

IUCN Commission on Environmental, Economic & Social Policy

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Policy **Matters**

**Conservation
and
Human Rights**

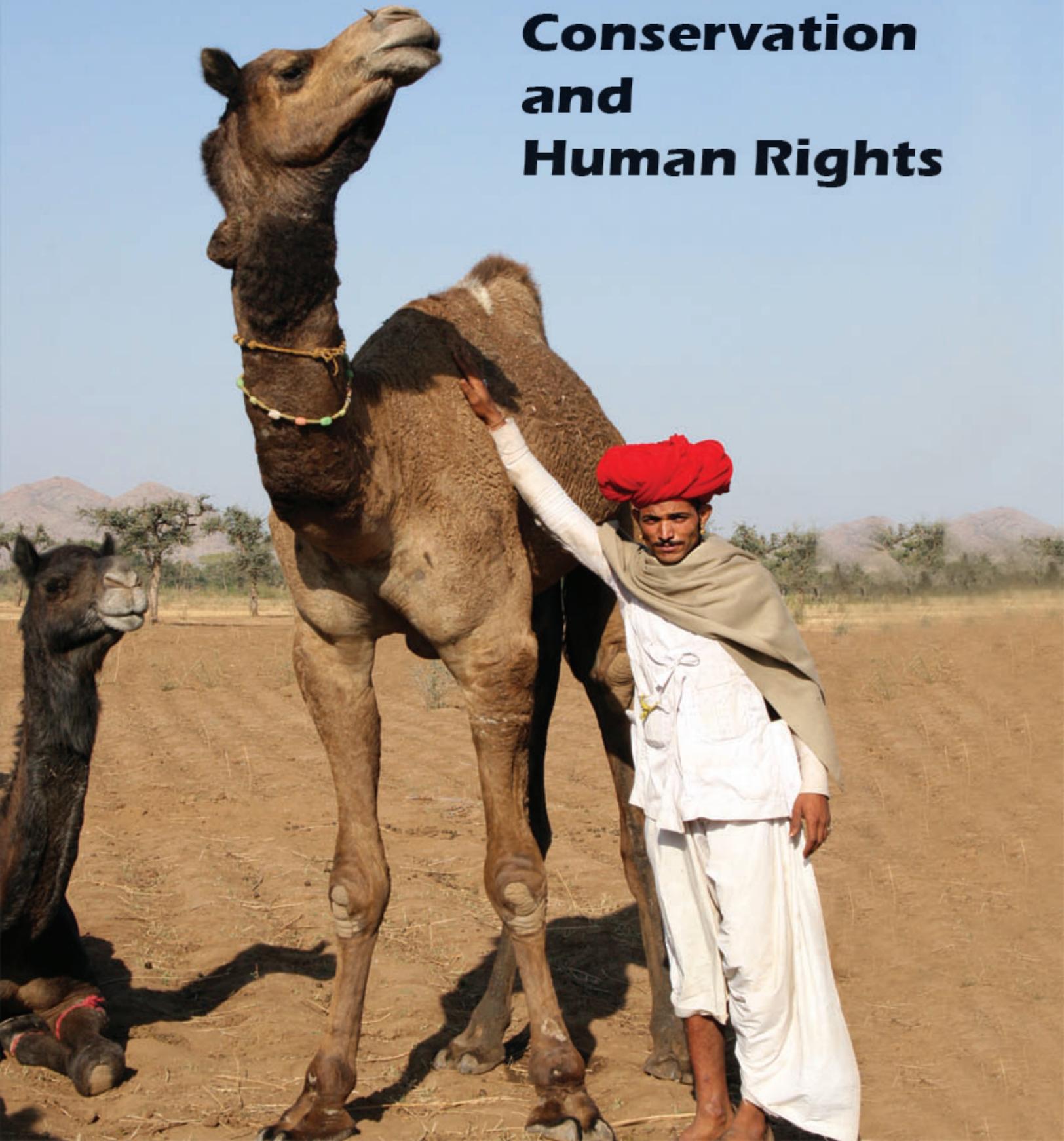


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LETTER FROM THE CHAIR OF CEESP

Many of us in CEESP are strong believers in the values and power of human communities. We trust the virtues of local knowledge and customary practice, the potential of local solidarity and cooperation and the collective ingenuity of people managing natural resources for the common good of present and future generations. If we look at history, however, we can discern some dangers. Throughout the world, particularly in Europe in the early 20th Century, the emphasis on localism has been a double-edged sword. Self-sufficiency, voluntary simplicity, local sovereignty, living close to the land and following community values are marvellous ideals... but those same ideals can also slip into extreme conservative and nationalist thinking, intolerance, fear and mistrust of "the other". It is not impossible for a movement based on the primacy of rural communities to distrust "the city" and all that is cosmopolitan and innovative. It is also all too possible for nationalism and fundamentalism to degenerate into imperialism, colonialism, racism, wars of occupation against near and distant peoples, apartheid, antisemitism, Zionism, ethnocide and even genocide and "ethnic cleansing". Simply put: that is why we need to identify, declare and respect human rights!

Universal human rights provide the balancing perspective to local, communitarian action. They force us to lift our eyes from the little garden in front of us and appreciate the larger humanity we share with other fellow beings—no matter their gender, age, appearance, culture and ideas. Human rights keep our mind open to egalitarian, anti-sexist and multi-cultural perspectives and ultimately are the most

powerful foundation on which we can base our conservation values. But of course they are not exempt from their own dangers and degenerations... first among all the "abstract thinking" that makes us perceive universal concepts and lofty connections while forgetting that all those have to make sense for ourselves and the persons right in front of us—our indigenous peoples, minority cultures, co-workers, neighbours and even our family.

This special issue of *Policy Matters* brings to light some elements that will hopefully allow us to **strike a balance between the local and the universal**, the need to anchor our action in



Human rights bring us to appreciate the humanity we share with other fellow beings—no matter their gender, age, appearance, culture and ideas. (Courtesy Grazia Borrini-Feyerabend)

human solidarity at the local level and the need to elevate our thinking and moral inspiration to those principles and values that can be broadly applied to all human beings—the "rights" we have for the simple fact of being born human. This act of "striking a balance" is incredibly complex, of course, and we can at most all try very hard and do the best we can... there are no

recipes and often only uncharted territories. To understand this we need only to refer to thorny issues such as the

“the other” can be easily advanced to explain injustices and irrationalities, with the pernicious consequences we

Cover story. The persons* shown on the cover of this journal—members of an indigenous tribe of nomadic pastoralists in Rajasthan—face multiple and interrelated opportunities and challenges at the interface of conservation and human rights. Their community’s livelihood depends on sustainable use of and access to scarce pastureland and associated resources. Conservation in support of sustainable use is clearly in harmony with their community rights to livelihood, i.e., to food, culture, health, life. But exclusionary, discriminatory, technocratic and strictly protectionist conservation efforts have most often undermined these very same rights by reducing access to natural resources. Further, community access rights to land and resources are intrinsically linked to the self determination and development of mobile indigenous peoples. These are among the most fundamental human rights. And, enlarging the view to the overall picture, the conditions of the land one can see in the picture and the decisions about whether or not, when, where exactly and how this community has access to pasture, depend on the larger historical, cultural, political, social and economic context. It is only within this larger context, in fact, that the interplay between conservation and human rights finds its full meaning and can be positively addressed. Read in this way, this photograph provides a snapshot of the collective content of this journal. See the article by Mansoor Khalighi in this Journal for more information on the community rights of indigenous nomadic pastoral peoples and the conservation of natural resources.

* In many camel herding societies, camels are counted and referred to as “persons” and are treated with utmost respect, which shows the interdependence of these cultures with these magnificent beings. (Thanks to Aghaghia Rahimzadeh of CENESTA for the permission to use this picture)

rights of present versus those of future generations, or the alternative environmental values that can be preserved by incompatible interventions. The “human rights perspective” can also bring other fundamental benefits. It can provide us with **the foundations of an analysis of power**, the beginning of an explanation of why we live in a world where injustice and ecological destruction are so pervasive and intertwined. Without an analysis of power—the understanding of the agencies that fuel ecologically-destructive growth and human exploitation—the world can indeed be a confusing and depressing place. Conspiracy theories and stereotypes about

keep seeing in human history. An alternative perspective would stress instead the common humanity of all peoples, and the bond of life that ties that humanity to the rest of living beings, to nature and to the biosphere. In this perspective **the respect for our common humanity and the larger bond to life and nature are the roots of our moral behaviour** and the main cause of our success or failure as a species. Environmental destruction, the exploitation of humans by humans and the humiliation and dispossession of entire peoples and cultures are the consequences of forgetting the bond

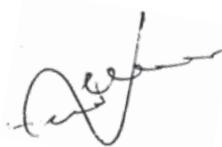
of humanity (or “human rights”) that links us all. In this sense, our failures are not isolated failures but common ones. And so are our achievements—first among all the appreciation, care and empathy we are still able to bring to biological *and cultural* diversity, including multi-cultural societies. Human rights have much less to do with legality than with meaning, and much more to do with the broader environment of life than we usually see.

CEESP has received partial financial support from IIED’s Sustainable Agriculture, Biodiversity and Livelihoods Programme to produce and diffuse this volume, and we are most grateful for

the unfailing support of this sister organisation. We would also like to thank here the outspoken and, at times, frankly courageous authors of the papers collected here. They have shared many stories that are not simple or even safe to tell. It is only through their work, endurance and passion for conservation and justice that we can see powerful advances and lessons learned.

Let me also thank most gratefully and warmly, **Jessica Campese**, who has provided an unfailing reference point for all the work that went in this volume, the organisation of related symposia, workshops and innumerable meetings and the development of practical options for the IUCN to tackle human rights in its conservation work. Jessica has been working with **Grazia Borrini-Feyerabend** for about two years and this volume is very much one of their cherished products, surely a

labour of love, and a result of the work of the members of TGER—the CEESP Theme on Governance, Equity and Rights. With them, who did the lion's share of the work, I also would like to acknowledge most sincerely the guest co-editors of this volume (and CEESP/TGER members) **Michelle de Cordova, Armelle Guigner, Gonzalo Oviedo, Marcus Colchester, Maurizio Farhan Ferrari** and **Barbara Lassen**. I trust they will all keep collaborating with CEESP and with IUCN at large to advance understanding, policy and action at the interface of conservation and human rights. I can see few more worthwhile and more powerful subjects for our personal and political engagement as conservationists. As usual, both our website and future issues of *Policy Matters* will be available for any comments, replies and discussion on the challenges posed by the articles in this issue.



M. Taghi Farvar,
Chair, IUCN Commission on Environmental, Economic and Social Policy (CEESP)



'Just' conservation? What can human rights do for conservation... and vice versa?!

Jessica Campese, Grazia Borrini-Feyerabend, Michelle de Cordova, Armelle Guigner and Gonzalo Oviedo,
with Marcus Colchester, Maurizio Farhan Ferrari and Barbara Lassen

Within the broad IUCN circles we are all familiar with the conservation of biodiversity and natural resources. But what are human rights, and what do they have to do with our work? The first section of this journal addresses these questions in a straightforward way, and highlights how, despite historic separation between the two,¹ attention to linking conservation and human rights has recently been increasing. This trend poses new challenges for conservation organizations, called to recognize and address some new direct and indirect responsibilities.² Yet, as conservation protects resources critical to fulfil rights to life, health, food, water, and security, this trend also opens new doors for conservation organizations to be recognised as performing invaluable roles in the realization of those rights, and in overall support to human societies.

Recognition of the relationship between human rights and the broadly defined *environment* has been developing since the 1970s.³ In this sense, many government and civil society actors— including CEESP— work to address the rights abuses that can arise from the extractive industry and other sources of environmental degradation.⁴ Similar action and attention around *conservation practice* has been slower to emerge, but can now be clearly identified.⁵ Since 2004, for example, IUCN as a whole recognizes human rights as an important component in supporting its mission to “influence, encourage and assist” societies to ensure that “any use of natural resources is

equitable and ecologically sustainable”⁶ (see Box 1). This special issue of Policy Matters deals primarily with the emergent understanding of the relationship between *conservation* and human rights.

There is little consensus regarding the roles, responsibilities and interests conservation organizations have in addressing human rights, or how these factors should be practically addressed—a fact made evident by the collection of articles included in this journal. The conservation–human rights relationship is complex, multi-dimensional, and dynamic. If the articles defy a single overall message, however, some broad themes can be perceived. Each of these themes— described in the main sections of this collection— is significant for understanding how conservation actors can work in just and sustainable ways.

First, it is now abundantly clear that **conservation has too often undermined human rights**, most clearly through protected area-related displacement and oppressive enforcement measures. This phenomenon, common in the past,⁷ continues today in subtle and less subtle ways. The articles in section two of the journal, which primarily demonstrate this negative dynamic, also discuss how this is changing, if slowly.

The second broad theme emerging in this collection is that **conservation and human rights can also work in mutual support**. Some **mechanisms, practices, policies and principles guiding conduct appear successful**

in responding to the challenge of their integration. The journal includes both case-based examples and general discussions of

Conservation is not an isolated or value-neutral endeavour— rather, it is infused with political meaning and values that originate outside and independently from it.

positive links between conservation and rights. For instance, mechanisms such as on-going Citizens' Advisory Councils or case-based legal procedures have been capable of fostering human rights as well as preventing/ mitigating negative environmental impacts.

While no one article presents a complete framework for a "human rights

approach to conservation," it is in the third section that the components of such an approach begin to emerge. Through these articles, we come to understand that:

- ▶ human rights instruments and rights-based codes of conduct can be leveraged to protect people from potential and/or realized violations arising from conservation practice;
- ▶ human rights instruments can be used to protect the environment; and
- ▶ natural resource management can (and should) be incorporated as a key factor in rights-based approaches to human development.

As a matter of fact, some of the most powerful examples of synergistic linkages between conservation and human rights emerge from experience within development organizations that have adopted a rights-based approach to their work.

The third broad lesson we learn from this collection— one present in most articles but arising most clearly in the fourth section— is that **the link between conservation and human rights is embedded in larger historical, political, cultural and socio-economic contexts that shape it and determine its meaning.** Conservation is not an isolated or value-neutral endeavour— rather, it is infused with political meaning and values that origi-



Picture 1. It is often the case that environmental damage and human rights violations go together. In Peru, the rural communities of Huancavelica, in the high Andes, are currently protesting major hydraulic works decided without their informed consent and expected to dry out 1,000 hectares of wetlands in their customary territories. The diverted water will feed a hydroelectric reservoir and will irrigate export monocultures, such as asparagus, in the Peruvian lowlands. Meanwhile, the highland communities will lose the ecological integrity of their pastures and wetlands and will suffer important economic losses. Communities living close to the hydroelectric reservoir will also lose land, as the water level is expected to rise seven meters as a consequence of the hydraulic works. Fifty years ago, the people of Choclococha lost their homes and the heart of their land (see the semi-submerged, abandoned houses in the background) when the reservoir was initially constructed. These people are still waiting for the promised compensation. The history of 'development' initiatives throughout the world is full of situations and events such as these. Who benefits? Who loses? Who speaks for environmental integrity and the rights of the affected people and communities? While many conservationists still focus on protecting a few "islands of biodiversity", others are beginning to address the intertwined issues of ecological integrity and respect for human rights in the overall landscape. (Courtesy David Bayer bayedavid@speedy.com.pe)

nate outside and independently from it. In this sense, poverty, environmental destruction and violation of human rights exist within power structures that may perpetuate them despite all the commitments and pronouncements to the contrary. We should view

We should view neither conservation nor human rights with tunnel vision, focusing on a single area or species or on the well-being of a particular group or class of people...

neither conservation nor human rights with tunnel vision, focusing on a single area or species or on the wellbeing of a particular group or class of people. Equity and sustainability demand that we enlarge the vision to the landscape and to humanity in general, and that we understand the broad phenomena that— sooner or later—will affect even our precious protected areas and comfortable lives.

Despite the complexities we have just mentioned, overall the articles in section four encourage the conservation community to take greater responsibility for respecting and supporting human rights. It is clear that conservation actors' scope of action is limited, that engaging with human rights implies understanding and responding to the broader institutions of society, and that the historical forces at play are often overpowering. Yet, the global situation is uneven, and local, national and international efforts by governments, civil society and even business actors can indeed make a difference. And they should.

The themes we have just described— themes which are differentiated by journal sections, but which can also be read into most articles— are further linked by several cross-cutting lessons. Transforming exclusionary conservation practice, empowering rights-holders, and enhancing the accountability of duty bearers (including non-governmental conservation organizations) are all important in addressing human rights. Further, procedural rights are a major entry point for substantive rights and should be forcefully stressed in conservation.

Our collection leaves open many questions and does not cover the full breadth of the relevant issues. Most notably, despite actively seeking submissions about the topics, we received little regarding the potential costs to conservation arising from the requirement to address human rights, and very few articles dealing with the positive role that conservation can play in supporting human rights. That notwithstanding, this collection contains sufficiently diverse perspectives and opinions to further a substantive discussion—a discussion whose time has definitely come.

Jessica Campese (jessica@cenesta.org) is a Fulbright Fellow working in Geneva with CEESP/TGER, the IUCN Secretariat and IUED. **Grazia Borrini-Feyerabend** (gbf@cenesta.org) is a Vice Chair of IUCN CEESP and WCPA. **Michelle de Cordova** (mdecordova@gmail.com) is an environment and social development consultant, based in Vancouver. **Armelle Guignier** (armgui@yahoo.fr) is a French PhD law student and a member of IUCN Commission on Environmental Law. **Gonzalo Oviedo** (gonzalo.oviedo@iucn.org) is Senior Social Policy Advisor with the IUCN. **Marcus Colchester** (marcus@forestpeoples.org) is Director of the Forest Peoples Programme. **Maurizio Farhan Ferrari** (maurizio@forestpeoples.org) is Environmental Governance Coordinator with the Forest Peoples Programme. **Barbara Lassen** (barbara@cenesta.org) is Executive Officer of TGER, working as a volunteer. All the co-editors of this issue are members of CEESP/TGER.



Picture 2. Fulfilling substantive rights often requires securing procedural rights— empowering right-holders and supporting their participation in developing and implementing conservation policy and practice. (Courtesy Grazia Borrini-Feyerabend)

Box 1. IUCN Resolution 3.015 Conserving nature and reducing poverty by linking human rights and the environment

"...The World Conservation Congress at its 3rd Session in Bangkok, Thailand, 17–25 November 2004:

1. DECIDES that IUCN should consider human rights aspects of poverty and the environment in the context of its overall mission, under the leadership of the IUCN Director General;
2. FURTHER DECIDES to assess the implications of the use of human rights-related legal resources and actions to protect the environment and the rights of those who defend it, especially through existing international human-rights protection systems;
3. ENCOURAGES IUCN's State members, in cooperation with its non-governmental members, to analyse legislation in the field of human rights and the environment in their respective countries and regions with the aim of providing effective access to justice in the event of the violation of those human rights;
4. REQUESTS the CEL to provide additional legal research, analysis and resources, and contribute to building the capacity of members in the enforcement of environmental laws, in close collaboration with IUCN members; and
5. FURTHER REQUESTS the CEL to provide a progress report to future World Conservation Congresses summarizing legal developments in human rights law and litigation that are pertinent to IUCN's Mission, with an emphasis on human-rights tools that may be used by IUCN and its members in pursuit of the Mission."⁸

Notes

- 1 See, among many, Perez (2004) for a general discussion.
- 2 Organized movements of indigenous peoples, local communities, and other civil society actors increasingly demand greater accountability from conservation actors regarding past and present impacts of protected areas establishment and management. Examples can be found in <http://www.danadeclaration.org/text%20website/textindex.html>, <http://www.forestpeoples.org/>, <http://www.survival-international.org/> and <http://www.iucn.org/themes/ceesp/WAMIP/WAMIP.htm>
- 3 A trend reflected in several UN and regional human rights communications and non-binding instruments that variously link environment and human rights.
- 4 For CEESP's work in this area, see <http://www.iucn.org/themes/ceesp/seaprise.htm>. See also CIEL Human Rights and Environment program at <http://www.ciel.org/Hre/programhre.html>, EarthJustice at www.earthjustice.org, EarthRights International at <http://www.earthrights.org/>, and Global Witness at <http://www.globalwitness.org/>.
- 5 WWF and CARE have called for "social and environmental justice", which they define as "the equitable achievement of both human and environmental rights". See <http://www.panda.org/downloads/policy/socialenvironmentaljustice2.pdf>.
- 6 <http://www.iucn.org/en/about/> (emphasis added)
- 7 Two important sources are West and Brechin (1991) and Ghimire and Pimbert (1997).
- 8 IUCN, 2004, p2.

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Human Rights— a brief introduction to key concepts

Jessica Campese and Armelle Guignier

...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

— Universal Declaration of Human Rights, 1948

Abstract. Understanding the relationships between conservation and human rights is difficult in part because of the nature of human rights themselves. We provide a brief overview of some (though by no means all) key concepts, debates, and contemporary instruments protecting international human rights. Given the vastness and complexity of the issue, we aim only to provide a helpful overview for readers unfamiliar with the international human rights framework.

Despite general consensus within the United Nations (UN), definitions and characteristics of human rights are still debated, and are still emerging, all over the world. According to one general definition: “Human rights are the rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity. They give all people moral claims on the behaviour of individuals and on the design of social arrangements—and are universal, inalienable and indivisible. Human rights express our deepest commitments to ensuring that all persons are secure in their enjoyment of the goods and freedoms that are necessary for dignified living.”¹

Rights can be understood as entitlements² that create constraints and obligations in interactions between people. Rights, in their broadest sense, may arise from various institutions that establish binding obligations (citizenship rights granted under laws particular to a state, inter-party contractual rights, etc.) An example may be the right to be paid for a service rendered under a contractual obligation. **Human rights**, however, are based on the concept that



Picture 1. “Human rights are the rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity”³ (Courtesy Grazia Borrini-Feyerabend)

all people are entitled to basic compo-

nents of lives commensurate with human dignity.

When most people talk about human rights they refer to those recognized in the UN and/or regional and national frameworks that arose since World War II, but the concept developed over a much longer period of time. Similarly, contemporary human rights are sometimes criticized for coming primarily from western philosophical traditions, but their conceptualization has been much broader than the relatively narrow focus on 'liberty rights'.⁴ In Shiman's summary: "The earliest attempts of literate societies to write about rights and responsibilities date back more than 4,000 years to the Babylonian Code of Hammurabi. This Code, the Old and New Testaments of the Bible, the Analects of Confucius, the Koran, and the Hindu Vedas are five of the oldest written sources which address questions of people's duties, rights, and responsibilities. In addition, the Inca and Aztec codes of conduct and justice and the Iroquois Constitution are Native American sources dating back well before the eighteenth century. Other pre-World War II documents, such as the English Bill of Rights, the US Constitution and Bill of Rights, and the French Declaration of the Rights of Man and the Citizen, focused on civil and political rights."⁵

Some basic concepts

There is growing consensus around the recognition of human rights as being, among other things:

Minimal standards of lives commensurate with dignity;⁶

Universal, i.e., they "belong to all people, and all people have equal status with respect to these rights"⁷ by virtue of her or his being human;⁸ and

Interdependent and indivisible, i.e., all political, civil, economic, social and

cultural rights are important and non-hierarchical, and the realization of each ultimately depends on the realization of them all.⁹

However, even these core characteristics are much contested. Regarding interdependency, some States prioritize economic development and see a potential threat to that development arising from democracy and public freedoms.¹⁰ Others continue to view economic, social and cultural rights as, at best, second to political and civil rights. The view of rights as non-hierarchical has gained wide acceptance only since the end of the Cold War (see Box 1). Some authors suggest that recognition of some hierarchy may be important for supporting key inderogable rights.¹¹ Universality is sometimes rejected on the grounds that human rights come from, and reflect, western cultural traditions, or more generally that universality is difficult to defend given global cultural diversity.¹²

Another widely recognized but contested characteristic is that human rights are recognized and supported in international law. The point of some contention here is whether or not such legal recognition is necessary for something to in fact be a human right¹³ One definition provided by the UN OHCHR makes the following distinction: "Human rights are legally guaranteed by human rights law...expressed in treaties, customary international law, bodies of principles and other sources of law. However, the law does not establish human

While human rights may not exist solely because they are established in international law, international law is an important part of what makes human rights powerful.

rights. Human rights are entitlements that are accorded to every person as a consequence of being human.”¹⁴ Thus, while human rights may not exist solely because they are established in international law, international law is an important part of what makes human rights powerful. As Hausermann states, “Human rights are a global vision backed by state obligations. The term “human rights” refers to those rights that have been recognized by the global community and protected by international legal instruments.”¹⁵

Collectively, the human rights recognized in international law today cover numerous dimensions of human well being and dignity, including:

- ▶ **substantive rights** such as the rights to life, health, food, housing, and work;
- ▶ **procedural rights** such as the rights to participate in political affairs, to information, and to access to justice; and
- ▶ **cross-cutting principles** including

being free from all forms of discrimination.¹⁶

Of course the relationships between rights are very complicated, and this is only one of many ways to categorize them.



Picture 2. All humans have a right to food that is economically and physically accessible over time, healthy, and culturally acceptable.
(Courtesy Grazia Borrini-Feyerabend)

Box 1. Successive ‘generations’ and the principles of non-hierarchy and indivisibility

Human rights have often been referred to in terms of first, second, and third ‘generations’.¹⁷ While such divisions have been disappearing since the end of the Cold War, and with increasing recognition of the principle of indivisibility, these ‘generations’ reflect historical treatment.

The first generation encompasses civil and political rights, covered within the UN framework primarily by the International Covenant on Civil and Political Rights (ICCPR, 1966). These rights were primarily supported by western democratic states in the negotiations over the UDHR. While often regarded as negative rights —those that define actions duty-bearers (traditionally states) must refrain from taking against claims-holders (traditionally citizens)— it is increasingly recognized that protecting civil and political rights requires positive action (e.g., creating institutions to support the rule of law and an independent judiciary). In fact, all human rights have positive and negative obligations associated with them.¹⁸

Second generation rights include economic, social and cultural rights, covered within the UN framework primarily by the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966). These rights were most supported by socialist and communist states in the negotiations over the UDHR. While long seen as positive rights —those that define steps duty-bearers must actively take in support of claims-holders— as with first generation rights, it is now increasingly recognized that ESC rights have both negative and positive duties associated with them.

In the 70’s, a third generation— solidarity rights— emerged, reflecting new concerns of the inter-

national community. These include rights to peace, development, and environment. Articles 22 to 24 of the African Charter on Human and Peoples' Rights (1981) reflect these emerging issues in protecting rights to "economic, social and cultural development", "national and international peace and security", and "a general satisfactory environment favourable to their development". Some human rights theorists and practitioners question the legitimacy and usefulness of these rights, due in part to their collective character and fears that they will be difficult to clearly define and implement.¹⁹ Others believe, in contrast, that rights should be further expanded, adding a fourth generation that would include rights to protect human dignity from misuses of science.²⁰

These generations, in addition to being a way of describing human rights' historical acceptance at the international level, reflect a sense of hierarchy between categories that is slowly disappearing. However, the struggle to secure the place of economic, social, cultural, and other rights in the mainstream of human rights discourse and action continues: "The principle of the indivisible, interdependent and non-hierarchical nature of rights has become the mantra since the 1993 World Conference on Human Rights held in Vienna. However, social and economic rights still encounter a degree of scepticism (mostly US-led) as to their status as rights. Mainstream Western-based human rights NGOs only began to work on these since the mid-1990s."²¹

Inter-and intra generational rights

Calls for 'inter-generational rights' reflect concern for equity, solidarity and responsibility between our generation and the future generations,²² those at the heart of sustainable development aiming to meet the needs



Picture 3. Inter-generational rights address our obligations with respect to equity, solidarity and responsibility between our generation and future generations. (Courtesy IUCN Photo Library © IUCN / Jeffrey McNeely)

of the present without compromising the ability of future generations to do the same.²³ Present generations have a duty to protect and sustainably manage natural resources²⁴ and the common heritage of humankind.²⁵ In this sense, the precautionary principle aims to protect the rights of future generation by taking into account future irreversibility of present decisions. But: who can represent future generations? How can we determine the needs and the contents of the rights of future generations, as we cannot compare our needs to theirs? How can we guarantee respect for their rights?²⁶

The rights of future generations were first expressed in the Stockholm Declaration (1972), and then restated in numerous international instruments (Rio Declaration Principle 3; Climate Change Convention Article 3; Convention to Combat Desertification; and Convention on Biological Diversity, preamble). The International Court of Justice mentions "future generations" in its advisory decision on the legality of the threat or use of nuclear weapons²⁷ and in the Case concerning Gabčíkovo-Nagymaros.²⁸ The Minors-Oposa case²⁹ brought before the Supreme

court of the Philippines provides a legal example of the protection of future generations. In this case, the plaintiffs (minors represented by their parents) filed a complaint in their name and “*their yet unborn posterity*”. The Court decided that the plaintiffs had the legal capacity to sue in the name of future generations based on the “concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned.” UNESCO proclaimed in 1997 the Declaration on the Responsibilities of the Present Generations Towards Future Generations.³⁰ In contrast, ‘intra-generational rights’ are only concerned with responsibilities among individuals and groups within a given generation. This concept has arisen primarily in the context of discussion of (and demands for) equitable resource-sharing and distributive justice across states (specifically Southern and Northern States).³¹

Individual and collective rights

In the traditional human rights framework, rights holders are individuals. However, some rights have a collective character. A distinction must be made between those individual rights with a collective dimension (they are exercised collectively by a group of people, such as work-related rights operated through trade-unions) and collective rights as such, in which the group itself (a people, minority, community) is the holder. Article 27 of the ICCPR, for instance, protects minorities, but does not recognize collective rights held by a group per se. Rather, it recognizes individual rights with collective dimensions, maintaining that it is the individual members of the community who are rights-holders.³²

The understanding of human rights as exclusively individual is slowly changing in response to increasing recogni-

tion that some rights, in fact, are best understood as essentially collective.

For instance, recognition of the collective rights of indigenous people—to their land, resources, etc.—is essential to their identity and integrity. According to a recent literature and issues review, “emerging human rights standards relating to indigenous peoples apply in large part to collectivities, focusing on the rights of indigenous peoples as a whole rather than on indigenous individuals, in accordance with their philosophies (cosmovisions) and lifestyles, which are much more based on collective property, knowledge generation, cultural identity and integrity”.³³

Collective rights are particularly important for understanding the significance of indigenous peoples and local and mobile community rights vis-à-vis conservation practice.

Indigenous Peoples and local community rights

Collective rights are particularly important for understanding the significance of indigenous peoples and local and mobile community rights vis-à-vis conservation practice—the topic at the heart of this journal. As stated by Oviedo³⁴ “From the conservation perspective, collective rights can have great impact. First of all, when applied to land, they are the basis for maintaining the integrity of the territory and avoiding ecological fragmentation, which is in turn a key requirement for meaningful biodiversity conservation. Secondly, collective rights provide a strong basis for the building and functioning of community institutions, which are indispensable for sound, long-term land and resource management. Thirdly, they strengthen the role of customary law as related to land management, and of

traditional knowledge applied to broader territorial and landscape units.”

Prior to the 1970s, human rights bodies were at best slow to address indigenous peoples’ issues. However, the last decades have seen numerous positive changes, including a growing body of international, regional and national law on indigenous peoples’ rights. In sum, “[t]hanks to the lobbying efforts of indigenous representatives over the past 30 years, the rights of indigenous peoples have received greater attention in the UN and in the international community, as a whole.”³⁵ According to Ferrari, “[many] rights of indigenous peoples relevant to biodiversity conservation [are] already established under the UN system”.³⁶ Colchester summarises recognized indigenous peoples’ rights applicable to protected areas as follows:³⁷

- ▶ Self-determination
- ▶ Freely dispose of their natural wealth and resources
- ▶ In no case be deprived of their means of subsistence
- ▶ Own, develop, control and use their communal lands, territories and resources, traditionally owned or otherwise occupied by them
- ▶ The free enjoyment of their own culture and to maintain their traditional way of life
- ▶ Free and informed consent prior to activities on their lands
- ▶ Represent themselves through their own institutions
- ▶ Exercise their customary law
- ▶ Restitution of their lands and compensation for losses endured.

In addition to relevant provisions in several core human rights treaties,³⁸ in more recent decades a set of instruments specifically addressed to indigenous peoples and, to a less extent, lo-

cal communities have emerged. These include:

- ▶ **ILO Convention No. 169 Concerning Indigenous & Tribal Peoples in Independent Countries** (1989), which was the first international convention to specifically address indigenous peoples’ human rights.³⁹ However, relatively few states have ratified this important instrument.⁴⁰
- ▶ **Convention on Biological Diversity** (CBD) (1992),⁴¹ which, among other things, advocates in Article 8j that States Parties “respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities embodying traditional life styles relevant for the conservation and sustainable use of biological diversity”; that they “promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices”; and that they “encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices”. Article 10(c) advocates that States Parties “protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements”. Further, under its 2004 Programme of Work on Protected Areas, the CBD suggests that parties “[e]nsure 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.”⁴²
- ▶ The (Draft) **Declaration on the Rights of Indigenous Peoples** which would, among other things address rights to secure tenure of land

currently or previously occupied; free, prior informed consent; restitution of lands lost; conservation of the 'total environment'; and control of development priorities.⁴³

Despite this, many states continue to express reluctance to recognizing collective rights for indigenous peoples, and perhaps even more so for minorities and non-indigenous communities. This reluctance is expressed on the grounds of national unity, fearing that collective rights open the door to new claims of and demands for self-determination and sovereignty. Several states (acting in their capacity as General Assembly members) postponed adoption of the Declaration on the Rights of Indigenous Peoples in part for these reasons.



Picture 4. An example of 3-D modeling built by the Karen people of Chom Tong District (Northern Thailand) to illustrate their ancestral territory. (Courtesy Grazia Borrini-Feyerabend)

The status of **local community** rights is more ambiguous, in part because their standing as clearly defined groups may also be more ambiguous. In the context of conservation, local communities may be farmers, fishers, pastoralists, mobile people, etc, or a mixture

of two or more of these social groups.⁴⁴

One important distinction between local communities and indigenous people, made more

complicated by this ambiguity, concerns the collective rights recognized for each. What rights are accorded to non-indigenous local communities in relation to land and resources, customary laws and institutions,

language and cultural practices?⁴⁵

Given the diversity of social groups that the term may encompass, the answer may be to analyze which rights each group is accorded by international law (such as Farmers Rights under the 2001 International Treaty on Plant Genetic Resources for Food and Agriculture), or to try to develop a broad based 'integrated rights approach' that could apply to the various social groups concerned,⁴⁶ such as the concept of Traditional Resource Rights.⁴⁷ With few exceptions (see CBD Article 8j above), international law does not, yet, widely acknowledge collective rights of local communities.

The importance of collective rights, particularly as they relate to land and natural resource access, often arises in the context of protected areas establishment and management. Protected areas have been, and are likely to continue to be, a core conservation strategy. While the ecological services they protect and provide can contribute to human rights in important ways, over the last two centuries protected areas have often been established on land held in common property by indigenous peoples or local communities, resulting in phy-

One important distinction between local communities and indigenous peoples, made more complicated by definitional ambiguity, concerns the collective rights recognized for each.

sical displacement or severely restricted resource access. This in turn often resulted in conflicts and resistance that in many cases continues today. Borrini *et al.*, point out that “[t]oday, few people argue against the need to engage positively with resident or neighbouring communities in protected area management, and probably no-one would defend the proposition that human rights

are less important in relation to protected areas than elsewhere”.⁴⁸ However, as can be seen in many of the cases in this journal, protected areas related displacement (including through restricted resource access) of indigenous peoples and local and mobile communities remains an issue demanding serious attention and action.⁴⁹

Box 2. Defining Indigenous Peoples and Local Communities (Adapted from Ferrari 2005)

Indigenous Peoples

There is no internationally accepted definition of the term 'indigenous peoples'. However, the recognition of indigenous status is important in part because of the rights that are attached to it. The term has increasingly been gaining international attention since the 1970s in the context of debates about the rights of 'ethnic minorities', 'tribal peoples', 'natives', 'aborigines' and 'indigenous populations', who in varying forms have suffered, and continue to suffer, discrimination, marginalisation and human rights violations as a result of colonialism, and post-colonial processes of nation-building, development and modernisation.⁵⁰ The term 'indigenous peoples' has been adopted by a broad movement of self-identified peoples as it is the only category that offers them with clearly recognized collective (group) rights. Although a large number of governments and international agencies have accepted this approach, many governments still object to recognition of indigenous peoples' inherent rights.⁵¹

For one widely used definition, we can look to the International Labour Organization Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries,⁵² 'statement of coverage' (Art. 1):

“1. This Convention applies to:

- (a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- (b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.”

Significantly, this definition differs from many others,⁵³ perhaps in part because it makes explicit reference to self-identification and deals with both Indigenous and Tribal Peoples, clearly establishing its applicability to all regions of the world.⁵⁴

Local Communities

The term 'local communities' has also increasingly been used in development and conservation debates but it has also proved elusive in terms of a definition, as it may carry different meanings in different countries and contexts. Two definitions— both relevant to the issues arising in this journal, and both demonstrating the diversity and complexity in defining local communities— are listed below.

"A community is a human group sharing a territory and involved in different but related aspects of livelihoods—such as managing natural resources, producing knowledge and culture, and developing productive technologies and practices. Since this definition can apply to a range of ...it can be further specified that the members of a "local community" are those people that are likely to have face-to-face encounters and/or direct mutual influences in their daily life....A local community could be permanently settled or mobile."⁵⁵

A local community is "...a socially and geographically defined group of people, not necessarily homogeneous, living close to the natural resources and [protected areas] at stake. These people may have customary rights of use, distinctive knowledge and skills and direct dependency on natural resources as individuals or groups of individuals. They also, however, have a close and unique relationship to the natural resources as a community."⁵⁶

Rights addressees (duty-bearers) and their obligations

Human rights imply corresponding obligations or duties. According to the 2000 World Development Report, "Duty bearers are the actors collectively responsible for the realization of human rights. Those who bear duties with respect to a human right are accountable if the right goes unrealized. When a right has been violated or insufficiently protected, there is always someone or some institution that has failed to perform a duty."⁵⁷ Such obligations are directed primarily to the government of that person's state, which has duties to:⁵⁸

- ▶ **Respect rights:** refrain from taking actions that interfere with the exercise of a right;
- ▶ **Protect rights:** ensure that third parties (e.g., private individuals, businesses, NGOs, etc.) do not take actions that interfere with the exercise of rights; and
- ▶ **Fulfil rights:** develop an enabling environment (through legislation, budgetary policy, public policies, etc) in which people can fulfil their rights, and provide services to more directly fulfil rights when people are not able to do so for themselves.

Not all states can fully meet all these requirements in the same way, or at the same time, a fact recognized in

many instruments protecting economic, social, and cultural rights. The ICESCR, for example, allows for 'progressive

realization' of certain aspects of the rights it covers, and provides a margin of discretion allowing states parties to decide which policies

they want to enact to meet obligations. These provisions oblige states parties to make progressive steps, reflecting their maximum available resources, toward full rights realization in ways that are realistic for and appropriate to their context. Progressive realization does not allow inaction or discrimination, however, and certain steps must be taken immediately, e.g., removing legislation that actively undermines people's ability to fulfil their own right to food or other ESC rights.⁵⁹

While states remain the focus of human rights, there is a growing realization within the international community that, in an era of shrinking roles of states and increasing scope of civil society and private sector action, it is important for non-state actors (i.e., 'third parties') to recognize their responsibilities towards human rights.

While states remain the focus of human rights, it is becoming more important for non-state actors to recognize their responsibilities towards human rights.

This is true both in traditional cases, where states hold non-state actors accountable through binding law, but also increasingly where states do not, or cannot, hold non-state actors directly accountable. The nature and scope of non-state actors' responsibilities, however, remain highly debated.⁶⁰



Picture 5. Participation can be seen as both a right in itself, and as a means for realizing other rights. (Courtesy Grazia Borrini-Feyerabend).

Human rights instruments

UN Covenants and Treaty Bodies

Partly in response to the global atrocities experienced during WWII, states came together in the UN and, with pressure from citizens acting through NGOs,⁶¹ drafted the United Nations Charter, the Universal Declaration of Human Rights (UDHR) and several legally binding human rights conventions that laid the groundwork for much of contemporary internal law addressing human rights.

Human rights covenants are legally binding for states parties, i.e., those states that fully ratify them. Each covenant is overseen by a UN "treaty body" (bodies set up to supervise implementation of obligations under specific binding covenants). Table 1 includes some of the key UN covenants and the names of their corresponding treaty bodies.

None of the core covenants mentioned above specifically addresses conservation practice or grants rights to sustainable and healthy environments.

Table 1. Some human rights treaties and their corresponding supervisory treaty bodies

Human rights treaty ⁶²	Corresponding supervisory body ⁶³
The International Covenant on Civil and Political Rights (ICCPR)	The Human Rights Committee
The International Covenant on Economic, Social and Cultural Rights (ICESCR)	The Committee on Economic, Social and Cultural Rights
The International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	The Committee on the Elimination of Racial Discrimination
The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	The Committee Against Torture
The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	The Committee on the Elimination of Discrimination Against Women
The Convention on the Rights of the Child (CRC)	The Committee on the Rights of the Child

However, they contain many rights that are linked to the environment including the rights to self-determination and permanent sovereignty over natural resources, life, health, food, safe and healthy working conditions, housing, information, participation, freedom of association, and culture.⁶⁴

Within the UN framework there are also a large number of non-binding instruments— e.g., declarations, principles,

guidelines, standard rules and recommendations— which do not establish legal obligations but do establish important moral obligations. In some cases (as in the case of the UDHR⁶⁵) such instruments may attain the status of international customary law. Table 2 provides examples of some of the instruments that may be of interest to conservation professionals.

Table 2. Examples of non-binding instruments relating to human rights in UN framework⁶⁶

Vienna Declaration and Programme of Action
United Nations Millenium Declaration
United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples
General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources"
Universal Declaration on the Eradication of Hunger and Malnutrition
Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security
Declaration on the Right to Development
Stockholm Declaration; (Principle I)
Rio Declaration on Environment and Development; (Principles 1 and 10)
Dublin Statement on Water and Sustainable Development
Draft Declaration on the Rights of Indigenous Peoples
Draft Declaration of Principles on Human Rights and the Environment

Finally, a number of international agreements and conventions, which are not strictly human rights conventions, deal at least implicitly with rights and concerns of people in connection to the use of natural resources. Two notable, previously mentioned instruments are ILO Convention No. 169 and the Convention on Biological Diversity.

UN human rights charter bodies

The United Nations Charter and subsequent General Assembly (GA) resolutions also set up several bodies, referred to as "charter bodies", which

generally "hold broad human rights mandates, address an unlimited audience and take action based on majority voting."⁶⁷ These bodies thus deal with broad human rights trends, including convening research and action around emerging human rights (like environmental human rights) and can in some cases take action against states for rights violations even where those states may not have ratified specific conventions. There are two currently operating UN Charter Bodies, explained briefly below.

The Human Rights Council⁶⁸ has responsibility for various, broad human rights initiatives. The Council oversees “special procedures”, which refer to various mechanisms the Council sets up to address human rights situations in a specific country, or an emerging thematic issue. One well known mechanism is the appointment of “special rapporteurs”, independent experts that are mandated to investigate and report on specific topics for specific periods of times. Among the many current special rapporteurs are: Mr. Rodolfo Stavenhagen, on “the situation of human rights and fundamental freedoms of indigenous people”; Mr. Okechukwu Ibeanu, on “the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights”; and Mr. Jean Zielger, on the right to food. Ms. Fatma Zohra Ksentini, former special rapporteur on human rights and the environment, gave her final report in 1994. This report included the Draft Principles on Human Rights and the Environment.⁶⁹ Special procedures can be important for exploring and advancing new issues in the human rights framework and, as explained briefly below, can sometimes provide an additional avenue for people to raise individual complaints about rights violations. The Council oversees some working groups, which can act as forums for raising, exploring, and gaining greater recognition for emerging rights principles. Two of the current working groups address rights of indigenous peoples⁷⁰ and the right to development.⁷¹

The other main UN charter body is the Subcommission on the Promotion and Protection of Human Rights,⁷² which reviews reports from working groups and special

rapporteurs, undertakes various studies on emerging human rights issues, and reports to the Human Rights Council.⁷³

Regional bodies & instruments

There is a vast network of regional human rights bodies and instruments, which often reflect the most important issues for a particular region.⁷⁴ Further, most states include at least some set of human rights in their constitutions or national laws. In her final report, the Special Rapporteur on Human Rights and the Environment shows that at least 61 countries have made provisions for the environment in their constitutions,⁷⁵ many of which either explicitly or implicitly link environment to human rights. In fact, it is in part through provisions in national law that states parties are expected to meet their obligations under international human rights instruments.

...at least 61 countries have made provisions for the environment in their constitutions, many of which either explicitly or implicitly link environment to human rights...

Table 3 lists some regional bodies and some of the key instruments they have established. There are many general sources available for anyone seeking more information about such institutions in their region or state.⁷⁶

Procedures to address human rights violations

Part of what makes human rights powerful is the ability to take recourse in international law systems against rights violations. Processes for seeking remedies exist at all levels—the international UN bodies, regional bodies, and many national bodies.⁷⁷ While

Table 3. Some key regional human rights bodies and instruments

Regional Body	Key Instruments
African Commission on Human and Peoples' Rights	African Charter on Human and Peoples' Rights
Asian Human Rights Commission	Asian Human Rights Charter
Council of Europe	Convention for the Protection of Human Rights and Fundamental Freedoms European Social Charter
Council of the League of Arab States	Arab Charter on Human Rights
European Union	The Charter of Fundamental Rights of the European Union
Inter-American Commission on Human Rights	American Convention on Human Rights
United Nations Economic Commission for Europe	Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

important, the universal mechanisms for human rights enforcement are non-judicial, and often criticized for being weak as decisions are not binding in the name of state sovereignty.⁷⁸ However, non-binding instruments can have strong political and public opinion consequences on states.

Within the UN framework, depending on the nature of the rights violation and the party bringing the complaint, one can use either the treaty bodies or the charter bodies discussed above, each having specific advantages and disadvantages.⁷⁹

Complaints mechanisms under the UN treaty bodies

Any state party to a UN human rights convention is required to submit periodic reports to the corresponding treaty body to describe its progress and challenges in meeting its obligations. Some non-state actors, including NGOs, UN agencies, the press, academic institutions, and other international bodies can also submit reports or other informa-

tion on a country's implementation. The treaty body will consider all available information and then publish a report, called 'concluding observations', stating its concerns and making recommendations.⁸⁰ Additional information from non-state actors can be important for raising issues that may not be reflected in states' own reports, and may serve as an important avenue for action in cases where there isn't a process for individual complaints (i.e., under the ICE-SCR).⁸¹

In addition to reports, there are some cases in which an individual can bring a complaint against a state directly to a treaty body. Such complaints must be brought to the supervisory body for the convention in question, and procedures vary by convention. For instance, under

Additional information from non-state actors can be important for raising issues that may not be reflected in states' own reports, and may serve as an important avenue for action in cases where there isn't a process for individual complaints.

the ICCPR, individuals can submit complaints under what is called the 'optional protocol' to this convention if their state has both ratified the convention and accepted the optional protocol. In the case of the ICESCR, there is currently no similar provision for individuals to bring complaints against their state.⁸²

Complaints mechanisms under the UN charter bodies

UN charter bodies allow more options for individuals to bring complaints against states even when those states may not have ratified particular conventions. For instance, under what is commonly called 'the 1503 Procedure', an individual or group can file a complaint with the Human Rights Council regarding a "consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms occurring in any country of the world", even where the alleged violator is not a state party. Processes and stipulations for filing such a procedure can be found on the OHCHR website.⁸³ In some cases, individuals can also raise rights violations with the holders of "special procedures" mandates (e.g., special rapporteurs). This depends largely on the rules of a given special procedure.⁸⁴

Complaints mechanisms under regional instruments

The European Court of Human Rights (ECHR) is open to any contracting States of the European Convention of Human Rights and also to individual complaints alleging a breach by a contracting State of one the Convention rights. The *Inter-American Court of Human Rights* with the *Inter-American Commission on Human Rights*⁸⁵ make up the Human Rights protection system of the Organization of American States. Complaints can be brought before the Court by the Commission (after review-

ing the admissibility of petitions which can be submitted by individuals) or by a State. Contrary to the ECHR, individual complaints cannot be brought before the Court.

Jessica Campese (jessica@cenesta.org) has a Masters in Public Policy, with a research focus on collaborative natural resource management and community driven development. She is currently a Fulbright Fellow (Geneva, Switzerland) working with IUCN/CEESP/TGER and the Graduate Institute for Development Studies (University of Geneva) on developing human rights approaches to conservation.

Armelle Guignier (armgui@yahoo.fr) is a PhD candidate in International law at the University of Limoges, France. Her subject deals with the links between food security, the environment and trade in developing countries. Her areas of interests are biodiversity law and agrobiodiversity, indigenous peoples, and international environmental and development law in general. She is also a program officer at the Centre International de Droit Comparé de l'Environnement (CID-CE), an NGO member of IUCN. Armelle is a member of both CEL and CEESP/TGER.

Notes

- 1 UNDP, 2000, P16.
- 2 See, for instance, Bromley, 1989, p42.
- 3 UNDP, 2000, P16.
- 4 See Hausermann, 1998 for further discussion.
- 5 Shiman, 1999 at <http://www1.umn.edu/humanrts/edumat/hreduseries/tb1b/Section1/tb1-2.htm>
- 6 See, for a general discussion of rights as minimum standards, Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/rights-human/>
- 7 UNDP, 2000, p16.
- 8 "It is the *universality of human rights* that distinguishes them from other types of rights— such as citizenship rights or contractual rights" (Hausermann 1998, p28, emphasis in original).
- 9 This characteristic, while now widely accepted, reflects a relatively recent change explained elsewhere in this paper.
- 10 For example, according to Sen (2000, p.25), some countries in Asia followed the "Lee thesis", named for Lee Kuan Yew, former Prime minister of Singapore, which advocates authoritarian political regimes to strengthen economic development. On the contrary, Sen (2000, p.151-164) has demonstrated the necessary interdependence between public freedoms and economic development.
- 11 Teraya, 2001, p917.
- 12 See works of anthropology of law, including Le Roy, 1992.
- 13 See, for instance, Maggio and Owen, 1997.
- 14 UN Guide for Indigenous Peoples, leaflet 2, p1 (emphasis in original)
- 15 Hausermann, 1998, p25.
- 16 See Hausermann 1998, p27 for background on this categorization, including 'cross-cutting' rights
- 17 The division of human rights into 3 generations dates back to 1977. Its origin is attributed to Karel

- Vasak, Professor of human rights. A proposal for a third International Covenant was drafted in 1982. See Vasak, 1984.
- 18 Hausermann, 1998, p30.
 - 19 Sudre, 2005, p.101-109.
 - 20 Helmons, 2000.
 - 21 Nyamu-Musembi and Cornwall, 2004, p8.
 - 22 Principles 3, 7, Rio Declaration.
 - 23 Brown, 1993.
 - 24 Jonas, H.
 - 25 Karagiannis, 2006, p.67.
 - 26 Kiss and Beurrier, 2004, p.150.
 - 27 *"The Court also recognizes that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn"* point 29; see also points 35 and 36. (8 July 1996)
 - 28 Judgement of September 25, 1997.
 - 29 La Viña, 1994.
 - 30 Adopted during the 29th session of the General conference of UNESCO, 12 November 1999. www.unesco.org
 - 31 Cullet P, 1998, and generally Maggio and Lynch, 1997.
 - 32 Herczegh, 1998, p.172.
 - 33 Ferrari 2005, drawing on Mackay 2002.
 - 34 Oviedo 2002, p22.
 - 35 UN Guide for Indigenous Peoples, leaflet 1, p4.
 - 36 Ferrari 2005, sec.2.3.1, p52.
 - 37 Colchester, 2003 (pp.16-17), cited in Ferrari 2005, sec.2.3.1, p52.
 - 38 See, for example, ICCPR Art. 1 and 27; ICESCR, and CERD
 - 39 ILO Convention 169 devotes articles 13 to 19 to indigenous peoples' land rights
 - 40 As of February 2007, 18 States have ratified the Convention: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Guatemala, Honduras, Mexico, Norway, Paraguay, The Netherlands, Peru, Spain, Venezuela
 - 41 Convention text and related text can be found at <http://www.biodiv.org/convention/convention.shtml>
 - 42 CBD Programme of Work on Protected Areas 2.2.5 at <http://www.biodiv.org/programmes/cross-cutting/protected/wopo.asp?prog=p2> (26 April, 2007).
 - 43 Through it will not be legally binding, "[t]he draft [UN] declaration on the rights of indigenous peoples represents one of the most important developments in the promotion and protection of the basic rights and fundamental freedoms of indigenous peoples." (UN OHCHR 1997, p5)
 - 44 Ferrari 2005, sec. 1.4.4
 - 45 Ferrari 2005, (sec. 1.4.4) poses this question and provides detailed discussion.
 - 46 Craig and Mayo, 1995.
 - 47 Posey, 1999.
 - 48 Borrini-Feyerabend *et al.*, 2004, p7.
 - 49 For background and specific case studies on these issues see, among others, West and Brechin, 1991; Ghimire and Pimbert, 1997; Colchester 2003; Borrini-Feyerabend *et al.*, 2004; and Brockington 2006.
 - 50 Colchester, 1992.
 - 51 Kingsbury, 1998.
 - 52 International Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries. <http://www.unhcr.ch/html/menu3/b/62.htm>
 - 53 See, for example the definition used by the UN Working Group on Indigenous Populations: "Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity; as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems"(Cobo, 1986, cited in Ferrari 2005, sec.1.4.3).
 - 54 Kingsbury, 1998.
 - 55 Borrini-Feyerabend *et al.*, 2004, p9.
 - 56 Kothari 2001, p14.
 - 57 UNDP, 2000, p16.
 - 58 This set of obligations is widely recognized by bodies that oversee rights at the international and regional levels. See Amnesty International (2005: 49) for more a more detailed summary of the current usage.
 - 59 This is a simplified interpretation of a much richer discussion of the nature of state obligations on the right to food in CESCR General Comment 12 (1999). Also see General Comments 3 and 9 for other relevant discussions.
 - 60 Jean Ziegler (2003, para.32), Special Rapporteur on the right to food, stated the following: "Under the traditional application of human rights law, it is usually only possible to hold a Government to account for violations of human rights; it is still not well understood how a corporation could be held to account for human rights violations. However, new developments are occurring within the study of human rights and it is now increasingly understood that there are two key ways of holding corporations to respect human rights — one indirect, the other direct..." Also see Clapham, 2006 for a discussion on some of the key positions among international lawyers and scholars on this emerging issue, and his argument for an expanded understanding of legal obligations for non-state actors.
 - 61 Shiman, 1999 at <http://www1.umn.edu/humanrts/edumat/hreduseries/tb1b/Section1/tb1-2.htm>
 - 62 See <http://www.ohchr.org/english/law/index.htm> for links to all major UN instruments
 - 63 Links to the UN Treaty Bodies available at: <http://www.ohchr.org/english/bodies/treaty/index.htm>

- 64 Zohra Ksentini, 1994, par 163– 243.
- 65 UNDP, 2000, p87.
- 66 Each instrument can be downloaded at <http://www.ohchr.org/english/law/index.htm>
- 67 UN Documentation: Research Guide <http://www.un.org/Depts/dhl/resguide/spechr.htm>
- 68 The HRC was established in March 2006 (GA resolution 60/251). It continues the work of the Commission on Human Rights, which concluded its final session in March 2006. See <http://www.un.org/Depts/dhl/resguide/spechr.htm>
- 69 As found in the report prepared by Ksentini, 1994.
- 70 <http://www.ohchr.org/english/issues/indigenous/groups/groups-02.htm>
- 71 <http://www.ohchr.org/english/issues/development/groups/index.htm>
- 72 The subcommission was established by the Commission on Human Rights in 1946. It was called the Subcommission on Prevention of Discrimination and Protection of Minorities until its name changed in July 1999. See <http://www.un.org/Depts/dhl/resguide/spechr.htm> for more information.
- 73 <http://www.ohchr.org/english/bodies/subcom/index.htm>
- 74 UN Guide for Indigenous Peoples, leaflet 2, p10.
- 75 See Annex III the final report prepared by Ksentini, 1994.
- 76 See, for instance, links available from University of Ottawa human rights database at http://www.cdp-hrc.uottawa.ca/links/sitesint_e.html
- 77 For a more complete summary, see the UN OHCHR Fact Sheet 7, Complaints Procedures
- 78 Dupuy, 2006, p.248.
- 79 Specific advantages and disadvantages are explained in detail in the UNOHCHR Fact Sheet 7, Complaints Procedures
- 80 Summary adapted from OHCHR web resources at <http://www.ohchr.org/english/bodies/treaty/index.htm>
- 81 Sudre, 2005.
- 82 Summary adapted from OHCHR web resources at <http://www.ohchr.org/english/bodies/treaty/index.htm>
- 83 See, in particular UNOHCHR Fact Sheet 7, Complaints Procedures
- 84 See <http://www.ohchr.org/english/bodies/chr/special/complaints.htm> for more information
- 85 See for the Court <http://www.corteidh.or.cr> and for the Commission <http://www.cidh.oas.org>
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Human rights and the environment— a practical guide for environmental activists

Stefano Sensi*

Abstract. This article analyses the links between human rights and environmental protection, with a view to clarifying the way, and the extent to which, the mechanisms and procedures established by human rights instruments adopted at the universal and regional levels may be used by environmental activists to pursue protection of the natural environment. It provides an overview of the 'environmental' jurisprudence of international human rights mechanisms, focusing on those human right provisions that are more frequently invoked to address cases of environmental harm. The article argues that the recognition of a substantive right to a healthy environment is not necessary, and may not even be desirable. The mechanisms and procedures set forth in international human rights instruments already provide a useful tool to environmental activists challenging State environmental policies and practices that prevent or limit the enjoyment of the rights set forth in human rights treaties.

The existence of a link between a safe and healthy environment and the enjoyment of human rights has long been recognised in public international law.¹ Water and air pollution, loss of biodiversity, desertification and similar phenomena of environmental degradation do not only affect the quality of the natural environment, but also have a negative impact on human beings and their living conditions.

Despite the obvious relationship between the goals of environmental protection and the promotion of human rights, human rights law and international environmental law have until recently developed in isolation from one another. Environmental degradation and human rights abuses have been treated as unrelated issues—even in cases where the cause-and-effect relationship between environmental degradation and the violation of specific human rights was evident—and distinct mechanisms and procedures have been put in place to address these phenomena.



Picture 1. "the preservation of the environment represents a pre-condition for the effective enjoyment of a number of human rights— including the rights to life, health, food, clean water..." (Courtesy Purna Chhetri, Tanzania).

This article aims to analyse links between human rights and environmental protection, with a view to clarifying the way, and the extent to which, the mechanisms and procedures established by human rights instruments

* The views expressed here are those of the author alone and do not necessarily reflect the views of the Office of the High Commissioner for Human Rights or the United Nations.

may be used by environmental activists to pursue the goal of the protection of the natural environment.

Human rights and the environment: a brief history

Human rights are universal legal guarantees protecting individuals and groups against actions by governments or non-State actors which interfere with fundamental freedoms and human dignity. They are inherent entitlements which come to every person as a consequence of being human, and are protected through a body of international norms commonly referred to as 'international human rights law'.

The Charter of the United Nations is usually regarded as the starting point of modern international human rights law.² It reaffirms the faith of the 'Peoples of the United Nations' in fundamental human rights, and includes the promotion of, and respect for, human rights and fundamental freedoms among the purposes of the United Nations.³ The Charter "does not identify the human rights and fundamen-

The Universal Declaration of Human Rights neither enshrines a substantive right to a clean and healthy environment nor refers to the protection of the natural environment.

tal freedoms which would contribute to the economic and social advancement of all peoples, nor does it provide any support for the

idea that a clean or healthy environment should or did form a part of those rights and freedoms."⁴

The first international instrument to elaborate human rights standards was the Universal Declaration of Human Rights.⁵ The Declaration sets forth the human rights and fundamental freedoms to which all human beings

are entitled, without distinction of any kind. As is the case for the UN Charter, the Universal Declaration neither enshrines a substantive right to a clean and healthy environment nor refers to the protection of the natural environment among the pre-conditions for the enjoyment of the substantive rights recognised in it.

In 1966, two treaties open to all States— the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁶ and the International Covenant on Civil and Political Rights (ICCPR)⁷— expanded upon the rights and freedoms proclaimed in the Universal Declaration, providing protection for a wide range of human rights and fundamental freedoms. The right to a decent environment is not included in the list of guarantees they set out.⁸

The two Covenants have since been supplemented by several treaties adopted at the global and regional level. At the global level, a number of treaties expanded the content of the rights and freedoms set out in the Covenants, and adapted it to the particular situation and needs of the target group that these treaties aim to protect.⁹ At the regional level, four 'core' human rights treaties have been adopted: the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),¹⁰ the European Social Charter (ESC),¹¹ the American Convention on Human Rights (ACHR),¹² and the African Charter on Human and Peoples' Rights (ACHPR).¹³

At the time most of these treaties were adopted, i.e. in the period between the end of the Second World War and the 1970s, the protection of natural environment was not included in the human rights agenda. The international community had more immediate hu-

man rights concerns to deal with at that time, and this explains why 'environmental rights' were not considered. Among international human rights instruments, only the most recent ones contain explicit references to 'environmental rights' or to the protection of the environment as a pre-condition for the enjoyment of human rights.

The Convention on the Rights of the Child (CRC) is the first universal treaty which expressly recognises that the enjoyment of human rights depends, *inter alia*, on a decent environment.¹⁴ The ACHPR and the Additional Protocol to the ACHR¹⁵ go even further, and expressly include the right to a healthy environment in the catalogue of rights that States parties undertake to implement.

The remaining part of this article looks in greater detail at the way in which existing human rights complaint procedures may be used by environmental activists to seek redress against human rights violations originated by poor environmental policies or practices of States. It considers the main arguments for and against adopting a substantive right to a healthy environment *vis-à-vis* a rights-based approach to environmental protection, and looks at the way in which global and regional human rights compliant procedures have been used in order to preserve and protect the natural environment.

A substantive right to a healthy environment

The African Charter and the San Salvador Protocol are the only human rights instruments that enshrine a right to a healthy environment.

Article 24 of the ACHPR states that: *All peoples shall have the right to a general satisfactory environment favourable*

to their development.

Article 11 of the San Salvador Protocol contains a more complete formulation, which reads as follows:

1. *Everyone shall have the right to live in a healthy environment and to have access to basic public services.*
2. *The States Parties shall promote the protection, preservation, and improvement of the environment.*

Both formulations have been criticised for being extremely vague and generic.¹⁶ More generally, the existence of, and the need

for, a substantive right to a healthy environment have been seriously questioned at the international level.

As Boyle put it, there are very powerful arguments that the recognition of such a right is neither necessary nor desirable.¹⁷

There are very powerful arguments that the recognition of a substantive right to a healthy environment is neither necessary nor desirable

First of all, it is problematic to identify the holders of this right. The San Salvador Protocol refers to 'everyone'. The ACHPR states that this right is to be enjoyed 'by all peoples', as opposed to 'every individual' who is the beneficiary of the traditional human rights recognised in the Charter. This reference seems to include the right to a healthy environment in the category of collective rights, which are difficult to uphold within the traditional human rights framework. Furthermore, it is unclear whether the expression 'all peoples' refers to the whole population of the State concerned, to a particular group within the State or even— as Anderson suggested— to unborn persons and future generations.¹⁸

Secondly, existing legal instruments

recognising this right contain no definition or other indication of what is meant by 'healthy environment'. The African Charter refers to a 'general satisfactory environment'. The San Salvador Protocol prefers the term 'healthy environment'. Principle 1 of the Stockholm Declaration used yet another expression, referring to 'an environment of a quality that permits a life of dignity and well-being'. As Boyle noted, "[w]hat constitutes a satisfactory, decent, viable, or healthy environment is bound to suffer from uncertainty and ambiguity. Arguably it may even be incapable of substantive definition, or prove potentially meaningless and ineffective (...) and



Picture 2. ...[w]hat constitutes a satisfactory, decent, viable, or healthy environment [...] may suffer from cultural relativism, particularly from a North-South perspective..."²⁰ (Courtesy Wet Tropics Management Authority, Australia)

undermine the very notion of human rights. At best, it may suffer from cultural relativism, particularly from a North-South perspective, and lack the universal value normally thought to be inherent in human rights."¹⁹

The practical implementation of this right would also pose a number of problems. Article 24 of the ACHPR remains silent as to the measures that States parties are required to adopt in order to implement this provision, and does not explain what States parties are supposed to do in the event of a conflict between environmental measures and economic development.²¹ Article 11(2) of the San Salvador Protocol requires States parties to "promote the protection, preservation, and improvement of the environment", but does not indicate what kind of measures States parties should take. The vague and laconic way in which these provisions have been drafted is also likely to undermine the effectiveness of mechanisms put in place under the respective treaties to ensure States parties' compliance with the obligations they have undertaken.²²

Another objection to the recognition of a right to a healthy environment concerns its anthropocentricity. Such a right —like any other human right— is inherently focused upon the human being, and is thus opposed by some environmentalists on the account of its failure to recognise adequately the inherent value

Another objection to the recognition of a right to a healthy environment concerns its anthropocentricity.

of other species and of the environment in general.²³ The limited focus of this right "may indeed reinforce the assumption that the environment and its natural resources exist only for the human benefit, and have no intrinsic

worth in themselves."²⁴

Consequently, biodiversity in Antarctica and other ecosystems would indeed be protected only insofar as their preservation is necessary, or desirable, for the protection of human lives and health, or for the realisation of human interests (e.g. the protection of natural landscape or the promotion of tourism).

Finally, it has been objected that while a substantive right to a healthy environment would have undoubted rhetorical force, it would in reality add little to what already exists in international environmental law, and would therefore be largely redundant.²⁵

The lack of a reference to a human right to a clean environment in the Rio Declaration, which abandoned the human rights vocabulary used in

A rights-based approach to environmental protection recognises that the preservation of the environment represents a pre-condition for the effective enjoyment of a number of human rights.

Principle 1 of the Stockholm Declaration, seems to be indicative of continuing uncertainty concerning the need or desirability of such a right.²⁶

A rights-based approach to environmental protection

A rights-based approach to environmental protection recognises that the preservation of the environment represents a pre-condition for the effective enjoyment of a number of human rights— including the rights to life, health, food, clean water, adequate housing, property, private and family life, and culture— and that, conversely, damage to the environment can impair and undermine the realisation of

these rights. This approach is based on existing international human rights standards and principles and seeks to ensure the promotion of human rights through a sound management of environmental resources.

The real added value of a rights-based approach consists in allowing victims of environmental harm the right to bring complaints against the State.

Using existing human rights law as a tool to protect the natural environment presents several advantages *vis-à-vis* the creation of a new substantive right to a healthy environment. As Boyle observed, such an approach "avoids the need to define such notions as satisfactory or decent environment, falls well within the competences of existing human rights bodies, and involves little or no potential for conflict with environmental institutions."²⁷

Nonetheless, the real added value of this approach consists in allowing victims of environmental harm the right to bring complaints against the State through the mechanisms and procedures established under the existing human rights treaties. Such mechanisms and procedures represent an important tool for environmental activists, given the general absence of procedures to bring complaints in existing environmental treaties and the very conservative approach adopted by many international and domestic tribunals with regard to environmental litigation. Indeed, as Shelton has correctly noted, "[i]n nearly all cases, human rights tribunals provide the only international procedures currently available to challenge government action or inaction respecting environmental protection."²⁸

Not all forms of environmental degradation can be addressed by using existing human rights mechanisms. The limits of a rights-based approach lie in the very nature of human rights law, which aims to promote and protect the fundamental rights of individual human beings. Thus, recourse

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to human rights procedures would prove useless with regard to those environmental threats— like climate change or

loss of biodiversity— that cannot be regarded *per se* as human rights violations or directly evaluated in relation to their impact on the life and well-being of particular persons. On the other hand, human rights law provides a powerful means to protect the natural environment against pollution and other forms of degradation that have the effect to prevent or limit the enjoyment of the rights set forth in human rights treaties.

The following analysis provides an overview of the 'environmental' jurisprudence of international human rights mechanisms, focusing on those human right provisions that are more frequently invoked to address cases of environmental harm.²⁹

● Right to life

All human rights treaties recognise that every person has an inherent right to life.³⁰ This right places upon States two obligations: a negative obligation not to 'arbitrarily' deprive individuals of their right to life and a positive obligation to take active measures to ensure everyone's right to life. In the environmental sphere, the right to life "might be in-

voled by individuals to obtain compensation where death resulted from some environmental disaster, like Bhopal or Chernobyl, in so far as the State is responsible."³¹

However, the potential of this provision has never been tested in practice. International bodies have adopted a very cautious approach towards cases of alleged violation of the right to life caused by hazardous activities undertaken by the State or by its failure to provide a proper regulatory framework and monitoring mechanisms to ensure the respect of the right to life by private actors.

The Human Rights Committee received a number of complaints under the Optional Protocol³² concerning alleged violations of the right to life relating to radioactive waste and nuclear tests. In *E.H.P. v. Canada*,³³ the Human Rights Committee acknowledged that the storage of radioactive waste close to the applicants' homes raised serious issues with regard to the obligation of States parties to protect the right to life of present and future generations, but declared the communication inadmissible for non-exhaustion of domestic remedies. In *E.W. v. Netherlands*,³⁴ a communication concerning an alleged violation of the right to life based on the deployment of cruise missiles fitted with nuclear warheads on Netherlands territory was found to be inadmissible because the authors failed to prove that they were 'victims' within the meaning of Article 1 of the Optional Protocol. In *Bordes and Temeharo v. France*,³⁵ concerning France's nuclear tests in the South Pacific, the Committee conceded that "the designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront mankind today",

but found the case inadmissible on the ground that the claimants had not substantiated their claim that the conduct of nuclear tests by France had violated or threatened their right to life.

The European Court on Human Rights has taken a similarly cautious approach in its interpretation of alleged violations of the right to life resulting from environmental harm caused by State action (or failure to act). In *Guerra and Others v. Italy*,³⁶ the applicants complained of pollution resulting from operation of a nearby chemical factory. The applicants claimed that the Italian authorities' failure to take appropriate action to reduce the risk of serious environmental pollution and to avoid the risk of major accidents amounted to an infringement, *inter alia*, of their right to life and physical integrity. The European Court did not rule on this alleged violation. Having ascertained a violation of the right to respect for private and family life, the Court found it unnecessary to consider whether the right to life had been violated in the present case, despite the fact that deaths from cancer had occurred in the factory. This decision has been criticised by several commentators, including some of the judges of the Court.³⁷

- **Right to respect for private and family life**

Several human rights treaties recognise the right to respect for private and family life, home, and correspondence.³⁸ This right aims to protect individuals against arbitrary or unlawful interferences with a wide range of interests related to the personal sphere. In the field of environmental litigation, this right could be invoked by individuals to complain against pollution or other forms of environmental degradation which might be attributed to the State, in particular for its failure to prevent

private actors from polluting or degrading the natural environment.

Notwithstanding its great potential, this right does not appear to have been invoked under the Optional Protocol to the ICCPR or the Inter-American system. However, several cases brought under the European Convention provide examples of the way in which this right has been used in environmental cases.

Most of the cases of alleged violation of the right to private and family life involve noise pollution. In *Powell and Rayner v. United Kingdom*,³⁹ the Strasbourg Court found that the excessive noise caused by the increasing volume of aircraft at Heathrow Airport was justified under Article 8(2) because it is 'necessary in a democratic society' for the economic well-being of the country. In reaching this conclusion, the Court noted that the Government had struck a fair balance between the competing interests of the individual and of the community as a whole, without exceeding the margin of appreciation afforded to it in determining the steps to be taken to ensure compliance with the Convention.

In *Hatton and others v. United Kingdom*,⁴⁰ a chamber of the European Court found that the government policy on night flights at Heathrow airport gave rise to a violation of the applicants' rights under Article 8 of the Convention. This decision was overturned by the Grand Chamber of the European Court, which reaffirmed that it is primarily the State's responsibility to strike a fair balance between the economic interest of the country and the conflicting interests of the persons affected by noise disturbances.⁴¹ Environmental protection should be taken into consideration by States in acting within their margin of appreciation and

by the Court in its review of that margin, but it would not be appropriate for the Court to adopt a special approach in this respect by reference to a special status of environmental human rights.⁴²

The Court found that the authorities had not overstepped their 'wide' margin of appreciation by failing to strike a fair balance, and concluded that there had been no violation of Article 8.

The most important decision of the Court concerning environmental protection is *López Ostra v. Spain*.⁴³ Here, for the first time, the Strasbourg Court found a breach of the Convention as a consequence of environmental harm. The applicant and her daughter suffered serious health problems from fumes from a tannery waste treatment plant which was situated only a few metres away from her home. The European Court noted that "[s]evere environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health."⁴⁴

The Court applied its 'fair balance' test and reaffirmed that States enjoy a 'certain' margin of appreciation in striking such a balance. However, it found that the State did not succeed in striking a fair balance between the interest of the town's economic well-being and the applicant's effective enjoyment of her right to respect for her home and her private and family life, and concluded that the facts of the case revealed a breach of Article 8.

The position of the Court in the *López Ostra* case has been confirmed in subsequent Article 8 cases. In *Guerra and Others v. Italy*,⁴⁵ the Court found the failure of the Italian Government

to provide essential information to the applicants concerning environmental hazards associated with the functioning of a nearby chemical factory to be in breach of Article 8. The Court reached the same conclusion in the recent *Giacomelli v. Italy*,⁴⁶ concerning the lack of prior environmental impact assessment and failure to suspend operation of a plant located close to dwellings and generating toxic emissions.

● Right to property

The ICCPR does not contain a right to property. Such a right is included in Article 17 of the Universal Declaration of Human Rights and in the European and Inter-American human rights systems.⁴⁷

These provisions aim to protect the right to peaceful enjoyment of one's possessions, i.e. the right to have, use, dispose of, pledge, lend and even destroy one's property. Enjoyment is protected primarily against interference by the State. However, such a right also imposes positive obligations on the State, most notably a duty to prevent private actors from interfering with the enjoyment of peaceful enjoyment of one's property.

In the environmental sphere, this right has been relied upon only within the European human rights framework, and often in conjunction with the protection afforded by Article 8 of the Convention. In general terms, Article 1 of Protocol No. 1 (hereinafter, P-1), which protects the right to peaceful enjoyment of one's possessions, may be invoked only in cases where pollution or other forms of environmental degradation result in a substantial fall in the value of the property, provided that the State may be held responsible and that the economic loss has not been adequately compensated by the State. This is an

area where States enjoy a wide margin of appreciation, and subsequently there will be no violation when the State can prove that a fair balance was struck between the competing interests of the individual and the community as a whole.

There are several cases in which the Court affirmed that excessive noise and other forms of environmental pollution may adversely affect the right to peaceful enjoyment of one's possessions in breach of Article 1, P-1. In *Rayner v. United Kingdom*,⁴⁸ the European Commission on Human Rights noted that Article 1, P-1 "does not, in principle, guarantee a right to the peaceful enjoyment of possessions in a pleasant environment" but recognised that aircraft noise of considerable level and frequency may seriously affect the value of real property or even render it unsaleable. However, it considered the application manifestly ill-founded because the applicant had failed to submit evidence showing that the value of his property was substantially diminished on the grounds of aircraft noise. The European Commission reached similar conclusions in *S v. France*,⁴⁹ concerning the building of a nuclear power station within 300 metres from the applicant's house.

In other cases concerning the right to property, the European Court ruled that State interferences with the enjoyment of property in order to protect the environment were to be justified under Article 1(2), insofar as they were considered to be "in accordance with the general interest". In *Fredin v. Sweden*,⁵⁰ the Court— recognising "that in today's society the protection of the environment is an increasingly important consideration"— upheld the Government's interference with property rights in order to protect the environ-



Picture 3. The right to freedom of expression is included in all major human rights instruments...

(Courtesy Grazia Borrini-Feyerabend)

ment. The Court confirmed this position in the case of *Pine Valley Developments Ltd and Others v. Ireland*.⁵¹ It noted that interference with property rights conformed with planning legislation designed to protect the environment, and concluded that it was clearly a legitimate aim "in accordance with the general interest" or the purposes of the second paragraph of Article 1.

● Right to information

The right to freedom of expression—intended as the freedom to seek, receive and impart information and ideas of all kinds, without interference by public authorities— is included in all major human rights instruments.⁵² This right protects individuals against arbitrary or unlawful interferences aimed at excluding or limiting the right to receive or circulate information. However, it is unclear whether such a right can be construed as imposing a positive obligation upon public authorities to disclose information in their hands, and, conversely, as a right of individuals to receive information held by public authorities.⁵³

The right to access to information regarding the environment has come to the attention of existing international authorities only in one occasion, namely in the *Guerra* case.⁵⁴ The applicants alleged that the relevant authorities' failure to inform the public about the environmental hazards associated with the functioning of a nearby chemical factory, and about the procedures to be followed in the event of a major accident, infringed their right to freedom of information. The Court did not subscribe to this view. It affirmed that "freedom to receive information, referred to in paragraph 2 of Article 10 of the Convention, basically prohibits a government from restricting a person from receiving information that others wish or may be willing to impart to him" but "cannot be construed as imposing on a State, in circumstances such as those of the present case, positive obligations to collect and disseminate information of its own motion."⁵⁵ The Court thus concluded that Article 10 was not applicable in the instant case.

• Minority rights

Among the core human rights treaties, only the ICCPR contains a specific provision on minority rights.⁵⁶ Article 27 provides that "[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

This provision aims to protect the cultural life of minorities, rather than their physical survival. However, the Committee has interpreted the concept of culture in a broad manner, observing that culture "manifests itself in many

forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them. (...) The protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned."⁵⁷

Under the Optional Protocol, indigenous individuals and communities have brought several complaints relating to the ownership of the land and the use of the natural resources within the territories they traditionally inhabited prior to the arrival of the present dominant population. As the ICCPR does not include a clause on the right to property, and as cases related to the right of all peoples to self-determination or the right to participation have not proven successful, "the main perspective applied by the Human Rights Committee in considering these cases has been on Article 27— the right of members of minorities to *enjoy their own culture* in community with the other members of their group."⁵⁸

A number of these cases provide interesting examples of the way in which Article 27 can be invoked to protect indigenous land and culture from environmental degradation.⁵⁹ In *Ominayak and the Lubikon Lake Band v. Canada*,⁶⁰ concerning an alleged deprivation of the Band's means of subsistence through the State's selling oil and gas concessions on their lands, the Committee expressly recognised for the

first time that the rights protected by Article 27 include the right of persons, in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong. The Committee concluded that "historical inequities (...) and certain more recent developments threaten the way of life and culture of the Lubicon Lake Band, and constitute a violation of article 27 so long as they continue."⁶¹

In the first *Länsman* case,⁶² related to private companies quarrying building stone in traditional lands of the Sami, the Committee found that there had been no violation of Article 27. In reaching this conclusion, the Committee noted that the amount of quarrying that had taken place did not appear to have adversely affected reindeer herding in the area, and that the local Sami had been consulted during the proceedings. With regard to future activities, the Committee stated that if mining activities "were to be approved on a large scale and significantly expanded by those companies to which exploitation permits have been issued, then this may constitute a violation of the authors' rights under article 27."⁶³

In the second and third *Länsman* cases,⁶⁴ the Committee adopted the same combined test of consultation and sustainability to exclude that logging already conducted or planned within the *Samiland* amounted to a violation of Article 27. It is worth noting that, in applying the sustainability test, the Committee the Committee pointed out that "though different activities in themselves may not constitute a violation of this article, such activities, taken together, may erode the rights of Sami people to enjoy their own culture."⁶⁵

The absence of a specific provision on indigenous rights has not prevented the Inter-American Commission on Human Rights from entertaining cases concerning alleged violations of the right of indigenous peoples over their land and its natural resources. In the *Yanomami* case,⁶⁶ the Commission found that the construction of a highway through Yanomami territory and the authorisation to exploit the territory's resources amounted to a violation of the Yanomami rights to life, liberty, and personal security, as well as their rights to residence and movement, and to the preservation of health and well-being. The readiness of the Commission to consider environment-related cases is confirmed by two recent cases brought to its attention. In the *San Mateo de Huanchor* case,⁶⁷ the Commission accepted the request for precautionary measures to protect the life and health of an indigenous community affected by mining toxic waste in Peru. In the *Ralco* case,⁶⁸ it approved a friendly settlement between indigenous communities affected by the construction of the Ralco dam in southern Chile and the Government.

