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Indigenous and Customary Land Tenure Security: History, Trends, and Challenges in the Latin American Context

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Why Indigenous and Customary Land Tenure?

Globally, land rights advocates consistently argue that the statutory recognition of Indigenous and customary forms of tenure can encourage the sustainable management of local resources, contribute to global environmental services (such as carbon sequestration), and leverage new forms of

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public and private investment that enhance livelihoods (Blackman et al., 2017; Rights and Resources Initiative, 2018a; Robinson et al., 2014). But what are these Indigenous and customary tenure forms? Where do these tenure regimes come from? And what role do they play in promoting sustainable development?

Addressing these questions requires that we first put the contemporary trend of recognizing Indigenous and customary land rights into a historical and geographical perspective. What we now call customary forms of tenure reflect the interactions over time between pre-colonial land-holding institutions with new forms of tenure introduced during the colonial period. After independence, these forms underwent transformation as part of state-building programs and continue to evolve in tandem with evolving policy priorities. Far from static and anachronistic, today's Indigenous and customary tenure regimes are dynamic systems of governance that reflect local conditions, national legal frameworks, and international policy priorities (Fitzpatrick, 2005). Because of their dynamic and often hybrid nature, these regimes resist categorization under the dominant binary of private versus public land (Ostrom, 2009). They reflect cultural and spiritual values and practices that represent distinct forms of relating to place and nature, which cannot be reduced to a statutory classification of property (Escobar, 2008).

Indigenous and customary land tenure regimes are as diverse as the landscapes and regions in which they exist, and this chapter can only provide a partial view of the core issues facing Indigenous and customary land tenure security today. That said, by highlighting the diversity and dynamism of these systems and their common differentiation from Western property systems, we aim to provide key definitions and background for understanding their status today. This chapter also analyzes contemporary trends for these regimes to highlight the vital role that such tenure regimes still play for human-environment relationships across the globe and prospects for sustainable development more broadly.

We will first define what we mean by a customary land tenure regime, explaining the particularities of making claims on the basis of indigeneity. Next, we will explain how the systems that we recognize today as Indigenous or customary have their roots in pre-colonial governance systems but co-evolved with changes during colonial times and in the post-colonial period. From there, we examine contemporary trends in Indigenous and customary land rights recognition and tenure security,

with a focus on lowland tropical regions in Latin America where more extensive recognition has taken place (Rights and Resources Initiative, 2018b). Finally, we consider current and projected challenges to achieving security for communities whose livelihoods and territory depend on recognition of their customary and Indigenous land tenure regime, especially in the context of increasing pressures on their historic lands.

Defining (Customary and Indigenous) Land Tenure Regimes

According to a Rights and Resources Initiative (RRI) study of land rights in 64 countries, Indigenous Peoples and local communities hold nearly 64 percent of the world's land and have formal recognition to about 18 percent of it (RRI, 2015).¹ Other estimates suggest that these communities may have rights to up to 25 percent of the world's land area, including 40 percent of terrestrial protected areas (Garnett et al., 2018). At least 1.5 billion people depend on lands under customary or Indigenous control for their livelihoods (Rights and Resources Initiative, 2015). Many, though not all, of these areas are remote or in frontier zones, containing some of the most globally significant remaining intact forest landscapes—recent estimates suggest over 1 billion people reside within 5 kilometers of a forest (Fa et al., 2020; Newton et al., 2020).

Many communities around the world have developed collective land tenure systems to manage the lands, forests, and resources that they held in common. Over long periods of time, communities have adapted these systems to their local environments resulting in highly diverse institutional forms responsive to local ecological and cultural conditions (Cotula, 2007; Trawick, 2001; Unruh, 2006). Not all collective land tenure systems, however, are held under customary tenure. The case of the Association of Forest Communities in Petén (Guatemala) demonstrates a contemporary example where forests are collectively managed, but the state is the guarantor of and has jurisdiction over the resources (Gómez & Ernesto

¹ The RRI study classified different types of land tenure systems as community-based tenure regimes if ownership or management were held at the community level. Formal recognition included ownership and management rights. Several United Nations agreements also use this language to cover a range of traditional and customary land and resource rights arrangements.

