

LOCAL VOICES IN GLOBAL DISCUSSIONS: HOW FAR HAVE INTERNATIONAL CONSERVATION POLICY AND PRACTICE INTEGRATED INDIGENOUS PEOPLES AND LOCAL COMMUNITIES?¹

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with

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1. Introduction

Modern conservation is undergoing a major transformation, towards policies and practice that increasingly integrate the rights and roles and livelihood interests of indigenous peoples and other local communities. This paper provides a brief overview of the changes taking place in international conservation discourse and policy, assesses the extent to which these are being reflected at national and local levels, points to key gaps, and suggests next steps towards completing the transformation.

Paucity of space necessitates a somewhat less nuanced treatment of this subject than is desirable, but the references and readings referred to would hopefully fill the gap for the interested reader. Additionally, this paper focuses primarily on wildlife/biodiversity conservation policies and practice, and deals only peripherally (if at all) with a number of related developments at international and national levels, including discussions and policies on traditional knowledge and intellectual property rights, access and benefit-sharing issues especially related to genetic resources, human rights including gender and children's rights, and others. Some of the notes annexed here provide references to a few of these developments.

A key gap in the analysis below is an understanding of how donor policies and practice have changed. This would be essential to get a more comprehensive picture of the subject.

2. Conservation *versus* communities

Formal or modern conservation policy and practice have had an uneasy relationship with indigenous peoples and local communities. Across the world, such conservation has tended (with notable exceptions) to disadvantage or ignore the rights, concerns, needs, and practices of agricultural, pastoral, fishing, or hunting-gathering peoples (see, for instance, West et al 2006; Colchester 2004; Lockwood et al 2006; Chatty and Colchester 2002; *Policy Matters*

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³ This team of contributors provided write-ups on specific aspects of the theme, which are annexed to this paper; their individual profiles are also given there. The lead author is grateful to them for providing expert inputs well in time, and to the following for comments on the 1st draft: Joji Carino, Aroha Mead, Felicity Arengo, Alice Bancet, and Jonathan M. Davies. He is also thankful to anthropology students of Columbia University who dug out a few hundred citations for reference, and to Eleanor Sterling, Felicity Arengo, and Fiona Brady of the American Museum of Natural History for facilitating this process. Unfortunately a paper on indigenous peoples that was promised did not materialize, and a request to Via Campesina for a paper on small peasants/farmers, was declined.

15). While this is particularly true of ‘developing’ countries, it is also found in industrial or ‘developed’ ones (see, for instance, Burnham 2000 for an account of the impact of American PAs on native populations). The results have included physical displacement (the full extent of which is unknown, as there are surprisingly few studies and data available), dispossession and denial of access to survival and livelihood resources (much more common than actual displacement), cultural disruption, alienation from the resource base, loss of authority and control over traditional surrounds, rebound effects on wildlife and ecosystems, and a host of other impacts. The full extent of this is not known, as there are surprisingly few studies that document the full range of impacts. Additionally, the story is not uniformly one of displacement and dispossession; several countries and some international treaties did acknowledge and allow for the customary use practices of indigenous peoples and local communities within conservation sites. The Bonn, Apia, CAMBA and JAMBA agreements and South Pacific Declaration on Natural Resources and the Environment, in the 1970s and 1980s, recognized limited traditional rights to resource uses (Sutherland 1995). Land rights reforms in Canada, Alaska (US), Australia and New Zealand, in the 1960s and 1970s, recognised customary practices, and many earlier Acts concerned with the conservation of nature in these jurisdictions also included exceptions from the legislation for indigenous peoples' subsistence take. But even in many of these, conservation policy and practice often entailed loss of entitlements and control.

It is not the purpose of this paper to go into the details of this history, but to look at how the world has tried to respond to the conflicts and injustice that has arisen from this conventional model of conservation.

3. Conservation *with* and *by* communities: the new models

Strong winds of change have been blowing across the modern conservation world. Over the last few years, the discourse has focused increasingly on the social, economic, and political aspects of conservation. The model of wildlife protection *sans* people (in ecosystems and landscapes that people have been traditionally resident in or using), is no longer acceptable, at least in international policy, and in the policies of several countries. As more and more studies expose the social and economic costs of such a model, as communities themselves voice discontent and demand alternatives, and as formal conservation practitioners face the harsh realities of trying to do their jobs in increasingly hostile conditions, the search for other models has intensified.

The following trends in particular characterize the transformation:

1. the realization that territorial and resource rights of indigenous peoples and other local communities that have traditionally lived in or used natural ecosystems, need to be respected in conservation policies and practice, and that the costs and benefits of conservation need to be much more equitably distributed;
2. the recognition that there is not only *one* kind of governance of protected areas (by governments), but several; in particular, the conversion of government managed and controlled protected areas into collaboratively or jointly managed ones (*collaboratively managed protected areas*), and the recognition that communities of all kinds themselves are conserving sites and species across the world, most of these outside formal protected areas (*community conserved areas*)⁴;

⁴ The term ‘community conserved areas’ incorporates a wide range of locally and nationally used terms, such as indigenous protected areas, biocultural heritage sites, and so on. It is also important to recognize that the concept of CCAs is in the context of protected areas; these are not coterminous with indigenous territories, which are distinct entities, and may in full or part constitute a CCA. Some indigenous peoples from Latin America have

3. the realization that conservation needs to happen across entire landscapes, not only in isolated pockets, and therefore requires the involvement of rural and urban populations (*landscape conservation, ecosystem approach*⁵, *connectivity conservation*).

While elements of the above trends have been present in conservation discourse for at least a decade⁶, and a part of their emergence comes from even earlier international environmental discourse and agreements (see Section 4 below), their acceptance at global conservation forums has happened in the last 3-4 years. Two global events in particular have been instrumental in this: the IUCN World Parks Congress (WPC) at Durban, 2003, and the 7th Conference of Parties of the Convention on Biological Diversity (CBD COP7), at Kuala Lumpur, 2004.

At the first of these, over 3000 conservation practitioners, policy makers, and others, gathered for what till then was the largest ever gathering of people working on protected area issues. The presence of about 200 representatives of indigenous peoples' and other local communities, was instrumental in the WPC giving unequivocal support to the paradigm shift represented by the above trends. This was also in no small part due to strong advocacy by a number of IUCN networks and civil society representatives, including the WCPA-CEESP Theme on Indigenous and Local Communities, Equity and Protected Areas (TILCEPA, see www.tilcepa.org), which designed and ran the cross-cutting theme on communities and PAs (Brosius 2004), and the CEESP Theme on Governance, Equity and Rights (TGER, see www.iucn.org/themes/ceesp/TGER.html).

Elements of the new conservation paradigms endorsed by the WPC are contained in each of its key outputs: the Durban Accord, the Durban Plan of Action, the Message to the CBD (www.iucn.org/themes/wcpa/wpc2003), and recommendations on Good Governance of PAs, Diversity of Governance Types of PAs, Indigenous Peoples and PAs, Co-management of PAs, Community Conserved Areas, Mobile Indigenous Peoples and Conservation, and Poverty and PAs (www.iucn.org/themes/wcpa/wpc2003/pdfs/english/Proceedings/recommendation.pdf).

Following closely on the heels of the WPC, and clearly influenced by it, the CBD COP7 adopted a comprehensive Programme of Work on PAs, which included clear goals and actions for moving towards new governance models for PAs (<http://www.cbd.int/decisions/?dec=VII/28>). Sustained inputs by TILCEPA and others, facilitated by the CBD Secretariat, helped introduce a new element on Governance, Participation, Equity, and Benefit-sharing into this Programme of Work, which contained specific goals and targets relating to the new conservation paradigms. In particular, this included actions to:

- Recognise PAs under various governance types, including Community Conserved Areas (CCAs) and Private Protected Areas (PPAs) (2.1.2)
- Use conservation benefits to alleviate poverty (2.1.4)
- Ensure mechanisms of participation by communities in all PAs.(2.1.5)

suggested the term 'indigenous conservation territory' for their situations, to indicate the distinction between indigenous peoples and local communities, as also between territories and areas.

⁵ <http://www.cbd.int/programmes/cross-cutting/ecosystem/>

⁶ For instance, see the resolutions emanating from the 1996 World Conservation Congress of the IUCN – World Conservation Union (IUCN 1996).

- Establish and strengthen policies to deal with access and benefit sharing of genetic resources within PAs (2.1.6)
- Establish and follow “good governance” principles, including equity and participation (2.2.1)
- Implement plans to involve communities at all levels of PA planning, establishment, governance and management removing barriers preventing adequate participation (2.2.2)
- Ensure legislative and policy support for the involvement of communities and build their capacity in the establishment and management of PAs including CCAs and PPAs (2.2.4)
- Stop relocation or sedentarisation of communities without their prior informed consent(2.2.5)

The IUCN World Conservation Congress in late 2004 further reinforced these messages, adopting a number of resolutions and recommendations dealing with governance of protected areas, indigenous peoples, mobile peoples, community conserved areas, and others (IUCN 2004).

4. The run-up to the transformation

To a casual observer, the new models of conservation seem to have taken place suddenly in the new millennium. And indeed many governments and conservation NGOs across the world are mystified, and not quite prepared to accept or implement these models. However, these developments are built on a longer history of struggle, experimentation, and discourse at national and international levels (see, for description and examples, Jaireth 2004; Colchester 2004; Maggio 1998). These include at least the following:

- Sustained advocacy by and on behalf of indigenous peoples, especially since the 1970s, to gain access to international human rights and policy-making forums, and have their rights and voices recognized in various agreements and treaties.
- Somewhat more recent advocacy by and on behalf of other traditional peoples and communities, such as small fisher and peasant communities since the mid-1980s in UN forums dealing with agriculture and fisheries (e.g. the UN Fish Stocks Agreement, and the FAO Code of Conduct for Responsible Fisheries).
- Similar advocacy and participation in international environmental forums, including the Earth Summit in 1992, the CBD and its various subsidiary processes, IUCN conferences, and so on. At these forums, considerable support was also given to indigenous/local community voices, by a number of conservation and human rights organizations.
- The formation of institutional spaces and agreements specifically to address such issues, including the UN Permanent Forum on Indigenous Issues, and the long-standing draft UN Declaration on the Rights of Indigenous Peoples (finally adopted in 2007).
- Processes within international conservation organizations such as IUCN and WWF, including dialogue with indigenous peoples and local communities, resulting in these groups adopting principles and guidelines for engagement with such people.

International human rights discourse has been particularly influential in the development of environmental treaties and agreements that incorporate community rights and concerns. Concerns about the violations of the rights of indigenous peoples and other local communities have been voiced in international forums for several decades, and have in

varying degrees influenced national and international treaties and agreements in various spheres (see detailed review in Martinez 1999).

Early drafts of the CBD were marked by the absence or weakness of rights and livelihood issues, which was pointed out in a critique by the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests (Joji Carino, personal communication). Strong human rights based advocacy by indigenous groups and others, led to greater incorporation of some principles in the CBD. The legal obligations regarding issues of rights are somewhat weak in the CBD, but they have been used in follow-up work programmes, as also in other international forums, to push for rights-based reforms.

The lead up to the Earth Summit in 1992 was of crucial importance for the recognition of Indigenous and local communities resource management practices. Indigenous peoples and support organisations “strategically invoked UN processes to further their agenda regarding recognition of customary property rights and traditional knowledge. This resulted in work programs requiring the preparation of special studies, reports, and draft guidelines, particularly concerning intellectual and cultural property rights. The Working Group on Indigenous Populations (WGIP) within the former ECOSOC Commission on Human Rights, for example, was asked to request that ‘traditional knowledge’ issues be considered at the 1992 UN Conference on Environment and Development (UNCED). This facilitated the recognition of relevant standards in the instruments adopted at the Earth Summit or opened for signature there. A 1990 WGIP resolution called on UNCED to ensure that any new conventions which may be adopted regarding biodiversity or conserving renewable resources, provide explicitly for the role of Indigenous peoples as resource users and managers, and for the protection of Indigenous peoples’ right to control of their own traditional knowledge of ecosystems.” (Jaireth, at Annex 1; see also Jaireth 2004).