In those cases where environmental degradation and pollution can be measured in relation to their impact on the human rights of individuals, human rights mechanisms provide a formidable instrument in the hands of environmental activists

Conclusions

This analysis of jurisprudence highlighted several examples of the willingness showed by international organs and tribunals to strengthen environmental protection by making a creative use of existing human rights provisions, in particular those relating to the right to private and family life and the right property. It also showed the limits

of the protection afforded by human rights complaint procedures, which can only be used in those cases where environmental harm has the effect to prevent or limit the enjoyment of the rights set forth in human rights treaties. In those cases where environmental degradation and pollution can be measured in relation to their impact on the human rights of individuals, human rights mechanisms provide a formidable instrument in the hands of environmental activists to challenge the poor environmental policies and practices of the State.

Stefano Sensi, LL.M., is currently working as a Human Rights Officer in the Treaties and Council Branch at the United Nations Office of the High Commissioner for Human Rights (OHCHR). His previous responsibilities within the OHCHR included the mandate on human rights and the environment as well as the mandate of assisting the Special rapporteur of the Council on Human Rights on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights.

Notes

- 1 The Stockholm Declaration, adopted by the United Nations Conference on Human Environment (UNCHE) in June 1972, is the first international instrument that expressly recognises the inter-relations existing between the preservation of the natural environment and the enjoyment of human rights. See in particular Principle 1 of the Declaration. The text of the Declaration is available at <http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=97&ArticleID=1503>
- 2 The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organisation, and came into force on 24 October 1945. For the text of the UN Charter, see <http://www.un.org/aboutun/charter/>
- 3 Articles 1(3), 55 and 56 of the UN Charter.
- 4 Sands, 1995, p. 221.
- 5 Universal Declaration on Human Rights was adopted by the United Nations General Assembly on 10 December 1948. For the text of the Universal Declaration, see <http://www.unhcr.ch/udhr/index.htm>
- 6 The ICESCR was formally adopted and opened for signature and ratification in 1966, and entered into force in 1976. For the text of the Covenant, see <http://www.ohchr.org/english/law/cescr.htm>
- 7 As the ICESCR, the ICCPR was adopted in 1966 and entered into force ten years later. For the text of the Covenant, see <http://www.ohchr.org/english/law/ccpr.htm>
- 8 The only explicit reference to the protection of the environment can be found in Article 12(2)(b) of the ICESCR, which requires States Parties to the Covenant to take steps to achieve the full realisation of the right to the highest attainable standard of physical and mental health, *inter alia* by improving "all aspects of environmental and industrial hygiene".
- 9 For the text of other core United Nations human rights treaties, see <http://www.ohchr.org/english/law/index.htm>
- 10 The ECHR, adopted in 1950, entered into force in 1953. Additional protocols to the Convention integrate the list of rights protected under the European human rights framework. The Convention establishes international enforcement machinery based on the compulsory jurisdiction of the European Court of Human Rights. For the text of the ECHR and its Protocols, see <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>
- 11 The ESC was adopted in 1961 and entered into force in 1965. The ESC was revised in 1996, to take account of the evolution which has occurred in Europe since the Charter was adopted. For the text of the ESC, see <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>
- 12 The ACHR was adopted in 1969 and entered into force in 1978. For the text of the Convention, see <http://www.oas.org/juridico/english/Treaties/b-32.htm>
- 13 The ACHPR was adopted in 1981 and entered into force in 1986. For the text of the Convention, see <http://www1.umn.edu/humanrts/instree/z1afchar.htm>
- 14 Article 24(2) on the right of the child to the enjoyment of the highest attainable standard of health requires States parties to consider "the dangers and risks of environmental pollution" and ensure that all segments of society have access to information and education with regard to, *inter alia*, hygiene and environmental sanitation. Article 29(e) includes "the development of respect for the natural environment" among the goals of educational programmes.
- 15 The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, signed in San Salvador on 17 November 1988, entered into force on 16 November 1999. The text of the San Salvador Protocol is available at <http://www.oas.org/juridico/English/Treaties/a-52.html>
- 16 For a detailed analysis of these provisions, see Churchill, 1996.
- 17 Boyle, 1996.
- 18 Anderson, 1996, at p. 12.
- 19 Boyle, 1996, p. 50.
- 20 Boyle, 1996, p. 50.
- 21 Churchill, 1996, p. 106.
- 22 On the machinery put in place by the San Salvador Protocol and the African Charter to ensure protection of the rights set out in the respective treaties see Churchill, 1996, pp. 99-100 and 105.

- 23 On the issue of anthropocentricity, see Redgwell, 1996.
- 24 Boyle, 1996, p. 51.
- 25 Boyle, 1996, p. 53.
- 26 Principle 1 of the Rio Declaration on Environment and Development, adopted by the UN Conference on Environment and Development (UNCED) held in Rio de Janeiro in June 1992, reads as follows: *Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.*
- 27 Boyle, 1996, p. 63.
- 28 Shelton, 2003, at p. 2.
- 29 For a more in-depth analysis of the jurisprudence of international courts and quasi-judicial bodies on the issue of environmental protection, see *inter alia* Shelton, 2003, pp. 1-30; Shelton, 2002; and Churchill, 1996.
- 30 Article 6 ICCPR; Article 2 ECHR; Article 4 ACHR; Article 4 ACHPR.
- 31 Churchill, 1996, p. 90.
- 32 The Optional Protocol to the International Covenant on Civil and Political Rights was adopted in 1966 and entered into force in 1976. For the text of the Covenant, see <http://www.ohchr.org/english/law/ccpr-one.htm>
- 33 *E.H.P. v. Canada*, Communication No. 67/1980, CCPR/C/OP/2, 1982, in "Selected Decisions of the Human Rights Committee under the Optional Protocol", Vol. 2, United Nations, New York and Geneva, 2002.
- 34 *E.W. et al. v. Netherlands*, Communication No. 429/1990, CCPR/C/47/D/429/1990, 1993.
- 35 *V. Bordes and J. Temeharo v. France*, Communication No. 645/1995, CCPR/C/57/D/645/1995, 1996.
- 36 *Guerra and Others v Italy*, Judgment of 19 February 1998, Reports 1998-I.
- 37 In his concurring opinions, Judge Jambrek noted that "[i]t may therefore be time for the Court's case-law on Article 2 (the right to life) to start evolving, to develop the respective implied rights, articulate situations of real and serious risk to life, or different aspects of the right to life. Article 2 also appears relevant and applicable to the facts of the instant case in that 150 people were taken to hospital with severe arsenic poisoning. Through the release of harmful substances into the atmosphere, the activity carried on at the factory thus constituted a "major-accident hazard dangerous to the environment".
- 38 Article 17 ICCPR; Article 8 ECHR; Article 11(2) ACHR.
- 39 *Powell and Rayner v. United Kingdom*, Judgment of 21 February 1990, Ser. A, No. 172.
- 40 *Hatton and others v. United Kingdom*, Judgement (Third Section) of 2 October 2001.
- 41 *Hatton and others v. United Kingdom*, Judgement (Grand Chamber) of 8 July 2003, Report of Judgements and Decisions 2003-VIII.
- 42 *Ibid.*, para. 122.
- 43 *López Ostra v Spain*, Judgment of 9 December 1994, Ser. A No. 303-C.
- 44 *Ibid.*, para. 51.
- 45 *Guerra and Others v Italy*, Judgment of 19 February 1998, cit.
- 46 *Giacomelli v. Italy*, Judgement of 2 November 2006.
- 47 Article 1 of Protocol No. 1 to the ECHR; Article 21 ACHR.
- 48 *Rayner v. United Kingdom*, Application 9310/81, (47) Decisions and Reports of the European Commission on Human Rights, 1986, 5.
- 49 *S v France*, Application No. 13728/88, (65) Decisions and Reports of the European Commission on Human Rights, 1990, 250.
- 50 *Fredin v Sweden (No. 1)*, Judgment of 18 February 1991, Ser. A No. 192.
- 51 *Pine Valley Developments Ltd and Others v. Ireland*, Judgment of 29 November 1991, Ser. A No. 222.
- 52 Article 19(2) ICCPR; Article 10 ECHR; Article 13 IACHR; Article 9 ACHPR.
- 53 As far as environmental law is concerned, the importance of public participation in environmental decision-making has been first affirmed in Principle 10 of the Rio Declaration. The drafters were very careful to avoid references to the 'rights language', an attitude which reflects a reluctance on the part of States to allow an unlimited right of access to information. However, express references to this right have been since then included in several international instruments, including the EC Environmental Information Directive (Council Directive 90/313/EEC) and, most notably, the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.
- 54 See *supra*, footnote 36.
- 55 *Ibid.*, para. 53.
- 56 Among the legal instruments concerned with minority groups and indigenous populations, see the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) and the European Framework Convention for the Protection of National Minorities.
- 57 Human Rights Committee, General Comment No. 23: The rights of minorities (Article 27), 1994, para. 7 and 9, available at <http://www.ohchr.org/english/bodies/hrc/comments.htm>
- 58 Scheinin, 2000, at pp. 163-164.
- 59 For an in-depth analysis of the jurisprudence of international courts and quasi-judicial bodies on cases concerning the use of land and natural resources by indigenous people, see Shelton, 2003, pp. 18-22; see also Scheinin, 2000, pp. 159-222.
- 60 *Ominayak and the Lubikon Lake Band v. Canada*, Communication No. 167/1984, CCPR/C/38/D/167/1984, 1990.
- 61 *Ibid.*, para 33.
- 62 *Ilmari Länsman et al. v. Finland*, Communication No. 511/1992, CCPR/C/52/D/511/1992, 1994.
- 63 *Ibid.*, para. 9.8.

- 64 *Jouni Länsman et al. v. Finland*, Communication No. No. 671/1995, CCPR/C/58/D/671/1995, 1996; *Jouni Länsman, Eino Länsman and the Muotkatunturi Herdsmen's Committee*, Communication No. 1023/2001, CCPR/C/83/D/1023/2001, 2005.
- 65 *Jouni Länsman et al. v. Finland*, cit., para. 10.7.
- 66 *Status of the Yanomami Indians*, Case 7615, Inter-Am. C.H.R. 24, OEA/ser. L/V/II.66, doc. 10 rev. 1 (1985) (Annual Report 1984-1985).
- 67 *Community of San Mateo de Huancho and its members v. Peru*, Case 504/03, Report No. 69/04, Inter-Am. C.H.R., OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 487 (2004).
- 68 *Mercedes Julia Huenteao Beroiza et al. v. Chile*, Case 4617/02, Report No. 30/04, Inter-Am. C.H.R., OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 693 (2004).

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Derechos humanos y medio ambiente

Mario Peña Chacon y Ingrid Fournier Cruz

Abstract. Despite being recognized as a fundamental human right, the right to environment is not explicitly regulated in any of the various international human rights instruments. Neither the international human rights system, nor regional systems such as the Inter-American or European system regulate the right to a healthy environment in a clear, explicit or exhaustive way. Although theoretical exceptions exist, such as in the African Charter on Human Rights, which does codify third-generation human rights, these have not been implemented so far. Therefore, for all practical aspects, the right to environment lacks adequate protection under regional mechanisms. An indirect protection of this right can be observed in the European system, which through the Commission and the European Court of Human Rights has "environmentalised" other human rights mentioned explicitly in the Treaty of Rome. However, this indirect recognition is far from constitut-

ing the effective creation and protection of a human right to a healthy environment. The Inter-American system, despite the Pact of San Salvador having entered into force, still lacks sufficient elements of direct protection of environmental rights. The codification of environmental human rights within international instruments is fundamental for the adequate protection of such rights. In this context, the proposal advanced by the Centre for Human Rights and Environment briefly described in this article is of great importance, as it could be a first step for the creation and implementation of a Treaty or Protocol of Human Rights and Environment.

Resumen. A pesar de ser reconocido como de un derecho humano fundamental, el derecho al ambiente no se encuentra expresamente regulado en los distintos instrumentos internacionales que versan sobre Derechos Humanos. Ni el Sistema Universal de Derechos Humanos, ni los sistemas Regionales como el Sistema Interamericano o el Europeo regulan de manera clara, expresa ni contundente el derecho al ambiente sano. Si bien existen excepciones teóricas dentro de los sistemas regionales de protección de derechos, como lo es la Carta Africana de Derechos Humanos la cual sí regula taxativamente los derechos de tercera generación, su implementación a la fecha no se ha dado. Por esta razón, para todo efecto práctico el derecho al ambiente carece de la debida protección dentro de los mecanismos regionales. La protección indirecta a este derecho se ha observado a través del Sistema Europeo, el cual por medio de la Comisión y de la Corte Europea de Derechos Humanos, ha "ambientalizado" otros derecho humanos que sí se encuentran plasmados explícitamente en el Tratado de Roma. Esta protección indirecta se encuentra lejos de crear y tutelar efectivamente el derecho a un ambiente sano. Por su parte, el sistema Interamericano, a pesar de la entrada en vigencia del Protocolo de San Salvador carece de elementos suficientes para protección directa del derecho al ambiente. La taxatividad de los derechos humanos ambientales dentro de instrumentos internacionales es fundamental para la correcta tutela de tales derechos. De ahí, la propuesta del Centro de Derechos Humanos y Medio Ambiente brevemente ilustrada en este artículo se reviste de gran importancia, pudiéndose utilizar de punto de partida para el análisis y ejecución ya sea de un Protocolo o bien de un Tratado de Derechos Humanos y Medio Ambiente.

"La paz, el desarrollo y la protección del medio ambiente son interdependientes e inseparables"— Principio 25 de la Declaración de Río sobre Medio Ambiente y Desarrollo

La evolución de los derechos humanos y la incorporación del derecho ambiental como derecho humano de tercera generación

Por lo general, la mayoría de las definiciones sobre Derechos Humanos están cargadas del fundamento filosófico de sus respectivos autores, ya sea positivista o más bien, con tendencia hacia el derecho natural. En el primer caso, el profesor Arturo Pérez Luño dice: "Los Derechos Humanos aparecen como un conjunto de facultades e instituciones

que, en cada momento histórico, concretan las exigencias de la dignidad, la libertad y la igualdad humanas, las cuales deben ser reconocidas positivamente por los ordenamientos jurídicos a nivel nacional e internacional."¹ En el segundo, el profesor Eusebio Fernández, señala: "Toda persona posee unos derechos morales por el hecho de serlo y que estos deben ser reconocidos y garantizados por la sociedad, el derecho y el poder político, sin ningún tipo de discriminación. Estos derechos son fundamentales, es decir se hallan estrechamente conectados con la idea

de dignidad humana.”²

Siguiendo una definición de tipo positivista, los Derechos Humanos son el conjunto de normas y principios reconocidos tanto por el Derecho Internacional como por los distintos ordenamientos jurídicos internos, de observancia universal e inherentes al ser humano, tanto en su faceta de individuo como de sujeto integrante de la colectividad, y que definen las condiciones mínimas y necesarias para que el individuo pueda desarrollarse plenamente en el ámbito económico, social, cultural, político y jurídico, en armonía con el resto de la sociedad. En este sentido es importante considerar la posición de los Derechos Humanos como indicadores de democracia en una sociedad, donde su existencia implica el reconocimiento a la dignidad del hombre, por ser anteriores, superiores y prevalentes a la conformación de los Estados. Se parte de la premisa de que los derechos y libertades fundamentales de los individuos son universales, interdependientes, indivisibles y de igual jerarquía, pero desde una perspectiva meramente didáctica, a los Derechos Humanos se les puede clasificar en tres generaciones:

La primera generación de Derechos Humanos es positivizada por el Bill of Rights norteamericano de 1776 y por la Declaración de Derechos del Hombre y el Ciudadano suscrita en Francia en el año 1789. Se trata de los denominados derechos civiles y políticos, dirigidos a proteger la libertad, seguridad, la integridad física y moral de los individuos. Se caracterizan por ser derechos exclusivos del individuo, sin atención a la sociedad, ni a ningún otro interés, porque deben responder a los derechos individuales, civiles o clásicos de libertad.

La segunda generación de Derechos

Humanos incorpora los derechos económicos, sociales y culturales, estos hacen referencia a la necesidad que tiene el hombre de desarrollarse como ser social en igualdad de condiciones. Nacen a raíz del capitalismo salvaje y de lo que se ha conocido como “la explotación del hombre por el hombre”. Su primera incorporación la encontramos en la Constitución Mexicana de Querétaro suscrita en el año 1917, siendo desarrollada también tanto por la Constitución de las Repúblicas Socialista Federativa de Rusia del año 1918 y por la Constitución de la República de Weimar de 1919. El derecho a la educación, a la salud, al trabajo, seguridad social, asociación, huelga y derecho a la familia, forman parte de esta segunda generación de Derechos Humanos. Un sector de la doctrina denomina a esta generación como “derechos de crédito” o sea, aquellos que son invocables por el ciudadano ante el Estado al asumir éste último no ya el papel de garante de la seguridad, (estado gendarme) sino la realización de los objetivos sociales.³

Los Derechos Humanos, tanto de primera como de segunda generación, fueron incorporados rápidamente en una gran cantidad de constituciones a nivel global, pero no pasaban de ser parte del derecho interno de los distintos Estados. Esto viene a cambiar a partir de 1948, cuando a raíz de las atrocidades cometidas en las dos anteriores guerras mundiales, y el fracaso de la Liga de las Naciones, el 10 de diciembre de 1948 una gran cantidad de países reunidos en el seno de la emergente Organización de las Naciones Unidas tomaron el acuerdo de suscribir la Declaración Universal de Derechos Humanos.

Esta Declaración marca el inicio de una era en pro de la codificación, recono-

cimiento, defensa y promoción de los Derechos Humanos.

Así, la corriente de cambio iniciada con la promulgación de la Declaración Universal de los Derechos Humanos sienta las bases para que en el año de 1966 se suscribiera el Pacto Internacional de Derechos Civiles y Políticos, así como el Pacto Internacional de Derechos Económicos, Sociales y Culturales. Con la promulgación de la Declaración Universal de los Derechos Humanos y el complemento necesario de estos Protocolos, los Derechos Humanos se incorporan efectivamente en el Derecho Internacional, naciendo a la vida jurídica el Derecho Internacional de los Derechos Humanos.

A diferencia de los Derechos Humanos de primera y segunda generación, al día de hoy, los Derechos Humanos de tercera generación no han sido tratados con la misma complejidad, ni en los tratados internacionales ni en las respectivas legislaciones nacionales. Se trata de derechos colectivos, pues los beneficios que derivan de ellos cubren a la colectividad y no sólo al individuo en particular. La doctrina les ha llamado derechos de la solidaridad por estar concebidos para los pueblos, grupos sociales e individuos en colectivo. Otros han preferido llamarles "derechos de la humanidad" por tener por objeto bienes jurídicos que pertenecen al género humano, a la humanidad como tal, entendiendo por ésta, no sólo a las generaciones presentes sino que también a las generaciones futuras. Igualmente, se les suele llamar también "intereses difusos", debido a su característica de no ser necesaria la demostración de violación de un derecho subjetivo para poder reclamarlo. Son derechos que, de manera clara, se identifican con una suerte de *actio popularis* que legitima a cualquier persona,

incluso algunas instituciones del Estado, a incoar un proceso de reclamación para la restitución del derecho violado⁴. Al tratarse de derechos colectivos, no pueden ser monopolizados o apropiados por sujetos individuales, pues pertenecen al género humano como un todo. El punto es que se trata de derechos modernos, no bien delimitados, cuyos titulares no son estrictamente personas individuales, sino más bien los pueblos, incluso la humanidad como un todo.⁵ De acuerdo a la teoría de los Derechos Humanos, los derechos de tercera generación, están dentro de la categoría de derechos de síntesis, pues para que se hagan efectivos es necesario que en ellos se sinteticen los de primera y segunda generación, en una interconexión necesaria, pues a manera de ejemplo, únicamente se puede tener acceso al medio ambiente sano, cuando el hombre sea libre, se respete su vida, el Estado garantice su educación, su salud, etc.⁶

Algunos han caracterizado a la tercera generación de Derechos Humanos con el calificativo de "soft rights" o derechos blandos, por carecer de atribuciones tanto de juridicidad como de



Foto 1. "Dentro de los Derechos Humanos de tercera generación se encuentran el derecho a la protección del ambiente..."
(Cortesía Grazia Borrini-Feyerabend)

coercitividad. Lo anterior encuentra su justificación por la escasa positivización de los mismos en las Constituciones Políticas de los distintos Estados. La tarea de incorporarlos dentro de las distintas constituciones ha sido lenta, siendo el derecho al ambiente y el derecho al desarrollo los únicos que han tenido eco en una gran cantidad de cartas fundamentales.

Dentro de los Derechos Humanos de tercera generación se encuentran el derecho a la protección del ambiente, el derecho al desarrollo, el derecho a la paz, libre determinación de los pueblos,

Específicamente, el derecho a la protección del ambiente contiene una serie de principios que inundan la totalidad del sistema jurídico y tiene por objeto la tutela de la vida, la salud y el equilibrio ecológico.

patrimonio común de la humanidad, derecho a la comunicación, y por último el megaderecho humano al desarrollo sostenible conformado tanto por el derecho al ambiente como por el derecho al desarrollo. Específicamente, el derecho a la protección del ambiente ha sido encasillado por la doctrina dentro de la tercera generación de Derechos Humanos. Contiene una serie de principios que inundan la totalidad del sistema jurídico, de ahí que se hable de su transversalidad. Tiene por objeto la tutela de la vida, la salud y el equilibrio ecológico. Vela por la conservación de los recursos naturales, el paisaje y los bienes culturales. El derecho a gozar de un ambiente sano y ecológicamente equilibrado es un derecho subjetivo concebido para todos y cada uno de los sujetos, oponible a cualquiera (Estado y/o particular) y con posibilidad de ser ejercitado a nombre de cualquiera por formar parte de los denominados "intereses difusos".⁷

El derecho a la protección del ambiente tiene su aparición a nivel internacional en el año 1972 a raíz de la promulgación de la Declaración de Estocolmo sobre Medio Ambiente Humano. Se ve desarrollado por la Carta de la Tierra del año 1982, la Declaración de Río sobre Medio Ambiente y Desarrollo del año 1992 y por la reciente Declaración de Johannesburgo del año 2002. De la fusión del derecho al ambiente y del derecho al desarrollo nace el megaderecho humano denominado derecho al desarrollo sostenible, entendiendo por éste aquel tipo de desarrollo que satisface las necesidades de las generaciones presentes sin comprometer la capacidad de las generaciones futuras de satisfacer sus propias necesidades.

El derecho al ambiente como derecho humano de primera o de tercera generación.

El derecho a un ambiente adecuado y a su protección

Además de la clasificación de los Derechos Humanos por generaciones, el autor Demetrio Loperena Rota ofrece otra clasificación dividida en dos categorías: por una parte, los derechos que el Estado debe respetar y proteger, y por otra, los que el Estado debe promover o proveer. Como bien lo afirma el autor, sólo los primeros son imprescindibles para que una sociedad pueda ser calificada como tal, mientras que los segundos son opciones "civilizatorias", actualizables con el desarrollo social y progreso económico en su contenido.⁸ Siguiendo esta clasificación, los derechos civiles y políticos o derechos de primera generación formarían parte de los Derechos Humanos que el Estado debe respetar y proteger; por tratarse de derechos intrínsecos a la naturaleza humana. Respecto a estos derechos, la función del Estado es reconocerlos, respetarlos y protegerlos. Se trata de

derechos que son anteriores a la conformación del mismo Estado y que por tanto, éste debe reconocerlos como derechos fundamentales y encomendar a los Poderes Públicos su tutela. Contrario a lo anterior, los derechos de segunda y tercera generación entrarían dentro de la categoría de los derechos que el Estado deber promover o proveer. Se trata de Derechos Humanos que necesitan o dependen de los sistemas sociales o políticos. De esta forma, el derecho a la educación o a la asistencia sanitaria universal, son consecuencia de un desarrollo "civilizatorio", y por tanto, requieren necesariamente de la intervención del sistema social y político del Estado.

El medio ambiente precede al hombre, al Derecho y al mismo Estado. Por ello el derecho a un medio ambiente sano y ecológicamente equilibrado como derecho fundamental no depende de los sistemas sociales y políticos, al no ser forjado por el actuar humano sino por la misma naturaleza.

misma naturaleza. Lo mismo sucede con el derecho a la vida, el cual también precede al Estado. En este sentido el rol del Estado respecto al derecho al ambiente lo es de dar reconocimiento, respeto y protección. Por ello y siguiendo la acertada tesis esbozada por el profesor Loperena Rota, el derecho a un medio ambiente adecuado encuadra dentro de la categoría de los derechos

Ahora bien surge la duda respecto al lugar que debería ocupar el derecho al ambiente dentro de estas categorías. El medio ambiente precede al hombre, al Derecho y al mismo Estado. Por ello el derecho a un medio ambiente sano y ecológicamente equilibrado como derecho fundamental no depende de los sistemas sociales y políticos, al no ser forjado por el actuar humano sino por la

que el Estado debe reconocer, respetar y proteger, en donde el rol estatal se ve supeditado a tutelar que estos no sean violentados, sin que su actuación positiva sea imprescindible.

Es importante en este punto resaltar la diferencia que existe entre el derecho a un ambiente adecuado y el derecho a la acción pública para la protección del ambiente. Mientras el primero es cronológicamente anterior y por ende, no se ejerce frente al Estado, el segundo es posterior y si se ejerce frente a éste. El derecho a la protección del medio ambiente está debidamente relacionado con los derechos de solidaridad, ya que por el principio de equidad intergeneracional, las futuras generaciones dependen del uso actual que se le da a los recursos naturales. De ahí que la intervención Estatal sea necesaria para asegurar que las generaciones venideras lleguen a gozar de un ambiente sano, en donde se puedan desarrollar en armonía con el equilibrio ecológico.

El derecho a la protección del medio ambiente por medio de la acción pública del Estado, así como de la participación solidaria de los demás individuos, encuadra dentro de la segunda categoría expuesta, sea aquellos derechos que el Estado debe promover o proveer. A esta categoría pertenecen los Derechos Humanos de tercera generación o de solidaridad, los cuales, como se expuso, necesitan de la plena acción del

El derecho a la protección del medio ambiente está debidamente relacionado con los derechos de solidaridad, ya que por el principio de equidad intergeneracional, las futuras generaciones dependen del uso actual que se le da a los recursos naturales.

aparato estatal para su debida implementación y protección.

El derecho al ambiente en el sistema universal de los derechos humanos

Con la adopción de la Declaración Universal de Derechos Humanos de 1948, se reconoció por parte de una organización de naciones, que son los Estados los primeros obligados en respetar, proteger y promover los Derechos Humanos y por ende, es también un derecho de los individuos, por sí y como colectividad, el exigir este respeto.

El Sistema Universal de los Derechos Humanos

El sistema Universal de los Derechos Humanos nace con la Organización de las Naciones Unidas y la suscripción de los países miembros de Declaración Universal de Derechos Humanos, adoptada por la Asamblea General de las Naciones Unidas el día 10 de diciembre de 1948. La Declaración fue seguida de dos instrumentos internacionales sobre Derechos Humanos adoptados en 1966: la Convención Internacional de Derechos Civiles y Políticos y la Convención Internacional de Derechos Económicos, Sociales y Culturales. Tanto la Declaración Universal de Derechos Humanos como estas dos Convenciones, fueron redactadas y puestas en funcionamiento con anterioridad al inicio de la preocupación mundial por el medio ambiente, lo cual ocurre a partir de 1972, luego de la Conferencia de Naciones Unidas sobre el Medio Ambiente Humano de Estocolmo.

En la Declaración Universal de Derechos Humanos de 1948, se encuentra la primera base en donde se puede asentar el Derecho a un Medio Ambiente Sano cuando se establece que

“toda persona tiene derecho a un nivel de vida adecuado que le asegure, así como a su familia, la salud y el bienestar.” Es importante aclarar que un medio ambiente sano y ecológicamente equilibrado es un requisito indispensables para el efectivo desarrollo de la salud y el bienestar del ser humano, de hecho, del derecho a la vida se extrae el derecho a la salud, y de estos dos se extrae el derecho a un ambiente sano y adecuado, pues sin éste último es imposible el desarrollo adecuado de los dos primeros. Por su parte, el Pacto Internacional de Derechos Económicos, Sociales y Culturales de 1966 menciona la necesidad de mejorar el medio ambiente como uno de los requisitos para el adecuado desarrollo de la persona.

Si bien no existe referencia expresa en los instrumentos de Derechos Humanos de las Naciones Unidas que haga suponer la existencia del Derecho Humano a la protección del ambiente, si es posible deducir su protección indirecta. Esto ocurre por ser tales instrumentos anteriores al nacimiento de la preocupación internacional por el medio ambiente. Sin embargo, es por la vía interpretativa por medio de la cual se puede extraer las bases que permiten asentar el derecho a un ambiente sano dentro de los primeros documentos de la protección de los Derechos Humanos del Sistema de Naciones Unidas.

Los Sistemas Regionales de Derechos Humanos

América, Europa y África han establecido sistemas regionales de protección de los Derechos Humanos mediante la adopción de Declaraciones y Convenciones, así como la creación de Comisiones y Cortes que refuerzan su aplicación.

El Sistema Africano de Derechos Humanos

La Carta Africana de Derechos Humanos fue adoptada por la Organización para la Unión Africana, y entró en vigor a partir de 1986. Por ser de reciente creación, la Carta expone la

La Carta Africana de Derechos Humanos se encuentra casi en desuso, debido a la falta de mecanismos efectivos que la lleguen a poner en práctica.

lista tradicional de derechos civiles y políticos, los derechos económicos, sociales y culturales, así como los derechos de solidaridad o

de tercera generación; incluyendo el derecho explícito de los sujetos a "un ambiente favorable y satisfactorio para su desarrollo".

A pesar de ser un documento de vanguardia, el cual incluye derechos de tercera generación, la Carta Africana de Derechos Humanos en su aplicación, no ha tenido consecuencias prácticas favorables. Esto se debe principalmente a que ella es aplicada por una Comisión y no por una Corte, la cual a pedido de la Organización para la Unión Africana, investiga y rinde recomendaciones, las

cuales pueden ser acogidas o rechazadas por la Asamblea de la Organización para la Unión Africana, incluso la publicidad de los reportes se da sólo en el caso que así lo decida la Asamblea General de la Unión Africana. Por ende, la Carta Africana de Derechos Humanos se encuentra casi en desuso, debido a la falta de mecanismos efectivos que la lleguen a poner en práctica.

El Sistema Interamericano de Derechos Humanos

El Sistema Interamericano de Derechos Humanos está compuesto por la Convención Americana sobre Derechos Humanos o Pacto de San José de Costa Rica de 1969, el cual entró en vigencia en 1978, junto con sus protocolos sobre Derechos Económicos, Sociales y Culturales mejor conocido como Protocolo de San Salvador suscrito el 17 de noviembre de 1988, y el relativo a la abolición de la pena de muerte aprobado en Asunción Paraguay el 08 de junio de 1990, y las cuatro convenciones interamericanas sectoriales sobre: prevención y sanción de la tortura,⁹ desaparición forzosa de personas,¹⁰ prevención, sanción y erradicación de la violencia contra la mujer,¹¹ y la eliminación de discriminación contra personas con discapacidad.¹²

Con el fin de implementar la puesta en ejecución de los derechos contenidos en la Convención se crea la Comisión Interamericana de Derechos Humanos y la Corte Interamericana de Derechos Humanos. La Convención Americana sobre Derechos Humanos no hace referencia expresa al derecho a un ambiente adecuado, principalmente por haber sido redactada con anterioridad al advenimiento de estos últimos. Por su parte, el Protocolo Adicional a la Convención Americana sobre Derechos Humanos en Materia de Derechos Económicos, Sociales y Culturales o



Foto 2. "...la Carta Africana de Derechos Humanos en su aplicación, no ha tenido consecuencias prácticas favorables. ..."
(Cortesía Christian Chatelain)

Protocolo de San Salvador de 1989 si regula expresamente el derecho al ambiente en su artículo 11, donde expresa "Todo individuo tiene el derecho a vivir en un ambiente sano y a tener acceso a los servicios básicos públicos. Los Estados parte deben promover la protección, preservación y el mejoramiento del ambiente".

El protocolo de San Salvador entró en vigencia hasta el día dieciséis de noviembre de mil novecientos noventa y nueve cuando fue ratificado por Costa Rica. El problema adicional que presenta tiene que ver con la falta de mecanismos procesales para demandar la violación de algunos derechos económicos, sociales y culturales, mediante la interposición de peticiones individuales ante el Sistema Interamericano.

El derecho a un ambiente sano como Derecho Humano no ha sido implementado aún por el Sistema Interamericano de Derechos Humanos. Prueba de ello, es la poca cantidad de casos por violación al derecho al medio ambiente en conocimiento de la Comisión



Foto 3. "...(hace) falta de mecanismos procesales para demandar la violación de algunos derechos económicos, sociales y culturales, mediante la interposición de peticiones individuales ante el Sistema Interamericano. ..."
(Cortesía Grazia Borrini-Feyerabend)

o la Corte Interamericana de Derechos Humanos, con la salvedad de casos en que se involucran situaciones de pueblos indígenas donde, por lo general, se vincula el derecho humano a la propiedad colectiva con situaciones de medio ambiente.¹³

El Sistema Europeo de Derechos Humanos

En el año 1950 en la ciudad de Roma las naciones europeas crean la Convención Europea de Protección de los Derechos del Hombre y de las Libertades Fundamentales, la cual entró en vigencia en el año 1953, creándose además la Comisión Europea de Derechos Humanos y la Corte Europea de Derechos Humanos. Además de la Convención de Roma, el Sistema Europeo de Derechos Humanos se encuentra constituido por la Carta Europea de Derechos Sociales y la Convención Europea para la prevención de la Tortura y trato o castigos degradantes e inhumanos. El sistema europeo de Derechos Humanos es ejercido por dos instituciones que velan por el cumplimiento del Tratado de Roma, la Comisión Europea de Derechos Humanos y el Tribunal Europeo de Derechos Humanos. A diferencia de los otros sistemas regionales, el Sistema Europeo, por medio de su Tribunal de Derechos Humanos, si ha entrado a conocer de lleno violaciones medioambientales, lo que merece un análisis por aparte.

Protección del derecho al ambiente por parte del tribunal Europeo de derechos humanos

Al igual que el sistema de Derechos Humanos de las Naciones Unidas, así como al Sistema Interamericano, el Tratado de Roma no reconoce explícitamente un derecho humano a gozar de un medio ambiente adecuado.

La interpretación dinámica y teleológ-

ica de los derechos protegidos por el Tratado de Roma, tanto por parte de la Comisión como el Tribunal Europeo de Derechos Humanos, han permitido para fines prácticos, proteger el derecho al medio ambiente a través de una doble vía indirecta.¹⁴ De esta forma, los particulares pueden beneficiarse de la protección del derecho al medio ambiente en conexión con el Convenio de Roma. Por una parte, esta protección puede darse en cuanto a titulares de derechos cuya garantía exija, en determinados supuestos, protección de las condiciones medioambientales de calidad. Por otro lado, también puede darse esta protección al derecho al medio ambiente cuando éste se encuentre en conexión con un interés general, cuya salvaguardia permite a los Estados Parte en el Convenio, imponer limitaciones y restricciones en el ejercicio de algunos derechos reconocidos por este instrumento regional de Derechos Humanos.¹⁵ Esta doble vía indirecta de protección al derecho al ambiente por parte del Tribunal Europeo de Derechos Humanos, se ha desarrollado a raíz de la aplicación por violación, por acción u omisión, de los artículos 2 y en especial el 8 del Tratado de Roma.

El numeral 2 del Tratado de Roma establece la tutela del derecho a la vida, mientras que el artículo 8 establece el derecho al respeto a la vida privada y familiar, y al disfrute del domicilio. Por tanto, y siguiendo el criterio esbozado por el autor Daniel García San José, si puede afirmarse a la luz de la jurisprudencia del Tribunal Europeo de Derechos Humanos, la existencia de una creciente percepción de la dimensión medioambiental de algunos de los derechos reconocidos en el Tratado de Roma, lo que conlleva en la práctica a la protección del derecho al disfrute de un medio ambiente adecuado, por encontrarse implícito en algunos de los

derechos enunciados dentro del mismo, tales como el derecho a la vida, el respeto a la vida privada y familiar y al disfrute del domicilio.

A pesar de la protección del derecho al ambiente, vía indirecta, por parte del Tribunal Europeo de Derechos Humanos, ello no implica necesariamente que se esté creando un nuevo derecho humano dentro del Tratado de Roma que tutele un medio ambiente adecuado, pues del análisis de la jurisprudencia de dicho Tribunal no se puede deducir una tutela directa de tal derecho.

De lo anteriormente manifestado se puede concluir que el Tribunal Europeo de Derechos Humanos ha llegado a tutelar el derecho al ambiente indirectamente a través de la protección del derecho a la vida privada y familiar y al domicilio, otorgándoles a tales derechos, bajo determinadas situaciones, una dimensión medioambiental, lo cual no implica que dichos derechos se hayan "ambientalizado" *per se*, pues perfectamente pueden ser restringidos por las autoridades estatales, siempre que se trate de una medida con base legal que persiga un fin legítimo y que sea necesaria en una sociedad democrática, tal y como lo establece el párrafo segundo del numeral 8 del Tratado de Roma. El Tribunal Europeo se ve obligado a velar por el justo equilibrio entre los intereses en juego, sea el interés estatal versus el interés del particular o el interés de los particulares afectados. Con ello, el Tribunal Europeo debe analizar caso por caso mediante el sistema de ponderación de los intereses, sin que pueda establecer a priori, cual de los intereses en juego irá a prevalecer sobre el otro.

A manera de ejemplo, en el caso López Ostra versus el Reino de España,¹⁶ el Tribunal Europeo consideró que las



Foto 4. "...el Tribunal Europeo de Derechos Humanos ha llegado a tutelar el derecho al ambiente indirectamente. ..."
(Cortesía Grazia Borrini-Feyerabend)

emanaciones de gases, olores, pestilencias y contaminación por parte de una estación depuradora de aguas y desechos que funcionaba sin la respectiva licencia municipal, violentó los derechos al respeto del domicilio y a la vida privada y familiar de la señora López Ostra. El Tribunal europeo estimó que el municipio no adoptó las medidas oportunas y constató que no se mantuvo el justo equilibrio entre el interés económico del municipio y los derechos de la señora López Ostra, declarando en sentencia que estos últimos fueron violentados por la acción omisiva del municipio.

La tutela ambiental por parte del Tribunal Europeo de Derechos Humanos es posible en el tanto la ingerencia contra el derecho incoado sea injustificada, y el efectivo disfrute de los mismos no sea posible a consecuencia de las malas condiciones ambientales. En tal supuesto, la ingerencia al derecho protegido no respetaría el justo equilibrio que debe prevalecer entre los intereses del particular y los de la comunidad, y una vez realizada la

ponderación de rigor, prevalecerían los intereses de los particulares afectados sobre los del Estado. Por ello, en este caso específico se observa el supuesto de la tutela ambiental indirecta por parte del Tribunal Europeo de Derechos Humanos.

Conclusiones y propuestas

A pesar de ser reconocido como de un derecho humano fundamental, el derecho al ambiente no se encuentra expresamente regulado en los distintos instrumentos internacionales que versan sobre Derechos Humanos, ya que ni el Sistema Universal de Derechos Humanos, ni los sistemas Regionales como el Sistema Interamericano o el Europeo regulan de manera clara, expresa ni contundente el derecho al ambiente sano.

Si bien existen excepciones teóricas dentro de los sistemas regionales de protección de derechos, por ejemplo, en la Carta Africana de Derechos Humanos si se regula taxativamente los derechos de tercera generación, ha quedado claramente demostrado que su implementación a la fecha no se ha dado. Por esta razón, para todo efecto práctico el derecho al ambiente carece de la debida protección dentro de los mecanismos regionales. La protección indirecta a este derecho se ha observado a través del Sistema Europeo, el cual por medio de la Comisión y de la Corte Europea de Derechos Humanos, ha "ambientalizado" otros derecho humanos que sí se encuentran plasmados explícitamente en el Tratado de Roma. No obstante, esta protección indirecta se encuentra lejos de crear y tutelar efectivamente el derecho a un ambiente sano.

Tal vez, mediante la ratificación de la Constitución Europea, el derecho fundamental al ambiente logre plasmarse

dentro de los derechos fundamentales de tutela directa. El sistema Interamericano, a pesar de la entrada en vigencia el Pacto de San Salvador, carece de elementos suficientes para la protección directa del derecho al ambiente.

Consciente de ello, y debido a la necesidad imperante por la efectiva protección de este derecho fundamental, el Centro de Derechos Humanos y Medio Ambiente, organización no gubernamental con sede en Córdoba, Argentina, ha preparado un borrador de Proyecto de Legislación Internacional de Derechos Humanos y Medio Ambiente, con el fin que dicho documento sirva de base de discusión para la suscripción dentro del continente americano de un Tratado de Derechos Humanos y Medio Ambiente. Dicho bor-



Foto 5. "...La taxatividad de los Derechos Humanos ambientales dentro de instrumentos internacionales es fundamental para la correcta tutela de tales derechos. ..."
(Cortesía Grazia Borrini-Feyerabend)

rador posee un capítulo exclusivo sobre Derechos Humanos Ambientales, entre los que se encuentran el derecho a un ambiente sano, derecho a la vida, a la integridad personal, igualdad ambiental, derechos del consumidor, derecho al desarrollo sostenible, derecho de participación e información y acceso a la justicia ambiental, entre otros.¹⁷

La taxatividad de los Derechos Humanos ambientales dentro de instrumentos internacionales es fundamental para la correcta tutela de tales derechos, de ahí que la propuesta que realiza el Centro de Derechos Humanos y Medio Ambiente reviste de gran importancia, pudiéndose utilizar de punto de partida para el análisis y ejecución ya sea de un Protocolo o bien de un Tratado de Derechos Humanos y Medio Ambiente.

"Hasta hace sólo unos pocos años antes de su asesinato en 1988, Chico Mendes, el brasileño conocido internacionalmente por la batalla que libró contra la deforestación amazónica, se consideraba a sí mismo exclusivamente un activista defensor de la justicia social. Su principal objetivo era proteger el derecho de sus compañeros recolectores de caucho a ganarse el sustento gracias al bosque. Sin embargo, en 1985, Mendes conoció el movimiento ecologista y se dio cuenta de que la lucha internacional para salvar la selva tropical y su lucha local para ayudar a sus habitantes venía a ser casi lo mismo. Esa idea reside en el corazón de su legado: él mostró que las cuestiones relativas a los Derechos Humanos y las del medio ambiente están intrínsecamente unidas."¹⁸ Independientemente si el esfuerzo es de un grupo de gobernantes, legisladores, especialistas, activistas o de un solo hombre, entre la teoría y la práctica, lo importante es rescatar

el verdadero sentido de interconexión entre los Derechos Humanos y el derecho al medio ambiente.

En este capítulo se presentan ambas, una perspectiva teórica, un proyecto con esperanza de motivar discusión creada por un grupo de especialistas en la Argentina, y una anécdota para mover los corazones que aún les cuesta creer en el poder del cambio que radica en cada uno de nosotros. Si el derecho ambiental es de primera, segunda o tercera generación, eso a los habitantes de la selva tropical les tiene sin cuidado, pues lo que necesitan es la respuesta efectiva del Estado para su efectiva protección. Al lector se le pide tome esta última reflexión para su propio análisis, para los autores, que la inquietud sobre la conexidad entre los Derechos Humanos y el medio ambiente deje huella ya es un triunfo.

Mario Peña Chacon (mariopena@racsa.co.cr) es abogado costarricense graduado de la Universidad Autónoma de Centro América y Máster en Legislación Ambiental de la Universidad para la Cooperación Internacional y se desempeña como consultor ambiental independiente. Es miembro de la Comisión de Legislación Ambiental de la UICN y de la Asociación Costarricense de Derecho Ambiental.

Ingreed Fournier Cruz (ifournier@upeace.org) es abogada costarricense graduada de la Universidad Autónoma de Centro América y Máster en derechos humanos de la Universidad para la Paz de las Naciones Unidas, y se desempeña como Legal Officer de la Universidad para la Paz.

Notas

- 1 Pérez, 1924.
- 2 Fernández, 1982.
- 3 Loperena, 2003.
- 4 Rodríguez.
- 5 Sagues, 1993.
- 6 Santander, E., "Instituciones de Derecho Ambiental", Ecoe Ediciones, Bogotá, 2002.
- 7 Zeledón, R., "Código Ambiental", Editorial Porvenir, Primera Edición, San José, 1998.
- 8 Loperena, D., "Los derechos al medio ambiente adecuado y a su protección" en Medio Ambiente y Derecho, Revista Electrónica de Derecho Ambiental de la Universidad de Sevilla, Número 6, 2003.
- 9 Suscrita en Cartagena de Indias, el 09 de diciembre de 1985, en vigor desde el 28 de febrero de 1987.

- 10 Adoptada en Belem du Pará, Brasil, el 09 de junio de 1994, en vigor desde el 29 de marzo de 1996.
- 11 Adoptada en Belem du Pará, Brasil, el 09 de junio de 1994, en vigor desde el 05 de marzo de 1995.
- 12 Adoptada en la Primera Sesión Plenaria de la Asamblea General de la OEA el 07 de junio de 1999.
- 13 Mediante la sentencia del 31 de agosto de 2001 en el caso Awas Tigni contra Nicaragua, la Corte Interamericana de Derechos Humanos reconoció a los pueblos indígenas como un colectivo de derechos en su unidad y no únicamente como derechos individuales de sus habitantes. Además, desarrolló el derecho a la propiedad colectiva y la obligación del Estado nicaragüense de titular sus tierras y de disponer de recursos legales eficaces para que los pueblos indígenas puedan tener acceso a la reivindicación de ese derecho. La Corte concluyó que el Estado de Nicaragua violó los derechos de la comunidad Awas Tigni al haber otorgado una concesión de explotación forestal a terceros sin su consentimiento, y por hacer caso omiso a las demandas de la comunidad indígena para que se delimitare su territorio. De esta forma, el Tribunal concluye que los derechos territoriales indígenas no se basan en un título formal otorgado por el Estado, sino en la simple posesión de tierras, enraizada en su propio derecho consuetudinario, valores, usos y costumbres. A la vez estableció que "los indígenas por el hecho de su propia existencia tienen derecho a vivir libremente en sus propios territorios, la estrecha relación que los indígenas mantienen con la tierra debe ser reconocida y comprendida como base fundamental para sus culturas, su vida espiritual, su integridad y su supervivencia económica". La misma sentencia de comentario impuso medidas provisionales para que el Estado de Nicaragua proteja la integridad de las tierras y recursos de la comunidad frente a la acción de terceros o del mismo Estado como una forma de garantizar la efectividad del derecho de propiedad hasta tanto no se produzca la titulación de tierras definitiva.
- 14 Dejeant-Pons, 2002.
- 15 García San José, 2003.
- 16 Tribunal Europeo de Derechos Humanos, S 09-12-1994, número 0496/1994.
- 17 El borrador de Proyecto de Legislación Internacional de Derechos Humanos y Medio Ambiente puede ser accesado en la siguiente dirección electrónica: www.cedha.org.ar
- 18 Sachs, 1995, p5.

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Human Rights—a new “territory” for nature conservation organizations

Yves Lador

The new UN Human Rights Council, created in June 2006 to replace the former Commission on Human Rights, is not designed to be the place to talk about ecosystems, species and genetic diversity. The mandate of the Council is to deal with people, their fundamental rights and the States’ obligations to protect and promote such rights. It could even be seen as an inappropriate “institutional biotope” for conservationists. In contradiction with such a perception of the Council, however,

one the keynote speaker at the opening ceremony of the Council was Ms. Wangari Mathai, the Kenyan Nobel Prize winner. She reminded the Member States of the Council how much the mismanagement of natural resources and of the environment can create conflicts, poverty and insecurity, with a particular pressure on the weak and the poor, and thus increase human rights violations. She insisted that good governance in these matters is crucial to reach justice and security and how a body such as the Council is needed to

monitor the situation of human rights in the world and make sure that no one silence others in submission, when the world is facing the challenge of potential conflicts over scarce resources.

The presence of Ms. Wangari Mathai at the beginning of the Council was a foresight of the new challenges and issues on which the Council will have to work. But there were precedents. The

Ms. Wangari Mathai, the Kenyan Nobel Prize winner reminded the Member States of the Council how much the mismanagement of natural resources can create conflicts, poverty and insecurity, with a particular pressure on the weak and the poor... and thus increase human rights violations

former Commission on Human Rights had started, although much too slowly, to look at environmental issues relevant to its mandate. At the beginning of the nineties, it had agreed that its expert body, called the "Sub-Commission", pre-

prepares a report on human rights and the environment. Ms Fatma Zhora Ksentini, the Commission's expert from Algeria who tabled it in 1994, wrote the report and included in it a "Draft Principles on human rights and the environment",. Unfortunately the Commission seriously followed-up on this issue only in 2002, when preparing its contribution to the Johannesburg Summit. In that occasion it jointly organized an expert meeting with UNEP, whose conclusions were presented in Johannesburg by Ms Mary Robinson, the UN High Commissioner for Human Rights. In 2003, the Commission adopted its first Resolution on "Human Rights and the Environment as parts of Sustainable Development".

In 1995, the Commission created also

the mandate of a "Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights", in order to see how to protect the rights of victims of such practice and look at trends in this matter. The mandate holder is today Prof Okey Ibeanu, of the University of Nigeria. The Commission also mandated in 2004 its expert body to prepare a report on the legal implications of the disappearance of States for environmental reasons, including the implications for the human rights of their residents, with particular reference to the rights of indigenous people. The study prepared by the British expert, Prof Françoise Hampson, is one of the first to look at such human rights implications of climate change and the possible raise of the sea level. It is to the new Council to discuss now the first results of this study and probably to extend it.

All these examples illustrate how the UN Human Rights Council will have to deal more and more with the human rights implications of environmental degradation and its prevention and responses. Two elements can specifically concern conservationists. First, the Council is mandated to review and strengthen the former Commission "Special Procedures". Under this general name are either individuals (called, for example, "Special Rapporteur" or "Special Representative of the Secretary-General") or members of a working group, serving in their personal independent capacity and in all impartiality. They are now mandated by the Council to receive information on specific allegations of human rights violations, to carry out country visits and to examine, monitor, advise, and publicly report to the Council on human rights situations in specific countries or

on major phenomena of human rights violations.

A number of these mandate-holders have had to deal with environmental issues and conservation problems, such as Mr. Peter Leuprecht, from Austria, Special Representative of the Secretary-General for human rights in Cambodia, and Mr. Paulo Sérgio Pinheiro, from Brazil, Special Rapporteur on the situation of human rights in Myanmar, who have been confronted with the impact of illegal timber trade on people. In another field, Prof. Jean Ziegler, from Switzerland, Special Rapporteur on the right to food, mentioned in his report the impact of land degradation and desertification and its possible contribution to new flows of environmental refugees. Of course, other Special Rapporteurs are also constantly confronted with the environmental dimensions of their issue. These Rapporteurs include the one on the situation of human rights and fundamental freedoms of indigenous people—Prof Rodolfo Stavenhagen, from Mexico; the one on the right to the enjoyment of the highest attainable standard of physical and mental health, Mr. Paul Hunt, of New Zealand; and the one on the right to adequate housing, Mr. Miloon Khotari, of India. The so-called “classical” mandates are also concerned, such as the Special Representative of the Secretary-General on the situation of human rights defenders, Ms Hina Jilani, from Pakistan, who includes environmental defenders in her activities and reports. In 2000, the Working Group on Arbitrary Detention, who investigate cases of arbitrary detention adopted an Opinion regarding the charges against Grigorii Pasko, detained in Russia for having tried to alert national and international opinion to the environmental risks of the breakage for recycling of defective nuclear submarines and from the clandestine



Picture 1. “...the UN Human Rights Council will have to deal more and more with the human rights implications of environmental degradation and its prevention and responses...”
(*Courtesy Clive Wicks*)

dumping of their nuclear waste into the Pacific Ocean by the Russian fleet. Considering “that damage to or protection of the environment is an issue that knows no boundaries (...) it should be possible freely to engage in ecological criticism: this forms part of the right to freedom of expression “regardless of borders”, as laid down by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights”. The Working Group concluded that the deprivation of liberty of Grigorii Pasko was arbitrary and thus gave an important interpretation of these rights for the environmental movement.¹ In 2006, 13 communications were sent jointly or individually by 6 mandates on issues concerning the environment.

Finally, the second element concerns the efforts to improve the international environmental governance. A group of

Conservation and human rights— the case of the #Khomani San (bushmen) and the Kgalagadi Transfrontier Park, South Africa

Phillipa Holden

Abstract. This paper outlines the dispossession of the southern Kalahari San of their ancestral lands, due to colonisation, the development of the conservation estate, and South Africa's apartheid policies. The San (or Bushmen as they more usually call themselves) are the first peoples of southern Africa and there is evidence of their widespread distribution over the sub-continent, dating back at least 30 000 years. With the establishment of the Kalahari Gemsbok Park in 1931, people's rights to live and hunt on the land were gradually eroded until their final eviction from the park in the mid 1970s. Under the new democratic government, the #Khomani San Community submitted a land claim for 400 000 ha in the park, which was vindicated and formally settled with major modifications in March 1999. The paper considers whether progress has been made since then, if in fact the rights of the San have been fully restored to them, and what factors are driving such outcomes.

A look into the past...

Most paleoanthropologists and geneticists subscribe to the "Out of Africa" theory that the ancestors of modern humans arose some 200 000 years ago in Africa, with the earliest modern human fossils being found at Omo Kibish, Ethiopia.¹ They also agree that all the variously shaped and shaded people of Earth trace their ancestry to African hunter-gatherers. Ancestral DNA markers turn up most often among the San people of Southern Africa and the Biaka Pygmies of central Africa, as well as in some East African peoples.² A vast rock art record found on the sub-continent points at the San as the first peoples of southern Africa. It seems reasonable to conclude that the San are closely related to the ancestry of all humankind.

The first peoples of southern Africa were seemingly all from one language family, known as !Ui. They were pushed into remoter and drier regions by two major and relatively recent migrations

of other peoples. Approximately 2 000 years ago the sheep and cattle herding Khoekhoe peoples migrated down from Namibia and Botswana, pushing !Ui speaking peoples away from the coast and river areas, and around 800 years ago a major migration of Bantu-speaking peoples entered eastern South Africa.³ Most relations between hunter-gatherers and the agro-pastoralist peoples, however, are likely to have been positive and to have involved a degree of intermarriage.

This changed with the arrival of European explorers and settlers in the 16th and 17th centuries, after which land was gradually carved up into freehold farms, displacing indigenous people onto smaller tracts of communal land, particularly in Namibia, South Africa and Zimbabwe. The expansion of European colonisation caused a great strain on land resources. !Ui speaking hunter-gatherers were victimised by the European settlers as well as by Khoe and

Bantu-language groups, who were now all competing for resources in the face of European territorial expansion. Over this period, disease and other genocidal conditions decimated most San clans in South Africa and Namibia—the last permit to hunt a Bushman was issued by the South African pre-apartheid state in 1927.⁴

At the same time, growing commercial trade, together with protection of crops and livestock necessitated certain controls over wildlife. The accumulation of wealth led to divisions among social classes, and 'desirable' wildlife species came to be controlled by an elite who alone had the permission to hunt, trade and enjoy the spoils of certain species.⁵ Wildlife numbers on freehold ranches decreased over time, particularly in South Africa, due to a combination of uncontrolled hunting and slaughter for skins, trophies and biltong.⁶ The dominant settler religion, Christianity, excluded pantheistic beliefs in the intrinsic power and value of nature, such as those held by the hunter-gathering communities.⁷ Rather, Christianity encouraged its adherents to tame and civilize nature in the service of mankind and material progress.⁸

The net result of the situation described above—exacerbated by the rinderpest epidemic of the late nineteenth century—is that by the early twentieth century, in South Africa in particular, wildlife numbers had declined substantially and other natural resources were under increasing pressure.⁹ During that time, the emergence of a 'new' conservation ethic in western countries filtered through to southern African colonial administrations. The extinct quagga and Cape bluebuck were held as examples of the result of an uncontrolled free-for-all approach. Species such as the bontebok and the

black and white rhinos became flagships for conservation as their numbers had dwindled to near-extinction levels. Game reserves were proclaimed by the state, conservation legislation controlling hunting was enacted, and several private nature reserves were proclaimed by conservation conscious land owners.

Whilst indigenous hunter-gathering communities are likely to have had only minor impacts on natural systems, the enforced apartheid policy of South Africa (also applicable to Namibia, then a mandated territory under South African administration) and the prevailing land policies in then Rhodesia (now Zimbabwe), further removed any control or use of wildlife from indigenous populations. The net result of protectionist legislation was to centralize control over wildlife and to effectively ban subsistence use. Customary and traditional natural resource management institutions were eroded and gradually replaced with centralised, state systems that effectively removed control of natural resources and biodiversity from local communities, destabilising functional management systems and replacing them with increasingly non-functional, alien ones. 'Superstitious beliefs' that had previously safeguarded biodiversity to some extent were also undermined by the church with detrimental impacts on local, *de facto* conservation practices.

History of the land claim

The last to be affected by the European expansion were the peoples of what is now Siyanda District in the Northern Cape (see Figure 1 below). This territory, away from the Orange River, was so dry that none of the food producing peoples could penetrate it easily with their cattle and crops. Various San groups co-existed in the area until the

20th century when technology allowed the European and so-called Coloured settlers to sink boreholes and gradually dispossess the last surviving "Cape Bushmen" or Southern Kalahari San of their ancestral lands.¹⁰

for the proclamation of a Bushman reserve, either inside or outside of the KGNP. Boydell (1948:100) pointed out that the extinction of the Cape Bushman '...was now being expedited because that part of the country where they had lived, roamed and hunted had recently been made into a game reserve in which Bushmen were not allowed'.

Though General Smuts was sympathetic, the National Parks Board was adamant that a Bushman reserve should be created elsewhere, as is stressed by Mr Justice de Wet, chairman of the National Parks Board in a letter to Senator Boydell, dated July 3rd, 1937: 'As regards the Bushmen I certainly have no objection to the government creating a

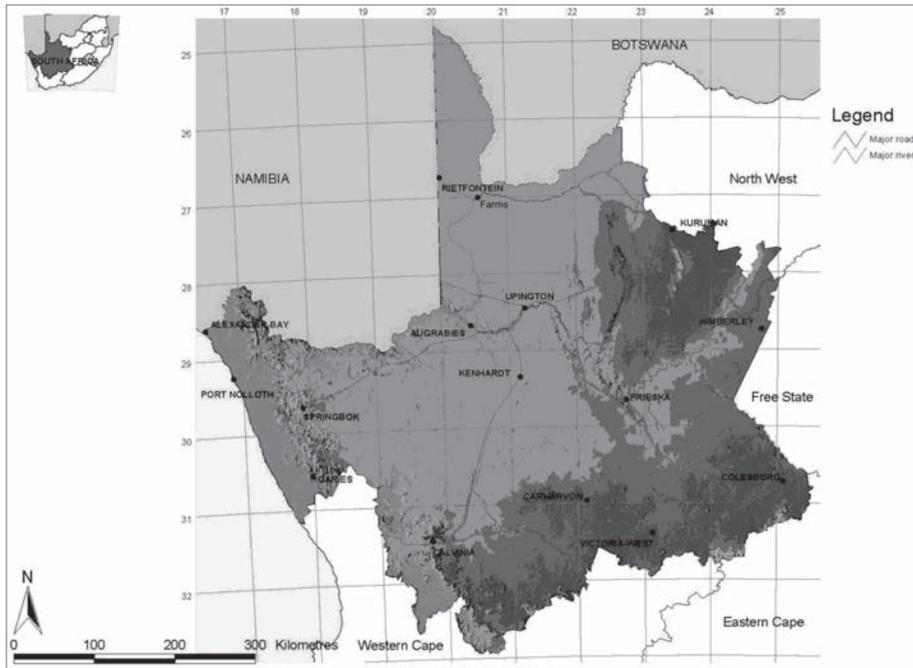


Figure 1. Map of the northern Cape—'Farms' indicates the position of the #Khomani San farms, south of the Kgalagadi Transfrontier Park, which occupies much of the finger of land north of Rietfontein, between Namibia and Botswana (Source: Adapted from Department of Environmental Affairs and Tourism, South Africa, 2004)¹¹

reserve for them so long as it is not in or on the border with the Gemsbok Reserve (Boydell 1948:105). Though they could not persuade the government to proclaim a Bushmen reserve, the efforts of Bain, Boydell and others however bore some fruit with the appointment of Colonel Denys Reitz as Minister of Native Affairs, who in April 1941 reported to parliament that there were 29 Bushmen in the KGNP, '...and it is our intention to leave them there and allow them to hunt with bows and arrows but without dogs. We look upon them as part of the fauna of the country...We think that with their bows and arrows they will kill less gemsbok than the lions. It will be a crime to let them die out, and we have to make provision for them in some way or another.'¹³

In 1931 the Kalahari Gemsbok National Park (KGNP) was proclaimed, with enormous implications for the Bushmen living within the park boundaries. A process of evictions began, which continued on and off until the mid 1970's.¹² In 1936, Donald Bain, a well-known explorer and big-game hunter, responded and took up what he saw as the desperate plight of the Bushmen. An extract from Steyn is instructive in this respect: "Donald Bain and Senator Thomas Boydell meantime campaigned

The efforts of Bain to obtain land for the Bushmen eventually bore fruit

when the farm 'Struis Zyn Dam' adjoining the park was allocated by the state as a home for them. However, for reasons that aren't entirely clear, the farm was sold to white settlers before the Bushmen could occupy the land.¹⁴ The remaining Bushmen continued to live in the park, hunting at first, but then gradually being relocated to the park headquarters at Twee Rivieren, before final eviction in the early seventies.

In 1995, under the new democratic government, the 'reconstituted' #Khomani San Community lodged a claim for restitution of some 400 000ha in the Kalahari Gemsbok Park. After years of negotiation and verification the now diluted claim was finally settled on Human Rights Day, 21 March 1999. At a moving ceremony attended by scores of Bushmen as well as the world's media, then Deputy President Thabo Mbeki signed a land claim settlement agreement transferring the title deeds of six Kalahari farms (approximately 36,000 ha) to the #Khomani San Communal Property Association (CPA). In addition, some 25 000 ha of the originally claimed 400 000 ha within the now renamed Kgalagadi Transfrontier Park were to be managed as a Contract Park (the !Ai!Hai Heritage Park), in conjunction with 25 000 ha awarded to the neighbouring Mier community. The latter had submitted a conflicting land claim at the last minute. The remainder of the calculated capital value of the claim became available for the purchase of additional land or development of existing land. Over the next three years, further negotiations took place and in August of 2002, whilst South Africa was hosting the World Summit on Sustainable Development, a complex final settlement agreement was signed by the parties.



Picture 1. The signing ceremony on Human Rights Day, 1999. From right to left are then Deputy President Thabo Mbeki, the traditional leader of the #Khomani San Mr Dawid Kruiper, the then minister of Land Affairs Mr Derek Hanekom, and a member of the Mier Municipality, Mr Willy Julius. (Courtesy Phillipa Holden)

Rights restored

Apart from ownership of the six farms outside of the park, the #Khomani San rights inside the park include:

- ▶ Land Rights. The #Khomani San received ownership of 25 000 hectares in the south east of the park whilst the Mier community received 25 000 hectares in the south west, which areas were de-proclaimed as National Parks and re-proclaimed as a Contract Park, to be managed by a Joint Management Board. The San can utilize this land in accordance with conditions contained in the settlement agreement and the management plan, a draft of which was annexed to the agreement. No permanent residence, agriculture or mining are allowed, but tourism related and traditional/cultural activities are, including hunting, providing such use and activities are sustainable and in keeping with biodiversity conservation objectives .
- ▶ Preferential commercial rights. The

San received preferential commercial rights to the area between the contract parks and the Auob River. In this zone the #Khomani will be entitled, in addition to traditional/cultural activities, to formulate and conduct eco-tourism projects, in partnership with South African National Parks (SANParks) or otherwise.

- ▶ Symbolic and Cultural Use Rights. The San were awarded "symbolic and cultural" rights over the entire remaining area of their original land claim. In this area they are entitled to visit and to carry out medicinal, gathering, cultural, hunting and related activities, providing such use and activities are sustainable and in keeping with biodiversity conservation objectives.
- Shares in the Klein Skrij Lodge. Both the San and the Mier were awarded 50% shares in a now constructed joint lodge situated in the contract park area in order to commemorate the manner in which they had cooperated during the negotiations. The basic construction of the lodge was funded by the Government, and the concession fee is to be shared three ways between the partners and SANParks as day-to-day managers of the contract park.
- Specific community park incentive. SANParks offered the San a matching amount of up to R 500 000 for the specific establishment of a community game park outside of the park.
- Community Gates. Each community had the right to build and manage at least one gate into the park, subject to the park's strict regulations regarding entry and security.

Reality of land restoration

As the initial negotiations had been

rushed and further detailing of the agreement was required, title to the 25 000 ha of land in the park was not handed over to the community until August 2002. In the interim, registered members of the #Khomani San Community commenced the novel process of managing communally owned farms according to the Communal Property Association Act. Part of what made this challenging was the fact that the 'community' was now artificially constructed from both original claimants and San drawn from the diaspora (as the original claimant group had agreed to expand it to include other San people from the northern Cape), many without any formal education or previous experience of owning and managing land. In the absence of a functioning "community council" or other authoritative body, legislation required the San to operate in accordance with received western notions of "representative democracy".¹⁵ However, this complex process was seriously undermined by a lack of adequate post-restitution support from government, specifically the Department of Land Affairs, and NGOs, and to date has not been achieved.

Throughout South Africa there have been numerous problems encountered with the land reform process and the functioning of CPA's, and the #Khomani San case is perhaps one of the worst instances of this. The causes of dysfunctionality include failure to adhere to democratic and equitable practices, failure to allocate individual land rights to members, deficiencies in the design and establishment of entities

In the absence of a functioning "community council" or other authoritative body, legislation required the San to operate in accordance with received western notions of "representative democracy".

created under the Communal Property Association Act and land management complexities related to communal land holding. One of the results of this is a lack of clarity with respect to who is supposed to be managing and benefiting from the resource base and how.

In the case of the #Khomani San, the lack of a common vision and the absence of a credible land use and development plan for the farms in question, coupled with a history of inequitable self help by a few individuals at the expense of the group, has led to little effective control of natural resource use and a lack of meaningful or optimal benefit being derived by most members of the community. Whilst the #Khomani San's constitution does provide a basis for such, it would seem that these provisions are either not understood or have been ignored by the various CPA management committees. Due to ongoing maladministration by successive CPA committees, the Director General of the Department of Land Affairs (DLA) obtained a court order against the CPA in November 2002. The order assigned control of the affairs of the CPA to the Director General of Land Affairs, under whose administration the estate still remains.

The murder of master tracker Optel Rooi in early 2004 by a member of the South African Police (subsequently convicted) eventually precipitated the South African Human Rights Commission (SAHRC) to launch an inquiry into allegations of abuse of human rights. In late February 2005 a report was released that detailed their findings of serious rights abuse and neglect and that made a number of recommendations for all actors involved.¹⁶ A further investigation by the UN's Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People¹⁷ corroborated these findings and recommended that the situation receive priority attention

from all spheres of government. In recent months there has been an attempt to restore order to the situation and, apart from an inter-governmental steering committee that has been formed, the various actors are finally coming together in a constructive and co-operative manner in an attempt to resolve the crisis and ensure delivery and development in a manner that respects people's fundamental human as well as constitutional rights.

Many factors contribute to and exacerbate the situation within the #Khomani San Community, including but are not limited to, the following:

- ▶ After nearly a century of being spread out in the diaspora, families and clans had developed in totally different directions. Some had retained most of the old ways, others had totally immersed themselves in modern life, or had eked out lives as an underclass in dismal squatter environments. Many had survived lives of unspeakable hardship and misery. The land claim brought these disparate San, linked by ancient blood ties, into one reconstituted community overnight.
- ▶ Racial discrimination remains rife in this area and this perpetuates the status quo and the sense of disempowerment that the San community experience.
- ▶ Substance abuse is rife in the community and this leads to further social

decay resulting in domestic violence, child abuse, increased risk of HIV transmission, malnutrition, depression and social dysfunctionality.

- ▶ A lack of education and life skills means that the people are poorly equipped to cope with the situation that they find themselves in.
- ▶ The provision of services to this relatively remote area is slow and the community has been severely neglected by all arms of government. There is extremely limited access to health care, limited access to the justice system, limited access to shops and a food supply, no water on the farms, inadequate housing, a lack of income generating opportunities, and a lack of infrastructure including for communication. These all result in the physical and virtual isolation of this community with little access to information and the outside world.
- ▶ There is inadequate post settlement support, despite statutory obligations and contractual commitments. This is mainly due to the over-commitment of government departments and officials in the face of numerous time and resource-consuming land claims.



Picture 2. Toppies and Tiena Kruiper outside their home on the farm Witdraai. (Courtesy Phillipa Holden)

Meanwhile, back at the park...

After signing, and in accordance with

the settlement agreement, the day-to-day management of the !Ai!Hai Heritage Park, continued to be undertaken by SANParks. A Joint Management Board (JMB) comprising members of SANParks, San and Mier was constituted and the first meetings were held, focussing primarily on the issues of building the joint lodge and locating community access gates into the park. Difficulties were experienced from the outset and could be ascribed to park management's lack of ability to embrace and implement the settlement agreement, internal political conflicts within the Mier, and a dysfunctional (and for a period non-existent) CPA Management Committee on the #Khomani San side (of which the park committee is a sub-committee.) Aside from the construction of the joint lodge, little was achieved in the first four years of the JMB's operation, and meeting after meeting was postponed or cancelled. Furthermore, no effort was made by any of the parties to assist the claimants, particularly the elders, to visit their land in the park and to re-establish their ancestral connections with their land. People grew increasingly frustrated as 'ownership' and contractual rights did not manifest in actual rights to enter and reconnect with their land. The majority lived on the farms, located over 60 km away from the park, with no transport or procedures enabling them to freely access their land.

On 6 February 2004, some of the original claimants met and drew up the Welkom Declaration, a cry for help which recorded in no uncertain terms their disenchantment with the outcome of the restitution process and their frustration now years later at still being alienated from their land, and therefore from their history and their culture, these being interdependent. They concluded that they would like to

re-open their claim to the whole 400 000 ha and return permanently to live on their land in the park. The Welkom Declaration was sent to the CEO of SANParks and to the Ministers and Director Generals of the Department of Environmental Affairs and Tourism (where SANParks is housed) and the Department of Land Affairs. No reply or acknowledgement was received. The matter was then again brought to the attention of SANParks by external parties and a meeting between the aggrieved claimants and SANParks was finally held in June of 2004. It was agreed that in order to give effect to the settlement agreement, it would need to be 'unbundled'— complex legalese had to be decoded and the traditional, cultural and symbolic rights that had been restored to the people had to be defined and interpreted in practical terms. It was also very clear that the CPA's dysfunctionality and the lack of communication within the community and between them and the CPA Management Committee was a key factor undermining progress. Despite commitments to address the situation from the park's side, not much happened for another two years.

Then, in May 2006, a group of elders and some youths returned to the park for a three day visit. For many it was the first time they had set foot on their land since the historic signing of the agreement in 1999. Financial support for the trip was provided, for the first time, by SANParks, and the park's newly appointed People and Conservation Officer joined the people on this special occasion. The event marked a turning point in relations and gave the San some assurance that SANParks was committed to working together with them. In August of 2006, the first 'unbundling' workshop was held, at which the San were able to propose draft

protocols that would give effect to their rights in the park, including medicinal plant collection, traditional hunting, as well as cultural activities and visits by members of the community to their land. JMB meetings have also become more purposeful and it is evident that with the backlog of work, an implementation officer is needed to carry out the JMB's mandate on a day-to-day basis.



Picture 3. Early morning in the park, May 2006. (Courtesy Phillipa Holden)

Whilst there is renewed political will within SANParks to implement the agreement, a number of challenges remain. South Africa is a signatory to the Convention on Biological Diversity as well as the Durban Accord (output of the 2003 World Parks Congress) and has adopted the United Nations Declaration on the Rights of Indigenous Peoples. Explicit in South Africa's policy and legislation is acknowledgement of the contribution that Indigenous Knowledge Systems can make to sustainable development as well as their intrinsic value. The constitution is also very strong on the protection of human rights, religious freedom and the eradication of racial discrimination and inequality. But what is clear is that it takes time and ongoing effort to change prevailing mindsets and give effect to these sentiments.

Whilst the notion of 'co-management' looks interesting on paper and sounds good at conferences, it is apparent that there is a great deal of resistance to it at a number of levels. It would seem that a certain amount of mistrust remains embedded in the institutions

Whilst it is accepted that 'modern /western science' is presently not able to provide exact answers on what constitutes sustainable use for each of the hundreds of plant species in question, there is reticence to accept the very practical (and conservative) guidelines that have been proposed by the San.

themselves, and that there is not in fact a true appreciation of the opportunity that is presenting itself in terms of the information sharing and learning that can happen. A case in point is the draft protocols for sustainable resource use that have now been tabled by the San at successive meetings and workshops. Whilst it is accepted that 'modern /western science' is presently not able to provide exact answers on what constitutes sustainable use for each of the hundreds of plant species in question, there is reticence to accept the very practical (and conservative) guidelines that have been proposed, even given that an adaptive management approach has been adopted with a monitoring and evaluation system being put in place to support this. The right to undertake traditional hunting activities is clearly a further cause of consternation for the Park Management, and probably understandably so. However, the Bushmen ask whether they can be Bushmen without hunting. As they clearly articulate, the hunt, the dance, the healing and the connection to the land are all integral to their cultural identity, and when one component falls away, the whole slowly starts

to fade— and it's been a long time already.

Institutional transformation is thus critical if indigenous and local communities are to have their rights properly restored. Signing contracts is only one part of the process and further obligations remain. In the South African context Magome & Murombedzi contend that "devised under the apartheid regime in an attempt to expand national parks by entering into agreements with politically powerful private landowners, the contract national park model was not meant for the disadvantaged majority of black people, with the result that the unequal treatment of private and communal landowners in their contracts with the state represents a new form of 'ecological apartheid' in the democratic South Africa, perpetuating a dual tenure system (individual freehold for white farmers and communal tenure for black farmers) and preventing communities from reaching the full potential of possible resource utilisation...".¹⁸

Institutional transformation is critical if indigenous and local communities are to have their rights properly restored. Signing contracts is only one part of the process and further obligations remain.

Some lessons learned

- One of the most apparent lessons is that without a suitable and supportive environment, conservation agencies alone cannot save the day— they cannot be expected to carry the burden of ensuring that social justice and development take place. This is not their core function and they have no institutional experience in the matter. All relevant spheres of government need to co-operate and

share responsibilities.

- ▶ Changing mindsets and shifting entrenched perceptions takes time and effort (and money) and institutional capacity building and harmonisation at all levels of the organisation is essential. It is also necessary to put the right person in the job, and where park staff are going to be expected to deal with social and cultural issues, they need to be able and empowered to do so.
- ▶ A further major impediment to progress after the signing of the settlement agreement was the anarchic state of affairs within the CPA. Good governance, both within and without the conservation estate, is essential if progress is to be made and people are to benefit.
- ▶ Although people are often able to clearly articulate their own vision, ongoing (and often costly) technical and NGO support is essential, especially where people are still dispossessed, disempowered and deprived of their rights. Navigating tortuous legal agreements and being intimidated by 'foreign science' is a daunting prospect for anyone, particularly for peoples whose culture embraces the avoidance of conflict and is innately egalitarian. In this instance, government in particular seems to have underestimated the costs of post-settlement support to historically ravaged and hastily reconstructed 'communities'.
- ▶ Capacity building at a community level is essential too, though it also begs the question of whether, if a rights based approach is to be honestly embraced, appropriate governance systems are not a prerequisite.
- ▶ The cultural and spiritual values of protected areas need to be mainstreamed in order that conservation agencies and the public are able to perceive conservation in a more ho-

listic manner and develop an appreciation for IKS and the deep relationship between indigenous people's and the earth. The latter can be illustrated by the fact that in the !Ui San languages there is no generic word for a tree as each individual tree matters and is given its own name.¹⁹

- ▶ How fast true power sharing can be achieved obviously depends on the local circumstances as well as the prevailing political climate. It tends, however, to invariably be a long process. Essential conditions are the willingness to devolve authority and the embrace the principle and ethic of co-management at local park level (not just at the political and corporate head office level); the availability of the necessary resources for capacity building and skills transfer (and the willingness to do so); the empowerment of communities to ensure equal weight in co-management; strong technical support, and, with respect to capacity building—good ground work and follow through with community members.²⁰

Conclusion

Bushman elders are concerned that their knowledge is dying out. Whilst encouraging youth to embrace modern concepts, they remain concerned (as do many youth) that young people do not know how to hunt and do not perform the healing dance. The connection with their ancestors is fading. Poverty, disrespect for human life, and aggressive racism have all had an impact on the mental, physical and spiritual health of this indigenous community. The more 'traditional' members of the †Khomani San CPA, largely members of a clan who were the last residents of the park, are strongly attached to the park and place a high value on rekindling their material, cultural and spiritual connections to the land. For

them perhaps more than anyone it is important that the terms of the agreement are properly met and that justice is done, not just on paper but in the effective and successful implementation of what is planned, in a mutually constructive and co-operative manner.

Conservation agencies and most conservation-oriented NGOs obviously have conservation objectives uppermost in their corporate goals and conscience. Conservation is where their experience and expertise lie. To mainstream issues such as co-management and access and benefit sharing, conservation agencies and their personnel need to become fully mindful and respectful of the rights held by people *vis a vis* protected areas, and acknowl-



Picture 4. Ouma Anna - one of the few remaining #Khomani San elders who was born in the park and who finally set foot on the land again in 2005. (Courtesy Geoff Dalglish)

edge that these are— in fact— rights and not discretionary concessions or 'nice-to-haves'.

Phillipa Holden (phillipa@hixnet.co.za) lives and works in southern Africa and is involved in protected area planning and management, both within national borders and across borders in the form of Transfrontier Conservation Areas. She is mostly concerned with the involvement of local and indigenous communities in planning for and benefiting from conservation and eco-tourism. Phillipa is a member of TILCEPA.

Notes

- 1 Shreeve, 2006.
- 2 Shreeve, 2006.
- 3 Huffman, 2006.
- 4 Gall, 2001.
- 5 Carruthers, 1995.
- 6 Grossman and Holden, in press
- 7 Carruthers, 1995.
- 8 Carruthers, 1995.
- 9 Grossman and Holden, 2005.
- 10 Southern Kalahari San Land Claims Committee, 1995.
- 11 Map of the Northern Cape Province, Department of Environmental Affairs and Tourism, South Africa, 2004, in Bradstock, 2005, p1981.
- 12 Surplus People Project, 1970
- 13 Steyn, 1995.
- 14 Land Claim Committee, 1995.
- 15 Chennels, 2002.
- 16 for the full report see http://www.sahrc.org.za/sahrc/cms/publish/cat_index_41.shtml#13
- 17 Stavenhagen, 2005.
- 18 Magome & Murombedzi, 2002.
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- 20 Grossman and Holden, in press.