Mendéz, 2007; Sauls, 2020). This system also evolved out of negotiations between the state and communities in the context of the 1996 Central American Peace Accords, which stipulated that 100,000 ha of land be turned over to organized communities within the Maya Biosphere Reserve (Gnych et al., 2020). The Mexican *ejido* system, codified in the post-revolutionary Constitution of 1917, similarly situates a form of collective land management firmly within the state's purview, although it did grow out of customary forms of post-colonial collective land-holding (Barnes, 2009).

Customary and Indigenous land tenure regimes are those where community, rather than statutory, norms and rules usually prevail when it comes to land use decisions. In these tenure regimes, “people gain access to the commons as a social right derived from their membership in the local community or collective” (Gnych et al., 2020, 2). The ways in which people gain access are mediated through often unwritten protocols and practices that set criteria for membership and status in the territorial groups. These protocols may incorporate various conceptualizations of the rights of nature into these regimes, reflecting distinctive, place-based worldviews (Escobar, 2008; Sánchez Canseco, 2017). For this reason, the range of “different relations of authority, identity or territory” between people and land—or *land tenure regimes*—that we define as customary or Indigenous thus are important for understanding social, economic, and environmental conditions across a range of geographies (Boone, 2015, 173).

Customary land tenure regimes often incorporate a mix of ownership and use rights and are found in urban areas, too. As Chimhowu (2019, 898) notes, “customary tenure is an omnibus term that at its most basic means collectively owned land usually under the authority of traditional leadership,” even if within the collectively held lands, certain plots are allotted as almost individual property. Thus, some customary regimes function even where land is no longer collectively held, but where a local community retains jurisdiction over land-community relations, as is now the case in many parts of Sub-Saharan Africa (Alden Wily, 2017). Distinct customary land tenure arrangements have important implications for urban land policy, especially in Africa where traditional authorities have jurisdiction over larger areas of urban and peri-urban land compared to other regions (Pieterse & Parnell, 2014). For an example of this phenomenon, see Box 4.1, which details the historical evolution of Mailo tenure regime in Uganda and implications for investment in Kampala, Uganda's rapidly growing capital.

Box 4.1 Mailo Customary Land Tenure System in Uganda

Present-day customary land tenure arrangements in Uganda are multi-layered, reflecting the country's history. The Kingdom of Buganda, located within the country's central region, has its own land tenure system known as Mailo. The kingdom has a history dating back to the fourteenth century (Wrigley, 1996). However, the origins of Mailo date back to the colonial period, c. 1900, when the British awarded the Buganda nobility private property rights over their feudal estates. The new system gave the nobility absolute control over the land, disregarding the historic customary use rights of the peasantry. In 1928, the legislation was amended to grant these tenants protection against rent hikes and evictions. Following Uganda's independence in 1962, the Kingdom was abolished and Mailo land was nationalized. When the National Resistance Movement came to power in 1986, royalists began to negotiate for the restoration of the Buganda monarchy. A new Kabaka (king) was crowned in 1993, and subsequently, the 1995 Constitution recognized the Mailo system (Green, 2006).

Today, Mailo tenure prevails on about 10 percent of Uganda's land area including Uganda's most urbanized and economically dynamic region, which includes the capital city of Kampala. A principal feature of the Mailo system is that absentee landlords, including descendants of the nobility, own most of the land. The Kabaka is the largest landowner and his estates are managed by the Buganda Land Board. Most land users are considered occupants. The Land Act of 1998 formalized occupancy rights for lawful tenants who could claim rights based on legacy legislation from the colonial period. In addition, a category of good faith (*bona fide*) tenants was created to recognize the occupancy rights of those who had held land for more than 12 years without challenge by the owners or who were part of government resettlement programs before the approval of the 1995 Constitution.

