

Virtual Hearing by the Sub-Committee of the US Congress on Water, Oceans and Wildlife
entitled Protecting Human Rights in International Conservation
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WRITTEN TESTIMONY

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I wish to express my sincere appreciation to this Sub-Committee for taking this positive and bold step towards stronger protection of human rights in international conservation. I am humbled by the invitation for me to take part in this important hearing.

As an indigenous activist, I have been working with indigenous communities adversely affected by the designation and management of conservation areas in their territories often declared as national parks. When I was based in Thailand as the Secretary General of the Asia Indigenous Peoples Pact, it was heartbreaking to receive news that Mr. Porlajee “Billy” Rakchongcharoen, a Karen indigenous leader, was arrested in 2014 by forest guards for harvesting honey in the Kaeng Krachan National Park. While the forest guards claimed they released him, he was nowhere to be found. Prior to his arrest and disappearance, we had a meeting with him and other leaders on how we can support the case they were filing in court after their village in the national park was burned down by forest guards. In fact, we even produced a documentary video of this incident in order to raise attention to this unjust and inhumane action in the name of “national park protection” committed against those that have been nurturing the forest for centuries. The body of Billy was later found in an oil barrel in the forest five years after he went missing. Tragically, the murder charges against four officials of the Park believed to be involved in his arrest and killing were dropped by state prosecutors.

Adding insult to injury was the designation of the Kaeng Krachan National Park as a World Heritage Site by the World Heritage Committee on July 26 this year. This decision was taken by this World Heritage Committee despite the appeals made by the UN Office of the High Commissioner and many indigenous organizations, including my organization—the Indigenous Peoples Rights International (IPRI), and advocate groups. These appeals called to delay the decision until the rights of the Karen living in the park are fully recognized and the demand for justice to the killing of Billy has been fully addressed. It should be noted that the rich diversity of flora and fauna in the national park is largely due to the conservation and sustainable management systems of the Karen indigenous peoples. Until today, they are prohibited to return to their settlement in the national park, which is their customary land.

The "Thung Yai-Huai Kha Khaeng Wildlife Sanctuary—also in Thailand—shares the same situation as the Kaeng Krachan National Park. Both forests have rich biodiversity and healthy ecosystems and are part of the territories of the Karen indigenous peoples. When the Karen villagers appealed to be allowed to live in the Wildlife Sanctuary as it is their customary forest, the government officials were suspicious that they may be involved in poaching. However, they soon realized that the Karen indigenous peoples’ traditional knowledge and

conservation practices are useful in the management of the sanctuary. The park officials have then included them as partners in the management of the wildlife sanctuary. In fact, the villagers in this sanctuary are playing a key role in monitoring of illegal loggers and poachers.

This specific case demonstrates that partnerships with indigenous peoples in the management of rich biodiversity areas, which they have been protecting for decades, result to better protection, compared to those taken over by states and some international conservation organizations.

Another case where I was involved in raising concern and attention was on the forced displacements of indigenous peoples (called *Adivasi*) in India due to the expansion of a tiger reserve. This has been a collaborative undertaking of the Government of India and World Wildlife Fund (WWF). I have written directly to WWF-India on this matter and they outrightly denied any involvement to the forced displacements. However, they neither condemned nor raise their concern over the case of gross human rights violation against the said *Adivasi*.

Similarly, Survival International claimed that for several years both the WWF and Wildlife Conservation Society (WCS) were complicit in the evictions of *Adivasi* communities being carried out by the India's Forest Department. Unfortunately, both conservation organizations received funding from the US Fish and Wildlife Service in 2018 to "facilitate government-sponsored, voluntary relocation of forest-interior families to new sites outside the forest,"¹ according to Survival International.

In relation to our work in the Indigenous Peoples Rights International (IPRI), currently, we have been assisting the Maasai indigenous communities in Tanzania in raising awareness and attention to the hardships they have been facing for years due to the restrictions imposed on them in the management of the Ngorongoro National Park. Many families are going hungry as they are forbidden to undertake their traditional and sustainable agricultural practices. They have also not been provided with livelihood support by their government. As a consequence, many of their children are now malnourished, while several Maasai women had to go to town to beg for food, reportedly resulting to cases of sexual abuse committed against them. On top of these, thousands of them are now facing the threat of eviction.