One of the striking aspects of the increasing role of indigenous peoples in international environment and conservation forums, is the more recent entry of non-indigenous traditional communities, or of specific sections of indigenous peoples such as many of those that are nomadic or mobile (exceptions to this being such peoples from the ‘north’, such as the peoples of the Arctic, who were earlier entrants). Only very recently, and much later than terrestrial indigenous peoples, have non-indigenous or indigenous fisherfolk, mobile peoples, and peasant communities been able to mobilize themselves and gain support for their rights and demands in relation to conservation policies and practice.

Starting with the WPC, for instance, nomadic or mobile peoples have begun to get together to gain the critical mass needed to influence international policy (see paper at Annex 3 by Rahimzadeh). The formation of a World Alliance of Mobile Indigenous Peoples (which actually also contains non-indigenous communities), and the passing of recommendations and resolutions on mobile peoples and conservation at both the WPC and the WCC 2004, have been crucial milestones. Mobile peoples have also obtained greater recognition in the UN Permanent Forum on Indigenous Issues, and most recently came together at the World Gathering of Nomadic and Transhumant Pastoralists (Spain, September 2007), coming out with the Segovia Pastoralist Declaration laying out their issues and demands.

Similarly, traditional and artisanal fisher communities have in the last few years gathered the strength to influence international conservation policy. This includes the Ramsar Convention and the CBD, where networks like the World Forum of Fisher Peoples (WFFP) and the World Forum of Fisherworkers (WFF) have voiced their demands and concerns (see a more

detailed analysis in the paper by ICSF, at Annex 2). In a way their earlier struggles on more direct issues of fisheries policy, advocating that small-scale fisheries be recognized as the most ecologically, socially, economically, and culturally appropriate model of fisheries development (as against the industrial fisheries model), had already laid the ground for them to argue at conservation forums.

5. The role of local voices and supporting networks

In various ways, those most instrumental in creating the context for the acceptance of the new models are indigenous peoples and local communities themselves. Through local and national level struggles, very often painful and protracted, and through increasing involvement in international forums, communities have raised awareness of the injustices of conventional conservation (and ‘development’) processes, provided evidence of different ways in which conservation can take place, and taken part in the nitty-gritties of drafting international policy instruments. Their active involvement (even in small numbers!) in the Earth Summit and early years of the CBD processes, led to strong text on their rights/needs into Chapter 26 of Agenda 21 (The Role of Indigenous & Local Communities), the establishment of an Indigenous Focal Point person in the CBD Secretariat, and the establishment of the Voluntary Fund to support indigenous peoples’ participation in CBD processes. In later years it led to the establishment of the Working Group on Article 8j. Amongst the most memorable aspects of the World Parks Congress, was the presence of indigenous peoples, mobile peoples, and other local communities, the sheer diversity of their languages, ways of speaking, and attire, contrasting vividly with the drab uniformity of the three-piece suited formal conservationists who otherwise greatly outnumbered them. This physical presence, and the sheer power of their arguments, were undoubtedly instrumental in the WPC endorsing some of the most radical resolutions and workplans that have ever been seen in an international gathering of conservationists, and for the CBD COP7 to adopt a very progressive Programme of Work on PAs. Conversely, notes ICSF in the paper at Annex 2, the limited participation of fisher groups in the CBD Programme of Work on Marine and Coastal Biodiversity, has led to a much weaker integration of the rights of small and artisanal fishers. Increasing indigenous and community presence has also been seen in UN and other international forums, especially at the Ramsar, and FAO meetings and negotiations, and has made a marked difference to their outcomes.

Even before this, indigenous peoples have had strong presence at human rights forums, with noticeable impacts. “The way in which indigenous people have organised themselves has ‘evolved’ over the years, and it can’t be understated, how much of that evolution has been shaped by indigenous involvement in the human rights ‘arm’ of the UN, e.g. the Working Group on Indigenous Peoples, the Inter-Governmental Group on the UN Declaration on the Rights of Indigenous Peoples, and more recently the UN Permanent Forum on Indigenous Issues” (Aroha Mead, personal communication).

To strengthen their presence in international forums, indigenous peoples and local communities have formed their own international coalitions. Indigenous peoples working on the CBD issues, for instance, have grouped under the International Indigenous Forum on Biodiversity (www.iifb.net), a working group of which, the Indigenous Peoples Committee on Conservation, focuses on Protected Areas. A precursor to this was the Indigenous People’s Biodiversity Network (IPBN). Similar indigenous groupings work on other forums such as the climate change treaties. Small peasants around the world have formed Via Campesina, with the general aim of upscaling the struggle for farmers’ rights, and more specific objectives of influencing relevant international treaties and forums on environment and

development (www.viacampesina.org). Small fishers, especially in Asia and Africa, are united under the World Forum of Fisher Peoples (www.wffpfishers.org).

But there have also been strong alliances with civil society organizations that have an interest in conservation and rights-based approaches. At both the WPC and the 7th COP, a number of civil society organizations, and some international networks such as TILCEPA and TGER, were influential in helping create the space for communities to speak, in helping draft resolutions and statements, and in providing ideas for communities to consider. It is noteworthy that the idea of *community conserved areas*, for instance, or more generally of focusing on *governance of protected areas*, came from networks like TILCEPA and TGER (building, of course, on community practice and articulation). Indigenous peoples have received considerable facilitation and support from groups like Forest Peoples Programme (www.forestpeoples.org), and fishers have been helped by groups like the International Collective in Support of Fishworkers (www.icsf.net). The World Initiative for Sustainable Pastoralism (WISP) has also advocated pastoralist rights issues in various conventions, managing for instance to get the Convention on the Control of Desertification (CCD) to acknowledge the role of pastoralism in reversing degradation (Jonathan Davies, personal communication; www.iucn.org/wisp). The CBD Alliance, a loose network of NGOs, community based organizations, and indigenous peoples organisations provides support to people from ‘developing’ countries to participate in international CBD related meetings (www.cbdalliance.org).

A number of governments too have been helpful. At the CBD forums, for instance, several countries have strongly supported the participation of communities, and in some cases included community members on their official delegations. Sometimes, though, such inclusion could be more tokenism than a genuine change, and indigenous people who are on such delegations often report that their independence is compromised.

One of the continuing stumbling blocks to greater community participation in international forums is what Craig (1998) calls the “classical statist” view. International law has been dominated by the view that the only legitimate actors that can take part in its formulation are nation-states, and that each nation-state has a duty not to interfere in the ‘internal’ matters of other nation-states. Indigenous peoples and local communities, or other individuals and groupings that exist within a nation or between nations, can therefore only participate as observers, and only when nation-states allow them to. Such a statist view not only hinders community participation in international forums, it is also one major cause of the absence of or inadequate implementation of international policy at national and local levels (discussed in the next section).

6. The world proposes, countries dispose?

While considerable progress has been made in transforming international conservation policy, the equally or more important question is: is policy and practice changing within countries, and on the ground? The most radical of ideas at the international level would mean nothing if it does not help in *actually* making conservation both more effective for wildlife as also more equitable with regard to indigenous peoples and local communities.

There is sufficient evidence to suggest that the new paradigms of more equitable, sustainable, and landscape level conservation are being seriously considered or implemented in a number of countries. Indeed early experimentation and innovation in some countries took place even before the international policy changes in this last decade, and could have been a catalyst of

some of these changes. Overall, though, progress with national and local implementation of the new paradigms is slow, patchy, and fragile.

One indicator of the extent of change is the degree to which countries have implemented Element 2 (Governance, Participation, Equity, and Benefit-sharing) of the CBD Programme of Work on PAs. Most countries from where information is available (in their national reports, their responses to the CBD Secretariat's questions on implementation of the Programme of Work, and citizens' reports), are way behind in meeting their targets.

A recent survey of 36 PAs in Latin America, Africa and Asia, by the Forest Peoples Programme, found that new conservation principles were not yet in widespread application (Colchester 2004). Indeed in many countries, forcible displacement and exclusion have continued well after international policy pronouncements frowned upon them. Nevertheless, the new principles of equity, power sharing, participation, and sharing of benefits are now increasingly being discussed and adopted at national levels, are being incorporated into donor policies, and are being used as tools by indigenous peoples and local communities to demand changes in national policy and practice.

With regard to the new governance types of PAs, there appears to be no comprehensive assessment of how many countries provide for collaborative management or for [community conserved areas (CCAs, or equivalent terms used in various countries, see footnote 3 above)] to be recognized in their conservation legislations. But some indications are available. A survey of 16 countries by TILCEPA (see paper at Annex 4 by Balasinorwala, and full surveys at <http://www.iucn.org/themes/ceesp/CCAlegislations.htm>), has yielded mixed picture in relation to CCAs. Of these 16, six (Australia, Brazil, Guyana, India, South Africa, and Vanuatu) had brought in legislation recognizing CCAs as part of the PA network (with great variation in what kind of sites could be considered eligible). Another six (Canada, Costa Rica, Indonesia, Mauritania, Tanzania, and Taiwan) did give legal backing to CCAs, but as part of more general laws providing recognition of indigenous or community territories and rights, rather than as PAs or specific conservation mechanisms. Four countries (China, Morocco, Nepal, and Nigeria) had no legal backing for CCAs whatsoever, though a few of them reported some level of administrative or financial support to CCAs, and one (Nepal) had moved towards almost full community management of at least one PA.

There is also increasing evidence that insensitive or mechanical implementation of the new paradigms may be counter-productive. In some countries such as Malaysia and India, for instance, top-down recognition of CCAs through statutory legislation which forces uniformity and allows government interference, threatens existing customary law and practice and thereby the conservation initiative itself.

ICSF in the paper at Annex 2, has reviewed the status of integration of fisher communities in marine conservation policies and practices of Brazil, South Africa, and India. It concludes that while there are some signs of progress (notably in Brazil), there remain serious deficiencies in power-sharing, recognition of rights and tenure, and so on.

Some countries are demonstrably further ahead than others. Australia and Canada, for instance, have experience with collaborative management of PAs for between one and two decades now, both of them within the larger context of recognition of the territorial rights of indigenous people. At a number of sites, there is genuine sharing of power, costs and benefits with indigenous populations, or even the empowerment of such people to manage their own

PAs (Craig 2002; Smyth 2006). However, even in such countries, progress is uneven, with collaboration often limited to some forms of public participation (Craig 2002). In the Philippines, bold legislation provides considerable possibilities for indigenous peoples to govern themselves and protect their territorial and knowledge rights, which some communities have been able to use to claim 'ancestral domain' (see for instance Ferrari and de Vera 2004), but some loopholes in the law and strong resistance from the bureaucracy have severely restricted or delayed its application.

Many countries continue to resist attempts to change national policies in line with the international requirements. New Zealand, for instance, has still not incorporated any of the three broad trends mentioned in Section 3 above: indigenous rights, diversity of governance types of PAs, and landscape approach (Aroha Mead, personal communication). Forced evictions continue in several countries. In countries like Tanzania, the absence of a strong civil society able to defend indigenous or community rights, and the continued negative perception of the State towards communities and their livelihoods (especially those of mobile peoples), sustains the violation of rights in conservation practice (Alice Bancet, personal communication).

A more detailed assessment of South Asia revealed the following picture (Balasinorwala et al 2008):

- Bangladesh has just begun experimenting with some form of collaborative management in forested PAs, and recognition of a few community managed wetlands, but both have a tenuous position in the law.
- Bhutan has no legal mechanisms for CMPAs or CCAs, though some integrated conservation and development projects are being carried out.
- India has scope for both CMPAs and CCAs in its wildlife legislation, but the former are not applicable to existing national parks and sanctuaries (which comprise most of India's PAs at the moment), and the latter will be highly restrictive as it is supposed to be only on 'private' and 'community' lands whereas most CCAs are on government lands. Other more recent legislation (on biodiversity, and on forest dwellers' rights) may lead to more community participation in PAs, and provide backing to CCAs, though not as part of the PA network.
- Nepal is probably the most advanced in South Asia in relation to CMPAs, with particular focus on conservation areas in the mountains. This includes one of the largest PAs being run by a NGO and local communities. In 2006 a government managed PA has been handed over to communities to manage, but there is otherwise no legislation to provide PA status to CCAs.
- Pakistan has tried some innovative collaborative management arrangements in some of its mountain PAs. There are also hunting reserves in which local communities get the benefits of hunting fees charged to outsiders. There is no legislation to back CCAs as part of the PA system.
- Sri Lanka has no legally backed CMPAs, though some benefit-sharing arrangements have been initiated. A few coastal areas under community management have been provided legal backing, but these are not in the PA network.