Despite legal protections, occupants on Mailo land continue to face land tenure insecurity and large-scale evictions are not uncommon (Musinguzi et al., 2020; Place & Otsuka, 2002). The Buganda Land Board has tried to improve the situation by extending certificates of occupancy to lawful and *bona fide* occupants. This certificate grants the occupant the right to own, sell, and mortgage improvements on the land for a given number of years (49, 75, or 99 years with the option to renew). Resolving overlapping claims is expected to give landlords and tenants more options to negotiate land agreements (Musinguzi et al., 2020). Because of the urban and economic geography of these land claims, improving the security of Mailo tenure has implications not only for landlord-tenant relations but also for the country's urban development and economic growth (Deininger & Ali, 2008). The legacy of land tenure conflicts on Mailo land led to unregulated informal development, which undermined substantial economic growth for the country (Bird & Venables, 2020).

While “customary tenure” serves as a useful term to describe land tenure rights that derive from community or collective membership, it masks the great diversity of actual institutional forms, social relations, and land use practices related to commons management (Fitzpatrick, 2005). For one thing, customary tenure regimes are local adaptations to ecosystems that vary greatly around the globe, from the highlands of South America’s Andean Mountains to the dense rainforests of Kalimantan, in Indonesia, to the tundra of northern Canada. Intensive agricultural systems demand different relations between communities and their lands than do multi-local hunter-gatherer systems, so different customary tenure regimes are composed of a diverse array of norms that respond to environmental conditions as well as cultural distinction (Sikor & Stahl, 2011).

Additionally, while customary tenure regimes may function outside of statutory rules regarding land and property, the state may still play a significant role in constraining or structuring forms of customary tenure. In some contexts, the state may sanction which customary authorities are legitimate and guarantee their authority, as Boone (2015) documents in the Asante region of central Ghana. In other cases, the absence of the state—or persistent resistance to it—has helped define the institutions in an Indigenous or customary system, as is the case in the *comarcas* of Panama (Spalding, 2017). Whether the state directly sanctions a given customary land tenure regime or not, virtually all reflect the dynamic interplay with the colonial and post-colonial regimes that have sought to eliminate, assimilate, or incorporate them (Alden Wily, 2018; Monterroso & Larson, 2013). Thus, while customary tenure is an omnibus term, it can provide a useful lens through which to examine a variety of concerns related to land tenure, sustainable development, climate change, and ecological outcomes.

To conclude this section, we note that, although Indigenous land tenure regimes could be considered customary, they are granted special protection under international law—through the International Labor Organization’s Indigenous and Tribal Peoples Convention 169 (ILO 169), ratified in 1989, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007. While UNDRIP declines to give a definition of “indigenous,” ILO 169 states that it applies to self-identified groups with “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” (International Labour Organization (ILO), 1989). These groups often, but not always, maintain distinct linguistic, religious, subsistence, and cultural practices that set them apart from the majority populations in colonized geographies, in addition to retaining their customary land tenure regimes. Further, in many cases, these groups make claims to *territorial* rights, which include secure land tenure, but also a broader array of cultural and historical recognition (López Sandoval et al., 2017).

Pre-Colonial Land Tenure and Today’s Customary Systems: A View from Latin America

In what is now known as the Americas, moments of encounter between colonizing Europeans and pre-colonial societies transformed landscapes and land tenure systems—often violently. This violence still affects many landscapes where Indigenous land tenure regimes persist, as exclusion, expropriation, and extraction threaten traditional claims to land and culture (Bebbington et al., 2018; Global Witness, 2019). At the same time, the forms of tenure in Indigenous-held and -claimed regions today are in part a reaction to or function of these colonial encounters, even as they can also resist state control. These Indigenous land tenure regimes are neither relics of a pre-colonial past nor do they conform with the ideal type of individual and collectivized property that dominated land reforms in the twentieth century.

