.org/Participation/Cenerini2008Angola.pdf>

²⁵ De Wit, P. 1996. Uma metodologia para o estudo da gestão de terra a nível da comunidade na Guiné Bissau, Ministry of Public Works, Construction and Urbanism, Project ACP/GUB No 7.

‘county’ for their territories, within the San Blas region. Specifically, 235 700 hectares of land were earmarked for them under the concept of ‘community territory’, to be administered autonomously.

The Statute was confirmed by ‘Law 16’ of 19 February 1953, and is considered by many Kuna to be a constitutional guarantee of their cultural freedom and land, through which the Kuna Yala region and its traditional authorities are fully recognized. This secure environment has stimulated strong population growth in these communities over the years, to the point where more than 40 000 Kuna Indians are estimated to live in Panama today, making them the largest ethnic group in the country. On account of this demographic weight, in 1972 the Panamanian government launched specific measures for the political participation of indigenous representatives, in an attempt to encourage their involvement in national elections²⁶.

3) Participatory Rural Appraisal

In projects where FAO has been involved in matters of territorial demarcation and recognition of local communities, it has used the method commonly known as Participatory Rural Appraisal (PRA), which in addition can also serve to encourage a gender analysis²⁷. This is an example of a methodological approach understood for decades and which may have practical uses in gender studies too.

This technique involves the key group or community in full continuous participation, and will usually lead us to understand the reality of their everyday community life. Using the PRA method the technical team supports the community in the creation and analysis of a wide range of information that is later used to establish both their land-use rights and their territories’ borders. The role of the team in this case is to support the community in a process of self-identification at multiple levels: as a social entity with territorial rights and as an administrative entity with specified limits to its jurisdiction and reach. In this way, the participants defend their rights to land use acquired through long-term occupation and efficiently define their own community, in spatial and social-economic terms.

Using this technique a number of participatory maps are produced by different interest groups. The result is a more general consensual map that represents community territory as perceived by the members of the community itself. Often, the production of these maps starts at a meeting between the members of the community. Together with other actors, they are asked to draw a map of where they think their borders are. This leads to a discussion in which everyone contributes to the creation of the participatory map.

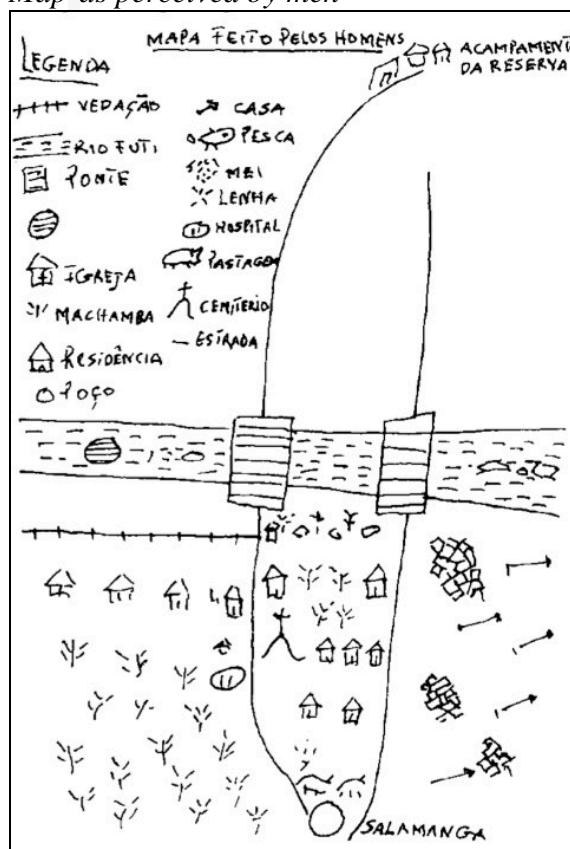
Comparing these maps with others produced earlier by different groups, a consensus can be reached about what resources exist within the community, where its principal border lies (a street, a river, etc), and which villages and infrastructures belong to the community.