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The history of conservation evictions in Botswana—the struggle continues ...with new hope

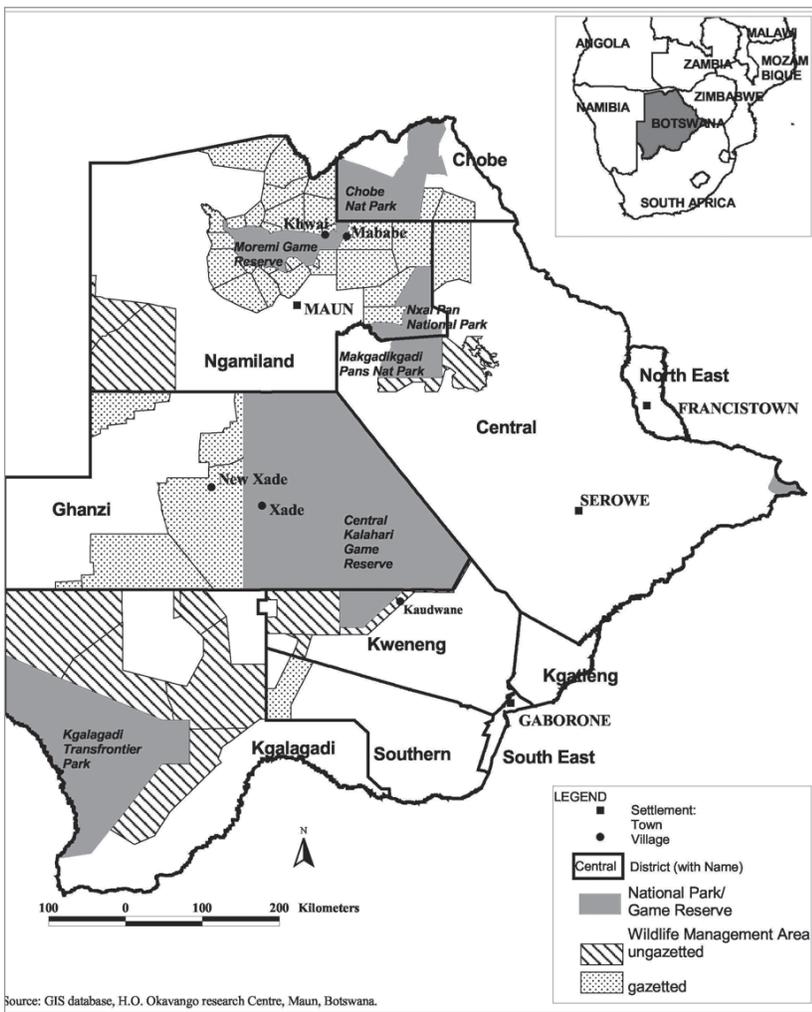
Lapologang Magole

Abstract. Botswana has since the colonial era designated large tracks of land as national parks, forest reserves, and wildlife management areas. While this is a laudable act of conservation, as its proponents claim, there are rightful concerns about the related continual removal of people, especially minority Khoi San groups, from their land. Not only are the evictions a violation of human rights, they also serve to impoverish these communities and cause them to be dependent on Government and NGO hand outs for their livelihoods. Historically, these evictions have brought much suffering to communities and their supporters— that is until the popular Central Kgalagadi Game Reserve (CKGR) eviction, where a Government decision to evict a San group from the park was successfully challenged in court.

There is general lack of regard for the land rights of the *Basarwa* (Khoi San) in Botswana. This appears to emanate from the erroneous assumption that the Basarwa are 'nomadic', which is generally understood to mean that they roam aimlessly and have no inherited land rights like sedentary groups. The *Basarwa* are perhaps the most socially and politically marginalised group in Botswana, if not all of the Southern African region where they reside. As a result, their rights, especially those of access to and ownership of land, have

been taken lightly. Land policy decisions concerning areas that they occupy are never thoroughly appraised for impact on their livelihood and general welfare. The position of Basarwa within land resources governance is defined by the general context of the development of the country through the pre-colonial, colonial and post-colonial eras.

As Mazonde argues, 'the politics of land allocation fall within the framework of the country's overall development pattern'.¹ In Botswana, the political economy of the country has not only



Source: GIS database, H.O. Okavango research Centre, Maun, Botswana.

Map 1. Botswana Districts, Game Reserves, National Parks, and Wildlife Management Areas. (Courtesy, Cornelis Vanderpost and Masego Dhlwayo)

had a role in shaping the general development strategy but has also had an influence on the policy choice for land management. Before colonial rule, traditional leaders were pivotal in determining land distribution, access and use. Within the power given to them by the people, the Chiefs, headmen and elders allocated and administered land within their territories. This had the advantage of decentralised and localised land management as opposed to District wide management by the Land Boards system,² which constitutes a large-scale and porous framework for determining access to land resources.

The change came as political power shifted from the people and traditional leaders to the Colonial Administration and then to elected politicians. Social and political marginalisation of the Khoi San groups meant that they had little contact with the Colonial Administration and were hence left out when district boundaries and claims to land territories were defined and established.

At the beginning of the colonial rule, land occupied by minorities, especially the Khoi San, was sliced out and given up to the Colonial Administration as a token of appreciation for 'protection'.³ As a result, the minority groups' territories of Chobe, Ghanzi, Kgalagadi and North East Districts (see Map 1) have large proportions of their land held by the State (mainly as parks and game and forest reserves) or private individuals, with little or no access allowed for the adjoining communities

who historically used the natural resources there in. On the contrary, areas dominated by other more politically and socially powerful groups, namely, Central, Kweneng, Kgatleng, Ngamiland, and Southern have retained most (more than 80%) of their tribal land (see Figure 1). Even the small parcels of land given up as Crown, State or private land in the territories belonging to the powerful groups, were peripheral lands occupied by minority groups. For example, the 12.4% given up to the State in Central District is located in the far northern part (Makgadikgadi pans region) of the district, which is mainly occupied by Khoi San communities. Similarly in Southern District, land given up to the British Government was occupied

by minority Khoi San and *Bakgalagadi* groups. In Ngamiland, land sliced out to be preserved as Game Reserves was land occupied by Khoi San groups. As a result of this practice of appropriating land from the Khoi San and giving it to the British Government during colonial rule, most, if not all conservation evictions have happened to the Khoi San communities.

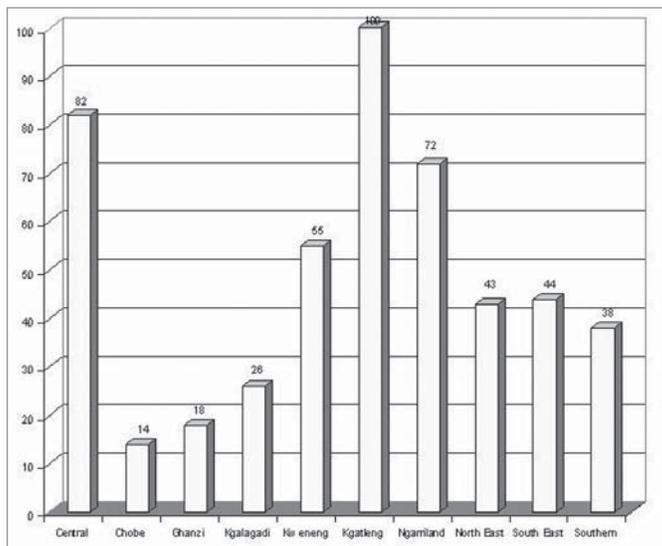


Figure 1. Percentage of District communal land available for communal use after land reforms. Through conservation policies and commercialization of communal land use, Districts occupied by minority communities (Ghanzi, Kgalagadi, Chobe) have had their communal (tribal) land changed to other forms of use and their access to land resources either severely reduced or totally diminished. (Source, Magole, 2003)

Apart from Government handouts, land-based resources are the only available source of livelihood for the rural poor in Botswana. Livelihood activities include gathering forest products, rearing small stock (goats and sheep), farming, and, to a lesser extent, cattle rearing. Therefore access to land and the resources therein is extremely important for these communities. There is, however, evidence that over the years the poor, especially the minor-

ity Khoi San groups, have been denied ownership and or access to land. Land reform and heavy regulation of natural resource use has meant that many rural communities who used to eke out their livelihoods through multiple use of their land resources have been left with only government aid as a survival option. For example, since the late 1990s government support ranks first as a source of livelihood in the Matsheng area of the Kgalagadi District.⁴ Similarly in the North West District, Kgathi, *et.al.*,⁵ found that for small settlements where minority Khoi San groups live, a combination of Government assistance programmes, old age pensions, and drought relief form the most important sources of livelihood.

I argue in this paper that this situation, in which so many have been put in a position where they must live on Government or other aid, is caused in part by consistent removal of these people from the land on which they have depended for generations. I further argue that the situation is neither sustainable nor dignified for these communities, and that it is a violation of their human rights. I compile a profile of land evictions that show that this 'tragedy of the commoners'⁶ dates back to the colo-

onial period and that most evictions have claimed a moral high ground based on conservation. The most obvious conservation-related evictions are those that took place during the formation or expansion of parks and game reserves. It is a colonial legacy which has continued in post-independent Botswana. The Government of Botswana continues to use the conservation rhetoric to remove poor Khoi San communities from their land.

The situation is neither sustainable nor dignified for these communities, and that it is a violation of their human rights.



Picture 1. Zebras in Moremi Game Reserve. The Khoi San have co-existed with the animals for centuries and they are the ones best placed and experienced to conserve them. (Courtesy, ODMP)

Parks and national reserves removals

Park evictions are not unique to Botswana. Evictions were part of the formation of Kruger National Park in South Africa in the 1930s and 1940; local settlements were removed from the Matopos of Zimbabwe; in East Africa local community evictions were part of the formation of parks in Kenya and Tanzania.⁷ Botswana boasts that 17% of its total land surface is set aside for conservation as restricted access and use parks and game reserves, and a further 21% is set aside as wildlife management areas (WMA) where utilisation restrictions favour environmental conservation.⁸ Sadly, the conservation objective has been achieved through human rights violations where communities are evicted from their land and caused to live in perpetual poverty.

The creation of Moremi Game Reserve

Moremi Game Reserve was created on the 15th of March 1964.⁹ The reserve is hailed as being the first wildlife sanctuary created by an African tribe. While the question of whether or not an African tribe founded Moremi is debatable, what causes concern and is worth highlighting is that communities living in the park at the time, who were later moved twice, were not

involved in the decision making. Moremi Game Reserve was formed at the instigation of a conservation group with expatriate and Batswana members called the Fauna Conservation Society (FCS), which worked closely with the Batawana Tribal Authority (the dominant ethnic group in the Northwest District where the park is located), based at the District Headquarters in Maun.¹⁰ Together they took the decision to create the park and presented the idea and proposal in a public meeting in Maun, some 50 kms from Moremi, and not in a Khwai village inside the proposed park area. The group led by a Mr. Robert Kay went to the community of Khwai with conservation rhetoric and threats (see Box 1) after the decision was taken and 'convinced' them to move.

While the question of whether or not an African tribe founded Moremi is debatable, communities living in the park at the time were not involved in the decision making.

Box 1. A Mosarwa woman's account of the events leading up to their eviction from the park

While we were here in the bush, in our land, the BaTawana Tribal Authority and Fauna [Ngamiland Fauna Society] came with the decision that they wanted to protect / preserve our wildlife, to create a game reserve. We were told that if we did not reserve land to protect wildlife we were likely to face the problems faced by other African countries. A white man, Robert Kay, talked about foreign safari companies who caused a lot of game destruction in countries like Kenya, already approaching our country, coming to shoot and make money out of them...¹¹

A year later the FCS and the Tawana Tribal Authority decided, again without involvement of the community, to extend the park and move the community further away.

Box 2. Mosarwa woman's account of the events leading up to the second move

When they came to us the second time they told us that they were going to move us again. We had spent a year at Segagana. In the second year they told us to move out of the place because they had expanded the park to where we were. We were told to cross the river and that this river would be the boundary between the people and the park. We moved again carrying our belongings, this time without transportation...¹²

The community was asked to move a third time in 1979 when the Department of Wildlife and National Parks took over the authority to manage parks and national reserves. This time the community refused to move. Bolaane believes that the Basarwa took this stand because their plight had been exposed to the outside world.¹³ The isolation of these communities is what makes their evictions easy. Once exposed, these unfair evictions are likely to be criticised by people within and outside of the country, making them complicated and difficult to carry out, especially without proper negotiation and compensation for the involved households.

The creation of Chobe National Park

Of interest in this case is the Khoi San settlement of Mababe, which lies at the edge of Chobe National Park at the Southern tip adjoining Moremi. Like other Basarwa communities who live

in 'remote' and resource rich areas, this settlement has since the mid nineteenth century attracted hunters from elsewhere in Botswana and Europe. The case of Mababe is different from that of Khwai, because while the latter community has been moved twice, the Mababe resisted eviction. However, the communities have had similar experiences of loss of access to important land resources. According to Taylor,¹⁴ outside interest in Mababe's natural resources intensified in the 1940s when colonial officers decided to initiate a large project involving ranching and commercial crop plantations and to move the community in the process. The Mababe Khoi San resisted successfully because they had a strong and assertive leader (see box 3).

The isolation of communities is what makes their evictions easy. Once exposed, these unfair evictions are likely to be criticised by people within and outside of the country.

Box 3. A Mababe woman's account of the failed eviction¹⁵

Kgosietsile was the one who refused to allow us to move to Nxaraga. The government wanted to move us, but he said if you take these stones and trees and waterholes, I will move there. The government could not say anything so they left us.

This was a success for the Mababe community, however it was not to hold for long, as in 1960 the area was gazetted as a Game Reserve and the community was regarded as squatting. Eviction was avoided by degazetting

the small piece of land on which the settlement was located, however the community lost most of the land on which they used to hunt and gather. The situation of restricted use and appropriation of land worsened in 1967,

when without informing the community, the Government of Botswana decided to upgrade the Game Reserve to the more restrictive status of a National Park. In 1980 the Park was extended to include the land adjoining the Moremi Game Reserve. The latter move brought the Park boundary to within two kilometres of the village, encompassing nearly all their hunting and gathering grounds. Here again residents complained that they have not been given consultation by either the Colonial Administration or the Government of Botswana on any decisions taken, an opportunity to negotiate compensation for loss of livelihood and land use rights, or, most importantly, an offer of alternatives.



Picture 2. A Khoi San woman gathering wild berries, an important part of their tradition and source of livelihood. (Courtesy, Bothepha Kgabung)

The creation of the Central Kgalagadi Game Reserve (CKGR)

According to the CKGR and Kutse Management Plan,¹⁶ the CKGR was gazetted in 1961. The CKGR is hailed as the second largest protected area in Africa after Tanzania's Selous Game Reserve as well as the largest unspoiled wilderness area in the continent. The reserve is located in the centre of the country (see

Map 1). Initially there were no evictions from the reserve. However, through a cabinet memorandum in 1987, the Khoi San communities who lived in the park were asked to move out of the Xade settlement, which is inside the park, to Kaudwane just outside both the CKGR and the Khutse Game Reserve, as well as to New Xade, 50 kilometres from the western edge of the CKGR. There were insinuations that residents were depleting wildlife. However, the explicit reasons given were that service provision and development of settlements could not be achieved simultaneously with the objective to conserve the wilderness status of the reserve. The Government also expressed that the residents had to move out in order for the tourism potential of the reserve to be exploited. This directive to move the residents of the CKGR was not implemented until January 2002, when the Government ceased its provision of basic essential services such as clean piped water and special game hunting licences for the residents of the reserve.¹⁷

In response, representatives of the residents took the matter to court, contesting the Government's decision to cut the services and particularly the special game licences which allowed the Khoi San to continue hunting using their traditional methods and equipment. In addition, and perhaps most importantly, the residents contested their 'forced' removal from the park. This was to be a milestone case, which attracted a lot of international interest. On the 13th of December 2006 judgement was passed in favour of *Basarwa* (local name for the San) on two of the above counts, namely that the *Basarwa* are entitled to special game licenses and that their removal from the CKGR was unlawful.¹⁸ What makes this a milestone case is that the *Basarwa* not only won the right to go

What makes this a milestone case is that the Basarwa not only won the right to go back to their land in the reserve, but most importantly won the right to be listened to.

back to their land in the reserve, but most importantly won the right to be listened to. The court judgement by a panel of three judges stated clearly that the residents had the right to live in

their land and that the government was wrong to evict them without proper consultation. It is also a landmark case in that it is hoped that future evictions will be thought through carefully, especially the human rights implications for those involved, and that due consultation will take place. It is also hoped that lessons have been learned and that unless it is absolutely necessary and all stakeholders agree, evictions disrupting people's lives and causing unnecessary suffering will be avoided.



Picture 3. Khoi San women in a meeting discussing their welfare in the new settlement of Kaudwane. (Courtesy, Bothepha Kgabung)

Conclusion

The same conclusion that Picard and Morgan came to regarding post-independence land reforms in Botswana can be made here— that policy makers do not really “engage the problem of the rights of the hunting and gathering groups (*Basarwa*)”.¹⁹ As argued above, *Basarwa* communities face potential and real evictions all the time. Moreover government often sets stringent and at times unreasonable regulation of their use of natural resources on which they depend for their livelihood. This is not only a violation of these people's human rights, but is also totally against the principles of sustainability to which many countries including Botswana claim to subscribe.

International organizations continue to adopt progressive steps towards sustainable development. They regularly engage in meetings, such as the United Nations World Summit on Sustainable Development-WSSD, and embrace sustainability through agreements such as Sustainable Tourism to Eradicate Poverty -STEP, the Millennium Development Goals -MDG, and the Vth World Parks Congress resolutions. Whilst Governments accept and ratify these agreements and resolutions, the implementation of these sustainable development ideals remain a mirage, especially for local minority groups, the Khoi San being a case in point for Botswana.

In some countries where the judiciary is relatively independent, the minorities need only to have the courage, and assistance, especially with financial resources and moral support, to fight for their rights and win.

Clearly the preservation rhetoric of ‘save the Rhino’ which preceded the sustainable devel-



Picture 4. Khoi San men listening carefully at the meeting to discuss the welfare of Kaudwane residents.
(Courtesy, Bothepha Kgabung)

opment era still informs the current conservation agenda that claims to be people centred. They cannot be genuinely people centered when decisions are taken without involvement of the local people, whose interests are always relegated to a place behind all other stakeholder interests. The outcome of the CKGR case, however, is an indication that in some countries where the judiciary is relatively independent the minorities need only to have the courage, and assistance, especially with financial resources and moral support, to fight for their rights and win. It also helps to publicise one's plight nationally and internationally as this attracts sympathisers and critics who may put the Government under pressure to reverse unjust conservation decisions.

Lapologang Magole (magolel@mopipi.ub.bw) is a research fellow at the University of Botswana's Harry Oppenheimer Okavango Research Centre in Maun, Botswana and a member of the IUCN CEESP Theme on Governance, Equity and Rights. Her research work and interest is in land and natural resources management policy and development of rural communities.

Notes

- 1 Mazonde, 1998, p41.
- 2 After independence the government established District Land Boards to take over land management, administration and allocation from the Chiefs.

- 3 Botswana was regarded as a British Protectorate as opposed to a colony. In the strictest sense of the word a protectorate would continue with self-rule and was only offered protection from external invasion, while a colony was regarded as a territory under British rule. Whether Botswana continued with self-rule or was under British rule is debatable however there is evidence that the British Colonial Administration was involved in the internal affairs of country, especially those concerning land resources use and management.
- 4 Chanda and Magole, 2001.
- 5 Kgathi, *et al.*, 2004.
- 6 Magole, 2003.
- 7 Bolaane, 2004.
- 8 Ministry of Finance and Development Planning, 1991
- 9 Taylor, 2000.
- 10 Taylor, 2000; Bolaane, 2003.
- 11 Bolaane, 2004, p407.
- 12 Bolaane, 2004, p409.
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Is biocultural heritage a right? A tale of conflicting conservation, development, and biocultural priorities in Dulongjiang, China

Andreas Wilkes and Shen Shicai

Abstract. The Dulong are one of China's least populous ethnic groups, living at the corner of Yunnan, Tibet and Myanmar. Traditional Dulong agriculture (rotational agriculture with cultivation of *Alnus nepalensis*) includes the cultivation of dozens of local varieties of crops, many of which are underutilized species. In 2003, implementation of the Sloping Land Conversion Program, a national soil and forest conservation program, brought traditional cultivation to an end. Many traditional crops are no longer planted. Because traditional agriculture is central to Dulong culture, the end of this practice threatens the survival of Dulong biocultural heritage. This paper argues that the concept of rights over biocultural heritage must be formally recognized in order to empower traditional communities to be able to contest conservation and development interventions that threaten important aspects of their culture.

Dingba was appointed by the government to represent his hamlet in the 1970s, a post he held until two years ago. During his period in office, he witnessed numerous development projects come and go. "They taught us to construct rice terraces and grow rice, but now the terraces are used for growing

corn for the pigs. Then they encouraged us to raise goats, but because of the wild animals in the nature reserve, I don't know anyone whose goat herds increased. The same for *Bos frontalis*. I've seen so many of these things fail, that I cannot count on this one. Yes, you could say I'm growing that plot of



Picture 1. A Dulong villager introducing his plot of finger millet. (Courtesy Andreas Wilkes)

finger millet in case things go back to the hungry days of before.”

Dingba is a member of one of China’s least populous ethnic minorities, the Dulong. Just over 4000 Dulong live in the Dulongjiang valley, an upstream tributary of the Irrawaddy that runs from Tibet, through Yunnan province and into Myanmar. The traditional livelihood of the Dulong has depended on rotational (swidden) agriculture with cultivation of *Alnus nepalensis*, a nitrogen-fixing tree.¹ The new project Dingba referred to is the Sloping Land Conversion Program, a nationwide soil and forest conservation project that in 2003 finally brought Dulong traditional agriculture to an end.

The implementation of the Sloping Land Conversion Program has increased Dulong people’s dependency on grain handouts, decreased agro-

biodiversity, and threatens to make Dulong biocultural heritage a thing of the past. This paper describes the implementation of this program and its impacts, and discusses what the situation of the Dulong implies in terms of rights in relation to conservation and development. We suggest that the concept of biocultural heritage must be formally recognized in national law in order to empower traditional communities to effectively negotiate the impacts of conservation and development.

Forest conservation and food security in Dulongjiang

Traditional Dulong agriculture is based on rotational (swidden) agriculture in which when forest is cleared, stumps of *Alnus nepalensis* trees are left in the field and seeds of *Alnus* are planted, so that after cultivation ends, forest cover regenerates quickly. *Alnus nepalensis* has nitrogen fixing properties, so these trees have benefits for maintaining soil fertility for future cultivation.²



Picture 2. Stumps of *Alnus* are left in the fields to hasten regeneration of forest and soil. (Courtesy Luo Rongfen)

In 1999, China’s central government announced the Sloping Land Conversion Program (SLCP). Through planting trees on farmland on slopes over 25 degrees and providing grain subsidies,

the aim is to increase vegetation cover and reduce soil and water loss, while also considering the livelihood needs of farmers. Subsidies are given for eight years. Although the government has tried to discourage swidden or rotational agriculture in Dulongjiang since the 1960s, this is the first such effort to come with specific implementation measures. In 2002 the program began to be implemented in Gongshan county, and most of the quota for conversion for the first year was allocated to Dulongjiang and special implementation measures were established. At the beginning of 2003, there was a total of 987.2 hectares of cultivated land in the valley, of which 33% was permanent arable land (35.2 ha. of irrigated paddy and 251.8 ha of rainfed land), and 654.9 hectares of rotational arable land. Most of this latter land was located on slopes over 25 degrees on both sides of the Dulong River. After implementation of the program, apart from retaining paddy, permanent fields, and vegetable gardens, the remaining arable land and all rotational arable fields were included in the conversion program. The national guidelines for implementation of the program stipulate that grain subsidies should be given on the basis of the land area converted. But given the large area converted in Dulongjiang and the long-term low rates of grain self-sufficiency among farming households, the local government decided to allocate the subsidy on a per capita basis, with all rural inhabitants (adult and children) receiving 180 kg of rice per year.

Poverty— as measured by government poverty lines— has always been both widespread and deep in Dulongjiang. In 1995, average net per capita income (including the imputed value of agricultural produce) was just 344 Yuan (ca. 40 USD). From 1995 to 2001 per

capita incomes rose to 684 Yuan, bringing average income levels for the whole valley to just above the national poverty line. For years the government has been providing relief grain and selling grain to Dulong villagers at subsidized low prices. For the local government, the SLCP provides a welcome opportunity to use central government

funding for grain supply to bring Dulong villagers' grain consumption levels to the poverty line. And it must be said that for many Dulong villagers, especially younger people, having an ensured grain supply without having to work in the fields is most welcome. But the conditions on which the grain has been supplied mean there is a price to pay.

Most farmers think that other households are preserving traditional varieties... But in fact, farmers who have kept cultivating traditional crops are a very small minority.

Impacts of the forest conservation program

In 2003, with implementation of the SLCP, all rotational agriculture in Dulongjiang stopped. In 2005 and 2006, the Center for Biodiversity and Indigenous Knowledge, an NGO based in Yunnan, China, undertook surveys and consultations on the impacts of the program, focusing on the implications of the program for the future of traditional Dulong agriculture.³ The surveys found that:

- ▶ Traditional agriculture supported cultivation of several rare and neglected crops and crop varieties, such as *Setaria italica*, finger millet, *Echinochloa* sp., buckwheat, *Amaranthus* sp., and yam.
- ▶ Many households have not kept the seeds of these crops and have not continued their cultivation. Of 39 households surveyed only six were

still growing at least one type of traditional crop.

- ▶ The range of varieties preserved by those farmers who are engaging in *in situ* conservation is limited, as many traditional swidden crops do not perform well outside swidden fields.
- ▶ Most farmers think that other households are preserving traditional varieties, and assume that if in the future they need to cultivate swidden again, it will be easy to find the seeds. But in fact, farmers like Dingba who have kept cultivating traditional crops in small corners of their permanent arable land are a very small minority.



Picture 3. A variety of unusual grain crops form the basis of Dulong food.
(Courtesy Luo Rongfen)

Beyond these specific impacts on agrobiodiversity, because the grain subsidies made under the SLCP will end in three years, all farming households in the valley face great vulnerability. Clearly, the program has substantially resolved grain shortages for rural households, and some say that even after the conversion program ends they do not want to have to renew the traditional farming practices. But current attitudes to the end of traditional agriculture are all conditional on what

will happen in three years' time when the subsidies given under the SLCP come to and end. Those farmers who, like Dingba, have retained the seeds of traditional crop varieties, worry that no suitable new policy will be announced in three years' time. If there is no suitable and credible new policy, many farmers say they will not hesitate to clear new swidden fields and return to their former practices. But when the time comes they may find that traditional crop varieties no longer exist.

And if there is a new policy that enables grain subsidies to continue to be paid, many older Dulong villagers are concerned about the future viability of Dulong culture as a whole. The practice of traditional rotational agriculture relies on knowledge about the characteristics of swidden sites (vegetation cover, slope, aspect, soil, etc), as well as knowledge relating to the treatment of different forest resources and the use of fire. Special farming tools are used to minimize soil erosion

Traditional agriculture is a core element of Dulong culture, relating not just to ecological knowledge, but also to religion and social organization.

caused by cultivation on steep slopes, and there is also a lot of knowledge related to the production and use of these tools. Traditionally, Dulong hamlets are based around one patrilineal clan, and elders have a great deal of influence on the use of forest resources, such as the choice of land plots for agricultural cultivation. In the process of cultivation, there are all sorts of joint cultivation arrangements between households, which are based on traditional social ties. And for those Dulong who have not converted to Christianity, cultivation must be preceded by rituals to propitiate

the spirits. Thus, traditional agriculture is a core element of Dulong culture, relating not just to ecological knowledge, but also to religion and social organization.

For many older people, food is a key cultural expression. The SLCP has resolved grain shortages by providing paddy rice for villagers to eat. But traditional Dulong food does not include paddy rice, and most villagers have not been able to eat traditional grains since the SLCP was implemented. Crops other than paddy rice are referred to as "ethnic food", and elder villagers insist that according to cultural views, mixed grains other than rice are good for the health. For example, when mothers who have just given birth rest for a month after delivery, they are mainly given these grains to eat. Also, finger millet is a widely known curative for diarrhea. Many people worry that "the young generation is growing up eating rice—what will the next generation eat?"



Picture 4. Women discussing what the future will be like without 'ethnic food'.
(Courtesy Andreas Wilkes)

Apart from reflecting changes in diet, this reflects worries about the overall loss of distinctive ethnic culture. Many

elder people worry that: "young people, if they are not good in school and able to find work, then they no longer understand ethnic food, and don't know which wild vegetables to eat and how to plant ethnic foodstuffs, so they are no different from old people just waiting to die". That is, these young people are no longer suited to livelihoods in the Dulongjiang. Other villagers said that "the things that old people eat and how to eat them— if you don't know these things then are you still a Dulong?" From this we can see that rotational agriculture and traditional foodstuffs are an important part of what it means to be Dulong.

Which rights come first?

The goals of the SLCP are to reduce soil erosion and increase forest cover. At the same time, grain subsidies are used to ensure basic living standards. But the program has traded forest conservation and food security goals for the biocultural heritage of a people, and their ability to pursue sustainable livelihoods without dependence on government hand-outs for meeting their basic needs.

Clearly, which rights one perceives, and which rights one is unaware of, depends on the frame of reference one brings to the situation. When officials view situations such as that in the Dulongjiang, they mostly see extreme poverty, 'backward' ethnic culture and the environmental destruction caused by creating swidden fields. Meeting 'rights to subsistence' and 'rights to development' are prioritized, and the focus of officials' efforts is on ensuring that basic food needs are met while introducing 'advanced' and 'scientific' agricultural production technologies. In this view, Dulong culture has nothing to offer the future.

Ecologists and ethnobotanists have also made studies of rotational agriculture in Dulongjiang,⁴ and praised the indigenous wisdom of cultivating *Alnus nepalensis*. But the values that they see in this are the values of forest conservation. Agro-biodi-

Some experts have suggested that the whole Dulongjiang valley should be made into a 'National Ecological Park'.

versity— biodiversity with the closest links to ethnic culture— has not fallen within their line of sight. Some such experts are equally aware of

the impacts the SLCP has had, and have suggested that the whole Dulongjiang valley should be made into a 'National Ecological Park'.⁵ As with other nature reserves, it is hard to imagine how the management of the administrative structures of such a park could allow for or support genuine Dulong participation in preserving their biocultural heritage.



Picture 5. Taro growing amidst *Alnus* stumps in a newly cleared field. (Courtesy Luo Rongfen)

In August 2006, the Center for Biodiversity and Indigenous Knowledge convened a series of meetings of ordinary Dulong villagers and their elected representatives in the county

People's Congress. For all the Dulong who took part in these consultations, it was clear that rotational agriculture represents a core part of their cultural heritage. The consultations identified several specific feasible and desirable actions that the participants recommended:

- ▶ Promote development of consensus among government departments on the value of preserving traditional crop varieties and traditional agriculture as a whole;
- ▶ Continue to encourage households to conserve traditional varieties in plots of permanent land;
- ▶ Initiate joint experiments with farmers on how to improve the performance of traditional varieties on permanent arable land;
- ▶ Convene seed exchange fairs within and between villages;
- ▶ Allow and assist hamlets to create collective plots for cultivation of traditional varieties using traditional methods;
- ▶ Use digital video cameras to make a DVD narrated in Dulong language documenting traditional cultivation practices to show in schools; and
- ▶ Explore the potential of market-led measures for encouraging agro-biodiversity conservation, e.g. developing food products to sell to tourists.

Officials who took part in the consultations stressed the need for agro-biodiversity experts to undertake landrace surveys, but for the Dulong participants in the consultations, solutions to their current 'crisis' all rely on farmers' involvement with support from the government. This highlights the importance of community-based activities to the conservation of biocultural heritage.



Picture 6. Taro now has to be planted on permanent fields.
(Courtesy Andreas Wilkes)

'Rights to subsistence', 'rights to development', and 'rights to enjoy an undegraded physical environment' are all rights that are commonly recognized in Chinese government discourses. But what about the rights to cultural practices—the rights to be Dulong in the way that (at least some) Dulong want to be? We see that formal recognition for the concept of **rights over biocultural heritage** is essential in ensuring that 'local communities embodying traditional lifestyles' (CBD Article 8(j))

Formal recognition for rights over biocultural heritage is essential in ensuring that local communities embodying traditional lifestyles' (CBD Article 8(j)) are empowered.

are empowered to make effective inputs into how both conservation and development measures affect the multiple, complex and intertwined elements of their lifestyles. A definition of 'Collective Bio-cultural Heritage' has

been suggested by a workshop on traditional knowledge protection and

customary law in Peru, which reads:⁶

"Knowledge, innovations and practices of indigenous and local communities which are collectively held and inextricably linked to traditional resources and territories, local economies, the diversity of genes, varieties, species and ecosystems, cultural and spiritual values, and customary laws shaped within the local socio-ecological context of communities."

In 2004 China ratified the UNESCO Convention for the Safeguarding of Intangible Heritage, which explicitly refers to "knowledge and practices concerning nature and the universe" among its targets for protection. In May 2006 the Chinese government announced a list of 518 elements of intangible culture that would be preserved, but of these, only a small handful related to indigenous knowledge of the environment. Part of the reason for this was that the implementation of the convention is the responsibility of the Ministry of Culture, whose work focuses mostly on the performing arts. But part of the reason lies in the low levels of understanding and awareness of ecological knowledge and practices as an integral part of culture and lifestyle.

Within the next year or two China will also announce a new law on the management of genetic resources. Experts involved in drafting the law are focusing on developing arrangements for fair and equitable access to genetic resources. But as with many such laws it is likely that a limited definition of indigenous knowledge is adopted, focusing on access to and the use of technical ecological knowledge. Without an appreciation of ecological knowledge and practices as



Picture 7. Women weeding upland rice.
(Courtesy Luo Rongfen)

part of biocultural heritage, it is unlikely that situations such as that of the Dulong will be either addressed or prevented by this new law.

Without formal recognition of the concept of rights over biocultural heritage in national law, and without government-supported mechanisms in place through which indigenous communities can make effective claims, the future for the Dulong—and countless other indigenous experts and communities facing similar challenges—looks bleak. We suggest that concerted efforts are required to gain recognition for the notion of biocultural heritage in policy circles, and to develop measures through which governments' related commitments under the CBD and other international instruments can be realized.

Andreas Wilkes (awilkes@mountain.org), a British anthropologist working in China for the last 10 years, was Director of Programs at the Center for Biodiversity and Indigenous Knowledge (CBIK) when the research for this paper was undertaken. **Shen Shicai** (shenshikai@cbik.ac.cn), a botanist, has been coordinator of CBIK's work on agro-pastoralist livelihoods in Gongshan since 2003. Acknowledgement: Surveys and consultations in Dulongjiang were funded by a grant from the WWF Russell E. Train EFN Program, and a grant from Yunnan Agricultural Academy/Convention on Biological Diversity Office of the State Environment Protection Agency.

Notes

- 1 Yin Shaoting 2001.
- 2 Yin Shaoting 2001, Qi Yinfeng 2006, Gao Yingxin 2003.
- 3 Xiao 2005, CBIK 2006.
- 4 e.g. Long *et al.* 1999.
- 5 Chu and Cheng 2006.
- 6 Cited in Swiderska 2006.

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Where there is no room for local people in conservation...

Reflections from Northern Thailand

Frankie Abreu

Abstract. The author recounts some personal experiences during research with communities in the Silalang area near Doi Phuka National Park in Northern Thailand. Based on these experiences, he draws the conclusion that even when conservationists have good intentions towards local communities, conservation without local people's involvement can damage their livelihoods and undermine traditional ethical and religious beliefs that contribute to conservation. For many local people, and especially for indigenous people, strict conservation means ignoring the balance between protection and sustainable use. The poor and less-educated easily become marginalized and voiceless. There must be more and better room for local people to participate in natural resource management in their communities!

"I came here to develop the community by investing in my environmentally-friendly business. Now [that] I can employ the villagers from Silalang at my hotel so that they can make their

living, [it] means that my business contributes employment to the communities." This was the message of the owner of Papua Phuka Hotel in a welcome speech to participants in an international Community Forestry Training course organized by RECOFTC (Regional Community Forestry Training Center) in the Silalang area of Nan Province, Northern Thailand. Situated on a hillside backed by mountain ridges in a remote valley near Doi Phuka National Park, the comfortable 40-room hotel was surrounded by farming communities and looked out over rice fields. It was heavily promoted to tourists in the area. Six villagers were

employed at the hotel as cleaners and waitresses. The owner was a businessman from Bangkok. He was known as a generous and devout person, eager to make merit at religious ceremonies, visiting the temple often and regularly offering food to the monks. Villagers praised him as a conservationist because of his care and concern for nature.

The RECOFTC trainees underwent practical environmental and social assessment training. In the daytime they undertook various assignments such as interviewing local villagers, collecting information from key informants, and direct observation. In the evening, they wrote up their findings and made presentations at the hotel. RECOFTC selected the Silalang communities to allow the trainees to study local people's sustainable approach to forest management, combining both conservation and utilization of resources.

In the forests of South East Asia indigenous people living scattered in small and isolated communities know that

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In the forests of South East Asia indigenous people living scattered in small and isolated communities know that

the forest is their rice bowl, their shelter, and their knowledge chest. They utilize forest products wisely and in keeping with their belief in ancestor reverence. Sometimes local people's traditional conservation methods are difficult for outsiders to understand and appreciate. For example, elder people can cut trees for their own utilization, but there is a prohibition on cutting trees with branches appearing from the trunk. It is said that if you cut that kind of tree, you will experience bad luck such as being separated from your family. This belief protects these trees. Trees with more branches bear more fruit, and provide more food for animals and birds. More fruit also means more seeds, and more young seedlings.

Villagers from Silalang have mainly depended on rice farming, but collect-

"...Even though the Royal Forest Department people have good intentions in their conservation approach, they do not understand our livelihoods..."

ing non-timber forest products (NTFP) has been common even in the forests within the boundaries of Pukha National Park. The Thai Royal Forest Department, which has been in charge of the park, has favored a conservation policy that restricts local people's activities

in the forests. The villagers have been aware that the Forest Department views them as a threat to the forest, and they have to prove that their NTFP collecting is sustainable and they do not over-exploit resources.

According to a local NGO, the traditional way of life in the area was first affected by a government policy for eradication of communism in the 1960s. One village elder said, "The government believed that if there were

no forests left, the political dissidents couldn't survive because they would have no more food and no more places to hide". The dense forests were allocated to logging concessionaires and some forests were converted into mono-crop plantations for corn, cassava and sugar cane. Eventually the focus of government policy in the area changed from counter-insurgency to conservation, and Doi Phuka National Park was designated in 1999.^a In all of the above, local communities remained excluded from decision-making. In the words of the village elder, "The forests declined gradually since the government adopted several policies that mostly excluded local people's participation in forest management. Now, even though the Royal Forest Department people have good intentions in their conservation approach, they do not understand our livelihoods. They assume that our ancestors' way of utilizing forest products is at odds with conservation. So we cannot express ourselves to the conservation movement."

During the RECOFTC course, various representatives of local authorities and village leaders visited the hotel owner. The head of Doi Pukha National Park was among the visitors. He suggested speeding up conservation based on prohibitions targeted at the community. The hotel owner vowed that he would do his best to support conservation. During the stay at Silalang, the RECOFTC course participants met three poor families whose houses were not far from the village, near huge cliffs that marked the beginning of the forest. These people worked on farms as day laborers. For extra income they collected mushrooms and bamboo shoots and made charcoal to sell to the blacksmith in the community. The blacksmith workers preferred lo-

cal charcoal made from the Nan tree, which grows in dry deciduous forest and is famous for its hardness. One smith said, "People like my agriculture tools— my knives, hoes and shovels— because they are good quality. I believe the quality depends on the [amount of] heat we use, and that depends on the quality of the wood. Charcoal from the Nan tree not only provides intense and constant heat but also doesn't produce sparks, so we prefer local charcoal."



Picture 1. Forests, river fisheries and other areas can be ordained as sacred spaces, exactly in the same ways in which Buddhist monks are ordained. (Courtesy Kirsten Ewers)

The three families lived near an amazing natural sight. Bees usually build their nests in trees, but here they had constructed huge hives that hung, like chandeliers, from the 50 meter-high cliff. The hotel owner proudly told the RECOFTC course participants how he had organized the protection of the cliff and the beehives. In Northern Thailand, tree ordination ceremonies are popular for forest conservation. The trees in the ordained forest are

wrapped in yellow robes. No one would dare to cut or harm trees wrapped like this— to do so would be a sin. The hotel owner used this belief to protect the cliff. He arranged for monks from the village temple to ordain the cliff for conservation.

The RECOFTC course participants, however, learned that the three families living near the cliff used to collect honey from the beehives once a year, around April. The small income from honey collection helped these poor families to pay their children's school fees when the school opened in May. The yearly income from collecting honey was a blessing for these poor

families who had the opportunity to give their children an education.

When the cliff was ordained, effectively they were prohibited from collecting the honey. One family member said, "The monks from the temple came to the cliff with the hotel owner and ordained it for conservation, because it is so amazing and beautiful. No one talked to us or informed us about the ceremony."

There is no doubt that the hotel owner will derive a benefit from this type of conservation. But what will happen to the three poor families now that their source of income is gone? Everybody has a human right to education. The honey that the families collected allowed them to exercise that right...

After the cliff ordination ceremony, the hotel owner came to the area with a professional photographer who took photos of the beehives. The pictures were used in an advertisement for the wonderful land of Silalang, with directions on how to get there and where to eat and stay. The hotel was the only one in the area and provided a full

package of accommodation and food. There is no doubt that the hotel owner will derive a benefit from this type of conservation. But what will happen to the three poor families now that their source of income is gone? Everybody has a human right to education. The honey that the families collected allowed them to exercise that right. They were not consulted about how the beehives should be conserved.

Even when conservationists have good intentions towards local communities, conservation without local people's involvement can damage their livelihoods and undermine traditional ethical and religious beliefs that could contribute to conservation. For many local people,

especially indigenous people, strict conservation means ignoring the balance between protection and sustainable use. The poor and less-educated easily become marginalized and voiceless. There must be more and better room for local people to participate in natural resource management in their communities!

Frankie Abreu (franktheera@yahoo.com) is Project Coordinator for Karen Environmental and Social Action Network (KESAN), working on indigenous knowledge, environmental education, forest policy, impacts of infrastructure projects and human rights issues among the Karen of Burma/Myanmar. Frankie is a member of CEESP/TGER.

Notes

- 1 See the WCMC World Database of Protected Areas at <http://www.unepwcmc.org/wdpa/sitedetails.cfm?siteid=312937&level=nat>

Voices from the margins— human rights crises around protected areas in Nepal

Sudeep Jana

Abstract. Human rights violations perpetrated by the Army and conservation officials have aggravated the predicament of communities residing on the fringes of protected areas (PAs) in the southern lowlands of Nepal. Based upon exhaustive research, the paper inquires into and discloses factual cases of atrocities and violence under the aegis of PA authorities— cases that have been obscured in conservation dialectics and dormant in human rights discourse. The central tenet of the paper is that the poor, the landless, the tribal people and women are the most vulnerable to human rights violations, a vulnerability reinforced by their compelling need to access natural resources. The paper revisits real stories of atrocities, provides a glimpse of movements and public protests, and deciphers their meanings as consequences of current policies and mechanisms of PA management in Nepal. The paper argues against militarization of PAs on account of its human rights implications. Based on Nepalese experience, the paper draws a theoretical linkage between erosion and crisis of traditional

livelihoods of local communities, politics of survival, and human rights violations. The goals of conservation are complemented when they integrate the human rights agenda.

Human rights discourse in Nepal centers around civil and political rights. It is reflected in the contemporary political history that is marked by a decade-long armed struggle waged by the Communist Party of Nepal (Maoists) under the banner of “the people’s war”, atrocities by the Royal Nepal Army in the name of counter insurgency, the demise of multiparty democracy, the royal coup and the subsequent shrinking of democratic space, curtailment of civil liberties and resulting human rights crises. When the momentous people’s uprising toppled the despotic monarchic regime in 2006, Nepal witnessed a historic peace deal between an alliance of seven political parties and the Maoists, thereby creating an opportunity for lasting peace and democracy in the country. The recent political change is a significant impetus to a new democratic Nepal.

However, the fruits of major political changes in Nepal, including the most recent one, have not percolated down to the grassroots, as is reflected in ongoing atrocities carried out within the dominant protected areas (PA) management regimes. Grassroots ecological democracy, local agendas around PAs² and struggles against human rights abuse by the Army and conservation authorities are overlooked not only in conservation discourse but also in the dominant human rights debates in Nepal. At a time when the country is engaged in critical debates on state restructuring and socio-economic-cultural-political transformation, PA policies and governance and particularly the implications of militarizing PAs

against the backdrop of local struggles and movements, demand critical reflection and inquiry.

The Nepal Army is currently deployed in ten³ out of sixteen PAs of Nepal. The introduction of armed guards for protection of wildlife species began with deployment of ‘Rhino Patrol’ in Chitwan valley. In 1975, the ‘Royal’ Nepal Army was granted sole responsibility for law enforcement in ‘Royal’ Chitwan National Park (CNP), the first national park of Nepal. While the PAs were accessible for the royal family and elite class, after deployment of the Army, restrictions on local access became stringent. The *raison d’être* for deployment of the Army was to curb poaching of valuable wildlife species and control illegal logging by forest mafia. Furthermore, national security concerns explain mobilization of the Army to strategic locations such as the area bordering India. However, militarization also reflects a conservationist ideology that places animals above people, denies the possibility of coexistence of the two, reflects intellectual bias, and perceives locals as intruders or anti-conservation.

Vulnerability of tribal and local women

Conservation policy that favors military intervention and bureaucratic control has detrimental effects on human rights of local people, particularly the poor and marginalized social groups. Human rights violations and harassment carried out by Army personnel and conservation authorities charged with enforcing PA boundaries and restrictive policies interact with broader problems of gender inequal-

ity and the unfair perception and treatment of women in the society. Violence against women is rooted

Human rights violations and harassment carried out by Army personnel and conservation authorities interact with broader problems of gender inequality.

in patriarchal Nepali society. Local women, particularly poor tribal women, dependent on natural resources, living on the fringes of PAs and perceived as submissive and powerless, have fallen prey to human rights abuses by the Army and conservation officials deployed in

the national parks and wildlife reserves of Nepal. Local communities around Terai⁴ PAs have reported many incidences of sexual harassment and rape by members of the Army. Such incidences are not officially reported to the authorities due to the stigmatization of victims of sexual harassment that affects women's social identity. The voice and suffering of local women is often suppressed and concealed within the family, if not all together disappearing amidst the bushes and forests. Locals have reported unmarried victims of rape facing troubles later in their married lives, and married victims of rape abandoned by their spouses.⁵

The history of harassment and conflict between women Bote-Majhi-Musahar⁶ (traditional fisher folk) around Chitwan National Park (CNP) and armed conservation guards dates back to the time when *Gainda Gasti* (the Rhino Patrol) was mobilized in the forests of Chitwan valley to protect the endangered Asiatic one-horned rhinoceros. Male fisher folk were at ease with the Rhino Patrol, since they used to accompany them during duty and ferry them across the river, in return gain-

ing unrestricted access to fishing. The women fisher folk, on the other hand, have a different narrative. Many of them reported that *Gainda Gasti* harassed them, especially when they were in the forest to collect firewood, fodder, thatching grass and wild vegetables. One effective form of intimidation by the officials was confiscating their axe, *khurpa* (carving knife), and *namlo* (traditional basket).⁷

PA authorities, including security forces, accuse tribal women who go into the forest to gather vegetables and firewood of being "destroyers of the forest". Women fisher folk work along the riverbanks and in wetlands using *dhadiya* and *doko* (traditional hand-made baskets) to scoop up the *malgachi*, *bhoti*, *jhingha*, *gahira* and other aquatic species. The Army personnel have been reported to confiscate and destroy these tools and to abuse and harass the women. As a consequence, some women have refrained from going about their livelihood practices, which affected the food security of their families.⁸

In villages around CNP, more than 30 women have had children reportedly born out of rape or illicit relationships with Army personnel. An unpublished study by Community Development Organization (CDO), an NGO advocating rights of local communities around PAs in Nepal, reveals that the Royal Nepal Army deployed in CNP has fathered 37 children in Meghauri alone, a buffer zone village. CDO activists claim to have discovered around 65 such victims in villages around CNP including Meghauri. Children raised under such circumstances

Women fear going about their livelihood practices, which affects their food security.

face serious challenges in Nepal. Until recently,⁹ these children had a difficult time acquiring citizenship as well as birth certificates because of the practice in Nepal of giving citizenship based only on the father's name. Locally these children are accepted and called "*Gana Bahadur*" (boy child) or "*Gana Kumari* (girl child)". In Ayodhyapuri, another village, 9 women were deserted by Army deployed at Bagai Army Post of CNP in the period 1995-2005. Cases of local women abandoned by Army are rampant in nearby villages around CNP.¹⁰ There has been organized protest seeking justice against national park authorities. However, protestors believe that their voices have been grossly ignored and their efforts went in vain.

Another episode was revealed during a CDO study in the Koshi Toppu Wild Life Reserve (KTWLR). In April, 1998 Buchi (32 years old), from Babiya village around KTWLR, visited her sister-in-law's home at Purba Pipra village, Saptari district. There, along with 19 other women, she entered the reserve area to collect firewood and fodder. At about 7 a.m. a group of Army men from Bhagalpur, Udayapur district arrested all the women and detained them at the Bhagalpur Army post. Buchi escaped the arrest by hiding in the bushes, but was caught when another Army patrol arrived later. After initial interrogation, Army personnel gang-raped her and released her. She received medical treatment with the help of an NGO working with victims of torture. Her whereabouts are still unknown. According to her relatives, she migrated to India in order to avoid public stigma.

A women fisher folk, Hira Kumari Majhi, from Pithauli Village Development Committee (VDC)— 6, Nawalparasi

gave a painful yet bold recitation during a public hearing at the capital city.¹¹ "My aunt was in her second day after childbirth. Male members of the family had already left for fishing in river Narayani. At around 12 midnight, four soldiers from the CNP intoxicated with alcohol came to the hut and raped her. If such incidents are reported, they threaten to kill us with their guns. How long do we tolerate such brutal torture?" An incident of harassment of local Kumal¹² women from Meghauri, Chitwan received much publicity. On April 30, 2006, a group of 15 local Kumal women from a buffer zone village went to the Khoriya Army Post inside CNP to seek permission for collection of wild vegetables. The Army took advantage of the occasion to harass them and beat up nine of the women. The next day six Army personnel from the same post came to the village. Shanti Kumal, a local women's activist, questioned the action of the Army. "Why have you beaten Kumal women when they approached you seeking permission to collect wild vegetables? Have they committed a crime?" The officer-in-command was enraged, "Are you a journalist, a human rights activist, a leader of this village? How dare you question us?".

Poor tribal women are often perceived as submissive and voiceless. Feeling insecure, Shanti Kumal took the help of an NGO she is affiliated with and issued a press release condemning the incident and warning of protest if a proper investigation was not conducted. When the matter was taken up by the media, it infuriated the Army officers of the post. On May 2 and 3, 2006, Army personnel from the post came to the village looking for her. They threatened dire consequences if the villagers did not hand over Shanti

to the Army within three days. She had to escape from the village and take refuge at a relative's home. On May 4, in a press conference along with other victimized women, she strongly protested the Army's behaviour and appealed for justice and security. The next day, their appeal reached the House of Representatives. The issue was raised in the Parliament. Civil society leaders and human rights activists extended solidarity to their plight. Human rights organizations began a fact-finding mission. The national media too highlighted the issue. Though civil society pressure warned off the Army, no concrete actions were taken against the guilty.¹³ Bibi Fattama, a local woman from the buffer zone area of KTWLR, said the following during the public hearing at Kathmandu: "When we village women go to the forest, soldiers from the reserve arrest us. They make us dance naked and rape us in the bushes. The government either resettles us elsewhere or withdraws the Army from the reserve area. If none of these are possible they can take our lives".

Atrocities and violence by the Army deployed in PAs

*"Armies are similar to the villains shown in the movies"*¹⁴

What are the implications of Army deployment to guard PAs? Though conflicts between the Army and local communities have been found in highlands and mid-hills PAs, local experiences show conflict to be more intense in PAs situated in lowlands of Nepal. Among other reasons, this is particularly due to strict rules protecting endangered and valuable wildlife and guarding dense forest; close proximity of human settlements to the PA boundary; and persistent need of local communities to access



Picture 1. Shanti with local Kumal women, Meghauri, Chitwan.
(Courtesy Sumana Shrestha, CDO)

natural resources of PAs. The stories of violence and atrocities perpetrated by the Army have a direct link with conservation practice driven by exclusionary logic and firm belief in military solutions to wildlife conservation.

Purba Pipra, the village adjoining KTWLR in Saptari district, lies close to Pathahari Army post, which guards the reserve area. This post used to be condemned as a notorious one by the local people. When the Army deployed there abandoned the post during violent armed conflict in the area, locals experienced a sense of relief. Locals claim that "not a single family in the two villages has been spared from the torture and harassment of the Army". In buffer zone villages in this district, nine villagers lost their lives in one decade due to Army torture.¹⁵

During the state of emergency imposed by the government to confront Maoist rebels, several fundamental rights accorded to citizens by the constitution were curtailed. During fieldwork in the two villages, Purwa Pipra and Jagatpur, it was disclosed that, taking advantage of the political situ-

ation, the Army personnel from KT-WLR raided and terrorized the villages by shooting 80 domesticated buffaloes in a single day. This was ignored by mainstream media. The Army justified its action by claiming that buffaloes were found grazing within the restricted areas of the reserve. Locals deny this. They aver that it was a deliberate action by the Army to threaten the Maoists and terrorize the villagers, who were perceived as Maoist sympathizers. "In the adjoining district, cattle crossing over the reserve area were spared on the same day. It was revenge taken by the Army", says Idrish Mansuri, a local resident. Loss of domesticated animals is distressing to villagers who depend on these animals for their livelihoods. About 50 households were directly affected by the incident. Cattle owners who lost their buffaloes during the interview were distressed whenever they recollect the incident. Villagers asked in dismay, "Do we get compensation for our buffaloes?". In a similar incident in 2000, one hundred cattle, including 97 buffaloes and 3 sacred cows, were killed on the order of the officer-in-charge of the reserve area.

In conversation with indigenous fishing communities at Purwa Pipra, another story was shared. Three "Malahas"¹⁶— local fisher folk— from the village were fishing in the Koshi river in the buffer zone of the protected area. Suddenly, soldiers from Pathahari post arrived. "We could not escape. Soldiers caught us on the spot. Then they battered us with guns, sticks and their boots. They snatched our clothes, covered our heads with them and tied us with shoelaces. They also forced clothes into our mouth. Then they threw us in the river and went to catch the other two Malahas on the other side of river. We were blindfold-

ed and suffocating. We could not talk as well", said one of the Malahas who experienced the brutal incident. Fortunately, after struggling against the waves of the Koshi, the fishers managed to get out of the river and hid in the thatch grass and bush across the river. The soldiers did not trace them, but the Malahas lost their boats and fishing nets. Recalling the incident, Baidhya Nath Mukhiya, one of the victims said "What human rights are you speaking about? Out here, soldiers have laws in their mouth. They do whatever they want. It is impossible to note down all the torture we have experienced from the soldiers. Those are countless".



Picture 2. Local resident showing bruises resulting from abuses by Army personnel. In the background is a Kanji House where cattle and villagers were detained by the Army in Purwa Pipra, Saptari. (Courtesy CDO)

PA related displacement and eviction threats

On several occasions, establishment and expansion of PA boundaries in Nepal have taken place at the cost of displacement of native populations.¹⁷ Global experience demonstrates that relocation and resettlement of displaced people are highly damaging,

particularly when they require that people change social and geographic contexts, and reestablish livelihoods in territories alien to their traditional habitats. While the issue has yet to be adequately researched and debated in Nepal, specific experiences so far demonstrate detrimental impacts upon displaced communities. One recent study shows that displacements have resulted in livelihood crises

Absence of a concrete, socially-just rehabilitation and resettlement policy in Nepal has reinforced poverty and vulnerability of communities displaced by PAs...

when communities are alienated from traditional land, houses and occupations.¹⁸ The study discloses that male members of displaced communities have been forced to migrate to neighboring countries for manual work.

Absence of a concrete, socially-just rehabilitation and resettlement policy in Nepal has reinforced poverty and vulnerability of communities displaced by PAs. Their daily struggles and miseries do not find space in the discourse of "biodiversity conservation".

Bardiya National Park (BNP), in mid-western Nepal, has a history of displacing local communities. Among the communities displaced during the early 1970s, 96 landless Dalit households (marginalized caste group) are currently languishing on unregistered forest land at Bhawani Fata, Neulapur village in Baridya District. They have been resisting threats of eviction from BNP authorities and struggling for secure housing. December 22, 2005 was one of the most terrifying days in their lives. National park officials and hundreds of Army personnel terrorized the entire settlement and destroyed all the huts. Some locals were physically assaulted while oth-

ers were forcibly chased away. They claim that their huts have been demolished several times. "In the past forest guards used to trouble us, now national park officials and the Army trouble us" lamented a local resident in a personal conversation during the study.

Four hundred poor and landless informal settlers have been residing in Bandharjhula, ward number 9, Ayodhyapuri, Madi, on the periphery of CNP for the past 17 years. The location of the community is strategically placed in relation to Chitwan National Park (CNP), being bordered by the thick forest of Parsa district in the east and a trail to Indian territory to the south. According to Shyam Khadka, representative of the Bandharjhula Landless Struggle Committee, the settlers are often perceived as threat to CNP for harboring poachers. In 1996-1997 the entire crop belonging to these settlers was destroyed by CNP authorities. There were several attempts to evict the community forcibly: on February 2, 2002, authorities of the Park torched more than 800 huts, as a result of which the locals were homeless for 4 months.

Stereotypes and allegations against "landless squatters" have often been used to justify atrocities against the Bandharjhula community. Shyam avers they are labeled as "demolishers of forest", "poachers" and even "terrorists" by CNP authorities. Refuting all the allegations, he further claims "The forest around our vicinity is still dense. In

"The forest around our vicinity is still dense. In fact we are local conservationists. We are watchdogs against poaching. We have formed a conservation committee and have been protecting the forest."

fact we are local conservationists. We are watchdogs against poaching. We have formed a conservation committee and have been protecting the forest. We have clear demarcation for our settlement.” During one of the local patrols in 1993-1994, locals captured police personnel as well as poachers heading towards the Indian border and later handed them over to the authorities. In another instance, in October 2003, the locals succeeded in capturing 3 members of a group of poachers who were engaged in illegal felling of trees. The current settlement used to be a grazing land for Thori villagers, near Parsa district, but that grazing has now stopped. The area was also a convenient corridor for poachers and forest mafia. When the settlement grew, these activities were obstructed. Yet in spite of the strategic role of settlers in supporting conservation, the local communities have been leading a life of internally-displaced people resisting threats of eviction from CNP.

Sukla Fata Wildlife Reserve (SFWR) in far western Nepal was expanded in 1981 with the rationale that existing habitat for wildlife species was inadequate. Seventeen settlements from five villages¹⁹ fell within the expanded boundary. Around 3000 households were displaced. While resettlement was agreed to in principle by authorities of SFWR, it was not implemented adequately to accommodate all the displaced families. A few of them were resettled in the town of Mahendranagar. Yet, the majority of displaced families took refuge in forest land outside the reserve area. Displaced households have been occupying unregistered forest lands in 13 different locations²⁰ resisting threats of eviction. There have been several occasions in the past when state au-

thorities as well as local community forest users groups have resorted to violent actions to evict families from informal settlements for occupying the forest lands.²¹ According to Amar Jung Shahi, local leader of displaced landless families, in a recent incident on November 30, 2006, officials of the district forest office and members of a local forest users group collectively torched and demolished huts in Bandi, the settlement of displaced families in Krishnapur village. Four members of the displaced families were detained on the charge of provocation by encroachment of forest land.



Picture 3. Baidhya Nath Mukhiya, a local fisher folk from Purwa Pipra, Saptari, who was once physically harassed by Army personnel from KTWLR. (Courtesy CDO)

Local movements and backlashes

Several grassroots popular movements as well as community-based backlashes have thrived around national parks and wildlife reserves in Nepal. Voices and claims of marginalized communities facing the brunt of conservation costs began to emerge in organized forms in the expanded democratic political space following multi-party democracy in 1990. Local move-

ments and campaigns around Terai PAs have been a non-violent form of mass protest. Such movements so far range from spontaneous movements led by communities directly affected by PAs to those induced and supported by civil society organizations and international funding agencies serving the plight of affected communities. These movements often articulate public dissent and reaction to inadequacies of policies and governance of PA management and wildlife conservation. More often than not, such policies and governance are driven by a bio-centric, orthodox conservationist paradigm, 'exclusionary logic', and excessive bureaucratic and military control. The origin and continuation of social movements around PAs often have direct correlations with livelihood crises of natural resource dependent, poor and marginalized communities around PAs; human rights abuses and atrocities by Army and conservation officials, local conflicts with wildlife species, and failure of buffer zone development programs intended to reduce conflict between PAs and local people.

During an Army raid on January 30, 1993, CNP authorities, including Army personnel, confiscated boats and fishing nets in several settlements²² across the river Narayani. They torched all fishing nets and handmade baskets, smashed boats into pieces and battered villagers.²³ The raid was an unprecedented move to enforce restrictions on fishing within the park boundary. Though the communities had begun to resist park impositions and abuses from 1983/84, this terrorizing incident triggered a spontaneous movement of Bote-Majhi and Musahar, the traditional fisher folk²⁴ residing on river banks adjoining CNP. The community resents the park

authorities and their callous and disrespectful attitude towards forest dwellers and river dependent communities. The resulting struggle is an exemplary grassroots, non-violent movement of hitherto marginalized groups that raised issues of livelihood rights of natural resource dependent communities around PAs of Nepal. Demand for traditional fishing rights to mitigate the livelihood crisis engendered by restrictive policies of the CNP were central to the movement. The struggle challenged and vibrantly unveiled atrocities and human rights abuses by Army and conservation officials. The movement achieved fishing rights in river Narayani for six months a year. The struggle is continuing.

Voices and claims of marginalized communities facing the brunt of conservation costs began to emerge in organized forms in the expanded democratic political space.

Local women from buffer zone villages of KTWLR in Saptari have organized mass protests against their harassment by armed guards and officials of KTWLR. December 10, 2000 was noteworthy in their struggle. Around 2500 local women wore a black cloth over their mouth, a symbolic protest against the actions of reserve officials. They marched all way from their villages to the district headquarters asking, "Where are our human rights?".²⁵ Local activist Kalpana Chaudhari recalls that the demonstration was initiated by a local civil society group called Koshi Concern Group, which had been launching non-violent campaigns in districts around KTWLR on problems faced by local communities. The group was banned by state authorities during the State of Emergency in Nepal after a few cadres joined the Maoists. Women activists of the group have been harassed and tortured in the past by se-

curity forces on suspicion of ties with Maoist rebels.

Boundary expansion of SFWLR displaced communities from villages such as Rauteli Bichuwa, Pipladi and Dekhatvuli. Conflict intensified when landless poor communities were excluded from the resettlement plan. Among the displaced were around 1013 Dalit households which were forced to take refuge along highways. Several commissions and committees were formed by the government to address the resettlement issue but they failed to resolve the crisis. Displaced communities launched a movement to pressure the state with demands for secure housing. The movement took off vibrantly against the backdrop of massive destruction of a settlement on January 6, 2003 by the state authorities. The displaced families had been occupying forest lands for temporary shelter. 'Reserve Victim Struggle Committee, Kanchanpur' evolved as part of the resistance to threats of eviction. In the non-violent struggle for just compensation for displacement, 45 year-old Prem Bahadur Chand passed away while participating in a relay hunger strike. Media reports suggested that health conditions of inhabitants in temporary camps had been deteriorating due to lack of basic services. While



Picture 4. A torched hut in the settlement of landless, Bandi, Krishnapur, Kanchanpur District. (Courtesy CDO)

the displaced communities languish along highways, river banks and forest lands, their struggle for secure housing and security of life continues.²⁶

In a recent incident in December 2006, two local women of Bhuri Gaon, Shiwapur village²⁷ were harassed by a group of conservation guards led by a 'Game Scout', Laxman Sunar. The women had gone to the forest to collect grass and fallen firewood. According to the locals, conservation guards seized *Doko* and *Namlo* (traditional baskets carried by village women for fetching fodder and grass) and burnt them later. The incident was soon disclosed among the villagers. The local 'struggle committee of park affected communities', including social activists and local villagers, surrounded the Bankhet post, demanding justice and protesting the action of the game scout. Public pressure forced the guilty game scout to apologize publicly. The incident was covered by the local press, Bardiya Times.

Contesting militarization of PAs

For several reasons, deployment and dominance of the Army in PAs of Nepal is seen as problematic by local people, critics, civil society organizations, and some forest professionals engaged in contemporary discourse on conservation. The institution of the Army has always been loyal to the monarchy and the royal palace. There are matrimonial and other close ties between upper echelons of Army and the royal family, with the 'top brass' always belonging to one of four families/lineages (Rana, Thapa, Shah, Basnet).²⁸ Their role in suppressing the historic people's movement²⁹ to sustain royal hegemony is evident in contemporary Nepalese history. Relations of the Army with local civilians, and more often poor and indigenous

communities, have been contentious. The set of atrocities mentioned earlier reflect on-the-ground realities,

Locals in buffer zone villages have reported that soldiers have indulged in violations that range from seizure of property and food, forced labor, and verbal abuse to physical torture and sexual harassment.

resulting in local conflicts as well as backlashes. Locals in buffer zone villages have reported that soldiers have indulged in violations that range from seizure of property and food, forced labor, and verbal abuse to physical torture and sexual harassment. A re-

cent study learned from local communities that those captured may face twenty-seven different forms of Army punishment. These include 'Dunk in the water', 'Batter with rough stick', 'Tied up upside down', 'Forcing to lay on mud exposed to blazing sun', 'Kicked with boots', 'Held in custody', 'Fined unreasonable amount', 'Made to stand still in water', 'Made to run in water', 'Forced to run in awkward positions and physically assaulted if failing to do so', 'Made to run with elbows on the ground', 'Forced to touch each other's sex organs, punished if refusing', 'Pulling the skin of the stomach and beating', 'Making women dance naked', 'Making men strip in front of women and sending home', 'Touching and pointing at women's private parts and harassing them', 'Forced to eat one's own spit', 'Forced to sing and dance', 'Snatching the fish catch', 'Breaking the boats', 'Abandoning the boats in the river', 'Putting sugar on the body and forcing to lay on the ground in the sun', 'Seizing axe and sickle', 'Chasing with elephants', 'Tying hands with shoe laces and throwing in the river', 'Dunking in

cold water for hours', 'Made to sleep on the ground and sent home without a chance to wash' and 'Spilling hot water on the body'.³⁰

The 'Royal' Nepal Army has been criticized for human rights violations against civilians time and again by national and international human rights watchdogs. 'There is reliable and documented evidence that the RNA have been responsible for systematic and widespread violations'.³¹ The United Nations Office of The High Commissioner for Human Rights in Nepal, in its comments and recommendation on the Army Bill of 20 August 2006, pointed out the RNA's failure to comply with international human rights standards.³² "Though the newly passed bill on the Nepal Army by the parliament, after restoration of multiparty democracy, has attempted to accommodate some of the concerns raised by human rights organizations, there are still problematic lapses in the Act that provide room for impunity. Crime against civilians and other human rights violations other than murder and rape still fall within jurisdiction of military court. Provisions concerning fair trial are still dubious", remarks Mandira Sharma, in an interview with a prominent human rights advocate in Nepal.

Conclusion

Reflections on grassroots realities from the buffer zone villages discussed above demonstrate the implications of current policies and mechanisms of PA management in Nepal. They also illuminate the apathy of state authorities and institutions towards human rights issues particularly when they affect poor, tribal and indigenous communities bearing the costs of state-imposed fashionable 'biodiversity conservation' practices.

The experiences of human rights violations around PAs in southern lowlands of Nepal suggest that poor, marginalized and minority indigenous communities are often excluded from the dominant conservation discourse and doomed to human rights violations. The vulnerability of natural resource-dependent poor and indigenous communities is aggravated by the erosion of traditional livelihoods due to restrictive and exclusionary conservation policies of the state. Their agony should be seen of their traditional livelihoods, intertwined with their politics of survival and struggle for environmental justice. The political context in the country also has consequences for the human rights situation at the grassroots. Atrocities by state authorities against the poor and marginalized communities took place when the State of Emergency was imposed and shrank democratic space. Popular stereotypes against poor, landless and tribal people have also contributed to their sufferings in the name of conservation.

In the context of Nepal, civil and political rights dominate human rights discourse. It is imperative to broaden the dominant understanding of human rights, and move beyond a strict focus on civil and political rights. It is essential to recognize the curtailment of customary usufruct rights over natural resources and its repercussions upon poor and indigenous people as a violation of livelihood rights and food security. Apathy of conservation authorities towards human rights of local communities around PAs and continued exclusion are likely to be counterproductive to the aspirations of 'sustainable' conservation. An indication of this problem is mounting local hostility due to conflict with wildlife species that are commonly

perceived as something belonging to the state and alien to the locals. The escalation of poaching of Asiatic one horned rhinoceros and rapid decline of endangered wild water buffalo also challenge the effectiveness of the existing paradigm and strategy of wildlife conservation in Nepal. In a country where local campaigns and civil society groups raising issues of human rights and advocating an active role of local communities in conservation are perceived and labeled as 'anti-conservation', integration of the human rights agenda into conservation discourse is challenging. However, there are positive signs: emerging non violent local movements around PAs, civil society-initiated critical dialogues amongst diverse groups, institutions on democratizing protected area governance in Nepal, and growing realization of the problem on the part of forest bureaucracy.

Sudeep Jana (janasudeep@gmail.com) a post graduate in Social Work (Urban and Rural Community Development), is a researcher with Community Development Organization, a NGO working on social justice and ecological democracy around protected areas of Nepal. For the past two and half years he has been engaged in researching grassroots social movements, struggles and conflicts over natural resources around PAs in the southern lowlands of Nepal. He is also involved in advocating democratization of PA governance in Nepal. His book in collaboration with ICIMOD *The Struggle for Environmental Justice: An Indigenous Fishing Minority's Movement in Chitwan National Park, Nepal* is forthcoming.

Notes

- 1 After political change in April 2006, the 'Royal Nepal Army' was renamed 'Nepal Army'.
- 2 Protected areas in Nepal have thrived since 1970s and constitute more than 19 % of the territory. There are 16 PAs at present, which include national parks, wild life reserves, conservation areas and hunting reserves.
- 3 Rara National Park, Khaptad National Park, Bardia National Park, Chitwan NP, Koshi Toppu Wild Life Reserve, Sukla Fata Wild Life Reserve, Shivapuri Wild Life Reserve, Langtang National Park, Sagar-matha National Park and Shey Foksundo National Park.
- 4 Nepal is topographically divided into Himalayan, Hill and Terai regions. Terai belongs to the southern lowlands.
- 5 *Bikas*, 8 (15), Dec 8-9, 1999 in Adhikari & Ghimi-

- re, 2003.
- 6 Bote-Majhi-Mushar are indigenous fisher folk who reside on the periphery of Chitwan National Park (CNP), south central Nepal. Traditionally they earn their livelihood from ferrying, fishing and accessing livelihood resources of the forest. Before the establishment of CNP they had unrestricted access to natural resources.
 - 7 CDO & ICIMOD, 2006, pp: 8.
 - 8 CDO & ICIMOD, 2006, pp: 8.
 - 9 After reinstatement of the dissolved house of parliament in April 2006, the Government of Nepal made provisions to extend citizenship to children from the mother's name where the father was not present or known.
 - 10 Such buffer zone villages include Gardi, Baghauda, Kalyanpur, Patihani, Sukranagar and Jagatpur.
 - 11 *Bikas*, 8(15), 8-9 Dec, 1999, quoted in Adhikari & Ghimire, 2003.
 - 12 Kumals, native population around CNP, belong to one of the marginalized nationalities of Nepal, traditionally dependant on natural resources.
 - 13 It is based on an interview with Shanti Kumal on May 10, 2006 at Kathmandu.
 - 14 Khor Bahadur Majhi, traditional fisher folk from Shergunj, fringe of CNP.
 - 15 CDO *et al.*, 2006.
 - 16 Malahas are traditional fisher folks who reside on the periphery of Koshi Toppu Wild Life Reserve (KTWLR) and earn their livelihood by fishing in river Koshi. They are one of the minority groups in buffer zone area of KTWLR.
 - 17 Based on first hand knowledge of the author several experiences of displacement can be found in Nepal. Communities displaced by CNP from old Padampur were resettled in new Padampur in Chitwan. Communities from highlands of Mugu, Karnali Zone, mid western Nepal were resettled in Chisapani, Banke district, lowlands of Nepal, after establishment of Rara National Park. Many villages were displaced during establishment of Koshi Toppu Wild Life Reserve in south— eastern Nepal.
 - 18 CDO *et al.*, 2006.
 - 19 The VDCs are Rauteli Bichuwa, Pipladi, Jhalari, Dekhatavali and Daiji.
 - 20 Some of these villages include Simal Fata, Jhalari, Kalika, Beldandi, Dekhatbhuli and Pipladi in the buffer zone area.
 - 21 Adhikari, and Ghimire, 2003.
 - 22 The settlements were Sandh, Badruwa, Laugain and Piprahar, located in buffer zone area of Chitwan National Park in Nawalparasi district, south-central Nepal.
 - 23 Bhattarai, and Jana, 2005.
 - 24 Their livelihood is historically dependant on fishing, ferrying and collection of livelihood resources of the forest.
 - 25 Bhattarai *et al.*, 2003.
 - 26 Based on the conservation with Amar Jung Sahi, local leader of displaced communities.
 - 27 The village is located in buffer zone of Bardiya National Park
 - 28 Bhatt, 2006.
 - 29 The People's Uprising in April 2006 forced king Gyanendra to renounce autocratic role and reinstate the dissolved House of Parliament.
 - 30 CDO *et al.*, 2006.
 - 31 ICJ 2006, p2.
 - 32 UN OHCHR, 2006. Among other things, it expressed concerns that the new bill, like the existing Army Act, 1959 'allows military court over civilian court to exercise jurisdiction over Army personnel who commit serious human rights violations'; does not create enough room to oblige 'Nepal Army to cooperate with civilian authorities' to investigate serious human rights abuses by Army personnel and does not guarantee defendants to just and fair trial or the human rights protection to those detained by Army '

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Protected areas and human rights in India— the impact of the official conservation model on local communities

Milind Wani and Ashish Kothari

Abstract. We reviewed the impact of some of India's conservation policies on the livelihoods of communities living within areas protected for wildlife (national parks and wildlife sanctuaries). We did that in the background of United Nation's Millennium Development Goal (MDG) of halving extreme poverty by 2015 and of the human rights framework, within which impoverishment can be seen as a violation of human rights. Our research at sites in three states of India suggests that conservation policy is having significant adverse impacts on resident and user communities. Some sincere attempts by the state and/or by NGOs to mitigate or minimize these impacts have been made, but they remain inadequate. Issues of poverty, conservation, human rights, citizenship rights, and land/resource tenure rights specific to India's history and social-economic conditions are closely inter-linked. They cannot be addressed in a piece-meal manner, as has been done so far. A human rights approach that integrates conservation and livelihoods requires an active and informed participation of the communities living within protected areas. Conservation policy itself needs to embrace new paradigms of governance and participation that many countries are exploring.

India's protected areas (PAs) have been the single most important strategic approach employed by the government for the conservation of the country's biodiversity. Upwards of 600 PAs cover about 5% of the country, helping to protect some of its last remaining natural ecosystems and wildlife populations. These PAs are, however, also home to 3 to 4 million people. Most of these belong to communities that have lived in or used the area for generations or centuries, and most belong to the economically 'lower' or 'poorer' classes of Indian society. This paper examines the social situation within India's PAs from three perspectives.

Firstly, we try to understand how the current poverty¹ of resident or user communities relates to the establishment of PAs. Poverty is a multi-dimensional concept² that negatively impacts on the well-being³ of people and com-

munities. In this sense, any actions that actively cause 'impoverishment' can be considered a violation of human rights. Examples of such violations include:

- ▶ Denial of customary rights over access to natural resources for physical subsistence, livelihood and economic security.
- ▶ Actual or potential threat of displacement, dispossession and loss of command over economic resources.
- ▶ Ill-health, illiteracy, hunger and morbidity that can be related to impoverishment.
- ▶ Denial of participation in developmental activities and community life.
- ▶ Disempowerment and decreased control over personal and community lives.
- ▶ Lack of accountability of decision makers including the government.

Following the economist Amartya Sen,



Picture 1. Women in Satpura Tiger Reserve, the hardest hit by restrictions on access to resources. (Courtesy Ashish Kothari)

poverty can be seen as “the failure of basic capabilities to reach certain minimally acceptable levels”.⁴ Being adequately nourished, clothed and sheltered and being able to participate in community life can be viewed as interrelated “functionings” that can be impacted by development or conservation policies. In this sense, the active impoverishment and disempowerment of people and communities can be seen as a violation of human rights

In this light, this article examines the impact of PA-related policies and judicial strictures on the livelihood options of these communities and explores the extent to which new conservation policy initiatives (eg. ‘ecodevelopment’) attempt to ensure livelihood security and otherwise alleviate poverty. The article is based on site visits to study the situation of PAs

in 3 states of India (Orissa, Madhya Pradesh and Himachal Pradesh), and an analysis of conservation policies, undertaken as part of a Small Grants Programme research project funded by UNESCO. It places itself within UNESCO’s perspective that freedom from poverty is an issue basic to ensuring the protection of human rights.

Poverty, human rights, and conservation

Around 70% of the Indian population depends on land-based occupations, and on forests, wetlands and marine habitats for their basic subsistence requirements.⁵ This dependence is widespread, with very few ‘natural’ ecosystems (mostly some inaccessible reaches of the Himalayas, and some islands) not being subjected to some form of human use. These communities depend on the resources of the area for water, housing material, fuel wood, fodder, pastures,⁶ medicinal plants, non-timber forest products (NTFP), timber, aquatic resources including fish, spiritual and cultural sustenance, and myriad other basic needs. In all, 275 million people depend on NTFP for their livelihood.⁷ NTFP collection generates about 1063 million person days of employment in India⁸ and about 60-70% of NTFP gatherers are women.⁹

It is crucial that access to natural resources be considered an essential component of anti-poverty strategies, and denial of access be seen as leading to impoverishment and therefore a violation of basic human rights.

There are an estimated 20 million person days per year involved in medicinal herb collection from the wild, for a net collection of around 1120 million rupees per year.¹⁰ There are an estimated 22 million fisher-folk who



Picture 2. Non-timber forest produce is a critical source of livelihood for villagers in Baisipalli Sanctuary, Orissa. (Courtesy Ashish Kothari)

depend on aquatic habitats for their livelihood.¹¹ The dependence is greatest in the case of India's indigenous or tribal communities.¹² It is not coincidental that 65% of India's forest cover is in 187 tribal-dominated districts.¹³

Given this dependence, it is crucial that access to natural resources be considered an essential component of anti-poverty strategies, and denial of access be seen as leading to impoverishment and therefore a violation of basic human rights. The complexity and seriousness of the issue is further underscored by the fact that the 150 poorest districts in India are also constitutionally-designated Schedule V areas and that Scheduled Tribes¹⁴ constitute about 8.4 per cent of India's population.¹⁵ Therefore, it is vital that conservation be addressed within the context of human rights, and conversely that human rights approaches incorporate the need to conserve natural ecosystems and resources. In the context of PAs, conservation strategies must address the issue of ensuring livelihood security (and hence freedom from poverty and impoverishment).