Pre-colonial Latin America contained highly varied land tenure regimes, from the extensive, bureaucratic, and agriculturally advanced Inca and Aztec empires to the loose networks of multi-local communities that populated (and in some areas, still populate) the Amazon (Angeles & Elizalde, 2017). Some of these regimes rivaled European systems of land allotment, registration, and cadaster; however, as Lockhart (1992, 162)

details of the Nahua of Central Mexico, “the dominant relationship between public and private in the European tradition is that land is either one or the other, while the dominant relationship in the Nahua tradition was that it was both at the same time.” Thus, while individual households might have possessed, inherited, and sold parcels of land as if they were private, the origins of the right of possession derived from membership in the collective and required approval or endorsement by collective authorities. As this author continues, post-colonization “a strong indigenous base continued to provide the framework while Spanish items and modes quickly entered everywhere, not so much displacing as infiltrating, interpenetrating, and being assigned to niches already existing in the indigenous cultural scheme” (Lockhart, 1992, 202). Today, while the Nahua customary land tenure regime has faded from view, its influence lives on in the *ejido*—which still recognizes a form of individual land use and rights nested within a collective (Olson, 2014).

Some of the earliest colonial encounters, between Spanish invaders and Caribbean societies, essentially wiped out entire Indigenous populations, after which colonizers supplanted traditional land tenure regimes with completely new forms, such as the slave-dependent plantation model. Yet even this system, a quasi-feudal import adapted to commodity agriculture for maximum profit, could not stop other forms of customary land-holding from flourishing along its periphery. The case of the *maroon* communities of Jamaica demonstrates where a customary system has emerged directly from a colonial land tenure regime, or more specifically, in fleeing from it (Zips, 1998). These communities incorporated values, language, and culture from multiple African communities, translated through enslavement and resistance to it, in a relatively new environment to produce a new collective form of small-holder-based agriculture on collectively held lands. Despite concerted efforts by British and then Jamaican authorities to stamp them out through both military and legislative campaigns, the Leeward and Windward maroons of Jamaica retain rights to the lands they claimed well over three hundred years ago and continue to maintain their customary land tenure regime and practices.

Finally, many Indigenous groups that depend upon customary land tenure regimes do so under conditions quite distinct from their

pre-colonial settings, both geographically and institutionally. For example, as Le Tourneau (2015) notes, many of the Indigenous groups that now live in the Brazilian Amazon originated elsewhere and came to their current territories in the processes of fleeing colonial campaigns. The customary regimes that they now practice retain elements of their pre-colonial systems, but have also adapted to new conditions, and at times assimilated practices or peoples from other traditional groups. Further, in much of Latin America, many Indigenous communities were able to secure collective land rights during the wave of multicultural reforms that swept the region in the 1990s and 2000s (Bryan, 2012). The process of achieving these rights has been fraught, and remains incomplete; however, the recognition of customary land tenure under constitutional law, such as in Brazil, Bolivia, and Ecuador, indicates a statutory acceptance of a diversity of tenure forms—under certain conditions (Kröger & Lalander, 2016; Offen, 2003).

Trends in Customary Land Tenure Regimes and their Recognition

Globally, nearly 80 percent of all forested land designated for use by Indigenous Peoples and local communities was recognized since 2002, while Indigenous Peoples and local communities gained ownership rights over an additional 90 million ha between 2002 and 2017 (Rights and Resources Initiative, 2018b). These gains are substantial and represent both a significant shift in policy and the results of long-term struggles by Indigenous Peoples and traditional communities. That said, much more land than is recognized remains under customary use, while statutorily owned by the State or even private actors. Further, even recognized or titled customary lands remain insecure for many peoples.

This section briefly reflects on recent efforts to support the recognition of customary land rights, again drawing in particular from trends in Latin America. This experience highlights how social movements around identity and rights intersected with more market-oriented land reform efforts, resulting in hybridized models of land ownership and use rights with the

State in the role of guarantor. It also examines the link between land rights and forest and biodiversity conservation. The tensions between agrarian land reform, conservation, and recognition of customary rights also play out in other regions, but the very different contexts of colonial and post-colonial policies make for significant differences. For example, Box 4.1 provides additional insights on the formalization of occupancy rights on customary land tenure system created during the colonial period in Uganda.