We had also initiated case studies and research on the criminalization and human rights violations of indigenous peoples in protected areas with our key partners at the local and national levels. These studies covered the Democratic Republic of Congo, Kenya, Tanzania, Nepal, and Thailand. Below are emblematic cases of human rights violations within the period of January 2020 – June 2021 in these countries in relation to the management of national parks and designated conservation areas. It is important to note that indigenous communities in these areas were not properly consulted and have not provided their free, prior and informed consent to the establishment of parks and conservation areas in their territories:

¹ <https://www.survivalinternational.org/news/12320>, accessed 23 Oct. 2021.

- Kenya²: Around a dozen arrests and trumped-up charges were filed against Indigenous Peoples Human Rights Defenders from Ogiek and Maasai communities; series of violent evictions of the Sengwer community occurred in response to their actions to defend their rights over their lands and resources in designated national parks;
- Tanzania³: Two cases of violent evictions resulting in the burning of 23 settlements and the death of a four-year-old girl; the criminalization of two members of the Maasai community; and two cases of abuse of power by armed wardens resulting in the suicide of a young pastoralist and the destruction of property and confiscation of 135 cattle belonging to a group of Maasai young men who were grazing their livestock;
- Nepal: Seven people, two of whom were women, from the indigenous Chepang community were tortured by forest guards, with one of them eventually dying. This case took place when these women went to the national park to gather food to feed their families as part of their customary forest; two people from the Indigenous Sonoha community were charged with illegal fishing in Bardia National Park. Traditional fishing is part of the identity and traditional occupation of the Indigenous Sonoha community;
- Thailand⁴: 85 (20 are women) indigenous Karen community members in Thailand were illegally detained and 22 of them were charged with encroachment, construction, clearance, seizure, possession and other acts of degrading or changing of the natural state of Kaeng Krachan Forest Complex without permission; thousands of legal cases were filed against indigenous peoples ranging from encroachment of forest areas, causing forest fire, logging and collecting non-timber forest products, to wildlife poaching under the Community Forest Law of 2019 in Thailand's national parks, which is home to around 2,000 indigenous communities.

These recent cases of the continuing human rights violations of both the individual and collective rights of indigenous peoples in the management of protected areas demonstrate the prevalence of the fortress conservation approach, which isolates people from nature. This historical and colonial approach and legacy of biodiversity conservation remain as the dominant framework by many states and their partner conservation organizations at the national and international levels. This is also the main reason for many ongoing conflicts in indigenous territories designated by states as national parks and World Heritage sites for conservation.

The findings and recommendations in the IPRI Report on Indigenous Peoples and Conservation⁵ were echoed in the recent Policy Brief by the UN Special Rapporteur on Human

² <https://iprights.org/resources/publications/indigenous-peoples-human-rights-defenders-on-the-run-country-study-on-the-criminalization-of-and-human-rights-violation-against-indigenous-peoples-in-conservation-areas-in-kenya>, accessed 22 Oct. 2021.

³ <https://iprights.org/resources/publications/criminalization-of-and-human-rights-violations-against-indigenous-peoples-in-conservation-in-tanzania>, accessed 23 Oct 2021.

⁴ <https://iprights.org/resources/publications/conservation-against-customary-practices-criminalization-of-and-human-rights-violations-against-indigenous-peoples-in-thailand-s-protected-areas-and-forest-reserves>, accessed 22 Oct. 2021.

⁵ <https://iprights.org/resources/publications/redefining-protected-areas-criminalization-in-conservation>, accessed 22 Oct. 2021.

Rights and the Environment David R. Boyd.⁶ This Policy Brief clearly stresses the point that fortress conservation is resulting to human rights violations and unless this is transformed to a human rights-based approach, the objectives of conservation will not be reached. It further states that “Governments and conservation organisations must acknowledge the huge toll that strictly protected conservation areas have taken on the lands, livelihoods and rights of many communities worldwide; they must make concrete plans for reparations of past wrongs, including through transferring control back to the historical and local guardians.”

These violations of human rights, including the rights of indigenous peoples, is a continuity of the situation identified in the 2016 Report on Indigenous Peoples and Conservation by the UN Special Rapporteur on the rights of indigenous peoples. This report states that:

“Among the principal challenges that indigenous peoples continue to face globally are difficulties in gaining legal recognition of collective ownership over their ancestral lands, especially when these have already been declared protected territories. National legislation is often contradictory. Laws pertaining to conservation and forestry are commonly not harmonized with subsequent national legislation and international law asserting the rights of indigenous peoples and the authorities responsible for enforcement of the different laws frequently fail to coordinate.”⁷