²⁶ Ali, M. 2010. Los indígenas acorralados: los kuna de Urabá entre conflicto, desplazamiento y desarrollo. Universidad de Los Andes, Facultad de Ciencias Sociales, Departamento de Antropología. Bogotá: Uniandes. ISBN 978-958-695-531-7.

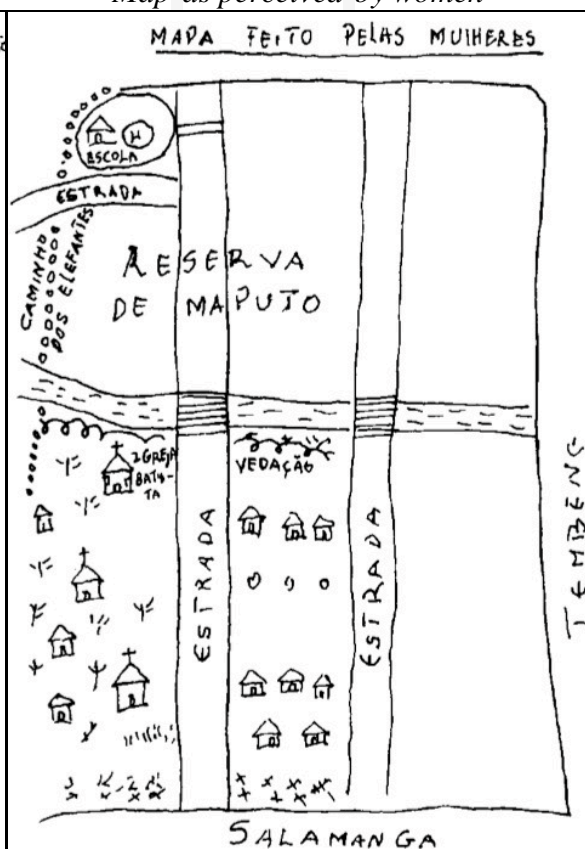
²⁷ FAO. 1996. El diagnóstico rural participativo para el análisis de género
<http://www.fao.org/docrep/007/ad645s/ad645sm2/AD645S01.htm>

For example, a PRA project that produced a community map showing the demarcation of land in a Reserve area of Mozambique, is a case in point. The diagrams below show two maps that offer a similar view of the geographical layout of the community, its location near a river, crop-growing areas and housing. However, the maps were produced by men and women separately, and strong differences are obvious. Women marked the school and the road used by elephants to cross the community; the elephants cause major damage to crops. On their map, men included a community resource key not shown on the women's map, as well as a large forest and scrubland area used for hunting and gathering medicinal plants. The men also marked the Reserve's camp, headquarters of the camp's management. At the time, this headquarters was a focus of politics and controversy on account of the elephant problem.

