

Article

# A Framework for Comparative Assessment of Indigenous Land Governance

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**Abstract:** Indigenous peoples are increasingly important players in the management and use of land and natural landscapes, bound in spiritual and traditional practices that endure and pre-date colonisation. This also extends to the aspirations that Indigenous traditional owners may have to generate income from land and to sustain business and employment opportunities that enable reinvestment in local communities. The paper draws from a study undertaken while the authors were at the Organisation of Economic Co-operation and Development (OECD) that involved 13 countries. It presents a framework to compare Indigenous land governance, to activate economic development opportunities across different legal and institutional contexts. The three-part typology allows us to assess the level of autonomy granted to Indigenous groups by law and identify key governance and regulatory instruments that they can employ to protect their cultural practices and activate commercial potential from land and waters. Varying autonomy levels can co-exist within a same country, since Indigenous groups may have different rights, aspirations, and capabilities. The typology allows us to conduct comparative analyses around progress and learnings that can support the self-determination of Indigenous peoples and promote regional well-being.

**Keywords:** indigenous peoples; traditional communities; land use governance; self-determination; economic development; comparative public policy



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## 1. Introduction

Between 2018 and 2020, the Organisation for Economic Co-operation and Development (OECD) pioneered a comparative research project on how regional and rural development efforts can improve economic development outcomes and the well-being of Indigenous Peoples [1]. The OECD is an inter-governmental organization composed of 38 member countries with a mission to promote policies that improve well-being. The OECD advocates for a place-based approach to regional development and well-being across multiple dimensions—economic, social, and environmental [1–5]. It emphasises strengths-based community-led models to mobilising local assets, coordinating between levels of government, and adapting people-based policies to the local context [6–8]. In this sense, the OECD's work on regional development seeks to maximise the growth potential and well-being of all regions by mobilising endogenous assets.

The project, called Linking Indigenous Communities with Regional Development, advanced policy analysis and recommendations on four themes: Indigenous statistics and data governance; Indigenous entrepreneurship and small business; land and economic development; and place-based models of governance [1]. The project consisted of three country reviews—Canada, Australia, and Sweden—and one thematic report, which addressed each of the four themes, comparing policies across several countries and developing policy recommendations for OECD member countries [1–4].

Among the wide range of theoretical and empirical evidence derived from the OECD project [1], the land and economic development theme focused on the key features of

Indigenous land management systems that enable Indigenous peoples to realise the development potential of land resources [1]. The literature review pointed to the lack of a shared framework to assess and compare Indigenous land management systems across countries. Comparison of land management systems can be a useful basis for policy learning, by sharing lessons and identifying practices that can support development and self-determination of Indigenous peoples.

This paper presents a framework for comparative assessment of Indigenous land governance. It draws on the analytical paper on land management that informed the project [9], and the learnings developed through the thematic and country-based studies [1–4]. The framework consists of three ideal types of Indigenous land and natural resources management that are shaped by the relative level of decision-making autonomy of Indigenous groups: self-governance, shared management, and coexistence. Ideal types, as simplified models, are useful devices for distinguishing different characteristics and providing a basis for international comparison [10].

Across these different types, four key policy instruments of Indigenous land management could be identified: land use planning; conservation and natural resource management; regulation of extractive activities and sub-surface resources; and land acquisition, leasing, and coordination. These instruments enable Indigenous peoples to protect their cultural practices and activate commercial benefits from their rights to land and waters, according to their own preferences, but within rules and limitations imposed by the State. Therefore, the framework enables to further explore the conditions of success, limitations and challenges related to Indigenous land management in different countries.

## 2. Literature Review

The Linking Indigenous Communities with Regional Development project departed from the hypothesis that a factor contributing to unrealised Indigenous economic potential was weak linkages between Indigenous peoples and regional economies [1–5]. This includes linkages in terms of production, labour, and institutions with planning and resource allocation decisions. It was assumed that institutional factors, such as inadequate governance arrangements over land use and lack of culturally pertinent frameworks, hindered cross-sectorial cooperation, which is essential to rural economic development [6,11,12]. Corroborating that assumption, OECD research in Chile [11] and in the northern sparsely populated regions of Norway, Finland, and Sweden [12] had found that Indigenous peoples played a marginal role in rural and regional development policies.

The starting point for the project was the conceptual framing and literature embedded in the OECD approach to rural development [5]. It combined the rural development literature with the literature regarding Indigenous economic and community development in a place-based context [13–17]. The literature pointed to the connections, tensions, and contradictions between settler regional development and Indigenous economic and community development [14,15]. Research showed that, across history, Indigenous policies have followed an assimilationist and paternalistic approach, treating Indigenous people as recipients of government services or interventions [16,18]. However, it also demonstrated the value of shifting the conversation away from deficits and barriers towards self-determination based on strengths and contributions to economic development [15–17].