The picture emerging in South Asia is probably representative of many or most regions of the world (for a more global overview, see Borrini-Feyerabend et al 2004). If this is true, most countries are clearly some distance from achieving the targets they have agreed to under the CBD Programme of Work.

In its latest “Review of Implementation of the Programme of Work on Protected Areas for the Period 2004 - 2007” (UNEP/CBD/WG-PA/2/2, 26 November 2007), the CBD Secretariat has concluded that:

“Though legislative and policy frameworks exist for equitable sharing of costs and benefits and participation of indigenous and local communities, more efforts are needed to implement them to ensure meaningful participation of local communities in the establishment and management of protected areas, and in the integration of various governance types into national systems of protected areas.”

It has therefore suggested that the meeting of the Ad Hoc Group on the PA POW, coming up in February 2008, recommend the following:

“*Improve and diversify* protected area governance by recognizing, where appropriate, community-based organizations as co-managers, incorporating community-conserved areas into the national system of protected areas; and recognizing and integrating local community knowledge into protected area decision- making;”

It should be noted that the above recommendation will not necessarily lead to more progressive steps, for it does not adequately incorporate a rights-based approach, and as mentioned above, top-down implementation of policies for CCAs or co-management could actually undermine community initiatives and rights. Nevertheless, it marks an acknowledgement that governments need to do much more than they are currently doing, to progress in the implementation of these elements of the PA POW.

7. Have international NGOs changed adequately?

Conservation policy and practice, at both international and national levels, is heavily influenced not only by governments but also by civil society organizations and donors. It is not clear how significantly these have changed, to embrace the new conservation paradigms. As mentioned above, some like IUCN⁷ have actually been at the forefront of leading the changes. But many others, including some of the largest and richest NGOs, are widely criticized as having lagged behind. Two widely quoted articles in the recent past (Chapin 2004; Dowie 2005) have alleged that these NGOs continue to press for conventional top-down and exclusionary conservation policies, corner a disproportionate amount of money available to civil society, wield considerable clout in many ‘developing’ countries, privilege global modern knowledge over local traditional knowledge, and treat indigenous peoples and local communities as, at best, participants in their projects, and at worst, enemies to be evicted from areas to be conserved. For their part these NGOs and others have responded in a variety of ways, pointing to what they say are distortions in the information and analysis contained in these articles, but also accepting that there is a grain of truth in them (see responses at <http://www.nature.org/pressroom/press/press1671.html>; http://www.panda.org/about_wwf/what_we_do/policy/people_environment/wwf_response/index.cfm; <http://www.worldwatch.org/system/files/EP181C.pdf>; <http://gristmill.grist.org/story/2004/12/28/21406/952>;). Some like WWF have undertaken an extensive internal review, with the help of critical outsiders, and have pledged to move

⁷ Given its structure, with both governmental and civil society membership, IUCN is not easily classified as a NGO; however in its functioning it usually provides civil society perspectives and spaces in varying degrees.

urgently and widely towards even more equitable and participatory modes of functioning and policies on conservation than they already have. The Nature Conservancy (TNC) has focused increasingly on partnerships with communities, including for instance fishing communities in marine conservation and livelihood enhancement programmes (as one example, see Leisher et al 2007). Reportedly the CEOs of several international conservation organizations are engaged in a process to work out common principles on indigenous/community issues in conservation.

8. Key lessons and challenges

Some observers have argued that the oft-seen failure of participatory approaches to conservation, not only to achieve conservation but also to generate sustained benefits for people, indicates the need to return to the conventional strict protectionist forms (see for instance, Terborgh 2004). This, however, has been strongly criticized for faulty reasoning, and it has been pointed out that lack of adequate implementation of the fundamental principles of equitable conservation cannot be seen as a failure of the principles themselves (Wilshusen et al 2002; Brechin et al 2002; Spiteri and Nepal 2006). Moreover, evidence from around the world suggests that new paradigm approaches to conservation (especially co-managed protected areas and community conserved areas) do indeed often work, where implemented with sufficient policy back-up, on-ground capacity, and other key ingredients (see examples in Borrini-Feyerabend et al 2004; Pathak et al 2004; Kothari 2006a; Kothari 2006b).

There are a number of key lessons that have emerged from both the successful and unsuccessful attempts at applying new paradigms of conservation, and it is vital that policy-makers and practitioners around the world understand and apply these in future programmes. To list a few (Blaustein 2007; Borrini-Feyerabend et al 2004; Spiteri and Nepal 2006; Redford et al 2006; Brockington et al 2006; Leisher et al 2007)

- The distribution of costs and benefits of conservation remain highly skewed between local communities and wider society (as shown, for instance, in studies by CARE International, WWF, and IUCN, in Uganda, Philippines, Thailand and Kenya; report under finalization, Phil Franks, personal communication), and much greater attention is needed to policies and practices that can balance these out.
- The distribution of power and benefits within communities too remains inequitable, often even in otherwise successful participatory conservation or community-based initiatives; policies and practice need to understand local divisions and hierarchies (including those of gender), and devise methods to ensure that the poorest and most disadvantaged sections are provided special focus.
- Many participatory conservation initiatives, especially those imposed from above by governments, NGOs, and/or donors, tend to remain at a superficial level of consultations and the doling out of benefits, without getting into actual power-sharing and joint decision-making; a critical view of these needs to be taken, and conservation agencies lobbied to make genuine changes towards equity, even while allowing for some caution where local socio-political situations are very conflict-ridden and a rush towards decentralization may be counter-productive in the short run.
- Another key ingredient, the provision of tenurial security through territorial, land, water, and resource rights (and corresponding responsibilities), appears to be in very short supply in most countries. Many conservationists fear that this will undermine conservation itself; there is therefore continued conflict between the territorial and tenurial demands of communities, and the demands of conservationists to set up

protected areas, in many countries. With little or no long-term security, communities are unable or unwilling to be enthusiastic partners or players in conservation; this clearly needs to change, again allowing for some caution in specific situations where conservation may be threatened by this.

- A lot of initiatives pay only lip-service to the use of traditional knowledge in the planning and implementation of conservation; given the overwhelming evidence of how productive such use can be, conservation policy and practice needs to urgently move towards integrating such knowledge with modern conservation knowledge.
- Many stereotypes continue to plague conservation, one of the most persistent of these being the romantic view of indigenous peoples as living in age-old lifestyles in total harmony with nature, and the opposite, that all people living within natural ecosystems are necessarily degrading the environment; conservation policy and practice needs to understand the nuances of each situation, the fact that all cultures are in flux, that traditions are changing, and that various mixes of the traditional and the modern may be needed to make conservation and equity work together.
- Most international attention on the inequities of conventional conservation policy has focused on indigenous peoples, who also happen to be the best organized and most vocal at international forums; much greater attention is now needed to other traditional communities, including mobile peoples (both indigenous and others), peasants, and fishers.
- Discussions amongst conservation and human rights advocates at international levels often remain polarized, full of rhetoric, with ‘both’ sides unwilling to find common ground (what Redford et al call the “dialogue of the deaf”); this needs to change, emphasizing inter-disciplinarity, the humility that no single discipline or ideology has all the answers, and the search for middle grounds in which both conservation and human interests can be integrated.
- Though indigenous peoples and local communities are increasing their presence in international forums, very often one still sees other civil society actors or government officials speaking on their behalf; all efforts need to be made to facilitate and create the spaces for communities to speak for themselves. This may require additional finances, and help in gaining the capacity to negotiate at international meetings.
- There are no systematic mechanisms in place to monitor and evaluate how much of equity concerns are actually being met in conservation programmes. Unlike the ‘management effectiveness’ tool that IUCN helped develop and which is now used in many countries, there is no ‘social assessment’ toolkit that can be similarly used. This urgently needs to be developed, not necessarily as one methodology but as a menu of tools, to enable continuous monitoring of whether equitable conservation is being achieved.
- Governmental recognition of community initiatives in conservation, such as CCAs, has sometimes, ironically, undermined or threatened them; this is especially the case where such recognition comes with imposition of uniform institutional mechanisms, rules, or government interference. The challenge is to devise mechanisms of recognition and support of CCAs that respect the diversity of local arrangements, and provide inputs only where required and requested by the communities concerned, for the purpose of more effective conservation or equity.
- Coordination amongst various agencies responsible for actions across the landscape, remains poor in many countries, thereby undermining attempts to achieve conservation and livelihood security at a landscape level; more innovative institutional mechanisms and policies are needed to break through the conventional

divisions amongst departments and agencies, and to empower citizens to participate in larger scale planning and implementation.

A major challenge to conservation in general, and to the new paradigms of conservation in particular, is the unsustainability of ‘development’ models rapidly spreading around the world. Economic globalization has considerably expanded the scope of predatory industrial forces, pushed the homogenization of cultures and worldviews and production systems, and opened up hitherto inaccessible or nationally protected sites and communities to exploitation...all in the name of ‘development’ and ‘growth’. Climate change is perhaps the most devastating result, the various manifestations of which will have to be confronted by conservationists around the world. More localized impacts are felt governments decide to locate projects and processes like mining, large hydro-projects, tourism resorts, industries, ports, and the like, into ecologically and culturally sensitive areas. In India and China, for instance, the last couple of decades of rapid economic growth have significantly enhanced ecological damage and the displacement or dispossession of communities.

Another major challenge is to bring together the various different strands of policy and practice that converge in their impacts on communities: development, conservation, human rights, responses to global issues like climate change. The landscape and ecosystem approaches may be a possible way to do this, but these too will encounter significant political and intellectual resistance as they will challenge prevailing power structures and mindsets.

In a number of places conservationists, social activists and local communities have joined hands to resist destructive development processes, but these instances of cooperation appear to still be few and far between. In an atmosphere in which they can’t even get along with each other, where there remain fundamental differences in the approach taken to conservation, it is indeed difficult to combine strengths to face a common enemy. This is all the more reason that more equitable and participatory forms of conservation have to be accepted and tried out, for only they provide a solid platform to bring together sections of society that could jointly fight the ‘development’ juggernaut...and evolve alternative visions and processes of human welfare and development.

8. Conclusion

The review above has shown that there has been considerable progress in integrating local voices in global policy-making relating to conservation. Most environment and conservation related treaties and forums are now explicitly oriented towards the recognition of the rights of indigenous peoples and local communities, and advocate the involvement and empowerment of such communities at all levels of conservation decision-making. In the case of protected areas, the fulcrum of formal conservation policy over the last several decades, a paradigm shift has taken place with the introduction of new governance types (collaborative management, community conserved areas), the move towards landscape level management, and the growing integration of conservation and human rights approaches.

However, and this the next big challenge, much of what has changed in the international arena has not yet translated into national level policy and practice. In some countries the paradigm shift is much further ahead than in most others, indeed in some it began well before the international shifts took place and are likely to have been one factor in the latter. But available evidence suggests that a large number of countries, most likely the vast majority, have a considerable way to go in fully implementing equitable, participatory forms of conservation.

Moving further along the road of equitable conservation will require governments, civil society organizations including international conservation NGOs, scientific institutions, and others, to engage much more with indigenous peoples and local communities on platforms that assure equality and mutual respect. It will need much greater attention to complex issues of land/water and resource tenure, the integration of traditional and modern knowledge, interdisciplinary work, adaptability to diverse ecological and cultural conditions, the distribution of costs and benefits, and inequities within communities....amongst others.

Meanwhile, major hurdles remain at the international level also. In particular, even where conservation policy has become more progressive, it risks being undermined by international economic and political forces that foster unsustainable 'development' processes, and cultural and economic homogenization. Forums like the World Trade Organisation, and entities like the world's biggest multinational corporations, remain largely out of the influence of environmental, conservation, and human rights discourse. Even in some environmental processes, such as the international response to climate change (especially the economic instruments that have become the playground for the world's corporations), threaten to marginalize indigenous peoples and local communities. In such a situation, there is even more of a need for a convergence amongst conservation and human rights advocates from all sections of society. Jointly, we can resist the forces of global destruction; separately, we will all sink.