In relation to conservation organizations, the report further states that “While human rights-based approaches to conservation have become widely accepted among conservation NGOs, their internal policy documents are at times elusive regarding the specific rights of indigenous peoples. This underlines the importance of reiterating the key applicable legal provisions.”⁸

Likewise, the findings and recommendations in the IPRI Report on Indigenous Peoples and Conservation were echoed in the recent Policy Brief of the UN Special Rapporteur on Human Rights and the Environment, David R. Boyd and Stephanie Keene entitled “Human rights-based approaches to conserving biodiversity: equitable, effective and imperative.” The Policy Brief clearly stresses that fortress conservation is resulting in human rights violations, and unless this adopts a human rights based approach, the objectives of conservation will not be reached. It further states that “Governments and conservation organisations must acknowledge the huge toll that strictly protected conservation areas have taken on the lands, livelihoods and rights of many communities worldwide; they must make concrete plans for reparations of past wrongs, including through transferring control back to the historical and local guardians.” The Policy Brief also points out that “High income countries...must cease funding conservation programmes which destroy local people and livelihoods, including by failures of FPIC, irrespective of whether this is intentional or not... That Indigenous-led, rights-based conservation is the only way forward. Under a human rights-based framework, communities on the ground would take a leading role in biodiversity protection, with outside

⁶ David R. Boyd and Stephanie Keene, Policy Brief No. 1: Human rights-based approaches to conserving biodiversity: equitable, effective and imperative, A policy brief from the UN Special Rapporteur on Human Rights and the Environment, August 2021.

⁷ Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, Victoria Tauli-Corpuz [A/71/229], 29 July 2016, p.8.

⁸ Ibid., p.9.

conservation projects or initiatives structured as an equal partnership rather than an imposition.”⁹

Based on the key findings of the September 2021 research undertaken by the Rights and Resources Initiative (RRI) on land rights, I wish to highlight the following relevant data on conservation¹⁰:

- Between **1.65 billion to 1.87 billion** Indigenous Peoples, local communities and Afro-descendant Peoples live in the planet’s important biodiversity conservation areas – including 363 million living in formally protected areas.
- **Indigenous Peoples’ lands intersect with around 40% of all protected areas and more than 65% of the most remote and least inhabited lands on Earth.** Protecting Indigenous and community rights to lands they customarily manage is essential for protection of the world’s biodiversity, the conservation of threatened ecosystems, and the restoration of degraded lands.
- **Recognition of community forest rights is increasing, but much more could be achieved if existing laws were implemented.** The total forest area that is legally held by communities rose by 40% (150 million hectares) across Africa, Asia, and Latin America in the last 15 years. Yet, implementation of existing legislation in only 4 countries (Colombia, DRC, India, and Indonesia) would more than double that progress—and benefit over 200 million people.
- **The financial cost for resettling as few as 1% of Indigenous Peoples, local communities and Afro-descendant Peoples in important biodiversity areas far exceeds the cost of their tenure rights.**

Prior to the World Conservation Congress in Marseille, France in September 2021, many indigenous and non-indigenous activists gathered in their own congress called “Our Land Our Nature” and came out with “The Marseille Manifesto: a peoples’ manifesto for the future of conservation.”¹¹ This manifesto calls on governments to “fully respect, protect and uphold Indigenous peoples’ land and forest rights, respect collective customary land and forest use by local communities, to ensure protection of that land in accordance with their wishes” as the primary means of protecting the world’s biodiversity.

Only recently, in the lead up to upcoming climate change conference in Glasgow (COP26) this November, 150 NGOs, including my organization IPRI, recently issued an open letter calling on world leaders to put human rights at the center of environmental policy. This groundswell of demands for a human rights-based approach to conservation is also in response to the global agreement to conserve 30% of biodiversity by 2030, known as the 30/30 Target. In order to reach this ambition, there should be an explicit provision for the respect and protection of human rights, including the rights of indigenous peoples, in any framework agreement. Clear and specific policy and guidelines at the national and local levels should also

⁹ David R. Boyd and Stephanie Keene, Policy Brief No. 1: Human rights-based approaches to conserving biodiversity: equitable, effective and imperative, A policy brief from the UN Special Rapporteur on Human Rights and the Environment, August 2021,

¹⁰ Rights and Resources Initiative, Indigenous Peoples’ and Local Communities’ land tenure and global climate and conservation goals: A synopsis of key findings from research, Sept 2021.

¹¹ <https://www.survivalinternational.org/news/12675>, accessed 22 Oct. 2021.

be adopted and implemented with a sense of urgency in order to reach that target that will benefit the people and the planet.

