



Our Land, Our Life

Indigenous Peoples' Land Rights

TAIGA RESCUE NETWORK FACTSHEET

Introduction

Many indigenous peoples¹ have a special relationship to land, one that moves beyond mere economic interests to also include deeply cultural and spiritual connections to the places they have inhabited for generations. One of the most destructive and lasting effects of colonization is indigenous peoples' alienation from their traditional territories, threatening their very cultural survival and making the assertion of the land rights one of the most important issues for indigenous peoples around the globe.

This fact sheet seeks to clarify some of the issues surrounding indigenous peoples' claims to their traditional territories. The primary focus is on the relationship between indigenous

...the land is an old friend and an old friend your father knew, your grandfather knew, indeed your people have always known...we see our land as much, much more than the white man sees it. To the Indian people our land really is our life. Without our land we cannot – we could no longer exist as a people. If your people ever take our land you will be taking our life.

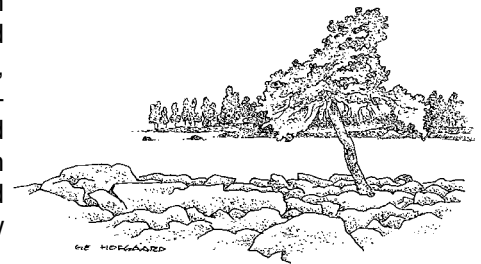
- Richard Nerysoo of Fort MacPherson, NWT, Canada (quoted in Notzke, 1994)

peoples and existing national and international legal and political systems. Legal and political campaigning is often an expensive, time-consuming and frustrating proposition; although some indigenous communities have successfully used these systems to secure or enhance their land rights. Case studies from Russia, Scandinavia and Canada are provided, to better illustrate the range of legal and political issues, and the disadvantageous position, that the original inhabitants of the world's northern forests are often faced with.

What are Indigenous Land Rights?

Arguably, the lack of a clear and consistent definition of indigenous land rights is one of the major sources of conflict. The very concept of land has been difficult to pin down; for although it is often taken to include an indigenous group's traditional territories, lengthy legal battles have been waged over the boundaries of these traditional territories and whether or not rights to these territories also implies subterranean and water rights. Another contentious issue is whether or not land rights involve actual title or whether they are simply about the right to access and use resources from the area.

In many countries, a great deal of legal energy is spent on defining the concept of title. This is especially true in Canada, which is bound by historical treaties signed with Aboriginal Peoples and is also in the process of developing "modern treaties" with Aboriginal Peoples that never ceded their territories during colonization. Broadly speaking, the Canadian courts have defined the concept of Aboriginal title as the right to "occupy and possess" and can be thought of as a right to the land itself. "When proven, Aboriginal title is a proprietary interest, held communally, and it includes the right to choose how the land will be used (Gladu et al., 2003)".



¹ Although indigenous peoples describe themselves with and prefer different names, the author has elected to use the term "indigenous peoples" to ensure consistency with the major international instruments and conventions concerning their rights. The term "indigenous peoples" is taken to include all peoples who self-identify as being descendent of the populations "which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization 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" (ILO, 1987).



The practice of signing treaties with indigenous peoples is unique to Canada, the US, Australia and New Zealand. In Northern Europe and Russia however, the concept of title is not always at the centre of land right debates. For example, the Sámi in Northern Sweden have asserted their right to use their traditional territories, but did not necessarily claim ownership over it (Borchert, 2001). Legally, these kinds of rights are often referred to as “usufruct rights” or the right to use and enjoy the property of another.

In areas where treaties have been signed, usufruct rights were often guaranteed as part of the exchange for extinguishing actual title. But, given the power imbalances and injustices that historically accompanied treaty negotiation, the mere existence of a treaty does not necessarily mean that title has been ceded.



Title claims are a much stronger assertion of indigenous land rights and are often connected to broader questions of self-government. Yet, the recognition of title does not necessarily mean that entire settled territories are going to be transferred back to the indigenous claimants. For example, the various bodies of the United Nations are advocating for the assurance of adequate procedures for resolving multiple claims to a specific territory, while some national judicial systems have argued for fair compensation when title has been infringed upon.

The Role of International Bodies in Securing and Upholding Indigenous Land Rights

Within the complex maze of international treaties, conventions and other legal instruments, there are a number of UN agreements that specifically address the question of indigenous land rights, of which the International Labour Organization (ILO) Convention on Indigenous and Tribal Peoples (No. 169) is arguably the most important.