Map as perceived by men



Map as perceived by women

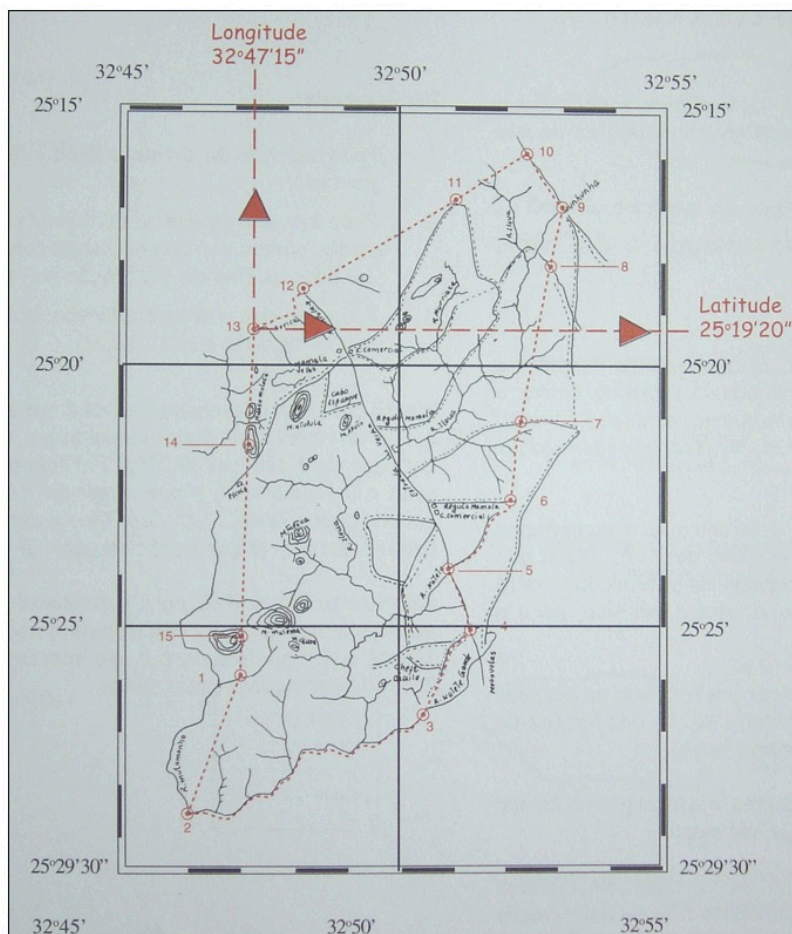


The cartogram evolves from a simple spatial approximation created by the local community to culminate in a much clearer picture, the result of agreement between all members of the community. This map then needs to be approved by other neighbouring communities; if they do not agree with the boundaries, other conflicts may result later on.

The series of meetings needs to be as participative as possible. Dialogue and consensus are two key concepts. Unless there is an open and involved discussion, supported by the technical team, it is very hard to achieve a result in which all the communities would agree with the boundary limits sketched on the map.

Once agreement between all neighbouring communities is reached, it is necessary to put all of the information collected onto the official map, in keeping with official norms and legislation,

where these exist. The boundary limits indicated should always be presented in a descriptive way, on maps with no scale. This representation of boundary limits and of the landscape should then be transferred to a map whose scale has been adjusted to recognized limits²⁸.



The process of Participatory Land Delimitation (PLD) is a form of integration between indigenous communities and the rest of society. Cases of good practice have been seen in the context of Angola²⁹ and the San community³⁰. Thanks to a long process and an inclusive dialogue, it has been possible to develop meaningful territorial limits whereby a first ever land title was enacted on behalf of the San community in April 2007.

b) Building territories and development

Some delimitation processes that FAO promotes are eventually legally formalized, although this is not always the case. It is generally desirable that there should be a full recognition of these rights, but it is also necessary to consider situations in which this does not occur or is not possible. Similarly, particular methods for opening roads to potential legal recognition should also be noted.

²⁸ FAO. 2009. *Participatory land delimitation. An innovative development model based upon securing rights acquired through customary and other forms of occupation* <ftp://ftp.fao.org/docrep/fao/012/ak546e/ak546e00.pdf>

²⁹ FAO. 2009. Documento de projecto n. 1: Uma metodologia para delimitação participativa de terras em Angola (GCP7ANG/035/EC)

³⁰ Groppo, P., Madureira, S. & Di Grazia, A. 2006. Collecting land titling for indigenous minorities in Africa. Case study of the San in Mupembati, Angola

Whatever the outcome, it is also important to discuss what to do after this process of territorial demarcation has taken place, and assess how to support indigenous communities in the management of their territories, in a context of full respect for their customs and sensibilities.

Some countries have gone far in terms of establishing special areas for indigenous communities. Colombia is a case in point: between 1966 and 2006 it set up 642 Indian reservations covering more than 31 million hectares – 27.4 percent of the country – for indigenous peoples. According to declarations by the Colombian delegation at ICARRD, the policy of land allocation to ethnic groups has become an effective tool for building territoriality for these communities. Colombia has adopted a secure legal basis for the defense and consolidation of these territories, excluding them from the market by giving them the legal status of inalienable, inviolable and unembargable rights, in accordance with the provisions of Article 63 of the Political Constitution. However, the institutional support that would enable indigenous communities to live in a sustainable and appropriate way in these territories, and in keeping with their culture, is still limited. In addition, civil protection schemes and social security are not very sensitive to their special needs in terms of guaranteeing basic rights.