The move from the late 1980s onward toward the recognition of collective land rights and customary land tenure regimes reflected a sharp break with previous agrarian reform policies, especially in Latin America (Pacheco et al., 2012). In previous decades, land reform generally meant the re-distribution of lands from large landholders (in Latin America, a remnant of the *hacienda* system) and allocation of parcels or plots to individual families through the designated head of household. Land reform that supported rights for small-holder farmers—*campesinos* in Latin America—were fundamental markers of progressive regimes in the twentieth century, though they met with variable success. Later efforts to improve land registration, especially market-led plans that would support burgeoning land markets and investment, attracted significant investment from international donors, including the World Bank (Hetherington, 2012). Accompanying these processes were often technocratically driven large-scale cadastral surveys and registration projects to make legal and formalize these new property relations (Fontana, 2014). These processes are covered in greater detail in Chaps. 3 and 11 of this volume.

The reactivation of indigeneity as a political identity starting in the 1970s pushed agrarian reform to consider multicultural policies that recognized demands for territory more broadly (Van Cott, 2000). These demands by Indigenous Peoples as well as other traditionally marginalized communities, such as Afro-descendant and forest-dependent groups, in part responded to the rapid expansion of the agricultural frontier, which threatened their access to land as well as the customary tenure regimes that guided their relation to it. In Latin America, rising concern on the part of environmentalists over the loss of biodiversity and tropical forests along these new frontiers coincided with community-based land rights demands. The combination of these concerns drew renewed

attention to the loss of fragile ecosystems and distinct socio-environmental relations, and bolstered international attention to the loss of forests, including those under Indigenous and customary tenure (Keck & Sikkink, 1998). While for many groups, ethnic identity played a central role in their land tenure demands, the pairing of conservation and community concern over the loss of tropical forests often played an important role in encouraging the recognition of customary or collective systems for non-Indigenous identifying groups, such as the rubber tapping communities of Acre, Brazil (Rodrigues, 2015). At the same time, Indigenous control may not automatically result in improved forest outcomes, and some Indigenous communities have had tense relations with conservation-focused organizations that advocate for limits on community exercise of land use rights (Holland et al., 2017; Lu et al., 2010).

Thus, the intersection of demands by social movements for collective land rights, international concern for the environment, and policy responses to improve land governance in support of sustainable development fundamentally shifted land rights processes across Latin America, as well as other parts of the Global South. While these processes have remade statutory land tenure systems, their effects on Indigenous and customary land tenure remains less clear. Box 4.2 provides a case where these different demands intersected in efforts to formalize customary land tenure among the Miskitu people in Honduras and Nicaragua.

Box 4.2 Titling and Miskitu Land Tenure in Honduras and Nicaragua

The Muskitia, which encompasses a significant portion of the Caribbean coasts of Northeastern Honduras and Nicaragua, is the binational homeland of the Miskitu people. During the colonial period, the Miskitu managed an autonomous kingdom in alliance with the British against the incursion of Spanish Central America. Although the Miskitu Kingdom dissolved in 1860, the region has maintained its territorial congruity and a distinctive cultural-linguistic identity (Pineda, 2006).

Like many other Indigenous Peoples in tropical forests, the Miskitu practice agriculture, hunting, and fishing as part of their subsistence economy. The customary land tenure system is based on the traditional occupation of extensive areas by kinship groups (known as *kiamka*), which hold land collectively over generations. In these lands, the Miskitu practice *swidden* agriculture, rotating about every two years, allowing the nutrient-poor tropical

(continued)

Box 4.2 (continued)

soils to regenerate. Many households must travel long distances to reach their farming plots, some of which are left fallow for decades but still recognized as part of a *kiamka's* trust.