In addition to affirming the basic political and human rights of indigenous people, ILO Convention 169 has an entire section on the land rights of indigenous people. The convention clearly states that indigenous people have “rights of ownership and possession” to their traditional territories and that measures need to be taken to safeguard indigenous peoples’ rights to “lands that are not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities”. It also states that governments have the obligation to preserve and protect traditional territories and that indigenous peoples have the right to be full participants in natural resource and land use decision-making processes².

Land rights have played a crucial role in the search for justice by indigenous peoples. When the laws and the courts uphold the dispossession of indigenous lands (as has happened throughout history in numerous parts of the world), then the cause of justice is not well served. On the other hand, recent judicial decisions and new legislation in some countries show promise that the situation may improve under certain circumstances, in accordance with evolving international standards regarding the human rights of indigenous peoples.

- Rodolfo Stavenhagen, UN Special Rapporteur

The significance of international conventions, such as ILO 169, lies in the fact that they can be used as a means to strengthen national legislation concerning the rights of indigenous peoples. When a national government signs an international convention, it is voluntarily agreeing to bind itself to all of that convention’s provisions. The first step in this new relationship between the national government and the international body overseeing the convention is the ratification process in which national laws and established practices are brought in line with the convention. In the case of ILO 169, only a small number of nations have actually ratified the convention, limiting its overall effect. While the number of ratifications needs to be improved upon, these conventions still play an important role in international standard setting and provide an important benchmark with which to measure a nation’s commitment to upholding the land rights of indigenous peoples.

² While the assurance of becoming full participants in decision-making processes may be a positive step for many indigenous communities, this aspect of ILO No. 169 has also been criticized. During the negotiation of the convention, some of the indigenous participants raised pertinent questions about the term “participation”, arguing that it is just another word for integration and that the focus needs to be on self-determination (Uldall, n.d.).

The People of the North - Russia

Contributed by Olga Murashko ³

The peoples of the Northern Russia have an extensive and long-standing relationship to the land and forest they inhabit: they graze reindeer herds, hunt, and gather berries, mushrooms, nuts, and medicinal herbs. Their reindeer migration routes constitute thousands of kilometres per year and the clan hunting grounds that were allocated by the decision of regional administrations in the early 1990s are hundreds of thousands of hectares. However, their rights to these lands are unstable and have been subject to changing government policies. In recent years, some of these communities were approached with the suggestion that they should sign rental agreements, which they signed, not knowing the implications. Now the authorities demand that they pay half a million roubles in rent and have threatened with court proceedings, but promise that the debt can be written off if the communities give up their land. Yet, how can they abandon their clan lands and their sacral sites? They will have nowhere to live, nowhere to graze their reindeer or hunt.

On the national level, indigenous rights are supposed to be guaranteed through the Constitution of the Russian Federation, which was adopted in 1993. It states that the constitution shall be “In conformity with the generally acknowledged principles and standards of international law and international treaties of the Russian Federation” (Clause 69) and it makes clear statements about the “Protection of the indigenous environment and traditional lifestyle” (Clause 72.1). Between 1993 and 2001, all the adopted documents and federal laws included similar standards stipulating special rights for indigenous peoples⁴. Some of the most important standards include: the Land Code, Forest Code, and laws On the Wildlife, On Protected Areas, On Resources, and On the Subsoil.



However, since 2001, many of these standards regulating the relations of federal administration towards Indigenous Peoples have been altered or removed from the Russian law. Consequently, the indigenous peoples of the North, Siberia and the Far East are no longer guaranteed the free use of lands. The communities of the peoples of the North appealed to the Russian Federation government for re-establishing Traditional Subsistence Areas (TSA), but the Ministry of Economic Development and Trade (MEDT), which was commissioned to set up TSA, replied that it was impossible to establish TSA due to the conflicts with the Land Code and lack of regulations regarding the legal status. MEDT was commissioned to develop that regulation but it has not yet been developed, and in the course of four years the federal agencies have established no TSA. In some regions the originally established TSA were cancelled under the pretext of the above-mentioned lack of the regulation. All the attempts of Indigenous Peoples organizations, deputies and regional legislative agencies to ensure amendments to the Land Code to restore free land use by indigenous peoples have thus far been unsuccessful. In the latest edition of the Forest Code, the benefits for free forest management for indigenous peoples of the North were cancelled, and the rights to forest use by peoples of the North can now be restricted by the forest managers who rent a forest plot or use it in trust administration.