Indigenous communities face many different challenges in terms of the conservation, management, exploitation and renewal of natural resources; this exposes them to risks: risks that public policy should be required to assess in an inclusive and sensitive way.

The concept of territory involved in the development of these policies is comprehensive, going beyond common conceptions of immediate property to include forests and renewable natural resources as well. It extends so far as to involve a right of precedence for the use of and benefit from subsoil resources: for example, the right to prior consultation when the exploitation of these resources involves hydrocarbons, coal, salts or other strategic minerals.

The politics of land endowment has resulted in a new mechanism for territorial management by ethnic groups, supported by the 'Entidad Territoriales Indígenas' (Entity for Indigenous Territories) and the 'Divisiones Territoriales Afrocolombianas' (Afrocolombian Territorial Divisions), two new entities in the political and territorial organization of the country, in accordance with Articles 285 and 286 of the Political Constitution. These entities are characterized by: their autonomy; the self-government of the territories they oversee; their participation in the everyday life of the country; the fact that they make up a special electoral district and that they are also a special fiscal regime.

The collective titling of Colombia's ethnic territories has become a strategic form of resistance against armed stakeholders, illicit drug plantations and forced displacement. This instrument has allowed the communities to reclaim their rights. While this is the purpose of the territories' new legal status, accompanying programmes must be developed in conjunction with national authorities, to improve the management of the territory assigned to indigenous communities, given that their leaders are still subjected to threats, intimidation and even murder when their interests are opposed to the interests of illegal armed groups.

The Colombian government considers that the best way to guarantee the protection and sustainability of indigenous peoples' territories is to promote the peaceful occupation of these territories, in combination with legal productive activities that can contribute to development and the improvement of these communities' quality of life, while respecting these peoples' ancestral culture. However, it is also correct to say that few resources have been directed at such programmes, which weakens the 'territory building' it is intended to support.

Cases like this, together with our own experiences in the field, have led the authors to consider the necessity of following up on the complex topic of sustainable development as it relates to indigenous peoples. An open assessment of our methodology is ongoing, based on some documents which FAO has produced on these issues (see notes 11 and 12). We see this as a useful starting point to open up dialogue with other institutions, and offer it as a means to expand the methodological basis needed to meet the challenges mentioned by the Permanent Forum on Indigenous Issues, at the May 2008 UN meeting.

c) Free, prior and informed consent

Free, prior and informed consent has come to be valued as a crucial tool for achieving social sustainability. The right to free, prior and informed consent derives from the right of indigenous peoples to self-determination, and is closely linked with the rights of peoples to their lands and territories according to the customary and historical ties they have with these. As commonly interpreted, the right to free, prior and informed consent is intended to allow indigenous peoples to reach consensus and make decisions in accordance with their own traditional decision-making processes³¹.

Article 32 of the *United Nations Declaration on Indigenous Peoples*³² provides that States must support consultations and cooperate in good faith with the indigenous peoples concerned, through their own representative institutions, in order to obtain their free and informed consent before approval of any project affecting their lands, territories or other resources. The Declaration (Article 41) also requests that United Nations agencies contribute to the fulfilment of the provisions of this technical assistance through means that can ensure the participation of indigenous peoples where matters concern them.

FAO's technical support in different countries is based on a firm conviction that we should encourage inclusive participatory processes among a plurality of different actors who may have different interests. Such an approach leads us to accept the principle that indigenous peoples have the right both to give and also to withhold their free, prior and informed consent for planned development activities in their territories. We are conscious that what is programmed does not always match the expectations of local communities. In such cases it is necessary to step back and identify the motives behind this rejection of our intervention.