Any consideration of India's conservation policies has to note their impact on people (leading to decreased or increased poverty), and conversely, the impacts (negative or positive) that people have on wildlife and natural resources. Some criteria crucial to understanding the current situation are:

- ▶ the extent of dependency on natural resources for basic survival, the extent to which such dependency is recognized as a rights issue,¹⁶ and the impact of conservation policy on this dependency;
- ▶ success or failure of developmental activities within areas designated for conservation;
- ▶ access to information regarding, and extent of participation in, decisions affecting one's life;
- ▶ awareness about compensation policies; and
- ▶ availability and awareness of alternative livelihood options.

India's conservation model and its livelihood impact

The greatest conflicts in relation to access to natural resources for livelihood purposes exist in PAs. Over the last few decades, several hundred PAs have been declared under the Wild Life (Protection) Act 1972 (WLPA). From a handful of such areas prior to 1972 (which were declared under previous laws, mostly colonial in origin), the country today has over 600 PAs, covering almost 5% of its territory. Until recently, these belonged to two categories: National Parks—where all human activities are strictly prohib-

Ensuring that livelihood needs are met without compromising the conservation of wildlife and biodiversity is a critical part of India's environmental and developmental agenda today.

ited, and Wildlife Sanctuaries— where some activities/rights are allowed. In 2003, two more categories of PAs were included in the Act: Conservation Reserves and Community Reserves. There are a number of other legal and non-legal categories providing varying degrees of conservation coverage to specific sites: protected and reserved forests (under the Indian Forest Act 1927), biosphere reserves, elephant reserves, heritage sites (none of these with legal backing), tiger reserves (declared since 1973 but given legal backing only in 2006), and ecologically sensitive areas (under the Environment Protection Act 1986).

In areas where natural ecosystems still exist in relatively intact or less disturbed form, considerable wildlife and biodiversity still survives. But many of these also have traditionally resident or dependent human communities. Ensuring that livelihood needs are met without compromising the conservation of wildlife and biodiversity is a critical part of India's environmental and developmental agenda today.

Unfortunately, the official conservation model applied in India is in many ways unsuited to the Indian context.¹⁷ This model, imported from the West (in particular from the US Yellowstone National Park) and based on the principle of exclusion, has been extended to areas where people reside within wildlife habitats. The fact that the model would have serious implications for livelihood security and people's own conservation practices was ignored when it was enshrined in the WLPA.

The WLPA has been crucial in reducing the destruction of wildlife species and habitats, but has also continued the colonial legacy of rendering control over natural resources into the hands

of centralized bureaucracies, further removing any vestiges of management and control that local communities may have had. This affects, either directly or indirectly, the life of 3 to 4 million people in indigenous and other communities that live within PAs and another few million that live outside PAs but depend on the PA natural resources for their own livelihoods. A country-wide assessment in the mid-1980s showed that 69%

of the studied PAs had human populations.¹⁸ Local traditions of conservation and community resource management and ethical and spiritual beliefs have sustained many ecosystems and wildlife species, though it would be a mistake to

romanticize these as being universal or always effective. These traditions were almost totally neglected in the legislation. Also neglected, and in some cases actually "dismantled", were community level institutions of resource management and conservation. This mismatch between conservation policy and the social situation on the ground has had significant impacts, some of which are:

► **Dispossession and displacement**

Over 100,000 people may have been displaced from PAs over the last 3-4 decades (the fact that there is no comprehensive official figure is symptomatic of the casual attitude towards this problem).¹⁹ More serious is the denial of access to survival and livelihood resources for people that remain within PAs, reported to be prevalent in most PAs of the country.²⁰

The WLPA continued the colonial legacy of rendering control over natural resources into the hands of centralized bureaucracies, further removing any vestiges of management and control that local communities may have had.

► **Conflict between local people and government officials**

The mid-1980 study mentioned above revealed that, of the PAs surveyed as many as one-fourth reported physical clashes between PA officials and local people.²¹ Another 1983 report²² prepared by a government appointed task force and focusing on rural peoples' dependence forests, acknowledges the fact that: "In their precarious existence, enforcement of restrictions in wildlife reserves triggers antagonism".

► **Backlash against conservation**

Extreme hostility against PA-related restrictions and frequent repression is also manifest in acts of reprisal: poisoning of wildlife, aiding and abetting poaching by outsiders, setting fire to the forest, and similar destructive acts. Political leaders make use of this to demand the de-reservation or downsizing of PAs to leave villages out of the boundaries.²³ This downsizing happened some years back, for instance, with the Great Himalayan National Park in Himachal Pradesh, the site of one of our case studies.



Picture 3. Women of Barnagi village in buffer zone of Great Himalayan National Park: in need of alternative livelihoods. (Courtesy Ashish Kothari)

This is not to say that conservation policy and programs have only had negative impacts. Communities have also benefited in several ways:

- PAs have helped keep out the destructive 'development' pressures from many areas, some of which (mining, dams, etc) could have inflicted far more damage on local communities than the restrictions imposed by PA rules. This impact is less tangible,²⁴ but nevertheless major in the case of some PAs, and many communities do acknowledge it, when asked.
- The biomass being protected in PAs is used by resident and user communities (where not denied access); PAs also act as "nurseries" from where natural resources such as fish spill over into surrounding areas and benefit people.
- Ecosystem services protected by PAs are of significant use to local people, water being probably the most important.
- Some PAs are employing local people, and beginning to deliver more tangible benefits in terms of ecotourism revenues.

Unfortunately, the above benefits are often poorly tangible, or seem to benefit only a fraction of the people adversely affected by PAs. This imbalance in costs and benefits to local people has of late become even more pronounced with recent policy pronouncements and judicial strictures. In 2000, the Supreme Court of India passed an order restraining all state governments from ordering the removal of timber, fallen wood, grasses, and other such produce from protected areas. Though this order was made in the context of a disguised move by one state government to re-open timber logging inside PAs, it has been more widely interpreted

ed (2003/04), by the central Ministry of Environment and Forests, and by a Centrally Empowered Committee set up by the Supreme Court, to ask state governments to halt all exercise of rights and concessions inside PAs! This extremely 'generous' interpretation of the Court's direction is even beyond the spirit and letter of the WLPAs, since it effectively denies any means of livelihood to people living inside PAs.

Due to be impacted are 3.5 to 4 million people, as virtually all their livelihood related activities dependent on forest or other natural produce would be halted. Without explicitly ordering this, India's central judicial and executive bodies have set into motion a process that could first dispossess, and then forcibly displace, millions of people. Already the impacts have been felt. In the south-eastern state of Orissa, the government has implemented a prohibition on NTFP collection. This has reportedly affected several hundred thousand *adivasi* (indigenous/tribal) people,

Without explicitly ordering this, India's central judicial and executive bodies have set into motion a process that could first dispossess, and then forcibly displace, millions of people.

taking away their sole or main means of livelihood, and forcing many of them to migrate out in search of employment and income. Similar orders are underway or under consideration in many other states. These orders have created a situation of

enormous tension and potential escalation of conflicts across India. The NGOs Kalpavriksh (Pune, Maharashtra, India) and Vasundhara (Bubhaneshwar, Orissa, India) have legally challenged the orders, but the courts have yet (as of January 2007) to hear their arguments.

It was precisely to ascertain the impact of the recent policy and judicial pronouncements that our study looked at the situation on the ground in some selected PAs.

Case studies' background and results

The study examined the situation in four PAs in three states:

1. The Satkosia Gorge Sanctuary (SGS) in Orissa state, with an area of 795.52 sq. kms, was declared on 19 May 1976. It is a vital habitat for the elephant and other wildlife, but also contains 102 villages (including three forest villages)²⁵ with a population of nearly 32,000.²⁶ The process of identifying and settling the customary rights of these people has not yet been completed.
2. The Baisipalli Sanctuary in Orissa state, with an area of 168.35 sq km, was declared on 7 November 1981. As of 2001, the villages inside had a population of 5874, most of them Scheduled Tribes with a very heavy dependence on NTFPs. Since the entire area of the Sanctuary was previously a Reserve Forest (under the Forest Act 1927), identification and settlement of people's rights to forest produce has not been considered necessary.

In both the above PAs, NTFP collection for sale was banned in 2001.

3. The Great Himalayan National Park (GHNP) in the state of Himachal Pradesh was established in 1984 for its exceptional range of Himalayan flora and fauna, including many threatened species such as the Western tragopan, Himalayan tahr, Blue sheep, and Musk deer.²⁷ GHNP is spread over an area of 754.4 sq km. Around 160 villages, with about

14,000 people, exist in the five-km wide belt on the western side of the park; many have been dependent on traditional resource uses inside GHNP. In 1999, with the final notification of the park, all such customary use rights were prohibited.

4. The Satpura Tiger Reserve (STR),²⁸ in the state of Madhya Pradesh, contains three protected areas: Satpura National Park (SNP: 524.37 sqkm), Bori Wildlife Sanctuary (BWS: 485.72 sqkm), and Pachmarhi Wildlife Sanctuary (PWS: 417.78 sq km). The total area is 1427.87 sq km. There are 8, 17 and 50 tribal villages respectively (total 75 villages) in the three PAs. The area is known as a part of the Gondwana tract after the Gond tribe, who chiefly inhabit this area and practice both settled and shifting cultivation. A decision was taken several years back to relocate some of the villages from within the STR. The first of these, Dhain, was shifted in 2005 and there are plans to shift 13 to 16 more villages.²⁹ Additionally, a number of restrictions on collection of forest produce for sale have been imposed here, pursuant to the Supreme Court's order of 2000.

These PAs were selected to illustrate three situations which face most PAs and PA-resident peoples in India:

- ▶ **Denial of access to natural resources**— A common phenomenon across India, the precise effects of this were studied in detail in Baisipalli and Satkosia Sanctuaries in Orissa, and in less detail at GHNP in Himachal Pradesh.
- ▶ **Physical displacement of communities residing within protected areas**— As an example of this, the success or failure of the relocation of Dhain village from within the Satpu-

ra Tiger Reserve (Madhya Pradesh) was studied.

- ▶ **State initiatives to create or enhance livelihoods**—The success or failure of 'ecodevelopment' initiatives as a means to alleviate livelihood/poverty needs and reduce pressure on the PA, was studied at GHNP, Himachal Pradesh.



Picture 4. The Great Himalayan National Park offers excellent trekking and camping opportunities, and a fledgling ecotourism venture could lead to some livelihood generation for local people. (Courtesy Ashish Kothari)

Our methodology included the following:

- ▶ Literature search on available material (official and otherwise);
- ▶ Site visits to study impacts of conservation policies and programmes on people, using personal observation and detailed questionnaires to elicit information and opinions from forest officials, local people and institutions, and state level NGOs;
- ▶ Group and individual meetings held

- with affected communities;
- ▶ Commissioning an expert paper on tourism as a livelihood option; and
- ▶ Analyzing existing and proposed new laws and policies and judicial pronouncements.

The focus of our study and methodology was to understand the impact of policy measures on communities residing within PAs, and the extent to which they may have led to impoverishment of communities staying within protected areas, through denial of livelihood because of dispossession, curtailment of access to sources of livelihood, inadequacy of developmental initiatives, displacement or inadequate rehabilitation, denial of opportunities for participatory decision making etc. From the perspective of the "capability approach", these have a direct relevance for the "functionings" of the people, an inadequate realization of which constitutes a violation/denial of certain human rights. Our study was also an attempt to understand whether initiatives like "ecodevelopment" really are an answer to the problems created by a certain model of conservation, and whether they have been adequate to remedy impoverishment and the related violation of human rights.

Our research reveals the following key impacts of protected areas on communities:

- ▶ Communities within or adjacent to these PAs were already facing deprivation and denial of customary rights prior to the PAs being declared, for reasons including the areas being declared reserve forests during colonial times, or lack of government attention to 'remote' areas away from main roads.
- ▶ However, there has been a significant additional negative impact on the livelihoods of communities liv-

ing in or around Baisipalli, Satkosia, and GHNP, due to denial of/restrictions on access to natural resources. In Orissa, prior to the ban on NTFP trade, families earned an average annual income of Rs. 6800— 9100 through legal sale of forest produce. This has dropped now to Rs.1000— 1500, no longer obtained legally. In many villages, since this was the main source of earning, people have been driven to the verge of destitution. Similarly, in GHNP, prior to restrictions on the sale of medicinal herbs, per family income was Rs.7500— 10,000. Legal trade has stopped almost completely, though some trade is reported to continue illegally. Thus the income drop in both cases has been above 80%. In Satpura, villagers also reported loss of livelihoods, but this was not studied in detail.

- ▶ Additional problems³⁰ that people within Baisipalli, Satkosia, and Satpura have been facing include: inadequate development facilities, non-settlement of rights, harassment by PA staff, lack of awareness of compensation schemes, lack of participation in decision-making, insecurity due to fear of eviction, inadequacy of medical support, poor educational opportunities, and inadequacy of roads, communication, and energy sources.
- ▶ There have been no attempts at amelioration of negative impacts in Baisipalli or Satkosia. At GHNP, sincere attempts at providing alternative sources of livelihood have been made under 'ecodevelopment' programmes, including creation of women's self-help groups. But these have been inadequate with respect to the scale of the loss. Villagers expressed serious difficulties due to inadequate compensation for (or alternatives to) the reduced income due to loss

of rights and access to medicinal herbs and grazing, compounded by inadequate settlement of customary resource access rights based on outdated records..

- ▶ Displacement from Satpura has had a significant negative impact, visible at least in the short term. Key issues at New Dhain (the resettled village) include: poor initial governance of the resettlement process (e.g. absence of written Memorandum of Understanding with the villagers), conflict with an existing settlement (Doobjhirna) over land, unsatisfactory land preparation and water availability for a year after relocation, and difficulty accessing authorities and civil society groups for redress. More recently, sincere attempts at rehabilitation and livelihood generation, mobilizing extra resources from district administration, are visible on the part of the Satpura Reserve authorities.
- ▶ Legal processes have been faulty in all these cases. Settlement of customary resource access rights remains incomplete for communities inside Baisipalli and Satkosia; at GHNP, the settlement was based on a 19th century report on forest rights that hardly benefited currently existing families. In the case of New Dhain, people have yet to get legal documents pertaining to the land they have been allotted, due to restrictions imposed by the central government.
- ▶ Very few basic development related activities have been undertaken within Baisipalli, Satkosia, and Satpura. Health-related problems are serious in the area. Though some initiatives were undertaken for the relocated village in Madhya Pradesh— for example roads were being constructed— this started more than a year after relocation.

At GHNP, Park authorities had made efforts at improving infrastructure in some of the affected villages in the buffer area.

- ▶ Some of the restrictions seemed to be leading to a backlash against conservation itself. In Baisipalli, for instance, it was reported that people had resorted to rearing goats, which are taken out to graze in the forests. At all the PAs, hostility against the PA authorities was palpable, leading to difficult working conditions for the staff.

Ironically, while local communities were being denied access to resources or were being physically relocated, the government was giving out PA land for commercial activities. This was very visible in the case of GHNP, where about 1000 hectares (10 sq km) were carved out of the PA, ostensibly to benefit two tiny villages inside, but actually to open up the area for the Parbati Hydrel project. Local people have suffered from loss of income from herb collection, grazing and agricultural activities while alternative sources of livelihood were not made available to them. Their health problems have actually increased because of high levels of dust and noise. Their crops and land have been damaged with no compensation. Their water sources have been disrupted. The influx of labor put added pressure on the natural resources and threatened the valuable bamboo forest and the Western Tragopan habitat.

Ironically, while local communities were being denied access to resources or were being physically relocated, the government was giving out PA land for commercial activities.

One positive point was that forest of-

ficials across the four PAs were clearly concerned about the plight of the people within their jurisdiction. While no compensatory activities were visible in Baisipalli and Satkosia, officials did mention that they are exploring dif-

One positive point was that forest officials across the four PAs were clearly concerned about the plight of the people within their jurisdiction.

ferent avenues like ecotourism to help the tribal communities, and also that they had filed an appeal to the Supreme Court to allow NTFP collection again. More concrete steps have been taken by the GHNP au-

thorities, in terms of ecodevelopment activities that, albeit inadequately, address livelihoods loss.³¹ In Madhya Pradesh, according to the forest officials in charge of Dhain villagers' rehabilitation, attempts are being made through forest department initiatives to provide livelihood alternatives, such as a sericulture project, which will hopefully assure a good income to the people in the future. The worst situation by far is in the Orissa PAs.³²

Key issues

From the case studies, and a general reading of the situation in India, some key issues emerge:

- ▶ Many communities living in areas targeted for wildlife conservation are living "on the margin", with tenuous access to critical livelihood resources. This situation partly existed prior to independence, and often continued post-independence. Historical processes of state takeover of commons are one factor, but there are others, such as state failure to deliver health, education and development inputs to "remote" areas.
- ▶ Conservation policy and programmes have had a significant negative impact on the socio-economic condition of communities living inside areas



Picture 5. Over 30,000 trees were cut for the rehabilitation of a village from Satpura Tiger Reserve, demonstrating the need to carry out impact assessments of the costs and benefits of relocation. (Courtesy Ashish Kothari)

sought for wildlife protection, worsening the already marginalized existence of these communities, and in some cases turning a situation of free and relatively secure access to survival resources into uncertain or prohibited access. This matter of great concern has been made even worse by the passing of the judicial stricture restricting access to NTFP.

In some cases commendable attempts at ameliorating the situation have been made. But these remain inadequate compared to the scale of deprivation.

- ▶ Denial of access to livelihood and survival resources, even when a community is allowed to continue living in its traditional place of residence, has directly lead to further community impoverishment and in some cases destitution.³³
- ▶ In some cases commendable attempts at ameliorating this situation have been made. But these remain inadequate compared to the scale of deprivation. A recent focus on ecotourism to benefit communities has

had some small-scale success, but in most places is insensitive to community needs and rights, and to ecological sustainability requirements.³⁴

- ▶ When communities get physically displaced, even a relatively efficiently-managed relocation process cannot make up for being up-rooted from a cultural way of living and way of being practiced for generations. These hitherto provided not only for livelihood, but also for the cultural and spiritual sustenance of these communities, based on a relationship with natural resources that evolved over centuries. Livelihood, moreover, has been based on historically-evolved customary rights and responsibilities. When these are suddenly replaced by relationships based on the modern concepts of state, law, judiciary, revenue, finance, development, and so on, the change can become a traumatic experience. Thus, those responsible for relocations also need to factor in the issue of potential malaise and conflict with villages already in and around resettlement sites.
- ▶ Denial of access to resources often backfires on conservation itself. There have been widespread reports from PAs in India of people resorting to damaging activities, including illegal timber felling and poaching. This is so because as people's hostility towards conservation measures increases, the potential for physical conflicts is heightened, and people become less cooperative, making it more difficult for wildlife officials to work effectively.
- ▶ Constitutional amendments and new laws regarding political decentralization (1993 and 1996) have come rather late (almost half a century after Independence). The situation has been further aggravated by poor implementation, divisions created by politicization, continuation of caste system privileges within local village

councils and assemblies (*panchayats* and *gram sabhas*), and political and administrative corruption. In the case of PAs, decentralized decision-making, which could balance out the alienation and disempowerment caused by conservation policies, was and continuous to be conspicuous by its absence.

The Way Ahead

Legally-notified protected areas are certainly one effective way to conserve ecosystems and wildlife. However, this cannot be done without providing for the needs of ecosystem dependent people. The imperatives of ecological security and livelihood/food security have to be seen as two sides of the same coin. For the former, it is critical to understand the biological requirements of ecosystems and species.

For the latter, factors that sustain or increase poverty (defined broadly as resource deprivation), or conversely sustain or increase livelihood security, must be understood and addressed in conservation planning. This would also mean respect for traditional and customary rights of ecosystem-dwelling

communities, facilitating their ability to ensure a certain standard of dignified living in terms of entitlements like secure livelihoods and employment, education facilities, health, access to information, and so on. Finally, this would also mean empowering people by enabling their participation and involvement in conservation initiatives and alternatives. Empowerment leads to a sense of freedom and a control over one's own destiny. Policy makers have to understand that unless and until there is freedom from poverty, there will always be a poverty of freedom.

The imperatives of ecological security and livelihood/food security have to be seen as two sides of the same coin.

Box 1. Stop-press! Two latest laws that could democratize conservation

In late 2006, two pieces of legislation have created the potential of democratizing forest and conservation management and providing greater benefits to local communities, but also some concerns about their impacts on conservation itself.³⁵ The passage of the **Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006** attempts to reverse the historical marginalization of the tribal (indigenous) and other forest-dwelling people of India.³⁶ The Act mandates the vesting of 14 kinds of rights over forest land and forest produce on two categories of communities: scheduled tribes, and "other traditional forest-dwellers" defined as those living in forests for at least three generations.

The Act specifies that all rights in PAs need to be identified and established. It mandates a process for determining "critical wildlife habitats" inside PAs, and assessment of whether people's activities within such habitats can be in consonance with conservation. If "irreversible damage" is established, communities can be relocated with their informed consent, and after ensuring the readiness of relocation and rehabilitation. Gram sabhas (village assemblies) have also been empowered to protect wildlife and biodiversity, and to keep destructive activities out of the forests in which they are given rights.

There are some serious concerns about the Act's potential impact on conservation. In the context of PAs, for instance, it is not clear if the rights could over-ride the steps necessary to achieve conservation. Specific conservation **responsibilities** have not been placed on the rights-holders. The fact that 'encroachments' upto December 2005 can be legalized is already leading to incitement by politicians, in some areas, to encroach into forests further with the hope that they will be legalized. In some Indian states, such encroachment is a serious cause of deforestation.

The second legislative measure of note is within the WLPA itself. In late 2006, the **Wild Life (Amendment) Act** was passed, setting up a National Tiger Conservation Authority, and specifying processes for notification and management of Tiger Reserves. It requires that "inviolable" areas need to be determined in a participatory manner, and that relocation from such areas needs to happen only with the informed consent of communities. Areas of concern pointed out by conservationists include the dropping of a number of provisions of the WLPA from being operative inside Tiger Reserves. As of late 2006, a legal challenge has been mounted by some conservation organizations against such provisions.

Based on this understanding, the study makes a number of recommendations, including:

Addressing the lacunae within current conservation policies and laws

- ▶ Developing criteria for declaring protected areas, assigning them a specific category and assessing dependence of local people on protected areas.
- ▶ Identifying and establishing the community rights, and settling them in PAs, through transparent and participatory means.
- ▶ Moving from an 'ecodevelopment' approach towards Joint or Collaborative Protected Area Management, in which decision-making and benefits are both shared.³⁷
- ▶ Regulating commercial use of resources within PAs, and prohibiting large-scale diversion for development projects.
- ▶ Ensuring due process of relocation and rehabilitation. This can make use of new laws requiring informed consent and adequate preparation—the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the

Wild Life (Amendment) Act 2006 (see Box 1 in this article).

- ▶ Implementing recommendations of existing national planning documents, such as the National Wildlife Action Plan 2002-2016, and the draft National Biodiversity Strategy and Action Plan.³⁸
- ▶ Implementing recommendations of international policy and treaties on conservation and livelihoods, in particular the CBD Programme of Work on Protected Areas.



Picture 6. Many villagers in the buffer zone of Great Himalayan National Park have had to sell off their livestock, since grazing in the Park was banned. (Courtesy Ashish Kothari)

Ensuring that human rights are safeguarded

People and communities living within PAs should enjoy human rights:

- ▶ *Right to association*: They must be free to organize without restriction and associate with other communi-

ties, civil rights groups, and social activists to exchange understanding and knowledge about the impact of policies (and amendments), processes of displacement and rehabilitation, etc..

- ▶ *Right to assembly*: They must be free to meet without impediment and intimidation, e.g., they should be able to assemble without outside interference or the intimidating presence of forest officials, vested political powers, etc. to discuss and decide about their own lives.
- ▶ *Right to say what they want without fear of persecution*: They must be free to dissent vis-à-vis a policy directive entailing their forcible or coerced displacement or vis-à-vis an unsatisfactory or inadequate rehabilitation. Appropriate mechanisms/avenues of expression should be available.
- ▶ *Right to participation*: This is a crucial and complex human right that is inextricably linked to fundamental democratic principles and that entails active and informed involvement in decision-making. As a World Bank document³⁹ observes "The poor want desperately to have their voices heard, to make decisions and not always receive the law handed down from above. They are tired of being asked to participate in governmental projects with low or no returns". A human rights approach to poverty requires active and informed participation of the people and communities living within PAs.
- ▶ *Right to information*: They must know the relevant facts about schemes, compensation policies, application processes, etc. that affect their lives.
- ▶ *Right to a reasonable standard of living and livelihood security*: Command over natural resources plays an important role in defining liveli-

hoods and should be protected.

Treading an integrated conservation and livelihoods path is difficult, and prone to errors of judgement. But in countries like India, where wildlife and people live side by side in most of the landscape, it is the only path that has a long-term hope of success. The sooner India moves in this direction, the better it will be for both its wildlife and its people.

Ashish Kothari (ashishkothari@vsnl.com) has been with Kalpavriksh— Environmental Action Group for the last 27 years. He has also taught at the Indian Institute of Public Administration for a decade, and been on the Board of Greenpeace International. He co-chairs the Strategic Direction on Governance, Equity and Livelihoods, of the IUCN— World Conservation Union and continues to participate in several social and environmental movements. His main areas of interest are environmental governance and community-based natural resource management.

Milind Wani (milindwani@yahoo.com) has been with Kalpavriksh— Environmental Action Group for the last 4 years. His areas of interest are conservation, human rights, social action and culture.

Notes

- 1 We define poverty here as deprivation of resources essential for survival and livelihood, including, for communities living within/adjacent to natural ecosystems, denial or lack of access to natural resources.
- 2 The dimensions of poverty are linked to certain 'freedoms' that a person can enjoy or be denied. Thus curtailment of certain 'freedoms', e.g., freedom to exercise customary rights of access over natural resources, can lead to impoverishment.
- 3 Human well-being can be viewed as a set of inter-related "functionings" that a person can "do or be". The level of well-being will then depend on the level of those "functionings" in areas of value to the person (OHCHR, 2004).
- 4 Quoted in OHCHR, 2004. pg. 7
- 5 TPCG and Kalpavriksh, 2005.
- 6 Over 200 castes, as much as 6% of the total Indian population, is engaged in pastoral nomadism with substantial dependence on natural ecosystems (Agarwal *et. al.*, 1982.)
- 7 Bajaj, 2001.
- 8 Khare, 1998.
- 9 Gera, 2001.
- 10 FRLHT, 2001.
- 11 Kocherry, 2001.
- 12 The term 'indigenous' is not officially used in India, though the peoples themselves use it; more commonly used terms are 'tribes' or *adivasi* ("original dwellers").
- 13 Quoted from "Fatwa raj is over", Interview with Brinda Karat, CPI(M) leader and Member of the Rajya Sabha, *Frontline*, January 12, 2007
- 14 Scheduled Tribes are tribal communities listed in a schedule in the Constitution of India, for the purpose of being provided special rights and privileges; Scheduled Areas are those primarily inhabited by tribal communities; these are also prime "tiger districts"; see for reference the Executive Summary of the report of the Tiger Task Force <http://projecttiger.nic.in/TTF2005/index.html>.
- 15 Prasad, 2007.
- 16 Till the 1991 amendment to the Wild Life (Protection) Act, 1972, a sanctuary could be notified without people's rights being determined; subsequently, they had to be identified and settled (allowed or extinguished), before the sanctuary could be finally notified. In 2003, further amendments provided for people to be given alternative arrangements for fuel, fodder and minor forest produce till the rights were settled. However, in many PAs, rights still remain unrecorded or unsettled even years after declaration.
- 17 The Yellowstone National Park model of the United States advocates a separation of wildlife from people, is based on western notions of wilderness, and is known to have caused disruption for native human populations even in the USA.
- 18 Kothari *et.al.*, 1989; the 2005 report of the Tiger Task Force set up by India's Prime Minister, acknowledges that "The protection of the tiger is inseparable from the protection of the forests it roams in. But the protection of these forests is itself inseparable from the fortunes of people who in India, inhabit forest areas" (<http://projecttiger.nic.in/TTF2005/index.html>).
- 19 Kothari *et.al.*, 1996.
- 20 Kothari *et. al.*, 1996
- 21 Kothari *et.al.*, 1989.
- 22 The 1983 *Eliciting public support for wildlife conservation — report of the task force*, by a committee headed by Madhavrao Scindia, focuses on the dependence of rural people on forests. This report recommended development programmes and funds for villages located in the periphery of protected areas. However, this will be much more relevant for villages located *within* protected areas where dependence on forest, aquatic and other natural produce for economic and domestic subsistence is very substantial
- 23 Kothari, 1999.
- 24 The problem, of course, is that this is a *potential* threat warded off, whereas the *actual* harassment due to conservation laws and often repressive bureaucracy is far more tangibly felt
- 25 Forest villages were set up by the Forest Department in the erstwhile colonial regime and after Independence, as labor for forestry operations. Very few rights were given to these people. Forest villages are under the control of the Forest Department, do not come under the Revenue Department, and are not entitled to many government schemes/programs that most villages in India can avail of. In Satkosia, one of these villages, Tarava,

- was established by the British in 1910 for commercial forestry operations. To date, this has not been converted into a revenue village. Due to this, it is deprived of the benefits of various government programmes like old age pension, widow pension, Anthyodaya Anna Yojana, or even domiciles certificates as they are under the sole jurisdiction of the Forest Department. There are recent reports of death due to malnutrition from this village (Barik, 2006).
- 26 1991 census.
 - 27 Pandey, 2003.
 - 28 This section is partially based on <http://project-tiger.nic.in/bori.htm>
 - 29 As of June 2006, this was the plans
 - 30 It should be noted that not all of these are due to the presence of the PA; many of these deprivations exist in Indian villages outside PAs also. However, at least some instances were recounted of development facilities being denied due to PA related policies.
 - 31 However, the then Park Director Sanjeeva Pande, responsible for many of the progressive efforts made in the last few years at GHNP, acknowledged the fact that conservation is not going to come through only economic empowerment, but that social and political empowerment of the communities living in and around protected areas is also required.
 - 32 There has been no response to our study from the Forest Department despite repeated reminders, though initially, at the time of giving us official permission to visit the study sites, we were told that we would require their permission in order to publish our findings!
 - 33 Recent policy revisions by a number of donors have redefined "restricted access" to certain natural resources as a form of involuntary displacement, even if the affected groups are not physically relocated. This revision would affect the programmes of various multilateral banks as also of the Global Environmental Facility (GEF) (Cernea 2006).
 - 34 Bhatt, 2006.
 - 35 Both these took place towards the end of this study, hence have not been analyzed in detail in relation to the case studies and empirical work done under it.
 - 36 See a series of articles and an interview in the *Frontline* issue of January 12, 2007 (<http://www.flonnet.com/fl2326/index.htm>).
 - 37 Lessons in this regard could be learnt from examples such as Periyar Tiger Reserves where some experiments in participatory conservation have been tried. Lessons could also be learnt from local people's efforts at conservation of wildlife, or Community Conserved Areas (see http://www.iucn.org/themes/ceesp/Wkg_grp/TILCEPA/CCA%20India%20brochure.pdf). Considerable documentation on the same is available with Kalpavriksh.
 - 38 As action plans, both the NBSAP and NWAP have so far not had major policy, legal, or on the ground impact. This lacuna needs to be addressed immediately.

- 39 As cited in OHCHR from the series "Voices of the Poor" published for the World Bank by Oxford University Press, 2000-2002. It is of course another issue that the Bank itself has been frequently criticized for not following such an approach in its funding.

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Conservation's engagement with human rights— “traction”, “slippage”, or avoidance?

Janis Bristol Alcorn and Antoinette G. Royo

Abstract. Human rights (HR) have become a smoking-gun issue threatening conservation's public legitimacy and long-term funding. Globally there are rising frustrations that large conservation non-governmental organizations (NGOs) do not seem to be collaborating with civil society movements promoting democratization. They rather appear to associate closely with governments and other actors with poor HR records. HR abuses or allegations of abuse that arise in conservation contexts include violation of due process, massive forcible resettlements, destruction of property and farms, torture, and extrajudicial killings. In addition, conservation agents are increasingly perceived as HR 'duty bearers' that do not fulfil their responsibilities. Many biodiversity hotspots overlap with poverty hotspots where HR abuses occur, and in such areas conservation organizations have an excellent opportunity to act towards addressing such abuses. Their responsibilities are guided by international and domestic law, yet their record of action is uneven. In some local cases, conservation agencies have demonstrated 'traction' in supporting HR. Evidence of 'slippage' and avoidance in assuming HR responsibilities, however, suggest that the biodiversity conservation community has yet to mature towards a commitment to HR, which would require systematic changes at multiple levels. This paper places unspoken issues on the table and encourages their open discussion, hoping to promote the positive changes essential for sustainable conservation. We address the following questions:

- ▶ Who are the duty-bearers in conservation?
- ▶ Where do they engage in conservation?
- ▶ What guidance exists to assist and encourage such duty-bearers to develop and implement a rights-based approach to their work?
- ▶ What are some indicators of their engagement, or lack thereof, with HR?
- ▶ What are illustrative examples of HR 'traction' and/or 'slippage' behaviour?
- ▶ How and by whom can conservation actors' HR engagement be monitored?

Critiques of conservation and protected areas¹ have raised global press attention to questions about the legitimacy² of protected areas created and managed in violation of human rights. A recent global review of conservation work³ found widespread frustrations that large conservation non-governmental organizations (NGOs) aren't joining civil society movements promoting democratization, but rather work side by side unprogressive governments that function through rule of power. They do not appear to perceive or agree about the need to build civil

society coalitions and rule of law to support long-term conservation. In many fora and conversations, these concerns have been shared by conservation fieldworkers, as well as by local NGOs, indigenous organizations, community representatives, and the donor community.⁴ As a result of these perceptions, the international biodiversity conservation agenda is losing ground with indigenous peoples (IP)⁵ and other sectors of society in local and global arenas.⁶

Large conservation NGOs have opportunities to influence decision-makers,

because they are part of elite circles, with access to politicians and national authorities beyond the reach of rural citizenry. Hence rural people and advocacy NGOs can view conservation programs as choosing to be complicit with the HR violations arising from government actions. They can point to the armed "nature keeping forces" that occupy protected areas⁷ and a long history of other cases that together reflect a general lack of concern for HR.

Some conservation analysts cherry-pick good cases to defend a positive assessment of conservation's HR record. Others say, "It's a mixed bag", as though supporting human rights in some cases is good enough. Others respond that conservation has nothing to do with human rights. Some international conservation NGOs are even seeking to counter these charges of HR neglect by defining the existence of biodiversity as a human right of humanity. This would shift the frame of engagement from questions about violations of the rights of individuals and communities to a frame defending the legitimacy of con-

Human rights are only protected when both rights-bearers and duty-bearers work together nurturing a positive feedback circle to consolidate norms and public accountability that in turn support a healthy civil society.

servation NGOs impinging on other human rights in order to achieve this goal. This apparent attitude of putting sectoral/organizational interests before human rights extends beyond protected areas. For example, a recent analysis of payments for environmental services (PES) states: "If we impose a lot of side objectives on

PES (poverty alleviation, gender, indigenous people, human rights, and other noble causes), PES would become the

new toy of donors, NGOs, and government agencies. At the same time, the outreach to the private sector would be much more limited, thus losing new financing options."⁸

These reactions are interpreted by critics as misguided efforts of conservationists to avoid legal and moral responsibilities while seeking to maintain and expand funding for conservation.

Human rights and responsibilities

Human rights are universal and indivisible, whether or not governments acknowledge these rights. The indivisible bundle of human rights includes civil, economic, cultural, political, property, and environmental rights. Individuals and groups holding the rights are 'rights-holders', and those with whom they interact are 'duty-bearers' carrying obligations to act to protect human rights directly and to create the conditions for other duty-bearers to fulfil their responsibilities, even in the absence of national legislation or regulations protecting human rights. According to international law, human rights cannot be negated by states, nor can states negate duty-bearers' responsibilities to uphold human rights.⁹

Duty-bearers can fulfil their obligations by engaging in actions that assist right-bearers to demand and fulfil their rights. Rights-bearers have the right and obligation to demand that duty-bearers fulfil their duties. Human rights are only protected when both rights-bearers and duty-bearers work together to create and use systems that prevent and/or redress violations, nurturing a positive feedback circle to consolidate norms and public accountability that in turn support a healthy civil society. Avoidance of duty-bearer responsibilities has negative effects on

human rights. Duty bearers' behaviour, directly and indirectly, determines whether human rights are respected or abused. Rights are violated as much by failure to address past wrongs as by ongoing actions. Hence, duty-bearers carry a major obligation to redress past wrongs.

An example of the complementary nature: rights-holders require access to legal and judicial processes to exercise their right to demand remedies; duty-bearers, in turn, are responsible to ensure that rights-bearers have access to remedy. Actions taken by NGOs, civil society, and the media to implement this duty include monitoring courts and filing relevant cases. Few human rights NGOs¹⁰ understand the issues in rural settings, and this enhances the duty-bearer obligations carried by conservation NGOs, religion-based groups,¹¹ and donors, who operate in remote areas far from the watchful eye of the press and other observers.

Given the growing awareness of conservation's human rights obligations,

It could be useful for conservation NGOs to develop their own 'conservation code of conduct' that incorporates human rights commitments.

tools for assessing HR engagement are sorely needed. They should be included in any protocol to certify protected areas and used to evaluate potential collaborators.

Sanderson¹² suggested that conservation NGOs should assist the private sector to develop a 'conservation code of conduct' to expand ethical guidance to incorporate conservation into existing codes of conduct that include social justice and human rights. In this vein, it could be useful for conservation NGOs to develop their own 'conservation code of conduct' that incorporates

human rights commitments, building on the Caux Round Table Principles for Business.¹³

In the spirit of opening a discussion to help conservation actors assess and guide their performance as HR duty-bearers, we put the following questions on the table:

- ▶ Who are the duty-bearers in conservation?
- ▶ Where do they engage in conservation?
- ▶ What guidance exists to assist and encourage such duty-bearers to develop and implement a rights-based approach to their work?
- ▶ What are some indicators of their engagement, or lack thereof, with HR?
- ▶ What are illustrative examples of HR engagement with 'traction' and/or 'slippage'?
- ▶ How and by whom can conservation actors' HR engagement be monitored?

In our replies to these questions, we use specific illustrative cases.¹⁴ These are but a few examples taken from our experience and the existing literature. They are not necessarily the best or worst possible cases, but illustrate how conservation actors' engagement with HR has been inconsistent over time and across countries. The intention is not to point a finger at particular international NGOs or places, but to ground the discussion of the need for new institutional guidance to achieve consistently positive performance.

Who are the duty-bearers in conservation?

The sheer size and global distribution of areas under conservation agreements puts a significant burden of responsibilities on international conservation programs. Twelve percent of the

Earth is under protected areas (20 million square kilometres) including 40% of rural lands in some African nations,¹⁵ and more areas are being declared.¹⁶ The national governments with sovereignty in these places are among the human rights duty-bearers, but they are not the only ones. Areas of high biodiversity concern are largely in nations with unclear property rights, weak judicial systems, and governments with uneven human rights records. Conservationists are among the few actors linking capital cities and remote areas, and, as duty-bearers, they need to act on human rights responsibilities in these situations.

International nongovernmental organizations (NGOs) can be particularly influential as they bring significant resources. In

The sheer size and global distribution of areas under conservation agreements puts a significant burden of responsibilities on international conservation programs.

2002, three major conservation NGOs (CI, TNC, WWF) had annual revenues of over \$1.28 billion. They spent \$487 million outside the US, more than the GEF.¹⁷ Their funding partners include bilaterals

and multilaterals, industries, private donors, trust funds and other financial mechanisms. The Conservation Finance Alliance (CFA), established in 2002, includes UNEP, UNDP, UNESCO, USAID, Danida, GTZ, major US-based conservation NGOs, and private firms. The political influence of the conservation organizations is reflected in the International Conservation Caucus Foundation (ICCF) that recommends strategic direction to members of the US Congress, for example.

The high level of funding positions con-

servation actors to influence policy in the poor countries where they operate.

Globally an estimated \$4.5 billion per year, (\$45 billion over the next ten years), will be used to finance the global protected area system covering 15% of terrestrial and 30% of marine ecosystems.¹⁸ National parks' budgets run around \$1.3-2.6

billion. Foreign aid contributes some \$350-420 million to conservation in developing countries.¹⁹ Of the estimated \$893/square kilometre/year—which is the average cost of managing protected areas—foreign assistance from countries that maintain high human rights standards contributes approximately \$600/square kilometre/year. In this way, foreign assistance donors transfer significant financial weight, which indeed could be used to encourage implementing agencies, NGOs, and host governments to honor their HR duty bearer responsibilities in conservation contexts.

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Where do duty-bearers engage in conservation?

Conservation is a multifaceted endeavour, offering a range of settings for exercising duty-bearer responsibilities. Governments and conservation NGOs have responsibilities in site-specific protected areas (parks, reserves, etc.), in design and management of conservation initiatives, in protected areas policy, debt-for-nature swaps and trust funds, certification of forestry products, conservation concessions and private reserves, conservation agreements/contracts with local communities, land use zoning, corridor and landscape management, ecotourism, wildlife

management, environmental education, collaboration with industry, policy development, conservation 'offsets,' safari hunting, and payments for environmental services. Partnerships with industry are a cross-cutting theme. For example, protected areas systems may be national, private, or parastatal with industries raising funds through luxury hotels and wildlife sales. Some conservation NGOs implement protected areas directly, and in some cases, provide armed guards to protect parks.²⁰ All these situations put significant HR responsibilities on conservation NGOs.

Human rights abuses and allegations which arise in conservation contexts include violation of due process, massive forcible resettlements, destruction of property and farms, torture, extrajudicial killings and other violations of social, cultural, political and economic rights. Rural poor bear a disproportionate share of conservation costs,²¹ and landscape approaches have extended

... as biodiversity hotspots overlap with poverty hotspots and governments with high corruption indices, conservation actors have major opportunities to act on their HR responsibilities.

conservation's impacts far beyond protected area borders. Nineteen of twenty-five biodiversity hotspots include 1.1 billion people who live on less than \$1 per day, and sixteen of twenty-five biodiversity hotspots include areas where 20%

of the population is malnourished.²² Human rights violations are common in remote impoverished areas²³ and, as biodiversity hotspots overlap with poverty hotspots²⁴ and governments with high corruption indices,²⁵ conservation actors have major opportunities to act on their HR responsibilities, for instance through their communication

channels with policy-makers. The Constitutions and laws have been reformed in the past decade in many countries,²⁶ yet conservation has lagged in reforming its programs to fit the new national settings, as was recently highlighted in Bolivia.²⁷

Donors who fund conservation activities are another key duty-bearer. Donors have significant policy and project oversight opportunities in which to carry out their responsibilities to shape the HR engagement of conservation.²⁸ A recent commentary in *Philanthropy News Digest*, summarizes the basis for growing donor concern: "Unfortunately, conservationists and environmental NGOs routinely carve protected areas out of indigenous land ... As their lands are stripped, Indigenous Peoples' sources of food, trade and traditional medicine are taken away and their very livelihoods threatened, putting them at increased risk of poverty, disease, social unrest, and, in some cases, cultural extinction. ... If (donors) were aware that .. conservation efforts are ... driving Indigenous cultures to extinction, they would demand changes in conservation programs."²⁹

What guidance exists to assist and encourage duty-bearers to develop and implement a rights-based approach to their work?

Human rights must be addressed as an integrated whole, as they are indivisible and interdependent. To properly support human rights, the overall strategies and goals must be modified to effectively assume the organisation's responsibilities. Duty-bearers cannot simply add human rights as another objective among the others, but rather need to incorporate this objective across the board as a minimum standard for all actions.

Given the need for duty-bearers to take an integrated approach, the United Nations has mandated that human rights responsibilities be mainstreamed into all UN programs through "rights-based approaches."

"The human rights based approach (HRBA) is premised on the understanding that **human rights principles** guide all programming in all phases of the programming process, including assessment and analysis, program planning and design, implementation, monitoring and evaluation. These principles include universality and inalienability, indivisibility, interdependence and inter-relatedness, non-discrimination and equality; participation and inclusion; accountability and rule of law."³⁰

Major development NGOs, such as CARE, OXFAM, and Save the Children, have embraced rights-based approaches, as described in other articles in this volume, and offer examples of how systemic, institutional change can be catalyzed.³¹

HRs are defined in international conventions and declarations, and in national Constitutions.³² Key rights include the right to free speech, rights to property, freedom from persecution, freedom to make a living, freedom of association, right to self-determination, and the right to freedom from harm.

Duty-bearer actions are mandated and governed by international hard and soft law. International hard law³³ indicates a broad global consensus that affects non-signatories and provides a practical, ethical guide to encourage other duty-bearers (including states) to implement mechanisms for guaranteeing human rights. International law is used through rights-holders' and

duty-bearers' recourse to arbitration as prescribed in each particular convention.³⁴ Rights holders and duty bearers ideally rely on national law that provides mechanisms for enforcement, if such law exists. International Labour Organization (ILO) Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries³⁵ is of particular relevance for conservation.

Soft law lies between policy³⁶ and hard law. Soft law provides ethical guidance principles but does not have enforcement mechanisms. It emerges from meetings sponsored under international auspices, and serves as a moral barometer and emerging global consensus on what is legitimate and what is not. Soft law often foreshadows the development of hard international law on the subject. Typical of relevant soft law are "Declarations".³⁷ In addition, expert bodies as well as committees associated with the hard law conventions also create soft law. An expert seminar convened by the Office of the High Commissioner for Human Rights³⁸ recently gave the expert recommendation:

"Experts call upon States to address inconsistencies in their national laws, recognizing indigenous peoples' rights over their lands and resources are not overridden or extinguished by other legislation, in particular in relation to extractive industries, natural resource use, and the creation of 'protected areas.' Experts also call upon States to ensure that their national laws and policies... are not discriminatory or inconsistent with international human rights laws and standards."

There is no broad policy guidance designed specifically for conservation's engagement as a human rights duty-bearer.³⁹

Are there indicators of duty-bearers avoiding engagement?

Red flags indicating *avoidance* arise when duty-bearers:

- ▶ say that they do not concern themselves with human rights because they are not human rights organizations;
- ▶ fail to point out gaps in addressing basic due process rights in conservation policies and laws;
- ▶ frame rights issues as if they were technical and management issues;
- ▶ speak of human rights issues in terms of 'social trade-offs' as though human rights have a relative and tradeable value;
- ▶ use terms and processes that are rights-neutral, such as focusing on stakeholders⁴⁰ instead of 'rights-holders';
- ▶ give awards and otherwise enhance the legitimacy of government agencies or private industry accused of violating human rights;
- ▶ rely on inserting Free Prior Informed Consent as a fix-all in key documents without investing resources in its application in key processes, and without addressing larger issues in the system itself;
- ▶ pass implementation work to local partners who do not comply with HR standards;
- ▶ refuse to forge new patterns in new protected areas instead of repeating HR violating processes of the past; and/or otherwise
- ▶ directly violate human rights or stand silent while their collaborators violate human rights.

In addition, recent trends in foreign assistance for conservation, as reported by the CBD Secretariat, show an increased focus on sustainable use and equitable benefit sharing.⁴¹ This rise in poverty eradication programs is

a potential red flag; programs linking conservation and poverty eradication generally avoid rights issues and in the end may fail in both aims, because they avoid addressing root causes and dimensions of poverty and biodiversity loss beyond income. While a more complete assessment of the long-term conservation and HR implications of linking conservation to poverty eradication is needed before making any conclusions, it is evident that this linkage has contributed to weakening of rights in those cases where poverty alleviation actions have reduced people to co-managers or targets for income replacement instead of recognizing them as property owners.⁴²

[The] rise in poverty eradication programs is a potential red flag; [as] programs linking conservation and poverty eradication generally avoid rights issues [they] avoid addressing the root causes and dimensions of poverty and biodiversity loss beyond income.

Are there illustrative examples of HR 'traction' and 'slippage'?

Duty-bearers are obligated to carry out their responsibilities in difficult circumstances, where forward movement can be slow even when 'traction' is achieved. It is best practice to honestly monitor and evaluate ongoing conservation work in order to improve performance and achieve objectives.

This section covers conservation's engagement with various pieces of the integrated whole for which duty-bearers are responsible. Eleven categories of conservation activity have been taken as headings to represent the complexity and breadth of conservation's reach; these categories are not mutually exclusive nor exhaustive, but rather overlap and inter-relate. Their order of

presentation should not be interpreted to reflect any meaningful order or hierarchy among them.

Under each of the eleven headings, rather than make a judgement of success or failure, we offer illustrative examples of “traction” (where good effort is being made toward HR compliance and assumption of duty-bearer obligations) and “slippage” (where obligations are not being met through inaction or false action).⁴³

The mixed record of slippage and traction across the board in international conservation NGOs and their private sector partners (e.g, The International Council on Mining and Metals noted below) is reason for concern, because in today’s interconnected world, global duty-bearers’ obligations are to engage consistently across the whole.

1. Protected Areas— resettlement and restriction of access

Protected areas are the keystone of conservation work, and a key area of HR concern. Policy reforms in protected areas management can encourage but do not guarantee change on the ground.

Traction. Co-management instead of resettlement is a step toward improving conservation’s engagement. Some contend that co-management is impossible given the power relations difference,⁴⁴ yet this engagement can offer a significant arena for systemic change in power relations if the duty-bearer assumes their responsibilities.⁴⁵ Kaa Iya National Park in Bolivia offers an example of co-management where the indigenous Guarani government (CABI) collaborates with the Wildlife Conservation Society (WCS) and the national parks agency SERNAP, using funds from a trust fund endowed by a gas pipeline

crossing the park to manage indigenous territory historically claimed by Ayoreos, Chiquitanos, and Guarani, who provide park guards (see Picture 1).



Picture 1. Park guards of co-managed Kaa Iya National Park discuss an archeological site in the Chaco thorn forest near Isoso, Bolivia. The park guards are hired from the TURUBO Chiquitano, Santa Terecita Ayoreo, and Isoso Guarani indigenous communities bordering the park. (Courtesy Janis Bristol Alcorn)

Slippage. Conservation’s poor duty-bearer performance can be measured by the number of conservation refugees. People who are forcibly resettled suffer multiple stresses and psychological trauma, cultural disruption, suicides, loss of access to livelihood resources and property, and impoverishment— clear violations of human rights conventions. Indigenous peoples have suffered the brunt of conservation impacts, but millions who do not identify themselves as “indigenous” have also been affected. In this context, it is unproductive to focus solely on indigenous rights as much as it is wrong to ignore indigenous rights where they are claimed.⁴⁶

Estimates have placed the global number of conservation refugees at 130 million.⁴⁷ If the people currently “illegally” resident inside protected

areas or using protected area resources were evicted or had their resource access restricted, the potential number of negatively affected people would run into the hundreds of millions.

In Africa, the situation is best-documented: 600,000 refugees in Chad;⁴⁸ 100,000 in Kenya and Tanzania in the past 30 years;⁴⁹ 120,000 (5% of the population) displaced since 1990 and an additional 170,000 facing displacement in Nigeria, Gabon, Cameroon, Republic of Congo, Equatorial Guinea, and Central African Republic— being moved into lands already occupied

...none of the major conservation NGOs has a policy on resettlement, an obvious opening for improving conservation's image and engagement.

and managed by 250,000 people;⁵⁰ and 30,000 forced from Kibale Forest Reserve and Game Corridor in Uganda.⁵¹ In addition, an unidentified number of local and indigenous people have been

removed from Central Kalahari Game Reserve, Chobe National Park, Etosha National Park, Moremi Game Reserve, Tsodilo Hills World Heritage Site, West Caprivi Game Park, Wankie National Park, and Gemsbok National Park.⁵² In protected areas in Gabon, Cameroon, and DRC, communities have lost access and control over their traditional forests (valued at \$1.4 billion) and lost income opportunities of \$21 million per year.⁵³ In the case of GEF-funded protected area projects, 65% have impoverished people with no evidence of conservation benefits. More severe human rights impacts are expected over the next six years⁵⁴ if protected area establishment procedures are not changed. Despite the seriousness of the problem, as illustrated by the above African data, none of the major conservation NGOs has a policy on resettlement,⁵⁵

an obvious opening for improving conservation's image and engagement.

2. Recognition of customary rights

Property and other customary rights are critical human rights considerations in conservation activities. Tenure is a relationship between/among people regarding their access to natural resources. It comprises a bundle of rights and responsibilities, and may include symbolic rights, rights of direct and indirect use, economic gain, control, and residual rights.⁵⁶ Property rights bundles are also sometimes classed as rights of exclusion, access, management, and alienation.⁵⁷

Customary rights, recognized in many Constitutions, include grazing rights, rights to sacred places, partitioned rights to areas over the year, rights to forests, rights to govern according to customary laws, as well as land rights. The majority of rural Africans hold land under customary rights.⁵⁸ Customary rights systems, present in many high diversity areas, do not mean that all is communal, but rather they include individual and group rights⁵⁹ that should be respected by duty-bearers.

Regardless of a national government's disregard for local and communal property rights, conservation organizations have obligations to fairly assess and support local rights in areas demarcated as protected areas. Customary rights are part of indigenous territorial rights (which include rights to govern themselves, etc.,) but in situations where territorial rights are not recognized, engaging in recognition of customary rights is a good move forward.

Traction. Community Conserved Areas (CCAs) have been proposed as one among four main "governance types"⁶⁰ in recent IUCN documents (Guidelines

11) and in the CBD Programme of Work on Protected Areas. Expanded acceptance of the CCA governance type could increase recognition of communities' customary rights to access and manage their resources, and provide greater support for those reserves in nations that already recognize customary rights to collective management of community forests and biodiversity reserves, e.g., Bolivia, Canada, Colombia, Mexico, Papua New Guinea, and Namibia. Indigenous peoples are recognized to have "time immemorial" rights over protected areas, under the National Integrated Protected Areas Systems Law of the Philippines.⁶¹ The many programs supporting community rights to wildlife in Eastern and Southern Africa are also illustrative of traction in supporting customary rights (see Picture 2).



Picture 2. Ngarambe village near the Rufigi River bordering the Selous Game Reserve in Tanzania participates in a pilot program that recognizes their rights to forest and wildlife. They sell hunting licenses to safari tourists, manage and butcher wildlife for their own consumption, and protect their forests through a transparent governance program facilitated by WWF. (Courtesy Janis Bristol Alcorn)

In India,⁶² in 2006, Parliament passed a Wildlife Act which gives new powers to local governments and tribals (instead of central government authority), recognizing tribal people's rights to

territories and management decisions, and protecting them from forced resettlement outside tiger reserves.⁶³ The central Tiger Conservation Authority will have representation from Tribal Affairs authorities.

Slippage. Conservation organizations' purchase of state or private lands that were established by ignoring or extinguishing customary rights, is an example of bad faith slippage by avoidance of HR obligations. The buyer ends up with a title and ownership rights while the indigenous and other rural communities with customary rights have no formal title and are forced off their lands as squatters. The Mapuche in Chile⁶⁴ and Argentina,⁶⁵ and Mbyaa Guarani in Paraguay⁶⁶ are among those who have faced this insidious form of forced resettlement.

In the case of San Rafael National Park in Paraguay (see Picture 3), neither land purchases⁶⁷ nor a bilateral debt-swap addressed human rights violations and obligations. Local communities protested the local vigilante landowners NGO's cutting of their traditional forests after they been taken over under the NGOs management plan in 2002, and conflict ensued when the NGOs' armed guards responded.

Another form of related slippage around property rights is seen where debt swaps are used to purchase lands that are claimed by peasants and indigenous peoples (including uncontacted people), as in the case of San Rafael National Park⁶⁸ in Paraguay. In an ideal scenario, the NGO facilitating land purchase,⁶⁹ or the donor behind the debt swap, investigates the tenurial situation prior to making any commitment and chooses not to disenfranchise the indigenous and local people of their human rights by purchasing lands in conflict,

but rather seeks to support a solution that recognizes local rights-holders.



Picture 3. San Rafael National Park in Paraguay is home to uncontacted Mbya Guarani, yet conservationists have not addressed their rights, nor the rights of Mbya Guarani and other communities around the park, in land purchases from private international banks to consolidate the park. Vigilante private landowners formed an NGO with armed private guards (in green hats) to assert control in collaboration with TNC, WWF, Guyra (Birdlife International local counterpart) and others. (Courtesy Janis Bristol Alcorn)

3. Indigenous territories

Traction: In Bolivia, Brazil, Colombia, and Panama, large indigenous territories are recognized and carry out their own conservation activities with technical assistance from conservation organizations or technicians. Indigenous Protected Areas (IPA) have been encouraged in Australia since 1996, under the federal Environment Protection and Biodiversity Conservation Act. In this latter case, aboriginal people retain usage rights, and the Commonwealth minister negotiates conservation agreements with them.

Slippage: In Ethiopia, African Parks Foundation has contracted with the Ethiopian government to manage two parks— Nech Sar and Omo, and is not following ICCP and CERD guidance.⁷⁰

Their agreement with the government may be read as requiring the government to displace people from Nech Sar before the NGO took over that park. Their actions are threatening the Mursi, Dizi, Suri, Me'en, Nyangatom and other tribal peoples who have lived, farmed and sustainably pastured their animals in the Omo River valley for centuries. African Parks Foundation and their international funders have not yet assumed their duty-bearer responsibilities by taking advantage of opportunities to forge new collaborative patterns for conservation. International HR activists are lobbying to encourage APF's foreign funders to require APF to assume their HR responsibilities.

Due to the significant overlap between indigenous territories and areas of high biodiversity,⁷¹ IP are especially vulnerable to having their special and prior rights violated by conservation. As a result of their experiences with conservation, IP increasingly view conservation as the major threat to their survival and territories.⁷² The problems and divisions between the two are deep and longstanding. IPs have sometimes described conservation as "ecofascist." Conservation documents refer to indigenous peoples as local "populations" "inhabiting" protected areas, rather than using terms that recognize their territorial rights and their rights to negotiate collaboration. They use other terms that prejudice against good relationships, e.g., rural people "survive" by farming and "poaching"⁷³ rather than "derive their livelihoods by farming and hunting". Human rights issues are also evident when conservation organizations take insufficient action to protect endangered peoples and "uncontacted" peoples while doing conservation work in their territory or declaring protected areas over their territories.⁷⁴ This division between IPs



Picture 4. Today pastoralist Mursi, Nyangatom, Surma, Bodi, and other peoples along the Omo River in Ethiopia are visited by international tourists seeking "the last authentic tribal experience in the world," where they can enjoy interactions and taking photos like this one, but APF's new rapid effort to consolidate Omo National Park and introduce rhinos on tribal lands does not fully recognize their human rights, and threatens these pastoralists' access to traditional territories and their way of life.

(Courtesy Laurie Hughes Church)

and conservation is growing, despite the glossy public relations efforts of some international conservation NGOs to paint a cozy picture of collaboration. This is particularly counterproductive for conservation success as at least 80% of the world's high biodiversity areas are home to IPs.

4. Protected Areas implementation

This is the heart of conservation action, and hence it is the area with the greatest slippage and the area with the greatest ground for traction. A few illustrative examples show the range of traction and slippage.

Traction. Starting in the early 1990s, Wildlife Fund Thailand collaborated with other local NGOs and universities to prevent resettlement and resource restrictions by documenting the impacts and resource management practices of

Karen in Thung Yai –Huay Kha Khaeng reserve. They fought narrow restrictions implemented under the aegis of a World Heritage Site designation that did not acknowledge indigenous rights, and they struggled against other conservation NGOs' efforts and coercive pressures to remove the Karen from their territory despite political risks to themselves, opened venues for dialogue and learning, and worked with the Karen to support their traditional cultural practices and to represent themselves to Thai government and international agencies.

Over the past ten years, Indonesia's civil society organizations have taken advantage of post-Suharto dictatorship era openings to push the envelope of reform, working with conservation groups like WWF Indonesia (Sahul office, Lorentz National Park), Birdlife Indonesia (in Sumba's Laiwangi Wangameti National Park) as well as with park management authorities of Lore Lindu National Park in Central Sulawesi, Palu, Tangkoko Nature Reserve in North Sulawesi, and Meru Betiri National Park in East Java, to negotiate recognition of community-managed zones and village conservation initiatives as part of park management planning.⁷⁵

Slippage. A global evaluation of two hundred protected areas recently noted: "One depressingly consistent problem is a failure to manage relations with people. Problems are evident in terms of effectively channelling the input of local communities and indigenous peoples and securing their voice and participation in management decisions. ... In spite of all this, respondents identified work with communities among the top critical management activities."⁷⁶

Park guards with "shoot to kill" orders

are involved in extrajudicial killings. In some African countries, this is common; but this practice recently expanded to Indonesia where it met with public outcry.⁷⁷

Many protected areas lie in zones of civil conflict and war, and it is easier to lose sight of HR responsibilities in zones of long-term armed conflict. When international conservation NGOs seek funds to arm helicopter gunships to herd refugees out of parks, or arm one faction to kill others who are inside a park in Congo, conservation has lost its way as a human rights duty-bearer.⁷⁸

Slippage. Transboundary protected areas offer the opportunity to use the country with highest common denominator tradition of recognizing human rights instead of lowest as the point of departure. In the GLT (Kruger and Limpopo) between Mozambique and South Africa, the Makulele of Kruger, who recently had their land rights restored, were excluded from bi-national park management meetings until they asserted their own rights.⁷⁹ On the Limpopo side, people are facing resettlements— hence the lowest common denominator was used in the binational situation. The joint enforcement patrols for enforcement in TNS (Cameroon, Congo, CAR) and TRIDOM, follow the norms of Congo, replicating patterns of human rights violations instead of raising standards.⁸⁰

In Paraguay, Ayoreos' indigenous territories, including settled and uncontacted Ayoreos (Photo 5), lie within a recently declared, 330 square mile, UNESCO Biosphere Reserve covering Defensores del Chaco National Park, Medanos National Park, and the Cerro Cabrera-Timane National Park Reserve in Paraguay, and Bolivia's vast Kaa Iya National Park— an initiative that has

been promoted by TNC,⁸¹ WCS, and their local implementing organizations. The area is on a trajectory to become a binational park that covers Ayoreo territory in Bolivia and Paraguay, without recognizing Ayoreo territorial and human rights. A World Conservation Congress resolution⁸² encouraged action on this human rights concern, but this issue has not yet been incorporated into published plans of WCS and TNC, financed by USAID. Ayoreos who live in Paraguayan society have formed a federation, yet the international NGOs have not actively engaged them. Human rights NGOs are actively agitating for conservationists to support HR in this Paraguayan case. In Bolivia (see above), WCS actively worked with the Bolivian government to establish the neighboring, co-managed Kaa Iya park with full recognition of IP rights and acknowledging the presence of the uncontacted bands of Ayoreode protected inside the park, which would seem to offer a good base from which to establish a binational co-managed park, recognizing Ayoreo territory. Also in Bolivia, TNC and its local counterparts have supported private reserves owned by indigenous communities. However, when conservation NGOs and international donors do not take the opportunity to apply their positive approach in other countries to perform their duty bearer responsibilities in Paraguay, it raises significant questions about institutional commitments.

Transboundary protected areas offer the opportunity to use the country with highest common denominator tradition of recognizing human rights instead of lowest as the point of departure.

5. National policy engagement

The IUCN leverages considerable in-



En la civilización. Un total de 18 indios 'salvajes' paraguayos abandonaron el monte por hambre y por miedo al hombre blanco, asediados por la 'civilización'. El grupo de silvícolas, identificados como miembros de la parcialidad Totobiegosode, se acercó y pidió auxilio a su parentela radicada en la colonia Campo Loro, a unos 600 km al noroeste de Asunción.

Picture 5. Uncontacted Ayoreo are recognized as living within a UNESCO Biosphere Reserve, yet their rights have not been addressed in development of the protected area, nor in the management plans drawn up by WCS, TNC, and collaborators in 2006. Eighteen uncontacted (voluntarily isolated) Ayoreo were reported in a Paraguayan newspaper, in 2004, as coming out of this forest to request assistance from Ayoreo in Campo Loro, but contact was initiated by missionized Ayoreo. (Courtesy Janis Bristol Alcorn)

fluence in identifying what are considered best practices through the World Parks Congress (WPC) which gives civil society input and the World Conservation Congress (WCC) of governments and NGO members of IUCN. The combination of IUCN's six Protected Area categories and four governance types serve as general recipes and optional menus, for national governments— each of which has its own particular PA system and laws governing it in accord with each country's unique historical, cultural and political factors. Conservation NGOs have long assisted national governments to write laws and policies, which obligates them as a HR duty-bearer to incorporate HR concerns into these policies and laws.

Traction. In Cameroon, NGOs promoted new procedures with Free Prior and Informed Consent (FPIC) for developing and approving protected areas management plans.⁸³ In Brazil, WWF incorporated indigenous territories and extractive reserves, together with protected areas, into a USAID conservation project with national policy engagement, and won an award for exemplary collaborative governance.⁸⁴ The Indonesian Forestry Ministry, working with Indonesian civil society and conservation organizations incorporated community participation and empowerment in its recent revisions of protected area and nature reserve regulation.⁸⁵

Slippage. Slippage often occurs around conflating "stakeholder" with "rights holder," and substituting "participation" for "decision-making". Many conservation agency documents (including IUCN's new governance types and proposed principles)⁸⁶ and methodologies for participation in protected areas and other conservation activities frame the issues/actions in terms of stakeholders as opposed to rights-holders, ignoring the different stakeholders' different rights and relative levels of marginalization/power to assert rights.

When conservation organizations lobby national Presidents to urgently declare new protected areas in conflicted zones without considering the prior claims of indigenous peoples in the area, as occurred for example, in 2001, when Conservation International and Field Museum offered funding and lobbied for outgoing Peruvian President Paniagua's rapid signature declaring Cordillera Azul National Park, disregarding an Indigenous Federation's prior submission of a claim for an uncontacted peoples' reserve in the area, their actions support

a national executive policy of bypassing democratic processes. It seems that rather than reflect on the seriousness of choices made in the face of such high-level opportunities to meet, or fail to meet, duty-bearer obligations and collaborate with civil society to consolidate systemic reforms in such cases, the international conservation organizations tend to say their plan is to get the park declared and then sort out "stakeholder" concerns by incorporating them into a park management plan, as though participation in a park management plan is the framework that offers a process for working out larger societal issues. A similar situation is being played out in other places in the rush to consolidate protected areas, as for example, in 2006, in Ethiopian National Parks, with APF's response to criticism from HR advocates. APF said that a management plan will later sort things out with the pastoralists groups whose traditional rights over the land were not considered by APF when it became involved in negotiations with the government to obtain concessions to manage some protected areas.⁸⁷

6. Forestry Certification

Traction. Forest Stewardship Council and other certification protocols include attention to property rights. This is a growing nexus of conservation organizations' influence in the world's forests. It is rumoured that a new multi-million dollar World Bank partnership with WWF, CI, and TNC to expand the IFC-funded Global Forest and Trade Network is in preparation.

Slippage. In Madre de Dios, Peru, the indigenous federation FENEMAD has complained that certified small loggers are using rivers to cross indigenous community lands to illegally enter and bring out logs from a reserve estab-

lished for uncontacted peoples, and then selling those logs as certified.⁸⁸ Lack of significant action on this problem is an instance of a neglect of duty-bearer responsibilities by a chain of certification experts and organizations, including conservation organizations (WWF and ACA) working in the area.

Private sector partnerships, including companies with negative human rights records, are a burgeoning area of conservation, this challenges conservation organizations to leverage changes in business.

In the Forest Law Enforcement and Governance and Trade (FLEGT) process, there is a tendency to emphasize the enforcement of laws that directly address issues such as illegal logging, illegal trade and forest conversion, when in fact all laws and human rights related to access and control over natural resources in forest areas should be equally considered and enforced.⁸⁹

7. Collaborations with private sector

Private sector partnerships are a burgeoning area of conservation fund-raising, including oil and gas companies, mining companies, and timber companies with negative human rights records, and this challenges conservation organizations to leverage changes in business.

Traction. IUCN collaborated with The International Council on Mining and Metals (ICMM) to develop a sustainable development framework which includes Principle #3, "uphold fundamental human rights and respect cultures, customs, and values in dealings with employees and others who

are affected by our activities.” ICMC Assurance Procedures include the requirement that ICCM members are audited for adherence to the principles and guidelines in the sustainable development framework.⁹⁰

Slippage. IUCN provided leadership for the ICCM’s development of guidelines for working with indigenous peoples, but those guidelines⁹¹ do not rule out forced resettlement.

8. Advocacy

Advocacy offers a wide arena where conservation could publicly or quietly⁹² join broad-based local movements struggling to build civil society and strengthen rule of law.

Traction. In India, in the late 1990s, US bilateral assistance (USAID) supported a WWF-led broad-based coalition linking biodiversity conservation to the development of a law for freedom of information⁹³— an example of supporting systems and laws necessary for guaranteeing human rights. The Act to this effect was passed in 2002 and the resulting transparency has produced significant, positive changes. Support was also given to an analysis of the national laws and policies to identify strategic options for openings to assert local people’s rights during conservation decision-making.⁹⁴

Slippage. Conservation agencies are widely criticized, around the world, for not taking a position when many other civil society organizations take on rights issues and struggle to support systemic changes. For example, in Russia, RAIPON indigenous federation sought to engage WWF in civil society networks focusing on legal and policy reforms on many occasions, but it felt rebuffed.⁹⁵

9. Seeking recourse in courts to create jurisprudence

Efforts to build jurisprudence in international courts are one option for strengthening human rights. Yet no case was found where conservation joined the claimant, rather cases were found where conservation was associated with the defendant being sued.

Slippage reversed. UN Committee on the Elimination of Racial Discrimination (CERD) expressed their concern about the forced resettlement of Basarwa/San people from their lands within the Central Kalahari Game Reserve.⁹⁶ Subsequently the Botswana High Court ruled against the Botswana government, demanding that the government allow San people to return to their territory⁹⁷ in the Central Kalahari Game Reserve,⁹⁸ ruling that they were “dispossessed forcibly, unlawfully and without their consent” from their ancestral lands. This is a significant decision, setting precedent for other human rights cases involving resettlement for conservation.

10. Free prior informed consent (FPIC)

FPIC⁹⁹ is a procedural right that is enjoying widespread insertion into processes to enable rights bearers to assert their own rights. Duty-bearers bear the burden of ensuring that the criteria for “free,” “prior,” and “informed” are met, preventing sloppy or coercive implementation of FPIC,¹⁰⁰ and upholding rights-bearers’ rights to say “no.”

Philippines, Malaysia, Australia, Venezuela, and Peru have national legislation on free, prior and informed consent of indigenous peoples for all activities affecting their lands and territories.¹⁰¹ Colombia’s Constitutional Court has upheld the right to FPIC.¹⁰²

Traction. FPIC is included in processes associated with the CBD and many guidelines for "local participation." This can be a first step toward assuming obligations or a red flag demonstrating avoidance of assuming more significant responsibilities.

Slippage. The FPIC concept has been incorporated into the ICMM mining and biodiversity guidelines.¹⁰³ The development of the guidelines by proxy (without indigenous and local representation) through ICCM collaboration with IUCN and large conservation NGOs led

Duty-bearers bear the burden of ensuring that the criteria for "free," "prior," and "informed" [consent] are met, preventing sloppy or coercive implementation and upholding rights-holders' rights to say "no."

to criticism of the conservation organizations not fully assuming their duty-bearer responsibilities¹⁰⁴ by not enabling indigenous peoples to represent themselves as rights-holders.

It is rare for conservation

organizations to provide para-legal training and hire legal advisers to integrate human rights obligations into organizational operations. Conservation organizations often lack understanding of the fundamental legal frameworks that deal with land, and other natural resources access and management in the countries where they are operating. In conflict situations over access and management, conservation groups need to take seriously the need for due process, including the free and prior informed consent procedures. For example, recent legal and policy research in Indonesia has revealed that a majority of protected areas have in fact not been fully gazetted, as

required by law, and the question of who has *prima facie* over these areas remains unanswered and often disputed.¹⁰⁵

11. Restitution of lands taken for conservation

Under international law, indigenous peoples have right to restitution of lands taken for protected areas.¹⁰⁶ The general remedy is legal recognition of property rights, demarcation and titling of collective property, and compensation for damages.

Traction. Land restitution in the Kruger National Park was initially perceived to be a threat to South African parks and reserves.¹⁰⁷ However, land restitution has produced new models for conservation, increased participation of indigenous peoples, and extended legally conserved land in South Africa. In Tasmania some lands were returned to their aboriginal owners as fee-simple titles in 1995. In Thailand, part of Huai Nam Dan National Park was degazetted and returned to villagers due to corrupt government agencies' use of the area.¹⁰⁸ The Philippine's NIPAS law effectively provided impetus to national policy implementation of indigenous peoples land rights in protected areas systems.¹⁰⁹

Slippage. In Australia, rights recognition has been conditional; many states required lease-back to the state as a condition for recognition of aboriginal rights.

How can the public, conservation agencies, and donors monitor conservation's performance in its role as human rights duty-bearer?

Organizational policy enforcement, external monitoring, and self-as-

assessments can be helpful for assuring that conservation agencies act on their HR responsibilities in ways that consistently produce traction in the move forward. While media attention and ad hoc public monitoring has increased, as yet formal monitoring and feedback processes are largely under construction, and there is insufficient experience to evaluate

Land restitution has produced new models for conservation, increased participation of indigenous peoples, and extended legally conserved land in South Africa.

ate what is being promoted or implemented. Fresh ideas and renewed commitment to evaluation are needed.

The World Bank's new resettlement policy

incorporates a "process framework" for addressing the HR issues on an ongoing basis. The African and Asian Development Banks rapidly followed with similar policies.¹¹⁰ On the other hand, while the World Bank and the regional multilateral development banks have Indigenous Peoples' policies that include provisions for protecting human rights, these policies and their application have been severely criticized by indigenous and rural peoples' advocates.¹¹¹

WWF, the only conservation organization with a significant policy on indigenous peoples— *WWF's Statement of Principles on Indigenous Peoples and Conservation*, carried out a self-assessment on the impacts of the policy after ten years in 2005.¹¹² WWF's management response has been in preparation since early 2006. Other conservation organizations have not yet demonstrated similar serious, in-depth attention to these issues.

WWF's review of 200 protected areas¹¹³ identified problems with local people as major challenges, but the evaluation instrument used management and poverty lenses, and did not gather data on local people's concerns or explore HR issues contributing the management problems that were identified.

The MacArthur Foundation requires conservation project proponents to complete a questionnaire about whether resettlement is likely. Other private foundations assume their HR responsibilities by supporting indigenous and local communities to conserve and manage their resources, bypassing big conservation NGOs as middlemen. Most bilateral donors have statements

of principles supporting human rights. Some have specific guidance on indigenous peoples. For example, Canadian CIDA has extensive policy guidance on Human Rights. DANIDA has developed a much-lauded, detailed toolkit for working with Indigenous Peoples.¹¹⁴

Most bilateral donors have statements of principles supporting human rights. Some have specific guidance on indigenous peoples.

The International Labour Organization carried out an audit of Poverty Reduction Strategy Papers (PRSP)¹¹⁵ to identify regional tendencies and factors contributing to the recognition of indigenous and tribal peoples' human rights. Transparency International¹¹⁶ also identifies opportunities and weaknesses where HR duty-bearers need to take on their responsibilities. These are resources that could be used by conservation organizations to develop monitoring

and evaluation tools.

If successful rights-based approaches are to be developed, they must be evaluated against criteria that differentiate them from efforts to tweak the system to promote "participation" within the existing conservation management paradigm without taking on the challenge of broader democracy issues where governments have not assumed HR responsibilities. The criteria should reflect an effort to enable rights-bearers to assert their own rights.

"Rights-based programming holds people and institutions who are in power accountable to fulfil their responsibilities toward those with less power. It also supports right holders to demand their rights and to be involved in political, economic and social decisions in society. It aims to increase impact and strengthen sustainability by addressing root causes, bringing about policy and practice changes, working together with others towards common goals and by changing power relations."¹¹⁷

Top-level decisions, budget commitments, resolve, individual initiative, and open two-way communication will be required to make and maintain the radical changes necessary to overcome institutional inertia.

In sum, to prevent continuing inconsistent performance, rights-based programming must integrate human rights-based activities and incentives into all the sectoral approaches of conservation to create systemic change

at organizational, national and global levels. Bad things are done by good people in institutional settings that

do not provide adequate guidance, feedback mechanisms, and transparency in uncertain situations.¹¹⁸ Institutional change is a hard road to travel, but the journey is not impossible. Top-level decisions, budget commitments, resolve, individual initiative, and open two-way communication will be required to make and maintain the radical changes necessary to overcome normal institutional inertia. Any effort to evaluate this progress must take these elements and processes into account, in order to build the governance systems and accountability necessary to achieve long term, sustainable conservation.

Janis Bristol Alcorn (janisalcorn@yahoo.com) has analysed governance issues in conservation and development for over thirty years. A PhD in Botany with a minor in Anthropology, she has written or coauthored five books and over 100 articles. She is on the Expert roster for the Global Environmental Facility (GEF) and president-elect of the Anthropology and Environment section of the American Anthropology Association. She has worked for universities, NGOs and bilateral funders. She is currently an independent consultant and advisor to the Garfield Foundation.

Antoinette G. Royo (nonette@samdhana.org) is a lawyer with twenty-five years experience in conservation issues. Active in human rights education since 1982, she is a founding editor of the Philippine Natural Resources Law Journal, and co-founder of the Legal Rights and Natural Resources Center-Kasama sa Kalikasan (LRC-KSK), the Women's Legal Bureau of the Philippines, and Samdhana Institute for Social and Environmental Renewal. She has worked for NGOs and bilateral aid agencies, and is currently executive director of Samdhana.