Bringing together this literature with the OECD approach to regional development, a conceptual framework for Indigenous development in regional economies was tested and adjusted in dialogue with study participants [1,6,9,19–21]. It recognised that Indigenous economic development is highly heterogeneous and embedded: Indigenous peoples have strong attachments to place, and diverse aspirations for development [17,22]. In this sense, it sought to connect regional development policies and Indigenous economic development through a multidimensional view of well-being. This was the first systematic effort to address the well-being of Indigenous Peoples at the OECD.

Concerning the topic of land rights and management, a new round of literature review was conducted. The importance of access to land and land rights frameworks to the

continuity of traditional ways of life of Indigenous peoples and the spiritual connections that many Indigenous groups have with their traditional land and waters were fundamental topics that served as a basis for further research [16,20,21,23]. Importantly, different studies across the world showed that Indigenous Peoples have been unfairly dispossessed of their traditional lands and that today they own fragmented lands that are also less connected to regional economies and more remote [24–26]. Research also shows that Indigenous peoples play a crucial role in nature conservation through keeping their lands [27–29].

After this review of historic issues of Indigenous land ownership and governance, new literature was analysed to conduct the case studies. This included academic studies and government documents from Canada, Australia, and Sweden, but also New Zealand, United States, and Norway, due to historic proximities with the case study countries [14,26,30–32]. The goal was to understand the legal framework of land rights and the subsequent policy options available for the governance of lands and waters. There was a specific focus on policies of land-use management and natural resource regulation, to align land uses with the Indigenous groups' own objectives for economic development and well-being [30,33–37].

The literature review revealed a lack of a comprehensive framework to assess how Indigenous land rights are utilized to achieve rural development outcomes. This framework had to combine two elements. The first is how statutory land rights translate into different Indigenous land governance models. This approach recognizes that the land use choices available to Indigenous groups are determined by the level and scope of autonomy granted to them by the nation state. The second is how these land governance models are operationalized through different regulatory and governance instruments that enable Indigenous groups to achieve their own development objectives.

The advantage of this approach is that it creates a comparative framework to assess how Indigenous peoples create and deploy instruments to manage land and achieve rural development objectives. Comparative research can generate benefits by opening new perspectives, deepening understandings, and helping identify gaps in knowledge [38,39]. This approach is facilitated by multi-lateral institutions such as the OECD. However, comparative studies are also limited: being too abstracted from a particular institutional context, it might be difficult to attribute policy change to cross-jurisdictional transfer and/or learning [40]. The paper seeks to overcome these limitations by focusing the comparative analysis on how different Indigenous land governance models and instruments are operationalized in a place-based context, departing from the case studies and related countries.

### 3. Materials and Methods

Given the broadness and complexity of the four dimensions of the OECD study, many variables and potential issues of interest arose, which led to the adoption of a mixed methods approach. The approach consisted of a literature review on Indigenous governance and Indigenous economic development, as described above, which was followed by secondary research compiling policy documents and reports on these topics [1,6,9,20,21]. Furthermore, primary data was collected through questionnaires answered by 13 national governments, field visits to Indigenous communities, and meetings and semi-structured interviews with over 600 Indigenous leaders, Indigenous business owners, and public civil servants from Australia, Canada, the United States, and Sweden.

In 2017, the OECD, through its Regional Development Policy Committee, sent a questionnaire to all member and non-member national governments with Indigenous populations to gather qualitative and quantitative information. Countries were encouraged to engage with peak and representative Indigenous organisations to answer it. Thirteen countries responded: Argentina, Australia, Canada, Chile, Colombia, Denmark/Greenland, Finland, Mexico, New Zealand, Norway, Peru, the Russian Federation, Sweden, and the United States.

Subsequently, and where available, quantitative socio-economic data at sub-national level was collected across five member countries: Australia, Canada, Mexico, New Zealand, and the United States. The sub-national data was organised across 37 sub-national re-

gions (TL2) and 214 labour market areas or sub-regions (TL3) across these five countries. Sub-national regions were categorised for analytical purposes into predominantly urban, intermediate, and predominantly rural (close to cities or remote), according to the OECD territorial typology [1,7,41].

The field visits were conducted as OECD missions during 2018. Thirty-six Indigenous communities across four countries—Australia, Canada, Sweden, and the United States—were engaged. The communities were selected on the basis that the participating Indigenous communities: (i) gave their informed consent; (ii) had made progress in addressing economic development issues; and (iii) were located across different types of regions (urban, rural close to cities, and rural remote). In addition, to collect further inputs, in June 2018, a workshop was organised with the European Commission with Indigenous leaders and government representatives from Finland, Sweden, Norway, and Greenland [42].

Besides OECD staff, international Indigenous peer reviewers participated in all field visits, to ensure their knowledge and insights were included in the work. The drafting process included opportunities for participating countries and Indigenous leaders to provide comments on the analysis, initial findings, and recommendations. Delegates of member countries at the OECD Regional Development Policy Committee also commented on the work, which was approved during meetings conducted in 2019 and 2020. A diagram summarising this process is at Figure 1.



Figure 1. Summary of the research process.