Free, prior and informed consent has also been accepted in a number of sectoral processes to establish good practice for the private sector, and by non-governmental agencies. For example, the Forest Stewardship Council (FSC) requires that timber companies "recognize and respect the customary rights of indigenous peoples to own, use and manage their lands, territories and resources". It also requires that "indigenous peoples have control over forest management on their lands and territories unless they delegate control to other agencies with

³¹ Colchester, M. 2010. Free, Prior and Informed Consent: Making FPIC work for forest and peoples. New Haven, USA, The Forests Dialogue.

³² http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

free, prior and informed consent.” The FSC applies the same principle to plantation companies operating on indigenous lands³³.

The relationship between indigenous peoples and conservation organizations (including governments) as regards indigenous territories and protected areas is critical, given that they sometimes have different views on the concept of conservation. For the conservation organizations, pure conservation is sometimes thought to prevail over the collective rights of indigenous peoples. As such, these NGOs have not yet fully incorporated into their policies the principle that, in order to promote true sustainable development, it is important to design policies and strategies for conservation that also account for the presence of human life in protected areas.

This type of approach may sometimes assume that indigenous peoples do not have the capacity to manage protected areas. Indigenous peoples possibly may then only participate as park rangers, while in these same or similar areas, mining companies may have been able to obtain licenses to operate with ease: especially timber, mining and petroleum concerns. A classic example is that of the Yasuni National Park in the Ecuadorian Amazon, a large part of which was awarded to the Brazilian state oil company, Petrobras. It is for this reason that indigenous peoples claim the right to make decisions in their territories: in protected areas, the fundamental problem is that indigenous groups are rarely consulted, and even fewer are given the option of exercising their free, prior and informed consent to major decisions that affect their lives.

But unfortunately what tends to prevail as the economic priority is private and short-term, against the collective environmental balance, which is a medium-term and long-term concept. Societies based on production and economic growth, and which consequently pursue the accumulation of capital, are inherently anti-ecological and can only lead to a devastated world³⁴.

Another crucial issue is to understand who can legitimately contribute to the idea of ‘gaining consensus’. Many development agencies and policy-makers include within the term ‘local communities’ all ethnic minorities, indigenous and tribal peoples, pastors and so forth, under the generic term ‘local lieutenants’. From a legal point of view this does not create a very definite framework in which to operate; as such, it is necessary to develop case law and other norms that will clarify the issue.

It is precisely these discrepancies that complicate the ability to reach an understanding between indigenous peoples, States and private sector. It is difficult to find common visions and values that allow mutual cooperation to develop, aimed at true sustainable development. The free, prior and informed consent of indigenous peoples is still pending as an issue and should be a high priority on the environmental agenda.

d) Take into account the environmental dimension

Particular attention needs to be given to the management of environmental issues and natural resources.

³³ www.fscoax.org ; Colchester, Sirait y Wijarjo 2003; Collier 2004

³⁴ ONU. de la Cruz, R. 2005. Taller Técnico de las Naciones Unidas sobre el consentimiento libre, previo e informado de los pueblos indígenas.

Often the relationship between changes in the environment and territorial dynamics has been addressed in instalments. Food security in general – but especially for indigenous peoples – is deeply connected to biodiversity and sustainability. The environmental dimension of indigenous land rights must be considered from the territorial point of view and the environmental point of view, simultaneously, assuming that the aim is to achieve long-term benefits.

In order to understand the characteristics and dynamics of the territory, the effects of the actors involved and their relationship with extra-territorial processes, it is necessary to have an understanding of how the social system and the ecological system interact to produce economic change. How natural capital is used also needs to be observed, particularly land and water and genetic resources, as well as the effects of such use.