Until recently, state policies in Honduras and Nicaragua dismissed that this complex land tenure system could be the basis for property rights and viewed the territories occupied by the Miskitu as public lands, a situation that encouraged the migration of landless mestizo farmers into these areas (Finley-Brook, 2016; Galeana, 2020). As these land invasions intensified in the 1970s and 1980s, the Miskitu, like many other Indigenous Peoples across the Americas, began demanding the legal protection of their ancestral territories. In both Honduras and Nicaragua, participatory mapping projects proved to be valuable instruments in raising awareness among state officials about the territorial dimension of the Miskitu land tenure system (Herlihy & Knapp, 2003). Based on participatory cartography, the Miskitu have obtained property titles to 18 territories in Nicaragua and 12 territorial councils in Honduras during the 2000s and 2010s. In both countries, the World Bank supported the titling process as part of broader efforts to rationalize land tenure to facilitate governance and economic growth (Hale, 2011). There are jurisdictional differences, though, as the Nicaraguan state recognizes political autonomy over two regions in the Caribbean Coast, whereas the Honduran state does not.

Despite the property titles, communities on both sides of the border continue to face land tenure insecurity. The Honduran and Nicaraguan governments have both failed to provide communities with the financial and logistical support to evict non-Indigenous settlers. As a result, the titles have not stopped the intensification of land grabbing for cattle ranching, timber, and mining, which has also increased deforestation rates (McSweeney et al., 2014). Land grabbing has been notoriously violent in Nicaragua, partly as a result of the cooptation of Indigenous authorities by the political establishment (Mittal, 2020). These governance issues underscore the point that land tenure security does not automatically result from obtaining a land title but depends on the broader political and economic conditions that shape land control (Ribot & Peluso, 2003).

Despite the newfound support to the formalization of customary land tenure, in practice, the dominant economic model continues to undermine the prospects for genuine recognition of territorial rights. In many countries, efforts to title the collective land rights of Indigenous and Afro-descendant communities have taken place alongside plans for large-scale development and commodification of natural resources

(Hale, 2011; Offen, 2003). Although organizations like the World Bank have readjusted their policies to accommodate customary land rights, they continue to plan and implement programs based on economic and market principles that often exclude political rights (Anthias & Radcliffe, 2015). Therefore, the seeming policy consensus on the need to formalize customary land tenure in Latin American is built on a paradoxical arrangement of grassroots demands, conservation efforts, and economic policies. The exact details of this paradox are beyond the scope of this chapter and have been well covered by a range of scholars (cf. Anthias & Radcliffe, 2015; Hale, 2011; Mollett, 2013; Offen, 2003). Nonetheless, we recognize that this policy shift would not have taken place without the activism of Indigenous movements, which in spite of challenges across scales continue to adapt their tools and strategies in mobilizing a territorial agenda (Sauls, 2020).

Challenges to Securing Land Tenure for Customary and Indigenous Regimes

While titling customary land rights remains a priority around the world, even land titles cannot guarantee tenure security for local communities. The challenges of customary tenure post-title are as diverse as the regimes that term describes; however, three challenges are perhaps most prevalent, especially from the Latin American perspective. These include weak enforcement of protections for customary tenure rights even post-recognition or titling; changing contexts around the institutions and practices that make up customary regimes; and the rollback of protections for these regimes in the face of economic development opportunities, especially related to natural resources extraction and infrastructure expansion.

Early proponents of Indigenous and customary rights focused primarily on the need for formal recognition of historical land tenure regimes, such as via titling processes; however, subsequent events quickly demonstrated that a title has little meaning without measures to support the security of land tenure, especially on the part of a national

government (Pacheco et al., 2012). Evidence from across Latin America suggests that many governments lack either the capacity or the incentive to enforce the rights bestowed by a title (Correia, 2019; Dest, 2020; Ferrante et al., 2020; McSweeney, 2020). While these rights vary depending on the country and the form of the recognition mechanism, in general, titles for territories or customary lands would exclude non-community members from extracting natural resources without permission, at the very least—and in some cases would enable community members to exclude others from accessing or using the land (Finley-Brook, 2007; Larson, 2011). As the ongoing violence against Miskitu communities in Nicaragua (Box 4.2) suggests, if the government does not make clear to broader constituencies that different rules prevail in a given territory—and that the government will enforce those rules when challenged—then community members have little recourse when outsiders—or insiders—break those rules. A tendency toward illegal land sales, land invasions, and in many cases violence in post-titling areas speak to this challenge.