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Notes

- 1 Chapin, 2004; NGOs' responses in WorldWatch Jan, 2005; Colchester, 2001; Dowie forthcoming; Geisler, 2003; Ngowi, 2006; Pacheco, 2006.
- 2 Wilshusen *et al.*, 2002, Ferreira, 2004.
- 3 Springer and Alcorn, 2007.
- 4 Examples are drawn from literature and thirty years experience in the field around the world. People in the field (conservation and other NGO workers, rural people, government workers,

- donor employees) are open in talking about the problems they face and their actions in response to those problems. We do not cite individuals, as we do not want to cause them any inconvenience. Oral information about the situation in the field is more reliable than written reports, which are constrained and filtered by internal organizational politics, donor demands for success, and consultants/employees needs to maintain their clients/jobs. The objective of the paper is not to seek responses regarding specific "slippage" examples, but rather to encourage constructive discussion and debate in a milieu of high-level meeting tables where these human rights concerns have too often been side-lined, disregarded or discredited.
- 5 Indigenous and tribal peoples, as defined by ILO Convention No. 169, self-identify themselves as "peoples"— societies with their own languages, customs, and identities. They have prior rights to territories. The term tribal was included in ILO 169 to cover a social situation of discrimination and marginalization, rather than basing it on length of residence/use of an area. See Tolei and Swepston, 1996.
 - 6 An anonymous source working for a European development agency noted that the words "environmental" and "conservation" have become associated with anti-poor and elitist agendas, and hence were not being included in new programs; also c.f., Adamson, 2007.
 - 7 Draulans and van K., 2002.
 - 8 Wunder, 2006.
 - 9 c.f., Lynch and Maggio, 2002.
 - 10 An exception would be Amnesty International's partnership with Sierra Club to protect HR of local conservation activists. Survival International responds to others' complaints about HR violations in protected areas. EarthRights supports grassroots action on environmental justice issues. Native Solutions to Conservation Refugees raises global public awareness of HR violations related to conservation.
 - 11 In many countries, rural social justice activists have links to religions that encourage people not to be indifferent to injustice. In Central America and Philippines, for example, the Catholic Church has used its institutional strengths to support local people in their struggle for human rights reforms.
 - 12 Sanderson, 2002.
 - 13 Cavanagh, 2004.
 - 14 Conservation is an ongoing process and there are constant changes in site situations. In some illustrative cases, there may have been changes at the site since the situation was reported or observed, but the point for discussion in this paper is that these negative situations have arisen and will very continue to arise unless there are reforms. Likewise the positive moments illustrated in this paper may have led to more positive effects, or may have been countered by other actions.
 - 15 Veit *et al.*, 2007.
 - 16 Emerton *et al.*, 2006.
 - 17 Bray and Anderson, 2005.
 - 18 Bruner *et al.*, 2004, Emerton *et al.*, 2006.
 - 19 For example, in 2006, US Foreign Assistance Act Section 576 provided \$165 million in Development Assistance for biodiversity programs. See also Molnar *et al.*, 2004.
 - 20 E.g, Defensores in Sierra de las Minas, Guatemala; various NGOs in Africa— Draulans & van K., 2002.
 - 21 Igoe, 2006.
 - 22 Khare and Bray, 2004.
 - 23 c.f., Sidoti, 2003; Sub-Commission on the Promotion and Protection of Human Rights, Fifty-fifth session, 2003/14. The Social Forum of UNHCHR, <http://www.unhchr.ch/html/menu2/2/sforum04/res2003-14.doc>
 - 24 Ford Foundation supports the Poverty and Conservation Learning Group at IIED to explore the linkages between poverty and protected areas. <http://www.povertyandconservation/information/en>
 - 25 Figari, 2006.
 - 26 Alcorn *et al.*, 2005; Van Cott, 2002.
 - 27 Bolivian President Evo Morales "nationalized" protected areas in 2006, in response to concerns that international NGOs were ignoring human rights and communities' concerns in and around protected areas, Cingolani, 2006; for debate and discussion see <http://www.redesma.org/estadisticas.php>
 - 28 A study of donor relations to indigenous organizations in Latin America is underway by the Center for Support of Native Lands, Arlington, VA.
 - 29 Adamson, 2007.
 - 30 The Human Rights Based Approach to Development Cooperation: Towards a common understanding among UN Agencies, adopted by UN Development group in 2003— cited in UN Permanent Forum on Indigenous Issues 2005.
 - 31 See, for example, Oxfam, 2005.
 - 32 The Bill of Rights appended to the US Constitution, for example, protects human rights.
 - 33 Conventions are hard law instruments that bind the signers to develop and implement domestic law to implement the general principles/standards of the convention. Relevant conventions include: International Covenant on Civil & Political Rights; International Convention on the Elimination of All Forms of Racial Discrimination; International Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; International Covenant on Economic, Social and Cultural Rights; International Labor Organization (ILO) Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries; European (Aarhus) Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters; The African Charter on Human and Peoples Rights and the Latin American, European, and American

- regional Charters, associated with their own processes and mechanisms; and Conservation on Biological Diversity (CBD) Article 8(j), Article 10 c.
- 34 e.g., in response to a Nicaraguan case of Awas Tingi, the Inter-American Court recently ruled that the American Convention on Human Rights, Article 21 section on property rights extends to protect traditional indigenous tenure even when tenure is not authorized by the state, Pasqualucci, 2006.
- 35 More information can be found in the ILO Newsletter, April 2005, The ILO and Indigenous & Tribal Peoples.
- 36 Policy is general normative guidance that is legally unenforceable and nonbinding unless linked to law.
- 37 Among the relevant soft law Declarations are: UN Universal Declaration of Human Rights (UDHR); Draft Declaration on Rights of Indigenous Peoples; InterAmerican Draft Declaration on the Rights of Indigenous Peoples; Draft Declaration of Principles on Human Rights and the Environment; and the Belem Declaration for the Protection of Isolated Indigenous Peoples. See Lynch and Maggio, 2002, for elaboration of definitions and more examples of relevant policy, soft law and hard law.
- 38 United Nations Economic and Social Council, 2006.
- 39 In 2004, the World Conservation Congress passed a weak resolution on "conserving nature and reducing poverty by linking human rights and the environment" indicating that the IUCN Commission on Environmental Law (CEL) was to establish an Environmental Law and Human Rights Specialist Group to provide future World Conservation Congresses with a summary of relevant developments in human rights law and litigation, but not directing that any concrete action be taken on the information thus gathered.
- 40 Framing the issues and actions around stakeholders focuses on stakes instead of rights, as a Mohawk representative complained publicly over ten years ago— anyone who comes "to the table" with a T-bone steak in hand is a stakeholder—i.e., the rights of local poor people are not treated with priority, but rather the big oil companies and other sectors who come with money and power are given seats at the negotiation and decision-making table when claimed stakes are privileged over prior rights. This is not to say that stakeholders should be ignored, but duty bearers should encourage use of a "seating" framework that first and foremost supports rights-holders to claim and exercise their rights.
- 41 Emerton *et al.*, 2006.
- 42 Alcorn, 2005.
- 43 False actions are actions that appear to respond to issues without taking real action; c.f., end-note 37 above.
- 44 Chapeskie, 1995.
- 45 Alcorn, 1997.
- 46 Brockington *et al.*, 2005. The African Commission on Human and Peoples Rights has recommended that in Africa, the term "indigenous" be applied to the structurally subordinate position of hunter-gatherers and pastoralists. The largest group are the pastoralists; Ethiopia has 7-8 million pastoralists, Kenya has 6 million, and Tanzania approximately 3.7 million, Tomei, 2005.
- 47 Geisler, 2002; Geissler and de Sousa, 2001; Geissler, 2003.
- 48 Dowie, 2006.
- 49 Dowie, 2006.
- 50 Schmidt-Soltau, 2005.
- 51 Colchester, 2001.
- 52 Hitchcock, 2005.
- 53 Schmidt-Soltau, 2005.
- 54 Schmidt-Soltau, 2006.
- 55 Schmidt-Soltau, 2005.
- 56 Crocombe, 1971.
- 57 Schlager and Ostrom, 1992.
- 58 Veit *et al.*, 2006.
- 59 Lynch and Alcorn, 1994.
- 60 For a source on background for this distinction, please see <http://www.iucn.org/themes/wcpa/theme/categories/summit/papers/papers/Governancepaper4.pdf>
- 61 Sec. 4, RA 7586, Philippine National Integrated Protected Areas Systems Law, 1992,
- 62 The global profile of the human rights issues of tiger protection policies has expanded in recent years, even serving as key story elements in bestselling popular novels, c.f. Ghosh, 2004.
- 63 Kothari and Pathak, 2006; Anonymous, 2006.
- 64 Anonymous personal communication to JBA, 2005.
- 65 In response to the violation of indigenous rights through land sales, Argentina showed international leadership on this issue by recently passing an emergency national law stopping all forced resettlement, including those brought about by land sales, and demanding that all states develop mechanisms for evaluating indigenous land claims. El Senado y Camara de Diputados de la Nacion, 112-S-06 OD 1301 2/.
- 66 Clough-Riquelme *et al.*, 1999, Alcorn *et al.*, 2005.
- 67 <http://www.nature.org/wherewework/south-america/paraguay/work/art5110.html>
- 68 Semino *et al.*, 2006; see also Notario, 2006 and USAID/Paraguay operational plan, 2006.
- 69 In worst case scenarios, NGOs can be drawn into situations where funding for land purchase (or other direct project funding) feeds creative diversion of funds within national circles of power, and NGOs can be quietly pressured to accept this as the price of collaboration. Likewise, when tax free status is granted to a park management concession expecting significant revenues, as when safari or other business

- deals such as gasoline concessions are granted by governments, the actors are in danger of entering side-deals that support rule of power over rule of law. A discussion of the indirect HR impacts related to the acceptance of these "transaction costs" of doing conservation business in corrupt circles is beyond the scope of this paper. See Baker, 2005 for general reflection on this problem.
- 70 Turton, 2006.
- 71 Oviedo *et al.*, 2000.
- 72 Dowie, 2005.
- 73 A typical international conservation document's choice of language in aspects relating to people can be found on the UNEP-WCMC Protected Areas Programme website, c.f., description of Salonga National Park in DRC.
- 74 Brackelaire, 2006.
- 75 Lynch and Harwell *et al.*, 2002.
- 76 WWF, 2004.
- 77 Fidrus, 2006; Farid, 2003; Lystiani, 2004.
- 78 Anonymous personal communication to JBA, 2006.
- 79 Anonymous personal communications to JBA; Steenkamp *et al.*, 2006.
- 80 Anonymous personal communication to JBA, 2005.
- 81 <http://www.nature.org/wherewework/south-america/paraguay/work/art5109.html>
- 82 World Parks Congress, Resolution BECW-CC3.103, Congress reference CGR.REC026. The Biosphere Reserve of the Chaco and indigenous peoples, 2004.
- 83 Springer and Alcorn, 2007.
- 84 ARPA and Amazonian projects, USAID/Brazil.
- 85 Sudrajat, 2006. Resulting Law No. 6, 2007 for the first time in Indonesian history provides long term tenure, up to 35 years, renewable, by local community co-managers of parks and protected areas, together with village forests, and social forestry managers.
- 86 As proposed in World Parks Congress and World Conservation Congress in 2004, Johnson and Pansky, 2005.
- 87 Anonymous personal communication to JBA, 2007.
- 88 Personal communication to JBA from FENEMAD indigenous peoples federation of Madre de Dios, 2005.
- 89 Colchester, 2006.
- 90 ICMM, 2006.
- 91 ICMM, 2006.
- 92 We participated in quiet, effective efforts while working with WWF and USAID in Indonesia, but the efforts were effective precisely because they were, and remain, off the record at very high political levels. Opportunities for quiet action abound if conservation NGOs are willing to use political capital to protect HR.
- 93 Singh *et al.*, 2002.
- 94 Rao and Prasad, 2000.
- 95 Anonymous personal communication to JBA, 2005.
- 96 Committee on the Elimination of Racial Discrimination, 2002.
- 97 Hitchcock, 2005.
- 98 Motseta, 2006.
- 99 c.f., Perault *et al.*, 2007.
- 100 Substantive and methodological issues related to FPIC have been explored in "Standard Setting: Legal Commentary on the concept of free, prior and informed consent, working paper for the Commission on Human Rights, E/CN.4/Sub.2/AC.4/2005/WP.1
- 101 "An Overview of the Principle of Free, Prior and Informed Consent and Indigenous Peoples in International and Domestic Law and Practices" UN Workshop on Free, Prior and Informed Consent, PFII/2004/WS.2/8, http://www.un.org/esa/socdev/unpfi/documents/workshop_FPIC_tamang.doc .
- 102 Commission on Human Rights, 2005.
- 103 ICMM, 2006.
- 104 IUCN, 2005.
- 105 Contreras-Hermosilla, 2005.
- 106 MacKay, 2002.
- 107 Fabricius and d.Wet, 2002; Steenkamp and Uhr 2000; R.Witter personal communication to JBA, 2006.
- 108 International Alliance of Indigenous Peoples Discussion Paper on FPIC and Traditional Forest Related Knowledge (TFRK), UNFF4 .
- 109 Sec. 13, RA 7586, 1992, Philippine National Integrated Protected Areas System Act.
- 110 BioSoc, 2006.
- 111 Down To Earth *et al.*, 2005.
- 112 Springer and Alcorn, 2007.
- 113 WWF, 2004.
- 114 DANIDA, 2004.
- 115 Tomei, 2005.
- 116 c.f., Dillon *et al.*, 2006; Figari, 2006, see also <http://www.transparency.org> .
- 117 Theis, 2003.
- 118 Social settings and institutional systems are the "bad barrels" where human rights failures occur— Warzo, 2006; Zimbaro, 2006.

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The right to know and the right to speak— Citizens' Advisory Councils exercise oversight of petroleum-related risks in Alaska

Richard Steiner

Abstract. Public involvement is critical in creating an equitable, democratic, and environmentally sound paradigm for petroleum development. This paper discusses two major and inter-related concepts in this regard— *government transparency* and *informed public participation*. The first part of the paper outlines the ethical and historic context for government transparency, and discusses several legal instruments of transparency in the U.S.— the Freedom of Information Act, the Privacy Act, Open Meetings acts and "Sunshine" laws, "Whistleblower" protections, state information access statutes, and conflict of interest / financial disclosure laws. The second part focuses on a mechanism to provide informed public oversight of petroleum development— Regional Citizens' Advisory Councils (RCACs). The two RCACs established in Alaska subsequent to the Exxon Valdez oil spill in 1989 have essentially become the "eyes, ears, and voice" for local citizens on oil issues. They are well funded (about \$3 million/yr. from the oil industry), have access to oil facilities, independence, and broad representation from citizen groups within the region impacted by oil operations. The groups give local citizens a formalized, direct voice in the corporate and governmental decisions that affect them and their communities. They are comprised of a Board of Directors, a paid staff, and several technical committees. They meet quarterly, review and comment on industry and government operations, and conduct their own independent research to support their policy recommendations. Their recommendations are non-binding, but the RCACs have been responsible for remarkable improvement in the relationship between the oil industry, government, and the public. The paper recommends that all nations establish mechanisms for government transparency, and citizen oversight councils for petroleum sectors. It is proposed here that the scope and structure of new citizens' councils be broader than those in the U.S., to include all aspects of oil and gas development— permitting, exploration, production, transportation, revenue collection, environmental compliance, etc. Funding should come either from the oil industry (preferably as an endowment), or from government oil revenues.

Petroleum development presents societies with both opportunity and risk— a double-edged sword. While the development of reserves can bring socioeconomic benefits, it will also bring with it a constellation of negative impacts. Thus, the public policy challenge is to *maximize the positive impacts and minimize the negative impacts*.

Throughout the 20th century, oil development has helped some societies become more prosperous, but in others

led to social, economic, and environmental decay. Due to its unusual ability to cause problems, a former oil minister in Venezuela called oil "the devil's excrement". Although the history of oil and gas development around the world is rife with poorly planned and operated fields, reckless corporate behavior, environmental degradation, human rights abuses, and corruption, this history need not repeat itself. And as some geologists estimate that humanity has used about half of the commercially recoverable oil on Earth (about 1 tril-



Picture 1. The Trans-Alaska Pipeline, stretching across 800 miles of Alaska from the Arctic coast south to Valdez. (Courtesy State of Alaska)

lion barrels), how we develop (deplete) these remaining finite reserves is extremely important.

The challenge is to create a new paradigm for oil and society— a new way of doing business around the world that will create a more equitable, democratic, and environmentally sound economics from petroleum. A central issue in this new paradigm for oil is how the public is involved. Oil development can foster democratic governance or it can destroy it.

Two of the fundamental principles of democracy are: 1. access to information, or *transparency*; and 2. *informed public participation* in governance. It is important to distinguish between the two principles. *Transparency* implies simply that the public has easy access to government and industry information, and literally a "clear view" of what government and industry are doing. However, transparency does not necessarily mean that the public has a formal, active voice in the operations of government and industry— the concept of *informed public participation*. While

transparency is *passive*— e.g information is accessible— informed public participation is *active*— there is capacity to collect, synthesize, interpret, and understand information, and the capacity therefor to formulate informed opinions and to rationally influence policy.

Although we have considerable government transparency in the U.S. (through legal instruments described below)

there exists a tragic lack of informed public involvement in petroleum policy. And in such a situation, vigilance atrophies, complacency thrives, and government policy drifts away from public interest and toward serving the industry. The les-

Although we have considerable government transparency in the U.S., there exists a tragic lack of informed public involvement in petroleum policy.

son is that transparency is a *necessary but not sufficient* component of democratic governance. These two principles must be developed together in order to create stable, prosperous, sustainable societies.

Government transparency— the public right-to-know

The fundamental basis of democratic governance is that the government operates "by and for the people." As stated in the U.S. Declaration of Independence, governments derive "their just powers from the consent of the governed." The first amendment to the U.S. Constitution recognizes both the needs for *an informed electorate* as well as the right to free self-expression without fear of government repression. Constitutional scholars interpret the 1st amendment such that the public's "right-to-know" derives directly from and is a fundamental necessity for the

public's "right-to-speak" to be meaningful and informed.

For democratic governance to work, its citizens must have *an active voice* in all the affairs of their government, and to

The public's "right-to-know" derives directly from and is a fundamental necessity for the public's "right-to-speak" to be meaningful and informed.

have such voice they must *be informed* about the workings of their government. Thus, it is a fundamental responsibility of any democratic government to provide free and open access to government information, and allow for the

active advocacy of public interests with such information.

Regarding the critical importance of the public's right to know, one of the fathers of American democracy, Thomas Jefferson, once wrote: *Whenever the people are well informed, they can be trusted with their own government.*

As citizens make the ultimate decisions regarding who will govern them and how they will govern, they must know what is going on in government. And while it is recognized that certain types of information can be kept secret (e.g. national defense, trade secrets, etc.), Thomas Emerson pointed out in "The Dangers of State Secrecy" that: *As a general proposition, secrecy in a democratic society is a source of illegitimate power.*¹

Emerson suggested that withholding of information by any part of the government is wrong for the following reasons:

- ▶ It is in direct conflict with democratic principles of decision making, and that no rational choice by citizens can be made in the absence of information;

- ▶ It is unjust and morally wrong, just as when due process with access to all relevant information is denied an individual by the judicial system;
- ▶ To the extent that information is withheld from a citizen, the basis of government control over him becomes coercion, not persuasion—the citizen is given no rational ground for analyzing a decision, but must submit to it by force;
- ▶ Secrecy is politically unwise, as it leads not to support but to disaffection—concealment of information leads to anxiety, fear, and extremism;
- ▶ Secrecy undermines confidence in government and produces a credibility gap.

The former director of the Associated Press, Kent Cooper, suggested that government secrecy was ultimately self-defeating because:

- ▶ confidence and loyalty thrive where people have the right to know.



Picture 2. The Trans Alaska Pipeline System marine terminal in Valdez Alaska, where over 15 billion barrels of oil have been loaded onto tankers for shipment south to market since its opening in 1977. (Courtesy State of Alaska)

- ▶ patriotism springs from the people's own convictions, based not upon government propaganda but on full information on all sides of every question.
- ▶ government power, backed by an informed citizenry, is unassailable, because through full availability to the news, an equal partnership between the government and the individual is established, based upon respect for the latter's right to know.

Instruments of government transparency in the U.S.

Freedom of Information Act (FOIA)

To counteract the tendency toward government secrecy in the U.S., the Freedom of Information Act (FOIA) was signed into law on July 4, 1966. The Act requires that "each agency, on request for identifiable records...shall make the records promptly available to any person." FOIA defines a public record as any record retained by any government body, including any document presented to any government body by any government or non-government body. The Act was amended in 1974 and again in 1995 to make it quicker, easier, more efficient and cheaper to access government information. In 1996, Congress passed "Electronic FOIA" to include electronic records.

FOIA provides the public access to files of federal executive agencies, and provides: that disclosure is the rule, not the exception; that all individuals have equal rights of access; that the burden shall be on the government to justify withholding of a document, not on the person who requests it; that individuals improperly denied access to documents have a right to seek injunctive relief in the courts; that there be a change in Government policy and attitude— *to-*

*ward openness.*² When FOIA became law, the U.S. Attorney General commented that "nothing so diminishes democracy as secrecy."

To file a FOIA request, a citizen must identify the proper agency, cite specific documents and/or topics, and demonstrate that releasing the material is in the public interest. FOIA allows documents to be withheld only for reasons provided by nine exemptions as follows: 1. national defense and foreign policy, 2. internal (personnel) rules, 3. exemption by another statute, 4. trade secrets, 5. internal records (that would not otherwise be available in litigation), 6. personal privacy, 7. law enforcement, 8. financial regulation, and 9. petroleum information (maps, geological information, etc.).

Some 26 nations have passed similar information access laws in the past 10 years— Japan, Thailand, Bulgaria, the U.K., South Africa, etc. The U.S. government receives over 2.5 million FOIA requests / yr., and spends about \$250 million / year (about \$1 / per U.S. citizen) in implementing the act. While some argue that this is excessive and unnecessary, citizen advocates counter that this is simply the cost a free nation must pay for government accountability.

The Privacy Act

The 1974 Privacy Act allows citizens to know what government agency records are kept on them; to read, correct, or append information in such files; and to prevent use of such files for other than their original purpose. The Act places restrictions on agencies on the sorts of information they can collect on private individuals, and in which such information can and cannot be communicated within and outside of government.



Picture 3. The Exxon Valdez lies crippled at anchor in April 1989 after spilling over 11 million gallons of oil into Alaska's Prince William Sound.
(Courtesy State of Alaska)

Open Meetings, or "Sunshine" Laws

"Sunshine" laws were named as such from a former U.S. Supreme Court Justice who stated that "sunshine is the best disinfectant." The 1972 *Federal Advisory Committee Act* grew out of the desire of consumer groups for access to advisory group meetings between industry and federal agencies heretofore closed to the public. It requires prior notice of meetings to be published in the Federal Register, and that minutes and records be kept of the meetings. And, the "*Government in the Sunshine Act*" went into effect in 1977, requiring about 50 federal agencies to hold their meetings in public, with 10 exemptions similar to those found in FOIA. But even if under the exemptions an agency meeting may be closed, the Act requires records be kept— transcripts, recordings, minutes, etc.— that "fully and completely describe all matters discussed." The records of closed meetings may be subject to later disclosure through FOIA.

"Whistleblower" protections

The unauthorized leaking of information from government agencies, if it is *to the public and in the public interest*, is also protected to some extent by the Civil Service Reform Act (CSRA) of 1978. The Act is intended to protect from administrative retaliation a civil servant who discloses information (other than classified) which he/she believes shows "a violation of any law, rule, or regulation", or "mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety."

State Information Access laws

All states in the U.S. also have *Public Records Acts* and *Open Meetings Acts*, as counterparts to federal FOIA and "Sunshine" laws. The state statutes, patterned in parallel to the federal statutes, are intended to make state and local government business as open and transparent as possible.

Conflict of Interest/ Financial Disclosure laws

In order for the public to rationally decide whether a government official may have a conflict of interest regarding a particular policy issue, federal and state governments have enacted financial disclosure laws applicable for certain government officials. These generally require people running for an elected office and those appointed to senior government positions (Congress, President, Governor, Legislature, cabinet posts, commissioners, etc.) to report campaign contributions, financial assets, etc., so that the citizenry can see who is giving money to whom. Such financial disclosure requirements provide a disincentive to corruption.

[Note: The September 11, 2001 terror

attacks on the U.S. lead to a significant reassessment of the U.S. government posture toward the collection and re-release of information. In general, the government expanded its abilities for collection of information and restricted the public's ability to access information.]

Informed public participation

Even in long-established democracies the relationship between government, industry, and the public is problematic and often fails to serve the common public interest. Although government agencies and legislative bodies are legally obligated to operate in the interest of the public, many regulatory agencies are too closely tied to the industries they regulate to provide effective oversight. Regulation and legis-



Picture 4. Crude oil spilled by the Exxon Valdez spread over 15,000 km² of Alaska's coastal ocean, and oiled over 1,500 km of coastline. The spill became the most ecologically damaging oil spill in history. (Courtesy State of Alaska)

lation in such a symbiotic environment tends to favor industry at the expense of the environment, social justice, and economic justice. Our *ideal* of a well-informed, participatory public, a government always receptive to public concerns, and a cooperative industry all

working to protect the public interest is in fact far from the *actual practice* of democracy.

Regional Citizens' Advisory Councils— a model for public oversight of the oil industry

To create a more equitable, transparent, and truly participatory process for important civil society activities such as oil and gas development, it is necessary to establish a well funded, empowered, and independent citizens' organization to provide oversight. The Regional Citizens' Advisory Councils (RCACs) in Alaska represent such an initiative.

Prior to the 1989 Exxon Valdez oil spill disaster in Alaska, the oil companies and the state and federal governments conducted their business largely "out-of-sight / out-of-mind" of the public. With the Exxon Valdez Oil Spill, the political dynamic took a dramatic shift in response to an outraged local public. Shortly after the spill, the Alyeska Pipeline Service Company owners (a consortium of BP, ARCO, Exxon, Mobil, Amerada Hess, Phillips, and Unocal) agreed to citizen demands to establish a citizens' oversight council. To back up oil company promises to fund and cooperate with this new citizens group, the federal Oil Pollution Act of 1990 (OPA 90) mandated the establishment of two national demonstration RCACs in Alaska—one in Prince William Sound, and the other in Cook Inlet. [OPA 90 was the federal government's response to the Exxon Valdez spill, and in addition to the RCACs, it also mandated the phase-in of double-hulled oil tankers in U.S. waters, stricter liability provisions, the establishment of an Oil Spill Liability Trust Fund, and more stringent safety protocols for tanker crews.]

In the OPA 90 RCAC provision, the U.S. Congress noted that "*the pres-*

ent system of regulation and oversight of crude oil terminals in the United States has degenerated into a process of continual mistrust and confrontation." and "only when local citizens are involved in the process will the trust develop that is necessary to change the present system from confrontation to consensus."

In December 1989, the Prince William Sound (PWS) RCAC was incorporated as a nonprofit corporation, and in February 1990, it entered into a contract with the pipeline owner, Alyeska.³ Through the negotiated contract, Alyeska agreed to provide four things to the PWS RCAC: \$2 million in annual funding, adjusted for inflation; absolute independence from Alyeska; access to Alyeska facilities; and that the contract would continue "for as long as oil flowed through the pipeline".³ The Cook Inlet RCAC was incorporated in December 1990, and entered into a contract with a consortium of oil companies and tanker operators in its region—Cook Inlet Pipeline Co., Kenai Pipeline Co., Phillips Petroleum, Tesoro Alaska Petroleum, UNOCAL, Marathon Oil, and

Cross Timbers—with an annual funding level of approximately \$600,000.⁴

Structure and function of an RCAC— the Prince William Sound, Alaska model

These RCACs provide citizens an advisory role in oil issues in the region, monitor impacts, review spill prevention and response plans, and recommend continual improvements in the system. The concept is to give local citizens a direct voice in the corporate and governmental decisions that affect them and their communities. The group is the primary conduit through which government and industry communicate to the public on oil issues. In a real sense, the RCAC has become "*the eyes, ears, and voice*" for the local public on oil issues. The public relies on the RCACs to safeguard its interests and assure transparency in industry and government. This is a novel, and indeed experimental effort. Among RCACs, the Prince William Sound RCAC (PWS RCAC) is the largest. The PWS RCAC has three main structural components: the board of directors, the staff, and the committees:

Board of Directors: consists of 19 members representing the communities and major citizen constituencies affected by the Exxon Valdez Oil Spill—commercial fishing, Alaska Natives, aquaculture, conservation, recreation, cities, villages, and tourism. Board members are chosen by their respective institutions, and are thus ultimately accountable to the institution they represent. Both the Prince William Sound RCAC and the Cook Inlet RCAC (with a 13-member board) have several *ex-officio*, non-voting board members representing the relevant state and federal agencies.

All board members are volunteers,



Picture 5. Commercial fishing, the economic mainstay of coastal Alaska, was shut down by the oil spill, and has not fully recovered today 18 year later. (Courtesy State of Alaska)

receiving no financial compensation other than for travel expenses to attend meetings and other events (the compensation issue may need to be reconsidered in the emerging democracies in order to attract the best possible people to serve on citizen councils). The RCAC Board of Directors meets at least four times a year, and at each meeting, representatives of industry and government report on their issues of concern and operations and hear from the citizens regarding issues of importance to them. This regular interchange provides a line of communication vital to the interest of each constituency, and results in a constructive climate for problem solving.

The board is responsible for allocating the annual budget. The PWS RCAC has an annual budget that has averaged about \$3 million (FY 2003 was \$3.2 million) of which on average about 38 percent (\$1.14 million/yr.) is devoted to staff, 33 percent (\$1 million/yr.) for contracts and research, and 29 percent (\$860,000) to office rent, supplies, equipment, and audits. An annual audit of all finances is conducted and approved. The U.S. Coast Guard also conducts an annual recertification of the group as being in compliance with the terms of OPA 90. All of the RCAC's work is open to the public on whose behalf it operates, and interested citizens can attend and provide public comment as well. These checks and balances provide a high level of integrity and credibility to the process.

Staff: The day-to-day activity of the PWS RCAC is the responsibility of a paid staff of 18, located in two offices—one in Anchorage, where Alyeska headquarters are located; and the other in Valdez, where the pipeline terminal is located. Staffing includes an executive director, two deputy directors, public information manager, community liai-

son, finance manager, seven project managers, and administrative assistance (The Cook Inlet RCAC has a staff of six). The staff serves at the pleasure of the Council's executive director.

Committees: Much of the council's work is conducted by four technical committees, each with a dedicated staff liaison: Oil Spill Prevention and Response; Terminal Operations and Environmental Monitoring; Port Operations and Vessel Traffic Systems; and Scientific Advisory. These volunteer committees are appointed based on expertise, interest, and willingness to serve. The committees meet regularly to discuss any and all issues within their purview, draft and recommend policy actions to the RCAC Board, and conduct research approved and financed by the Board. The Cook Inlet RCAC has three committees: Environmental Monitoring; Prevention, Response, Operations, and Safety; and Educational Outreach.

Responsibilities: The work of the council is multifaceted. The broad mission is to organize citizens to promote the environmentally safe operation of the Alyeska Pipeline Service Company terminal in Valdez and the oil tankers that use it. Within this mission, the council reviews and submits written comments on operations of the pipeline terminal and tankers. This oversight, review, comment, and recommendation can cover state and federal legislation, regulations and permits, industry policy and procedure, and so on.

At the request of its committees, the RCAC commissions independent scientific studies and reports on relevant issues to the public, the media, government agencies, legislative bodies, and the industry. This research often forms the basis of policy recommendations. Conducted jointly with government

and industry, this research has fostered a more cooperative spirit among these groups, minimizing conflict and contention. The RCAC monitors and plays an active role in all spill drills and exercises, and recommends improvements in post-drill debriefing.

Not surprisingly, the initial relationship between citizens' councils and the oil industry was somewhat distrustful, but gradually became dynamic and effective.

Not surprisingly, the initial relationship between these citizens' councils and the oil industry was somewhat distrustful, but gradually became dynamic and effective.

RCAC successes

The recommendations of the RCAC are *non-binding*, and government regulators and industry do not always take the council's advice. Yet many recommendations are adopted because of the thorough research and vetting facilitated by the council's public/industry/government framework that provides regular meetings to discuss research objectives, methodologies and results.

The successes of the PWS RCAC attest to the sort of cooperative problem solving that can be accomplished with genuine, informed public participation. Overall, the citizens' council has been a primary driver in the improvement of the system for oil transportation through Prince William Sound, making it arguably the safest system anywhere in the world. The following are some of the more significant improvements that the RCAC either recommended or played a pivotal role in:

- ▶ Deployment of powerful, maneuverable tugs to escort all outbound, laden tankers
- ▶ Monitoring the compliance with

phase-in requirements for double-hull tankers

- ▶ Installation of ice-detecting radar to warn of iceberg hazards in the shipping lanes
- ▶ Development of nearshore spill response strategies and contingencies
- ▶ Improved Vessel Traffic System (VTS) surveillance of all tankers in the system
- ▶ More stringent weather restrictions and speed limits for tanker traffic
- ▶ More stringent tanker inspection, in Alaska and beyond
- ▶ Advocacy for better government oversight, more personnel, and more funding
- ▶ Deployment of weather buoys along the shipping lanes for real-time weather
- ▶ Improved spill contingency plans, response equipment, and training
- ▶ Improved understanding of community impacts from technological disasters
- ▶ Conducted comprehensive environmental monitoring to assess oil impacts
- ▶ Pioneered the control of ballast water treatment to control exotic species
- ▶ The construction of a Vapor Control System to capture volatile hydrocarbon vapors released during tanker loading
- ▶ Improved fire prevention and response capability at terminal and on tankers

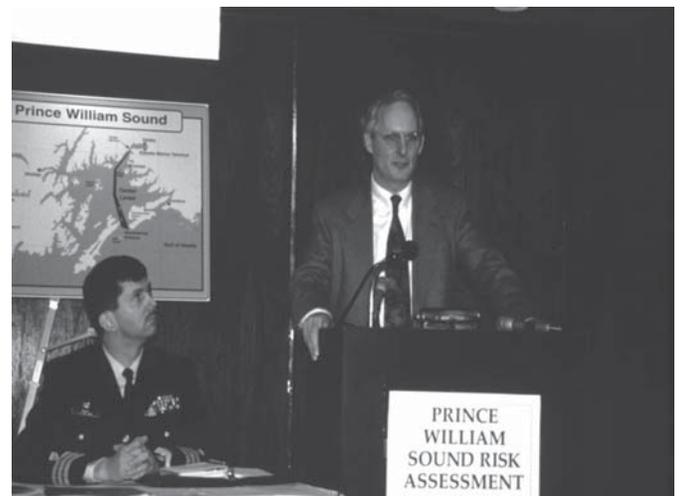
An official U.S. government review in 1993 of the two Alaska "demonstration" RCAC programs concluded that: "The demonstration programs have substantially increased the level of citizens' involvement with the oil industry and with government regulators in the environmental oversight of oil terminal and tanker operations. Through vari-

ous projects and activities, the citizen councils have provided extensive input into matters such as oil-spill contingency plans, tanker navigation and escort procedures, and oil terminal operations. Industry and government officials acknowledge that many of the councils' projects and activities have been helpful."⁵

As described in the "RCAC Retrospective", there have been many important lessons learned over the group's history.⁶ Some lessons with relevance in other regions are as follows:

- ▶ Cooperation works better than confrontation.
- ▶ Conflict is inherent, but common ground is possible.
- ▶ Trust between citizens and industry is difficult to establish and even harder to maintain, but can be maintained by regular informal meetings.
- ▶ Sufficient funding is essential
- ▶ A citizens' group can be independent with industry funding with proper safeguards.
- ▶ Agreeing on how to disagree reduces conflict
- ▶ Logic and using science make passion persuasive
- ▶ It pays to acknowledge industry and regulators when they act right
- ▶ All affected citizens should be represented on RCACs boards
- ▶ Board members do not have to be technical experts
- ▶ Funding should not have strings attached
- ▶ Advisory groups should be mandated by state or federal statute
- ▶ A clear mission and identity should be established early on

An overall lesson is that citizens are clearly more effective if they have formal relationships with those who make decisions that affect them.



Picture 6. The Prince William Sound Regional Citizens' Advisory Council was established in 1989, giving voice to the region's citizens in matters involving oil transportation and spill prevention. The Council sponsored a Risk Assessment, which identified further safety measures to be implemented. (Courtesy State of Alaska)

The challenges and opportunities for establishing RCACs

Given the obvious benefits to public process regarding oil and gas issues in the United States that have derived from the establishment of these citizens' councils, it is recommended that the citizens and governments elsewhere consider the establishment of such groups as well. Although there may be initial resistance to the concept within industry, government, and perhaps the public, none of this should prove insurmountable. The importance of these citizens' councils is paramount—they are not government, they are not industry, but they are *established and operated solely by and for the citizens of the region*.

Although other RCACs could have similar characteristics to those in existence in the U.S., they should have a *broader scope* of responsibility. These RCACs could be empowered *to provide over-*

sight on all aspects of petroleum development in their region—permitting, exploration, production, transportation, refining, public revenue collection, risk management, and environmental compliance. The RCACs should provide oversight, advice, and advocacy on issues such as the following: where to allow petroleum development, rates of reserve extraction, Best Available Technology (BAT) standards, accident prevention and response preparedness, legal liability, environmental monitoring, regulatory reform, petroleum revenues and taxes, and so on. They should have a voice in the selection of export routes and transportation methodologies. With regard to the public collection and use of petroleum revenues, the RCACs should monitor and advise government and the public on all industry financial matters—revenues, costs, taxes, royalties, etc. And, they should commission annual audits of both industry and government petroleum revenues.

All major constituencies in the regions should be represented, with directors being democratically chosen by their respective interest groups. The government should agree to become cooperative partners with these groups, granting them access to information and deliberations. The citizens' councils should also advocate strong public access statutes similar to the United States FOIA, as well as open meetings acts and other public disclosure instruments.

Funding: Substantial and stable funding for such a group / groups is critical. The budget should be commensurate with the responsibilities of the new RCACs, and include sufficient funds to commission independent research and technical reports as the RCACs deem appropriate. If there is one thing that distinguishes the RCAC concept from other advisory structures, it is that the

RCACs have sufficient funding to do the research that they feel is necessary, greatly enhancing the justification for their policy recommendations.

There are several possible avenues for financial support:

▶ *Direct funding by the petroleum industry:* Funding could come directly from the oil and gas companies and/or their consortia (as in Alaska), but must contain sufficient safeguards against industry bias and control. Industry funding would be best in the form of an

endowment from which the RCAC could operate off the investment earnings.

▶ *Financial institutions requiring the establishment of RCACs as a condition of their loan:* Lacking direct support by the oil and gas

The International Financial Institutions could require companies receiving loans to establish and fund independent, credible public participation as a condition of their loan.

companies, the International Financial Institutions (IFIs) could require companies receiving loans to establish and fund such independent, credible public participation as a condition of their loan. The IFIs could stipulate what sort of audit, review protocols, representation, and government and industry cooperation must be put in place to ensure the highest levels of integrity and effective action of the groups.

▶ *Government support:* The governments of the region could themselves establish and finance such citizen participation from public revenues derived from oil and gas projects, thereby removing industry from any direct role in the group's budget.

- *Interim, start-up support from philanthropic, non-governmental organizations (NGOs):* If none of the above financial instruments is attainable in the short-term, then the assistance of an outside, philanthropic NGO should be solicited. As the interim RCACs prove themselves a worthy mechanism for informed public participation in the region, then their funding should be picked up directly by government or industry.

A concern often voiced regarding establishing RCACs in the emerging democracies and other areas is that of *financial corruption*. And although the Alaska case is admittedly different, its structural safeguards against corruption are applicable anywhere. The RCACs commission annual financial audits by independent firms and report their results in their publicly available annual reports. Both the U.S. Coast Guard (the federal liaison agency) and Alyeska (the contracting oil industry body) have the right to conduct yearly financial audits of the RCAC—and on occasion avail themselves of this right. Thus there are straightforward audit and disclosure mechanisms that can prevent corruption.

Another related concern regarding the establishment of RCACs is possible *industry co-option* of the group. While there is no absolute safeguard against this tendency, the groups can be designed to limit this threat. RCAC members being accountable to their respective institutions, together with transparent activity, are the foremost safeguards against co-option. As board representatives have to report regularly to their host institution, it is the institution's responsibility to ensure that its views and concerns are addressed. If an interest group feels its RCAC representative is not working for

their interests, they can correct or replace that representative. Importantly, board appointments to an RCAC are made by the represented groups themselves— not the host government or industry. Ultimately, it is the citizens' groups represented in an RCAC that control the process— not government or industry.

The other challenge to the RCAC concept in some emerging democracies is that of *government persecution of citizen activists*. This is an extremely serious, fundamental problem that must be addressed whenever and wherever it occurs. Democratic governance depends on the rights of citizens to free speech and dissent. Governments that fail to protect these rights must be challenged to do so by the international community. Democratic governments must have laws and regulations in force to aggressively prosecute any such actions against its citizens. The establishment of RCACs may help some governments that are wary of citizen dissent come to value public attitudes and insights.



Picture 7. As a result of citizen demands, regular oil spill response drills are held, using local fishing vessels. (Courtesy State of Alaska)

Conclusion— a new paradigm for oil and society

In closing, it should be underscored that the success of corporations in the 21st century will be measured not just by their bottom-line profits, but also by social and environmental responsibility, citizen involvement, ethics, justice, and honesty. Governments will be assessed by how well they protect the rights and interests of their citizens. In this regard, citizen's involvement is critical.

All nations should establish instruments of *transparency* and *informed public participation* as outlined above. This should include enactment of a Freedom of Information Act (FOIA), Open Meetings Act, Privacy Act, Whistleblower protections, and Conflict of Interest / Financial Disclosure laws for public officials. Further, petroleum producing states should require the establishment of *Regional Citizen Advisory Councils* (RCACs) for a nation's petroleum sector, to be funded either from government

oil and gas revenues or from industry itself. Citizens need to be involved in the oversight of petroleum operations that will affect their lives, and to do this they will need an organization with money, staff, authority, broad representation, and most of all, independence.

The establishment of RCACs would provide an unprecedented level of *transparency* and *informed public participation* with regard to industrial activities in fulfillment of the promise of democratic governance— an important prerequisite to achieving a prosperous, equitable, just, and sustainable society.

Richard Steiner (afrgs@uaa.alaska.edu) is a Professor and Conservation Specialist for the University of Alaska Marine Advisory Program, based in Anchorage, Alaska. His specialty is ecological conservation, and he has worked internationally on conservation and sustainable development issues. His work regarding the Exxon Valdez spill included proposing *Regional Citizens' Advisory Councils*. He has published on a broad array of conservation topics including oceans, fisheries, forests, macro-economic policy, endangered species conservation, maritime issues, oil revenues, citizen involvement and environmental democracy, war and environment, global warming, the global environmental crisis, and oil spill prevention. Prof. Steiner is a member of CEESP's TGER and SEAPRISE.

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Picture 8. After strong, well reasoned citizen input, the oil tanker transport system in Alaska is much safer than when the Exxon Valdez occurred, and is arguably one of the safest anywhere in the world. The tanker in the background is outbound with a load of oil, and has an escort tug. (Courtesy State of Alaska)

...but conservation and human rights can also work in mutual support...

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Reflections on integrating a rights-based approach in environment and development

Gina E. Castillo and Marjolein Brouwer*

Abstract. The article reflects on how Oxfam Novib, a development organisation, has integrated a rights based approach (RBA) in its general work and mission of poverty eradication, and what lessons can be learned by conservation actors. Although historically human rights, development, and conservation have had a rather uncomfortable relationship, the authors maintain that a rights based approach and sustainable use of natural resources are compatible. An RBA to development seeks to transform the vicious cycle of poverty and marginalisation into a virtuous cycle in which people can seek the fulfilment of their rights from duty-bearers. The authors describe how Oxfam Novib has situated its work on the use of natural resources within the right to a sustainable livelihood. In practice, this means that at the local level, an RBA to environmental programs begins with a thorough analysis of local realities, and the inclusion of men and women in problem definition and proposal making. The analysis of who is accountable and how the situation can be redressed then informs the choice of strategies that can be used. Yet, many problems experienced at the local level are generated at higher levels. Hence, for Oxfam Novib, an RBA to environment requires changing policies, practices, beliefs and ideas, and building and reinforcing the capacity of rights holders and duty bearers. Moreover, seeking a government's responsibility for environment, poverty and exclusion requires active citizenship. Responsibility for the environment calls for joint work in mutual solidarity, as everyone has an obligation towards each other, the earth, and future

* The views expressed in this publication do not necessarily reflect those of Oxfam Novib or Oxfam International.

generations. The article touches briefly on the issue of trade offs between livelihood opportunities and sustainable use of natural resources. It acknowledges that this is an area where more analytical work and cooperation between development actors and conservation needs to occur if we are to ensure a healthy environment for all.

A rights based approach (RBA) to development is important for conservation actors to understand not only because of the links between conservation and development, but also because development organizations have a breadth and depth of experience with RBA that may exceed that in the conservation sector, and therefore development organizations' experience may provide important lessons.

While presenting our reflections and experiences, we will automatically touch on issues of natural resources, as both a RBA to development and anti-poverty work focus on women and men living in poverty. We posit that the physical environment is central to their well-being and livelihood practices. We further maintain that a human rights perspective on conservation issues offers additional benefits and challenges as compared with either conservation, anti-poverty, or human rights perspectives taken alone.

Before we begin, two caveats are in order. Historically, there has been discomfort between conservationists, development practitioners and human rights advocates. Some development practitioners and human rights advocates all too easily assume that, for conservationists, resource conservation and wilderness preservation are more important than people's rights and livelihood opportunities. Likewise, environmentalists may distrust the priority which human rights activists are likely to accord to the human being over other species and ecological processes: "If the established human



Picture 1. The environment is central to the well-being and livelihoods of women and men living in poverty. A human rights perspective on conservation offers additional benefits and challenges as compared with either conservation, anti-poverty, or human rights perspectives taken alone. (Courtesy Oxfam Novib)

rights to life, health, property, culture, and decent living conditions are to be fulfilled for the majority of the world population rather than just a minority, and if those rights are realized in the pursuit of affluence rather than moderation, than a rapid depletion of natural resources is a likely consequence. An environmentalist may suspect that there is a structural contradiction between fulfilling existing rights for a growing population and effective protection of limited environmental goods."¹ Obviously these are simplistic generalisations but historically human rights, development, and conservation have had a rather uncomfortable relationship. This is unproductive and there is much that all can learn from exchanging experiences and working together.

The second caveat is that we rec-

Historically, human rights, development, and conservation have had a rather uncomfortable relationship. This is unproductive and there is much that all can learn from exchanging experiences and working together.

Recognise that the term environment is notoriously ambiguous and restrict its meaning in this paper to natural resources in rural areas as this is where Oxfam Novib has acquired some experience. Our intention is to raise some general arguments about how RBA relates to the conservation of natural resources. Furthermore, we must stress that this is an area where we have

much to learn about. As such, this analysis does not in any way present a model. What is presented here is not necessarily the only way that RBA to environment can be conceived and implemented.

The first part of this article will give an overview of how RBA and development have come together. Subsequently, we will give a brief overview of Oxfam Novib's work. This will centre on presenting some of the lessons we have learned in working with an RBA. Finally, this article will present the way in which Oxfam Novib has addressed environment concerns. We argue that a rights based approach and sustainable use of natural resources are compatible. This entails empowering people to challenge power structures. Exercising rights is best done in a world where women and men have the power to decide over their own lives and have a say in decisions that affect their lives, where the rule of law exists, where governments are accountable and where the corporate sector acts socially responsible.

Introduction to rights and development

Although for those who live in poverty there is probably no distinction between 'rights' and 'development', human rights and development practitioners have worked rather independently. Traditionally, NGOs that worked on human rights concentrated on the protection of civil and political rights, on the basis of internationally agreed human rights instruments and using language of rights-holders and duty bearers. By contrast, development actors predominantly focused on improving living conditions and people's empowerment, advancing social, cultural and economic rights in a pragmatic way and not necessarily framed in rights language.

Yet, the link between rights and development was reaffirmed in many authoritative international statements: the Charter of the United Nations (UN) refers to an intrinsic link between development and rights as do the twin International Covenants on Economic, Social and Cultural

Rights (1966) and on Civil and Political Rights (1966). The UN Declaration on the Right to Development is even more comprehensive in saying: "The right to development is an alienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be full realized."²

In an RBA to development, people are seen as holders of rights, who have a claim on duty-holders, which include communities, governments at all levels, private sector, civil society, and external development partners.

In the late 1980s, the worlds of development and human rights converged. With the fall of the Berlin wall, the interdependence, indivisibility and interrelatedness of all human rights (economic, social, cultural, civil and political) could be reconfirmed at the World Conference for Human Rights in 1993. Within the development community, the topic of 'human development' gained ground, in which the well-being of the human person became the benchmark rather than macro-economic variables alone. People became the subject and agents of development. In an RBA to development, people are seen as holders of rights, who have a claim on duty-holders, which include communities, governments at all levels, private sector, civil society, and external development partners.

Oxfam Novib— a development actor

Oxfam Novib is part of Oxfam International, an international group of independent non-governmental organisations dedicated to fighting poverty and related injustice around the world.³ The Oxfams believe that poverty and powerlessness are avoidable and can be eliminated by human action and political will. In all of Oxfam's actions, the ultimate goal is to enable people to exercise their rights and manage their own lives. The Oxfams maintain that preventing and reversing damage to the environment is essential in achieving sustainable livelihoods. The Oxfams support the work of more than 3000 counterparts in approximately 100 countries. They work together to achieve greater impact by their collective efforts, as is illustrated in box 1.

Box 1. Sahelian cotton farmers in Cancun

As of the early 1980s hundreds of village-based farmers' associations were founded in the Sahel countries of West Africa. Intermediary NGOs, which invested in enhancing the organisational capacities of the village associations, received subsequent support from Oxfam Novib. Realising that local solutions were not sufficient, local groups of farmers, cattle owners, fishermen and women in different parts of the Sahel started forming national federations. With the help of the intermediary NGOs, they linked up with each other and formed regional unions. Meanwhile, Oxfam Novib shifted its support from the intermediary NGOs to the farmers' and other sectoral associations and their federations. In 2000, Sahelian farmers' organisations set up a regional farmers' organisation, ROPPA (Réseau des Organisations Paysannes et des Producteurs Agricoles de l'Afrique de l'Ouest). ROPPA was a response to the negative effects of globalisation on Sahelian cotton farmers whose income had dropped after the price of cotton fell on the world market. Sahelian cotton farmers were now confronted with American and European government's subsidies to their own cotton farmers. In 2003, together with Oxfam International, ROPPA defended the interests of Sahelian cotton farmers, at the WTO meeting in Cancun.

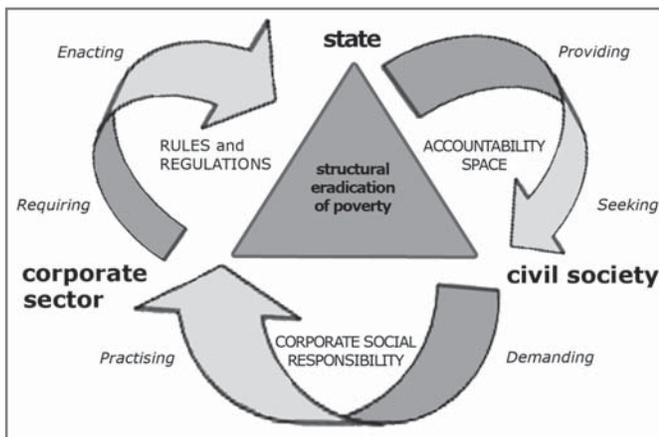
Source: Novib in Action

The mission of Oxfam Novib is 'to promote a global society where the socio-economic inequalities between rich and poor are eradicated, where the world's prosperity is distributed more justly and where people and sectors of the population can learn about and respect each other's culture, while working together on their development on the basis of shared accounta-

bility and mutual solidarity'. Operating from one central office in The Hague, Oxfam Novib works with civil society, governments and the private sector to halt poverty and injustice, believing that every member of this triangle (Figure 1) has a role and responsibility to act.⁴

The Oxfams understand poverty to

...but conservation and human rights can also work in mutual support...



be a state of powerlessness in which people are unable to exercise their basic human rights or to control aspects of their lives. Human rights are acquired at birth and belong to all human beings regardless of their colour, ethnicity, gender, sexual orientation, language, religion, etc. Human rights apply to all people wherever they live. The Oxfams believe that poverty is almost always rooted in human action

Poverty exists between continents, between countries and between population groups. It is a symptom of deeply rooted inequities and unequal power relationships

tion or inaction. "It can be made worse by natural calamities, and human violence, oppression and environmental destruction".⁵ Poverty exists between continents, between countries and between population groups. It is a symptom of deeply rooted inequities and unequal power relationships which are institutionalised through policies and practices at the state, societal and household levels. Some of these are rooted in age-old injustices and others are more recent in origin. To end this state of poverty, 'business as usual' is not an option. In November 2000, the Oxfams decided to adopt a RBA.

Oxfam's RBA: Principles

In adopting a RBA, Oxfam's work became centred and framed around rights. Five Rights Based Aims became the cornerstone of Oxfam's Strategic Plan, *Towards Global Equity*. Oxfam believes that all people have:

- ▶ The right to a sustainable livelihood (Aim 1)
- ▶ The right to basic services (Aim 2)
- ▶ The right to life and security (Aim 3)
- ▶ The right to be heard (Aim 4)
- ▶ The right to an identity— gender and diversity (Aim 5)

These rights are enshrined in international agreements and covenants, in the domain of human rights⁶, labour rights (adopted by the ILO), environmental rights (ratified by individual states) and rights protected by humanitarian law ("the Geneva conventions"). Oxfam defined its programme around these five rights, which are interrelated, interdependent and indivisible: the right to a sustainable livelihood is hard to achieve without the right to be heard, nor can the right to an identity be exercised without due respect for the right to basic social services or the right to life and security.

In order to bring significant and sustained positive changes in the lives of people who are affected by poverty, injustice, insecurity and exclusion, Oxfam seeks changes in policies and practices at various levels: international, national, sub-national, community, and household levels. In this way, unequal power relationships that perpetuate poverty and marginality can be challenged and reversed. Table 1 illustrates the kinds of changes Oxfam supports to make this occur in practice.⁷

Table 1. Examples of rights-based changes in policies and practices

THE OXFAMS' FIVE AIMS	← RANGE →			
	GOVERNMENTAL AND CORPORATE LAWS AND REGULATIONS AND THEIR ADHERENCE		RELIGIOUS, CULTURAL AND SOCIAL BELIEFS AND THEIR OBSERVANCE	
Rights	Changes in Policy	Changes in Practice	Changes in Policy	Changes in Practice
To a sustainable livelihood	Parliament passing a law mandating an agrarian reform.	Ministry of Agriculture distributing land titles to landless peasants.	Agro-industry recognising the economic potential of farming without intensive chemical fertiliser and pesticide use.	Commercial farmers adopting large-scale organic farming practices.
To basic social services	Ministries of Health and Commerce ruling that the importation and production of generic anti-viral medicines will be permitted.	Pharmaceutical companies initiating local manufacture and sale of low-cost anti-virals.	Roman Catholic archbishop modifying religious doctrine to permit the use of condoms.	Religious faithful massively using condoms to block the transmission of the AIDS virus.
To life and security	Interior Ministry emitting a decree prohibiting the public from carrying concealed weapons.	Civilian population stopping the carrying concealed weapons in public.	Families changing their belief that nothing can be done in the face of perennial flooding.	Communities implementing flood disaster preparedness plans.
To be heard—social and political citizenship	Referendum and constitutional amendment requiring that local government consult citizens on budget planning and execution.	Citizens participating in the municipal budgeting process.	Citizens' groups becoming convinced that governmental corruption must be combated.	Civil society organisations acting as watchdog on municipal officials.
To an identity—gender and diversity	Managers Association adapting corporate guideline prohibiting ethnic discrimination.	Members of minority groups file increasing number of formal charges for corporate harassment.	Community elders declaring every woman's right to be free of domination by men.	Parents supporting girl students in denouncing sexual abuse by their male teachers.

Equity and justice are key principles for the realisation of these rights and are at the heart of all of Oxfam's programmes. Other principles such as inclusion, responsibility, participation, citizenship and accountability have been worked out in 'Global Change Objectives' that the Oxfams have identified in their new Strategic Plan, *Demanding Justice*.⁸ All the world's people

carry responsibility for securing not just their own rights, but the rights of other people as well. Building an active worldwide citizenry, and strengthening the relationship between citizens and the State are key to an RBA. Everyone everywhere must be able to participate in changing the world into a fair place, where prosperity does not cause poverty and where social justice

has the same importance as economic growth. Governments and civil society need to be strong enough to ensure that corporations meet social and environmental standards. This entails building a world-wide constituency for economic, social, cultural and political rights, promoting inclusive citizenship and participation; and changing ideas, attitudes and beliefs.

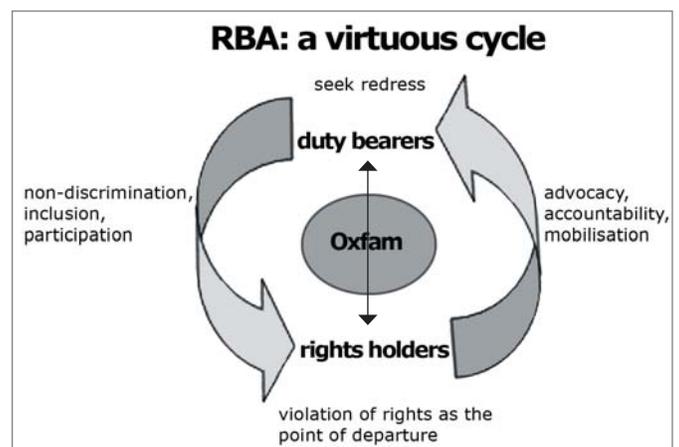
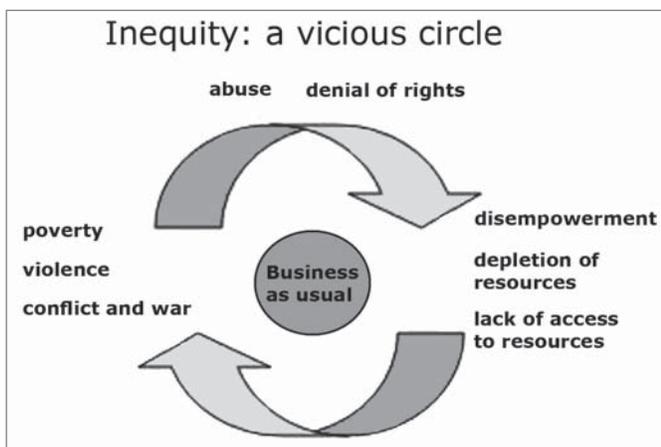
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promoting inclusive citizenship and participation; and changing ideas, attitudes and beliefs.

RBA and poverty

As mentioned, poverty is characterised by a lack of power. People living in poverty have little or no control over their own lives. Poverty hits vulnerable groups harder and reinforces the vicious circle of poverty-powerlessness-conflict-environmental degradation-poverty. Oxfam Novib seeks to turn this vicious circle (Figure 2) of inequity into a virtuous cycle (Figure 3), in which women and men, as rights holders, can seek redress for violations of their rights and in which duty bearers take their responsibility towards rights-holders.



In international law, the state has the ultimate responsibility to protect and safeguard rights. In the virtuous cycle of an RBA to development (Figure 3), any actor (as rights holder) can seek redress from an identified duty bearer, and any actor (in his/her role of duty bearer) should make efforts to ensure that rights of others are met. An organisation such as Oxfam can switch roles and positions: it can be a duty bearer when it comes to the rights of its beneficiary groups, but, in another instance, together with the same beneficiary groups, it can act as a rights holder vis a vis the State, the duty bearer.

A RBA: How is it done?

To better understand to what extent and how Oxfam Novib and its counterparts work with an RBA, in 2005, we undertook an internal study.⁹ The study analysed 24 projects/programs of Oxfam Novib and its counterparts. In the absence of an Oxfam definition of the RBA, we developed an "RBA checklist" with elements, based on Oxfam principles and other characteristics, commonly identified for the RBA. These elements include: participation, holism, accountability, universality and interdependence of rights, non-discrimination and empowerment.¹⁰

Analysing the interventions gave encouraging results. In all cases, organisations applied more than one of these elements. For example, in most cases, organisations have a holistic approach. This entails making a good analysis of the situation at hand and shedding light on who is to be held responsible for the state of injustice. The study also revealed that interventions that operate at multiple levels, such as the micro level (e.g. working with beneficiary groups)¹¹ and macro level (e.g. influencing states), and where the supposed beneficiary groups actively participate, generate better and more sustainable results than interventions that either aim at 'service delivery' or 'advocacy' alone. Finally, the study revealed that what at first appears to be 'RBA', such as legal aid to indigent women, may not necessarily 'be' RBA, whereas providing technical assistance to farmer groups can qualify as RBA. The secret in identifying genuine RBAs lies in the analysis of the situation and in the process of seeking accountability and redress. In the above example, providing technical assistance to farmers can be as empowering as providing legal aid to women, provided that the organisation empowers farmers to claim their rights.

The study has helped Oxfam Novib to further define what good RBA practice is. An RBA comes first of all with an accurate holistic analysis of the reasons that generate inequality by and with those women and men who (continue to) directly suffer from poverty and injustice. How did the situation come about? Who can be held accountable? How can the situation be redressed? Who has the power to make changes? This analysis informs the choice of strategies that the organisation will use.

Obviously, many of these come back to general principles of 'good programming'. What is new is how an analysis is weighed and labelled (injustice, violation of rights, inequality) and how redress is sought to set right what is wrong. Hence, what is important to emphasise that from an RBA, the process is as important as the outcome.

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In conventional approaches to poverty reduction, it is only the outcomes that matter. Finally, the language of rights (based on internationally agreed conventions and treaties) makes a clear statement: rights are inalienable and universal for all people, without distinction as to gender, race, caste or religion.

RBA, poverty, and environmental degradation

The main catalyst for Oxfam Novib to integrate RBA and environment stems from the simple fact that the organisations we support work predominantly with the rural poor. Poverty continues to have a rural face.¹² The livelihoods of rural poor men and women depend directly on unspoiled natural resources, from which they obtain food, housing, energy, water, medicine and income. When the natural resources they use are degraded, they have even fewer opportunities to get out of poverty. Therefore, environmental degradation further perpetuates the vicious cycle of poverty and exclusion. Moreover, poor people, particularly women, are generally most vulnerable to natural disasters such as floods or droughts because their limited access to assets means that they have low resilience to induced changes or shocks.¹³ Hence,

when a disaster strikes, they are plunged into deeper poverty.

Accordingly, the concept of sustainable livelihoods developed in the 1980s is key in guiding Oxfam Novib's approach to environment. This concept emerged to redress many issues afflicting rural development at the time. Perhaps the issue of paramount importance for development practice and theory was returning agency to the people on whose behalf development was undertaken. The concept of sustainable livelihoods refocused development as *praxis* and *agency*. Chambers, for example, pointed out "the environment and development are means, not ends in themselves. The environment and development are for people, not people for environment and development".¹⁴ He argued for an emphasis on "sustainable livelihoods" which enabled causal connections to be made between development and livelihood and between environment and livelihood. For development practitioners, the concept of sustainable livelihoods provided a basis for understanding the relationship between poor communities, their local environment and external socioeconomic, environmental, and institutional forces.

The other guiding concept that informs Oxfam Novib's work on environment is power. For development practitioners, the Brundtland Report¹⁵ was a landmark in that it acknowledged and expanded the linkages between environment and development and highlighted that the distribution of power and influence lie at the heart of most environmental and development challenges. More importantly perhaps for Oxfam Novib was that the Report reiterated that many problems of resource depletion and environmental stress arise from disparities in economic and

political power, so that resources of the physical environment are also about issues of control, power, participation and self-determination.

By uniting the concepts of sustainable livelihoods and power, Oxfam Novib wants to address issues of access to and control over natural capital by poor men and women. It also seeks to change the structures that perpetuated their exclusion and to promote the development of policies and institutions to protect and promote their interests. In funding environmental projects, guiding principles are participation, accountability, and empowerment, all of which are also part of RBA. These concepts and principles guide Oxfam Novib's funding priorities when it comes to environment issues. A considerable amount of the environment work that is supported falls under the category of the right to a sustainable livelihood (Aim 1) and the right to be heard (Aim 4). The organisations that we fund start from the recognition that in rural areas the capacity to resist poverty and to improve livelihoods often depends on opportunities offered by natural resource-based production systems, conditioned by the wider economic, institutional, and political environment. The organisations assess which assets are used for existence (including those owned and those obtained through formal or customary rights or through exchange), how they are used in livelihood activities, and who uses which resources and for what ends. It is important to emphasize that livelihood activities are not narrowly conceived as purely utilitarian economic driven activities. Rather

Issues of access to and control over natural resources are complex and are determined by many of the same structures that generate poverty and exclusion.

livelihood activities are appreciated for the meaning they give to people's lives and their aspirations. Hence, environment is also important for aesthetic, identity, and religious reasons.

Issues of access to and control over natural resources are complex and are determined by many of the same structures that generate poverty and exclusion. Even at the local level where natural resources are often described as "public" goods—open to everyone—in practice communities are not homogeneous and more powerful groups have easier access to these resources and hence can benefit from them more than others. In our experience, women, for example, are more likely to depend on open-access resources such as forests and wetlands for subsistence and income generation. Yet, when it comes to running or participating in institutions responsible for their management, women are impeded from doing so due to a number of barriers associated with class, class, ethnicity, etc. and to the difficulties of combining household and child care practices with public functions.

Accordingly, bringing an RBA perspective to environmental programs begins with a thorough analysis of local realities, men and women's perceptions of the problem, and their proposals on ways of tackling them.

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...tive to environmental programs begins with a thorough analysis of local realities, men and women's perceptions of the problem, and their proposals on ways of tackling them. Any attempt at RBA and environment must begin with a thorough understanding of local context, a power analysis (including an analysis of decision making powers and protection by law), of what

needs to change, and how this change can come about. Control and therefore power are central to discussions of environmental management. It is particularly important to include marginal groups, ethnic minorities, and women, since they are often the ones who not only rely most heavily on the environment but also have knowledge of the environment and perceptions of what the problems are. Involving people in the analysis of problems means that they can be part of the solutions.

Thus, inclusion in problem definition and proposal making is the first step in empowering people to address the structures that generate and perpetuate inequality in the use of natural resources. Intervention strategies are then aimed at enhancing a groups' capacity to claim their rights, strengthening their voice in decision-making processes at all levels, and increasing their access to resources. Indeed, we find that although people may have some statutory or customary rights, often these are either unrecognised or unprotected by the state. In such cases, people are fairly easily displaced and not given proper compensation. Moreover, court and legal instruments are often inaccessible because of costs, corruption, or simply because they are often physically not easily accessible to poor people, particularly women.

Furthermore, many of the organisations that we fund operate in countries where external bureaucracies blame poor people for environmental degradation and where standard environmental packages are applied with no regard for local knowledge, local actors and the diversity between and within ecosystems. In their efforts to control the use of natural resources, powerful groups will create and cir-

culate myths that portray local users as the cause of environmental degradation. Peluso has noted that all too often state agencies depict local users as wild, uneducated, or backwards in their efforts to impose state resource management policies that benefit the powerful.¹⁶

Yet, experiences from numerous countries show that poor people are not to blame for the deterioration of natural resources.¹⁷ In fact, communities can play an active role in conservation when their own tenure and access rights are secured, when benefits are equitably shared, and when government provides a supportive legal and institutional framework that protects their rights. And although for some conservationists and state environmental agencies, conservation may entail keeping humans out, we have found the opposite. In the countries where we work, most progress is made on common ground— where securing environmental rights for local livelihoods also provides a basis for better stewardship.

This may be an unsatisfactory answer for some conservationists who believe that enclosure is necessary to protect biological diversity. Such a perspective clashes with the RBA that we adopt in our environmental work. Depending on the context, enclosures may seriously undermine the livelihoods of poor people who depend on them. More importantly, people are not simply bad or good stewards. They learn how to be good and responsible stewards of the environment. Culturally meaningful ways can be found to show men and women how they can best use and conserve natural resources. It is necessary to draw on both the insights of science and local knowledge to develop effective strategies for tackling

conservation issues and empowering people. Empowering approaches need to be created to bring together different knowledge systems to promote collaboration and mutual learning.

Changing bad policies into good ones: Linking levels and actors

Oxfam Novib supports organisations to change bad policies and practices. Bad policy hurts people, especially poor people, and contributes to environmental deterioration. Good policy protects people, especially those who live in poverty, and protects the environment. Changing policies from bad to good, or creating policies that protect the interests of poor men and women requires a long-term vision.

Policy-making is a complex, tedious, messy and often untransparent process. It is nothing like the common perception of a rational objective problem solving process. In reality, policy making is infused with political interests, involves diverse social actors holding different kinds of power and representing different groups, and depends on different discourses and narratives.¹⁸ Given this, our general approach is to support spaces and practices that allow poor people, who historically have been ignored in the policy making process, to voice their concerns. This requires enhancing people's capacity and supporting training and education (see Box 2). In our view, integrating an RBA approach to environment works to ensure that the policy-making process is both participatory, inclusive, and transparent.

Policy-making is a complex, tedious, messy and often untransparent process. It is nothing like the common perception of a rational objective problem solving process.

Box 2. Changing practices and policies through environment education

Oxfam Novib has been funding the Education Initiative for Water (EIW) program of WWF-China since January 2001. EIW aims at developing the capacity and responsibility of teachers and students to the environment through community based projects. Designed as part of WWF China's Environmental Educators' Initiative (EEI), EIW focuses specifically on primary and middle school students in Beijing. EIW introduces an alternative to the current educational system in the form of student-centred, active learning through real world problem solving and community service. In the first phase (2001–2004), the EIW partnership was a joint effort between WWF China Education Program, Beijing Normal University (BNU) and People's Education Press (PEP).

Oxfam Novib is supporting the upscaling of the EIW program in a project entitled "Sustainability Education Initiatives for Communities and Water". The rationale for this upscale is twofold: first, this is an investment that is consistent with Oxfam Novib's regional thematic focus in the East and Southeast Asia region. Funding support to counterparts moves beyond basic literacy and basic social services delivery to supporting programs that link directly to sustainable livelihoods targeting minorities and indigenous people, and with a strong policy advocacy framework. Two independent evaluations in 2004 showed that the program has achieved significant impact on both practice and policy change. For example, following a complaint by students, who had observed disabled park users' difficulties, Taoranting Park is reviewing its disabled access facilities. The students have also put forward suggestions for improving zoning of recreational activities within the park, and proposed a biological (rather than chemical) solution for a persistent algae bloom in the park lakes. Yaerhutong students have successfully campaigned for the relocation of a soy sauce factory, after local residents identified water pollution from the factory as a serious concern. They also negotiated a code of conduct on emissions with the entertainment business association of the popular recreational area around the Three Lakes, implementation of which the students will monitor.

Oxfam Novib will contribute to the consolidation and dissemination of the project by supporting: (a) expansion of the EIW to other schools in Beijing and initiation of a rural pilot project of the same; (b) development of Shangri-la Sustainable Community Initiative (SSCI)/Community Learning Centres. The latter aims at using education as a means to empower Shangri-La's local communities (in the north west of China's Yunnan Province) to manage their resources in a sustainable manner.

Source: Oxfam Novib files

Working at this level requires a long-term perspective to promote social learning and achieve sustainable results. This entails building relationships with different groups as they all have a role to play. Within this process, particular spaces and innovative means (see Box 3) have to be found to reach out to the most marginal, including women,

ethnic minorities, and illiterates.

It also entails supporting advocacy and lobby activities, as well as policy relevant research. Demands are more likely to produce change if they are accompanied with data and realistic suggestions about how change can be accomplished.

Box 3. Bringing the legal system to bear on the environment

The Bangladesh Environmental Lawyers Association (BELA) started in 1991 as an advocacy group of young lawyers developing techniques and strategies with the legal regime for environmental protection. The organization has adopted various means to create awareness amongst major actors and the common people. As a lawyers' group, BELA has always emphasized and advocated

wider participation in law making and policy planning.

Regarding achievements, Bangladesh's first environmental litigation was filed and fought by BELA in 1994. In 1995, the Supreme Court directed the government of Bangladesh to implement the Flood Action Plan (FAP) only after following certain legal procedures that involve assessing compensation claims of the affected people. BELA also works on raising environmental law awareness amongst different groups. In a country with high illiteracy rates, this requires using stickers, cartoons, etc. Awareness raising is also done with young people. School students who are likely to bear the consequences of environmental degradation in the future have been identified as a target for BELA's work. BELA launched an educational program to teach students about their environmental rights and duties. BELA has been undertaking training program for lawyers, NGO workers, journalists, statutory officials and others since its inception. These training programs increase the level of understanding about environmental issues and corresponding laws.

Source : Oxfam Novib files

Rights and responsibilities

Up till now, we have talked of rights and how they relate to environment and development. From a RBA, the state bears ultimate responsibility for upholding and protecting rights, including the right to live in a satisfactory environment. States must meet their responsibility and should be supported to do so.

Responsibility for environment, poverty and exclusion cannot be left to governments and powerful groups alone, however. It is too important for that. It needs to be everyone's business. It requires fostering personal responsibility and a more active citizenship. A RBA to environment, even more than an RBA to development, calls seriously for joint work in mutual solidarity (or what Oxfam Novib calls 'shared self interest'). Everyone has an obligation towards each other, the earth, and future generations. In particular, it requires engaging elites— those who have power— and convincing them that it is in their interest to share their power and privileges.

Reflections

For Oxfam Novib, working with a RBA

means that we are constantly exploring and learning about the origins of poverty, rights violations, environmental degradation, and exclusion. On environment, our entry point is livelihoods and empowering poor men and women to claim and use natural resources in a sustainable manner. We look at sustainability holistically: sustainability relates not just to natural resources or physical capital, but also to the larger institutional framework. The right institutions are critical to assure sustainable use of natural resources. Therefore, a considerable amount of the work we support is focused on enhancing people's capacities so that they can demand and participate in creating and/or reforming policies and institutions to better serve their needs and protect their rights.

Obviously, there are issues— trade offs— that we struggle with. Trade off is a term that is often all too easily used in contemporary development work, particularly by economists. From the work that we support, poor people are continuously asked to make very painful trade offs: sending a girl to school or keeping her home to fetch water 5km away from the house be-

cause the local river has become too polluted to use. These are the kinds of trade offs that prevent people from realizing themselves, violate their rights, and can plunge them into deeper poverty and exclusion. How can trade off issues be dealt with in a way that protects and promotes people's rights and promotes sustainable development in a just manner?

There can be instances where maximising short term needs takes precedence over long-term sustainability, as the urgent problems of immediate survival are likely to displace concern for long-term ecological integrity.

Also, there can be instances where maximising short term needs take precedence over long-term sustainability, as the urgent problems of immediate survival are likely to displace concern for long-term ecological integrity. When does achieving livelihood objectives compromise the livelihood opportunities of others within the same or future generations? The sustainable livelihoods approach recognises these trade-offs, but does not yet suggest how they might be resolved. In theory human rights can compete with each other. In such cases it is up to the courts to decide which right will prevail. However, in the case of 'personal integrity' rights, even in the case of public emergency, no derogation of such rights is allowed, according to international human rights law.¹⁹ It is on issues such as these that more and deeper exchange is needed between rights based development practitioners, conservation and environmental specialists, and people who have to weigh and make daily decisions to protect their own and their children's future.

Conclusion

We have related how RBA to development seeks to transform the vicious circle of poverty and marginalisation into a virtuous cycle in which people can seek the fulfilment of their rights from duty-bearers. Operationalising a RBA to development requires prioritising a situational analysis that looks at issues of power and is done with the active participation of the people who are struggling to get their rights heard. Likewise, connecting rights to environment forces us to ask the same questions as those lying behind poverty and injustice. How has this situation come about? Who is responsible for its perpetuation? How can we redress the situation? Formidable challenges remain. In substantive terms, part of the challenge is to pursue more convincing analytical work. Another important part is to work towards changing policies, practices, beliefs and ideas. And finally there is need to further build and reinforce the capacity of both rights holders and duty bearers, so that the enjoyment of rights becomes a reality, rather than just an intention on paper.

More and deeper exchange is needed between rights based development practitioners, conservation and environmental specialists, and people who have to weigh and make daily decisions to protect their own and their children's future.

Finally, a RBA to environment deserves and requires a sense of urgency that is shared by people, organisations, governments and business alike, and that transcends North-South thinking and fields of work— environment, development or rights.

Gina E. Castillo (Gina.Castillo@Oxfamnovib.nl) has a Ph.D. in anthropology and works as livelihoods advisor at Oxfam Novib. In her spare time, she practices urban agriculture on her balcony. **Marjolein Brouwer** (Marjolein.Brouwer@Oxfamnovib.nl) holds master degrees in criminology and law and joined Oxfam Novib 11 years ago as a rights advisor. Before that she worked for various UN agencies and Amnesty International.

Notes

- 1 Boyle, 1996, p3.
- 2 " Article 1 of the Declaration on the Right to Development, UN General Assembly resolution 41/128 of 4 December 1986.
- 3 By the beginning of 2007, the Oxfam-group was made up of Oxfam Australia, Oxfam Solidarité (Belgium), Oxfam Canada, Oxfam Québec, Oxfam Deutschland (Germany), Oxfam France, Oxfam GB (Great Britain), Oxfam Hong Kong, Oxfam Ireland, Oxfam Novib (The Netherlands), Oxfam New Zealand, Intermón Oxfam (Spain) and Oxfam America (United States).
- 4 In 2004, Oxfam Novib had 148 million euro available for its work. Of this income, Oxfam Novib transferred 118 million euro to more than 800 counterparts (in over 18 core countries, 11 regional programmes, and one global programme).
- 5 Article 6 of Oxfam International's mission
- 6 The primary frame of reference is the Universal Declaration of Human Rights (UDHR) and the subsequent International Covenants on Economic, Social and Cultural and on Civil and Political Rights (ICESCR and ICCPR, respectively). Together they form the International Bill of Rights, which contains the basic minimum conditions that all human beings are entitled to.
- 7 Wilson-Grau, 2004.
- 8 Oxfam International, 2006.
- 9 The study "How an RBA works in practice" can be downloaded from the RBA pages at www.oxfamkic.org. Hard copies can be obtained from the authors.
- 10 The full text of the checklist can be found in Annex 1 of the study.
- 11 Like many others, Oxfam struggles with how to define the people who benefit from Oxfam supported programmes. Oxfam Novib uses the words 'project participants' and 'beneficiaries'. Oxfam America uses the word 'primary change agents'. To our knowledge, none of the Oxfams uses the word 'rights-holders' for women and men who benefit from programmes.
- 12 Estimates of rural poverty range from 62% (CGIAR 2000) to 75% (IFAD 2001) of all poor people.
- 13 See WHO, 2007.
- 14 Chambers, 1986, p7.
- 15 Brundtland, 1987.
- 16 Peluso, 1996 in Pimbert, 2006.
- 17 See Pimbert, 2006.
- 18 See Shore & Wright, 1997.

19 See article 4.2 of the International Covenant on Civil and Political Rights

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Applying a rights-based approach to conservation— experience from CARE's Rights, Equity and Protected Areas Programme in Uganda

Phil Franks

Abstract. Rights based approaches provide a lens and a tool box for understanding and addressing issues of governance and specifically the underlying causes of poverty, environmental degradation and injustice related to power. This article illustrates the application of this approach within CARE International and specifically in CARE's Rights, Equity and Protected Areas programme in Uganda, emphasising procedural rights of access to information, participation and justice. The article demonstrates that working to ensure procedural rights can be an effective entry point for positive social and environmental impacts.



Picture 1. Assessing the costs and benefits of Queen Elizabeth National Park using participatory environmental valuation.
(Courtesy Phil Franks)

Focusing on CARE's work in Uganda, this article illustrates the application of a rights-based approach (RBA) to promote more equitable sharing of the costs and benefits of biodiversity conservation. This experience from Uganda shows the value of working with procedural human rights in addressing the relationship between human rights and environmental concerns.

Human rights are the universal rights of all individual human beings, regardless of ethnicity, nationality, religion or sex, based on inherent human dignity. These include both substantive rights— i.e., to the substance of human well-being (life, food, housing, water, a healthy environment)— and procedural rights— i.e., to procedures that help protect and fulfill substantive rights (access to information, participation in and influence on decision-making, and access to justice/legal redress). All of the above mentioned substantive rights are enshrined in international human rights instruments with the notable exception of the right to a healthy environment.

There has been much progress in establishing procedural environmental rights in the last fifteen years. This progress comes in large part from Principle 10 of the Rio Declaration, but most notably from the Aarhus declaration, a European convention that establishes these procedural rights as a means to

A rights-based approach empowers people to understand, claim and exercise their rights.

deliver on the substantive right to a healthy environment. Although the Aarhus convention applies only in Europe, this convention has influenced work on environmental human rights in many other countries.^a

The RBA empowers people to understand, claim and exercise their rights. In other words, the "states and their subjects" become the "states and their citizens with rights". In law, rights are protected and fulfilled through placing a legal obligation upon a "duty-bearer". RBA is as about holding duty-bearers accountable for protecting and fulfilling rights as it is about strengthening the provisions that define rights.

There is widespread recognition that in many developing countries protected

Conservation activities may be undermining the substantive human rights of poorer, marginalised groups

areas (PAs) impose negative impacts on local communities living in and around these areas, and that in many cases these costs are not balanced by the benefits generated by the PA. In other words, the rural poor frequently experience a net negative impact (cost) on their livelihoods.^b Recent studies of two PAs in Uganda confirm this scenario.^c These studies also indicate that poorer households tend to bear higher costs in relative terms. So at least in these cases, it would appear that conservation activities may be undermining the substantive human rights of poorer, marginalised groups— notably impacts on the right to food arising from damage to crops by wild animals and displacement (reduced access and in some cases physical displacement from farming/grazing lands). Although the right to food exists in international law, it is appears in the Ugandan Con-

stitution as an objective rather than an explicit right within the chapter on rights. There is also no explicit endorsement within Ugandan policy or law of the principle that PAs should "do no harm"— the principle at the heart of the recommendation on Poverty and PAs of the 2003 World Parks Congress. So, although these internationally accepted rights and principles strengthen the moral case for action, they offer little in the way of practical means of addressing the problem.