Such steady erosion of Russian indigenous peoples' rights suggests that national legislation, alone, will not be enough to ensure that land rights are protected and international conventions such as ILO 169 can play a tremendously important role. Yet, as it has already been suggested these conventions are alone as strong as their number of signatories. Russia has not ratified the ILO Convention 169, and according to RAIPON expert Olga Murashko: "... it will not plan do so in the nearest future. Because if it will be ratified, then Russia will not be able to adopt the Forest Code and the Law On Resources proposed by the RF Government ignoring the rights of citizens including indigenous peoples. Only a serious warning from the UN may influence the drafting process of these laws, which would be in disagreement with Article 1 of the International Covenant on Economic, Social and Cultural Rights, and Article 1 of the International Covenant on Civil and Political Rights, which both declare that 'no people shall be deprived of its own means of subsistence' ".

³ Olga Murashko, RAIPON expert. Contact: murkre@aha.ru

⁴ The notion of “Indigenous peoples of North, Siberia and the Far East” does not cover all indigenous peoples. It only makes some Indigenous people legal by Russian law. Komi and Buryats are not considered as such, partly because their number is greater and some could still practice traditional life styles

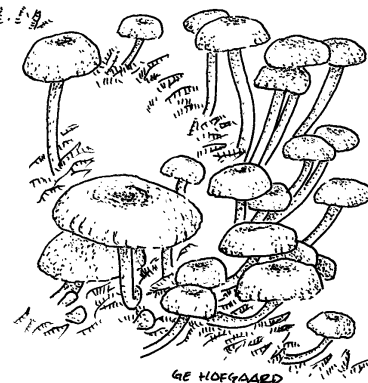
The Sámi - Sweden

Contributed by Anneli Jonsson ⁵

The Sámi traditional way of living is characterized by close contact with nature, following the path of the reindeer between summer grazing lands in the mountains and winter grazing land in the forest. The yearly cycle of reindeer herding is founded on the animal's need for different types of pasture land, which entails migration between mountains and woodland. The Sámi have lived and operated in the region of Sápmi (northern parts of Sweden, Norway, Finland and Kola Peninsula in Russia) long before the nation-state of Sweden was founded. They are recognized by the Swedish state as an indigenous people, with its own history, customs, culture, and livelihood.

During the last decades land exploitation and logging have encroached on the age-old right of the Sámi people to graze with their reindeer. More recently, their traditional way of life has been threatened as the reindeer herding Sámi in the southernmost Swedish part of Sápmi were being forced to defend themselves in political and legal processes concerning the rights to their grazing lands.

In the beginning of 1990, 500 private landowners went to court claiming that the Sámi had no customary rights for winter grazing beyond the Sámi villages in the provinces of Härjedalen and Dalarna. On February 21st 1996, the District Court of Sveg ruled that the Sámi had indeed no customary rights for winter grazing. On the 15th February 2002 the Court of Appeals ruled in the landowners' favour and in May 2004 the Supreme Court elected not to hear the case. In this way the Swedish courts have set a precedent of not recognizing the Sámi right to winter grazing.



From a historical perspective, the Sámi have been in the areas in question since times immemorial. The common law right to winter grazing has been assumed to exist in the reindeer pasturage laws ever since 1886. This means that the reindeer-herding Sámi have interpreted this law to mean that they have the right to utilize traditional grazing lands and to hunt and fish for their provisions. They have thus relied on their usufruct rights to utilize the land, rather than ownership. The Sámi customary rights to graze on private land as well as State owned land are still confirmed in the Swedish legislation. But the legislation does not state any clear geography boundary where these rights exist, and in case of conflict leaves it up to the Sámi to prove their customary rights in the courts.

Sweden was one of the standard bearers for the ILO Convention 169. However, when it was time for Sweden to sign the document, the government did not follow through on its intentions to protect its indigenous population. The laws that Sweden considered adequate to give the Sámi legal protection have shown to be nonexistent. On the other hand, a signature on the Convention would give the Sámi the international safeguards they require. Sweden's actions of promoting the Convention internationally while simultaneously ignoring indigenous issues at home are now becoming apparent internationally.