## 4. Results

### 4.1. Recognition of Indigenous Land Rights

Indigenous peoples are those who inhabited a country prior to colonisation. The experience of colonisation across countries varies because of different policies, historical timing, technological differences, and power imbalances [15,18]. During the colonisation process, there were episodes of forced removal and internal displacement. Throughout history, Indigenous peoples have been dispossessed of their traditional territories and forcefully moved to lands in worse locations, or that were smaller or of inferior quality. In some cases, treaties and agreements were made, and in many cases violated [43]. There were institutional policies of assimilation that sought to break traditional relationships with land, and lack of opportunity to shape or give consent to agriculture, forestry, fisheries and aquaculture, and mining. Many Indigenous peoples lost the use and control of their traditional territories and were sometimes relocated to lands with low development potential [24]. From a settler point of view, this had a legal basis either through the doctrine of discovery and *terra nullius*, and/or through formal and ad-hoc agreements with tribal leaders [44].

The value of land and water for Indigenous peoples resides in a myriad of aspects: cultural, spiritual, social, environmental, political, and economic [21]. The spiritual beliefs and worldviews of Indigenous peoples are deeply rooted on their connection with land and often with related practices of hunting, fishing, and gathering. Anthropological and sociological studies have long investigated the relationship of Indigenous peoples with their traditional lands, referring to this complexity of values and functions [21,23]. Due to

this strong connection to land, land rights are crucial to the maintenance of the collective identity of Indigenous groups.

From a colonial point of view, property rights are allocated to individuals and corporations with the ability to possess, use, exclude others from using, earn income, and transfer ownership or use rights [41,45]. It also encompasses ways to address common use problems through negotiation and regulation [46]. The origin of Indigenous property rights, however, is the recognition of customary law that pre-dates colonial legal regimes.. Customary law may not be written or codified and is often perpetuated through the inter-generational transmission of knowledge and cultural practices (food gathering, medicine, myths, storytelling, and performances). Nonetheless, when recognised by the government, Indigenous property rights become statutory law. These statutory rights may be conferred in different legal instruments, such as treaties, agreements, legislation, or Constitutional norms [47].

Given the history of colonisation and the varying levels of recognition of the special value of land for Indigenous peoples, the contemporary legal basis for Indigenous land rights varies across and within countries. There is a spectrum of land rights allocation, from user rights to limited or full ownership and, in some countries, self-government rights (Table 1). Land rights may include or not the right to exploit sub-surface resources and to access and manage waters. The right to occupy and use lands often belongs to the Indigenous group as a collective, which may be also composed of deceased members and spirits. Individuals or families may in some cases own or occupy specific plots of land, having the rights to use and transfer them to others in the community (Table 1).

**Table 1.** Forms of classification of Indigenous land rights.

According To	Main Categories
History of occupation	<ul style="list-style-type: none"> <li>• Traditional or ancestral lands</li> <li>• Lands allocated by the government: reserves, treaties, and agreements</li> </ul>
Source of law	<ul style="list-style-type: none"> <li>• De jure: Statutory (recognised)</li> <li>• De facto: Customary law</li> </ul>
Attribute	<ul style="list-style-type: none"> <li>• User rights: possess and use</li> <li>• Ownership rights: possess, use, manage transfer to others, and exclude others from use</li> </ul>
Type of ownership	<ul style="list-style-type: none"> <li>• Private: individual, family, or collective</li> <li>• Public: government land</li> </ul>

#### 4.2. Models of Indigenous Land Governance

Indigenous land governance refers to a wide range of environmental, natural resource, and cultural heritage management activities that take place in Indigenous lands, carried out by Indigenous communities, bodies, organisations, and individuals, on their own or with private stakeholders and government actors [9]. It concerns how and by whom decisions that regard these activities are made. In this sense, it encompasses fields of intervention that need to be developed, such as planning, infrastructure investment, and capacity development.

The possible arrangements for Indigenous land governance can be divided into three ideal types, according to the degree of autonomy of the Indigenous community: self-governance, joint management, and co-existence. These models have proven to be of great added value when conducting country-specific analysis, as the OECD did for the projects of Canada, Australia, and Sweden [2–4]. They will be further detailed in the following subsections.

Ideal types may coexist within a same country, in reason of multiple land rights frameworks, depending on the Indigenous group, recognition history, and claims settled. In Canada and the United States, for instance, because nation-to-nation relations have been regulated by treaties and agreements, conditions and powers are highly heterogeneous [48]. As such, decision-making powers regarding land use and environmental issues may vary from agreement to agreement: in Canada, in the Yukon Indian Agreement Indigenous groups own mines and mineral resources, while in the Nunavut Land Claim Agreement they only receive resource royalties [3].

#### 4.2.1. Self-Governance Model

In self-governance schemes, the Indigenous group has autonomy over the management of traditional lands and natural resources located within it. This conditional autonomy may derive from the self-government capacity of the group, attributed by a treaty or agreement that addresses nation-to-nation relations. Alternatively, it may arise from specific agreements that hand over regulatory authority over environmental issues from the government to the Indigenous group.