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Accessing Biological Resources: Complying with the Convention on Biological Diversity

Hanna Jaireth⁸

The recognition of community conservation areas (CCAs) in international law and policy can be attributed to the normative and spatial effects of international human rights discourse, which discourse in turn has evolved from struggles over the centuries for social justice in relation to the rights of Indigenous peoples⁹ and local communities in many countries.

There are an estimated 350 million Indigenous people living in more than 70 countries. These people live within dynamic cultures and interact with global forces, but often nevertheless retain distinct attributes such as traditional languages, creative practices, customary laws, and traditional knowledge and beliefs.

In August 2007 the UN General Assembly (with very few exceptions), recognised the right of Indigenous people to the lands, territories and resources which they traditionally owned, with due respect to their customs, traditions and land tenure systems. Signatories to the UN Declaration of the Rights of Indigenous Peoples declared their conviction, amongst others, that ‘respect for Indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.’ Shortly afterwards, the Secretariat of the Convention on Biological Diversity (CBD) hosted the annual meeting of the UN Inter-Agency Support Group on Indigenous Issues (IASG).¹⁰

The World Parks Congress in 2003¹¹ and the 7th Conference of Parties of the Convention on Biological Diversity (CBD) in February 2004, and again in March 2006, endorsed Community Conserved areas (CCAs) as deserving of recognition and support. Extracts of relevant decisions are at [Attachment 1](#).

The recognition of CCAs has resulted largely from the global social movement of IPOs which has demanded the recognition of Indigenous peoples’ human rights.¹² Broad international norms¹³ of non-discrimination and ‘racial’ and gender equality inform the campaign for the better recognition of traditional knowledge and Indigenous peoples’ intellectual and cultural property rights. Commitments that Indigenous and local

⁸ Member, various IUCN Commissions and working groups. This annex draws on H. Jaireth, 2004. Human Rights Discourse, Indigenous Peoples, and Legal Evolution. In N. Stoainoff ed. *Accessing Biological Resources: Complying with the Convention on Biological Diversity*. Kluwer, London:187–221, which in turn drew on the author’s PhD thesis, completed at the Australian National University (2001).

⁹ The definition for Indigenous peoples in the International Labour Organisation Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (1989) has not been incorporated in more recent international instruments. The Declaration on the Rights of Indigenous Peoples does not include a definitional article. In 1996 the Chair of the then Working Group on Indigenous Populations, Professor Daes, suggested that definitions for minorities and indigenous peoples were neither possible nor useful because of their diversity, and that past attempts to produce definitions had produced greater ambiguity. She suggested a procedural solution of ensuring that the implementation of a declaration on the rights of indigenous peoples was entrusted to a body which was fair-minded and open to the views of indigenous peoples and governments, so that there was room for the reasonable evolution and regional specificity of the concept of ‘indigenous’ in practice: see *Standard Setting Activities: Evolution of Standards Concerning the Rights of Indigenous People: Working Paper on the Concept of ‘Indigenous People’* (Chairperson-Rapporteur: E.-I. Daes), 10 June 1996, UN Doc. E/CN.4/Sub.2/AC.4/1996/2.

¹⁰ The IASG includes representatives of UN agencies and its aim is to strengthen inter-agency cooperation to promote the human rights and wellbeing of Indigenous peoples and the implementation of recommendations of the United Nations Permanent Forum on Indigenous Issues: Secretariat of the Convention on Biological Diversity, Communiqué: United Nations Environment Programme, ‘CBD Secretariat Hosts Meeting of the Inter-Agency Support Group On Indigenous Issues (IASG) Days After Adoption of the Declaration on the Rights of Indigenous Peoples by The UN General Assembly’, Montreal 18 September 2007, <<http://www.cbd.int/doc/press/2007/pr-2007-09-18-indigenous-en.pdf>>

¹¹ For a summary of the recognition by the IUCN World Parks Congress concerning CCAs, see: CEESP/WCPA Theme on Indigenous and Local Communities, Equity and Protected Areas (TILCEPA) & CEESP Theme on Governance, Equity and Rights (TGER), <http://www.iucn.org/themes/ceesp/Wkg_grp/TILCEPA/WPC.htm#key>

¹² H. Jaireth, ‘Human rights discourse, indigenous peoples, and legal evolution’ in N. Stoainoff ed. *Accessing Biological Resources: Complying with the Convention on Biological Diversity*. Kluwer, London, 2004, ch.10

¹³ A norm in international law is a standard, rule, obligation or duty which most governments consider to be binding. The breach or threatened breach of an international norm is likely to bring sustained international pressure for corrective action.

communities' traditional knowledge and land and sea management practices should be given the same respect as any other form of knowledge are based on the norm of non-discrimination.

International human rights discourse has been particularly influential in the development and implementation of the CBD.¹⁴ Even though the legal obligations in that instrument are fairly weak, they nevertheless set benchmarks and have been relied on in other fora to ratchet further reforms. Ironically, the implementation of the CBD has been proceeding apace, whilst elsewhere in the UN the negotiation of the United Nations Declaration on the Rights of Indigenous Peoples was, until 30 August 2007, fraught and protracted. Intersubjective understandings about non-discrimination, and gender and 'racial' equality underpin broadening respect for traditional knowledge and the assertion and recognition of customary property rights and CCAs. There is a considerable and increasing body of views about cultural rights and non-discrimination under the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which are relied on by Indigenous and local communities, and women's groups, to improve recognition of their rights.¹⁵ To the extent that governments and other international actors have promoted and agreed with these discourses, they can be considered embedded in and constituted by their discursive context.¹⁶

Many non-Indigenous academics and NGOs have been supporting the rights-based campaign for recognition of customary property rights, and traditional knowledge and management practices. There is also an expanding academic literature on ethnobotany, agro-biodiversity, agro-ecology, ethnobiology, traditional ecological knowledge and sustainable development.¹⁷ A range of professional NGOs have been particularly concerned with recognising traditional land and sea management practices, adopting codes of ethics for research concerning biodiversity prospecting and intellectual property rights, and many of these organisations have been supportive of IPOs' activities and aspirations. Stakeholders promoting ethical statements and professional constraints when working with Indigenous peoples and their cultural and natural heritage, commonly articulate their commitments using the language of international norms and principles.¹⁸

Several internationally authoritative academics warrant special recognition for their contribution to the recognition of traditional knowledge. The term 'traditional resource rights' (TRR) is most closely associated with Graham Dutfield and the late Darrell Posey of the Working Group on Traditional Resource Rights based at Oxford University. Posey and Dutfield drew on international legal instruments to justify a 'bundle of rights' approach, and the development of *sui generis* legal and policy instruments and processes to conserve and protect

¹⁴ Adopted on 22 May 1992 in Nairobi and opened for signature at the UN Conference for Environment and Development in Rio de Janeiro from 3–14 June 1992.

¹⁵ See for example: *Lovelace v. Canada*, Communication No 24/1977, Report of the Human Rights Committee, GAOR, 36th session, Supp. No. 40, UN Doc A/36/40, Communication No. 167/1984, *Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada*, in Report of the Human Rights Committee, vol. II, UN Doc A/45/40 (1988) (Annex IV); Communication No. 197/1985, *Kitok v. Sweden*, in UN Doc A/43/40 (1988) (Annex IX, section G); *Ilmari Lansman v. Finland*, Communication No. 511/1992, UN Doc CCPR/52/D/511/1992, reproduced in *Australian Indigenous Law Reporter*, Vol. 1, No. 1, January 1996, pp. 154-161. Various general comments are also available for guidance, including: General Comment No. 23(5) on Article 27 of the Covenant on Civil and Political Rights, Text adopted by the Committee at its 1314th meeting on 6 April 1994, CCPR/C/21/Rev.1/Add.5, 1994; 'General Recommendation XXIII (51) concerning Indigenous Peoples' in Committee on the Elimination of Racial Discrimination, Fifty-first session, 4-22 August 1997, CERD/C/51/Misc. 13/Rev. 4, 18 August 1997; Committee on the Elimination of Racial Discrimination, General Recommendation XX (48) on Article 5, UN Doc CERD/48/Misc. 6/Rev. 2, 1996; Committee on the Elimination of Racial Discrimination, General Recommendation XXI on self-determination, UN Doc CERD/48/Misc. 7/Rev. 3.

¹⁶ M. Shapiro, G.M. Bonham and D. Heradstveit, 'A discursive practices approach to collective decision-making', *International Studies Quarterly*, vol.32, 1988, pp.397-419, B. Seitz, 'Constituting the political subject, using Foucault', *Man and World*, vol.26, no.4, 1993, pp.443-455.

¹⁷ D.M. Warren, L.Jan Slikkerveer, D. Brokensha and W.H.J.C. Dechering, eds., *The Cultural Dimension of Development: Indigenous Knowledge Systems*, Intermediate Technology Publications, London, 1995; J.T. Inglis ed., *Traditional Ecological Knowledge: Concepts and Cases*, International Program on Traditional Ecological Knowledge and International Development Research Centre, Ottawa, 1993; T. Greaves, ed., *Intellectual Property Rights for Indigenous Peoples, A Sourcebook*, Society for Applied Anthropology, Oklahoma City, Oklahoma, 1994.

¹⁸ See generally: *Article 8(j): Traditional Knowledge, Innovations and Practices, Instruments, Guidelines, Codes and Statements*, accessed from <http://www.biodiv.org/programmes/socio-eco/traditional/instruments.asp#STA> on 17 July 2002.

cultural and biological diversity.¹⁹ In WWF and IUCN Gonzalo Oviedo and Grazia Borrini-Feyerabend warrant special recognition for their outstanding contributions in this area.²⁰

The lead up to the Earth Summit in 1992 was of crucial importance for the recognition of Indigenous and local communities resource management practices, and later for the recognition of CCAs. IPOs and their supporters strategically invoked UN processes to further their agenda regarding recognition of customary property rights and traditional knowledge. This resulted in work programs requiring the preparation of special studies, reports, and draft guidelines, particularly concerning intellectual and cultural property rights. The Working Group on Indigenous Populations (WGIP) within the former ECOSOC Commission on Human Rights, for example, was asked to request that ‘traditional knowledge’ issues be considered at the 1992 UN Conference on Environment and Development (UNCED). This facilitated the recognition of relevant standards in the instruments adopted at the Earth Summit or opened for signature there. A 1990 WGIP resolution called on UNCED to ensure

that any new conventions which may be adopted regarding biodiversity or conserving renewable resources, provide explicitly for the role of Indigenous peoples as resource users and managers, and for the protection of Indigenous peoples’ right to control of their own traditional knowledge of ecosystems.

That resolution also sought co-operation with other UN agencies and processes concerning Indigenous peoples and environmental rights, an experts meeting on the issues, and invited the World Intellectual Property Organisation (WIPO) to prepare recommendations concerning the protection of the intellectual property of Indigenous peoples, for discussion within the WGIP.²¹ In 1991 the Preparatory Committee for UNCED requested the UNCED Secretariat to take into account the traditional knowledge of Indigenous and local communities relevant to environment and development when preparing for the conference.²² The Committee referred to the proposed 1993 International Year for the World’s Indigenous People, and relevant provisions in the Platform produced at the Latin American and Caribbean countries’ regional preparatory meeting for UNCED.²³

In order to fulfil these requests, in May 1992 a technical conference on the realisation of sustainable and environmentally sound self-development for Indigenous peoples was held in Chile. The conference included detailed discussions about the value of traditional ecological knowledge and programs to promote and recognise such knowledge, with the late Darrel Posey as one of the key participants.²⁴ It identified numerous principles

¹⁹ D. Posey and G. Dutfield, *Beyond Intellectual Property: Toward Traditional Resource Rights for Indigenous Peoples and Local Communities*, International Development Research Centre, Ottawa, 1996; G. Dutfield, *Intellectual Property Rights, Trade and Biodiversity*, Earthscan Publications Ltd in association with IUCN, Stirling, 2000.