The constitution of Uganda does, however, establish the substantive human right to a healthy environment, and in a few cases this has been used to the advantage of local communities. Viewed from a national (i.e. aggregate) level, Uganda's PAs are certainly helping to contribute to protection and fulfilment of this right through securing environmental services (watershed protection, biodiversity conservation), but from the perspective of poor, park-adjacent communities, this does not compensate for the negative impacts of the PAs on their livelihoods.

CARE's work with protected areas in Uganda has emphasised three major



Picture 2. Batwa leader Diveera on the land that she could lose to the park. (Courtesy Phil Franks)

concerns of local communities— crop damage by wildlife, displacement (physical relocation and loss of access), and the sharing of benefits derived from tourism. This article focuses on physical displacement and tourism revenue sharing, which we have addressed primarily through procedural rights.

Although physical displacement of people resulting from the establishment or

There have been few cases of displacement in recent years because of the strengthening of property rights and procedural rights.

expansion of PAs has been a major problem in Uganda in the past, there have been few cases in recent years precisely because of the strengthening of property rights (including customary) and procedural rights. The case presented

here is the result of an unfortunate mistake, but it illustrates efforts to use these rights to remedy the situation. The problem arose in 2002 when a bill was submitted to parliament to extend the boundaries of Bwindi Impenetrable National Park to include an area that was voluntarily (and amicably) vacated by local people with substantial compensation (financed by the World Bank). By mistake, the gazette notice included an adjacent area where 120 families were still living. Based on past experience of the heavy hand of the state, local people feared the worst. But NGOs representing these people have been able to challenge this threat, firstly on the grounds that it violates their customary land rights, and second that even in the event of a case for compulsory purchase in the national interest, the government should have issued a statutory notice of their intention and paid "fair and adequate" compensation prior to acquisition of the land. The action of the government is thus unconstitutional.^d

It is assumed that the government will now amend the gazette notice, but in the event that they fail to do so, the communities also have the constitutional right to challenge the action of the government in the courts.

In terms of benefits from PAs to adjacent communities, Ugandan law requires Uganda Wildlife Authority to allocate 20% of the park entry fees paid by tourists to communities bordering the PA. According to the Tourism Revenue Sharing policy of 2000, this is specifically intended to mitigate negative impacts of the PAs on these communities in recognition of the fact that they shoulder a disproportionate burden of the costs of conservation. In terms of implementation, the policy requires local government to take the lead in facilitating a transparent process of project selection, oversight, and accounting. The work of CARE and its local partners has focused on giving communities access to information on the law and policy, and promoting accountability of local government in fulfilling its obligations in the manner intended. Community-based monitoring of all stages of the revenue sharing process, including accounting for funds, and continuing through project completion, promotes accountability of



Picture 3. The edge of Bwindi Impenetrable National Park. (Courtesy Phil Franks)

local government. These efforts have highlighted many weaknesses, and resulted in improved implementation and informed policy revision. This work is part of a broader programme of CARE Uganda which promotes accountability in service delivery, including health and economic development services.

These examples illustrate how working with procedural human rights provides an entry point for addressing substantive human rights. These cases focus on issues of social equity in conservation that are relevant both to human well-being and the effectiveness and

Working with procedural human rights provides an entry point for addressing substantive human rights.

sustainability of conservation itself. In this work we have found that the substantive human rights and the "do no harm" principle provide a useful reference to inspire

discussion and enhance the moral authority of the process. However, in practical terms, results have been achieved largely through working with procedural rights, and in particular the obligations these rights place on the relevant duty-bearers.

Rights are derived from many different regimes including local statutory and customary law, national statutory law, and international human rights instruments. Whether we are working with locally, nationally or internationally defined rights, CARE has found RBA to be an intrinsically valuable approach, particularly for addressing issues of governance of natural resources. RBA has proved to be a powerful lens and tool box. The lens helps us identify and understand the underlying causes of environmental degradation, poverty, and social injustice. The tools enable us to strengthen the way in which rights

are defined and hold duty-bearers accountable for delivering on their obligations. Most fundamentally RBA helps us understand and influence the power imbalances that so often lie at the heart of problems of governance. Changes in power balance can be defined by, and anchored in, rights and duties, and to a large extent these will be procedural rights and duties. Over and above the contribution this work may make to protecting and fulfilling specific substantive rights, the empowerment that can be generated through working with RBA and procedural rights can be crucial to enhance the human dignity at the basis of all human rights.

Phil Franks (phil@ci.or.ke) is the Coordinator of CARE's Poverty and Environment Network, a learning network within CARE International focusing on natural resource management/governance, environmental and natural resource-based enterprise, and climate change. Phil has been working in this position since 1999, and before this as Coordinator of integrated conservation and development projects in Kenya (with Birdlife International) and Uganda (also with CARE). Phil is one of the longest-standing members of CEESP TGER and currently co-chairs the TILCEPA Task Force on Protected Areas, Equity and Livelihoods.

Notes

- 1 Pallemmaerts, 2004.
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In search of environmental justice— linking land rights, livelihoods and conservation in South Africa

Wendy Crane

Abstract. South Africa's Cape Action for People and the Environment Programme (C.A.P.E.) seeks to conserve the globally significant biodiversity of the Cape Floristic Region, while ensuring that people are engaged in the process and benefit from conservation opportunities. Often the product of top-down conservation planning and action, landscape scale bioregional programmes run the risk of negatively impacting human rights at the local level. C.A.P.E.'s strategy emphasises collaborative approaches and partnerships among private landowners and existing nature reserves to promote sustainable utilisation of biodiversity. This case study explores how this approach to conservation might conflict or be reconciled with land tenure rights, and opportunities for land-based livelihoods among impoverished farm dwellers in the Baviaanskloof area of the Eastern Cape.

South Africa is the third most biologically diverse country in the world, with between 250,000 to 1,000,000 species and exceptional levels of endemism.¹ Unfortunately, this global treasure also has the highest known concentration of threatened plants, and the highest extinction estimates anywhere in the world.² This reality coexists with an apartheid history of dispossession that produced a starkly unequal land ownership pattern along racial lines and wide-

spread rural poverty. In this context the post-apartheid government must fulfil constitutional and international obligations to safeguard environmental assets as well as undertake land reform benefiting the previously dispossessed.

Responding to the demands of the new democratic order, South Africa's new Constitution—widely admired as one of the world's most progressive—enshrines not only

South Africa's new Constitution enshrines not only the right to environmental protection, but also the nation's commitment to land reform and equitable access to natural resources.

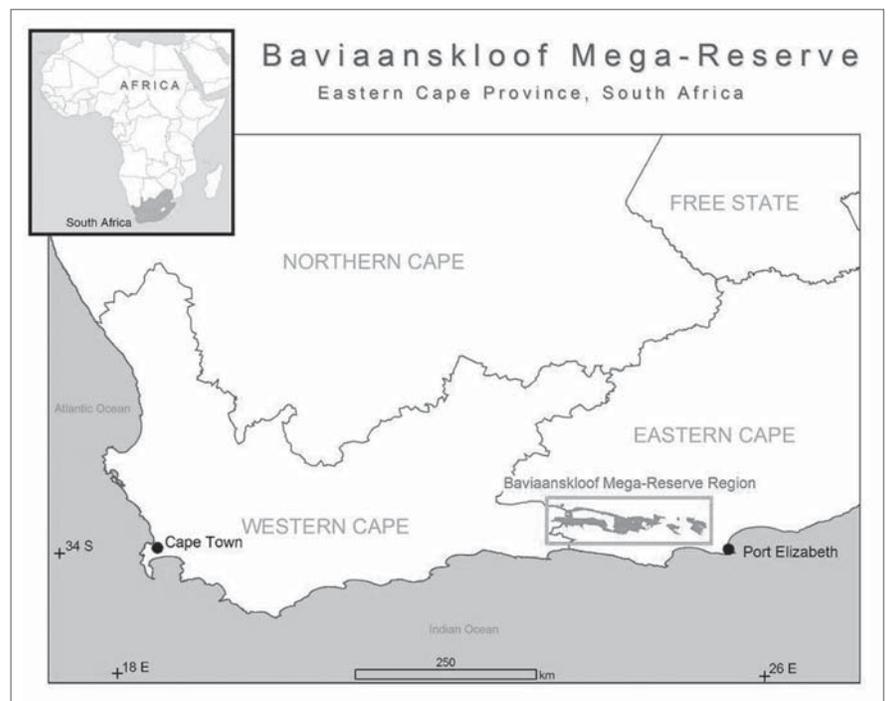
the right to environmental protection, but also the nation's commitment to land reform and equitable access to natural resources.³ Inevitably, there is a continuous challenge of reconciling complex and often conflicting relationships between poverty, inequitable access to resources, and the protection of biodiversity.



Picture 1. The Baviaanskloof is an area of exceptional beauty and biodiversity, and an important water catchment. (Courtesy Wilderness Foundation)

Farm dwellers constitute one of South Africa's most marginalised and poorest communities. Numbering nearly three million, they reside in insecure circumstances on mostly white-owned commercial farms. Poorly paid, geographically isolated and politically marginalised, their plight has worsened in the wake of agricultural deregulation post-1994, which has led to job losses, casualisation and evictions.⁴ Although farm dwellers are a key target group of the state's land reform programme, legislation designed to secure and upgrade their tenure rights has so far provided them little benefit in practice.⁵

To fulfil its constitutional and international obligations to protect the environment, the state promotes conservation on both public and private land. Recent years have seen the creation of biodiversity 'mega-reserves'⁶— large areas under some form of protection, based on the voluntary and cooperative participation of private landowners— in the Cape Floristic Region⁷ under the C.A.P.E. programme.⁸ Conceptualised as partnerships between private land owners and existing nature reserves, the focus is on exposing people to more sustainable ways of using the land and natural resources, promoting the adoption of conservation-conscious farming methods or other land use practices and, where possible, setting aside land for formal protection. This differs markedly from the 'fences and fines' approach— drawing boundaries, regulating entry, and penalising unauthorised use— typical of many conservation efforts in the past.



Map 1. Map showing location of the Baviaanskloof Mega-Reserve in South Africa. (Courtesy Wilderness Foundation)

In this case study of the Baviaanskloof Mega-Reserve, I explore possible implications of this new approach for the rights and livelihoods of farm dwellers in the area. Recent national evidence of farm dwellers' continuing vulnerability to evictions and loss of livelihood gives this question added importance.⁹ The analysis draws on my field research conducted in late 2005.¹⁰

Description of the area

The Baviaanskloof, or "Valley of Baboons", is situated in the western part of South Africa's Eastern Cape Province (see Map 1). It is a 75 km long valley of varying width and depth, and lies between two parallel east-west running mountain ranges: the Baviaanskloof Mountains in the north and the Kouga Mountains in the south. The easternmost point of the valley is about 95 kms north-west of the coastal city of Port Elizabeth, and its most southerly point is 50 kms from the Indian Ocean.

The wider Baviaanskloof area is one of outstanding natural beauty and biodiversity, and an important water catchment. No fewer than seven of South Africa's eight biomes are represented there— the Fynbos, Subtropical Thicket, Nama-karoo, Succulent Karoo, Grassland, Savanna and Forest biomes.¹¹ It supports a high diversity of species, several of which are Red Data listed— including leopard (*Panthera pardus*), Cape mountain zebra (*Equus zebra zebra*), and grey rhebok (*Pelea capreolus*).¹² It is at the convergence of two of the world's top 25 biodiversity hotspots: the Cape Floristic Region and the Succulent Karoo.¹³ This natural treasure has led to part of the area being declared a World Heritage Site, along with seven other reserves in the Cape Floristic Region.

The surrounding area is facing growing socio-economic pressures. The local economy is based almost entirely on agriculture, involving a mix of pastoralism and irrigated crops (mainly citrus and deciduous fruit, but also some cash and seed production crops). Commercial agriculture is operating at or near to capacity and there is limited space for growth. An overall decline in the regional economy has been accompanied by a general depopulation. Agriculture is unlikely to provide the economic boost required to address growing unemployment, at least not in the current paradigm that favours large-scale commercial agriculture. Conservation-based tourism has been advocated as an alternative and sustainable form of land use with the potential to contribute to the local and regional economy.¹⁴

While much of the Baviaanskloof is state-owned, in the western part of the valley some 50,000 ha remains

under private— largely white— ownership. About 20 family-owned commercial farms here are entirely surrounded by protected area. Less than 800 ha is under cultivation, with the rest used for extensive grazing and browsing. Vegetable seed production, once a thriving industry with significant labour demand, has declined substantially following the cessation of farming subsidies and introduction of agricultural labour legislation. This has led to the loss of many permanent and casual jobs since 1994. Most farmers now practice mixed small stock farming, which is much less labour-intensive. Pensioners, farm workers and their extended families make up over 70 percent of the valley's community,¹⁵ with many entirely dependent on government pensions and disability grants. The remainder are a mix of white farmers and their families, other landowners, civil servants, and even includes a small hippy community. The overall population currently stands at around 1000 and has been on the decline as people migrate to towns in search of work and subsidised housing.

A conservation history

Conservation in the Baviaanskloof goes back to 1923 when state-owned land in the area was proclaimed as a forest reserve and water catchment zone. Purchase by expropriation of key properties in the 1970s led to the consolidation of a provincial nature reserve system, a cluster of protected areas of which the Baviaanskloof Nature Reserve is the focal point. During the 1980s the particular importance of the Baviaanskloof Nature Reserve for biodiversity conservation and for the provision of essential ecosystem services (especially water) became more widely recognised. Additional land purchases increased the size of the reserve to about 175,000 ha by the turn

of the century.¹⁶ Further expansion of the protected area is continuing up to the present.

The long and convoluted boundary makes management of the conserva-

C.A.P.E.'s underlying philosophy of "keeping people on the land in living landscapes" differs radically from previous concepts.

tion estate expensive. Due to its shape (see Map 2), the present protected area is exceptionally vulnerable to the 'edge effect' and the potential for conflicts with neighbouring landowners is high in terms of fire risk, predator poaching, alien vegetation, soil erosion, water wastage etc. This situation led to a proposal in 1997 to consolidate the western sector of the reserve through compulsory acquisition of all private land inside the Baviaanskloof.¹⁷ While this could yield many conservation benefits, the proposal failed to appreciate socio-political realities of the new South Africa and that the future of the reserve as a viable conservation area must take into account human communities and land use on properties adjacent to the reserve. The proposition that inhabitants simply be relocated to the nearby town of Willowmore met with fierce resistance from all sides of the Baviaanskloof community¹⁸ and was clearly no longer viable under the new democratic order. The essence of the proposal, however, was later taken up by C.A.P.E. when it identified the Baviaanskloof Nature Reserve and adjacent areas as a potential mega-conservation area—culminating in the present Baviaanskloof Mega-Reserve Project. Its underlying philosophy of "keeping people on the land in living landscapes"¹⁹ differs radically from the previous concept. Nevertheless, a legacy of expropriation in earlier decades and resettlement issues arising

from more recent land acquisitions, coupled with anxieties and mistrust generated by the 1997 proposal, pose major challenges to the new strategy.

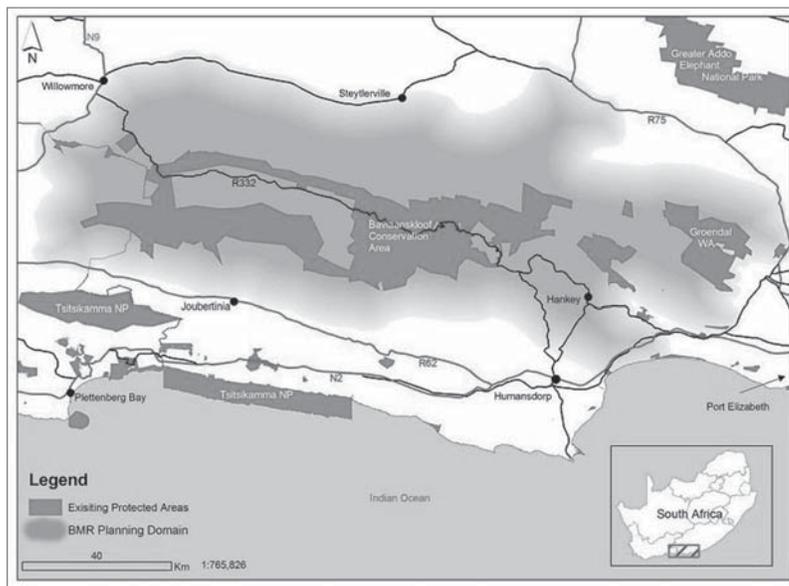
The Baviaanskloof Mega-Reserve Project (BMRP)

The BMRP is conceived as a 20-year process to conserve the area's biodiversity, protect its critical role as a regional water provider, and deliver economic benefits to surrounding communities. According to project documents²⁰ it will stimulate a 'biodiversity economy'²¹ by promoting alternative productive land uses— notably though not exclusively ecotourism. Under the auspices of the Provincial Department of Economic Affairs, Environment and Tourism (DEAET), a Project Management Unit (PMU) was created in 2003 to manage the initial phase of this process. The PMU operates under

Expansion of the reserve is primarily directed towards voluntary inclusion of private land through the use of formal agreements with landowners.

a sub-contract to the Wilderness Foundation, an Eastern Cape-based NGO, in a transitional arrangement aimed at building the provincial government's capacity to manage the mega-reserve project after 2008. A Baviaanskloof Steering Committee (BSC) has been formed to oversee the implementation of the BMRP.

Expansion of the reserve can involve land purchase by government but is primarily directed towards voluntary inclusion of private land through the use of formal agreements with landowners.²² This expansion does not necessarily exclude the people residing there. It is the express intent of the BMRP that no people should be involuntarily displaced, and that where relocation is proposed it will only be done in



Map 2. Map of planning domain of the Baviaanskloof Mega-Reserve Project. (Courtesy Wilderness Foundation)

a consensual manner. In such an event, the BMRP is bound by a Resettlement Policy Framework and Process Framework (RPF/PF) designed to comply with World Bank social safeguard policies— a conditionality of GEF funding.²³ The RPF/PF sets out quite stringent process and compensation standards in the event that the BMRP displaces people from land or productive resources. It explicitly covers farm workers and dwellers and offers far greater protection than the national Extension of Security of Tenure Act (ESTA).²⁴

The planning domain of the BMRP covers a vast territory around the existing reserve cluster, but certain areas are prioritised. The western part of the Baviaanskloof is a major priority as it represents a 'hole' in the core of the reserve (see Map 2). The discussion which follows is focussed on this area.

Farm dwellers, tenure rights and livelihoods in the Baviaanskloof

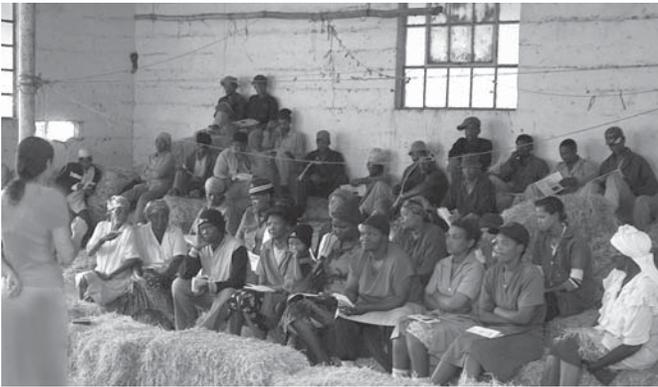
The BMRP is at an early stage and any discussion of impact on farm dwellers

is necessarily speculative. Concerted effort by the PMU since 2003 to build a dialogue with the community has gone some way to allaying mistrust and suspicions. Through a 'stakeholder engagement programme' project staff have held numerous meetings with private landowners, farm labourers, local communities, organised agriculture and others.²⁵ A full-time community liaison manager and a landowner liaison manager conduct frequent interactions with different segments of the community. Throughout this process, it has been made abundantly clear that there will be no expropriation and that people will not be forced off the land.

But there is scepticism about the 'biodiversity economy'. To appreciate the different perspectives, it is useful to disaggregate the community based on varying patterns of land ownership. Farm dwellers on private land face a different situation than those occupying land recently purchased by the state. A group of ex-farm dwellers now own a farm as a collective, under a land redistribution project. Other, mainly white landowners can be divided between those who depend on farming for their livelihood, and those who have recently purchased land for its nature-based tourism potential.

Farm dwellers on state land

Coleske farm was bought by DEAET from a commercial farmer in 2001 and now serves as western gateway into the reserve. The farmer moved off the land, leaving behind a community of around 125 farm dwellers. He had employed 8 permanent workers and many others on seasonal basis. Many were born on the farm, have lived there their entire lives and numerous relatives are



Picture 2. The stakeholder engagement programme holds frequent meetings with communities.

(Courtesy Wilderness Foundation)

buried there. Initially, DEAET employed 45 people on a temporary basis under a state-funded Poverty Relief project, raising the community's expectations of job-creation in the reserve. But there were problems in managing the workers. There were insufficient resources for supervision, and on occasion people were found playing dominoes at home during working hours. Relations soured between the reserve manager and the community. In 2004 the newly formed Eastern Cape Parks Board (ECPB) took over as statutory authority of the reserve. Poverty Relief funding ran dry and work stopped, virtually without notice. As the farm is now a protected area, the farm dwellers' rights of access to resources such as firewood, clay, honey, natural medicines and grazing have become severely restricted. "Die kampe is so klein, ons donkies is te swak om by die winkel uit te kom" (the designated grazing area is so small, our donkeys are underfed and too weak to reach the nearest shop).²⁶ The farm store was closed down and people now walk over 30km for basic supplies. Unemployment has made younger people dependent on the pensions of their elders. "Al die jong mense met vrouens en kinders het by ons ouens ingetrek" (the younger

families have had to move in with us old folks).²⁷ The community's continued existence has become increasingly precarious.

The PMU recognises that the Coleske case should trigger the Resettlement Policy Framework and Process Framework. People have lost jobs and access to natural resources. But moving the process forward is complicated by several factors. First, the ECPB— as management authority— has jurisdiction over resource access and utilisation in the reserve, so any agreements with the community require its consent. But the ECPB is very new and short on capacity. Second, there seems to be no consensus on whether the RPF/PF applies to Coleske.²⁸ DEAET purchased the farm two years before the BMRP officially started, and some feel that DEAET should have handled any resettlement issues then under ESTA legislation. Instead the matter was left to linger and ECPB is reluctant to touch it. Meanwhile, there may well have been an influx of 'relatives' seeking employment or other benefits under a possible resettlement deal. To prove or disprove anyone's legitimate tenure rights today will require a very tricky process of forensic sociology.²⁹ Third, the RPF/PF was drawn up by C.A.P.E. without the involvement of the Eastern Cape government, raising questions about 'buy-in' from those now responsible for the BMRP. Fourth, delivering on the promises of the RPF/PF is hugely complex. As GEF funds cannot be used for implementing action plans arising from the policy, it requires budgetary commitments and synchronised planning from a multiplicity of government institutions at local and provincial level. In addition to alternative land and accommodation, the RPF/PF provides for alternative employment, training and "measures to guarantee that livelihoods do not de-

cline”— all equivalent to and preferably better than before.³⁰ The RPF/PF process may be too institutionally complex to be viable, especially in the Eastern Cape where local government has been widely criticised for insufficient capacity and poor delivery.

While the PMU struggles to initiate the RPF/PF process and line up the various institutional actors, anger and frustration in the community is beginning to boil over. “Hulle het ons gesê da gaan altyd werk wees, maar die beloftes het verbreek” (they told us there would always be work, but the promises have been broken).³¹ Much is at stake— not just the fate of dozens of poor and vulnerable people, but the credibility of the BMRP itself and its approach to conservation. Across the Baviaanskloof coloured community, Coleske farm is now a constant reference point as to why conservation is bad for farm dwellers. As long as the Coleske case is not resolved in a way that is perceived as fair and just, the BMRP’s stated philosophy of ‘keeping people on the land in living landscapes’ is seriously undermined.

Farm dwellers on private land

Farm dwellers on private land have not yet felt the impact of the BMRP— it is too early to observe concrete changes in land use as a direct result of the project. Change for them will depend on whether or not landowners agree to alter the way they use their land to accommodate conservation concerns. This is driven strictly by economic considerations.

Among other things, the PMU would like to see farmers withdraw livestock from degraded mountain sides and concentrate farming in the valley bottom.³² Restoration of wilderness would attract greater numbers of tour-

ists, creating new income streams. For farmers, such a shift involves two types of risk. One is reduced income from reduced stock levels in the short term, against uncertain growth of a biodiversity economy in a more distant timeframe. Second, the current practice of extensive mixed stock farming enables them to spread their risk, while shifting to intensive single stock farming increases risk. Landowners whose livelihoods depend solely on farm income are unlikely to volunteer for such a scheme without income-replacement guarantees: “Daar moet ‘n waarborg wees” (there has to be some guarantee).³³ If such guarantees were forthcoming (which seems unlikely) farmers could focus on a single stock type such as ostrich and cultivate land for animal fodder in the valley near the river, thereby enabling the surrender of significant land areas to biodiversity conservation and expanded tourist facilities. Another view is that such a scenario is inevitable. “We have to change our mindset, and fence ourselves in.”³⁴ As new landowners with an eye on ecotourism withdraw grazing areas from agriculture, nature is encroaching on farms and winning the battle slowly but surely: wild animals are increasing and predators moving in. Farmers may be forced to concentrate their crops and stock in central, fenced-in areas in order to protect them.

Whichever the case, most farmers interviewed expect neither positive nor negative impacts on labour and tenure rights of farm dwellers. Jobs lost from herd reductions would be few and could probably be replaced by alternative work, such as servicing camp sites, trail guides, horse treks, etc. Nor do they see much room for job growth. Farm workers themselves see it differently. Those interviewed consistently expressed concern that a reduction in

farm activity will place their jobs at risk, pointing at Sandvlakte farm as an example. The owner of this farm stopped farming some years ago to focus on ecotourism leaving many farm dwellers, especially women, without work. Most farm dwellers cannot see how they could possibly benefit from tourism enterprise on land belonging to someone else. "Ons bly op wit-man se grond" (we live on white man's land).³⁵ Anything they do is by the grace of "die baas" (the master)— investment is a risk as permission can always be withdrawn. Who is going to put up infrastructure for a kiosk? Selling vegetables to tourists may be an opportunity, but a farm worker who fails to make him/herself available "om in te val" (to substitute) on Saturdays or Sundays risks losing his job because he is too inflexible.³⁶ Everywhere, farm dwellers worry about their fate should the landowner decide to sell his farm to nature conservation— Coleske farm serves as a constant reminder.

Ex-farm dwellers at Sewefontein farm

Sewefontein is a land redistribution project. In 2001, a group of 75 landless people from the Baviaanskloof pooled their government housing grants to purchase the farm. Given the limited number of houses, the majority of shareholders do not reside there. Some live at Coleske while others live and work on other farms in the valley. Most intend to settle at Sewefontein at some point, when they get ill, old or for one reason or another can no longer remain where they presently are. Sewefontein is their 'insurance policy' against the ever-present threat of eviction.³⁷ First and foremost, it offers them a secure place to live when they run out of options elsewhere; second is the possibility of generating some income. The latter is invariably

associated with keeping livestock. For poor people livestock is crucial: "die hoofdoel op 'n plaas" (the main aim on a farm).³⁸ If people have a quick debt to settle they can immediately sell off an animal— the easiest and quickest way to convert a farm product into cash. Equally, they find it inconceivable to confine their livestock to the current camps— grazing and browsing in the hills is necessary from time to time when the camps do not provide enough forage. It is particularly in this regard that the Sewefontein community feels threatened by the BMRP's conservation agenda. They worry about losing their hard-earned right to use their land as they wish: "Ons vrye reg gaan bekrimp raak" (our rights will be restricted), and about being squeezed out by conservation as the wilderness encroaches on them and their animals. "Hulle vernou ons; ons bergwêreld word verkoop of uitgehuur; ons veeplekke raak beknoppig" (our mountains are being sold or rented; our grazing becomes limited).³⁹

The BMRP sees Sewefontein as an important opportunity to demonstrate how poor people can turn the biodiversity economy to their advantage. The farm itself holds considerable potential for ecotourism: stunning springs, space for a wilderness campsite, buildings suitable for conversion to guest houses. There is ample water to support intensive irrigated agriculture on smaller land areas. But before any of this can happen, the Sewefontein people have more basic problems to resolve. Like many land redistribution projects in South Africa,⁴⁰ the large number of shareholders is the source of problematic group dynamics and continuous conflict over issues such as farm management, payment of wages to members working the farm, who is entitled to live in the existing houses, etc. There is general agreement that



Picture 3. Farm dwellers depend on donkey carts to access their basic supplies. (Courtesy Wilderness Foundation)

the group's size must reduce before any progress can be made in making Sewefontein a viable enterprise, and the PMU has agreed to take a back seat while a process of restructuring gets underway.⁴¹

Analysis and conclusion

The early stage of implementation of the BMRP makes this concluding discussion more speculative than evaluative. At the time of this research, the project was only two years into a twenty-year process. In addition, the plight of farm dwellers is set against a backdrop where many agricultural jobs have been and continue to be lost as a result of wider forces in the agricultural economy unrelated to the conservation agenda now being pursued. Nevertheless, the findings presented here point to some systemic and structural issues that reflect tensions in the BMRP's attempts to reconcile biodiversity conservation with land tenure rights and land-based livelihoods of farm workers and dwellers.

First is the issue of land acquisition by the state as one element in the mega-reserve's expansion strategy. Where this directly results in cessation of

agricultural activity as on Coleske farm, and also Nuwekloof farm where 5 workers lost their jobs in 2003, it introduces the possibility of loss of livelihoods and increased impoverishment of farm dwellers occupying that land. Although purchase of this kind is intended to form only a small part of the overall land consolidation and expansion strategy, it has been the most visible and with visibly negative consequences. This creates a major image problem for the BMRP and its underlying philosophy that conservation be achieved in a manner that is embraced by local communities. Public perceptions are vital to this new approach to conservation. Cases like Coleske and Nuwekloof threaten to undermine its essence by fuelling suspicions that biodiversity conservation leaves poor and landless people worse off.

Second and closely linked to the above, social safeguard policies especially designed to protect poor people against these risks are proving very difficult to implement, for reasons mainly to do with institutional complexity and capacity. Moreover, the fact that neither the community nor the majority of the Baviaanskloof Steering Committee appear to know about the existence of these policies raises questions about openness and transparency. The RPF/PF is arguably the most important policy instrument spelling out the rights of people affected by expansion of the mega-reserve. As long as people at both ends of the power spectrum—the poor whose rights the RPF/PF is designed to protect, and the steering committee responsible for overseeing the project—remain unaware, their ability to realise these rights is seriously undermined. Without adequate measures to ensure

Social safeguard policies especially designed to protect poor people are proving very difficult to implement.

Without adequate measures to ensure

that decision-makers recognise and protect existing rights, they are potentially in jeopardy.

Third, while early speculations suggest that farm dwellers on privately owned farms may not suffer the negative consequences experienced by their compatriots mentioned above, unequal power relations on farms make it hard to see how they might actually benefit from a new biodiversity economy. To overcome this, deeply entrenched attitudes and prejudices on both sides must be addressed. Social relationships on many of South Africa's farms are highly exploitative and unequal, but their persistence cannot be explained simply in terms of farmers' control. It rests also in some measure on farm dwellers' consent— consent which arises from structural conditions such as a deep-rooted culture of paternalism,⁴² and the lack of alternatives available to them. Questions that should be asked are: Who stands to benefit most? How can a social environment be created where farm dwellers can negotiate economic opportunities with their landowners on a more even-handed basis? What is required to create some visible success stories to demonstrate that the possibility of change for them exists? This will not happen by itself. Dedicated capacity is needed to forge a new social accord in the community, giving farm dwellers and other poor and landless people access to entrepreneurial opportunities— for example a micro-enterprise development professional with a social/community development perspective, based in the area and tasked with identifying and developing a number of projects that respond to this urgent need.

Fourth, two aspects of employment impact need careful monitoring over the coming years. One is the levels of

labour absorption in current farming practice versus a biodiversity economy; the other is the different skill profiles the latter requires, and therefore the implications for a potentially changing profile of employees, along lines of class and gender and also, perhaps, race.⁴³ Better-paid and more highly skilled jobs may privilege people who do not bear the brunt of job-shedding in farming. The present study came across a few cases where white middle-class individuals from outside the area were employed in tourism-related functions. While too anecdotal to be conclusive, such cases suggest a need for further scrutiny.

The study reveals that biodiversity conservation may be risky for the rich as well as the poor.

Fifth, the study reveals that biodiversity conservation may be risky for the rich as well as the poor. Expectations that farmers will be prepared to reduce the scale of their farm enterprise in favour of uncertain growth in ecotourism are tempered by the question 'who carries the risk?' In the context of the Baviaanskloof, just what it will take to persuade farmers to change their land use still seems poorly understood.⁴⁴ An approach to conservation that relies on the voluntary participation of private landowners requires greater insight into this question.

Sixth, the claim that agriculture is unlikely to provide the economic boost needed to address unemployment cannot go unchallenged— for it begs the question: what kind of agriculture? Critics of South Africa's land reform programme argue that land reform should include a process of agrarian restructuring that favours smallholder agriculture over the prevailing commercial farming model, if it is to tackle

rampant rural poverty.⁴⁵ International evidence as well as local research suggests that small-scale family type farm models are generally more efficient,

Small-scale family type farm models are generally more efficient, create more on-farm employment, and are more supportive of biodiversity than large-scale mechanised farms.

create more on-farm employment,⁴⁶ and are more supportive of biodiversity⁴⁷ than large-scale mechanised farms. As this study shows, poor rural households seek, first, a secure place to live and land for small-scale production of food and market crops; be-

beyond this, they value land for non-commoditised resources such as grazing, firewood, building and craft materials. In contrast, the state's preference for capital-intensive commercial agriculture— informed by its largely neo-liberal macroeconomic paradigm— tends to undervalue the land uses of the poor. Challenging this paradigm may be beyond the scope of the BMRP, but is central to the issue at hand.

Two observations can be made about the inter-institutional relations that shape the BMRP. One concerns the Baviaanskloof Steering Committee (BSC). Its official mandate is to oversee, advise and facilitate the project,⁴⁸ but in practice it functions more as a public relations forum bringing together a wide range of stakeholders⁴⁹ on a quarterly basis. In itself this is a useful function, but it does tend to obscure where real power and oversight reside and this may compromise accountability, especially in relation to protecting poor people's rights. More broadly, the highly complex institutional arrangements on which this project is built can generate inertia and paralysis, and raise doubts about the viability of con-

serving biodiversity while at the same time delivering social and economic rights to the poor. The aforementioned impasse in implementing social safeguard policies at Coleske farm is an example.

Finally, questions must be raised about the increasingly popular, yet arguably overstated belief that ecotourism can meet the challenge of reconciling biodiversity conservation, rural livelihoods and land rights. Although ecotourism is not the only element of the biodiversity economy being promoted by the BMRP, it appears to take centre stage. But stories of successful ecotourism ventures that involve poor rural people are scarce in southern Africa,⁵⁰ and this applies equally to poor people in land reform projects.⁵¹ For the Sewefontein community, ecotourism should be seen as only one livelihood possibility among others available to them. It may contribute to farm income without being the major focus of income-generating activities. Government and conservation agencies should aim to provide support that can enhance multiple livelihood strategies.

Ecotourism should be seen as only one livelihood possibility among others available to them.

This paper has identified systemic and structural tensions in current attempts to reconcile biodiversity conservation and farm dwellers' rights and interests in the Baviaanskloof. There are unresolved critical questions about conservation-human rights connections, including those dealing with procedural rights (as with the role of the steering committee and the application of social safeguards) and with certain 'negative' rights (where communities have lost livelihoods and access to natural resources). The road ahead for the BMRP is difficult but deserves support.

The broader bioregional strategy for conservation that looks beyond formal protected areas in terms of planning, conservation and economic development is a positive response to much of the criticism that has been levelled against conservation in the past.⁵² But the complexity of the task cannot be underestimated. The Baviaanskloof Mega-Reserve will be an instructive space to watch in the coming years.

Wendy Crane (wendycrane@telkomsa.net) is an independent analyst and consultant in the field of sustainable development. She has worked for over 20 years in the international development arena across Africa and Asia.

Notes

- 1 Sandwith, 2002.
- 2 Wynberg, 2002.
- 3 Republic of South Africa, 1996.
- 4 Centre for Rural Legal Studies, 2003.
- 5 Crane, 2006; Hall, 2004a, 2004b; Wegerif and Russell, 2005.
- 6 The term 'mega' is used because the area must be large enough to accommodate animal movements and gene flow over large distances, as well as encompass a gradient of habitat types.
- 7 South Africa's Cape Floristic Region is one of the world's top 25 biodiversity hotspots (see Myers *et al.*, 2000).
- 8 C.A.P.E. is a multi-stakeholder initiative between government, civil society and the private sector to coordinate and maximize efforts to conserve the Cape Floristic Region.
- 9 See Wegerif and Russell, 2005.
- 10 Findings of this research were originally presented in a more extensive article published in Geoforum (see Crane, 2006).
- 11 Boshoff, 2005.
- 12 Clark, 1998.
- 13 Myers *et al.*, 2000.
- 14 Boshoff *et al.*, 2000.
- 15 *Ibid.*
- 16 *Ibid.*
- 17 See Clark, 1998.
- 18 See Roodt, 2003.
- 19 Baviaanskloof Mega-Reserve Project, 2004a.
- 20 See Baviaanskloof Mega-Reserve Project, 2004a; GEF, 2004.
- 21 The concept of a biodiversity economy is one where local economic development does not harm biodiversity, and where biodiversity resources are developed into economic opportunities.
- 22 Baviaanskloof Mega-Reserve Project, 2004b.
- 23 Cape Action for People and Environment, 2003.
- 24 ESTA is the national law enacted to secure farm dwellers' tenure rights and to prevent arbitrary evictions (see Department of Land Affairs, 1997), but is widely seen as providing relatively weak protection and notoriously difficult to enforce (see Hall, 2004b).
- 25 Boshoff, 2005.
- 26 Interview with farm dwellers, August 2005.
- 27 *Ibid.*
- 28 Interviews with Matthew Norval, Project Manager, and Eleanor McGregor, Community Liaison Manager (PMU), August 2005.
- 29 Interview with Trevor Beeton, Department of Land Affairs, August 2005.
- 30 Cape Action for People and Environment, 2003:38-39.
- 31 Interview with farm dwellers, August 2005.
- 32 Interviews with Matthew Norval, Project Manager, and Andrew Skowno, Conservation Planner (PMU), August 2005.
- 33 Interview with Chris Lamprecht, Chairman Baviaanskloof Farmers Association, August 2005.
- 34 Interview with Thys Cilliers, landowner and CEO of Baviaanskloof Mountain Passes Tours, August 2005.
- 35 Interview with farm dwellers, August 2005.
- 36 *Ibid.*
- 37 Interestingly, other landowners in the Baviaanskloof view the Sewefontein Trust as their own insurance against land expropriation for conservation purposes. (Interviews with Skillie Rautenbach, Department of Agriculture, July 2005; and Chris Lamprecht, Chairman Baviaanskloof Farmers Association, August 2005)
- 38 Interview with members of the Sewefontein Trust Committee, August 2005.
- 39 *Ibid.*
- 40 Hall, 2004b.
- 41 To this end, a Steering Committee has been formed involving *inter alia* Trust officials, Department of Agriculture, Department of Land Affairs, and Southern Cape Land Committee.
- 42 This culture is rooted in colonial tradition which described the farm as a family-like community and emphasised the master's (often despotic) power over the 'child', his servant. For a discussion of this culture of paternalism see Du Toit, 1996.
- 43 I am grateful to Ruth Hall for pointing out this issue.
- 44 Interview with Mandy Barnett, Programme Developer, C.A.P.E., September 2005.
- 45 *E.g.* Hall, 2004b; Kepe and Cousins, 2002.
- 46 Van Zyl, 1996.
- 47 Pretty, 1995.
- 48 Baviaanskloof Mega-Reserve Project, 2003.
- 49 Members include local and provincial government agencies, NGOs, organised agriculture, academic institutions. BSC meetings are sometimes attended by landowners and other mem-

- bers of the Baviaanskloof communities.
50 Kepe *et al.*, 2005.
51 See Magome and Murombedzi, 2003.
52 Kepe *et al.*, 2005.

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The 2006 Recognition of Forest Rights Act, India— a tool to support conservation through recognition of human rights

Pradeep Kumar and P. Senthil Kumar

Abstract. In India, the tribes and other forest dwellers (TFD) have been residing on their ancestral lands from time immemorial. Among the problems they faced are the inadequate recognition of their land rights during the forest consolidation process, the non-conferment of ownership rights over minor forest products, and the limited access to the benefits of development schemes. In order to solve these problems, the Government of India has recently enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act. This Act recognizes several rights of the forest dwellers, while maintaining a clear conservation vision. This paper analyses the provisions of the Act in relation to rights, with special reference to human rights, and discusses how such rights can contribute to conservation. The paper also presents perceived threats to conservation expected to arise from implementation of the Act. The Act is in its very early implementation stage and its full implications in terms of conservation and livelihoods are not yet clear. It is argued, however, that the Act can serve as a tool to develop pathways for forest dwellers' engagement in conservation, while simultaneously promoting human rights.

In India, tribal people and other forest dwellers (TFD) are integral to the very survival and sustainability of forest ecosystems, including wildlife. However, historically TFD rights have not been adequately recognized,¹ resulting in protracted injustices, including:

► ***inadequate recognition of TFD land rights during the process of forest consolidation.*** The traditional rights of TFD on forest lands were not adequately recognized and recorded in the process of consolidation of state forests, either during the colonial period or in independent India. As an example, many TFD still do not have a homestead or address of their own. They are people without legal identities, erroneously looked upon as encroachers on forest lands. The threat of eviction looms large in their psyche. Insecurity of tenure and fear of eviction from the lands where they have

lived and thrived for generations are perhaps the main reasons why tribal communities feel emotionally as well as physically alienated from forest conservation.

► ***lack of confirmation of ownership rights over minor forest products.*** An emphasis on production forestry has somehow left the interests of the tribal communities in minor forest products (MFP) unrecognized.

There has been no confirmation of ownership rights over MFP to forest dwellers. The collection and trade of most high value MFP is largely monopolized by the Corporations of the Forest Departments of various states, with TFD employed only as wage earners collecting MFP for the state.

The Act is a valiant attempt to balance forest dwellers' rights with economic and environmental objectives.



Picture 1. Forest dwellers are heavily dependent on forest products for their livelihood. (Courtesy Pradeep Kumar)

► **benefits of development schemes denied.** Mainly due to their lack of clear land title, TFD are threatened with displacement resulting from demands for bringing more land under protected area (PA) status. Further, the land under their occupation is treated as illegal and therefore not serviced by development interventions for drinking water supply, health facilities or electricity.

It was against this background that *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act* was passed by the Indian Parliament in 2006 after several

months of acrimonious debate. The Act is a valiant attempt to balance forest dwellers' rights with economic and environmental objectives, and seeks answers to some key questions, such as "Who can live in forested areas? What rights do forest dwellers have over lands they have lived on for generations? Can they be relocated, and if so, on what justifications and under what terms?"

Overview of the provisions of the Act

The main rights recognized for the tribes and forest dwellers by the Act are:

- (i) right to hold and live in forest land, under individual or common occupation, for habitation or cultivation for livelihood—specifically, scheduled tribes and other traditional forest dwellers living in forests for three generations will be entitled to a maximum of four hectares of land or area [per individual, family or community, as applicable] if that land has been under occupation prior to December 2005 (for scheduled tribes), or at least for 3 generations (75 years) (for other forest-dwellers).
To ensure conservation, the rights holders are empowered to protect catchment areas, water sources and other ecologically-sensitive areas.
- (ii) right to access, use, or dispose of minor forest products, including through sale;
- (iii) other rights of use or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

- (iv) right of habitat and habitation for primitive tribal groups and pre-agricultural communities;
- (v) right of access to biodiversity, and community intellectual property rights over traditional knowledge related to forest biodiversity and cultural diversity;
- (vi) right to protect, regenerate, conserve or manage any community forest resource that TFD have traditionally protected and conserved;
- (vii) any other customary rights, excluding hunting.

To ensure conservation, the rightsholders are empowered to protect catchment areas, water sources and other ecologically-sensitive areas, as well as their cultural and natural heritage. Even though they will enjoy their customary rights, those now exclude hunting, trapping or extracting body parts of any wild animal. There are regulatory provisions to ensure sustainable practices and promote conservation in critical wildlife habitats, and these are being framed as further rules under the Act.

How the Act simultaneously addresses human rights and conservation

The present Act fulfils a need for comprehensive legislation giving due

Only an inclusive forest management system can secure the active participation of forest dwellers in conservation.

recognition to the forest rights of tribal communities and forest dwellers. More than 40 million of India's most impoverished and marginalized people live in the country's forests, including

tiger reserves, wildlife sanctuaries and national parks. For years they have

been neglected by the government and left to fend for themselves. For example, the pastoral Maldhari community in Gir Wildlife Sanctuary in Western India and the pastoral Gujjar community in Rajaji National Park in Northern India live simple lives in small mud houses hidden deep in the forests. They have no access to electricity, schools or health care. Their basis of livelihood is milk from their cattle, vegetables, collecting honey, and trading their produce in the local market for items like food grains. Some of them are illiterate and unable to count or use money.

Some conservation activists see it as essential for conservation success that forest dwellers be involved in conservation efforts and given a sense of ownership and responsibility over the forests. There is a symbiotic relationship between tribal people and conservation. The natural resource base forms the very foundation of their life support system. It is not only for food and water that they depend on forest—their customs and lifestyle are integrally interwoven with the forests. Only an inclusive forest management system can secure the active participation of forest dwellers in conservation.

It is natural for any human to have an attachment to his or her land, but in the absence of tenure rights it can hardly be expected that people develop a sense of ownership to forest land and, consequently, care about forest conservation. Insecurity of tenure forces people to think on short-term horizons and focus on immediate and exploitative benefits. Once the tribal people secure their own land, they will have the incentives to protect the forests in the vicinity. The realization that they have a permanent

stake in the land allocated to them and the adjoining forest land, will create a lasting stake in its conservation² and dismantle the psychological barrier created by the perception of conservation as something imposed by outsiders ("their land, their rule"). As shown by the work of Kalpavriksh and other Indian activist groups, there are thousands of sites where communities have demonstrated the ability and willingness to protect forests and wildlife. However, they did not have the legal authority to counter threats and sustain their conservation results in such areas. The present Act finally provides backing for such initiatives.³

Perceived threats to conservation and the situation of tribal people and other forest dwellers

The main challenge of the Act is to harmonize the potentially conflicting interests of recognizing forest rights of TFD, and protecting forests and wildlife resources. Unfortunately, the Act has, since its inception, generated a sharp division of opinions on political and ecological lines. For instance, some conservationists and journalists have commented that the Act will destroy "what remains of India's forests". Some of the main concerns expressed are enumerated below.

► There are no reliable estimates of the likely number of families eligible for the forest land rights that will be granted by the Act, therefore it is not known if the number of rights-holders could be a significant risk to existing forest cover. If too many people are allowed to live in the forest, they will degrade the habitat as their cattle graze in direct competition with prey like deer.^d Certain species such as tigers, rhinos, and elephants are vulnerable to pres-

ures from human land use.^e These species are typically large-bodied, slow-breeding, and need large areas of habitat and vast resources for survival. Increased human habitation in forests may cause depletion of forest cover, resulting in significant ecological costs.

► While the Act does not allow cultivation of previously unoccupied forest land, if a family is allowed to use an occupied four hectare patch for cultivation, it is certain that the whole patch will be used for cultivation only, and that all forest-based requirements will be met from adjoining forests. One cannot imagine that just at the boundary of cultivated land there will be dense forest.

The main challenge of the Act is to harmonize the potentially conflicting interests of recognizing the forest rights of tribals and other forest dwellers while protecting forests and wildlife resources.

There will be a gradient of degradation from the edge of the cultivated land to some point inside the forest. The whole forest may be dotted with cleared patches and surrounding degraded forest.⁶

► The argument that the tribal people have been living in the forest for a very long time without degrading it really does not hold true any longer. The population of tribal people has increased and so have the impacts of their way of living. Many tribal people have been influenced by culture outside their own traditions. The total pressure on the forest is much higher than it was in the past.⁷

► The Act has vested land rights not only with the tribal people, but also with other forest-dwelling communi-



Picture 2. Some encroachments, once legalized, may pose danger to the health of the forests. (Courtesy Pradeep Kumar)

ties. Politicians were unanimous in demanding the withdrawal of cases registered against forest-dwellers by forest officials. This was tantamount to legalizing encroachment. Further encroachment in the forests may be encouraged by the expectation that it will be regularized eventually by similar legislation in the future.

- ▶ The definition of "traditional forest dwellers" in the Act provides scope for State Governments, land mafia and local elites to exploit the situation, which could in turn create or exacerbate local conflicts. There are many situations, for instance in the north-eastern States of India, in which individuals and communities from outside a region have occupied forest land recently, at the expense of the local tribal or other traditional forest-dwelling communities.⁸
- ▶ Despite the Act, large-scale relocation of tribal communities from core areas of National Parks and Sanctuaries may take place.⁹ Given poor track record in relocating people affected by development projects, such as the Narmada Dam,¹⁰ or from sanctuaries such as Sariska and Gir,¹¹ the possibility of large-scale relocation from core areas raises the spectre of loss of liveli-

hood and hardship for TFD.

In spite of the above concerns, many people seem to believe that the positive aspects of the Act outweigh the concerns. In other words, the majority of commentators believe that this Act is a great beginning to link human rights with sustainable conservation in India.

Conclusion

There is no doubt that legislation was necessary, in India, to remedy the historical injustices against tribal people. Yet, the public debate revealed a sharp division of opinions: some hard-core conservationists have foretold a disastrous ecological future after the Act, while their human rights counterparts have argued that the Act should have included even stronger provisions for land rights. In the debate, the voices of several moderate conservation and human rights groups have been drowned out. But their message is nevertheless critical: we need to protect forests to protect livelihoods, and we need to establish clear livelihood rights to create a long-term stake in conservation. As *The Telegraph*, a respected Indian newspaper, puts it: where human rights, human and animal coexistence and the conservation of nature are concerned, "legislation is only a beginning for achieving such a difficult and delicate balance. This is the first proper attempt to implement a complicated issue of natural justice— the conferring or restitution of land and produce rights for forest dwellers".¹² The authors of this paper agree and believe that the present Act can open new pathways to engage forest dwellers in conservation while ensuring the promotion of human rights.

Many people seem to believe that the positive aspects of the Act outweigh the concerns.

Pradeep Kumar (pradeepifs@hotmail.com) is an Officer of the Indian Forest Service with responsibility for forestry and environment-related issues. Currently, he is posted as Conservator of Forests in the Government of Sikkim. **P. Senthil Kumar** (senthilkumarifs@yahoo.com) is also a member of Indian Forest Service and currently posted as Divisional Forest Officer in the Land Use and Environment Division of the Government of Sikkim. He is responsible for land use and environment-related issues.

Notes

- 1 Government of India, 2005.
- 2 In the opinion of authors of this paper.
- 3 Kalpavriksh, 2006.
- 4 Pooja, 2007.
- 5 Madhusudan, 2005.
- 6 General impression of the authors of this paper.
- 7 General impression of the authors of this paper.
- 8 Madhusudan, 2005.
- 9 Core Areas: National Parks and Sanctuaries are required to keep certain areas inviolate for purposes of wildlife conservation. The areas may be

determined by the Ministry of the Central Government dealing with Environment and Forests.

10 Levien, 2004.

11 Shahabuddin *et al.*, 2005.

12 Daily Telegraph, December 2006.

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Reconocimiento y protección de los derechos humanos de los pescadores artesanales— Las áreas marino-comunitarias una alternativa?

Patricia Madrigal Cordero y Vivienne Solís Rivera

Abstract. This article analyzes the legal viability of the recognition of a marine community conserved area. After reflecting generally on legal frameworks to jointly address human rights and conservation, the article proposes some concepts for effective recognition of artisanal fishers' rights. We then review the process developed in Tárcoles, an artisanal fishing community on the Central Pacific Coast of Costa Rica. Working in collaboration, Coope Solidar R.L. (a cooperative for professional services for social solidarity) and Coope Tárcoles R.L. (an artisanal fishers cooperative) facilitated creation of a community area for responsible fishing. The objective was to secure traditional fishing rights and ensure the sustainability of artisanal fishing. This activity demonstrates that artisanal fishing is compatible with marine conservation by integrating conservation and development objectives and taking an ecosystem approach that could reduce poverty in coastal communities and enhance food security.

Resumen. Este artículo analiza la viabilidad jurídica del reconocimiento de un área de conser-

vación comunitaria en el mar. Partiendo de una reflexión sobre los marcos jurídicos en materia de derechos humanos y conservación, plantea algunas ideas para el reconocimiento de los derechos de pesca artesanal. Como referencia se menciona el proceso que se ha desarrollado en Tárcoles, una comunidad de pescadores artesanales ubicada en el Pacífico Central de Costa Rica, en donde en el marco de la relación de asociatividad entre Coope SoliDar R.L.,¹ una cooperativa de servicios profesionales para la solidaridad social, y Coope Tárcoles R.L., una cooperativa de pescadores artesanales, se ha declarado un área comunitaria para la pesca responsable, con el objetivo de que se reconozcan sus derechos tradicionales de pesca, procurando la sostenibilidad de la pesca artesanal como un oficio que puede ser orientado hacia la conservación marina y cultural. Este planteamiento intenta reconocer a la pesca artesanal como un sector más cercano hacia la conservación marina, que integra objetivos de conservación y desarrollo desde un enfoque ecosistémico que podría reducir la pobreza de las comunidades costeras y fortalecer su seguridad alimentaria.

Las áreas de conservación comunitaria: un reconocimiento a procesos locales de conservación

Las áreas de conservación comunitaria (ACC) son una forma de entender, conceptualizar y justificar, situaciones que

Esta dignidad debe ser reconocida no sólo a los individuos sino también a los colectivos, a las comunidades, a los pueblos y a las organizaciones

se han dado a lo largo del tiempo en todo el mundo. No es de extrañar entonces, que desde una perspectiva jurídica su justificación se encuentre no solamente en los marcos jurídicos de la conservación sino también en los de derechos humanos, tanto a nivel internacional como a

nivel nacional. Las ACC no sólo reconocen que es importante conservar la diversidad biológica sino el acceso y la distribución equitativa de estos recursos. Su conceptualización integra conservación pero también desarrollo, calidad de vida y/o derechos humanos. Su fundamento reside en principios hartamente pregonados pero difícilmente aceptados, de que el ser humano tiene como tal una dignidad que debe ser reconocida, un libre albedrío que le permite tomar decisiones y una libertad que exige que éstas sean reconocidas. Esta dignidad debe ser reconocida no sólo a los individuos sino

también a los colectivos, a las comunidades, a los pueblos y a las organizaciones.

El V Congreso Mundial de Parques Nacionales² definió las Áreas Conservadas por Comunidades como aquellos "ecosistemas naturales y modificados que contienen una biodiversidad importante, prestan servicios ecológicos y poseen valores culturales, y cuya conservación está a cargo de com-

unidades indígenas y locales en el marco del derecho consuetudinario o por otros medios efectivos" (WPC Rec 5.26). Un Área de Conservación Comunitaria no es una categoría de manejo, es el reconocimiento de una forma de gobernanza,³ el reconocimiento de la toma de de-

Un Área de Conservación Comunitaria no es una categoría de manejo, es el reconocimiento de una forma de gobernanza, el reconocimiento de la toma de decisiones en un espacio geográfico por parte de comunidades locales o pueblos indígenas.

cisiones en un espacio geográfico por parte de comunidades locales o pueblos indígenas. Esta forma de gobernanza se encuentra reconocida por el Convenio de Diversidad Biológica (CBD) cuya Decisión VII/28 de la VIII Conferencia de las Partes contiene el Plan de Trabajo para

Áreas Protegidas.⁴ Dicho plan recomienda a los Estados signatarios revisar sus sistemas de áreas protegidas de acuerdo a los tipos de gobernanza incluyendo aquella desarrollada por comunidades locales o pueblos indígenas.

Asimismo, el Plan de Trabajo reconoce un enfoque de equidad y participación para las áreas protegidas que han ampliado su espectro para añadir a los objetivos de conservación el reconocimiento de otras formas de gestión y gobernanza. Esta inclusión no es más que el reconocimiento de los derechos humanos de las poblaciones usuarias. Por otro lado, en este plan se reconoce que el porcentaje de áreas protegidas en el mundo ha aumentado, pero que no han incluido los ecosistemas más representativos, debilidad que se vuelve más evidente sobre todo en ambientes marinos.

El elemento 2 del programa "Gobernabilidad, participación, equidad y participación en los beneficios" incluye en el objetivo 2.1 la necesidad de promover la equidad y la participación en los beneficios. Su meta es establecer para el año 2008 mecanismos de participación equitativa tanto en los costos como en



Foto 1. Asociados de Coope Tárcoles R.L. con el apoyo de Coope SoliDar R.L. realizando la zonificación participativa del área comunitaria de pesca responsable en septiembre 2006. (Cortesía Coope SoliDar R.L.)

los beneficios derivados de la creación y administración de áreas protegidas. Entre otras recomendaciones sugiere: "2.1.2. Reconocer y promover el conjunto más amplio de los tipos de gobernabilidad de las áreas protegidas en relación con su potencial de logro de las metas de conservación de conformidad con el Convenio, en lo que pudieran incluirse las áreas conservadas por comunidades indígenas y locales".

Respaldo jurídico para la propuesta de un Área Comunitaria para la Pesca Responsable

El reconocimiento de los derechos de pesca artesanal, enfrenta serias limitaciones en los países que siguen el sistema romano francés, que parte de que el mar y la zona costera es un bien de dominio público. La forma tradicional en que se ha propuesto la utilización de estos bienes públicos o demaniales ha sido a través del otorgamiento de actos administrativos como las concesiones o permisos de uso. La gran limitación de estos instrumentos administrativos de derecho público es que otorgarían derechos exclusivos, o excluyentes de otros actores interesados. Dicho de otra forma, el beneficiario de una concesión adquiere el uso exclusivo sobre el bien que le ha sido otorgado.

El reconocimiento de derechos de pesca artesanal que han existido a lo largo del tiempo proviene por otra parte de una ideología de derechos humanos basados en la solidaridad, o por los derechos de la tercera generación, que implican el goce solidario entre quienes acepten las normas de uso basadas en la lógica-

una ideología de derechos humanos basados en la solidaridad [...] el goce solidario entre quienes acepten las normas de uso basadas en la lógica, la ciencia y la razón

ca, la ciencia y la razón. Tal es el caso de Coope Tárcoles R.L. cuya Asamblea General declara que un área comunitaria para la pesca artesanal responsable es aquella en donde no sólo sus asociados pueden ejercer derechos de pesca artesanal sino todos aquellos pescadores artesanales que se comprometan a realizar una pesca responsable.

Compartir el poder de acceso y uso a estos recursos que pareciera más fácil entregar en forma exclusiva a un actor, enfrenta obstáculos y dificultades conceptuales y metodológicas. No sólo no existen procedimientos específicos sino que además su justificación parte de una integración de principios y valores de la teoría de derechos humanos que todavía muchos juristas consideran "derecho natural". Lo cierto es que alrededor del mundo, se está solicitando que el sector pesquero artesanal sea protegido en el acceso a los recursos pesqueros como una forma de reducción de la pobreza y de mantenimiento de la soberanía alimentaria. Este reclamo, desde un punto de vista de derechos humanos, no es otra cosa que un reconocimiento de los derechos económicos sociales y culturales de los pescadores artesanales que a lo largo de las décadas han quedado rezagados.

Nomura afirma recientemente que "de acuerdo con las políticas pesqueras y los enfoques frente a la gestión, incluyendo los derechos de pesca, deben adaptarse a cada contexto concreto del país o de la zona en cuestión en función de su pesquería, su estructura social, su cultura local, etc. Actualmente se asignan derechos de pesca en el marco de programas a largo plazo como el sistema de desarrollo comunitario que funcionan en comunidades pesqueras del mar de Bering; los varios sistemas que derechos de uso territorial en la pesca (en inglés TURF) vigentes en Japón, Filipinas,

Samoa y Fiyi; las áreas de manejo o explotación de recursos bénticos chilenas o las unidades de gestión de playa que operan en Uganda, Tanzania y Kenia".⁵

Problemática del sector pesquero artesanal: derechos económicos, sociales y culturales que no han sido garantizados

Desde el año 2001 Coope SoliDar R.L. ha promovido espacios de intercambio y discusión con pescadores artesanales, no solo nacionales, sino también de las islas Galápagos, en Ecuador, y de Panamá. Como resultado de ese proceso se han identificado los asuntos que más preocupan a este sector, los cuales revelan claramente que los derechos económicos, sociales y culturales no han sido garantizados por el Gobierno y que existen grandes obstáculos para que el sector pesquero artesanal disfrute del goce y ejercicio de este tipo de derechos. Los principales problemas identificados por el sector pesquero artesanal que violan el ejercicio y goce de sus derechos son:⁶

- ▶ derecho a la organización;
- ▶ derecho a la educación, el trabajo y la seguridad social;
- ▶ derecho a un trabajo digno;
- ▶ derechos ambientales y de acceso a los recursos naturales.

1. Derecho a la organización

Los pescadores artesanales perciben que dentro de su gremio es difícil organizarse, trabajar por metas comunes y enfrentar juntos los obstáculos que se les presentan desde afuera. Datos suministrados por el Instituto Costarricense de Pesca y Acuicultura, INCOPECA, dan cuenta de la diversidad de actores que se agrupan alrededor de la actividad pesquera. Esta diversidad queda representada en la tabla 2, donde se clasifica al sector por tipo de organización.⁷

Tabla 1. Sector pesquero nacional: tipología de actores según modelo de organización⁸
(Fuente: Lic. Luis Castro, Dirección de Extensión, INCOPECSA).

Asociaciones de pescadores	66
Asociaciones de pescadores artesanales	25
Comités locales de pescadores (COLOPES)	14
Asociaciones de buzos	3
Cámaras	8
Cooperativas	7
Federaciones	3
Sindicatos	2
Uniones	2

Como se observa en la tabla, el pescador artesanal cuenta con estructuras organizativas como asociaciones, Comités Locales de Pesca (COLOPES) y cooperativas. Estas estructuras organizativas han sido promovidas por el Estado o a través de la Cooperación Internacional, pero sin el apoyo y seguimiento necesario para su fortalecimiento. Esas organizaciones muestran grandes debilidades de gestión administrativa las cuales muchas veces llevan a su desaparición, este elemento está íntimamente relacionado con los problemas sociales que enfrenta el sector. Asimismo, el derecho a la organización se ve afectado directamente por la obtención de una remuneración inferior a los salarios mínimos y por la falta del derecho a la educación.

2. Derecho a la educación, el trabajo y la seguridad social

Estimaciones realizadas por el *Informe Estado de la Nación* para el año 2005,

con base en la Encuesta de Hogares de Propósitos Múltiples del INEC, ponen de manifiesto el deterioro socioeconómico del sector pesquero artesanal y la necesidad de articular una estrategia interinstitucional para abordar la complejidad de los problemas de este sector tan importante para el desarrollo del país. El ingreso per cápita promedio del hogar es de ¢66.685,7 por mes. Para el 2005, el Ministerio de Trabajo definió para ocupaciones tipificadas como no calificadas un salario mínimo de ¢4.188 por jornada diaria, equivalente a ¢125.640 mensuales.⁹ Esto significa que, según los datos oficiales, el ingreso económico de las personas que se dedican a la pesca es inferior al salario mínimo. Por otro lado, la escolaridad promedio de los pescadores es de 5,7 años, como puede verse en la tabla 3, también elaborada por el Programa Estado de la Nación a partir de la Encuesta de Hogares de Propósitos Múltiples.

Tabla 2. Nivel de educación pescadores (Fuente: Programa Estado de la Nación, 2006)

Nivel de educación	2001	%	2005	%
Primaria incompleta o menos	2.963	39,1	2.660	28,0
Primaria completa	2.853	37,7	3.309	34,9
Secundaria incomplete	957	12,6	1.845	19,5
Secundaria completa o más	733	9,7	1.425	15,0
Ignorados	67	0,9	246	2,6
Años de escolaridad promedio	5,7		6,7	

Ambos indicadores, educación e ingreso, revelan la precariedad del sector pesquero artesanal. Debe agregarse que el sistema de seguridad social hasta hace muy poco ha reconocido el derecho de los pescadores artesanales a una pensión por vejez, incapacidad o muerte. Es frecuente observar en las comunidades costeras personas mayores de 60 años que todavía se dedican a la pesca porque no tienen otra fuente de ingresos o que se desempeñan en otras labores relacionadas. En consecuencia, es posible afirmar que los derechos sociales en cuanto respecta al menos al trabajo, la educación y la seguridad social, permanecen en un estado de declaración formal en lo que al sector pesquero artesanal se refiere.

3. Derecho a un trabajo digno.

La realidad antes descrita, unida a la disminución de las capturas y de las áreas donde se puede pescar, es lo que despierta la inquietud de los pescadores

El derecho a un ambiente sano y ecológicamente equilibrado se ve seriamente limitado al permitir el Estado la utilización de artes de pesca que dañan el ecosistema marino.

por la búsqueda de nuevas opciones socioproductivas. Algunas comunidades pesqueras han buscado alternativas en el turismo o en proyectos de acuicultura. Sin embargo, preocupa que estas actividades puedan traer pérdida de valores o crear expectativas que no necesariamente serán satisfechas. Se reconoce que si no existen formas para distribuir los beneficios que genera el turismo, éstos no llegan a las comunidades pesqueras. Los proyectos de acuicultura que desarrollan algunas comunidades pesqueras están en una fase experimental, requieren asistencia técnica y aún les falta llegar a una etapa de distribución comercial

que pueda ser replicada sin riesgo por otros grupos.

La apertura de espacios de reflexión al interior del sector pesquero permitiría que se analicen, sistematicen y compartan las lecciones aprendidas de las opciones socioproductivas que se promueven, siempre y cuando se parta del respeto al ejercicio de un oficio digno como lo es la pesca artesanal y no de la necesidad de que los pescadores se dediquen a otro tipo de oficios. Como lo establece el Código de Pesca Responsable de la FAO, la pesca artesanal brinda empleos, seguridad alimentaria e ingresos para un país y el Gobierno debe establecer las políticas, estrategias y programas necesarios para su mantenimiento.

4. Derechos ambientales y de acceso a los recursos naturales

En todas las entrevistas, visitas e intercambios realizados, los pescadores

artesanales mencionaron el impacto de las redes de arrastre sobre su actividad. Para ellos, la responsabilidad por la degradación ambiental y la disminución de la captura es en gran medida atribuible a los barcos camaroneros.

En todas las entrevistas, visitas e intercambios realizados, los pescadores artesanales mencionaron el impacto de las redes de arrastre sobre su actividad.

Esta situación afecta también las artes de pesca, cuando los rastros se llevan los trasmallos. Algunas embarcaciones asumen los costos de estos daños. No obstante, son los camaroneros quienes proporcionan la carnada para la pesca artesanal y existen relaciones entre ambos grupos.

El derecho a un ambiente sano y ecológicamente equilibrado se ve seriamente limitado al permitir el Estado la utilización de artes de pesca que dañan el

ecosistema marino. Paradójicamente, al tratar de identificar las amenazas para la conservación marina se señala al sector pesquero, sin establecer las diferencias necesarias que eviten las asimetrías en la distribución de la responsabilidad. Otro elemento que hace aún más difícil esta realidad es la marginalidad jurídica del sector. Las comunidades pesqueras están asentadas en la zona marítimo-terrestre y por lo general sus pobladores no cuentan con títulos de propiedad del lugar donde viven y trabajan. Por otra parte, la gran mayoría de ellos no tiene licencia de pesca.

En los últimos años, el desarrollo turístico y de bienes raíces ha aumentado la plusvalía de propiedades ubicadas en áreas costeras. Esto ha motivado un mayor interés de las entidades estatales en controlar el uso de las zonas públicas, lo que se ha traducido en una política de desalojos que afecta seriamente a los grupos pesqueros. Así lo han señalado, por ejemplo, los miembros de la Asociación de Pescadores de Zancudo, ubicado en el Pacífico Sur de Costa Rica, que se han organizado para enfrentar esta situación. La utilización de manglares, bienes públicos, también está provocando graves problemas entre usuarios como los piangüeros, que ahora requieren un permiso de extracción emitido por el Ministerio de Ambiente y Energía (MINAE), para lo cual se requiere un plan de manejo.

El establecimiento de áreas marinas protegidas (AMP) en algunos casos supone la reducción de las áreas de pesca, los pescadores se quejan de que no se les ha dado la debida participación en el proceso tendiente a zonificar y delimitar las áreas de pesca y de protección. En el Parque Nacional Marino Ballena, Pacífico Sur de Costa Rica, los pescadores aceptaron la creación



Foto 2. Asociados de Coope Tárcoles R.L. con el apoyo de Coope SoliDar R.L. realizando la zonificación participativa del área comunitaria de pesca responsable en septiembre 2006. (Cortesía Coope SoliDar R.L.)

del área bajo la creencia de que solo se restringiría la pesca de arrastre en sus aguas y que ellos podrían desarrollar su actividad de una mejor forma. Sin embargo, a la postre la categoría de manejo de parque nacional generó conflicto, pues limita el ejercicio de la pesca en todas sus modalidades, incluyendo la artesanal.

En otras áreas protegidas, como en Guanacaste, el conflicto ha llevado a presentar pliegos de peticiones al gobierno y a plantear una reforma al artículo 9 de la Ley de Pesca y Acuicultura, para que sea el plan de manejo el que defina las actividades que se pueden realizar en las áreas protegidas marinas. Además se solicitó mayor participación en la elaboración de ese plan y, sobre todo, en la zonificación. El sector considera que, en la actualidad, los mejores luga-

... los mejores lugares de pesca se encuentran dentro de un área protegida marina (AMP)... no obstante, los pescadores artesanales ... tienen una actitud positiva frente a las AMP y la pesca responsable

res de pesca se encuentran dentro de un área protegida marina. No obstante lo anterior, los pescadores artesanales con los que se ha trabajado en el marco de este proyecto tienen una actitud positiva frente a las AMP y la pesca responsable.

El anteriormente mencionado Plan de Trabajo para Áreas Protegidas incluye como meta para el 2008 el establecimiento de mecanismos de participación equitativa tanto en los costos como en los beneficios derivados de la creación y administración de áreas protegidas. Esta propuesta para el reconocimiento de un Área Comunitaria Marina para la Pesca Responsable se orienta hacia el cumplimiento concreto de esta meta.

Los derechos a un ambiente sano y ecológicamente equilibrado también deben ser garantizados para el sector pesquero artesanal

En Costa Rica el respaldo legal de las áreas protegidas se encuentra en el capítulo VII de la Ley Orgánica del Ambiente de 1995. Contrariamente a lo que se puede creer por la fama internacional de nuestro país en este campo, lo cierto es que el Sistema de Áreas de Conservación ha funcionado en base a una integración de normas de diferentes leyes y a lineamientos políticos que no encontraron respaldo jurídico como tal, sino hasta la Ley de Biodiversidad en 1998. Las categorías de manejo que la Ley Orgánica del Ambiente (LOA) reconoce son:

- ▶ Reservas forestales
- ▶ Zonas protectoras
- ▶ Parques nacionales
- ▶ Reservas biológicas
- ▶ Refugios nacionales de vida silvestre
- ▶ Humedales
- ▶ Monumentos naturales.

No obstante, el artículo 32 deja abierta la posibilidad de establecer áreas silvestres protegidas según otras categorías de manejo que el Ministerio de Ambiente y Energía (MINAE) reconozca en un futuro. Como parte de los objetivos de las áreas protegidas, reconoce que deben asegurar el uso sostenible de los ecosistemas y sus elementos, fomentado la activa participación de las comunidades vecinas. El capítulo siguiente, número VIII, que trata sobre recursos marinos y costeros, establece que el Ministerio de Ambiente y Energía (MINAE) junto con las instituciones competentes pueden delimitar zonas de protección a determinadas áreas marinas, sujetas a planes de ordenamiento y manejo, a fin de prevenir la degradación de estos ecosistemas. Considerando que uno de los principios que inspiran la Ley Orgánica del Ambiente es el de la utilización racional para el mejoramiento de la calidad de vida de sus habitantes, el establecimiento de estas áreas marinas pueden aceptar una gestión comunitaria de la misma. La Ley de Biodiversidad que fue aprobada tres años después, vino a ratificar lo establecido por la LOA en sus artículos 58, 60 y 61, brindándole además como se dijo anteriormente el marco institucional que había venido funcionando, el Sistema Nacional de Áreas de Conservación.

En 1994, se constituyó el Instituto Costarricense de Pesca y Acuicultura, INCOPECA. Este instituto tiene también dentro de sus atribuciones dictar las medidas tendientes a la conservación, el fomento, el cultivo y el desarrollo de la flora y fauna marinas. Dicho de otra forma, la conservación, el aprovechamiento y el uso sostenible de los recursos biológicos del mar es el ámbito de competencia de esta institución. El otorgamiento de los actos administrativos relacionados con los recursos marinos compete al INCOPECA y el sector que regula es el sector pesquero.

El sector pesquero artesanal, ejerciendo una pesca artesanal responsable puede contribuir con los objetivos de conservación de la diversidad biológica marina.

El reconocimiento de los derechos tradicionales de la pesca artesanal en Tárcoles, y consiguientemente el reconocimiento de la existencia de un área comunitaria para la pesca artesanal, podría ser un insumo para la discusión del Grupo de Trabajo sobre diversidad biológica costera y marina, que ha solicitado información sobre experiencias de manejo integral marino costero con participación comunitaria para próxima reunión del

SBSSTA. Su fundamento se encuentra en el reconocimiento del Estado de los derechos sociales, económicos y culturales del sector pesquero artesanal, el cual para el ejercicio de su oficio, la pesca artesanal, requiere del establecimiento de una estrategia interinstitucional que le reestablezca sus derechos de acceso a los recursos en la zona costera y en la zona marina, de los cuales depende su sobrevivencia económica y cultural. Por otra parte, el sector pesquero artesanal, ejerciendo una pesca artesanal responsable puede contribuir con los objetivos de conservación de la diversidad biológi-



Mapa 1. Ubicación de Tárcoles, Costa Rica.

ca marina.

El área comunitaria de pesca artesanal responsable en Tárcoles puede convertirse en un sitio de observación y aprendizaje sobre la integración de los derechos sociales, económicos, culturales y ambientales que promueve la normativa nacional e internacional. Pero sobre todo, representa una muestra de que aún existen oportunidades para los sectores más marginados.

Caso de Estudio. Tárcoles, un proceso local de conservación marina para la pesca artesanal.

Tárcoles es una comunidad ubicada en el pacífico Central de Costa Rica. La principal fuente de ingresos para sus habitantes ha sido a lo largo de estos años, la pesca artesanal. CoopeTárcoles R.L es una cooperativa que agrupa cerca de 40 pescadores y sus familias y fue constituida hace 20 años. Se dedica a la pesca y distribución de diferentes variedades de pescado mediante la gestión sostenible de los recursos naturales y culturales. A lo largo de los años, Coope Tárcoles R.L. ha sido la fuente principal de empleo en el distrito de Tárcoles, generando ingresos para un 50% de la población, recibiendo pescado tanto para sus asociados como para pescadores no afiliados de Tárcoles y sus alrededores, como Playa Azul y Tarcolitos. A notar que, según el Foro Mundial de Pesca, el pescador no es solamente el que sale en su embarcación a traer el producto, sino que incluye una serie de oficios asociados como los "lujadores" que son aquellos que se encargan de desenredar las líneas después de una jornada de pesca, y que ocupa principalmente a mujeres y jóvenes; a los "encarnadores" quienes preparan las líneas con la carnada; los trabajadores en los Centros de Acopio; transportistas e incluso los administrativos. Coope Tárcoles R.L. ha decidido asumir el liderazgo para conservar la diversidad biológica de los

ecosistemas marinos en donde ha desarrollado la pesca artesanal por más de veinte años, asumiendo también la responsabilidad de su control y gestión para beneficio de la pesca artesanal en general y no sólo para sus asociados.

Desde hace cinco años se desarrolla la relación de asociatividad entre Coope SoliDar R.L. y Coope Tárcoles R.L. que espera proponer soluciones y alternativas.¹⁰ A fines de noviembre del 2004 fue aprobado unánimemente en Asamblea General el primer instrumento voluntario desde el sector pesquero artesanal, el Código de Pesca Responsable de Coope Tárcoles R.L.¹¹ Se han también desarrollado diferentes acciones, como la elaboración y ejecución de un Plan de Gestión Ambiental de la Planta, el cual ha sido reconocido con el Premio a la Innovación Tecnológica que otorga la Comisión Centroamericana de Ambiente y Desarrollo (CCAD) 2006. Desde mediados del 2005 se está llevando una Tabla de Pesca que recoge la información de las capturas diarias, el esfuerzo pesquero y los principales lugares de pesca, información que ha apoyado la toma de decisiones como la solicitud al INCOPECSA para monitorear la captura de la raya o la necesidad de realizar investigación participativa sobre la langosta en el Pacífico. Continuando con los avances para desarrollar una pesca responsable, la Asamblea General de Coope Tárcoles R.L. del 12 de junio del 2005,¹² declaró el establecimiento para un Área Comunitaria Marina para la Pesca Responsable. Esta iniciativa se concibe como un proceso en construcción, en donde se solicita el acompañamiento a las instituciones competentes y a todos los sectores interesados.

El Concejo Municipal de Garabito, Gobierno Local de la Zona, en sesión ordinaria número 24 del pasado 18 de octubre del 2006, declaró al Distrito de Tárcoles como "*Zona de Pesca Artesanal Responsable*"; este reconocimiento se entregó en las propias instalaciones de CoopeTárcoles R.L. en una sesión extraordinaria del Concejo Municipal de Garabito el 4 de noviembre del 2006, reconociendo los derechos tradicionales de pesca en esta área. El Área Comunitaria Marina para la Pesca Responsable que se propone pretende reconocer la importancia de la pesca artesanal como una actividad económica relevante para la creación de empleo, seguridad alimentaria y la erradicación de la pobreza de las poblaciones costeras; conservar los recursos marinos de la zona y reconocer el aporte a la conservación biodiversidad marina que brindan los pescadores artesanales de Coope Tárcoles R.L. Se está trabajando en el proceso de zonificación participativa con el conocimiento de los pescadores asociados; y un Reglamento de Uso con las medidas necesarias para la conservación de la diversidad biológica marina en esta área: artes de pesca, estacionalidad de la captura de ciertas especies, mejores prácticas pesqueras. Coope Tárcoles R.L. ha solicitado a las autoridades gubernamentales que se unan en su esfuerzo haciendo lo que por ley les compete,

Patricia Madrigal Cordero (patmadri@racsa.co.cr) es abogada, especialista en derecho ambiental de la Universidad de Costa Rica, y candidata al Doctorado en Derecho Ambiental de Alicante, España. Es miembro del Consejo Internacional de Derecho Ambiental (ICEL), de la Comisión de Derecho Ambiental (CEL) y la Comisión sobre Política Ambiental, Económica y Social (CEESP) de la UICN, y colaboradora regional del Anuario de Derecho Internacional Ambiental, Oxford Press. Actualmente es gerente de la Cooperativa Autogestionaria de Servicios Profesionales para la Solidaridad Social, Coopesolidar R.L. **Vivienne Solís Rivera** (vsolis@coopsolidar.org) es bióloga graduada de la Universidad de Costa Rica, con una maestría en Ecología de la Universidad de Lawrence, Kansas, EUA. Durante 10 años fue coordinadora del Área Temática de Vida Silvestre de la Oficina Regional para Mesoamérica de la Unión Mundial para la Naturaleza (ORMA-UICN). Actualmente es Vicepresidente de la Cooperativa Autogestionaria de Servicios Profesionales para la Solidaridad Social, Coopesolidar R.L. y co-chair del "Theme on Governance, Equity and Rights" de CEESP

Notas

- 1 En este proceso han trabajado los asociados de Coope SoliDar R.L., Vivienne Solís R., Patricia Madrigal C., Marvin Fonseca B., e Ivannia Ayales Cruz.
- 2 UICN, 2005.
- 3 La gobernanza se refiere a la interacción entre estructuras, procesos y tradiciones que determina cómo se ejerce el poder, cómo se toman las decisiones en asuntos públicos y cómo los ciudadanos y otros actores se manifiestan. Trata sobre el poder, las relaciones y la rendición de cuentas, quién tiene influencia, quién decide y cómo se rinden cuentas" (Abrams et al. 2003).
- 4 UNEP-CBD-COP 8-31, 2006.
- 5 Nomura, 2006.
- 6 Este apartado ha sido tomado del documento en prensa "Consideraciones sociales del sector pesquero artesanal sobre el Corredor Marino de Conservación del Pacífico Este Tropical: primeras ideas hacia la incidencia social", elaborado por Coope

SoliDar R.L. con el apoyo de Conservación Internacional en el marco del proyecto Walton.