As such, the main instruments through which autonomy can be granted are treaties, legal frameworks, covenants, or specific agreements about land management, nature conservation, land acquisition, registrable heritage, hunting and fishing, or wilderness protection. Some treaties recognise the Indigenous group as a nation within the nation state. The United States has signed more than 500 treaties with Native Americans and Alaska Natives [48]. These treaties are remainders of the colonisation period and are legally binding, although enforcement has been inconsistent [49].

The main institutions involved in these arrangements are Indigenous local governments and councils, regional councils, and land management agencies, but also land councils, land trusts, and Indigenous corporations. For such arrangements to be operational, functioning institutions need to be in place, equipped with enough financial resources and competent staff, and operate within a clear legal framework.

#### 4.2.2. Joint Management Model

In the model of joint, shared, or cooperative management, also referred to as co-management, the Indigenous group shares the responsibility and the authority over land issues with government authorities. Agreements and memoranda of understanding may be signed for that purpose (see section below). The shared management of the environment and natural resources can take place through joint institutions, such as natural resources boards and land councils, or through participation in environmental regulation and monitoring.

The areas for which cooperative management are established can be parks, natural reserves, Indigenous protected areas, World Heritage sites, or the whole territory of the Indigenous group [36]. In 1981, Gurig National Park became the first jointly managed National Park in Australia and since then further co-management arrangements have been developed for national parks in the country. In Canada, joint institutions for environmental governance have arisen from comprehensive land claims processes. In Sweden, the Laponia World Heritage site has a shared management model between the government and the Sami Indigenous people. Sami representatives hold the majority on the board of directors of the management organisation, and the management structure has been adapted to traditional Sami organisational practices and knowledge [32].

Co-management of protected areas has faced many challenges. To some authors, rigid, universally applied prescriptions undermine the power of locally negotiated arrangements that are context-sensitive and flexible enough to adjust responses [33]. Indigenous groups often lack the skills and capacity to engage in formal institutions and have limited tools to push for stronger recognition of traditional knowledge in management practices. Other challenges include lack of clarity about roles and responsibilities between parties, and

different worldviews, values and ideas about objectives and priorities, as well as the lack of recognition of traditional forms of knowledge [30].

#### 4.2.3. Co-Existence Model of Land Governance

In the co-existence model of land governance, Indigenous groups are considered an interested party in land management issues that directly or indirectly affect their designated lands. Without autonomy to decide over such issues, they can nonetheless be part of decision-making processes regarding licensing, the designation of areas for environmental conservation and environmental approvals processes related to major projects.

Moreover, in this model, Indigenous peoples typically have use rights over land and waters but do not have the authority to exclude others or direct part in the management of land and natural resources. For example, in Sweden, the Sami reindeer herders' right to use land for the purposes of reindeer herding and traditional hunting and fishing co-exists with other rights across the landscape, such as rights to extract mineral resources and forestry. In the Australian context, native title—a bundle of rights enabling traditional use of land and waters—can co-exist with other rights to use land, such as pastoral leases on crown land.

The ability to participate in land-use decision-making is primarily shaped by two factors. The first one regards how the consultation, engagement, and decision-making process is structured. For example, cost, location, format, and language can all create barriers to the effective participation of Indigenous peoples. Another is power asymmetries and ensuring Indigenous peoples have the resources, information, capacity, and governance capability to effectively participate in decision-making about projects and activities that impact on their use rights [6].

#### 4.3. Land Governance Instruments

This section examines different land management instruments that can be utilised to mobilise the economic potential of Indigenous lands in the context of these Indigenous land governance models (Table 2). It includes assessment of the lessons and challenges associated with them. Since land rights vary across and within countries, as discussed above, the possible land management systems will also vary. In this sense, it is a toolbox that States and Indigenous groups can resort to at different levels, according to the underlying rights framework and land governance model [1].

**Table 2.** Instruments to mobilise the development potential of Indigenous land.

Tool	Challenges the Tool Addresses
Land-use planning	<ul style="list-style-type: none"> <li>• Indigenous traditional knowledge, interests, and preferences are not considered adequately in the strategic and statutory planning process.</li> <li>• Lack of clarity about locations for appropriate development that considers socio-cultural, environmental, and economic objectives.</li> <li>• Mismanagement of negative externalities between Indigenous and non-Indigenous lands (pollution, noise, and land-use incompatibilities).</li> </ul>
Conservation and natural resource management	<ul style="list-style-type: none"> <li>• Indigenous communities are not involved in the governance of natural resources (land, water, air quality, forests, flora, and fauna) on their traditional territories.</li> <li>• Indigenous communities miss out of business, revenue, and employment opportunities associated with conservation management.</li> </ul>
Regulation of fishing, hunting, and sub-surface resources	<ul style="list-style-type: none"> <li>• Data about natural resources on Indigenous lands, and monetising their value is lacking.</li> <li>• Competition and over-use of natural resources, and lack of control over licensing.</li> <li>• Traditional knowledge is not incorporated into policy and regulatory settings.</li> </ul>

Table 2. Cont.