In areas characterized by the expansive presence of extractive industries concerned with natural capital – be this gas or oil – these intruders are factors that condition territorial dynamics. Clearly they reconfigure the territory, but they also redefine access to, use of and management of other natural resources (such as water and land) that are found in this same geographical space, as well as in other spaces that are affected indirectly. The transformation of natural capital resulting from petroleum exploitation and the increased investment in public infrastructure that accompanies these industries is also a significant influence on the provision of ecosystemic services, contributing to the development of new territorial dynamics³⁵.

Action aimed at promoting respect for nature is therefore fundamental. It is not possible to continue with interventions that exclude local actors. It is not possible to foresee how the process of dialogue and negotiation will end. The authors also believe that it is necessary to promote a participative development process instead of focusing attention exclusively on the end result.

In this context, in recent years there has been much talk about the UN programme to Reduce Emissions from Deforestation and Forest Degradation (UN-REDD). This programme has a direct impact on the lives of forest communities and indigenous peoples who inhabit and depend on forests. The southern forests are mostly owned by States – in Africa, 98 percent, in Asia, 66 percent, in Latin America, 33 percent – while only a fraction are owned by communities and indigenous peoples. However, these state-owned forests are home to thousands of native peoples that depend on them for their survival. At issue is the fact that the REDD programme cannot be strengthened without the support of the communities, precisely because governance issues are central to a successful REDD mechanism. As such, we believe it is extremely important to start from a base of genuine inclusion for indigenous populations in any decision relating to their territory.

e) Territorial indicators

Indigenous peoples' organizations have developed indicators that give expression to their situation and which are useful to inform decision-makers and apply pressure at the governmental level, concerning resource management and the implementation of political change. Among these indicators are several territorial indicators – concerning land, water, sea

³⁵ Hinjosa, L. & Hennermann, K. 2011. *La dimensión ambiental de las dinámicas territoriales rurales en contextos de expansión de industrias extractivas*.

and islands – that need to be taken into consideration in order to develop a properly inclusive focus that will be representative of indigenous peoples’ genuine needs³⁶.

The indicators are tools used to measure, value and protect natural resources. The basic idea is that these indicators will put indigenous peoples in a more solid position to negotiate: the indicators reduce their invisibility.

The authors would emphasize that we consider the indicators to be a result of the participatory processes, not a starting point. It is also important to understand the various links between the indicators. What might be proposed is a conceptual and methodological framework for the participatory development of indicators (a multidimensional analysis). The community members can then discover the concepts for themselves, and how to translate them into accurate indicators.

Following are some tables related to these territorial indicators.

Territorial indicators (land, water, sea and islands)

Structural indicators	Process indicators	Outcome indicators
<ul style="list-style-type: none"> • International and regional agreements and treaties that recognize the ownership, control, use and territorial management of the resources, and the traditional knowledge of indigenous peoples and peoples in voluntary isolation. 	<ul style="list-style-type: none"> • Recognition and preservation of the toponymy of indigenous place names as a cultural manifestation of territoriality. • Programmes for the recovery and sustainable management of wildlife resources. • Policies, programmes, laws, ordinances and agreements that recognize ownership and facilitate the development of indigenous peoples. 	<ul style="list-style-type: none"> • Number of indigenous communities that have their own territorial zoning plan. • Mechanisms for retribution and permanent compensation to indigenous peoples for environmental services. • Sustainable development plans, programmes and projects based on the cultural identity of indigenous peoples.
	<ul style="list-style-type: none"> • National legislation referring to environmental impact studies and studies of the impact on cultural and traditional knowledge of projects that have a direct and indirect influence on indigenous territories and peoples. 	<ul style="list-style-type: none"> • Studies in coordination with indigenous peoples of impacts on culture and traditional knowledge. • The communities have and apply regulations for research on and use of traditional knowledge. • Percentages of indigenous

³⁶ TEBTEBBA, Indigenous Peoples International Centre for Policy Research and Education. 2008. Indicators relevant for Indigenous Peoples: a Resource Book. pp. 162–164.