Meanwhile attitudes to the presence of Sámi in the countryside are hardening. The Sámi observed that following the verdict in the reindeer grazing case they suddenly had no rights, and they have tried dialogue and cooperation, trying to come to a long term agreement. But now that the verdict is legally binding, the Sámi have become an inferior negotiating party. It has resulted in widespread, negative, social, legal, and economic consequences. It is devastating to the Sámi culture and continued existence of reindeer husbandry.

The Lubicon Cree - Canada

Contributed by Ed Bianchi ⁶

Until the late 1970s, the Lubicon Lake Cree lived off the land and pursued a traditional hunting, fishing and trapping lifestyle with moose as the staple of their diet. As an Aboriginal Nation of about 500 people, they have never surrendered their rights to their 10,000 square kilometre traditional territory in the boreal forest in northern Alberta, Canada.

In 1939, the government of Canada confirmed that the Lubicon are a separate and distinct Aboriginal people with Aboriginal land rights. A reserve was selected and approved by both Canada and the province of Alberta, and a membership list was started, but the reserve was never established. During ongoing negotiations with the federal government,

⁵ Contributed by Anneli Jonsson. Presented at "The 4th Annual Meeting of the Permanent Forum For Indigenous Issues-may 2005, N.Y, USA. Contact: anneli@jdresameby.se

⁶ Ed Bianchi, Program Coordinator, Aboriginal Rights, KAIROS. Contact: ebianchi@kairoscanada.org

the Lubicon were encouraged to surrender their Aboriginal rights or transfer their names to the membership lists of other Aboriginal societies. But they resisted and in 1973, their existence as a separate and distinct Aboriginal society was once again affirmed by the federal government.

In 1979, a government-funded road through the Lubicon territory was built on behalf of oil and gas companies, who in the following four years drilled more than 400 oil and gas wells within a twenty-five kilometre radius of the community of Little Buffalo, with far-reaching consequences for the traditional hunting and trapping economy and way of life of the Lubicon. The moose retreated from the lands, which caused a drop of 90% in the average annual moose harvest, and similar figures for the hunters' income. The Lubicon also experienced significant health and social problems such as cancers, skin diseases, respiratory problems, a tuberculosis epidemic, miscarriages and still births. As a result welfare dependency increased from less than 10% to more than 90%.

There has however never been a settlement that has extinguished the Lubicon Aboriginal land rights, or any agreement that conferred on the government or any corporation the right to extract oil and gas resources from the Lubicon territory.

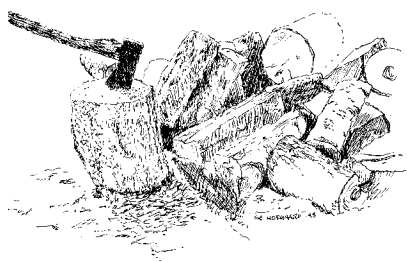
With 1700 oil and gas well sites and countless kilometres of pipeline in place, the current round of negotiations for a modern treaty began in July 1998. The third since 1990, it hasn't yielded a negotiated settlement so far. One of the obstacles is Canada's position on the Lubicon right to self-government: Canada insists Lubicon self-government can be negotiated only after settlement of the Lubicon land rights. This is however in violation with the Aboriginal right to control lands and resources, which is a key component of the Lubicon peoples' self-determination.

"We have no place else to be. If we can no longer survive on our traditional lands, we will cease to exist as a people."
Lubicon Chief Ominayak

The Lubicon believe the Creator charged them with a special responsibility to protect and preserve their traditional territory so that it can support future generations.

Conclusion

From the above case studies it is apparent that a lack of well-defined regulations concerning Indigenous Peoples' land rights causes a variety of conflicts. In all 3 cases, laws or regulations at the national political and legal levels exist, which are expected and thought to safeguard Indigenous Peoples customs and land rights. Yet when it comes to the decisive authority of these national laws and regulations, they often don't work properly as they leave space for changes, lack clear definitions, or contain controversies. This lack of proper legislation and the conflicts originating thereof lead to social, economic and environmental problems, and may even put the continuation of Indigenous Peoples' traditional way of life at stake.



Almost all peoples involved in these case studies are, by their respective states, recognised as "Indigenous Peoples"; a status which at the international level would in fact guarantee them their rights, if the national governments had signed an agreement such as the ILO Convention 169, which up till now is ratified by only one country in the boreal region, namely Norway. Until then, indigenous peoples will have to continue to defend the rights for every stretch of land they have inhabited since many generations, and depend on local campaigns to get their voices heard.

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