Tool	Challenges the Tool Addresses
Land acquisition, leasing, and consolidation	<ul style="list-style-type: none"> <li>• Indigenous lands that are formally recognised are relatively small and face barriers to development (e.g., remoteness, poor infrastructure).</li> <li>• Complex and costly judicial and administrative processes to acquire land, and lack of funds to do it.</li> <li>• Inalienability makes it impossible to use land as security when seeking finance for land development (leasing)</li> <li>• Fragmentation of land ownership due to allocation to individuals and family groups makes it difficult to generate economies of scale, and restricts options for development (consolidation)</li> </ul>

#### 4.3.1. Indigenous Land-Use Planning

Land-use planning usually has two dimensions: strategic and statutory [50]. Strategic land-use planning involves the development of long-term plans regarding land use, taking account of future demographic trends. The statutory land-use system controls development through the zoning of land for different uses and encompasses the administration of these regulations by governments.

##### Land-Use Planning in the Self-Governance Framework

Indigenous-led land-use planning is possible in the self-governance model, where Indigenous groups have attribution to manage their own lands. Through this instrument, a community can agree on a common vision for land development, clarify rules about land use, and foresee future activities. Through planning, it becomes clear to Indigenous peoples and to external stakeholders what is acceptable and desirable to take place in their own community.

To illustrate, in Canada, First Nations that have adhered to the First Nations Land Management Act (1999) can develop their own land codes. Land codes set out basic provisions regarding the exercise of rights and powers over land. After the land code is approved by the community, the First Nation can opt out of the lands-related sections of the Indian Act, consequently gaining control over their reserve lands, environment, and resources. Recently, in 2021, the 100th First Nation approved their own Land Code and exited the corresponding 32 sections of the Indian Act [51].

The case of Canada shows that the devolution of land management authority is a process that requires time, resources, and capacity [3]. Land administration, as a highly technical issue, needs competent staff with a dedicated office, and the ability to compile information, produce maps, enact laws, and enforce regulations. Funding streams are currently available from the Canadian government, but in the future investing in autonomous revenue sources may become a necessity, such as taxation from land-use activities.

So far, Indigenous land-use planning has meant creating planning instruments akin to Western practices, such as land codes, land authorities, zoning maps and such. However, replicating dominant planning practices embodies the risk of leaving out local practices and excluding members of the community who have insufficient technical knowledge to engage in their design. In the cases examined, there was limited evidence that Indigenous land planning had evolved into a “third space” of planning capable of accommodating both the dominant planning practices, which bring certainty and legality, and the traditional practices of land management, based on traditional knowledge [52].

##### Inclusion in Regional and Municipal Land Use Planning

Across the self-governance, joint management, and co-existence models, Indigenous peoples can be included or participate in land use planning. In the United States and Canada, as reserve lands lie under federal jurisdiction, land-use planning at the level of provinces and municipalities does not necessarily reflect that. Some land-use plans do

not account for recognised Indigenous lands, participation mechanisms do not involve Indigenous groups, and so forth.

Despite that, it is at the local level that the impacts and overlaps of diverging land uses are most strongly felt. Environmental degradation, road infrastructure, energy projects, and water management are all issues that likely affect reserves and their surrounding municipalities or, if remote, lands owned by a regional government. Moreover, it is not uncommon that traditional territories cut across municipal or regional lands, a case in which the local authorities must manage and regulate competing land uses.

Considering these interactions, local governments should develop planning frameworks that are inclusive of Indigenous peoples and/or should invest in joint management of resources or joint venture projects. Inclusion means, at a very basic scale, accounting for the Indigenous territory in the maps of local land-use plans, but also that there are mechanisms for genuine partnerships with Indigenous communities, as to incorporate their social and economic development aspirations.

#### 4.3.2. Conservation and Natural Resource Management

Natural resource conservation and management refers to decision-making frameworks and processes regarding the protection and sustainable use of water, land, forests, fisheries, flora, and fauna. It can take place in any of the identified frameworks of land governance, but in the self-governance and joint management types there is more room for development. Under the co-existence model, Indigenous peoples can be consulted and participate in the elaboration of management plans, but they would not carry out the actual tasks of implementation and monitoring.

The main instruments by which Indigenous peoples can manage nature conservation areas are agreements, memoranda of understanding, or through adapted and new institutions. They can be defined as follows:

- Agreements: comprehensive regional agreements, specific land-use agreements or lease-back agreements. In Australia's lease-back agreements, the government returns a park or reserve to its Aboriginal owners and leases it back from them.
- Memoranda of understanding (MoU): formal agreements that set out rules and conditions for shared involvement in park planning and management. MoU can be further specified in joint statements and shared principles.
- Institutions: heritage trusts, funds, boards, and councils responsible for managing funds, enacting plans, and enforcing regulations. Cross-cultural governance is shared between Indigenous representatives and governmental authorities.