²⁰ Abrams, P., Borrini-Feyerabend, G., Gardner, J. and P. Heylings, ‘Evaluating Governance. A Handbook to Accompany a Participatory Process for a Protected Area’, manuscript, Parks Canada and TILCEPA, 2003; Borrini-Feyerabend, G., ‘Governance of Protected Areas, Participation and Equity’, pages 100-105 in Secretariat of the Convention on Biological Diversity, *Biodiversity Issues for Consideration in the Planning, Establishment and Management of Protected Areas Sites and Networks*, CBD Technical Series, 15, Montreal (Canada), 2004; Borrini-Feyerabend, G., Pimbert, M., Farvar, M.T., Kothari, A. and Renard, Y. *Sharing Power – Learning by Doing in Co-management of Natural Resources throughout the World*. IIED and IUCN/CEESP/CMWG, Ed. Cenesta, Teheran, Iran. 2004; Borrini-Feyerabend, G., A. Kothari and G. Oviedo, *Indigenous and Local Communities and Protected Areas. Towards equity and enhanced conservation*, IUCN/WCPA Best Practice Series, 11, Gland (Switzerland) and Cambridge (United Kingdom), 2004 [NEEDS TO BE EXPANDED WITH PUBLICATIONS]

²¹ Economic and Social Relations between Indigenous Peoples and States, Sub-Commission Resolution 1990/27, UN Doc E/CN.4/1991/2, E/CN.4/Sub.2/1990/59, pp.55-7.

²² Information received from United Nations Organs, Specialized Agencies and Intergovernmental Organizations: Note by the Secretary-General: Information Submitted by the United Nations Conference on Environment and Development, 4 July 1991, UN Doc E/CN.4/Sub.2/AC.4/1991/2/Add.1.

²³ The ‘Tlatelolco Platform on Environment and Development’ adopted in Mexico City on 7 March 1991, recognised that knowledge of biodiversity, both scientific and grass-roots, was part of the scientific and cultural heritage of every nation, and called for international law to regulate access and equitable benefit-sharing agreements concerning genetic resources: *Letter dated 20 March 1991 from the Permanent Representative of Mexico to the United Nations Office at Geneva addressed to the Secretary-General of the United Nations Conference on Environment and Development*, 22 March 1991, UN Doc A/CONF.151/PC/L.30.

²⁴ *Discrimination Against Indigenous Peoples: Report of the United Nations Technical Conference on Practical Experience in the Realization of Sustainable and Environmentally Sound Self-Development of Indigenous Peoples* (Santiago, Chile, 18-22 May 1992), Rapporteur: Ingmar Egede, UN Doc E/CN.4/Sub.2/1992/31. The background papers for the conference are in UN Doc E/CN.4/Sub.2/1992/31 Add.1.

and made specific recommendations to promote the realisation of sustainable and environmentally sound self-development. These included '[r]ecognition, protection and respect for Indigenous knowledge and practices that are essential contributions to the sustainable management of the environment'. They also called on the UN system to take measures for the effective protection of the property rights, including intellectual property rights, of Indigenous peoples concerning 'cultural property, genetic resources, biotechnology and biodiversity'.²⁵ There are clear similarities in language between these declarations and the terms of the CBD. Similar commitments were made in other instruments negotiated at the Earth Summit,²⁶ at the 1993 World Conference on Human Rights,²⁷ later in the implementation of instruments such as the Ramsar Convention on Wetlands,²⁸ and in many other instruments and decisions since.

The CBD is the most important treaty which deals with traditional resource management practices. The CBD entered into force in December 1993 and had been ratified by 190 countries in October 2007.²⁹ Indigenous peoples' representatives have been vocal and visible stakeholders in discussions over the implementation of the CBD, more so than representatives of 'local communities', even though the CBD is relevant to both.

Under the CBD, Contracting Parties are to respect, preserve and maintain Indigenous and local communities' knowledge, innovations and practices relevant for biodiversity conservation and sustainable use, 'as far as possible and as appropriate'. The CBD articles which are of special relevance to Indigenous peoples include the following:

Art. 8. *In-situ* Conservation

Each Contracting Party shall, as far as possible and as appropriate:

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of Indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

Art. 10 concerns the sustainable use of components of biological diversity, and art. 10(c) provides that State Parties shall, 'as far as possible and as appropriate', 'protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements'. State parties are also required to adopt economically and socially sound incentive measures for biodiversity conservation, 'as far as possible and as appropriate': art. 11. The Convention also deals with the exchange of information, including Indigenous and traditional knowledge (Art. 17(2)), and with cooperation in the development and use of technologies, including Indigenous and traditional technologies: art. 18(4).

The reliance by many IPOs on international human rights mechanisms and discourse suggests an affirmation of IPOs' political identity and subjectivity within the normative boundaries of the current international order, and consistent with a movement towards the constitutional accommodation of politicised cultural diversity.³⁰ Broad international norms of non-discrimination and 'racial equality' inform the campaign for recognition of CCAs, as do more specific international legal obligations concerning rights to culture which arise under treaties of universal application.

The number of institutions, NGOs and academics who are endorsing ethical statements about professional ethical constraints when working with Indigenous peoples, are also expressing a form of subjectivity created discursively. This type of ethical subjectivity both preceded and has proliferated since the entry into force of the CBD. Thus the CBD's normative concerns can be seen as a constitutive and productive force which is generating commitments from state and non-state actors consistent with it. The range of actors concerned about ethical research and equitable benefit-sharing may be seen as constituting a social movement, in part legitimated by the CBD. This trend has derived legitimacy from broader global environmental and human rights movements and the participatory processes managed by inter-governmental institutions.

Attachment 1

²⁵ UN Doc E/CN.4/Sub.2/1992/31, at pp.16, 17.

²⁶ See for example principle 22 of the Rio Declaration on Environment and Development and chapter 26 of Agenda 21

²⁷ Vienna Declaration and Programme of Action

²⁸ See: Establishing and strengthening local communities' and indigenous people's participation in the management of wetlands, Ramsar Convention Bureau, Gland (Switzerland) 2000.

²⁹ The United States is the most significant non-party to the CBD, having signed it in June 1993. see: 'List of parties', <<http://www.cbd.int/convention/parties/list.shtml>>, viewed 11 October 2007

³⁰ J. Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity*, Cambridge University Press, New York, 1995.

References to Community Conserved Areas in the Biodiversity Convention Programme of Work ON
PROTECTED AREAS

Decision VII/28: Protected areas (Articles 8 (a) to (e))³¹

The Conference of the Parties

...

3. Also welcomes the outputs of the Vth IUCN World Parks Congress, in particular the message from the Congress to the Convention on Biological Diversity, and its contribution to the programme of work on protected areas;

...22. Recalls the obligations of Parties towards Indigenous and local communities in accordance with Article 8(j) and related provisions and notes that the establishment, management and monitoring of protected areas should take place with the full and effective participation of, and full respect for the rights of, Indigenous and local communities consistent with national law and applicable international obligations;

(c) To contribute to the further development of "tool kits" for the identification, designation, management, monitoring and evaluation of national and regional systems of protected areas, including ecological networks, ecological corridors, buffer zones, with special regard to Indigenous and local communities and stakeholder involvement and benefit sharing mechanisms;

Suggested supporting activities of the Executive Secretary

PROGRAMME ELEMENT 1: Direct actions for planning, selecting, establishing, strengthening, and managing, protected area systems and sites

Goal 1.1 - To establish and strengthen national and regional systems of protected areas integrated into a global network as a contribution to globally agreed goals

...1.1.4 By 2006, conduct, with the full and effective participation of Indigenous and local communities and relevant stakeholders, national-level reviews of existing and potential forms of conservation, and their suitability for achieving biodiversity conservation goals, including innovative types of governance for protected areas that need to be recognized and promoted through legal, policy, financial institutional and community mechanisms, such as protected areas run by Government agencies at various levels, co-managed protected areas, private protected areas, Indigenous and local community conserved areas.

...

PROGRAMME ELEMENT 2: GOVERNANCE, PARTICIPATION, EQUITY AND BENEFIT SHARING

Goal 2.1 - To promote equity and benefit-sharing

Target: Establish by 2008 mechanisms for the equitable sharing of both costs and benefits arising from the establishment and management of protected areas.

Suggested activities of the Parties

2.1.2. Recognize and promote a broad set of protected area governance types related to their potential for achieving biodiversity conservation goals in accordance with the Convention, which may include areas conserved by Indigenous and local communities and private nature reserves. The promotion of these areas should be by legal and/or policy, financial and community mechanisms.

2.1.3. Establish policies and institutional mechanisms with full participation of Indigenous and local communities, to facilitate the legal recognition and effective management of Indigenous and local community conserved areas in a manner consistent with the goals of conserving both biodiversity and the knowledge, innovations and practices of Indigenous and local communities.

2.1.4. Use social and economic benefits generated by protected areas for poverty reduction, consistent with protected-area management objectives.

2.1.5. Engage Indigenous and local communities and relevant stakeholders in participatory planning and governance, recalling the principles of the ecosystem approach.

Goal 2.2 - To enhance and secure involvement of Indigenous and local communities and relevant stakeholders

Target: Full and effective participation by 2008, of Indigenous and local communities, in full respect of their rights and recognition of their responsibilities, consistent with national law and applicable international obligations, and the participation of relevant stakeholders, in the management of existing, and the establishment and management of new, protected areas

Suggested activities of the Parties

2.2.1. Carry out participatory national reviews of the status, needs and context-specific mechanisms for involving stakeholders, ensuring gender and social equity, in protected areas policy and management, at the level of national policy, protected area systems and individual sites.

...

2.2.4 Promote an enabling environment (legislation, policies, capacities, and resources) for the involvement of Indigenous and local communities and relevant stakeholders .../ in decision making, and the development of

³¹ Decision VII/28: Protected areas (Articles 8 (a) to (e)), <<http://www.cbd.int/decisions/cop-07.shtml?m=COP-07&id=7765&lg=0>>, viewed 11 October 2007

their capacities and opportunities to establish and manage protected areas, including community-conserved and private protected areas.

2.2.5 Ensure that any resettlement of Indigenous communities as a consequence of the establishment or management of protected areas will only take place with their prior informed consent that may be given according to national legislation and applicable international obligations.

Suggested supporting activities of the Executive Secretary

2.2.6 Make available to Parties case-studies, advice on best practices and other sources of information on stakeholder participation in protected areas

2.2.7 Promote, through the CHM, technical publications and other means, the international sharing of experience on effective mechanisms for stakeholder involvement and governance types in conservation in particular with regard to co-managed protected areas, Indigenous and local community conserved areas and private protected areas.

Decision VIII/24: Protected areas: Review of implementation of the programme of work on protected areas for the period 2004–2006³²

18. *Invites* Parties:

(g) To support institutional strengthening and improved governance of protected-areas management authorities including those of indigenous and local communities and to build capacities of protected-area officials and members of community – based management initiatives, where appropriate to undertake sound financial planning and management;

22. *Invites* the Global Environment Facility:

e) To support community conserved areas, ensuring the immediate, full and effective participation of indigenous peoples and local communities in the development of relevant activities;

33. *Urges* Parties, other Governments, funding and other relevant organizations to provide adequate financial resources and other support for workshops to focus on the use and further development of available toolkits, in particular in relation to co-managed protected areas and community-conserved areas, and to ensure the full and effective participation of indigenous and local communities in this activity;

34. *Recognizes* the need for the continued improvement of the toolkits in cooperation with relevant partners, including indigenous and local communities, in order to fill existing gaps and achieve better usability;

³² Decision VIII/24: Protected areas: Review of implementation of the programme of work on protected areas for the period 2004-2006, <<http://www.cbd.int/decisions/default.aspx?m=COP-08&id=11038&lg=0>> viewed 11 October 2007

Local fishing community voices in global and national conservation of fisheries and coastal/ wetland resources: How far have we progressed?

International Collective in Support of Fishworkers³³

Over 200 million people worldwide— most of whom are in the artisanal and small-scale sector in the tropical multi-species fisheries of the developing world—are estimated to depend on inland and marine fisheries and fish farming for a livelihood. Fishing communities have lived along the coasts of seas, rivers, lakes and other water bodies for long, given their need for being close to fishing grounds.