- 7 Coope SoliDar, 2006.
- 8 Asociación: según la Ley de Asociaciones, para su creación se requieren como mínimo diez personas y su organización incluye una Asamblea General y una Junta Directiva.
COLOPES: reúnen como mínimo a cuarenta pescadores artesanales y reciben el apoyo técnico del INCOPESEA. Su estructura se basa en una Asamblea General y una Junta Directiva.
Cámara: estructura gremial que agrupa a diferentes organizaciones con un giro económico común.
Cooperativa: según la Ley de Cooperativas, es una asociación voluntaria de personas con personería jurídica, duración indefinida y responsabilidad limitada, que se organiza a través de una Asamblea General con un mínimo de doce personas en el caso de las cooperativas de autogestión, o de veinte personas para el resto de las cooperativas. Tiene un Consejo de Administración, un Comité de Educación y Bienestar Social y un Comité de Vigilancia.
Unión de cooperativas: según la Ley de Cooperativas, se constituye con hasta cinco cooperativas.
Federación: agrupa más de cinco cooperativas.
Sindicato: asociación permanente de trabajadores constituida para el mejoramiento y protección de sus intereses económicos y sociales comunes.
- 9 Programa Estado de la Nación, 2006.
- 10 Coope SoliDar R.L., 2005.
- 11 Coope SoliDar R.L., 2004.
- 12 Asamblea General Extraordinaria, Coope Tárcoles R.L., 12 de junio del 2006. Especial reconocimiento merece el Consejo de Administración que impulsó esta iniciativa: Danilo Morales A., Marcos Chacón Rojas, Jeannette Naranjo González y David Chacón Rojas.

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Using human rights instruments for biodiversity conservation

Svitlana Kravchenko

Abstract. This paper analyzes the connections between conservation of biodiversity and human rights. First, it discusses court cases in which substantive human rights, such as the right to life and indigenous peoples' rights to land and property, culture, and self-determination, have been used to protect biodiversity. Second, it explains the role of procedural human rights, such as rights to information, participation in decision making and access to justice, in

the protection of biodiversity. The article demonstrates that international and national human rights instruments can be powerful tools for protecting biodiversity— often more effective than multinational environmental agreements.

A connection between the field of human rights and the field of environment has been developing during the last two decades. Some people saw a conflict between human rights and environmental rights during the 1992 UN Conference on Environment and Development in Rio de Janeiro. By 2001, however, experts from both fields had come together and reached broad agreements during the Expert Seminar on human rights and environment organized by the United Nations High Commissioner on Human Rights and the United Nations Environment Program in Geneva.¹ Using international human rights instruments for the protection of the environment, and for biodiversity conservation in particular, has in fact several advantages for citizens and non-governmental organizations (NGOs).

Human rights instruments are established in the form of UN Charter or-



Picture 1. A bird being born in the Danube Biosphere reserve. When construction of a canal started, many nests of endangered species of birds were abandoned. (Courtesy Prof. John E. Bonine)

gans, such as the UN Human Rights Council,² and UN human rights treaty organs, such as the Human Rights Committee under the Covenant on Civil and Political Rights and other bodies under other human rights treaties. Some (though not all) can be addressed by individuals, but these are not judicial bodies and have no direct enforcement powers. Human rights violations can be challenged more effectively in the regional human rights systems, namely the European Court of Human Rights, the Inter-American Commission and Court of Human Rights, and the African Commission and Court of Human Rights.

In contrast, most Multinational Environmental Agreements (MEA) and, in particular, the Convention of Biological Diversity (CBD), have no strong systems of enforcement that can be accessed by individuals. The CBD has dispute resolution and arbitration mechanisms for solving disputes between Contracting Parties³ concerning the interpretation or application of the Convention.⁴ Similarly, the Compliance Mechanism for the Cartagena Protocol on Biosafety under the CBD (which started its operation in March 2006), which is a non-judicial mechanism that includes provisions for offering advice or assistance, can only be invoked by other Parties.⁵ As for state challenges against other states' non-compliance under MEA compliance, dispute, and arbitration mechanisms, these are rather rare because states are concerned about the possible consequences for their diplomatic relationship with other countries.⁶ Most human rights bodies, on the other hand, are available for

complaints from non-state actors, such as citizens and NGOs.

Substantive human rights and biodiversity

Various human rights treaties have provisions that explicitly or implicitly recognize environmental rights. For

Various human rights treaties have provisions that explicitly or implicitly recognize environmental rights.

instance, the San Salvador Protocol⁷ recognizes that "Everyone shall have the right to live in a healthy environment". Another example is the African Charter on Human and Peoples' Rights,

which says that "All peoples shall have the right to a general satisfactory environment favorable to their development."⁸ The two human rights courts with the most highly developed environmental case law are in Europe and the Americas, even though the word "environment" is not mentioned in the Convention applied by either court.

European Court of Human Rights

The European Court of Human Rights has several cases in which the connection between human rights and the environment has been established successfully. There are no specific environmental rights in the European Convention on Human Rights. Despite this, the right to respect for private and family life and home (Article 8) has been used in cases such as *Lopez Ostra v. Spain*,⁹ *Fadeyeva v. Russia*,¹⁰ *Taşkin v. Turkey*,¹¹ and other cases to stop pollution causing harm to the health, family life, and home of plaintiffs; to oblige governments to resettle affected people; or to demand compensation for damages.

In the case of *Taşkin v. Turkey*, in May 1997, the Supreme Administrative Court of Turkey had invalidated a per-

mit issued for a gold mine that would use cyanide to extract gold from ore. The court considered that, in light of the Turkish state's obligation to protect a healthy environment and the right to life, the permit did not serve the general interest, in part because of the danger of sodium cyanide to the local ecosystem. When the Prime Minister and other authorities intervened to issue new permits despite the decision of the Supreme Administrative Court, various courts ruled that those permits were illegal. Nonetheless, the government authorized mining and related production starting in 2001 and continuing thereafter. When the matter was brought to the European Court of Human Rights, the court ruled that the mining was a violation of the right to respect for private and family life, in breach of Article 8 of the European Convention on Human Rights. It also ruled that the government's refusal to abide by the decisions of its own courts deprived the citizens of a procedural human right, namely the right to effective judicial protection in the determination of their "civil rights." (The particular civil right at issue was the right, under Article 56 of the Turkish Constitution, to live in a healthy and balanced environment.)¹²



Picture 2. White Pelican and Pigmy Cormorant are two of 325 endangered species in the Danube Biosphere reserve. (Courtesy Prof. John E. Bonine)

Inter-American Court of Human Rights

The Inter-American Court of Human Rights recognized indigenous peoples' rights to land and property in the landmark *Awas Tingni* case,¹³ and protected biodiversity in the process of doing so. In this case, the Court held that the international human right to enjoy the benefits of property, affirmed in the American Convention on Human Rights, includes the right of indigenous peoples to the protection of their traditional lands and natural resources. The Court held that the State of Nicaragua violated the "property" rights of the Awas Tingni Community by granting a foreign company a concession to log within the Community's traditional lands, even though the Community did not have official legal title to the lands.¹⁴ The Court ruled that Nicaragua must secure the effective enjoyment of their rights. This decision ensures better conservation and sustainable use of biodiversity by indigenous people.

Other petitions have been less successful, but the attempts continue. For example, the Inuit people of Alaska and Canada have argued that the adverse impact on wildlife from climate change, which generates changes in the location, number, and health of plant and animal species, violates their fundamental human rights to life, property, culture and means of subsistence.¹⁵ Some species will move to different locations; others cannot complete their annual migrations because ice they normally travel on no longer exists. Reduction of sea ice has drastically shrunk habitat for polar bears and seals, pushing them toward extinction. This has impaired the Inuits' right to subsist by altering their food sources. The Inuit petition, which was formally filed against the United States, was rejected by the Inter-American Com-

mission on Human Rights. The petitioner received a letter stating that the Commission "will not be able to process your petition at present... the information provided does not enable us to determine whether the alleged

facts would tend to characterize a violation of rights protected by the American Declaration."¹⁶ However, after the Inter-Governmental Panel on Climate change issued a dramatic report about global warming in February 2007, the Commission started a proceeding to consider the matter more generally, inviting the Inuit to present testimony in March 2007.

...after the Inter-Governmental Panel on Climate change issued a dramatic report about global warming in February 2007, the Inter-American Commission on Human Rights started a proceeding to consider the matter of climate-related human rights, inviting the Inuit to present testimony in March 2007.

Procedural human rights and biodiversity in international law

Procedural rights, such as the right to information, to participate in decision making, and to access to justice in environmental matters, can be a powerful tool for the conservation of biodiversity. The CBD and the Cartagena Protocol on Biosafety contain procedural rights to information and participation in decision making concerning the safe transfer, handling and use of living modified organisms in relation to the conservation and sustainable use of biological diversity. Parties have to "consult the public in the decision-making process regarding living modified organisms and shall make the results of such decisions available to the public... Each Party shall endeavor to inform its public

about the means of public access to the Biosafety Clearing-House."¹⁷ How the public can actually enforce its right of information, participation, and consultation is unclear, however. The mechanisms adopted to assess states' compliance with their obligations under the CBD and the Protocol do not allow the public to submit complaints.

In Europe, the Espoo Convention on Environmental Impact Assessment in a Transboundary Context established that if a development project may affect the environment of another country, the public has a right to information and to participate during preparation of environmental impact assessments (EIAs). Transboundary effects can obviously have significant impacts on biodiversity. However, as with the CBD and the Cartagena Protocol, the procedures to measure compliance with the Espoo Convention do not provide the public any right to complain if their rights to information and participation are violated.¹⁸ Several other MEAs do not even provide information or participation rights to the public, depending instead on the good will of governments to implement the conventions wisely. Just as they do not provide such rights, the compliance mechanisms under these other conventions do not provide the public any way to complain if a country fails to meet its obligations.

The Aarhus Convention

In contrast to the relative ineffectiveness of the rights in various MEAs, a relatively new convention that does *not in itself* explicitly protect biodiversity or conserve protected natural areas *does* recognize procedural human rights that, when used properly, can promote the conservation of biodiversity. That convention is the Aarhus Convention on Access to Information and Public Participation in Decision Making in Environmental

Matters. It is regional in scope, covering Western and Eastern Europe, the Caucasus and Central Asia, but has global significance. According to UN Secretary General Kofi Annan, this Convention "... is by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizens' participation in environmental issues and for access to information on the environment held by public authorities. As such it is the most ambitious venture in the area of "environmental democracy" so far undertaken under the auspices of the United Nations."¹⁹ The Aarhus Convention's procedural rights are being tested and defined in the Convention's Compliance Committee.

The best example of an international agreement protecting procedural human rights is the Aarhus Convention



Picture 3. Danube Delta— the "Ukrainian Venice" (Courtesy Prof. John Bonine)

The Danube Delta case

The Danube Delta is the ecological heart of Europe for many wildlife species. Its waters and diverse habitats support biodiversity found in few other places. According to scientists at the World Wide Fund for Nature, the Danube Delta is "the most important wetland area in Europe."²⁰ It is also the

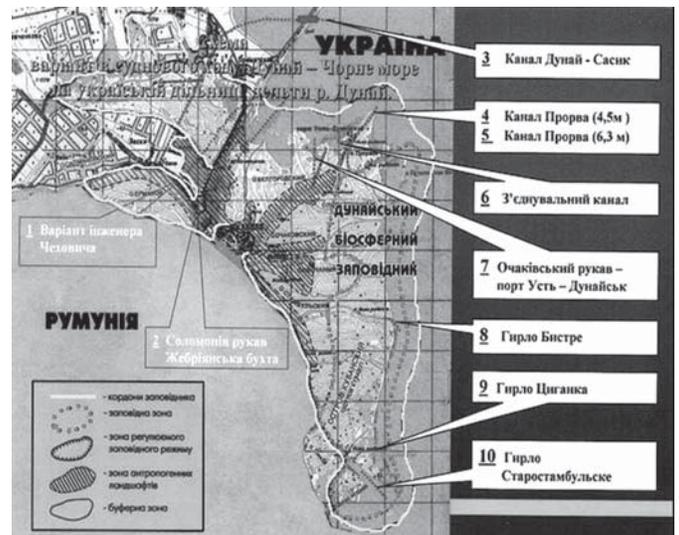
home to 325 species of birds and 75 species of fish, several of which are listed in species Red Books and threat-

Ukraine decided to build a deep navigation canal through the heart of the biosphere reserve without proper environmental impact assessment

ened with extinction.²¹ "The estuaries are important biological environments in that they form the spawning ground for many economically valuable marine species."²² The importance of the area is internationally recognized. The Danube Delta has

been designated a "Global 200" site, one of the world's most significant and diverse regions²³ and as a Biosphere Reserve under UNESCO's Man and the Biosphere Program in 1998.²⁴ Part of the Danube Delta was also designated a Wetland of International Importance under the Ramsar Convention in 1995.

Despite these international recognitions, the Government of Ukraine decided to build a deep navigation canal through the heart of the biosphere reserve, without an EIA that would meet international standards of public involvement in decision making. The process took over four years, and the first phase of the canal was built and officially opened in 2004. Critics of the canal have alleged violations of national law and of several international treaties ratified by Ukraine. A joint Ramsar and UNESCO mission to the Danube Delta in October 2003 reached the conclusion that construction of the canal through the Bystre Mouth of the Danube River would represent the worst option, in terms of the damage that the route would inflict on the natural environment and the costs and time associated to undertake the necessary compensation measures required by the particular protection status of the area.²⁵



Map 1. The Danube Biosphere reserve with 8 alternative options for the construction of the canal. The government of Ukraine chose the "worst" one (according to the UNESCO/Ramsar mission report), through the Bystre mouth of the Danube River, here indicated as option 8. (Courtesy Danube Biosphere Reserve)

A further Joint Mission of international experts, representing the secretariats of the Convention on the Protection of the Danube River, the Ramsar Convention, the Bern Convention, the Aarhus and Espoo Conventions, and UNESCO, and led by the European Commission, visited Ukraine on 6-8 October 2004 and made recommendations in November 2004.²⁶ Shortly thereafter, the Standing Committee of the Bern Convention on 3 December 2004 adopted Recommendation N° 111 on the proposed canal through the Bystre estuary. It recommended that Ukraine suspend all works, thoroughly explore alternative solutions for creating or recreating a shipping canal in the Danube Delta, prepare an EIA Report considering all possible alternatives, minimise deterioration of important areas for biological diversity, and, in case of canal construction, provide for ecological compensation for any possible environmental damage.²⁷ A special Inquiry

Committee under the Espoo Convention in July 2006 stated that the canal will have adverse transboundary impacts, and that no proper EIA, including adequate public consultation, had been prepared.

The government of Ukraine has paid little attention to any of these criticisms by international bodies operating under conservation and EIA conventions, and

...EPL built its strategy on alleging the violation of procedural rights to information and participation in decision making in the EIA prepared for the canal...

has only partly followed their recommendations. But the citizens of Ukraine, invoking their procedural human rights, have played an important role and have had some successful results. The Ukrainian NGO Environment-People-Law (EPL, formerly Eco-pravo-Lviv) has worked to stop the construction of the canal and to

protect biodiversity using national and international legal tools. It sent petitions to the secretariats of the Danube, UNESCO and Bern conventions, and a formal complaint to the Implementation Committee through Espoo Secretariat. Its most successful complaint, however, has been communication to the Aarhus Compliance Committee.

EPL built its strategy on alleging the violation of procedural rights to information and participation in decision making in the EIA prepared for the canal. The Second Meeting of the Parties of the Aarhus Convention, in Almaty, Kazakhstan, on 25-27 May 2005, adopted Decision II/5b. This decision endorses the findings of the Compliance Committee, i.e., that Ukraine failed to provide for public participation of the kind required by article 6 of the Convention, and that Ukraine failed to

provide information by the responsible public authorities according to article 4 of the Convention.²⁸ After initially ignoring the rulings of the Aarhus Meeting of the Parties, the government of Ukraine has begun to respond to them. The second phase of the canal construction was stopped. A new EIA was conducted with public involvement, and some of the public comments were taken into account. The government is going to re-start the canal construction, however, and a transboundary EIA that meets international standards has yet to be organized by the government. Whether the procedural rights will be strong enough to stop the damage to the area is still uncertain, but efforts to ensure biodiversity protection in this area are continuing.

Procedural human rights and biodiversity in national laws

Procedural human rights also exist in national laws and are being used to protect biodiversity at the national level.

The Tashlyk Protected Area case

Another example of the use of procedural human rights to protect biodiversity is found in the Tashlyk Protected Area case in Ukraine. The government of Ukraine plans to finish the construction of the Tashlyk Pumped Storage Hydro Station, to be included in the South Ukrainian nuclear power complex. The scheme is to supply the station with water from the South Bug River to provide full-time operation of the nuclear station. This will be possible by storing excess energy at night through pumping water into the reservoir, and then releasing it during the day when there is higher energy demand. In conjunction with this, the government made a decision to change the water level of the Oleksandrivsky reservoir from its previous

level of 8 meters to 16 or even 20.7 meters.²⁹ The rising water will cause

The court ruled that withdrawing land from a protected area to allow flooding, without adequate notice and public comment, violated the environmental rights to public participation.

harm to, and possibly extinction of, unique local biodiversity, including flora and fauna listed in the IUCN Red List and covered by the Bern Convention. At the time of this writing many habitats of such species have already been covered by water. The flooded territory

also had monuments and objects of cultural and historical value.

Complaints to international bodies and pleas to the Ukrainian government to respect the status of the protected area fell on deaf ears. Then EPL, the same Ukrainian NGO mentioned before, decided to use national laws that protect procedural human rights. Acting on behalf of two citizens living near Tashlyk, EPL went to court to seek a ruling invalidating an oblast (county) action that withdrew lands from the protected area. EPL has alleged that the project violates the right of the public to participate in environmental decision making because the station is being built without proper consultation with the public during the preparation of the EIA. EPL got its first taste of victory in January 2007. A trial court ruled that the action of the Mykolaiv Oblast (County) Council, i.e., the withdrawing of land from a protected area by active flooding, without adequate notice and public comment, violated the environmental rights to public participation.³⁰ The decision is likely to be appealed and the final chapter is not written, but it is apparent that procedural human rights have an important role to play in protecting areas

of biodiversity such as Tashlyk.



Picture 4. Newborn seagulls in the Danube Biosphere reserve.
(Courtesy Prof. John E. Bonine)

Conclusion

More and more experts in the previously separate fields of human rights and the environment are developing a common understanding and consensus about the benefits of cooperation. Indigenous peoples' rights depend on the sustainable use of biodiversity, and can be used to help protect it. The right to life and the right to a healthy environment can reach their full potentials only in a rich, diverse, and unspoiled environment. In this light, the human rights approach can be a powerful tool for the conservation of biodiversity, as the field has established institutions and, in its regional human rights courts, the beginning of developed case law. Furthermore, the Aarhus Convention has stronger "teeth" in terms of compliance than any other multilateral environmental agreements. Similarly, human rights claims in national courts have some potential. In terms of doctrines and tools, substantive human rights can be used to achieve goals that are important to biodiversity conservation. Procedural rights can be

used to ensure that all stakeholders participate in decision making, which will in many cases lead to more effective conservation.

Svitlana Kravchenko (slana@uoregon.edu) received her J.D. and Ph.D. in environmental law in the former Soviet Union and her LL.D. in Ukraine. She taught domestic and international environmental law for 26 years at Lviv National University in Ukraine and continues to teach at the University of Oregon School of Law. Prof. Kravchenko is the author of 174 publications in the field of environmental law, including 12 books and book chapters. She founded the public interest environmental law firm Ecopravo-Lviv (now Environment-People-Law) in 1994 and has served as its president since. Dr. Kravchenko served as a Vice-Chair of the IUCN Commission on Environmental Law. She was involved in the negotiations of the Aarhus Public Participation Convention and the SEA Protocol under the Espoo EIA Convention as a "citizen diplomat." She is Vice-Chair of the Aarhus Convention Compliance Committee.

Notes

- 1 Conclusion of the Meeting of Experts on Human Rights and the Environment (2002).
- 2 The Human Rights Council replaces the Commission on Human Rights, which performed many of the same functions until it concluded its 62nd and final session on 27 March, 2006.
- 3 States that ratified the convention.
- 4 The Convention on Biological Diversity, Article 27, <http://www.biodiv.org/convention/articles.shtml?a=cbd-27>. The Parties concerned seek a solution by negotiation. If the problem is not solved, mediation by a third party is suggested. The next steps are arbitration, and ultimately submission to the International Court of Justice.
- 5 The Cartagena Protocol on Biosafety, Article 34, <http://www.biodiv.org/biosafety/articles.shtml?a=cpb-34>.
- 6 An exception is the Aarhus Convention's unique compliance mechanism, which accepts communications from the public and has considered 17 cases during just 3 years of its operation. See Kravchenko (2005).
- 7 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador," Article 11, <http://www.cidh.oas.org/Basicos/basic5.htm>
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...but conservation and human rights can also work in mutual support...

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Indigenous peoples, protected areas and the right to restitution—the jurisprudence of the Inter-American Court of Human Rights

Fergus Mackay

Abstract. The majority of protected areas were (and continue to be) established and/or managed in violation of indigenous peoples' internationally guaranteed rights. It is a general principle of international law that violations of international obligations that result in harm create a duty to make adequate reparation, which includes a right to restitution. This article focuses on indigenous peoples' right to restitution of their traditional lands, territories and resources, as that right has been elaborated by the institutions of the inter-American human rights system, especially the Inter-American Court of Human Rights. Jurisprudence articulating and upholding indigenous peoples' property rights and right to restitution is examined, and a pending case that explicitly seeks restitution of indigenous lands incorporated into protected areas is discussed. The article looks at the interaction between human rights norms and the Convention on Biological Diversity (CBD), and argues that it is important that the nexus between these two bodies of interrelated law is given greater emphasis by governments and conservation organisations. Further, it argues that Article 10(c) of the CBD and its future elaboration in a decision of the Conference of Parties provides ample opportunity to officially merge environmental and human rights norms, and to ensure that the protection of biological diversity and ecosystems not only takes into account the rights of indigenous peoples, but is fully consistent with those rights.

One of the most pressing issues facing conservation groups, governments and indigenous peoples today is how to ensure the effective protection of biological diversity without compromising indigenous peoples' rights. This is especially pertinent in connection with the establishment and management of protected areas. By some estimates, around 50 percent of existing protected areas worldwide are on lands traditionally owned by indigenous peoples, and in the Americas this number increases to over 80 percent.¹ Additional protected areas, including marine areas, are also planned all over the world, many of them incorporating or affecting indigenous peoples' territories. The vast majority of these protected areas were (and continue to be) established and/or managed in violation of indigenous peoples' rights: *inter alia*, to own their traditional territories, to consent to decisions that affect them, and to secure access to subsistence resources and areas of religious or cultural significance.²

It is a general principle of international law that "every violation of an international obligation which results in harm creates a duty to make adequate reparation."³ Thus, governments that violate indigenous peoples' rights by establishing protected areas within their traditional territories without their free, prior and informed consent are obliged to make reparations. One method of repairing violations is the restitution of lands and resources and the restoration of other rights abrogated in the establishment and management of protected areas.

This article focuses on indigenous peoples' right to restitution of their traditional lands, territories and resources as that right has been elaborated by

the institutions of the inter-American human rights system, especially the Inter-American Court of Human Rights ("the Court"). Because the Court has specified that an obligation to return or restore indigenous peoples' lands is integral to the right to property, in addition to a specific remedial measure, I begin by looking at the rights indigenous peoples hold over their traditional territories in inter-American human rights law. This is followed by a discussion of the Court's jurisprudence on the restitution of indigenous lands and a section describing a pending case that explicitly seeks restitution of indigenous lands incorporated into protected areas.



Picture 1. Indigenous researchers in Suriname interviewed community members to document unwritten, customary norms on traditional land and resource management. (Courtesy Ellen-Rose Kambel)

Rights to Lands, Territories and Resources

The primary organs of the inter-American human rights system are the Court and the Inter-American Commission on Human Rights ("IACHR"). These bodies supervise compliance with two main human rights instruments: the 1948 American Declaration on the Rights and Duties of Man and the 1969

American Convention on Human Rights ("ACHR"). The IACHR is competent to receive complaints about alleged violations of the American Declaration, which is applicable to all members of the Organization of American States ("OAS"), and the ACHR, presently applicable to 25 of the 34 OAS member states. The IACHR issues recommendations rather than binding decisions. The Court is competent to adjudicate contentious cases provided that the respondent state is a party to the ACHR and has accepted its jurisdiction (22 states have accepted the Court's jurisdiction). The decisions of the Court are, as a matter of international law, binding on respondent states and may be executed in domestic courts.⁴

The IACHR and the Court have resolved a number of cases involving indigenous peoples' rights to lands, territories and resources, and a large number of cases are presently pending. In their decisions and judgments the Court and the IACHR have repeatedly held that indigenous peoples' property rights derive from their own laws, their land tenure systems, and their traditional occupation and use, and that these rights are valid and enforceable absent formal recognition in national laws.⁵

In the 2004 *Maya Indigenous Communities Case*, for instance, the IACHR observed that "the jurisprudence of the system has acknowledged that the property rights of indigenous peoples are not defined exclusively by entitlements within a State's formal legal regime, but also include that indigenous communal property that arises from and is grounded in indigenous custom and tradition."⁶ It held that Belize is obligated to "effectively delimit and demarcate the territory to which the Maya people's property right extends and to take the appropriate measures

to protect the right of the Maya people in their territory, including official recognition of that right.⁷

In the *Mary and Carrie Dann Case*, the IACHR interpreted the American Declaration to require "special measures to ensure recognition of the particular and collective interest that indigenous people have in the occupation and use of their traditional lands and resources...."⁸

It also observed that "general international legal

....indigenous peoples' property rights derive from their own laws, their land tenure systems, and their traditional occupation and use.

principles applicable in the context of indigenous human rights" include "the right of indigenous peoples to legal recognition of their varied and specific forms and modalities of their control, ownership, use and enjoyment of territories and property; [and to] the recognition of their property and ownership rights with respect to lands, territories and resources they have historically occupied."⁹

In the landmark *Mayagna (Sumo) Indigenous Community of Awasting v. the Republic of Nicaragua Case*, the Court confirmed that indigenous peoples' territorial rights arise from traditional occupation and use and indigenous forms of tenure, not from grants, recognition or registration by the state. The latter simply confirm and secure pre-existing rights. In its 2001 judgment, the Court held that "[a]s a result of customary practices, possession of land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration."¹⁰ It ordered, among others, that "the State must adopt the legislative, administrative,

and any other measures required to create an effective mechanism for delimitation, demarcation, and titling of the property of indigenous communities, in accordance with their customary law, values, customs and mores.”¹¹

These norms have been reaffirmed and further elaborated on by the Court in three further judgments issued in 2005 and 2006.¹² In the 2006 *Sawhoyamaya Indigenous Community Case*,¹³ for example, the Court observed that its jurisprudence holds that: “traditional indigenous land ownership is equivalent to full title granted by the State [and]; traditional ownership grants the indigenous people the right to demand official recognition of their property and its consequent registration.”¹⁴ In the 2005 *Moiwana Village Case*, the Court held that Suriname had violated the right to property of a tribal community¹⁵ and ordered the state to adopt legislative and other necessary measures to restore and ensure the community’s property rights,¹⁶ “with the participation and informed consent of the victims” and neighbouring indigenous peoples.¹⁷

The Court also established important norms in relation to displaced persons and communities in *Moiwana*, an issue that is highly relevant to protected areas, especially in Africa.¹⁸ It held that the many of the *United Nations Guiding Principles on Internal Displacement*¹⁹ “illuminate the reach and content ... of [the right to freedom of movement and residence in Article 22 of the ACHR] in the context of forced displacement.”²⁰ One of the Guiding Principles emphasized by the Court provides that “States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.”²¹ What this may mean

in cases where indigenous peoples are threatened with displacement or have been displaced in relation to development projects or protected areas remains to be seen. Nevertheless, it is an important benchmark against which the design and implementation of these activities should be assessed.

It is important to note that the norms set forth above are not unique to the inter-American system. Indigenous peoples’ rights to own and control their traditional territories are also protected in similar terms under United Nations human rights instruments.²² The Committee on the Elimination of Racial Discrimination, for example, has called on state parties to “recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources....”²³ It routinely reaffirms this basic principle when examining state reports and in decisions under its urgent action procedure.

The Convention on Biological Diversity (“CBD”), an international environmental treaty, also addresses indigenous peoples’ rights, including in relation to the establishment and management of protected areas. Decision VII/28 on Protected Areas, adopted by the 7th Conference of Parties to the CBD, provides 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

Indigenous peoples’ own research demonstrates that secure land tenure rights and control over traditional territory and resources are critical elements of the sound conservation, use, and management of biological diversity.

consistent with national law and applicable international obligations."²⁴ These applicable international obligations are defined, *inter alia*, in international human rights law including the jurisprudence of the IACHR and the Court. Decisions of the CBD Conference of Parties represent authoritative interpretations of the CBD and thus are legally binding on state parties.

Article 10(c) of the CBD further provides that state parties shall "protect and encourage [indigenous peoples'] customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements." This article, by implication, should also be read to include protection for rights to lands and resources and to require recognition and protection of indigenous institutions and customary laws relating to ownership, use and management of biological resources.²⁵ These conclusions are supported by the analysis of the Secretariat of the CBD, which explains that:

In order to protect and encourage, the necessary conditions may be in place, namely, security of tenure over traditional terrestrial and marine estates; control over and use of traditional natural resources; and respect for the heritage, languages and cultures of indigenous and local communities, best evidenced by appropriate legislative protection (which includes protection of intellectual property, sacred places, and so on). Discussions on these issues in other United Nations forums have also dealt with the issue of respect for the right to self-determination, which is often interpreted to mean the exercise of self-government.²⁶

These conclusions are further supported by indigenous peoples' own research

on the measures needed to implement and give effect to Article 10(c). Conducted in five countries around the world, these studies demonstrate that secure land tenure rights and control over traditional territory and resources are critical elements of the sound conservation, use, and management of biological diversity.²⁷ They also show that indigenous peoples' institutions and customary laws are intrinsic to biodiversity and ecosystem protection and management, and have evolved based on detailed and long-standing interactions with the natural environment.

Finally, in line with UN human rights treaty bodies,²⁸ the IACHR has consistently held that indigenous peoples' informed consent is required in relation to activities that affect their traditional territories.²⁹ As a general principle, it observes that inter-American human rights law requires "special measures to ensure recognition of the particular and collective interest that indigenous people have in the occupation and use of their traditional lands and resources and their right not to be deprived of this interest except with fully informed consent, under conditions of equality, and with fair compensation."³⁰ This right to consent applies to traditionally-owned indigenous lands and territories, and is not restricted to indigenous property rights as recognized by national laws. Parallel to this, the Court has ordered that states "refrain from actions— either of State agents or third parties acting with State acquiescence or tolerance— that would affect the existence, value, use or enjoyment" of indigenous peoples' property at least until such time as their property rights are secured in law and fact.³¹ Similar orders have been issued in the Court's provisional measures jurisprudence.³²

The Right to Restitution

In international law, violation of a human right gives rise to a right of reparation for the victim(s).³³ Reparations include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The UN Special Rapporteur on the right to restitution, compensation and rehabilitation states that, "Restitution shall be provided to re-establish, to the extent possible, the situation that existed for the victim prior to the violations of human rights. Restitution requires, *inter alia*, restoration of liberty, citizenship or residence, employment or property."³⁴ Similarly, the Court has consistently held that "Reparation of harm brought about by the violation of an international obligation consists in full restitution (*restitutio integrum*), which includes the restoration of the prior situation ..." and compensation or other forms of indemnification for material and immaterial damages.³⁵

In the 2005 *Yakye Axa Indigenous Community Case*, the Court first addressed indigenous peoples' right to the restitution of their traditional lands. Among others, it determined that a violation of the right to property had occurred because Paraguay had failed to effectively restore and secure the rights of the Yakye Axa to their traditional lands, large parts of which were held by private persons. It ordered that the state identify these traditional lands, regularize the indigenous people's ownership rights, and establish a fund for the expropriation of privately held lands to ensure their return, free of charge, to the

Yakye Axa.³⁶

Similar violations were also found in the *Sawhoyamaxa Indigenous Community Case*.³⁷ Reviewing its jurisprudence, the Court explains that indigenous peoples maintain their property rights in cases where they have been forced to leave or have otherwise lost possession of their traditional lands, including where their lands have been expropriated or transferred to third parties, unless this was done in good faith and consensually.³⁸ Thus, according to the Court, "title is not a prerequisite that conditions the existence of the right to restitution of indigenous lands."³⁹ Note that the Court has elaborated this right of restitution as part and parcel of indigenous peoples' right to property rather than as a separate remedial measure.

The Court also examined the temporal scope of indigenous peoples' right to restitution in *Sawhoyamaxa*. It held that the right to restitution continues as long as indig-

... indigenous peoples have a right to restitution of their traditional territories and resources, which in principle also applies to nature reserves.

evidence of the requisite connection may be found in "traditional spiritual or ceremonial use or presence; settlement or sporadic cultivation; seasonal or nomadic hunting, fishing or harvesting; use of natural resources in accordance with customary practices; or any other factor characteristic of the culture of the group."⁴¹ The Court further held that if indigenous peoples are prevented by others from maintaining their traditional relationships with their territo-

ries, the right to recovery nonetheless continues "until such impediments disappear."⁴²

If a state is unable to return indigenous peoples' traditional lands and communal resources for "concrete and justifiable reasons," compensation or the provision of alternative lands is required.⁴³ In such cases, the Court requires that indigenous peoples' consent be obtained, "in accordance with their own consultation processes, values, uses and customary law," with regard to choices about the provision of compensation or alternative lands.⁴⁴

While neither the IACHR nor the Court have had occasion to apply the above jurisprudence to a case involving protected areas, this is only a matter of time. One case is presently pending before the IACHR that directly requests restitution of indigenous lands incorporated into protected areas (discussed below). Additionally, although the IACHR and the Court have yet to address indigenous peoples' rights in the context of protected areas, in addition to applying the norms enumerated by the Court, they are also likely to be persuaded by the jurisprudence of the UN Committee on the Elimination of Racial Discrimination ("CERD"). This is all the more likely given that the provisions utilised by CERD (protecting property and participation rights) employ similar language to that found in relevant provisions of the ACHR.

CERD has articulated two main inter-related rules applicable to establishment of nature reserves in indigenous peoples' territories. First, in 2002, the Committee held that "no decisions directly relating to the rights and interests of members of indigenous peoples be taken without their informed

consent" in connection with a nature reserve in Botswana.⁴⁵ Second, with regard to a national park in Sri Lanka, the Committee called on the state to "recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources."⁴⁶ More generally, CERD has recognized that indigenous peoples have a right to restitution of their traditional territories and resources, which in principle also applies to nature reserves, stating that: "Bearing in mind its general recommendation 23 on the rights of indigenous peoples ... where they have been deprived of their lands and territories traditionally owned, or such lands and territories have been otherwise used without their free and informed consent, the Committee recommends that the State party take steps to return those lands and territories."⁴⁷



Picture 2. The Lower-Marowijne river has been home to indigenous peoples' for over 4,000 years. In the 1970s its beaches attracted city dwellers who obtained land titles and dispossessed the indigenous communities. Atlantic Coast beaches, frequented by sea turtles, have been declared nature reserves without the indigenous peoples' consent.
(Courtesy Ellen-Rose Kambel)



Picture 3. The Wane Creek was the homeland of the Lokono peoples of Marowijne, and is now abandoned. It remains one of the most important hunting and fishing grounds for both the Lokono and Kaliña peoples, but was declared a Nature Reserve in 1986.

(Courtesy Ellen-Rose Kambel)

The Case of the Kaliña and Lokono indigenous peoples

A case is presently pending before the IACHR that, *inter alia*, explicitly seeks the restitution of indigenous lands that have been converted into protected areas. This case was submitted by the Kaliña and Lokono indigenous peoples of northeast Suriname and complains about three nature reserves within their territory, all created pursuant to Suriname's 1954 Nature Protection Act: the Galibi Nature Reserve (1969), the Wane Kreek Nature Reserve (1986) and the Wiawia Nature Reserve (1966). The Wane Kreek Reserve alone covers an area of 450 square kilometers, some 50 percent of the indigenous peoples' traditional territory.

These reserves were established without the Kaliña and Lokono's participation and consent, and they negatively affect their rights on an ongoing basis. This is acknowledged in the Galibi Nature Reserve Management Plan 1992-96, which states that, "Although the government discussed the establishment



Picture 4. While Surinamese law prohibits indigenous peoples from hunting and fishing inside nature reserves, Suriname allows large scale bauxite mining within the Wane Creek Nature Reserve.

(Courtesy Ellen-Rose Kambel)

of the Galibi Nature Reserve with the local population, the villagers were not involved in the decision-making process. They were confronted with the reserve as a *fait accompli*, something to which everyone would have objections."⁴⁸

Suriname's Nature Protection Act makes no reference to the existence of indigenous peoples, nor does it recognize or protect their ownership rights to their traditional territories. The same is true for Surinamese law in general.⁴⁹ Article 1 of the Act provides that "For the protection and conservation of the natural resources present in Suriname... the President may designate lands and waters belonging to the State Domain as a nature reserve." As indigenous territories are legally classified as state lands (state domain), this provision permits the state to unilaterally declare any indigenous territory or part thereof to be a nature reserve by decree. The Act also makes no provision for the exercise of indigenous peoples' rights within nature reserves.⁵⁰ Rather, under the Act, hunting, fishing or damage to the soil or the flora and fauna within the reserves are strictly prohibited and punishable

as criminal offences.⁵¹ While this prohibition remains in force for indigenous peoples, large-scale bauxite mining, authorized by the state, is taking place in the Wane Kreek Reserve.

Applying the IACHR and the Court's jurisprudence to this situation, it is clear that the Kaliña and Lokono peoples' have protected property rights in and to their traditional territory irrespective of whether these rights are recognized in Suriname's domestic laws. The nature and extent of these property rights is defined in the first instance by the indigenous peoples' customary laws and traditional tenure systems. As explained by the Court, "traditional ownership grants the indigenous people the right to demand official recognition of their property and its consequent registration."⁵² Also, until such time as the Kaliña and Lokono's property rights are secured in law and fact, Suriname is further obligated to "refrain from actions— either of State agents or third parties acting with State acquiescence or tolerance— that would affect the existence, value, use or enjoyment" of their property rights.⁵³ Irrespective of whether title is recognized and secured in domestic laws, the state must seek indigenous peoples' consent prior to undertaking or authorizing activities that may affect their traditional territories.

Where the Kaliña and Lokono have been dispossessed of their traditional lands without their consent— as is the case with the protected areas— and provided that they continue to maintain some degree of material or cultural/spiritual connection to these lands (which they do), they hold an ongoing right of restitution that is integral to satisfying their property rights. These lands therefore must be returned unless the state can demonstrate that there are 'justifiable and concrete' reasons that prevent it

doing so. This is a requirement that will be very difficult for the state to satisfy unless the areas' protected status itself is judged to be a justifiable and concrete reason

If we assume for the sake of argument that the IACHR or the Court will find that the protected status of land constitutes a valid excuse from the restitution requirement— an unlikely outcome in my view— application of the Court's jurisprudence should further require that the interests of the state in maintaining its proprietary rights in the protected area be weighed against the rights and interests of the Kaliña and Lokono. In undertaking such an analysis, the Court stresses that indigenous peoples' territorial rights are fundamentally related to collective rights of survival, and that their control over territory is a necessary condition for the reproduction of culture, their development and life plans, and their ability to preserve their cultural patrimony.⁵⁴ It should also be noted in this context, that the Court also has held that restricting or denying indigenous peoples access to their traditional means of subsistence are prohibited by the ACHR.⁵⁵ In *Moiwana Village*, for instance, the Court presumed the existence of material harm, *inter alia*, on the grounds that the community members' "ability to practice their customary means of subsistence and livelihood has been drastically limited."⁵⁶

Indigenous ownership per se does not preclude the continuation of ecosystem or species protection measures, or even the continuation of the protected areas themselves.

Given indigenous peoples' fundamental and compelling interests in maintaining their relationships with their territories,

the state will be hard pressed to demonstrate that its interests are paramount and should prevail. This is especially the case given the size of the protected areas (more than 50 percent of the Kaliña and Lokono's traditional territory) and the fact that indigenous ownership *per se* does not preclude the continuation of ecosystem or species protection measures, or even the continuation of the protected areas themselves. Indeed, the Kaliña and Lokono would argue that they are more effective at protecting these areas than the state has been or is likely to be in the future. The continuation of protected area status would nevertheless have to be negotiated and consented to by the Kaliña and Lokono.

Finally, there is a general rule of international law that a state cannot be held liable for its acts and omissions that predate its accession to an international treaty. Suriname would argue that it acceded to the ACHR in 1987 and therefore that alleged violations of that instrument in relation to the protected areas are inadmissible because all were established prior to that date. However, while upholding this rule, the Court held that it is permissible to examine possi-

ble violations of the ACHR that originate in events predating acceptance of its jurisdiction insofar as they concern related "effects and actions" that are ongoing and continuous.⁵⁷ The Court's approach is also subscribed to by other international courts and tribunals, including the IACHR⁵⁸ and the International Labour Organization in cases involving indigenous peoples,⁵⁹ which routinely exercise jurisdiction over alleged breaches of international law that began before the date of a state's ratification and continue thereafter.⁶⁰

In the context of the Kaliña and Lokono, the ongoing and continuing effects and consequences of the establishment of the nature reserves include denial of their property rights and denial of access to and security over their subsistence and other resources. These deni-



Pictures 5 and 6. In February 2006, the Kaliña and Lokono indigenous leaders called on the government to recognize and respect their human rights during a conference devoted to article 10c of the Biodiversity Convention. (Courtesy Ellen-Rose Kambel)

als constitute violations of the ACHR, which, although originating in events prior to Suriname's accession to that instrument, are presently actionable. This is obviously relevant beyond the confines of the specific case in Suriname and would apply to protected areas throughout the Americas (and beyond, given that the principles are very similar under United Nations human rights instruments). The admissibility of ongoing and continuous effects, coupled with the Court's jurisprudence with regard to the right to restitution, therefore raise questions about the legitimacy on human rights grounds of most protected areas affecting indigenous peoples in the Americas.

Concluding remarks

The preceding issues are not new to the conservation community. Indigenous peoples' territorial rights and the right to restitution were extensively discussed at the 2003 World Parks Congress, and the *Durban Accord: Action Plan* acknowledges that there is "an urgent need to re-evaluate the wisdom and effectiveness of policies affecting indigenous peoples and local communities."⁶¹ The *Accord's* 'key targets' include full respect for the rights of indigenous peoples in relation to all existing and future protected areas; and, by 2010, the establishment and implementation of "participatory mechanisms for the restitution of indigenous peoples' traditional lands and territories that were incorporated in protected areas without their free and informed consent"⁶² However, there appears to be little will to fully pursue these targets on the part of governments or conservation organizations.

What is new is the post-Durban jurisprudence of the Court that affirms and provides additional detail about the nature and extent of indigenous

peoples' territorial rights and the right to restitution. This jurisprudence also demonstrates that respect for these rights is not a matter of discretionary conservation policy and targets, but is instead a matter of international legal obligation for the countries of the Americas and Caribbean.

The 2004 decision on protected areas adopted by the CBD Conference of Parties should also be read constantly with this jurisprudence and thus provide a much needed human rights perspective to our understanding of international environmental law in this area.

Indeed, the two bodies of law should not be viewed as mutually exclusive but as interrelated and complementary.⁶³ This will require a substantial reformulation of protected areas laws and institutions, both to remedy past violations of indigenous peoples' rights and to ensure that these rights are protected in the future.

It is also important to bear in mind in this context that the jurisprudence of the Court has also been incorporated by reference into the Inter-American Development Bank's ("IADB") 2006 Operational Policy 7-65 on Indigenous Peoples.⁶⁴ This policy requires special safeguards for indigenous peoples in projects that directly or indirectly affect their traditional lands, territories and resources, and specifies that "one of those safeguards is respect for the rights recognized in accordance with the applicable legal norms."⁶⁵ The definition of 'applicable legal norms' includes ratified international treaties "as well as the corresponding international jurisprudence of the Inter-American

Post-Durban jurisprudence of the Court affirms and provides additional detail about the nature and extent of indigenous peoples' territorial rights and the right to restitution.

Court of Human Rights or similar bodies....”⁶⁶ This is relevant to the subject at hand because the IADB is now one of the primary implementing agencies in the Americas for Global Environment Facility-funded projects. Therefore, in principle, GEF projects implemented by the IADB, including protected area projects, must respect the rights of indigenous peoples, among others, as elaborated in the jurisprudence of the Court.

The post-Durban failure to achieve meaningful progress towards meeting the key targets on indigenous peoples does little to build confidence and leaves those so inclined few options other than to invoke domestic and international legal remedies to challenge the validity of protected areas and their management regimes. The Kaliña and Lokono case is one of the first international cases and others are sure to follow. While the details of that case may be peculiar to Suriname, the situation is not that different from many other countries around the world.

Article 10(c) of the CBD and its future elaboration in a decision of the Conference of Parties provide fertile ground to begin to address some of the deficits in conservation practice related to indigenous peoples’ rights. They also provide ample opportunity to merge environmental and human rights norms and to ensure that the protection of biological diversity and ecosystems not only takes into account the rights of indigenous peoples, but is fully consistent with those rights. This will require addressing land and resource tenure rights, recognizing indigenous peoples’ right to control and freely determine how best to utilize their territory and resources, and developing and implementing a framework for negotiating mutually acceptable and beneficial conservation

agreements with indigenous peoples. By supporting this, conservation organizations and governments can demonstrate that they are serious about achieving the Durban targets, protecting biological diversity, respecting human rights, and engaging in respectful relationships with indigenous peoples.

Fergus MacKay (fergus@euronet.nl) is the Coordinator of the Legal and Human Rights Programme of the Forest Peoples Programme.

Notes

- 1 Amend & Amend, 1992.
- 2 See, Handl 2002, p. 85-110, (explaining the bases in international and comparative law for cultural and subsistence lifestyle damage claims by indigenous peoples.)
- 3 *Velasquez Rodriguez Case*, Judgment of July 21, 1989. Series C No. 7, at para. 25. See, also, Permanent Court of International Justice, *Factory at Chorzow Case, Merits*, Judgment No. 13, 1928, P.C.I.J., Series A, No 17, p. 29 and; International Court of Justice, *Reparations for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, I.C.J. Reports 1949, p. 184. For a detailed treatment of remedies in human rights law, see, Shelton 1999.
- 4 Article 67 of the American Convention on Human Rights provides that "1. The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties. 2. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state."
- 5 *Sawhoyamaya Indigenous Community v. Paraguay*, 29 March 2006. Series C No. 146, para. 248; Case 11.577 (Awas Tingni Indigenous Community— Nicaragua), *Annual report of the IACHR*. OEA/Ser.L/V/II.102, Doc.6 rev., (Vol. II), April 16, 1999, 1067, para. 108 and, See, also, Art. XVIII, *Proposed American Declaration on the Rights of Indigenous Peoples*, approved by the IACHR in 1997.
- 6 *Report No. 40/04*, Maya Indigenous Communities of the Toledo District, Case 12.053 (Belize), 12 October 2004, at para. 117.
- 7 *Id.* at para 132 (footnote omitted).
- 8 *Report No 75/02*, Case No 11.140, Mary and Carrie Dann (United States), 27 December 2002. OEA/Ser.L/V/II.116, Doc 46, at para 131.
- 9 *Id.* at para 130 (footnotes omitted).
- 10 *Mayagna (Sumo) Awas Tingni Community Case, August 31, 2001, Series C No 79*, at para. 151.
- 11 *Id.* at para. 164.
- 12 *Yakye Axa Indigenous Community v. Paraguay*, 17 June 2005. Series C No. 125; *Moiwana Village v. Suriname*, Judgment of 15 June 2005, Series C

- No. 124; *Sawhoyamaxa Indigenous Community v. Paraguay*, *supra*.
- 13 *Sawhoyamaxa Indigenous Community*, *supra*, para. 248.
- 14 *Id.* at para. 128.
- 15 *Moiwana Village v. Suriname*, *supra* note 46, para 128-35.
- 16 *Id.* at para 209, 233.
- 17 *Id.* at para 210.
- 18 See, also, *Case of the Massacres of Ituango v. Colombia*, Judgment of 1 July 2006. Series C No. 148; *Kankuamo Indigenous Community v. Colombia (Provisional Measures)*, Order of the Inter-American Court of Human Rights of July 5, 2004, at Resolution 3 (requiring immediate measures to protect the right to freedom of movement including those to permit displaced indigenous persons to return to their traditional lands); *Jiguamiandó and the Curbaradó Communities v. Colombia (Provisional Measures)*, Order of the Inter-American Court of Human Rights of March 6, 2003, at para. 9 (an Afro-Colombian tribal community who "are all in a situation of equal risk of ... being forcibly displaced from their territory, a situation that prevents them from exploiting the natural resources necessary for their subsistence;"); and *Jiguamiandó and the Curbaradó Communities v. Colombia (Provisional Measures)*, Order of the Inter-American Court of Human Rights of February 7, 2006, para. 9, 12.
- 19 UN Doc. E/CN.4/1998/53/Add.2. February 11, 1998.
- 20 *Moiwana Village*, *supra*, at 111.
- 21 *Id.*
- 22 See, for instance, MacKay, 2005 and MacKay 2006.
- 23 *General Recommendation XXIII (51) concerning Indigenous Peoples*. Adopted at the Committee's 1235th meeting, 18 August 1997. UN Doc. CERD/C/51/Misc.13/Rev.4, at para. 4. The International Convention on the Elimination of All Forms of Racial Discrimination has 173 state parties as of December 2006.
- 24 Decision VII/28 Protected Areas, at para. 22. In, *Decisions Adopted by the Conference of Parties to the Convention on Biological Diversity at its Seventh Meeting*. UNEP/BDP/COP/7/21, pps. 343-64.
- 25 This is acknowledged in the *Adis Ababa Principles and Guidelines on Sustainable Use of Biodiversity*, adopted in 2004 by the VIIth Conference of Parties to the CBD, especially in Principles 1 and 2.
- 26 *Traditional Knowledge and Biological Diversity*, UNEP/CBD/TKBD/1/2, 18 October 1997.
- 27 The results of these studies are summarized in M. Colchester 2006.
- 28 For UN jurisprudence affirming indigenous peoples' right to give or withhold consent, see, inter alia, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Ecuador*. 21/03/2003. UN Doc CERD/C/62/CO/2, at para 16; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Colombia*. 30/11/2001. UN Doc E/C.12/Add. 1/74, at para 12; and, *Concluding Observations of the Human Rights Committee: Canada*, 20/04/2006. UN Doc CCPR/C/CAN/CO/5. See, also, UN Permanent Forum on Indigenous Issues 2005.
- 29 *Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans*, 2 March 2006, para. 214; *Mary and Carrie Dann Case*, *supra*, para. 131; *Report No. 40/04*, *Maya Indigenous Communities of the Toledo District*, Case 12.053 (Belize), 12 October 2004, para. 142. These issues are discussed in greater detail in S.J. Anaya 2005.
- 30 *Mary and Carrie Dann Case*, *supra*, at para 131.
- 31 *Moiwana Village Case*, *supra*, at para 211; and *Mayagna (Sumo) Indigenous Community Case*, *supra*, para 164.
- 32 See, for instance, *Mayagna (Sumo) Indigenous Community Case, Provisional Measures of 6 Sept. 2002*, at Decisions, at para 1.
- 33 Van Boven 1993.
- 34 *Id.* at p. 57.
- 35 *Velasquez Rodriguez Case. Compensatory Damages. Judgment of July 21, 1989 (Article 63(1) American Convention on Human Rights*. Series C No. 7, at p. 49, para. 26.
- 36 *Yakye Axa Indigenous Community Case*, *supra*, para. 217.
- 37 *Sawhoyamaxa Indigenous Community*, *supra*, para. 248.
- 38 *Id.*
- 39 *Id.* at para. 128
- 40 *Id.* at para. 131.
- 41 *Id.*
- 42 *Id.* at 132.
- 43 *Id.* para. 138-9.
- 44 *Yakye Axa Case supra*, at para. 151 and; *Sawhoyamaxa*, *supra*, para. 135.
- 45 *Concluding observations of the Committee on the Elimination of Racial Discrimination: Botswana*. 23/08/2002. UN Doc. A/57/18, paras.292-314, at 304.
- 46 *Concluding observations of the Committee on the Elimination of Racial Discrimination: Sri Lanka*. 14/09/2001. UN Doc. A/56/18, paras.321-342, at 335.
- 47 *Concluding observations of the Committee on the Elimination of Racial Discrimination: Guatemala*, 15/05/06. UN Doc. CERD/C/GTM/CO/11, 15 May 2006, at para. 17.
- 48 Reichart 1992, at 30.
- 49 See, Report on Admissibility and Merits No. 09/06, *Twelve Saramaka Clans*, *supra*, at para. 230 and, *Moiwana Village*, *supra*, para. 86(5).
- 50 *Nature Protection Act (Naturbeschermingswet)*, GB 1954, 26 (current text SB 1992, 80).
- 51 *Id.* Art. 5: "Within a nature reserve it is prohibited: a) to purposely or negligently damage the condition of the soil, the natural beauty, the fauna, the flora, or to perform acts which harm the value of the reserve itself;" and, Art. 8: "Violation of this law will be punishable with imprisonment not exceeding 3 months or with a fine of one thousand guilders maximum."
- 52 *Id.* at para. 128.

- 53 *Moiwana Village Case*, *supra*, at para 211; and *Mayagna (Sumo) Indigenous Community Case*, *supra*, para 164.
- 54 *Yakye Axa Case*, *supra*, para. 146.
- 55 *Case of the Masacres de Ituango v. Colombia*, 1 July 2006. Series C No. 148; *Kankuamo Indigenous Community v. Colombia (Provisional Measures)*, Order of the Inter-American Court of Human Rights of July 5, 2004, at Resolution 3 (requiring immediate measures to protect the right to freedom of movement including those to permit displaced indigenous persons to return to their traditional lands); *Jiguamiandó and the Curbaradó Communities v. Colombia (Provisional Measures)*, Order of the Inter-American Court of Human Rights of March 6, 2003, at para. 9 (an Afro-Colombian tribal community who "are all in a situation of equal risk of ... being forcibly displaced from their territory, a situation that prevents them from exploiting the natural resources necessary for their subsistence;"); and *Jiguamiandó and the Curbaradó Communities v. Colombia (Provisional Measures)*, Order of the Inter-American Court of Human Rights of February 7, 2006, para. 9, 12.
- 56 *Moiwana Village Case*, *supra*, at para. 186-7.
- 57 *Blake Case*, Judgment of 2 July 1996. Series C No. 27, at paras. 33 and 40; *Genie Lacayo Case*, Judgment of 27 January 1995. Series C No. 21, para. 22-26; *Plan de Sánchez Massacre Case, Reparations*, 19 November 2004. Series C No. 105; and *Moiwana Village Case*, *supra*, at para. 108, 126.
- 58 *Report No. 26/00 (Admissibility)*, Village of *Moiwana*, 7 March 2000, para. 18; and, *Report No. 60/99 (Admissibility)*, Ovelario Tames., 13 April 1999, para. 26 and 27.
- 59 *Report of the Committee set up to examine the representation alleging non-observance by Mexico of the Indigenous and Tribal Peoples Convention*, (No. 169), made under article 24 of the ILO Constitution by the Radical Trade Union of Metal and Associated Workers. Doc.GB.273/15/6; GB.276/16/3 (1999), at para. 36. See also, *Report of the Committee set up to examine the representation alleging non-observance by Denmark of the Indigenous and Tribal Peoples Convention*, 1989 (No. 169), made under article 24 of the ILO Constitution by the *Suliner-mik Inuussutissarsiuqartut Kattuffiat (SIK)*. Doc. GB.277/18/3; GB.280/18/5 (2001), para. 29.
- 60 *Sandra Lovelace v. Canada*, Communication No.R.6/24, U.N.Doc.Supp.No.40 (A/36/40) (1981); *Phosphates in Morocco case (Italy v. France)*, PCIJ Series A/B, No. 74 (1938), at 28. Also see, *inter alia*, *X. v. France*, Eur. Ct. H.R., App. no. 18020/91 (1992)(Judgment)(Merits and Just Satisfaction); *Bozano v. France*, Eur. Ct. H.R., App. no. 09990/82 (1986)(Judgment)(Merits).
- 61 *Durban Accord: Action Plan*, adopted at the Vth IUCN World Parks Congress, Durban South Africa (2003), at p. 25.
- 62 *Id*, at p. 26.
- 63 See, also Article 22 of the CBD and *Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia*, ICJ Rep. 16 (1971), at 31.

64 Inter-American Development Bank 2006.

65 *Id*, at 8.

66 *Id*, at 5.

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The role of parliaments in fostering environment-related human rights

Hanna Jaireth

Abstract. This article argues that parliaments can play a significant role in protecting environment-related human rights, and that NGOs should encourage this, while mindful of the potential limitations of such involvement. While some parliaments already make a contribution to the protection of environment-related human rights (examples are included in this paper), improvements could be made and more parliaments could become engaged. The paper outlines the benefits for NGOs of focusing action on parliaments rather than on other governance sites.

Environment-related human rights

It is generally accepted that humanity and global biodiversity are endangered by unsustainable production and consumption, and by the degradation of the planetary environment. The declining ability of some areas to provide a decent quality of life for significant human populations, and the disproportionate impact that some segments of the human population have on others, raise human rights issues. But so do other local matters from inappropriate

development on indigenous peoples' land to forced resettlement, denial of access to customary territories and resources, poorly administered town planning regimes, inappropriate aircraft flight paths, the siting of waste disposal facilities or the denial of access to information or the right to protest.¹

Multilateral treaty obligations, such as those in the international human rights covenants and conventions, and environmental treaties such as the Convention on Biological Diversity, tend to be vaguely worded concerning the linkages between human rights and the environment. They do not yet explicitly recognise a fundamental and distinct human right to a safe and healthy environment. And yet, many well-established civil, political, economic, social and cultural rights can apply to environmental concerns and sustainable development.² Environment-related human rights in the international bill of rights include the rights of minorities; the right to equality before the law; to life; to protection of the family and the rights of the child; to privacy and reputation; to peaceful assembly and association; to freedom of expression; to take part in public life; and to a fair trial. Non-binding multilateral declarations also



Picture 1. Walk Against Warming outside of the ACT Legislative Assembly on the International Day of Action on Climate Change, 4 November 2006. (Courtesy Dave Long and the Conservation Council for Canberra and South East Region)

tend to recognise the human rights and environment linkages.

The interdependence of human rights and sustainable development is the subject of ongoing discussion within the UN,³ and was recognised in the Implementation Plan agreed at the Johannesburg World Summit on Sustainable Development.⁴ The implementation of the UN Millennium Development Goals has been linked directly with international human rights obligations.⁵ The 1994 Ksentini report to the UN Human Rights Commission on the links between human rights and the environment⁶ stimulated broad ranging international discussions,⁷ but not yet the development of specific international instruments.

Several regional agreements recognise a broad human right to a healthy environment,⁸ but some regional initiatives

Encouraging parliaments at all levels to recognise and protect environmental rights can be an effective means of ensuring their realisation.

have failed to give appropriate recognition to environment-related human rights. For example, among the web-accessible reports to the 2006 Asia Pacific Forum on National Human Rights Institutions, only India's and Thailand's mentioned environmental rights.⁹

More than 100 national constitutions protect environmental rights, and parliaments can be required to not legislate inconsistent with these.¹⁰ Domestic judiciaries in various countries have affirmed the right to a healthy environment in constitutional or statutory litigation. Some jurisdictions also have statutory bills of rights, which were enacted following consultative exercises.¹¹ The recognition of environment-related



Picture 2. Members of the ACT Legislative Assembly, Assembly secretariat, and Planning and Land Authority staff at a briefing on planning reform legislation. (Courtesy ACT Legislative Assembly Committee Office)

human rights provides a foundation for broader global standard-setting, and compliance reporting by diverse social actors. But it is more important for enabling the domestic implementation of these recognised rights. Encouraging parliaments at all levels to recognise and protect these rights can be an effective means of ensuring their realisation. There is also growing international interest in protecting the rights of human rights defenders, including those of activists promoting environment-related human rights.

The role of parliaments, and committees in particular

Parliaments, which are often representative or partially-representative bodies, are arguably as well-placed as the judicial institutions to insist on adherence to internationally-recognised standards protecting basic human dignity. Both types of governance institutions have embarrassments on their record. But for parliaments, a temporary capacity to deny rights with impunity may reflect electoral will, authoritarian rule, or majority government. These causes are impermanent, and it is up to social actors to insist that their environment-related human rights are recognised and protected. The Commonwealth Parliamentary Association has taken a

commendable lead in capacity-building for parliamentarians in the general area of human rights,¹² but more can be done with environment-related human rights.

In the exercise of their legislative powers, most parliaments have enacted a panoply of legislation concerned with environment-related human rights to resources (land and other property rights, native title, co-management,

With a broader human rights focus, parliaments can ensure that all legislation it enacts is human-rights compliant.

gender-based rights etc), access to information, due process, privacy, non-discrimination etc, although these do not often explicitly acknowledge their rights-based genealogy. Although the terms and implementation of this legislation may fail to deliver on its promise, this is likely to result in on-going campaigns. For example, the limited gains from native title legislation in Australia continue to rankle with social justice proponents, including Indigenous Australians.¹³ So does governments' tendency to frustrate the implementation of freedom of information legislation. But this does not deny the potential of parliaments to enact rights-affirming legislation, and simply invites more effective campaigning and the mobilisation of authoritative (or otherwise influential) networks to provide advice supporting reform.

With a broader human rights focus, parliaments can ensure that all legislation it enacts is human-rights compliant. Some jurisdictions have enacted legislation to ensure that legislative drafting and interpretation are human rights-compliant unless expressly intended not to be so. Pre-legislative scrutiny may be attested through

'declarations of compatibility'. Several jurisdictions also permit the judiciary to issue 'declarations of incompatibility', where legislation cannot be interpreted as consistent with human rights but leaves it to the parliament to remedy the breach. Despite such legislation, political exigencies, including a commitment to parliamentary sovereignty and a reluctance to regulate extra-territorial trans-national corporate activities, can thwart well-intentioned commitments.

The case law that these statutory declarations of rights have produced do not include radical judicial pronouncements on the scope of environmental rights, but this could have hardly been expected. Judiciaries in most countries are usually reluctant to intervene where large-scale resource-allocation questions are at issue, and where governments already regulate the market.¹⁴ There have, however, been a few litigation wins for complainants in extreme cases. The failure of litigants to succeed in court should not be a deterrent to engaging parliaments on environment-related human rights issues, however, as the political arena can be effective for resolving values-based conflicts, provided political communities are effectively engaged on the issues.

There are a range of parliamentary opportunities for asserting and protecting human rights, as parliaments are supposed to hold the executive arm of government to account. A range of opportunities in parliamentary chambers can be used to debate and scrutinise executive actions: question time, speeches on matters of public importance, adjournment debates, and debate in the committee of the whole. In general, however, parliamentary committee work is recognised as the most

influential scrutiny mechanism.

There is potential in establishing (where they do not exist) and strengthening and clarifying the terms of reference of

The political arena can be effective for resolving values-based conflicts, provided political communities are effectively engaged.

parliamentary standing committees for the scrutiny of legislation, regulations and subordinate instruments. Such committees can influence the development of human rights cultures in governance institutions¹⁵ and can develop expertise

in specialised areas, such as environment-related human rights. These committees review bills and advise the parliament if they unduly trespass on rights and freedoms, make them unduly dependent on insufficiently defined administrative powers or non-reviewable decisions, inappropriately delegate legislative powers or insufficiently subject the exercise of legislative power to parliamentary scrutiny. For example, the UK Parliament's Joint Committee on Human Rights reviews legislation. Typically such committees refer to domestic law, international human rights law and the law and jurisprudence of other jurisdictions as sources for the standards they apply for their scrutiny work. Ministers usually respond formally to issues raised by the committee and, if the concerns are accepted, may amend the offending legislation or develop remedial administrative procedures. The correspondence is usually on the public record, but issues identified tend to be muffled in technical or oblique language, which may be ignored, and direct recommendations are rarely made.¹⁶

Many parliaments have standing or select committees with 'environment' and/or 'sustainability' in their terms of

reference. Such broader reference or legislative parliamentary committees can undertake substantial and detailed scrutiny and policy development work. In the Australian Capital Territory, the Standing Committee on Planning and Environment has canvassed the human rights implications of planning proposals and reform legislation.¹⁷ Other committees may focus on indigenous peoples, on mobile or settled communities, or on the legislative and policy frameworks for the sustainable development for these communities. As they tend to operate in a rather independent way, their attention to human rights issues tends not to draw on the expertise of the scrutiny committees. It is thus incumbent on stakeholders, MPs and committee staff to develop expertise on human rights issues and apply it to general committee work.

There have been several inquiries in recent years that demonstrate how parliamentary committee work can foster environment-related human rights. The 2005 Report of the Canadian House of Commons Standing Committee on Foreign Affairs and International Trade, for example, made far-reaching recommendations on the need for Canadian companies operating in developing countries to be

Through their scrutiny of budget estimates and appropriation legislation, parliaments can insist on pro-human rights budgets.

more accountable for environmental and human rights violations. It called for stronger incentives and regulatory measures to encourage corporate social responsibility (CSR) and better compliance with international human rights standards. It also called for an investigation into the impact of TVI Pacific Canatuan mining project in Mindanao (Philippines) on the indigenous rights

and human rights of people in the area, and on their environment.¹⁸ The government's non-regulatory response disappointed some civil society stakeholders, including Amnesty International, but the report provides a lightning rod for further lobbying. The government response proposed a series of national roundtables to discuss the report's recommendations and co-operative international work to clarify the CSR framework; expressed support for the UN Secretary-General's special representative on human rights and transnational corporations; and expressed a commitment to incorporating human rights best practice into projects' due diligence processes, improving advisory services; and improving corporate transparency.¹⁹ In Australia, a similarly groundbreaking report was the 2006 report of the Parliamentary Joint Committee on Corporations and Financial Services on corporate responsibility.²⁰

Despite the potential for work in this area, some parliamentary committees have not given a high priority to environment-related human rights. The European Parliament's Environment Committee, for example, seems not to

have focussed on environment-related human rights despite the relatively strong human rights institutions in Europe.²¹ Some other parliamentary committees have not explicitly recognised the human rights aspects inherent in their recommendations. In Zambia for example, the Committee on Local Governance, Housing and Chiefs' Affairs recommended in 2006 the development of mechanisms for sharing revenues from game licence fees between the Zambia Wildlife Authority, district councils and local communities, without referring to the human rights aspects of this issue (such as rights to culture, equality before the law and right to property).²²

Some parliamentary committees monitor or scrutinise the findings of other oversight bodies such as human rights commissioners, ombudsmen, auditor-generals or commissioners for the environment. Public Accounts Committees tend to scrutinise Auditor-Generals reports. Some parliamentary officers focus are more specifically on environmental issues. New Zealand, for example, has a Parliamentary Commissioner for the Environment (PCE) appointed for a 5-year term by the Governor-General on the recommendation of the NZ Parliament. The *Environment Act 1986* establishes the office of the PCE and details the Commissioner's powers



Pictures 3 and 4. Citizen action can be an important part of the campaign for parliaments to better protect environment-related human rights, such as this 'Walk Against Warming' (see also Picture 1). (Courtesy Dave Long and the Conservation Council for Canberra and South East Region)

and functions. Through their scrutiny of budget estimates and appropriation legislation, parliaments can also insist on pro-human rights budgets.

Advantages and benefits

There are several advantages in seeking parliamentary engagement on environment-related human rights in a political rather than purely legal sense. Committee recommendations, if accepted by government, can lead directly to reform. If not agreed, or if additional and dissenting comments are included (usually on party lines), the differences between parties on issues becomes transparent and can provide guidance for electors or political campaigns.

A distinct advantage of a parliamentary focus is that all members of parliament (MPs) and witnesses appearing before a parliamentary body, and all work done in the course of parliamentary proceedings, are protected by the privileges and immunities of parliament. This means that no legal action, including actions for defamation, can be instituted as a result of anything said or done during those proceedings.²³ This is a powerful advantage in liberal democracies. Some jurisdictions have conferred an additional protection for activists outside the parliamentary context, by restricting the ability of corporations to pursue strategic litigation to silence critics (SLAPP litigation)²⁴, and/or to sue for defamation. Of course environmental and human rights activists are still detained in many jurisdictions (with notorious examples recently in Turkmenistan, China, Indonesia and Russia), but this does not reduce the protective mantle of parliaments in jurisdictions that better recognise democratic freedoms. Permitting dissent and attempting to resolve it peacefully and politically is a far better governance approach for long-term peace and

stability, and parliaments that insist on compliance with human rights standards are likely to have greater legitimacy and authority amongst the less powerful in society.

The powers that are available to parliamentary committees are also substantial, and can be exercised without significant financial expense. Parliamentary committees' ability to call for persons and papers can be an effective means for ensuring that ministers and others are held accountable and responsible to the parliament and stakeholders. Usually, witnesses are willing to provide submissions and evidence to parliamentary committees and to voluntarily appear as witnesses. On the other hand, various powers, privileges and immunities can be invoked to encourage reluctant witnesses to cooperate. Conduct that amounts, or is intended or likely to amount, to an improper interference with the free exercise by a house or committee of its authority or functions, or with the free performance by a member of the member's duties as a member, may be an actionable contempt of parliament.

MPs can become effective proponents of environmental causes related to human rights.

MPs can become effective proponents of environmental causes related to human rights for instance by canvassing issues in correspondence, speeches or debates inside or outside parliament. This can contribute to the education of the broader public about the issues. Parliamentary engagement is also likely to increase media interest. But the effectiveness of an MP or committee depend on their level of interest and engagement; their expertise or capacity; the political make up of the parliament and the committee; the strength

of stakeholder activism; competing priorities; governance standards; and practices in the polity and media reactions.

Disadvantages and risks

It needs to be acknowledged that there are many constraints facing campaigns which focus on parliaments for better rights protection. Often by the time legislation has reached parliament

Parliamentary scrutiny mechanisms may be politically constrained.

it has been substantially negotiated and endorsed by a cabinet and/or political caucus. In such cases, the likelihood of significant amendments being agreed is correspond-

ingly slim. Early engagement during policy-development stage, focussing on bureaucracies as well as well as elected representatives, may be more effective.

Parliamentary scrutiny mechanisms may be politically constrained. The constitution of the parliament or strength of a political movement can lead to or inhibit reforms. Where there is a minority government or an upper-house not controlled by the majority party or parties, parliamentary leverage is stronger. On the other hand, if there is a majority government or weak opposition and cross-bench, parliamentary committees seem more vulnerable to being captured by the executive, or to having recommendations ignored.²⁵ Weak and partisan committees may reflect a lack of MPs' experience and poor understanding of the democratic benefits of strong and effective parliamentary (as distinct from partisan) checks and balances. If influential and expert human rights champions have been elected to parliament, such advocates can present arguments in principle and precedents justifying reforms.

Sadly these individuals tend to be rare, or suppressed by party or executive discipline.

There may also be more practical constraints. Scrutiny of bills committees, for example, are often limited in their effectiveness by the absence of a clear definition of the human rights standards against which they assess legislation, and by the tradition of only obliquely identifying issues for parliament's consideration, rather than suggesting recommendations for amendment(s). The legalistic representation of human rights issues and the lack of a broad-based human rights culture generating political resonance (with some exceptions such as rights to trial and due process), may weaken lobbying efforts. The abstract nature of environment-related human rights can also be a limiting factor, as are the disciplinary silos within which committees and ministries operate, and the poor definition of the terms of reference of parliamentary scrutiny committees.

The abstract nature of environment-related human rights can be a limiting factor.

Conclusions

While there are many factors inhibiting the recognition and realisation of environment-related human rights, these are not insurmountable. There are advantages in better focussing parliaments on human rights issues, including environment-related human rights. These have been noted briefly, and have several constraints. Some realistic targets for progress in this area are:

- ▶ the enactment of domestic laws (where these are not in place), requiring all legislation to conform with international standards on human rights, including environmental rights;

- ▶ a better engagement and development of expertise on environment-related human rights by MPs, political advisers, committee staff and other stakeholders;
- ▶ the establishment of parliamentary commissioners for the environment or the express inclusion of environment-related human rights in the mandate of human rights commissioners;
- ▶ the creation of parliamentary committees with a specialist human rights focus;
- ▶ the clarification of the terms of reference of legislative scrutiny committees to better recognise environment-related human rights;
- ▶ the formation of working groups on human rights and the environment in associations and organisations such as the Commonwealth Parliamentary Association, the Inter-Parliamentary Union,²⁶ regional bodies, and regional governance institutions;
- ▶ the strengthening of linkages between parliaments, the non-government sector, and UN institutional activities, and particularly those concerned with environment-related human rights, such as inquiries and reporting by Special Rapporteurs, UN scrutiny of country reports, communications to treaty bodies etc;
- ▶ parliamentary scrutiny of National Action Plans on Human Rights which implement the Vienna Declaration and Program of Action with a view to ensuring that they address environment-related human rights.

Hanna Jaireth (mhsjaireth@netspeed.com.au) is Secretary to the ACT Legislative Assembly's Standing Committee on Planning and Environment, but the views expressed herein are personal. Hanna has a longstanding interest in the law and politics of sustainable development. She co-edited with Dermot Smyth, *Innovative Governance: Indigenous Peoples, Local Communities and Protected Areas* (2003), is actively involved with community environmental organisations and is a member of CEESP/TGER and TILCEPA and of other IUCN Commissions.

Notes

- 1 See for example: *Police v Beggs* [1999] 3 NZLR 615; *Dennis v Ministry of Defence* [2003] Env LR 34; *Baggs v UK* [1981] 52 DR 29; *Arrondelle v UK* [1977] 19 DR 186 and DR 26; *Andrews v Reading Borough Council* [2005] 256 (QB)8; *Lopez Ostra v Spain* (1994) 20 EHRR 277, *Guerra v Italy* (1998) 26 EHRR 357; *Oneryildiz v Turkey* [2002] ECHR 491; amongst other determinations, many of which were unsuccessful for the complainant. Litigation in India on the right to clean air demonstrates the potential for protracted conflict over environmental rights and the potential for significant reforms to be achieved: see Greenspan Bell et.al.2004.
- 2 See Picolotti & Taillant, 2003.
- 3 See United Nations Permanent Forum on Indigenous Issues, 2007 <http://www.un.org/esa/socdev/unpfii/> and work in the earlier United Nations Economic and Social Council subsidiary bodies, 2004
- 4 United Nations Johannesburg Plan of Implementation 2002, paras 5, 54, 62, 102, 138, 169
- 5 'Human rights and the Millennium Development Goals', UN Doc A/res/55/2, 8 September 2000, <http://www.unhchr.ch/development/mdg.html>, accessed 3 February 2007
- 6 Ksentini, 1994. See also 'The 1994 Draft Declaration of Principles on Human Rights and the Environment', Sierra Club Legal Defense Fund Pamphlet
- 7 *Meeting of Experts on Human Rights and the Environment, Final Text, 2002*. See also UN Doc. E/CN.4/2004/87.
- 8 Such as the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, the 'Protocol of San Salvador'. See also OAS General Assembly, San José de Costa Rica, June 5, 2001 and Shelton, 2002.
- 9 Asia Pacific Forum of National Human Rights Institutions, 2006.
- 10 The South African Constitution provides that everyone has the right to an environment that is not harmful to their health or well-being, and to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures that (i) prevent pollution and ecological degradation; (ii) promote conservation and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development. See Hayward, 2005.
- 11 Bill of Rights Act 1990 (NZ), Human Rights Act 1998 (UK), Charter of Rights and Freedoms (Canada), Charter of Human Rights and Responsibilities Act 2006 (Vic), Human Rights Act 2004 (ACT). On consultation outcomes see for example: ACT Consultative Committee Bill of Rights (2003), *Report: Towards and ACT Human Rights Act*, Canberra, <http://www.jcs.act.gov.au/prd/rights/documents/report/BORreport.pdf>, accessed 3 February 2007.
- 12 Commonwealth Human Rights Initiative and Com-

- monwealth Parliamentary Association's Human Rights Module for Parliamentarians (internet module).
- 13 Laurie, 2007; Dick, 2007.
- 14 Lee, 2005.
- 15 Shearan, 2006.
- 16 Murray, 2006.
- 17 The Committee's reports are accessible at <http://www.parliament.act.gov.au/committees/index1.asp?committee=55>. See in particular Report Nos 20, 21, 22
- 18 Canada, House of Commons, 2005.
- 19 Government of Canada, 2005.
- 20 Australia, Parliamentary Joint Committee on Corporations and Financial Services, 2006.
- 21 See for example: European Parliament, 2004.
- 22 Republic of Zambia, 2006, pp17 and 22.
- 23 In jurisdictions with a Westminster heritage, these privileges and immunities derive from the UK Bill of Rights 1689 but may have more recent embodiment in constitutional or statutory provisions or parliamentary standing orders.
- 24 Strategic Lawsuits against Public Participation.
- 25 Evans and Evans, 2006.
- 26 The resolution adopted by the 114th Assembly of the Inter-Parliamentary Union (Nairobi, 12 May 2006), '*The role of parliaments in environmental management and in combating global degradation of the environment*,' did not refer expressly to environment-related human rights but these would be addressed implicitly: see <http://www.ipu.org/conf-e/114/114-2.htm>
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Conservation, protected areas and humanitarian practice

Nicholas Winer, David Turton and Dan Brockington

Abstract. In recent years there has been increasing concern about the impacts of conservation on local and indigenous communities. This concern has come from both within and beyond the conservation community. In particular the impacts of protected areas have come under close scrutiny— a long list of case studies highlight evictions, forced resettlement, reduced or lost access to important resources and sources of income. Although protected area planning is the responsibility of government ministries, some of the big international conservation NGOs have been the target of criticism concerning these impacts. Yet, despite the existence of relevant case studies, and some “sensationalist” articles in the popular press, the evidence about the impacts of protected areas on human rights is often weak and anecdotal. The establishment of protected areas remains one of the principal conservation tools for the maintenance of biodiversity. As the demand for greater biodiversity protection competes with growing demands for access to agricultural and grazing lands, many conservation organisations are increasingly linked to efforts to better understand the impact of conservation on local people and the potential role of such people in promoting and benefiting from conservation. This has opened up a larger debate about the priorities to be adopted by conservation organisations, both large and small. This paper argues that it is high time to develop a set of agreed humanitarian principles, against which conservation organisations could hold themselves publicly accountable, as a way to maintain the public’s

confidence and ensure that impoverishment in the name of nature truly becomes a thing of the past. Such a set of principles would provide a means by which organisations could be publicly differentiated from governmental and non-governmental bodies whose actions continue to jeopardise the livelihoods of communities in and around areas of conservation importance.