The management of natural areas requires leadership, planning, and administrative capacity from the involved Indigenous groups. To illustrate, in Australia, Indigenous stewards of parks have elaborated their own management plans, with support from the government [4]. Technical assistance was necessary as the plan must abide to Australian and international laws for protected areas management. It represented an opportunity to combine the scientific conservation standards and traditional knowledge practices.

Moreover, sufficient funds are needed to conduct activities. Funds can come from partnerships with the government, from fees, such as park entrance fees, or from autonomous activities. Charging fees for park entry has been done in the Uluru Park in the Central Desert of Australia. Indigenous peoples can also earn revenues from carbon conservation activities such as carbon sequestration [28,31]. In addition, eco-tourism activities can be pursued, e.g., guided tours and educational activities. Indigenous persons may secure employment as rangers, guides, or administrators, as in the programme of park rangers in Indigenous Protected Areas in Australia [4].

#### 4.3.3. Regulation of Fishing, Hunting, and Sub-Surface Resources

Indigenous peoples' rights to fish, hunt, gather food, and extract surface and sub-surface natural resources can cover traditional uses that perpetuate social and cultural values or economic uses that can represent a significant source of own-source revenues.

The regulation of fishing, hunting, and sub-surface resources applies in different ways across the self-governance, joint management, and co-existence models.

Title to sub-surface resources presents considerable variation across models. To illustrate, in New Zealand, according to the Crown Minerals Act, sub-surface resources of national relevance are owned by the Crown, even if situated on privately held land. In Australia, the Federal government's Native Title provisions recognise traditional occupation of land, but not the right to access and control sub-surface resources. Australian States' land rights legislations, which grant collective freehold title to land, also do not confer rights to sub-surface resources, except for the veto rights embedded in the Northern Territory Aboriginal Land Rights Act.

Competing uses of land arise when non-Indigenous people with licenses for hunting and fishing co-exist with traditional practices carried out by Indigenous peoples. There may also be competing uses of land for other purposes, such as roads, forestry, and mining, which reduce the land area available for traditional uses. Cumulative land-use mapping is a tool that can be used to identify the impact of different activities on the land and on animal habitats and in so doing determine if these activities are compatible with the preservation of the environment and of Indigenous traditional ways of life.

Across different jurisdictions and land management models, the main issues concern knowing the size and value of resources; defining the licensing authority; and managing competition for resources. Another fundamental issue is prior consultation of Indigenous peoples regarding the access and exploitation of sub-surface resources located in Indigenous lands, notably mining, and related benefit-sharing agreements [53].

#### 4.3.4. Land Acquisition, Leasing, and Consolidation

Indigenous lands, usually held in trust by the nation state or collectively owned by Indigenous groups, cannot typically be sold or given as collateral for loans. On the one hand, inalienability and collective title help prevent land grabbing and fragmentation, and contribute to preserve the integrity of the Indigenous estate and associated cultural practices. On the other hand, to some authors, these characteristics inhibit the effective functioning of Indigenous lands in the private market, which would constitute a paternalistic approach [54]. Even then, there are several instruments that can be introduced into Indigenous land tenure systems to enable investment and economic development.

##### Land Acquisition

Land acquisition can complement Indigenous territories for important objectives, such as to expand the housing offer and develop economic activities, to facilitate access to creditors to generate revenues and consolidate an asset portfolio for the Indigenous community, as governments everywhere do.

There are different ways in which Indigenous peoples can acquire land. The revision of historic settlements may be an opportunity to expand the territory. Restitution of Māori lands in New Zealand, for example, which has been taking place over the past 25 years, has given back land that had been confiscated by or irregularly alienated to the government during the 19th century. The restitution process has allowed several tribes to acquire land that once had belonged to them.

Indigenous communities can also purchase freehold land in the market. Depending on the location and size of land, however, prices may be high. Indigenous communities in many countries struggle to have significant levels of own-source revenue to make land acquisitions. Therefore, this option is available to Indigenous tribes that count with significant own source-revenues. The Millbrook First Nation of Nova Scotia (Canada), for instance, has acquired 1500 acres of freehold land—the same amount of reserve land. This land, which includes property in Halifax, the capital city of Nova Scotia, has been developed for commercial and residential purposes. This asset base generates revenues to the First Nation, which can then be reverted into the general budget, paying for social services, infrastructure, and community development projects.

## Land Leasing

In the self-governance model, Indigenous groups or individuals may be able to lease the lands that they hold to other tribe members, or to private actors in the market. Land leasing can increase legal certainty for possessors, foster productive activities, and support job creation. It can also generate revenue and bankable interests to land, thus facilitating access to credit.

Leases can be long-term or renewable. In Australia, depending on the state land rights act, Indigenous groups may lease lands to third parties. In Queensland, trustees of Indigenous lands can sign long-term leases with private actors. The Northern Territory Aboriginal Land Rights Act (1983) requires traditional owners' consent, but does not impose time or price limit on the lease.

Within Indigenous groups, leasehold contracts increase the legal certainty of material possessors of land plots, encouraging them to invest in housing maintenance. For example, the Canadian model of Certificates of Possession creates individual interests in land plots for residential use. However, this instrument has had unintended consequences, because, when band councils issued certificates without effective land-use zoning regimes, inappropriate or incompatible land uses have taken place [3].