Through generations of close interaction with the coastal ecosystem, coastal and indigenous fishing communities have evolved well-developed traditional ecological knowledge systems (TEKS), as reflected in their day-to-day interactions with the resource base and their fishing practices. Fishing communities also have a long-term stake in the conservation and protection of biodiversity, given their reliance on coastal and marine biodiversity for livelihoods and income, and several communities across the world have developed their own norms to regulate access to resources, resolve conflicts, and ensure equity. They often have clear perceptions of 'claims' to the resources (land and water/sea-based) on which their lives and livelihoods depend. Their perceptions and claims have, in some cases, obtained wider social acceptance in the larger community and attained the status of unwritten or, in a few cases, legally recognized 'rights'.

In recent decades manifold challenges face fishing communities. In many parts of the world, coastal and marine biodiversity, including mangrove forests, are under serious threat due to both fisheries and non-fisheries-related factors such as pollution. With growing competing uses of coastal spaces, fishing communities in several parts of the world find themselves displaced from their traditional lands and fishing grounds, or facing the threat of displacement, given that most communities lack formal titles to the lands they have customarily lived on and used, or recognized rights to their fishing grounds. Ironically pressures of displacement and denial of access are from both 'development' and 'conservation' initiatives, in the latter case, those that are target-driven and non-participatory.

For coastal fishing communities, the implications of these developments are severe. They have, consequently been stressing the need for participatory management and conservation of coastal and fisheries resources as well the need to recognize, protect and strengthen their rights to access and use biodiversity in a responsible manner, to pursue sustainable livelihoods, and to participate in decision-making and resource management processes at all levels.

This note discusses the extent to which international legal instruments and processes have recognized the rights of the small-scale and artisanal fishing communities, as well as some of the lacunae that still exist at the international and national levels.

1. What major breakthroughs have been made at international levels, in conservation policy and practice, with regard to the integration of indigenous peoples and local fishing communities?³⁴

³³ By the International Collective in Support of Fishworkers (ICSF) with inputs from the following: Jackie Sunde (South Africa), Antonio Carlos Diegues (Brazil), Rene Scharer (Brazil) Cornelie Quist (Netherlands), Ramya Rajagopalan (India), Sebastian Mathew (India), John Kurien (India), Brian O'Riordan (Belgium) and Chandrika Sharma (India)

³⁴ Of the international legal instruments mentioned in this section the following are binding on States that are parties to them: *Ramsar Convention*, *Convention of Biological Diversity (CBD)*, *Convention on the Conservation of Migratory Species of Wild Animals (CMS)*, *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, and the *United Nations Fish Stock Agreement (UNFSA)*. The other international instruments mentioned, including the *FAO Code of Conduct for Responsible Fisheries (CCRF)*, *Agenda 21*, *United Nations Declaration on the Rights of Indigenous Peoples*, *Millennium Development Goals*, while not legally binding, represent a moral and political commitment by States, and can be used as guidelines in enacting legislation and formulating policies.

Several international legal instruments recognize various dimensions of the rights of indigenous peoples and local fishing communities (men and women), as evident in the following indicative compilation:

- (i) **Protecting customary use of resources:** Article 10 (c) of the *Convention of Biological Diversity (CBD)* calls on States to protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements. Similarly, while Article III.5 of the *Convention on the Conservation of Migratory Species of Wild Animals* (CMS or the Bonn Convention) prohibits the taking of species under Appendix I, Article III.5 (c) notes that exceptions may be made if the taking is to accommodate the needs of traditional subsistence users of such species. The term "management" as used in the CMS includes sustainable use and, therefore, traditional hunting practices, of special importance for indigenous peoples, are allowed under this Convention, subject to conditions of sustainability. Article 7.6.6 of the *FAO Code of Conduct for Responsible Fisheries (CCRF)*, highlights the need to recognize traditional practices, needs and interests of indigenous people and local fishing communities highly dependent on fishery resources for their livelihood.
- (ii) **Respecting, maintaining and promoting traditional knowledge/practices:** Article 8(j) of the CBD recognizes the need to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, and to promote their wider application. The need to encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices, is also highlighted. Section 17.74 b, *Agenda 21*, emphasizes that States must take into account the traditional knowledge and interests of local communities, small-scale artisanal fisheries and indigenous people in development and management programmes. Article 6.4 of the CCRF stresses the need to take conservation and management decisions for fisheries, based on the best scientific evidence available, also taking into account traditional knowledge of the resources and their habitat, as well as relevant environmental, economic and social factors. The need to investigate and document traditional fisheries knowledge and technologies, in particular those applied to small-scale fisheries, in order to assess their application to sustainable fisheries conservation, management and development, is highlighted in Article 12.12 of the CCRF.
- (iii) **Stressing participatory approaches to management/conservation:** The need for full and effective participation of indigenous and local communities is recognized by several international legal instruments dealing with conservation of coastal and marine resources, including the CBD, the CCRF, Agenda 21 and the Ramsar Convention. For example, Programme Element 2 on Governance, participation, equity and benefit sharing, under the Programme of Work in Protected Areas (COP7, Kuala Lumpur, 2004) of the CBD, emphasizes the full and effective participation of local and indigenous communities in protected area management. Article 10.1.2 of the CCRF stresses that, in view of the multiple uses of the coastal area, States should ensure that representatives of the fisheries sector and fishing communities are consulted in the decision-making processes, and are involved in other activities related to coastal area management planning and development. Article 14 of the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* ask States to take all appropriate measures to ensure that rural women participate in, and benefit from, rural development and, in particular, to ensure that women have the right to participate in the elaboration and implementation of development planning at all levels.
- (iv) **Recognizing role of communities in conservation/ community conserved areas:** The above-mentioned Programme Element 2 on Governance, participation, equity asks States to recognize and promote a broad set of protected area governance types, including areas conserved by indigenous and local communities, using legal and/or policy, financial and community mechanisms. Resolution VII.8 (COP7, San Jose, 1999) under the *Ramsar Convention* on "Local communities and indigenous people" refers to ILO's Convention C169 concerning Indigenous People and Tribal Peoples in independent countries as well as to the fact that in many contexts, indigenous people and local communities are already involved in managing and using wetlands sustainably, and have long-standing rights, ancestral values, and traditional knowledge and institutions associated with their use of wetlands. The Resolution adopted, as an Annex, the Guidelines for establishing and strengthening local communities' and indigenous people's participation in the management of wetlands. The guidelines emphasize the need to encourage active and informed participation, and the assumption of responsibility, by local communities and indigenous people in the management of Ramsar-listed sites and other wetlands and the implementation of the wise-use principles at the local, watershed, and national levels. Resolution IX. 4 asks States to systematically collect ecological and socio-economic data including on artisanal fisheries and aquaculture and highlights the importance of participatory management for conservation and sustainable of fisheries resources.

- (v) **Supporting small-scale fisheries and fishworkers:** Agenda 21, Section 17.81 asks coastal States to support the sustainability of small-scale artisanal fisheries by integrating small-scale artisanal fisheries development into marine and coastal planning as well as by recognizing the rights of small-scale fishworkers. Section 17.94 asks States to provide support to local fishing communities, in particular those that rely on fishing for subsistence, indigenous people and women, including, as appropriate, the technical and financial assistance to organize, maintain, exchange and improve traditional knowledge of marine living resources and fishing techniques, and upgrade knowledge on marine ecosystems. Article 24. 2 (b) of the *United Nations Fish Stock Agreement* (UNFSA) requires States to avoid adverse impacts on, and ensure access to, fisheries by subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, while adopting conservation and management measures for straddling and highly migratory fish stocks.
- (vi) **Recognizing rights of indigenous people to traditionally-owned lands, territories and resources:** Article 26 of the recently adopted *United Nations Declaration on the Rights of Indigenous Peoples*, among other things, recognizes the rights of indigenous peoples to traditionally-owned lands, territories and resources and asks States to give legal recognition and protection to these lands, territories and resources, with due respect to the customs, traditions and land tenure systems of indigenous peoples concerned.
- (vii) **Recognizing preferential access rights of small-scale fishers to traditional fishing grounds:** Article 6.18 of the CCRF stresses the need to protect the rights of fishers and fishworkers, particularly those engaged in subsistence, small-scale and artisanal fisheries, to a secure and just livelihood, as well as preferential access, where appropriate, to traditional fishing grounds and resources in the waters under their national jurisdiction. Notably, in the Basic Principles in Annex I on the Elaborated Programme of Work On Marine and Coastal Biological Diversity, under Decision VII/5 (COP7, Kuala Lumpur, 2004) of the CBD, specific reference is made to Article 6.18 of the CCRF.
- (viii) **Contributing to poverty alleviation:** States agreed to eradicate extreme poverty and hunger by halving, between 1990 and 2015, the proportion of population below \$1 (PPP) per day, when they adopted the *Millennium Development Goals* (MDGs) in 2000. The Basic Principles in Annex I on the Elaborated Programme of Work On Marine and Coastal Biological Diversity, under Decision VII/5 (COP7, Kuala Lumpur, 2004), CBD, specifies that this programme of work aims to make a direct contribution to poverty alleviation, in accordance with the Millennium Development Goals.

2. What were the major factors in bringing about these breakthroughs?

The participation of small-scale and artisanal fishworker organizations, women's groups, indigenous peoples organization, and support organizations in various international processes related to coastal and marine resources conservation and management, undoubtedly played a major role in drawing attention to the concerns of indigenous and small-scale fishing communities, and in influencing the language of the various international instruments and decisions under them.

Fishworker, support organizations and environmental groups actively engaged with fisheries-specific processes such as during the United Nations Conference on Environment and Development (UNCED) that adopted Agenda 21, the United Nations Fish Stocks Agreement, and the process that led to the adoption of the CCRF. From the perspective of the artisanal and small-scale fisheries sector, Chapter 17 of Agenda 21 on "Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources" takes into account several of their concerns. The UNFSA and CCRF also recognize the need to take into account the interests of small-scale fishworkers and fishing communities.

It was the strong participation of indigenous groups and other organizations supporting indigenous people and local communities that influenced the language of the CBD and the decisions under it, such as, for example, on the Protected Area Programme of Work. On the other hand, due to the limited participation and representation of fishworker groups and support organization in the lead up to several of the decisions taken under the Programme of Work on Marine and Coastal Biodiversity, the rights and concerns of small-scale and artisanal fishworkers are not as well represented in the decisions taken under this Programme of Work, in particular on integrated marine and coastal area management, and on marine and coastal protected areas.

3. What key weaknesses and hurdles remain at international levels?

In general, there are strong provisions in existing international legal instruments recognizing various dimensions of the rights of indigenous and small-scale fishing communities vis a vis conservation.

Weaknesses remain, however, at the operational level, and the following steps are necessary to address these weaknesses:

- It is important to ensure adequate *direct* participation of indigenous and small-scale fishing communities (men and particularly women), as well as groups supporting them, in ongoing negotiations, conferences, workshops and monitoring processes, taking place under the auspices of these instruments, including by making available finances for this.
- For effective participation of indigenous communities and small-scale fishers/users in international processes, effort and investment is needed (i) for ensuring interpretation during meetings and translation of key documents, and (ii) in developing the capacity of groups, particularly women, to engage with these processes, through training, information, awareness, literacy, and education.
- The agenda adopted should consistently include monitoring of the implementation of provisions related to rights of indigenous and small-scale fishing communities, particularly issues of governance. This continues to be a weakness, especially in discussions on marine protected areas and integrated coastal management. In this context, it is important that clear indicators, standards and norms for measuring implementation of the above-mentioned provisions, are put in place. It is particularly important to have in place indicators, standards and norms to gauge women's participation and the integration of a gendered analysis of conservation initiatives.

4. To what extent are these developments at international levels reflected in national policy and practice on conservation? Conversely, are there elements of national policy and practice that are more progressive, but are not getting built into international policy?