In this context, my organization, IPRI, is therefore making these recommendations:

- States and international and national conservation organizations to fully adhere to, and implement a human rights-based approach to conservation and establish equitable partnerships with Indigenous Peoples, including indigenous women, to ensure their meaningful participation in decision making in relation to conservation measures, programs and targets that affect them. This should also include measures to prevent and address violence against indigenous women and girls;
- States, international and national conservation organizations to support the initiatives of Indigenous Peoples in the conservation of their resources and biodiversity; and provide the needed support to indigenous women in enhancing their roles, and contributions in the protection of the environment, as well as addressing their needs and aspirations.

Under a human rights-based approach to conservation, key elements of the Land Rights Standard¹² developed by indigenous peoples' organizations and advocate groups should be considered in developing the legislative action for the protection of human rights in international conservation. Below are the key elements for consideration:

Impose the following requirements for funding recipients:

- To respect human rights as protected in international law, including the rights of indigenous peoples as affirmed by the UN Declaration on the Rights of Indigenous Peoples, and the rights of Afro-descendant peoples and local communities who have community-based customary tenure systems (Standards 1, 4 8, 9). This requirement should not be based on national laws, because many countries do not have laws in place that ensure respect for these rights. It should instead be based on international human rights standards. Further, specific attention should be paid to ensure respect for rights of women in these communities, rights to lands and cultural heritage, and rights of human rights defenders to be free from violence, threats, and criminalization;
- To respect the rights of indigenous peoples to free, prior, and informed consent, and of Afro-descendant peoples and local communities to effective participation in consultation processes (Stds 3, 5-7). Specifically:
 - Where there is agreement to do so, funding recipients should plan, implement, and monitor programs or projects in full collaboration with Indigenous Peoples, local communities, Afro-descendant Peoples, and women within these groups and to have agreements that include provision for: (i) Mutually agreed and equitable sharing of benefits; (ii) Respect for traditional knowledge; (iii) An independent, accessible, fair and mutually acceptable grievance and redress mechanism to address potential and actual harms; (iv)

¹² <https://rightsandresources.org/land-rights-standard/>, accessed 23 Oct 2021.

Fair compensation for any current and future impacts on their lands, territories and resources; (v) The preservation of locally-defined livelihoods and priorities,

- Where there is agreement to collaborate, and/or there have been past or ongoing harms caused by the funding recipient's conservation initiatives, agreement should be reached on: (i) prompt, fair and effective remedies for harms or potential harms caused by interventions; (ii) independent, accessible, fair and mutually acceptable grievance and redress mechanisms that include procedures to address historic harms and legacy issues as well as their ongoing impacts;
- To provide remedy where there have been rights violations, in accordance with an agreement (as above);
- To report on the due diligence measures taken to identify indigenous peoples, Afro-descendant peoples, and local communities who may be impacted by conservation activities and to do participatory assessments of impacts, and to ensure respect for their rights (to prevent/mitigate any harms and provide remedy for historical or ongoing harms) (Std 10);
- To report on measures taken to promote the rights of indigenous peoples, Afro-descendant peoples, and local communities to lands, cultural heritage, and to be free from violence, threats, or criminalization (Std 2):
 - Establish consequences for non-compliance by a funding recipient with any of the above,
 - Require relevant government agencies to publish information about funding recipients, to enable transparency,
 - Establish a mechanism to allow submission of complaints by indigenous peoples, Afro-descendant peoples, and local communities, or civil society; to conduct investigation of such complaints; and to engage with rightsholders if requested to facilitate appropriate remedy for rights violations.

I hope that these key elements shall be given due consideration in the legislative action to protect human rights in international conservation. It is critical that the inclusion of the respect and protection of the individual and collective rights of indigenous peoples, as well as the rights of marginalized communities and sectors and human rights defenders, is ensured as part of the global commitment and obligations of states for the protection of humanity and the planet.

The positive action of the US Congress in developing and adopting a legislation to protect human rights in international conservation will set a mandatory framework and standard that shall transform the behavior of key actors in the conservation community. This will be a game changer as it will impel them to put into practice the needed human rights due diligence for them to be able to receive financial support. This would also build the necessary requisites for these key actors to establish respectful and meaningful partnerships with indigenous peoples as steward of nature. Likewise, a strong legislation on the protection of human rights in international conservation will also set a positive precedent for other states providing

financial support to international conservation to adopt. More importantly, this will further enable indigenous communities to fully exercise and enhance their conservation practices for the benefit of the present and the future generations.

Thank you very much for this opportunity.