Leasing may also serve for dedicating land to productive activities. For instance, if there are several co-owners, through leasing, a single co-owner consolidates the right to use and develop the land plot. In New Zealand, a lease agreement can be signed between Indigenous co-owners, fostering economies of scale and opportunities for development.

Leasing out to external actors creates opportunities to generate own-source revenues. In Canada, for reserve lands to be available for leasing, the band council must obtain ministerial approval to "designate" them as such in their land use plans. Leases are long-term (e.g., 50 or 99 years) and transferable. This is an important lever for communities because it opens land for commercial activities. The Mashteuiatsh community in Québec and the Millbrook of Nova Scotia have facilitated local business development with this instrument. This enables the band council to earn revenues from rents and create local employment opportunities.

## Consolidation of Land Ownership

In some countries, notably in the United States and New Zealand, individual ownership of Indigenous land is allowed [25,55]. The objective of this policy was to encourage investments and increase land productivity [56]. Over time, however, inheritance and transfer of land plots amongst family members engendered a patchwork of small land holdings that were also more isolated and less 'useable'. This fragmented structure created barriers to using and investing in Indigenous lands [25].

Smaller land plots and fractioned co-ownership hinder the possibility of developing productive activities in land. The economic and law literatures have long associated Indigenous land fractionation with lower economic development outcomes on-reserve [25]. Fragmentation further generates high registry-keeping costs. In the United States, it is estimated that a complete elimination of fractionation and the associated recordkeeping activities would save the Bureau of Indian Affairs six billion dollars over ten years, in recordkeeping costs only [57].

To address this challenge, governments have implemented land consolidation, which is a strategy to acquire fractional interests from willing sellers at fair market value and place the acquired land into trusts for the interest of tribes. The United States undergoes this strategy through the Bureau of Indian Affairs. New Zealand has directed efforts to make data more accessible, by creating the online Māori Land Information System, with details of land blocks and ownership status [26]. The government of New Zealand has also promoted positive changes to the management structure of lands, allowing trusts or corporations to be formed. With an organisation behind them, land titles are managed in a more coordinated and strategic way, which facilitates development [58].

## 5. Discussion

Land plays a central role in spirituality and connection of Indigenous groups whilst also being a source of wealth, resources, and power. Indigenous communities are widely diverse and have the agency to shape their own development paths. This agency is influenced by the level of autonomy recognised in agreements, treaties, constitutions, and other laws, or by force of customs or tradition. As the application of these laws and institutions are context specific, Indigenous land governance will vary between and within countries. In the context of this diversity, the paper classified the governance of Indigenous lands into three models, or ideal types:

- **Self-governance of Indigenous land:** The Indigenous group has been empowered by the nation state to have autonomy over the management of Indigenous lands and natural resources located within it. This conditional autonomy derives from treaties or agreements that address nation-to-nation relations, or from specific agreements to hand over regulatory authority.
- **Joint land management model:** The Indigenous group shares the responsibility and the authority over land issues with government authorities. Institutions, such as natural resources boards and land councils, may be created, which must be equally composed by Indigenous and non-Indigenous representatives. This is likely to include a decision-making authority related to environmental licensing.
- **Co-existence:** In this model, Indigenous groups are considered an interested party in land management issues that affect their use rights. Without autonomy to decide over such issues, they can nonetheless participate in decision-making processes, which may include consultation in administrative procedures such as environmental licensing, and influence the elaboration of laws, plans and other policy documents.

There are different factors shaping the effectiveness of these models of Indigenous land governance. The starting point for assessing effectiveness is how local Indigenous groups can exercise land rights to achieve strategic objectives. This assessment needs to recognize that sitting within these governance arrangements are divergent interests and incentives, as well as asymmetries of information and resources. Beyond these differences, the following factors seem to be significant: (1) how the governance arrangement is formed, and whether Indigenous groups are equal participants in this process; (2) procedural fairness and how Indigenous groups have a say in shaping decisions about resource use that impacts their rights; and (3) whether there is alignment between administrative responsibilities and technical capabilities and financial resources.

Across these different types, the paper identified four key governance and regulatory instruments that can be deployed to enable Indigenous peoples to activate commercial benefits from their rights to land and waters. The opportunity to deploy these instruments depends on the underlying land rights. These different instruments were:

- **Indigenous land-use planning:** Self-governing Indigenous nations enjoy land-use planning competencies or there are mechanisms to include traditional knowledge and Indigenous interests in local municipal and regional land-use planning.
- **Natural resource conservation and management:** Governance instruments that support the inclusion of Indigenous peoples in the management of land and water resources, which create jobs, enable funding and capacity-building to carry out these responsibilities, and facilitate coordinated decision-making with relevant agencies.
- **Regulation of surface and sub-surface resources:** Regulatory instruments that enable Indigenous peoples to earn own-source revenues by ensuring that they have the means to quantify the size and value of natural resources, have control over licensing procedures, manage competing uses, and utilise natural resources for commercial ventures, e.g., minerals, hydrocarbons, forests, fishing.
- **Land leasing, acquisition, and consolidation:** Suite of tools embedded in the Indigenous land tenure system that increases the development potential of land by facilitating

access to credit, providing the means to expand Indigenous lands, and consolidating smaller plots.