As mentioned earlier, there are, in general, strong provisions in existing international legal instruments supporting the rights of indigenous and small-scale fishing communities with respect to conservation initiatives. Looking at the situation at the national level, there are a few documented examples, where conservation policies and practices are known to have recognized the rights of indigenous and small-scale fishing communities, and to have promoted and supported their role in conservation. Some notable examples, where positive efforts have been made, are that of the Raiu system and Locally Managed Marine Areas in the Pacific, community-managed protected areas in Philippines, and marine extractive reserves in Brazil. However, overall, several problems *vis a vis* implementation of national-level coastal and marine conservation initiatives, from a small-scale fishing community perspective, can be observed. Examples from Brazil, India and South Africa, are briefly outlined, as illustrative cases.

Brazil

Notably, as indicated earlier, there is a legal framework in place in Brazil to support community initiatives for sustainable use and management of marine fisheries resources³⁵. The National Environmental Legislation (namely Lei No. 9.985/Article 225 of the Constitution instituting the National System of Conservation Units (*SNUC* or *Sistema Nacional de Unidades de Conservação da Natureza*, *Capítulo III, Art.14, IV*) supports the establishment of sustainable use areas, also called direct use conservation units, which includes extractive reserves. The Marine Extractive Reserve (MER) is essentially an effort to modify and extend the concept of 'extractive reserves'—a conservation and sustainable development framework successfully instituted in the western Amazonian forest, primarily rubber-tapper economies—to coastal aquatic and marine domains of traditional fishing communities. MERs are designed to be community-based, site-specific, multiuse land and sea resource management units, that are based on claims of culturally distinct groups with long-standing livelihood ties to "artisanal-scale" production territories. MERs can be considered as "new commons" that are being built by coastal communities, particular by fishing communities, in order to protect their fishing territory from encroachment by other economic activities, such as tourism and industrial fisheries, and now particularly from the expansion of commercial shrimp farms that have a negative impact on mangrove and livelihoods of local people.

Presently, there are 17 MERs in nine Brazilian states. Several fishing community groups in Brazil, such as in Prainha do Canto Verde, Municipality of Beberibe, Ceara, are in the process of applying for setting up MERs for sustainable management of coastal and fisheries resources. The effort also is to defend the interests of their communities and to exclude outsiders, particularly those using destructive gear. Thus, an additional 68 MER proposals are under consideration for strategic sites in 15 of Brazil's 17 coastal states.³⁶

³⁵ World Bank. 2006. *Scaling Up Marine Management: The Role of Marine Protected Areas*. World Bank report No. 36635-GLB. Washington, D.C.

³⁶ Diegues, AC. 2007: *Marine Protected Areas and Artisanal Fisheries in Brazil* (study in progress)

There are several challenges, however, to successful implementation of marine extractive reserves in Brazil, including the integration of modern science with traditional knowledge, making co-management work in practice and resolving federal, state and municipal jurisdictional conflicts and inconsistent policies and legislation across sectors. There is need for greater institutional co-ordination and co-operation in managing marine and aquatic resources within the environment sector as a whole. Efforts to build the technical capacity and expertise of the lead coordinating agencies for implementing the MER, is also required.³⁷

South Africa

According to South Africa's Third National Report to the CBD in 2006, there are 19 Marine Protected Areas in the country, and a programme is underway to expand the number and extent of Marine Protected Areas, with a target of 20 per cent of the coastline by 2010.³⁸

In South Africa management plans for marine protected areas lag behind those of terrestrial protected areas. National Marine Protected Area targets have been set and areas proclaimed with no prior consultation or involvement of indigenous peoples or local communities. Attempts till now implement the Programme of Work tend to be of a very technical nature and do not accommodate the specific political and historical conditions of communities on the ground. Mechanisms that have been developed to promote community participation in the terrestrial parks (A 'People in Parks' Forum where communities are represented at national level) have yet to be extended to coastal and fishing communities.

The approach of the authorities tends towards a strict conservation approach with a strong 'no-take approach' in most reserves. Recently a community (the fishing community near the Tsitsikamma National Park) has organized and actively challenged this approach, demanding access to former fishing grounds for their livelihoods. In general, fishing communities feel that their indigenous knowledge and traditional methods, such as rotation of areas and resources, are not being recognized by scientific measures or government regulations, for management purposes.³⁹

To date no indicators, norms or standards exist for monitoring the participation of local communities, and no guidelines are in place to ensure that communities benefit from interventions or that interventions do not impact negatively on communities' livelihoods.

Public works programmes are introduced in marine protected areas to promote short-term employment opportunities and benefits for local communities. These projects often target rural women, however, efforts were not made to understand the needs of the local women, who have depended on the park for their livelihood in the past, and most local communities do not participate in selecting the projects. While these projects are considered to reflect 'sharing of benefits', in the long run most promote primarily tourism interests and are not designed to accommodate the specific needs of local communities, who might have lost access to natural resources and their livelihood base through the establishment of the park.

India

According to the Government of India's, Third National Report to the CBD in 2006, India has 31 Marine and Coastal Protected Areas, 18 of which are fully under marine environment, whereas the other 13 are partly in sea and partly on land, declared under the Indian Wildlife Protection Act, 1972. Besides this, there are another 100 protected areas that have terrestrial or freshwater ecosystems with boundaries with seawater or partly contain coastal and marine environment⁴⁰.

In general, local fishing communities have not been involved in the establishment of new MPAs or in the management of existing ones. Nor have they been involved in decision-making processes and the implementation and enforcement of regulations. There is, at the same time, a lack of recognition of, or appropriate legislative or policy support to, community-led management initiatives, such as for conservation of mangrove areas, ban on destructive gear, seasonal area closure areas, restriction on number of days at sea, etc.

³⁷ World Bank. 2006. Scaling Up Marine Management: The Role of Marine Protected Areas. . World Bank report # 36635-GLB. Washington, D.C.

³⁸ South Africa's Third National Report to the CBD, 2006 (<http://www.cbd.int/doc/world/za/za-nr-03-en.pdf>)

³⁹ Peterson, Carolyn, Naseegh Jaffer, Jackie Sunde. 2005. Marine Protected Areas: making communities visible. SAMUDRA Report No. 42, November 2005

⁴⁰ India's Third National Report report to the CBD, 2006: <http://www.cbd.int/doc/world/in/in-nr-03-p5-en.pdf>

There are some efforts currently being initiated to form Village Marine Committees and Eco Development Committees in the Gulf of Mannar Biosphere Reserve and the Sunderbans Biosphere Reserve, to enhance participation of fishing communities in conservation. However, such initiatives are in the very initial phase—only education and awareness programmes on marine conservation are being taken up, with little involvement of communities in decision-making process. There are no “scientifically-prepared” management plans for MPAs developed in a participatory manner, involving local stakeholders. In a recent study it was observed that the only MPA in India where the process of preparing a management plan has been initiated is the Gulf of Mannar Biosphere Reserve and National Park⁴¹. This was initiated by the Wildlife Institute of India in January 2006 (though the Gulf of Mannar National Park was declared in 1986). However, as men and women representatives of a number of local fishworker organizations claim not to have been part of consultation processes, the process is known to have had its limitations.

The existing legal frameworks also requires State governments to appoint an officer to settle rights and claims of affected persons within a period of two years, and to then issue another notification specifying the limits of the protected area. This process has not been completed for most of the MPAs in India, and the second notification, declaring the area of the protected areas after the settlement of rights is yet to be issued.

The Wildlife (Protection) Act 1972 has provisions to include the local self-government organizations in the management of sanctuaries, to render advice on measures to be taken for better conservation and management of the sanctuary, including participation of the people living within and around the sanctuary. However, sanctuaries in marine areas declared under this Act do not, as yet, have an Advisory Council in place.

It is also worth noting that there is no reliable data, baseline or otherwise, to assess the costs and benefits of MPAs for men and women local fishing communities. There is no single estimate on the number of people living in/near MPAs and dependent on resources from them, or of those who will be/ are being affected by the declaration of MPAs. Further, there is no single holistic study, with both a biological and socio-economic component, that looks at the impact of marine and coastal protected areas.

In an Indian context another major impediment is the lack of clear-cut roles and responsibilities and co-ordination between various departments/ ministries involved in the implementation and management of MPAs. India also lacks a single legal framework for marine and coastal resources management that includes MPAs as one of the management measures. There is also a lack of coherence between policies and programmes of marine biodiversity conservation and fisheries development and management.

In summary

From the above examples it is clear that, despite strong provisions at the international level to support the rights of indigenous and small-scale local fishing communities and a few notable case of positive national-level efforts, as in Brazil, there is still a long way to go in terms of better recognition of the rights of indigenous and local communities in conservation and management, and of the initiatives taken by them, in legislation, policy and practice, at the national and local levels.

5. Any final thoughts on moving towards more progressive, participatory, equitable conservation policy and practice?

Experience has proved that coastal fishing communities can be powerful allies in the efforts to conserve, restore and protect coastal and marine biodiversity, and that communities are taking the initiative to manage/ conserve resources in several countries, as mentioned earlier. In some countries, protected areas are being seen by communities as tools to secure tenure their rights and to check adverse developments (indiscriminate tourism, intensive shrimp/salmon culture, industrial/ destructive fishing).

Safeguarding rights to access fisheries resources and to the continuous possession or enjoyment of coastal residential habitats and other lands traditionally used by communities, within the framework of sustainable utilization of living natural resources, is of paramount importance, if fishing communities are to progressively share the responsibility of managing coastal and fisheries resources. If we are to move towards progressive, participatory, equitable conservation policy and practice, it is essential to address some of the current problems areas. It is, therefore, important that:

⁴¹ Rajagopalan, Ramya. 2007. Study on MPAs in India (in progress), ICSF, India , and Lahangir. Sharada. 2006. Conservation: Life Studies, SAMUDRA Report No. 43. 2006 http://www.icsf.net/icsf2006/uploads/publications/samudra/pdf/english/issue_43/art11.pdf

- Provisions in existing international legal instruments supporting the rights of indigenous and small-scale fishing communities with respect to conservation initiatives, is reflected in national legislation and policy
- The rights of small-scale fishing communities to engage in responsible fisheries, in keeping with the principle of sustainable use of biodiversity, are recognized, particularly at the national and local level, in terms of legislation, policy and practice. This is particularly relevant in a context where no-take areas are being indiscriminately promoted.
- Traditional and customary rights of communities to resources (land and sea) are recognized and protected at the national and local level, in legislation, policy and practice
- Community conservation/ management initiatives (area-based or otherwise) are recognized and supported, in legislation, policy and practice.
- Communities traditionally dependent on the resource base are seen as rights holders, not stakeholders, in decision-making processes
- The subsidiarity principle—those living closest to the resource and using it for livelihoods, are given greater say in decision-making processes—is applied
- The proportionality principle is applied in ecosystem-based management—factors and activities that are causing greatest harm to the coastal and marine ecosystem are addressed first
- Effective and inclusive participation of communities in conservation initiatives is ensured at all stages. This means that the choice of appropriate management/ conservation tool, the objectives of management, the management plan, the governance structure, provisions for community representation, and the implementation and monitoring plan, are decided in consultation with local communities, and that the governance structure itself is representative of the various social groups within the community, including women, and crew.
- Economic and socio-cultural benefits from protected areas directly flow back to local communities (not only the costs), guided by the principle of equitable benefit sharing within community.
- In cases where livelihoods are affected or access to resources is restricted, appropriate compensation and livelihoods is provided, in consultation with the affected people, with their prior informed consent, and appropriate to their needs.
- Detailed gender-disaggregated socio-economic baseline data, to effectively monitor the contribution made by conservation initiatives to improving livelihoods and reducing poverty, is generated and compiled.
- Greater interdepartmental coordination, with due importance given to fisheries departments/ ministries, in decision-making, is fostered.

The voices and perspectives of mobile peoples in international treaties/policies

Aghaghia Rahimzadeh⁴²

Since 2003, mobile indigenous peoples have had a greater voice in the conservation community and have been able to influence international conservation policy to consider not only conservation, but also issues of mobility and livelihoods.

In 2003, the IUCN 5th World Parks Congress in Durban South Africa was the first international conservation gathering where mobile indigenous peoples convened to take part in workshops and meetings and to voice their concerns on issues of mobility, livelihoods, natural resources and conservation. These discussions led the participants to conclude that most of their concerns were commonly shared by mobile indigenous peoples throughout the world. As a consequence, they established the World Alliance for Mobile Indigenous Peoples (WAMIP). Since its inception in 2003, WAMIP has had a strong presence in the international conservation community, and it has established solidarity among mobile indigenous peoples worldwide. The steady increase in WAMIP membership indicates that it is serving a real need, and it appears that mobile indigenous peoples (MIP) and communities are happy to have an international organisation focused on issues important to them.