	<ul style="list-style-type: none"> •National legislation that grants indigenous peoples the capacity to make decisions about the appropriateness of projects in indigenous territories. 	<p>territories used for conservation of traditional crops.</p> <ul style="list-style-type: none"> •Level of empowerment through the flow of information between indigenous communities.
<ul style="list-style-type: none"> •Recognition of the legal systems of indigenous peoples by the national legal frameworks and other governmental entities. 	<ul style="list-style-type: none"> •Programmes for recovering and strengthening of the indigenous peoples' own legal systems. •Mechanisms in the national legal framework that value indigenous peoples' authorities and organizations according to their uses and customs. 	<ul style="list-style-type: none"> •Recovery and implementation of indigenous peoples' own legal systems.
Structural indicators	Process indicators	Outcome indicators
<ul style="list-style-type: none"> •Existence of a political-cultural project as a process to achieve indigenous autonomy and self-determination. 	<ul style="list-style-type: none"> •Self-demarcation projects. 	<ul style="list-style-type: none"> •Percentage of territories that are self-demarcated. •Incorporation of indigenous criteria for self-identification and quantification of indigenous peoples. •Recovery and implementation of the indigenous peoples' own institutional systems.
<ul style="list-style-type: none"> •Categories of recognition and legalization of indigenous territories, which are characterized, among other things, by being inalienable and inviolable. 	<ul style="list-style-type: none"> •Size (area) of legalized indigenous territories. •Mechanism for the legalization of full rights to indigenous territories. 	<ul style="list-style-type: none"> •Mechanisms to facilitate the coexistence of and exchange between transborder peoples.
<ul style="list-style-type: none"> •Direct management and administration of protected areas and sacred sites by indigenous peoples. 	<ul style="list-style-type: none"> •Classification of forms of land tenure according to the criteria of access, control and administration by indigenous peoples. 	<ul style="list-style-type: none"> •Protocols and agreements among indigenous peoples and states for the recovery, access, control and administration of protected areas and sacred sites.

<ul style="list-style-type: none">•Defining property rights of the indigenous peoples over natural resources, including, <i>inter alia</i>, biota, genetic resources, soil and subsoil in the indigenous territories and sacred sites.		
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Conclusion

A territorial development approach centred on indigenous peoples requires a more open vision that examines the land/territory issue through its material, socio-cultural and environmental dimensions. FAO recognizes that land/territory is a complex question that needs to be taken into consideration through great sensitivity. Facilitators' support for indigenous peoples' territorial claims requires seeking out reasonable common ground between governments and local actors. Territorial rights need to be recognized, starting from the consideration of territory as a space for development and environmental sustainability. Real instruments need to be created that are able to guarantee autonomy and political participation. The principles and tools discussed in this paper have to be considered concurrently with dialogue, negotiation and promotion of concerted action.

A number of challenges highlight the urgent need to build dialogue in order to help create bonds of trust between actors: the growing number of conflicts over land and natural resources; deforestation; environmental degradation; cases of land grabbing; the insecurity of resource management; formal education systems that do not take into account the expertise of indigenous peoples.

The crucial point is in understanding how to ensure that the players dialogue with each other. Although there are no pre-defined solutions to the more complex situations, field experience leads us to believe that it is possible to create a space in which dialogue can begin. It is necessary to find the starting point at which different actors are willing to cede some power, to create agreements together that are seen as legitimate by all, and thereby increase the level of social cohesion.

The world of indigenous peoples is becoming more organized: their representatives are integral parts of international fora, and as such their voices, which demand to be treated with more equity, cannot be ignored. For years, indigenous peoples have been thought of as automatically opposed to any form of progress: they have been victims of this belief, and now demand to be parties to a new type of participatory and inclusive developmental process.

In order to follow this path, it is necessary to build and reinforce links and networks, finding ways to facilitate the connection between UN agencies, indigenous organizations, CSOs, NGOs and territorial actors. Without this cooperation it is impossible to imagine any kind of progress. It is like a big puzzle: even when some pieces are missing it is often possible to imagine the image, yet it is incomplete. Our desire is to find the missing pieces, put them together and complete the picture.

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