The efficacy of Indigenous land governance can be influenced through policy. State authorities need capability and flexibility to adapt these instruments to the needs and aspirations of Indigenous groups, i.e., to create a so-called third space of planning that incorporates traditional and cultural knowledge [52]. Another important question is if the time and resources to apply these instruments are available in the face of differing levels of capacity and access. This requires ongoing support from the government in the direction of greater autonomy, without reinforcing dependency relationships. Information and data must also be available for Indigenous groups to make strategic decisions to deploy these instruments in ways that meet their objectives for development.

Regarding Indigenous communities, in all three models the basis for decision-making and policy change is the principle of self-determination. Although the model of self-governance yields a higher level of autonomy and therefore a wider range of topics over which to exert self-determination, this principle is the guide of any actions adopted under any of the models. For instance, in Sweden, the Sami people influence land use planning by stating which lands are necessary for reindeer pasturing and seasonal movements. This shows that even in the co-existence model, self-determination is the guiding principle and the element to which states must abide. In all, this typology shows that Indigenous land use governance can and must lead to greater self-determination, which is possible across varying levels of autonomy and managing powers.

The framework developed in this paper provides the basis of comparative research related to the use of different instruments by Indigenous groups to promote endogenous development. Comparison reveals widely different legal frameworks, histories, and socio-economic conditions facing Indigenous peoples across and within countries. As such, the choices that Indigenous peoples make about the uses of their land, water, sea, and cultural resource rights will be diverse. Economic opportunities are shaped by factors such as resource endowments and access to markets. In some cases, synergies can be found amongst competing socio-cultural, environmental, and economic objectives. Trade-offs are also necessary to protect environmental, social, and cultural values.

In all, comparing practices in ways that account for these differences instead of erasing them is expected to enable the implementation of better policies and outcomes by and for Indigenous peoples [1]. By better understanding the governance frameworks and instruments through which Indigenous agency can be exercised, context-specific arrangements can be formulated. Likewise, instruments of support and assistance can better align with their objectives for development. The approach outlined in this paper provides a basis for future comparative studies that enhance the agency of Indigenous traditional owner groups in achieving diverse objectives from their land assets.

Analysis of Indigenous land management systems must also apply a critical lens. Land is a source of wealth, resources, and power, and there are different interests at play. Securing Indigenous land rights involves a complex and contested process, which plays into how these rights are governed and utilised. Therefore, two important threads running throughout this study are (1) divergent interests and asymmetries of power in how Indigenous land governance arrangements operate, including the degree of flexibility in how instruments are applied, and (2) appropriate capability and technical support to empower Indigenous groups (without perpetuating dependency relationships) to form and participate in land governance and operationalise instruments that enable Indigenous groups to achieve their strategic objectives.

## 6. Conclusions

The aim of this paper has been to develop an analytical framework to identify the key features of Indigenous land management systems that enable Indigenous peoples to realise the development potential of land resources. As an element of the broader OECD project Linking Indigenous Communities with Regional Development, it departed from

the hypothesis that a factor contributing to unrealised Indigenous economic potential was weak linkages between Indigenous peoples and regional economies. The findings suggest that the efficacy of local governance arrangements is important for realising the diverse opportunities and aspirations of Indigenous groups. This is influenced by whether governance arrangements are formed in genuine partnership, the degree of flexibility of governance and regulatory instruments, and sustained investment in the capability of Indigenous groups to govern lands and operationalise these instruments whilst not reinforcing dependency relationships.

To date, a shared framework to assess and compare Indigenous land management systems across countries that can be applied across a wide range of sectors and eco-system conditions has not been attempted. By drawing on the existing literature and empirical research, this paper has presented a novel way of analysing how Indigenous groups manage and utilise rights and interests in land. The framework and examples presented in this paper are shaped and limited by the role of the OECD and the countries covered in the Linking Indigenous Communities with Regional Development project. Despite these limitations, it has raised important questions about how policymakers design and work with Indigenous groups to create opportunities for Indigenous peoples to realise development opportunities from land resource rights. This framework can provide the basis for future comparative studies that enhance the agency of Indigenous groups in achieving diverse objectives from their land resources. Comparative research can support policy learning, policy change, and capability-building efforts.

Further research is needed on how land governance instruments are deployed in different national as well as regional contexts, and how governance capability and policy choices by governments influence socio-economic outcomes. Another pressing question is whether prior consultation mechanisms may lead to the formation of new governance schemes in Indigenous lands and affect adjacent regional economies. It remains to be further investigated how Indigenous communities can adapt instruments that come from a different tradition of planning and governance into their own traditional ways of managing local affairs, or if they will deploy a different set of tools, coming from their own traditions of governance.

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