Mobile indigenous peoples' efforts at the 2003 WPC produced a number of useful results. Their discussions on the role of mobile indigenous peoples in biodiversity conservation and sustainable livelihoods resulted in declaratory statements on the rights of Mobile Indigenous Peoples and official inputs into the WPC Durban Accord and Action Plan. These inputs included, a set of recommendations to the WPC (recommendation 5.27), entitled "Mobile Indigenous Peoples and Protected Areas", which was adopted by the Congress. This was the very first time mobile peoples gathered in an international forum where their voices were heard.

Recognizing the value of continuing the good work begun in Durban, WAMIP members crafted Resolution CGR3.RES068 Mobile Indigenous Peoples and Conservation which was submitted to the 2004 3rd IUCN World Conservation Congress and approved with several amendments. This resolution seeks to build on progress made at the World Parks Congress in Durban, South Africa in September 2003 and at the meeting of the Convention of Biological Diversity in Kuala Lumpur in February 2004 where a political commitment was made "to ensure necessary participation and equitable sharing of the benefits of protected areas, particularly with indigenous and mobile peoples, as well as local communities."

In May 2006, mobile indigenous peoples convened in another important international forum. Members of mobile indigenous communities were invited to participate in the Fifth UN Permanent Forum on Indigenous Issues. During this event, a side event was organised by mobile indigenous peoples present. The side event and the participation of MIPs raised awareness of the special circumstances and vulnerabilities of mobile peoples within the larger indigenous peoples' movement. The theme of the side event was mobility, livelihoods, conservation and environmental impacts on mobile peoples. The side event drew a large group of participants from the UN Forum. Discussions during the side event led to an agreement that both UN Permanent Forum members and other participants would lobby to have the important issue of mobility and mobile livelihoods included on the programme of future UNPFII.

Another very important event that brought attention and focus on issues of conservation and mobile indigenous peoples was in September 2007 where MIPs participated in the World Gathering of Nomadic and Transhumant Pastoralists held in Spain. During this event, about 200 pastoral representatives from 40 different countries gathered to exchange information and experiences and to debate possible solutions to the problems faced by nomadic and transhumant herders around the world. The event coincided with the traditional transhumant migration of Spanish shepherds through Madrid en route to their winter pastures. Event participants from around the world accompanied Spanish herders and their animals as they crossed the city of Madrid on the royal shepherd road. The outcome of this event included the Segovia Pastoralist Declaration.

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Community Conserved Areas and Co-management: A Review of Some Countries

Summarized by **Tasneem Balasinorwala**⁴³

An ongoing survey by the IUCN Theme on Indigenous and Local Communities, Equity and Protected Areas (TILCEPA), on the implementation on the CBD by countries with respect to participation of indigenous and local communities, shows a mixed picture. Given below are summaries (pl. see the full reports, with author names, at www.iucn.org/themes/ceesp/CCAlegislations.htm).

Australia

The Australian Government's Indigenous Protected Area Program is recognized as an innovative, successful for progressing the realisation of biodiversity conservation, human rights and sustainable development goals. CCAs are recognised as part of the national reserve system provided they meet the IUCN PA definition and the six standards prescribed in the Natural Resource Management Ministerial Council's *Directions for the National Reserve System – A Partnership Approach*. (2005). All state and territory governments have programmes to promote the effective participation of local and indigenous communities and other stakeholders in the management, including joint management in some instances of their protected area estates. There has been a recent funding for IPAs following the 2006 Gilligan review of the IPA program, and at least one state recognises CCAs in legislation.

Brazil

Some kinds of CCAs are part of the *National System of Conservation Units* (SNUCs) and have been legally recognized in Brazil. Extractive Reserves and Sustainable Use Reserves, the two categories within this national system, are characterized by long-term agreements that are made with local and traditional communities to have the right to manage, use and monitor resources in areas of state land ownership. Brazil has reportedly drafted a new National Plan for PAs, which takes considerable parts of the PA POW on board, including many of the items in Element 2 on governance, equity, etc. If this goes through, it could bring about significant changes in the PA paradigm, including the incorporation of CCAs into the national system.

Canada

In Canada, national or sub-national law or policy does not specifically recognize terrestrial, riparian or marine CCAs. Some land claim agreements negotiated between government and indigenous organizations provide for lands that are owned by the indigenous organizations to be managed under the same regime as used for public protected areas managed by government. This approach is voluntary, on the part of the indigenous organization. There are many community-managed areas that are administered by towns, villages, at a municipal government level, primarily for recreational purposes and as green space.

China

The concept of community-participated management and CCA has not been explicitly reflected in national law or policy. But the principles of CCAs are almost recognized in recent regulations and laws. Joint management is recognized and allowed in some PAs. And it seems that the concept of CCAs is likely to be recognized in the future. This law rules the creation and the management of PAs in China. It recognizes joint management with local communities but the local communities have to follow the systems and the principles of PA management implemented by state organizations or other PA management organizations. Moreover, it seems that local communities cannot be members of these PA management organizations.

Costa Rica

Costa Rica has policies that recognize indigenous peoples' territories and their rights to use natural resources, through which their areas can be conserved. However, a legal recognition of such areas within the PA system as CCAs, is missing. **ILO Convention N° 169 on Indigenous and Tribal Peoples recognizes** the constitutionary rights, auto determination and the right to territory and access to natural resources is recognized, but the nation seems to be having difficulty practicing what they preach. Because there exists no institutionalized and regulated consultation, indigenous peoples have no say whatsoever about the exploitation of their territories.

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This is in direct opposition to Article 15 of Convention 169 which guarantees the right of these peoples to participate in the use, management and conservation of these resources. There are some governmental advances for the approval of a Co-management Policy. Because there exists no institutionalized and regulated consultation, indigenous peoples have no say whatsoever about the exploitation of their territories. This is in direct opposition to Article 15 of Convention 169 which guarantees the right of these peoples to participate in the use, management and conservation of these resources

Guyana

National law does recognise CCAs. It gives the communities legal powers to manage and conserve their lands. Amerindians comprise 9.1% of the population of Guyana and own over 13% of the land in Guyana. The land claims mechanism is intended to settle outstanding Amerindian land claims so that all communities will have title to the land. National law also recognises a community's cultural attachment to and spiritual relationship with the land. The WaiWai have established a protected area over the 2,300 square miles of their territory and have legal powers to enforce it.

India

There is no national level law to recognize co-management of PAs so far; indeed the main relevant law, the Wild Life Act, is currently being used to dispossess several million people of their natural resource rights, and there is only a weak provision to set up "advisory committees" in the case of sanctuaries. In theory, this Act does provide for recognition of CCAs as 'Community Reserves', however the relevant provisions are so limiting that very few existing community initiatives would be notified under them. For instance, most of India's several thousand CCAs are on lands belonging to the government (with the community providing *de facto* conservation services), which the Act will not recognise. A proposed law on the rights of forest-dependent populations may provide some legal space for forest CCAs.

Indonesia

There is no specific mention of CCAs in national law. However, various laws pertaining to forestry, water systems and natural resources recognise certain roles and rights of indigenous people and local communities, and benefits and management of natural resources and nature. The Ministry of Forestry is currently working on revising forestry law so that it would require the establishment of Forest Management Units for all forests in Indonesia. This could bring significant opportunities for indigenous and local communities to obtain formal management rights over forest areas. Currently, only protected area forests have Management Units. In theory, concessionaries of Production Forests should act as Management Units for these forests, but, in practice, this is rarely the case.

Islamic Republic of Mauritania

To some extent Mauritania recognises terrestrial CCAs, but not as part of a PA network system. They come under the legal framework of the "code pastoral" in the context of sustainable resource management. There is provision for a procedure to recognize local groups and to transfer authority over the site to them. For one national park, a new public and administrative institution is created for its management and the conservation. Moreover, traditional fishing, use of natural resources, pastoralism and pasture are authorized in the park, only for local and pastoral communities. But the legislation is weak with regard to the definition of who is a resident. So far there are no institutionalized mechanisms for their participation in governing the PA.

Kingdom of Morocco

Morocco does recognize CCAs but the recognition has no legal basis. In the case of "ethnic communities" there is recognition of collective lands that are cultivated or used as pasture. These communities, however, act under the direct supervision of the state. The country has the basic legislation in place to ensure conservation, but lacks the capacity to implement it. Local communities need to have more prerogatives in order to play a formal and substantial part in protected area management

Nepal

Nepal has a worldwide reputation for progressive, community-based conservation in its conservation areas, buffer zones, and national forest. These are, however, new institutions. Nepal has yet to adopt policies which recognize and support "customary" or "traditional" CCAs such as sacred places and community-managed commons in either its current protected area system or its nationalized forests. Nepal does not legally recognize "community conserved areas" as a designation of terrestrial or riparian management. Since 1992, however, the national government of Nepal has created several new, state-initiated types of local administration of terrestrial management, which, in effect, may be considered to be CCAs. In September 2006, however, the national government "handed over" legal co-management and effective, *de facto* management of Kangchenjunga

Conservation Area to a local NGO, the first time that indigenous peoples have gained co-management or management authority over a Nepal national government-recognized protected area. Local conservation management within conservation areas is largely carried out by local institutions known as “Conservation Area Management Committees. The government of Nepal has not recognized indigenous peoples’ territories, community ownership of land, or customary systems of community management of forests, grasslands, and other commons

Nigeria

Recognition to CCAs is given in policy guidelines. There are a few examples of where the CCA approach to PA management is working. But the concept of CCAs and approach is new. Local capacity on forest and natural resource management is weak and investment in forests and natural resource management is not encouraged in an economy dominated by crude oil and petro-chemicals. Although Federal Forestry Policy provides the basic guidelines for state legislation, the management of forests is mainly in the hands of state governments. Federal Forestry Policy currently under review, and hopefully to be passed by the Nigeria National Assembly, gives recognition to the role of communities in forest management.

South Africa

In South Africa there is a provision made in the Protected Areas Act for communities to have their land declared a protected area. There is also the provision for the registration of private lands as protected areas, as well as for co-management agreements between the South African Government and communities or private owners. But while policy and legislation is supportive of CCA formation and community involvement and benefit-sharing in PAs, in practice there is a long way to go. The issue of rights is further confounded in South Africa due to the high proportion of land claims that are still to be settled, many of these being claims (and conflicting claims) to land in already proclaimed PAs. Some progress has been made with restitution of lands taken away from communities during the apartheid regime, including from within PAs.

Tanzania

There is no specific reference to the CCA concept, but the legal framework favours in different ways community based management regimes. This is achieved through the combination of sectoral policies (Wildlife, Forestry, Beekeeping, Fisheries) and laws, and land policies/laws. The process of community management seems to be far more developed (and less contested) in the fisheries and forestry sectors than in the wildlife sector. Tanzanian policy legislation gets split often between centralized control of natural resources and community control of natural resources with the benefit going to the former. Nearly all policies contain clauses allowing central authorities to override community control if it is necessary to do so in the national interests

Taiwan

No recognition of CCAs yet. Local communities rights over natural resources are recognized in some national laws but there is still no concrete implementation of these laws on the field. Some community-based initiatives to conserve biodiversity and natural resources exist in Taiwan and these specific areas could be considered as CCAs. More than 50% of land territories are traditional lands of the indigenous tribes, an area even bigger than the national forests as the results of the mapping projects shown in Taiwan.

Vanuatu

Registered CCAs are entered into the Environmental Registry, after which they receive government recognition along with all other PAs. There are a number of options for recognizing PAs in Vanuatu, however, these options tend to be under-used (e.g. there are no national parks and the only formal marine reserves declared to date are for the protection of tourist dive sites). Hopefully, the community-based nature of the CCA provisions of the **Environmental Management and Conservation Act, 2002** will lead to the registration of more PAs as CCAs. However, the system will be more effective if changes can be made to improve the capacity of landowners to take action to enforce their management plans

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