On the second point, a given customary tenure regime is made up of institutions and practices grounded in a particular place, but it is also nested within broader contexts, such as the state or the globalized economy, which have their own institutions and operating logics (Alcorn & Toledo, 1995). When the broader context changes, it can undermine the functioning of the institutions that compose a given tenure regime. Those changes may result from political, economic, or environmental shifts that can alter relations within a tenure regime as well as the relations between customary norms and the institutional contexts in which they are nested. The experience of the Miskitu people (Box 4.2) outlines how some of these changes have affected the Miskitu people in Honduras and Nicaragua; other authors have also found that the requirements for receiving and maintaining tenure can shift relations of power in unexpected ways in a range of contexts (Finley-Brook, 2016; Humphreys Bebbington & Bebbington, 2010; Pacheco et al., 2012). Environmental challenges like climate change and biodiversity loss can also affect customary tenure regimes. These regimes have evolved in specific places predicated on specific socio-environmental relations, but as ecological conditions change, institutions may no longer function to effectively allocate

resources—especially where movement is no longer a possibility given the rigidity of legal land rights. Lastly, the efforts to map and title customary land tenure can themselves result in the over-simplification of dynamic systems, with potential negative consequences for the future regulation of resource access and management (Bryan, 2009; Mollett, 2013).

Finally, the legibility and legalization of new territories under Indigenous or customary tenure can draw the attention of actors interested in natural resource or other economic development opportunities, which can then provide incentives to the very governments that granted those land rights to roll back protections or legislate loopholes. Indigenous territories count as a category of “protected areas” under the World Database on Protected Areas system, and recent research suggests a rising vulnerability for these systems (Forrest et al., 2015; Pack et al., 2016). Mining, oil and gas, logging, and infrastructure expansion—including for projects pitched as “low-emissions” or “green”—all require extensive land and natural resources in order to advance. In many cases, governments retain rights to sub-soil resources even where they recognized Indigenous or community rights, meaning that communities may have little recourse when a company arrives on the scene to begin drilling or mining (Bebbington et al., 2018). Further, projects deemed “in the national interest” may trump existing land rights; governments have consistently deemed large-scale infrastructure projects as worth this type of designation and ignored or shifted regulations to promote them (Kröger & Lalander, 2016; Le Tourneau, 2015). Especially in Latin America, lands under Indigenous and customary tenure regimes are also consistently among the most biodiverse and most threatened; undermining Indigenous and customary systems also undermines these fragile ecosystems and the socio-ecological systems that have helped define them (Blackman et al., 2017; Fa et al., 2020).

Conclusion

At the beginning of this chapter, we set out to define what Indigenous and customary tenure regimes are, how these systems evolved over time, and the role they play in encouraging sustainable development. We

described Indigenous and customary land tenure regimes as those where community norms rather than statutory rules prevail when it comes to land use decisions. With a focus on Latin America, we placed today's customary systems within historical context, particularly highlighting the importance of colonial encounters, formalization programs, and international influences (both formal and via social movements) in shaping contemporary land tenure in historically Indigenous and customary areas. The trend toward recognition of Indigenous and customary land rights marked a shift in national land governance policy as well as a growing global recognition of the importance of both tropical forests and ecosystems and Indigenous rights; however, tenure insecurity remains a major challenge for communities that hold land through Indigenous or customary tenure systems. This insecurity results from a combination of factors—weak enforcement, changing conditions for land tenure, and new interests in land and natural resources—all of which potentially undermine the potential for sustainable development for people living under Indigenous or customary tenure regimes.

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