*"Perhaps one day in the future the new park could be fenced in. Then the animals would have to remain inside it. They would be protected from the settlers near the park and prevented from dying from hunger and thirst when all the timber around their water holes had been felled and their pastures are over-grazed by native cattle."*¹

*"Local support is not necessarily vital for the survival of protected areas. Conservation can be imposed despite local opposition and protected areas can flourish notwithstanding resistance to them. Rural poverty and injustice do not undermine the foundations of conservation. Indeed they can underpin them."*²

*"Conservation will either contribute to solving the problems of the rural poor who live day to day with wild animals, or those animals will disappear."*³



Picture 1. A tourist photographing Mursi at a settlement in the Mago National Park. The Mursi have deliberately 'exoticised' themselves for the camera. (Courtesy Ben Dome, 2004)

The concept of the National Park as a fully protected area has its origins in Western European and American concerns for wilderness and its preservation. The first Parks were established in the USA in the 19th century and shortly afterwards the model found its way to Africa and the rest of the world. The basic assumption was that 'wilderness' landscapes were free of human intervention and that only their separation from potential future encroachment

could guarantee the integrity of their conservation status. This status was originally conceived as having more to do with emblematic or charismatic scenery than any currently understood concept of biodiversity conservation.

The establishment of protected areas remains one of the principal conservation tools for the maintenance of biodiversity. The 2004 World Database on Protected Areas includes over 105,000 sites covering 19.7 million km². The expansion of this area remains central to the work of the Convention on Biological Diversity which believes that. "Experience shows that a well designed and managed system of protected areas can form the pinnacle of a nation's efforts to protect biological diversity.... Such a system complements other measures taken to conserve biological diversity outside protected areas."⁴

In other words, the parties to the Convention believe that the protected area model has stood the test of time. The model itself has been expanded and modified by IUCN's categorisation



Picture 2. Small plot irrigation from the Parapeti River, which runs along the edge of the Kaa-Iya del Gran Chaco Park in Bolivia. This is the first park in the Americas created at the request of an indigenous people. (Courtesy Hal Noss)

of protected areas to reflect the diversity of both form and policy now in existence. These range from category I (highest protection) to VI (sustainable resource use), comprising a range of land use options from forbidding all forms of residence and resource use, to human activity embraced as integral part of the landscape.⁵

The expansion and reform of the category system has substantially contributed to the expansion of the global protected area estate.⁶ But the weaker forms of protection are treated sceptically by significant sections of the conservation community who insist that the only valuable protected areas are the more strictly protected category I-IV models.⁷ New pressures are being put on landscapes as growing human

populations compete for diminishing resources; in some cases growing wildlife populations are pushing ever outward generating increased conflict over those same resources and in turn challenging established land use priorities. The increasing impoverishment of many marginal rural and agro-pastoral communities in the face of declining fertility, over-population and worsening terms of trade for their products means that their socio-economic predicament can no longer be ignored by conservation managers. There must be few today who feel that it is morally

Many of the landscapes deemed most precious for their biodiversity values would not have reached this state without some degree of human intervention.

sound, economically viable, administratively feasible or environmentally sustainable to pursue the sort of bleak, doomsday vision summed up in the above quotation by the Serengeti's founding father Bernhard Grzimek in 1960.

There are today hardly any untouched landscapes. Many of those deemed most precious for their biodiversity values have hosted indigenous peoples for millennia and would not have reached their present state without some degree of human intervention. This understanding, coupled with the sheer weight of socio-economic pressures and the dubious environmental sustainability of cutting off parks from their surrounding areas, has led to a review of the role of the National Park in the wider landscape. Two important recognitions have emerged to date at least in part of the conservation community:

1. National Parks, as ecological islands in seas of land degradation, are not functionally sustainable. This recognises the influence of the surround-

ing areas on the ecological integrity of parks and the important role that migratory corridors play in maintaining bio-diverse populations.

2. Those living in and around protected areas need to realise some benefits from their proximity in order to compensate them for the associated costs. This implicitly recognises that most protected areas are unlikely to achieve their conservation objectives without the cooperation of those who live within and around them.

The establishment of a protected area results in the immediate reduction of future land use options. So while the benefits of a protected area system may be perceived at the national, regional and international level, the costs are disproportionately borne by those who live closest to the protected areas and whose capacity to pay for reductions in land use opportunities are often lower than the national average—



Picture 3. Women thatching a grain store at a Mursi settlement in the Mago National Park. (Courtesy Ben Dome, 2004)

namely, the rural poor. This was never the intention of the framers of the Convention on Biological Diversity and it contradicts the Convention's targets for 2010 which aim "to significantly reduce the current rate of biodiversity loss at the global, regional, national and sub-national levels and contribute to poverty reduction and the pursuit of sustainable development, thereby supporting the objectives of the Strategic Plan of the Convention, the World Summit on Sustainable Development Plan of Implementation and the Millennium Development Goals."⁸

The problem is that many of today's protected areas function as barriers to expanding human economic activity.

A great number of programmes and projects have been designed which attempt to address the economic implications of this bleak fact. These activities are of-

Revenues generated by protected areas have rarely been seen by local recipients as a sufficient compensation or an adequate incentive to support conservation

ten piecemeal responses that involve local peoples in developing products for tourism markets and generating employment within the local tourism industry. But tourism is a fickle global industry that is often culturally insensitive.⁹ In addition, little tourism revenue goes directly to those most affected by the presence of a protected area. As a result, revenues generated by protected areas have rarely, if ever, been seen by their local recipients either as a sufficient compensation for loss of access to natural resources or as an adequate incentive to support conservation. Local people are rarely considered responsible and responsive enough to become managers and custodians of lands and resources they have lived with for centuries. It is even rarer that local peo-

ple actively support and lobby for the creation of national parks. In all of the Americas there are few national parks established as a result of lobbying by an indigenous people, the first such one was only established in 1995.¹⁰



Picture 4. A tourist gets his shot of a 'wild' Mursi in the Mago National Park, for which he will pay about 20 US cents.
(Photo courtesy Ben Dome, 2004)

There is clearly not just a practical difference, but also an ideological one in the conception of the role and value of a protected area. This difference is not just another expression of the north-south divide but also of the urban-rural divide. How a citizen of the USA, Europe or of a major conurbation in a developing country values conservation is inherently different from that of a marginal land user in a developing country whose land use and therefore livelihood options are placed under increasing threat from a variety of sources of which conservation is perceived as only one.

Conservation has not, by and large, been seen by either local residents or national and regional planners as an integral component of development planning. Conservation organisations have consequently found themselves working in 'islands' of biodiversity, feeling besieged by the surrounding

socio-economic interests. The advent of the MDGs [Millennium Development Goals] and the World Bank/IMF's PRSPs [Poverty Reduction Strategy Papers] has made it much more important for conservation initiatives to demonstrate their linkages to poverty reduction, and thereby to enter the mainstream of national development planning. On the one hand, these major multi-lateral initiatives offer opportunities to link protected areas to larger land use development processes and ensure a flow of funds and other resources capable of supporting the integration of conservation into the national development agenda. On the other hand, a failure to demonstrate linkages between conservation and poverty reduction risks leaving conservation programmes further isolated from national planning processes and less able to attract funds.

This may not be of critical importance to well funded conservation organisations or to purely research based activities, but it does mean that clear expectations now exist that conservation can and will play a role, not just in conserving biodiversity but also in reducing poverty. This in turn means that the way conservation organisations interact with the traditional custodians of land in and around protected areas falls under a brighter spot light.

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Many recent conservation initiatives make some effort to engage with local groups in order to provide them with alternative sources of income, in recognition of the fact that their user rights have been adversely affected. However successful or otherwise these efforts

may be, the commitment to provide economic and cultural incentives to support conservation promotes both conservation and development. In so doing it moves towards a reconciliation of the previously conflicting philosophical underpinnings of development and conservation. The uncoupling of such a linkage would return conservation to authoritarian preservationist management regimes unwilling to recognise the local cultural, economic and environmental costs of conservation.

The problem

*"There is often widespread conflict between the interests of rural peoples and the interests of biodiversity conservation within protected areas. Time and time again the premise of many nature reserves across the developing world has been the same: the forcible uprooting of resident and mobile populations, often coerced violently to relocate somewhere else.....The new enthusiasm for private investment in, and private management of, nature reserves has the potential to be a new and potent force for social disruption in rural areas."*¹¹

*"Involuntary resettlement may cause severe long-term hardship, impoverishment, and environmental damage unless appropriate measures are carefully planned and carried out.....Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher."*¹²

Despite both the rhetoric and targets of the Convention on Biological Diversity there is a growing sense of frustration among certain sectors of the conservation community with 'inclusive'

approaches to biodiversity— those that recognise the moral and practical importance of including community actors as active participants in the management of conservation areas. Notwithstanding the broad scientific understanding that most protected areas are too small to function as effective ecosystems

There is a growing sense of frustration among certain sectors of the conservation community with 'inclusive' approaches to biodiversity.

for biodiversity conservation, there is a growing belief that a return to stricter definitions of conservation may be both scientifically and morally justifiable. According to this 'narrative' biodiversity conservation is, on the one hand, incompatible with the presence of human beings and, on the other, of such importance as to constitute a moral obligation. This view holds most sway amongst a number of conservation scientists who also understand that the current protected area network is insufficiently extensive to satisfy rigorous scientific definitions of ecosystem, or biodiversity, conservation. They therefore propose an expansion of the area under protection, which should be free of human interaction and managed by a central authority. A range of justifications is given for this position:¹³

- ▶ Biodiversity loss is so rapid and extensive that there exists an overwhelming moral obligation to act to preserve it.
- ▶ Community based conservation principles and practises are not rooted in science and draw on romantic, unverifiable images of traditional relationships between peoples and the environments they live in.
- ▶ The weakness of common property institutions undermines the potential sustainability of community based approaches.

- ▶ Wider community based development actions rarely result in successful species conservation.
- ▶ The community development components of conservation draw scarce financial resources away from protection and into development.
- ▶ Protected areas do work and the scale of the threats to biodiversity justify a significant strengthening of their scope and implementation up to and including authoritarian enforcement measures.

This position gains strength from advocates of protected areas who do not recognise the costs displacement from protected areas can bring. There are, among this group, those who claim that there is insufficient empirical evidence to substantiate the contention that establishing national parks compromises the welfare of people who live in or around them.¹⁴ This position supposes that restricting human activity (which tends to be integral to conservation policy), without recompense might not necessarily affect welfare, when simple logic suggests it must. It also ignores a long and growing list of case studies and surveys which overwhelmingly indicate that eviction and exclusion have caused impoverishment and discontent.¹⁵

At the same time we must also recognise that the evidence about the impacts of protected areas could be stronger. Among the case studies referred to in the previous paragraph, there are many that are weak or merely anecdotal. There is also a problem of missing system and order in the enquiry into the social impacts of protected areas. This makes it hard to obtain an adequate overview of their social impacts. And, although the literature on the social impacts of displacement is growing, it still lacks a systematic anal-



Picture 5. An aerial view of the Lower Omo Valley. The Omo here forms the eastern boundary of the Omo National Park, under the management by the Netherlands-based African Parks Foundation (APF) as of January 2006. Members of seven ethnic groups live in and utilise the park for cultivation and grazing. The agreement between APF and the Ethiopian government does not recognise the land rights of these groups. It merely states that APF will consider the 'interests' of local people, 'as far as is practically possible'. (Courtesy David Turton)

ysis.¹⁶ This weakness makes it hard to discern regional and historical patterns in the nature and experience of different forms of displacement, or the distribution of benefits from protected areas.

It is clear that, for the foreseeable future, protected areas will remain key components of any national or international biodiversity conservation programme. Our concern is to address the absence of an international consensus

on the responsibility of those who promote protected areas to ensure that their costs are not 'externalised' in the form of increased costs borne by local communities.

The creation of a protected area can bring with it a range of possible impacts on local communities, from forced evictions on the one hand to integration into management structures and the development of new roles and responsibilities for them on the other. There is, at present, little to alert community members to the likely impact on them of a change in land use caused by the establishment of a protected area. Experience shows, however, that the overwhelming risk is that local communities, already amongst the poorest of the poor, will become even more impoverished and therefore increasingly alienated from the goals of biodiversity conservation.

It is therefore desirable, for both ethical and practical reasons, that conservation NGOs and multilateral institutions commit themselves to a set of 'conservation principles' that espouse minimum humanitarian standards consistent, at

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least, with the international obligations of host governments engaging in multi-laterally funded projects that involve significant changes in land use. It is appropriate that those whose land use options have been changed for larger, nationally driven, policy reasons should be able to rely on a consistent minimum set of standards that safeguard their interests. There are a number of policy and operational manuals published by

organisations such as the World Bank, The African, Asian and Inter-American Development Banks and the OECD. Each of these publications sets standard operating procedures for loan or grant agreements. They may or may not be appropriate in every detail, but they do outline the importance given to the subject by the wider development community which now views even restrictions on access as a form of displacement requiring remedy.¹⁷

In addition, major conservation bodies such as IUCN¹⁸ and WWF¹⁹ have tried to address these issues. "The international community has affirmed that all peoples have human and environmental rights. These are rights that should guide the distribution of the material benefits and limit the environmental costs of economic growth".²⁰ While the recommendations and policies elaborated by such organizations are clear statements of intent, it is high time to look at what can be done to bring together the rhetoric of institutional support for rights with the reality on the ground.

Nicholas Winer (winer_nicholas@yahoo.es) is an Honorary Fellow of the Institute of Development Policy and Management at the University of Manchester and an independent consultant specialising in Natural Resources Management after spending twenty years managing rural development and natural resource management projects in Africa. **David Turton** (david.turton@queen-elizabeth-house.oxford.ac.uk) is a Senior Associate of the Department for International Development at the University of Oxford, where he was formerly Reader in Forced Migration and Director of the Refugee Studies Centre. Before moving to Oxford he taught in the Department of Social Anthropology at the University of Manchester. **Dan Brockington** (daniel.brockington@manchester.ac.uk) is a Lecturer at the Institute for Development Policy and Management in the University of Manchester. His research examines the social impacts of protected areas and he has conducted a global review of eviction from protected areas using published and grey literature. Nick, David and Dan are all members of CEESP/ TGER.

Notes

- 1 Grzimek and Grzimek, 1960.
- 2 Brockington, 2004.
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- 4 CBD <http://www.biodiv.org/programmes/cross-cutting/protected/default.asp>

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Human rights, conservation and the privatization of sovereignty in Africa— a discussion of recent changes in Tanzania

Jim Igoe

Abstract. While states do not always guarantee human rights, human rights cannot be guaranteed without a viable state. Paradoxically, many conservationists see the state as a central obstacle to effective community-based conservation. The central contention of this article is that the neoliberalization of African conservation, leading to the privatization of African states, has led to a situation in which it is extremely difficult to promote human rights via conservation or vice versa. Not only have human rights been narrowly redefined according to free market priorities, but the mechanisms whereby rights can be articulated and understood have largely disintegrated. This situation is both reflected in, and perpetuated by, current conservation interventions. This article draws on examples from around the African Continent, but focuses primarily on the author's research in Tanzania in 2005-2006. It concludes with a discussion of how to bring the question of human rights to a more central place in transnational conservation. Most importantly, it emphasizes that everyone involved in international conservation is equally culpable in the field of human rights, not just the governments of the countries in which specific groups of people happen to reside. As such, there is a pressing need for the institutionalization of independent reporting and structures of oversight and accountability at all levels of international conservation.

Drawing from my research in Tanzania (2005-2006)¹ and recent observations of other researchers across the continent, this article outlines some of the fundamental aspects of human rights and conservation in Africa today. Its central argument is that the 'neoliberalization' of African states and societies has overshadowed organic linkages between conservation and human rights activism.

In the wake of the Soviet Collapse at the turn of the 1990s, human rights came to the center of development and governance discourses. Conservation quickly followed suit and for a few years in the 1990s some were predicting a global convergence of human rights and conservation agendas.² These two agendas appeared as a crucial bulwark

against the socially and environmentally destructive spread of neoliberal, free market capitalism. In their seminal article on communities and conservation Agrawal and Gibson wrote that advocates of community-based conservation saw states and markets as the main obstacles to their agendas.³ In the pursuit of economic growth through foreign investment, states do often facilitate enterprises and interventions that violate people's basic rights while harming the environment. Getting rid of states, however, is probably not our best bet for promoting human rights or the environment. For better or for worse, states remain the ultimate guarantor of rights in our current global system. NGOs and multi-lateral institutions may educate people and help them advocate for their rights, but ultimately it is states that must legislate and enforce those rights.

Until some other global institutions are able to guarantee people's rights, therefore, the current decline of states is probably bad for human rights and conservation.

Furthermore, the relationship of conservation to markets and private enterprise has shifted dramatically since the turn of the millennium.

NGOs and multi-lateral institutions may educate people and help them advocate for their rights, but ultimately it is states that must legislate and enforce those rights.

The role of corporations in conservation has become increasingly prevalent.⁴ These transformations have significant implications for both human rights and conservation. Understanding them, as well as their continuity to previous arrangements, requires looking at current

conservation, development, and governance discourses. It also involves looking beyond and behind these discourses to the actual practices of conservation and human rights and their implications for future action and conceptualization.⁵ While many observers have noted the types of practices I will outline below, they are often dismissed as temporary and/or anomalous. One of the central contentions of this article, however, is that they are quite 'normal' in the experiences of rural Africans in their day-to-day lives. They should, therefore, be taken much more seriously if we are serious about promoting human rights through conservation or even vice versa.

In fact, these fundamental changes demand a fundamental reconceptualization of the relationships between conservation and human rights. Most importantly, we need to recognize that everyone involved in transnational conservation is culpable and it is essential

that each of us examine our own culpability, both personally and institutionally. Most critically, these types of changes will require new types of institutional oversight, which should be modeled after existing bodies, such as the World Bank Inspection panel.⁶ I will return to these points in the conclusion of this article, following a discussion of the impacts of these changes on human rights and conservation in Tanzania and other parts of Africa.



Picture 1. View from Paul Tudor Jones' exclusive Grumeti Lodge. (Courtesy Beth Croucher)

The neoliberalization of African conservation and its implications for human rights

The opening up of African economies in the late 1980s went hand-in-hand with the opening up of African political systems. This reflected the widespread assumption that free markets and free elections would naturally lead to a free society. Totalitarian states were seen as the problem. They restricted free trade, free assembly, free speech, and free press. If states were less intrusive in all of these matters, peoples' lives would naturally improve. Smaller states, a vibrant NGO sector, and the promotion of private enterprise became the prescribed solution to these problems.⁷

State-sponsored protected areas were the mainstay of conservation during this period, and by no means would most conservationists like to see them deregulated. In fact, during this period of deregulation, Tanzania continued ga-

Neoliberalization involves reregulation as much or more than deregulation.

zetting national parks and the state-sponsored protected areas proliferated on a global scale.⁸

At the same time, outside of protected areas, deregulation, decentralization, and privatiza-

tion were increasingly heralded as the key to conservation success. Private Game Reserves began to proliferate. Transnational conservation NGOs began openly brokering conservation business ventures between foreign investors and local communities. For the most part, benefits accruing to those communities have been much smaller than those accruing to their "senior partners", while maldistribution of benefits within communities has also been a common problem. Moreover, little care has been taken to measure whether the costs of local people foregoing access to the resources that they "invest" in conservation enterprises is offset by the benefits that they receive.⁹

These events and processes are best understood with reference to neoliberal policy reforms. Rather than thinking of neoliberalism as a unified concept, it is more useful to think of it as a process of neoliberalization.¹⁰ Although experiences of neoliberalization vary from location to location, they revolve around certain key experiences readily visible in Africa. While neoliberalization is popularly perceived as the deregulation of economic activities and the withdrawal of states from social and economic spheres, critical observers argue that it is neither. In a comprehensive literature survey, Castree concludes that neoliberalization

involves reregulation as much or more than deregulation.¹¹ States play a central role in redefining natural resources in ways that make them available to private investors. This is often achieved through privatization, but can also be achieved through a variety of other arrangements, including those that ostensibly give local people more control of natural resources.

One of the key elements of "neoliberalization" for conservation and human rights is the idea of "more and more actors becoming self-governing within centrally prescribed frameworks and rules".¹² Individuals must be freed from the shackles of traditional social bonds, so that they can become owners of private property, which can be used as collateral for loans, which can be invested in new types of business ventures. This in part reflects the impact of Hernando de Soto's highly influential book, *the Mystery of Capital*. De Soto argues that poor people actually control a great deal of wealth, but that they are unable to realize the value of that wealth because of inefficient state bureaucracies and lack of legally guaranteed property rights. It is essential that these obstacles to the poor realizing the value of their capital be removed, so that they can take out loans and join the capitalist economy.¹³

While "rights" still enjoy a central place in de Soto's works and in neoliberalism in general, they are substantially different than in the classical sense of the term, which revolves around the idea of a "social contract" between the state and its citizens. Rather, they are narrowly defined as guaranteed rights over property, which qualify people for loans, which in turn allow them to enter the global economy as investors, producers, and consumers. Investments, of course, carry no guarantee. It is possible, even

probable, that people will lose their capital due to limited opportunities on the bottom rungs of the investment ladder. Poor people are also more likely to consume capital due to the numerous emergencies in their lives.¹⁴ Moreover, poor people have little capital and little experience of how to effectively invest it. The reregulation of resources, even when ostensibly for their benefit, often works to their detriment. They often find themselves divested of their property even when that property is putatively protected by law.



Picture 2. Jim Igoe and faculty from the College of African Wildlife Management participate in a community meeting concerning conflicts with the AWF and the Manyara Ranch. (Courtesy Beth Croucher)

In Tanzania, I observed communities that had been given legal rights to their land so that they could enter into wildlife management areas with transnational conservation NGOs and private investors. Once communities had entered into legal contracts as “property owners”, they found themselves excluded from their own property, while local elites, government officials, private investors (both foreign and Tanzanian), and outside NGOs reaped the benefits.¹⁵ Similar patterns have been observed in Zambia,¹⁶ as well as in

Zimbabwe and Mozambique.¹⁷

The first case was a program coordinated by GTZ to the north of Selous Game Reserve in the central part of the country, and the second was a program coordinated by the AWF (African Wildlife Foundation) to the west of Tarangire National Park in the northern part of the country. Local people in both the cases were certain their rights had been violated, but they were not sure to whom they could bring their grievances. Maasai herders to the north of Selous found themselves excluded from an area in which they had made substantial infrastructural investments. Kutu farmers complained that they were excluded from areas where they used to farm and prohibited from subsistence hunting. Arusha farmers west of Tarangire were angry and confused about the wildlife management area ostensibly being implemented on their behalf. The process of setting aside land for the wildlife management area had entailed the eviction of 63 households, while those living nearby found their farms swallowed up by the new boundaries. Elected village officials claimed that they were at a loss to understand how their village land had come to be taken from their control.¹⁸ All felt that a handful of elites were reaping benefits, while they were paying the price.

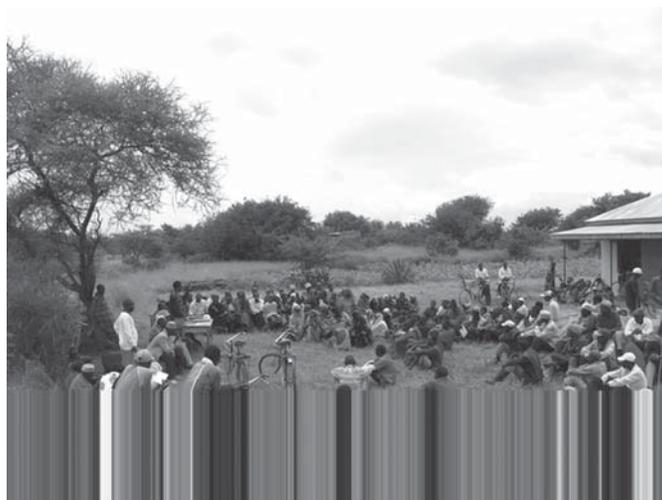
When officials from the villages near Selous took these grievances to the regional government, they were invited to a “special seminar”. They returned with a message for their constituents, “We have no authority. We are only consulted.”¹⁹ Informants who described these events, believed that these officials had been threatened, bribed, or both. A group of elders representing the 63 families evicted from the wildlife management area near Tarangire went to complain to the district offices and were

promptly arrested. Evictees claim that they then received a message from the detainees to comply with the eviction order as quickly as possible so that they would be released.²⁰ Village officials who traveled to the capital to find out how their land was enclosed without their consent claim to have discovered forged village assembly minutes.²¹

People in these communities often wondered aloud whether they actually had any rights at all or if they were simply going to be shunted around to make room for conservation enterprises from which they had little hope of benefiting. Even we as researchers began to wonder about the question of rights when we were called before the district game officer who had played a central role in the creation of the wildlife management area near Tarangire. During the meeting he told us that the AWF and the Tanzanian Government had put a lot of money and energy into creating the WMA... it was a big success for them, and they weren't going to allow it to be undermined by local people and outside agitators.

He then went on to tell us that he almost had us arrested for attending village meetings concerning the wildlife management area. At this point, one of my Tanzanian research assistants informed him that this would have been a violation of our rights. He responded that the government and the police were not concerned about the question of rights. "When we arrest people," he told us, "our job has nothing to do with their rights. That is a question for the courts. We arrest you and later the courts decide whether we have violated your rights. In between, however, you will suffer to a certain extent."²²

This discourse is highly consistent with the experience of rural Tanzanians



Picture 3. A meeting of Villagers near Tarangire National Park to develop a strategy of how they might withdraw from the wildlife management area, which they felt they were brought into without their knowledge or consent. (Courtesy Beth Croucher)

seeking their rights as their natural resources are alienated for conservation, economic development, and private enterprise. First people need to know their rights. The highly technical language of reregulation makes this difficult. Once people know their rights, it is then necessary for the state to enforce those rights, which often entails protracted legal battles, which usually do not go in favor of local people.²³ All this entails a great deal of expense for people who can scarcely afford basic necessities. In the era of free markets and free elections, scarcely anything else is free. Human rights must be bought and paid for—practically leaving poor people with no rights.²⁴

The privatization of sovereignty

Representatives of international conservation organizations, to the extent that they acknowledge these kinds of problems, tend to lay the blame on corrupt African governments. These have become a standard scapegoat for just about everything that goes wrong in Africa, which unfortunately is quite a

lot. Donors and foreign investors can claim that they had nothing to do with the negative impacts of their activities. Ideally their interventions would have benefited local people, were it not for the interference of corrupt African Governments. Unfortunately, corrupt as they are, these governments are also sovereign. Donors and investors could never meddle in the internal affairs of a sovereign state.

This is a disingenuous position, since anyone involved in conservation and/or development in countries like Tanzania can't help but know that donors and investors habitually meddle in the internal affairs of sovereign states. Of course sovereignty in a post-colonial

In the era of free markets and free elections, scarcely anything else is free. Human rights must be bought and paid for—practically leaving poor people with no rights.

setting is very different from sovereignty in the global north. European colonies in Africa were expressly designed to facilitate outside influence on the inner workings of colonial states. Keeping such arrangements in place was a

major concern of European powers at independence. This can be seen in the active role that the AWF, WWF, and IUCN took in this transition: starting the College of African Wildlife Management, establishing national parks, and developing management plans and conservation policies. Europeans continued to hold positions in African governments through the early 1970s.²⁵ Garland argues that Africans made some gains in controlling conservation and natural resource management in their countries during the period of state-centered development (roughly 1967 to 1985), but with neoliberalization white outsiders regained the kind

of control they previously enjoyed.²⁶

Lest we swing too far in the other direction, letting African elites off the hook and blaming outsiders, a more nuanced perspective suggests that both groups are equally culpable. The hollowing out of African states by neoliberalization has diminished their ability to govern. Sovereignty and control in such situations is highly fragmented and decentralized—deployed in different ways by different state-actors, in different contexts, with very little centralized control. For state actors, this fragmented sovereignty often becomes an important commodity that they can use to broker strategic alliances with private investors and donors. Both groups bring important resources to these alliances. Outsiders bring money and other external resources on which officials from impoverished states are highly dependent. State actors bring sovereignty—“the means of coercion that make it possible to gain advantage in struggles over resources traditionally the exclusive purview of the state”.²⁷ Outsiders wishing to directly control, or otherwise define the use of these resources, depend on state actors for this commodity. This does not usually mean that state actors cede sovereignty to these outsiders—although this sometimes does sometimes happen. The relationships that emerge from these dynamics are usually of mutual dependence, characterized by a great deal of strategic negotiation and occasionally intense antagonisms. These relationships are difficult to discern, obscured as they are by discourses of official prerogatives.²⁸

The impacts of these developments are visible in conservation across the Continent. Witness the recent activity within TILCEPA concerning the clearances of Omo and Nech Sar National Parks in Ethiopia.²⁹ Although these clearances

were undertaken by the Ethiopian Government, they were closely associated with African Parks Foundation, an NGO indirectly bankrolled by SHV Gas in the Netherlands and Wal-Mart in the United States.³⁰ African Parks Foundation has been at the center of similar controversies around Africa, including in South Africa.³¹ Alliances of international conservation NGOs, private enterprise, and state actors are increasingly common throughout Africa. These kinds of alliances are actively excluding people from landscapes in the name of conservation throughout the continent, including in Cameroon, Chad, Central African Republic, Equatorial Guinea, Mozambique Republic of Congo, Zimbabwe.³²

These dynamics are also clearly visible in Tanzania, as illustrated by two examples: 1) Robanda Village, on the western boundary of Serengeti National Park; and 2) Manyara Ranch, to the north-west of Tarangire National Park. During my time in Tanzania, events surrounding Robanda were a matter of national interests, and a topic of frequent discussion of faculty at the College of African Wildlife Management. In January 2006 I spent ten days in and around Robanda as part of the College's Community-Conservation field safari. Appropriately, we visited the Manyara Ranch as part of the College's Conservation Conflict safari. Between February and June of 2006, I worked extensively in the communities bordering the Manyara Ranch.

At Robanda the Western Serengeti Regional Conservation Project, sponsored by NORAD, succeeded in generating local support for conservation

between 2001 and 2003. The village also received benefits of approximately \$70,000 per year through partnerships with three private safari companies. Above the door to the village office is a hand painted sign that reads: "We must stand united. Wildlife Management Area is the key to our future." The benefits helped the village to purchase a tractor, which helps local people to farm instead of hunting for a living.

This situation changed abruptly in 2003, when American futures investor Paul Tudor Jones infused approximately \$20 million into a flagging company known as VIP Safaris with a promised total investment of \$40 million,³³ used to build an airstrip, clear migratory habitat, establish anti-poaching activities, provide development assistance to neighboring villages, and construct a \$1500/night luxury lodge.³⁴ The company, which became Grumeti Reserves Ltd., took over 340,000 acres of hunting concessions to the north-west of Serengeti National Park, including the Grumeti and Ikorongo Game Reserves.³⁵ The company also runs an NGO called the Grumeti Fund. Here we have three entities: 1) a transnational company; 2) an NGO; and 3) a state-sponsored Game Reserve; all sharing the same name, and in fact run by the same funding.

In 2005, the Grumeti Fund became involved in the planned reintroduction of rhinos to the Grumeti and Ikorongo Game Reserves. The plan was launched at a stakeholder workshop under the auspices of the Tanzania National Parks Authority and sponsored by the AWF and the Frankfurt Zoological Society.³⁶ Grumeti Ltd's interest in these relocations was to create a landscape in which their clients could see all of the "big five".³⁷ Similar reintroductions of species from South Africa to the Mkomazi Game Reserve in the late 1990s

were associated with the eviction of local people from the reserve in 1988 and their continued exclusion through the 1990s.³⁸ Local people were also forcefully evicted from both the Grumeti and Ikorongo Game Reserves in 1994.³⁹ The clearing of the reserves, though not directly sponsored by outsiders, has opened up these areas for major investments and conservation interventions, which benefit outsiders and Tanzanian elites at the expense of local people. As a matter of fact, Grumeti Reserves Ltd. did attempt to relocate Robanda Village, which it viewed as a final obstacle to the creation of its private game reserve. It also sought to force out the three tour companies that have business agreements with the village government.⁴⁰ Villagers also claim to have been harassed and beaten by private game guards working for the company.

During my time in Tanzania there was also significant discussion about Grumeti's plans to build an international airport, film a Hollywood-style movie, and relocate Serengeti Park Headquarters just north of Robanda, to prepare the area for tourism.⁴¹ Grumeti Reserves Ltd. also received significant media coverage. Both National Geographic and the New York Times travel magazine described the company and its initiatives in mostly glowing terms.⁴² An interview with Concession Director Rian Labuschagne in the Tanzania Daily News carried the headline, "We Sell Tanzania to the Outside World," while the New York Times article⁴³ carried the headline "Your Own Private Africa"—unambiguous messages that Africa and African Countries are now commodities. People occasionally appear in these narratives as dreaded poachers or needy recipients of corporate largesse, but the realities of their lives are seldom addressed and their rights vis-à-vis investors, founda-



Picture 4. Jim Igoe with Senior Instructor Teresia Ole Mako (second from right holding book) and students from the College of African Wildlife Management. (Courtesy Beth Croucher)

tions, and the government are hardly raised.

The Manyara Ranch, in contrast to Grumeti Reserves Ltd., is a much smaller and less funded intervention. Nevertheless it has been established by a network of NGOs, state elites, and private enterprise to set aside significant tracts of land for conservation and investment purposes. The ranch is controlled by a Trust set up by the AWF with funding from USAID.⁴⁴ One of its central goals is for an outside investor, which the Trust has already identified, to build a luxury lodge in the ranch once the necessary improvements have been made. The official history of the ranch, as told by the AWF, describes its takeover by the Trust as a nearly inevitable option.⁴⁶ Annexing the area into nearby Manyara National Park was 'deemed unacceptable,' be-

The lands' original owners are not described as rights bearing citizens, but as junior stakeholders who are in need of guidance and oversight so that they won't do the wrong things.

cause it would meet with too much local resistance. Giving the land back to the community, although it was originally theirs, was also “deemed unacceptable”, because local people might farm in the ranch, thereby fragmenting important wildlife habitat and migration routes. The only reasonable arrangement, therefore, was for the Trust to take over the ranch, on behalf of local people and for their benefit. The land would still belong to the communities and they would derive benefits from the tourist developments that would occur in the ranch and by being able to continue grazing their cattle in the ranch according to the permit system.

Conspicuously absent from this narrative is any discussion of people’s rights. The fact that the land originally belonged to these people, and was taken from them first by trickery and then by administrative fiat, appears to be of little consequence. Of primary concern is the possibility that these people will do something to fragment habitat and block wildlife migration routes. They are not described as rights bearing citizens, but as junior stakeholders who are in need of guidance and oversight so that they won’t do the wrong things.

This account of events is also much different than those of local people. The narrative that I collected from them goes as follows: local people gave up the land for the ranch under the mistaken impression that this was a temporary arrangement. When they heard that the land was being privatized they began to lobby the government to return it to them. At one point it appeared that these efforts would be successful, as community leaders began to hear through their networks that then President Benjamin Mkapa was favorable to the idea of the land being returned to the community. Shortly thereafter, in a

series of meetings to which they were not invited, it was decided that the ranch would be taken over by the Trust. After leaving office, Benjamin Mkapa was invited to join the AWF board of trustees. Edward Lowassa, then MP for the district and subsequently prime minister, was named to the Board of the Trust. Local people feel that these appointments represent a conflict of interests, since they also feel that these elected officials were meant to protect their rights and interests before those of outsiders. In addition to feeling robbed of land they feel is rightfully theirs, they feel that they have not received adequate benefits from the ranch, that they are not adequately represented on the Board, and that they are not kept apprised of what the Trust is doing at any given time.⁴⁶

The Trust also has authority to negotiate for easements or purchase of land. It has recently initiated Kwa Kuchinja Easements for the Environment Through Partnership (KKEEP), which seeks to induce local people to move from wildlife migration corridors with one-time monetary compensations. When we visited the Ranch with students from the College of African Wildlife Management, the Ranch’s Tanzanian community outreach person told us: “This is not a safe place for people to live. Our job is to help people in these villages to understand that they are not safe here.” The Ranch’s former manager told us that the AWF was also exploring the possibility of relocating people. He further indicated that they were exploring the

...human rights by definition are premised on a social contract between citizens and a state— not between stakeholders and other stakeholders or between a community-based organization and a private investor...

option of them moving to Hanang, 75 miles south.

Unfortunately, Hanang is also beset with land conflicts that have their roots in state-sponsored wheat farms. As these farms are privatized, local people are fighting with each other and outsiders for access to newly reregulated land. The relocation of people to Hanang would exacerbate these conflicts.⁴⁷ We also encountered households displaced from Hanang to our research area, which were on the verge of being displaced again. The reregulation of land throughout Tanzania, combined with population growth, has led to repeated internal displacements and migrations that appear as localized land conflicts.⁴⁸ The situation is captured in the words of an informant who was displaced from Hanang, then evicted from the wildlife management area described in the previous section (also sponsored by the AWF), and currently facing possible displacement by KKEEP: "It's like we aren't Tanzanians and this isn't our country. Wherever we go, we are told, you can't stay here."⁴⁹

Conclusion

This statement, the sentiment of which was echoed by many other respondents, goes straight to the heart of the question of human rights and conservation. As I mentioned at the beginning of this article, human rights by definition are premised on a social contract between citizens and a state— not between stakeholders and other stakeholders or between a community-based organization and a private investor. The respondent quoted above recognizes that he is not a citizen by this definition. There is no social contract that protects from being displaced by more powerful interests.

The downsizing of states and the decentralization of state power has facilitated

an explosion of new types of conservation across the African continent. It has also coincided with the proliferation of state-sponsored protected areas. These have in turn have been closely associated with the identification of tourism as one of the key economic opportunities in rapidly privatizing African countries. Tanzania, already a major tourist destination, has created more parks to increase the absorptive capacity of its tourist sector. Meanwhile countries that have not previously been thought of as tourist destinations (e.g. Chad, Ethiopia, Gabon, and Mozambique), have jumped on the protected area bandwagon in an effort to capture their share of the tourist market and more aid dollars.

These changes have created significant opportunities for private investors and international conservation NGOs, the lines between which are becoming increasingly blurred. In the case of the Manyara Ranch, the AWF has repeatedly stated that it already has found an investor to build a lodge in the ranch just as soon as it is ready. One of the main justifications for KKEEP is that it will attract additional investors to the villages bordering the ranches. These opportunities have not only attracted investors, but also other conservation NGOs. Most recently the Nature Conservancy has announced its plans to begin easement interventions in Africa, modeled after the AWF experience— envisioning several million acres of key African habitats under conservation easements.⁵⁰

With the privatization of sovereignty, the question of human rights has become much less straightforward. Everyone involved in transnational conservation is culpable.

The central argument of proponents of these kinds of interventions is that

they also create economic opportunities for Africans. Since I have already addressed this argument at length, I will not say much more here, only that benefits rarely accrue to those who pay the biggest costs for these interventions and there is little evidence that potential local benefits can begin to offset local opportunity costs for conservation. Most business opportunities available to local people entail high risk and low returns. Most jobs generated by investment and intervention do not go to local people (most Tanzanian lodges prefer to hire Kenyans and South Africans), and the ones that do are usually the lowest paying. Anyway, a job is not strictly a benefit. It is an economic exchange in which an individual sells their labor to a firm and the firm makes a profit from that labor.⁵¹ Part of the reason that ecotourism is such a growth industry is because of its low labor costs. Tourists can enjoy services and experiences that they could never enjoy back home for a fraction of the cost. Most fundamentally, it is necessary to keep in mind that the problems outlined in this article are not "outliers". Such problems are a common feature of conservation across the African Continent.

Lost in all of this is the question of rights. It is tempting to place the blame for human rights abuses (both large and small) on corrupt African governments, which obviously have a great deal to answer for. As I mentioned at the outset of this article, however, the privatization of sovereignty has rendered the question of human rights much less straightforward. Everyone who is involved in transnational conservation networks or who benefits from such involvement is culpable: private tour companies that take over land from local people without adequate compensation; international NGOs that support the displacement of

local people to clear wildlife migration corridors; and researchers/consultants who reproduce they types of narratives that keep the question of human rights out of focus.

As Chambers writes, everyone in these networks has both the efficacy and the responsibility to bring about positive change and to help undo the relationships of inequality that exist within these networks.⁵² Restoring sovereignty to African states in a way that they can (and will) uphold the rights of their citizens is a tall order. However, creating accountability and oversight throughout the networks that engage and interpenetrate with these states would be an important first step. A key element of such a transformation would be independent reporting of events and outcomes, perhaps by independent rapporteurs, since our current information is dominated by the reporting of the very people who are undertaking and benefiting from these interventions or from people hired by them. We also need institutional structures of oversight, like the World Bank Inspection Panel, and an enforceable code of ethics for individuals and institutions involved with transnational conservation.

[We need] independent rapporteurs, since our current information is dominated by the reporting of the very people who are undertaking and benefiting from these ["conservation" and "development"] interventions or from people hired by them ...

Jim Igoe (james.igoe@cudenver.edu) is a member of CEESP and WCPA, with TGER and TILCEPA. He is Assistant Professor of Anthropology at the University of Colorado at Denver, President of BRIDGE (Bridge for Indigenous Development and Grassroots Empowerment), and a senior fellow of the Environmental Leadership Program. He is author of the book *Conservation and Globalization*, which examines conflicts between indigenous communities and national parks in Tanzania and South Dakota, with examples from around the world.

Notes

- 1 As a Fulbright lecturer at the College of African Wildlife Management, Mweka.
- 2 Igoe, 2005.
- 3 Agrawal and Gibson, 1999.
- 4 See Dowie, 1995; Chapin, 2004; Igoe and Croucher, forthcoming
- 5 See Hibou, 2004, p4.
- 6 <http://web.worldbank.org/WBSITE/EXTERNAL/EX-TINSPECTIONPANEL/menuPK:64129249~pagePK:64132081~piPK:64132052~theSitePK:380794,00.html>, accessed 5 April 2007
- 7 See Igoe and Kelsall, 2005.
- 8 West and Brockington, 2006; and West, Igoe, and Brockington, 2006.
- 9 Igoe, 2007.
- 10 Heyden and Robbins, 2005; and Castree, in press.
- 11 Castree, in press.
- 12 Castree, in press.
- 13 De Soto's ideas have been very influential in Africa, especially in Tanzania where the President's Office hired him as a consultant for the countries informal sector policy and national poverty alleviation strategy.
- 14 e.g., Brett, 2006.
- 15 Neumann, 2001; Igoe and Croucher, forthcoming.
- 16 Brown, 2005.
- 17 McDermott-Hughes, 2006.
- 18 For a full discussion see Igoe and Croucher (forthcoming).
- 19 Translated from Swahili by the author.
- 20 This is very similar to the experience of Parakuyo activists who complained to district authorities following the evictions from the Mkomazi Game Reserve in 1988 (Brockington, 2002).
- 21 For a full discussion see Igoe and Croucher (forthcoming). There are two sets of minutes. One, on file in Dar es Salaam, says that the village agreed to join the wildlife management area. The other, on file in the village office, says that villagers would like more information before making a decision. Of course it will not be easy to prove which one of the two is the forged document.
- 22 Translated from Swahili by the author.
- 23 See for instance, Igoe, 2003; Igoe, 2005. The notable exception being the recent court victory of San People against the Government of Botswana, which will allow San groups to return to their traditional homeland inside the Kalahari Game Reserve.
- 24 cf. Mamdani, 1996.
- 25 Bonner, 1993; Neumann, 1998.
- 26 Garland, 2006.
- 27 Mbembe, 2001.
- 28 For a full discussion see Brockington and Igoe (2006).
- 29 <http://www.iucn.org/themes/ceesp/alert.htm>, accessed February 23, 2007.
- 30 <http://conservationrefugees.org/apf>, accessed February 23, 2007.
- 31 http://www.mg.co.za/articledirect.aspx?articleid=131438&area=%2finsight%2finsight__national%2f, accessed February 23, 2007.
- 32 Ferguson, 2006; McDermott-Hughes, 2006; Cernea and Schmidt-Soltau, 2006; Igoe and Croucher, forthcoming. <http://www.id21.org/insights/insights57/art02.html>, accessed February 23, 2007.
- 33 Special Team, The East African, January 31 2005, "Mr. Jones Takes 25 Kenyan Rhinos to a Tanzanian Reserve."
- 34 Poole, R., "Heartbreak on the Serengeti," *National Geographic*, <http://www7.nationalgeographic.com/ngm/0602/feature1/index.html>, accessed February 23, 2007.
- 35 From Singita web site <http://www.singita.com/site/about/news.asp>, accessed on February 21, 2007, also see http://www.africanconservation.org/cgi-bin/dcforum/dcboard.cgi?az=read_count&om=4387&forum=DCForumID3, accessed February 21, 2007.
- 36 Special Team, the East African, as in footnote 20 above.
- 37 The "big five" include elephant, rhino, buffalo, lion, and leopard. A colonial-era big game hunt was not considered a success unless the hunter returned with at least one head from each of these animals. These are coincidentally the animals that present the biggest threat to rural communities. Crop damage caused by elephants near Tarangire has made it nearly impossible for local farmers to harvest enough food to feed their families from year-to-year. Over the past ten years, habituated elephants have even begun pulling the roofs off of people's houses and village storage facilities and eating the relief food that has been stored within. Many farmers have responded by seeking new places to live in other parts of Tanzania, but with little success (Igoe and Croucher, forthcoming).
- 38 Brockington, 2002.
- 39 Nelson, 2004.
- 40 See J. Lawi, "Land Wrangle Threatens Serengeti Village with Loss of Millions," IPP Media, October 10th 2005, <http://www.ippmedia.com/ipp/guardian/10/10/51527.html>, accessed February 22, 2007. Grumeti Ltd. does not hunt in its extensive hunting concessions, but still pays the full complement of trophy fees to the Department of Wildlife— about \$300,000 per year, http://www.africanconservation.org/cgi-bin/dcforum/dcboard.cgi?az=read_count&om=4387&forum=DCForumID3, accessed February 22, 2007.
- 41 Shortly following the election of President Jakaya Kikwete in December of 2005, a government official confided to me that Grumeti was now going to have to renegotiate all its connections within the newly reshuffled government. The following year the government finally announced that there were no plans to relocate Serengeti Headquarter, to the relief of park employees and the Chief Park Warden E. Chacha, "No Relocation, Government Reassures SE-NAPA Workers, September 28, 2006, <http://www.ippmedia.com/ipp/guardian/2006/09/28/75311>.

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- 42 "Heartbreak on the Serengeti," <http://www7.nationalgeographic.com/ngm/0602/feature1/index.html>, accessed February 22, 2007 and "Your Own Private Africa," <http://travel.nytimes.com/2006/09/24/travel/tmagazine/24tanzania.html>, accessed February 23rd, 2007.
- 43 <http://travel.nytimes.com/2006/09/24/travel/tmagazine/24tanzania.html>, accessed February 23, 2007
- <http://www.dailynews-tsn.com/page.php?id=3217>, accessed February 23, 2007.
- 44 USAID, 2006.
- 45 Sunba, Bergin and Jones, 2005.
- 46 These assertions are consistent with the observations of consultants hired by USAID to assess the situation of the ranch in 2006. The exception being their assertion that "all stakeholders" support the Trust and the ranch.
- 47 <http://www.landcoalition.org/pdf/kpsidconrpt.pdf#search=%22hanang%20land%20conflicts%22>, accessed September 2, 2006.
- 48 cf. Galaty, 1988.
- 49 Translated from Swahili by the author.
- 50 <http://www.nature.org/magazine/spring2007/features/art20038.html>, accessed February 23, 2007.
- 51 cf. McDermott-Hughes, 2006.
- 52 Chambers, 1996.

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Derechos humanos y conservación ambiental— errores, horrores y terrores

José Sánchez Parga

Resumen. Si se respetaran los derechos civiles de las personas no sería necesario recurrir a los "Derechos Humanos", ya que estos son transgredidos, se denuncian y reclaman, cuando ya los seres humanos han dejado de ser tratados como personas y ciudadanos. Al medio ambiente le ocurre lo mismo: se denuncia su devastación en la misma medida que se vuelve irrecuperable. Frene a ambos fenómenos se adoptan posiciones defensivas y de protesta, porque falta el poder político para impedir las transgresiones tanto a los derechos humanos como a la conservación del medio ambiente.

Abstract. If every person's civil rights were respected, it would not be necessary to resort to "Human Rights", as these are violated, denounced and claimed only when people have already ceased to be treated like persons and citizens. The same happens with the environment: we denounce the disasters when they are already well under way. In the face of both phenomena, defensive and protesting positions are being adopted because the political will is lacking to prevent both violations of human rights and disastrous impacts on the environment.

A las víctimas, los derechos humanos o nunca les llegan o les llegan demasi-

ado tarde. Hay una suerte de brecha insalvable entre los discursos densamente inflacionarios, interpelativos o



Foto 1. A las víctimas, los derechos humanos o nunca les llegan o les llegan demasiado tarde. (Cortesía Grazia Borrini-Feyerabend)

declamatorios sobre los "Derechos Humanos" (DDHH), y la poca eficacia para garantizar su respeto o su ejercicio. La paradoja es que de los Derechos Humanos sólo somos sujetos cuando nos convertimos en víctimas de su trasgresión; es decir casi de manera póstuma. Habitualmente los hombres o ciudadanos, sujetos de derechos civiles, sólo extraordinariamente se vuelven sujetos de derechos humanos. Por consiguiente no habría mejor defensa y protección de los derechos humanos que evitar tales situaciones extremas, cuando las personas, por el simple hecho de encontrarse despojados de sus derechos civiles, resultan ya víctimas de una trasgresión a los derechos humanos.

Si el Estado y el Derecho Internacional garantizaran los derechos y libertades civiles e impidieran su despojo o trasgresión, nadie necesitaría ser sujeto de derechos humanos. La para-

doja terminal es que estos derechos son humanos no por otra razón sino porque son los mismos para todos; siendo precisamente esto lo que hace sus trasgresiones más impunes y universales. Por eso resulta tan urgente y necesario precisar cuándo y cómo se comienza a atentar contra los DDHH de personas y pueblos.

A la conservación de la naturaleza o del medio ambiente le ocurre algo muy similar a las infracciones contra los DDHH: no sólo se llega tarde para evitar sus daños y destrucciones sino también, y peor aún, para repararlos. Sólo cuando los efectos devastadores son inevitables y irremediables, suenan las alarmas ecológicas, para intentar proteger lo que todavía nos queda, pero no siempre para impedir que las fuerzas e intereses depredadores sigan actuando.

Muy curioso que exactamente lo mismo suceda con la "lucha contra la pobreza": una guerra equivocada y perdida de antemano, pues lo que no se puede, porque no se quiere, es evitar la pobreza: es decir el colosal enriquecimiento de unos pocos a costa del masivo empobrecimiento de muchos. Costaría mucho más evitar la pobreza y la destrucción de la naturaleza que todo el dinero invertido y todavía disponible para luchar contra el "efecto invernadero", contra la pobreza o contra todo atentado a los DDHH.¹

Por muy aparentes que parezcan las diferencias entre estos fenómenos, son demasiado similares y actuales como para no tener algo en común: la actividad depredadora del moderno desarrollo del capital y del mercado. Es tan voraz la actual producción de riqueza hoy en el mundo, que no sólo genera una constante y colosal masa de miseria, sino que además tiene un irreparable efecto devastador en la naturaleza, y en los

derechos humanos de los hombres.²

Derechos humanos y desigualdades sociales

Los derechos como la desigualdad son una relación social. Pero no se podrá comprender que la *desigualdad social* es no sólo una infracción contra los DDHH sino la trasgresión más radical y total contra ellos, mientras se siga reduciendo la desigualdad a simples comparaciones y *diferencias* económicas, de riquezas o recursos materiales. En contra de toda una tradición que se remonta a Aristóteles, pasa por Maquiavelo y culmina en Rousseau, según la cual la desigualdad es una relación social entre personas, grupos sociales o pueblos, ya desde el liberalismo hasta la actual sociedad de mercado se ha confundido la desigualdad, y se ha encubierto su sentido original y originario,

...toda desigualdad se origina con toda eliminación de lo común por medio de una apropiación privada. [...] porque al eliminar lo común se liquida la igualdad. Ya que lo común sólo es posible entre iguales...

convirtiéndola en una mera comparación económica entre personas y grupos que poseen o no poseen riquezas o recursos, entre quienes tienen más o menos o nada.

En una sociedad de mercado, donde ya no es *politically correct* pensar y tratar políticamente nada, y menos aún los mismos hechos políticos, la desigualdad en cuanto realidad y relación profundamente política sólo puede y debe ser pensada y tratada económicamente; ya que sólo es *politically correct* pensar económicamente cualquier realidad.

Nada casual por ello, que tanto la opinión pública como los científicos sociales y más aún los economistas

(incluso los más redistribucionistas y progresistas como Amartya Sen), crean que la desigualdad es resultado de una comparación y de una diferencia entre personas, y hayan olvidado completamente la obra de Rousseau *Sobre el origen de la desigualdad*. Olvido nada inocente, ya que encubre la naturaleza socio-política de la desigualdad y su atentado contra los DDHH.³

El origen de la *desigualdad* se establece (en otras palabras, toda desigualdad se origina) con toda eliminación de lo común por medio de una apropiación privada. No porque la propiedad privada signifique una diferencia entre quienes poseen y quienes no poseen, sino porque al eliminar lo común se liquida la igualdad. Ya que lo común sólo es posible entre iguales, y al no existir nada común entre desiguales, se excluye toda posibilidad de relación, comunicación e intercambio entre ellos. Esto implícitamente constituye un desreconocimiento efectivo de su condición humana; en otras palabras la desigualdad es una negación o supresión de la misma relación social entre personas.⁴ Un segundo grado de desigualdad se establece, como consecuencia del anterior, con las relaciones de sometimiento, dominación y explotación entre personas o grupos desiguales. El nivel extremo o terminal de la desigualdad, expresado en la fórmula del *amo— esclavo* (que después de Rousseau elabora Hegel), se produce cuando la dominación y explotación terminan por despojar a los seres humanos de su condición de personas, de sus derechos y libertades, reduciéndolos a la condición de cosas, convirtiéndolos en mercancías en una *sociedad de mercado*, objeto de oferta y demanda, de consumo y destrucción.

Según esto, la trasgresión de los DDHH en cuanto despojo de la con-

dición humana de los hombres, o de la condición de personas de los seres humanos, corresponde siempre y de

La trasgresión de los DDHH [...] corresponde siempre y de manera equivalente a un progreso de la desigualdad; hasta el extremo que el ser humano despojado de su condición de persona es reducido a la de objeto o cosa y mercancía.

manera equivalente a un progreso de la desigualdad; hasta el extremo que el ser humano despojado de su condición de persona es reducido a la de objeto o cosa y mercancía. Los hombres no son dominados y destruidos porque son esclavos, sino al contrario: es porque no poseen ni se les reconoce la condición humana, de personas, que pueden ser consumidos y destruidos,

como si fueran cosas. Por consiguiente, una sociedad de mercado, donde nada puede ser común y todo ha de ser privado, objeto de oferta y demanda, se funda en la desigualdad y se reproduce produciendo desigualdad, y atentando constantemente contra la condición humana de hombres y mujeres.

Es obvio que los genocidios, los terrorismos de Estado, las torturas judiciales y policiales ejercida sobre prisioneros, las violaciones de niños o prostitución infantil son todos casos extremos por más o menos frecuentes que sean, pero a estos casos extremos se llega cada vez con más frecuencia por una progresiva *desigualdad* y progresivo despojo de los derechos civiles primero y después de los derechos humanos. Nada más ilusorio que reducir todos estos horrores contra los DDHH a una cuestión de ética y humanismo; detrás de ellos, y del beneficio que reportan, está la voracidad del mercado.

Por eso nada más erróneo que acusar de irracionales e inhumanos los hor-

rores ambientales y contra los DDHH: el mercado no tiene conciencia y su lógica nada tiene de razonable.

Derechos humanos y medio ambiente

La destrucción de la condición humana de las personas, hombres y mujeres, de su reducción al estado de cosas, no sólo es análoga a la devastación de la naturaleza o del medio ambiente, sino que además responde a una idéntica causa; a las mismas fuerzas y a los mismos intereses del mercado. En primer lugar, también en este caso se trata de un movimiento de apropiación y de privación privatizadora de algo fundamentalmente común y compartido, espacio y objeto de los intercambios y relaciones entre los hombres. Por eso la devastación de la naturaleza y del medio ambiente no sólo quiebra y vuelve hostiles las relaciones entre los hombres sino que profundiza las desigualdades entre ellos; sus mutuos sometimientos y dominaciones.

La relación del hombre con el medio ambiente ha tenido a lo largo de la historia la forma de una "producción destructora".⁵ Pero este proceso en la actual fase del desarrollo capitalista,

debido al colosal desarrollo de las fuerzas productivas (nucleares, genéticas, tecnológicas...), ha alcanzado así mismo extraordinarios efectos destructivos. Con la particularidad de que estos efectos destructivos adquieren un carácter tan irreversible como irremediable, que no pueden ya

Nada más ilusorio que reducir todos estos horrores contra los DDHH a una cuestión de ética y humanismo; detrás de ellos, y del beneficio que reportan, está la voracidad del mercado

ser compensados por los efectos productivos. Nunca antes el poder destruc-

tor hombre sobre la tierra había sido tan extraordinariamente superior a sus poderes productivos.

Este fenómeno sólo ha sido posible a causa de la apropiación privatizadora del medio ambiente por parte de dichas fuerzas productivas del mercado; por una creciente y masiva acumulación de recursos energéticos de la naturaleza. Y en la medida que el medio ambiente ha sido objeto de una creciente concentración y acumulación por parte de las fuerzas productivas y del mercado, de manera simultánea el medio ambiente ha ido dejando de ser un bien común, compartido, objeto de una participación más o menos equitativa. Y por consiguiente se ha vuelto presa de una voraz devastación. Más aún, en cuanto que el medio ambiente, la naturaleza y sus recursos naturales, han dejado de ser compartidos, en lugar de generar vínculos y relaciones de intercambio entre los hombres, grupos sociales y pueblos, se convierten en un objeto de disputa y conflicto, de luchas encarnizadas, de guerras de "destrucción masiva"; de terrores terroristas y antiterroristas. Muy cínico o miope sería no relacionar en la actualidad el terrorismo ecológico con el terrorismo bélico y militar.

De esta manera la "devastación" del medio ambiente y sus recursos energéticos no es más que la contraparte de una devastación geopolítica. Hoy el consumo del medio ambiente y de dichos recursos energéticos tiene costos militares y etnocidarios. Antes la devastación de la naturaleza se limitaba a la devastación de un hábitat; actualmente en cambio acarrea la liquidación de los mismos pueblos que la habitan.

La apropiación por parte de un poder e interés privado de lo que era común, establece una relación de desigualdad entre los propietarios y quienes han



Foto 2. Hoy el consumo del medio ambiente y de dichos recursos energéticos tiene costos militares y etnocidarios. (Cortesía Christian Chatelain)

sido despojados de lo que era común. Tal relación de desigualdad adopta la forma de una dependencia y sometimiento proporcionales a la necesidad de sobrevivencia que supone el acceso a lo que se convierte en propiedad privada. Esta situación se agrava y se vuelve mortífera, cuando la propiedad privatizada es consumida irreparablemente sin posible reproducción. En este sentido la destrucción del medio ambiente tiene un efecto indirecto y secundario en la lenta e invisible destrucción de la humanidad.

La fórmula, programa o slogan del *desarrollo sostenible* o sustentable, responde a una ideología de compensación, que pretende encubrir el carácter insostenible del modelo de desarrollo impuesto por el actual crecimiento económico, basado en una *sostenida* concentración y acumulación de riqueza. El mercado capitalista actual ha transformado el natural e ilimitado deseo de poseer del hombre en un modelo de sociedad, el cual funciona (no racional pero sí) *irrazonablemente* como un automatismo devastador tanto del medio ambiente como de la misma condición humana del hombre.

La única manera de frenar dicho crecimiento económico es forzar (políticamente) procesos y procedimientos distributivos, que limiten su lógica de acumulación y concentración (esencialmente no-distributiva). No se trata de introducir un *decrecimiento*, lo que sería algo *contradictorio*, sino de imponer al modelo un mecanismo *contrario* a sus efectos tanto acumuladores y concentradores de riqueza como generadores de desigualdades y devastación del medio ambiente. Distribución y redistribución comienzan restaurando unas relaciones de igualdad, de intercambio, que además limitan la lógica y las fuerzas de la acumulación concentradora de riqueza.

Se trata de un problema fundamentalmente político, ya que hoy son precisamente los países subdesarrollados, los más pobres o "emergentes", los que más buscan y requieren un crecimiento

La devastación de la naturaleza y del medio ambiente no sólo quiebra y vuelve hostiles las relaciones entre los hombres sino que profundiza las desigualdades entre ellos; sus mutuos sometimientos y dominaciones

económico, aún a costa de las desigualdades y devastación ambiental que producen a su interior. El caso chino o de la India son un ejemplo. Lo que representa la situación extrema de la desigualdad y devastación: cuando los mismos hombres y pueblos confunden las desigualdades que sufren con las diferencias económicas, y creen que reduciendo éstas sería posible eliminar aquellas; cuando en realidad lo que ocurre es dramáticamente todo lo contrario.

Conclusiones: ¿póstumas o postreras?

Si eso es precisamente, lo que no deben ser los DDHH, ni postreros ni

póstumos o demasiado tardíos, quienes promueven y promocionan los derechos humanos y la conservación del medio ambiente, los organismos encargados o responsables deberían abandonar sus actuaciones y disposiciones defensivas o de mera denuncia de los atentados y transgresiones en contra de ellos, para ejercer un poder y unas facultades, que eviten tales atentados y transgresiones.

Esto significa un desplazamiento de la problemática de los DDHH y del medio ambiente desde los ámbitos ético-morales o exclusivamente judiciales, para situarla en el campo específicamente político, y donde los poderes políticos demás de apoyar los judiciales se someten a ellos. De lo contrario seguirá sucediendo lo que ha ocurrido hasta ahora: o juicios y sanciones póstumas y tardías o una doble medida judicial de condenas, dependiendo de quienes tienen o no tienen el poder sobre el orden jurídico internacional. Así, genocidios cometidos por unos (norteamericanos) no son judiciales a diferencia de los cometidos por otros (tras haber sido derrotados). Idéntica situación afecta al medio ambiente: más que medidas defensivas y denuncias tardías sería necesario atajar y atacar las causas y amenazas, cuando surgen y no cuando sus daños ya son irreparables.

Incluso Aristóteles consideraba que el hombre y la sociedad humana no hubieran podido existir ni tampoco podrían sobrevivir "sin algo en común"... Y sin embargo hoy el mercado [...] asalta lo más común e inalienable: el medio ambiente

Se trata de redefinir y restituir lo que es común entre los hombres sin necesidad de incurrir en comunismo alguno. Incluso Aristóteles, para quien era peor

demasiado en común que menos en común, consideraba que el hombre y la sociedad humana no hubieran podido existir ni tampoco podrían sobrevivir "sin algo en común".⁶ Y sin embargo hoy el mercado, para el que todo ha de ser privado, objeto de oferta y demanda, y nada soporta común, asalta lo más común e inalienable: el medio ambiente.

El problema en ambos casos es que nunca los poderes políticos fueron tan débiles y se mostraron tan sometidos a las fuerzas de otros poderes no políticos que los atraviesan. Y en el caso de los DDHH como en la devastación del medio ambiente hay que partir de un principio fundamental: en el mundo no hay buenos y malos sino quienes tienen el poder y la fuerza para ejercerlo sin control, y quienes carentes de fuerza y poder sufren las consecuencias. A ello hay que añadir el rasgo actual de que nunca las víctimas de los DDHH y la devastación del medio ambiente fueron tan rentables y produjeron beneficios tan colosales.

Nada revela mejor tanto los presupuestos como los alcances terroristas del mercado, que su doble eje de devastación: el de la igualdad entre los hombres y su condición humana, y el de su medio ambiente. Pero lo peor, lo más difícil de tratar y resolver, es que este terrorismo del mercado no sólo se ha convertido en el nuevo orden global del mundo, sino que además acusa y combate como terroristas todas las resistencias o ataques a dicho ordenamiento.

Finalmente, este complejo fenómeno, en el que convergen DDHH, medio ambiente, concentración y acumulación de riqueza y crecimiento económico, ordenamiento global del mundo, se divide brutalmente en una desigual dis-

tribución de sus efectos en el Norte y en el Sur: mientras que la devastación ecológica se produce y aprovecha en el Norte, se sufren en el Sur sus más nefastas consecuencias; las víctimas de los DDHH se acumulan y concentran en el Sur, pero sus causas y consecuencias benefician al Norte; la riqueza producida por acumulación y concentración en el Norte genera exclusión y empobrecimiento en el Sur; el crecimiento económico allí arriba corresponde inequidades aquí abajo; las defensas terroristas del Norte se vuelven ataques antiterroristas en el Sur; y mientras el Norte corre riesgos y gana con ellos, el Sur los sufre.

Nada revela mejor tanto los presupuestos como los alcances terroristas del mercado, que su doble eje de devastación: el de la igualdad entre los hombres y su condición humana, y el de su medio ambiente. [...] este terrorismo del mercado no sólo se ha convertido en el nuevo orden global del mundo, sino que además acusa y combate como terroristas todas las resistencias o ataques a dicho ordenamiento.

Y es que el mundo supuestamente cada vez más globalizado nunca fue tan diferente visto desde el Norte como lo es visto desde el Sur.

José Sánchez Parga (jsparga@yahoo.com.ar) es doctor en filosofía, antropólogo, profesor universitario, investigador del Centro Andino de Acción Popular, ex-Director del Centro de Estudios Latinoamericanos (PUCE) de Quito y primer Director de la revista *Ecuador Debate*.

Notas

- 1 Por ejemplo, el Alcalde de la ciudad de Quito, Capital del Ecuador, en funciones en 2007 ha declarado "la lucha contra la contaminación ambiental", demostrando así su incapacidad y falta de voluntad política para evitarla; si quisiera y pudiera impedirla no necesitaría de esa lucha imaginaria contra ella.

- 2 En el actual modelo de desarrollo basado en la concentración y acumulación de capital, el crecimiento no es posible sin creciente inequidad: cfr. Sánchez Parga, 2005.
- 3 En su obra *Inequality Reexamined*, Amartya Sen (1992) no tiene una sola referencia al texto clásico de Rousseau.
- 4 Que la desigualdad social no es posible en una sociedad basada sobre lo *común* (*koinon*), todo lo que puede ser compartido, y sobre el vínculo social de una tal participación, constituye un principio fundamental de la *Política* de Aristóteles. Por eso lo *común* es lo primero que destruye la desigualdad.

- 5 Schumpeter, 1969.
- 6 *Política*, II,i, 1260b.

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Parks and people in North America— one hundred and thirty five years of change

Robert G. Healy

Abstract. The three large and diverse countries that make up the North American continent—Canada, Mexico, and the United States — differ substantially in terms of how their protected areas have been selected and managed, how indigenous and other local people have been treated, and how government policy toward local populations has changed over time. This paper traces the history of park creation and management in North America, with an emphasis on when and why the "anti-resident" policy in Canada and the US began to change, and the consequences that have come from that change, as well as the issues that Mexico has faced as a result of its long tolerance for human settlement in and around its protected areas. The paper also raises questions regarding the putative property rights (in A.K. Sen's terminology the "entitlements") that residents of park gateway communities establish as the park and the communities grow up together.

United States

When the land that would become Yellowstone National Park was set aside by the US government in 1872, one of the first acts of active management was to use the army to remove squatters and stop hunting by migratory American Indians.¹ A contingent of the US cavalry provided law enforcement in the park until it was removed in 1918,

two years after the creation of the US Park Service. Nearly all of the "crown jewels" of the US national park system, including Yosemite, Mesa Verde, Olympic and Glacier N.P., are on former Indian land, and their continued use of the land was strictly prohibited by park managers.² When Glacier Bay National Monument (Alaska) was designated in 1925, considerable attention was paid



Picture 1. Sloan Canyon (Nevada) has been called the “Sistine Chapel” of American Indian rock art. It is less than one mile from the expanding suburbs of Las Vegas. (Courtesy Robert Healy)

to making sure the boundaries excluded many mining claims and areas of interest to timber interests, but the subsistence land uses of the native Tlingit people were simply not part of the debate.³

The policy of removing humans from parks persisted into the 1930s, when small farmers were ousted from the

Although the first century of US park history was marked by a policy of excluding residents from park units, tourists were welcomed.

new Great Smoky Mountains National Park, the Blue Ridge Parkway, and Shenandoah National Park. In most cases, park managers took pains to remove old farmhouses and allow fields to return to forest, erasing all traces of past human use of the land. In

Everglades National Park, conceived in the 1930s and designated in 1947, a small population of Seminole Indians was persuaded to move to reservations outside park boundaries, and their traditional hunting, fishing and other activities inside the park were curtailed

over time.⁴

Although the first century of US park history was marked by a policy of excluding residents from park units, tourists were welcomed. Many management actions were taken to encourage visitors, including allowing railroad spurs and roads into the most scenic parts of the parks, permitting construction of elaborate hotels within park boundaries, and training park rangers not only to ensure the safety of visitors but also to provide educational and interpretive programs. As a result of this policy, park tourism boomed. Visitation to national parks rose especially rapidly after World War II, as widespread automobile ownership combined with improved highways, higher incomes, and longer paid-leave time to make a park vacation, particularly in the brief summer season, one of the most popular activities for American families. National park visits totaled 37 million in 1951, but had climbed to 172 million by 1970.

Because hotels and eating facilities within the parks could not accommodate the visitor hordes, tourist-oriented “gateway communities” sprang up at or near the entrances of many of the most popular parks: Gatlinburg, Tennessee; West Yellowstone, Wyoming; Flagstaff, Arizona; Springdale, Utah. Residents of these communities developed an economic interest in how the parks were managed— they wanted the parklands to remain attractive, but they did not support restrictions on the numbers of tourists nor the recreational uses they wanted to pursue.

Most Americans were extremely proud of their system of national parks. However, groups of environmental advocates, often organized at a state or local level, wanted more parks. They

pointed out that very few of the existing parks were near large cities, limiting access by poor and minority people. They also noted that almost none of the pre-1960 parks protected the nation's extensive beaches or barrier islands. Creating new parks close to cities and along attractive stretches of coastline was, however, quite different from creating them from remote federal lands or buying out near-bankrupt mountain farmers. Many of the most attractive areas for park expansion already were occupied—often by landowners who were prosperous, politically mobilized, and very unwilling to move. By the 1960s, it became clear even to ardent park advocates that the view that human settlement was completely inconsistent with good park management would have to change if new park units were to be created.

Creation of Cape Cod National Seashore in 1961 specifically allowed some local residents to permanently occupy

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residential parcels within park boundaries, subject to federal and state land use controls. Parks following the Cape Cod model are often termed "greenline parks" in recognition of the fact that all activity within the boundary (the "greenline") is regulated, even though it is not necessarily owned by the author-

ity responsible for park management. In 1978 the Santa Monica Mountains National Recreation Area, one of several new "urban national parks" in the US, envisioned a preponderance of private (though regulated) land within park boundaries.⁵ At present, of 150,000 acres in the park, only 22,000 are owned by the National Park Service. Another 55,000 acres are owned by the California state parks department, local governments or land conservancies. Nearly half of the land within park boundaries belongs to private owners. The use of the private land is subject to regulation by local governments, and in some cases, the California (State) Coastal Commission. However, this arrangement does pose challenges for conservation objectives; the park's 2002 management plan points out that "human construction and intrusion have resulted in the loss or degradation of resources, including threatened and endangered species habitat."⁶ The report also notes threats by development to cultural resources, as well as fire, flood and earthquake dangers to structures built within the park. Nevertheless, very high land prices and opposition to use of eminent domain by the Park Service almost guarantee that the Santa Monica mountains park will remain a mixture of public and private land.

After the 1970s, increasing pressure was also experienced by the Park Service to recognize rights of Native Americans.⁷ For example, in Alaska's Glacier Bay, changed from a National Monument to a National Park in 1980, the use rights of the Tlingit had never been defined. Sometimes their hunting and fishing activities were allowed by Park managers, at other times prohibited. The Park Service tried to make a distinction between subsistence use of seals, fish and other wildlife resources, which would be permitted, and commercial use, which would be prohibited for native and non-native alike. However, this distinction has proved very difficult in practice, as Tlingit wildlife harvesting has been part of the cash economy for at least a century. More-

over, even subsistence use has run into objections from ecologists that it

After the 1970s, increasing pressure was experienced by the Park Service to recognize rights of Native Americans.

exceeds the carrying capacity of some wildlife stocks.⁸

Another complex issue that arose in the 1970s was Native American religious use of the parks.

This was addressed

by Congress in the American Indian Religious Freedom Act of 1978, but Native American organizations argue that protection of some sacred sites is inadequate even when they are included within national parks. For example, there is a long-running controversy at Devil's Tower National Monument (Wyoming). The huge rock formation is popular among expert rock climbers, and the National Park Service features a climber on the park's web page. However, the Park Service also notes that "It appears to many American Indians that climbers and hikers do not respect their culture by the very act of climbing on or near the Tower."⁹ The solution, not satisfactory to many Native Americans, is a voluntary closure to climbers during the month of June, when certain sacred rites take place.

Canada

In its early national parks, Canada had a much more tolerant policy toward resource exploitation (mining, logging, grazing) than did the United States.¹⁰ However, tourism, particularly when managed by the new and powerful Canadian Pacific Railroad, was given priority. Creation of Canada's Rocky Mountain National Park in 1885 was directly related to the government's desire to block individual land claimants who might develop the local hot springs in a chaotic manner, rather than in the organized fashion preferred

by the railroad. Over time tourism, strongly promoted by long-time Dominion Parks Branch director James B. Harkin, became more and more important in Canada's slowly growing park system. In 1930, a new National Parks Act prohibited hunting, mining and most timber cutting in the national parks.

Through most of Canada's history of park creation, the interests of aboriginal people were given no special consideration

Through most of Canada's history of park creation, the interests of aboriginal people were given no special consideration. For example, designation of the Algonquin Provincial Park in Ontario in 1893 (a park of world-class size and importance) included prohibition of hunting, fishing and trapping by native people. "The failure to consider aboriginal rights [in the Algonquin Park] says Killian "contributed to a sense of injustice that would smoulder for decades."¹¹ Wood Buffalo National Park, in Alberta, is Canada's only national park with "a long standing tradition of native subsistence use and involvement."¹² But even there "during the first 50 years of its existence, government officials



Picture 2. On the Canadian side of Niagara Falls, enormous crowds of visitors are efficiently managed by the Niagara Parks Commission, a self-supporting parastatal corporation created by Ontario in 1885. (Courtesy Robert Healy)

managed WBNP according to what they perceived as the best interests of indigenous peoples" and rules were made "with little consultation with the native population and enforced without much consideration of traditional harvesting practices."¹³

Recognition of the land rights of indigenous people (First Nations) in Canada was given a major boost by a 1973 decision by the Supreme Court of Canada ("Calder Case") in which the Nisga'a people of British Columbia asserted that aboriginal land titles had not been extinguished by historical actions of the Canadian government. Although the Nisga'a actually lost the case 4-3, the fact that three justices agreed with their position created a movement to re-visit the question of First Nations land rights.¹⁴ The impetus increased with the 1977 report of the Berger Commission, an inquiry into a proposed pipeline across native lands in the far north that called for greater attention to the people affected, and the Constitution Act of 1982, which gave explicit status to aboriginal rights.

The combined impact of these legal developments was to make Parks Canada

various legal developments made Parks Canada much more willing to negotiate with First Nations and to include them in planning and sometimes in on-the-ground management.

much more willing to negotiate with First Nations and to include them in planning and sometimes in on-the-ground management. One of the most interesting examples of what has come to be called "co-

management" is in Pacific Rim National Park (British Columbia). The Park's main feature is the West Coast Trail, a rugged and sometimes dangerous footpath which extends

for 47 kilometers along the ocean coast of Vancouver Island. The Quu'as West Coast Trail Group, composed of people from the three local First Nations communities, provides trail maintenance, visitor orientation, and "Trail Guardians" who do foot patrols looking for trail problems and injured hikers. The Parks Canada contract with the Trail Group is funded by a US\$80 fee paid by all overnight hikers.¹⁵

Another example of co-management is the 1993 agreement of Parks Canada to collaborate with the Haida nation in managing Gwaii Haanas National Park Reserve and National Marine Reserve. Gwaii Haanas is a portion of a large island lying 100 miles off the central British Columbia coast. The agreement set up an Archipelago Management Board composed of two representatives of the Government of Canada and two from the Haida Nation.¹⁶ It specifies resource use rights for the Haida, provides for identification and protection of sacred sites, and gives encouragement to Haida to become park employees. This management scheme (as well as the fact that Gwaii Haanas is lightly visited and quite pristine) helped make the park rank #1 of 55 Canadian and US national parks in a magazine poll that asked tourism experts to rank areas on attractiveness and sustainability.¹⁷

Native rights have also become very important in the designation of new parks in Canada. Unlike the United States, which has to date created national parks on an ad hoc basis, Canada has in recent years been following a deliberate plan that envisions new parks in biomes not represented in the current system. However, several of the areas on the Parks Canada wish list are located in areas where government has not yet concluded a land treaty with one or more First

Nations groups. The size and boundaries of the park thus become part of a negotiation involving land in other areas, cash settlements, and other considerations. New major parks (all in the far North), such as Kluane, Vuntut, Tuktut-Nogait and Auyuittuq, have been created as part of native claims settlements.¹⁸ The Canadian government is currently negotiating a land settlement with the Dene people of the Northwest Territories that would include a park in a huge pristine area, four times the size of Yellowstone, where the boreal forest meets the Arctic tundra.¹⁹

Native rights have become very important in the designation of new parks in Canada.

Mexico

The park history of Mexico is quite different from that of Canada or the US. Mexico's first protected natural area was established very early (first given protection in 1876, declared a national park in 1917) but, unlike parks in Canada and the United States, it did not protect a large "natural wonder" distant from most of the population. Rather, the Desierto de los Leones National Park protected a 1900 hectare area of slopes and forests just outside Mexico City, which served as a water supply area and site for urban recreation. Not until the 1930s did Mexico experience a burst of park designation when reformist president Lazaro Cardenas, advised by pioneering Mexican forester Miguel Angel de Quevedo, created 40 new national parks. Many of these areas were historical or archeological sites, but a few were "true national parks".²⁰ For example, several of the new parks protected the magnificent volcanoes of Central Mexico: Ixtaccihuatl and Popocatepet, just outside Mexico City; Orizaba in Veracruz; Nevado de Toluca, near the city of the same name; and

the twin volcanoes (one active and one dormant) above the city of Colima. On the other hand, some were essentially urban recreation areas, such as the streamside park that runs through downtown Uruapan, Michoacan, today a bustling city of 625,000 people.

Like the United States, and unlike Canada, Mexico prohibited timber cutting in its national parks. But unlike the other two North American nations, Mexico did virtually nothing to either set up a land management system or to promote tourism. There were limited recreational facilities in some of Mexico's urban and historical parks, but the "crown jewels" were simply not promoted as tourist destinations, nor were tourist facilities provided. The great park hotels built by railroads in Canada and the US were never created in Mexico's parks. Even today, most of the large and dramatic nature parks in Mexico may be featured in photographs on tourist brochures, but arranging to actually visit them can be quite difficult. (Mexico's magnificent archeological sites, managed by the National Institute for Archeology and History, a separate agency than the one managing natural areas, tend to be strictly protected and have well-developed facilities for tourists, who visit them in enormous numbers.)

Another difference between Mexico's early national parks and those in Canada and the US is that they were not created on federal land, but often included large areas of private property. Particularly after President Cardenas' historic and immensely popular program of breaking up large rural estates and giving property rights

Much of the land nominally in national parks was actually owned by communal bodies, called ejidos.

to landless peasants, much of the land nominally in national parks was actually owned by communal bodies, called *ejidos*. Simonian observes that "since Mexican law prohibited the buying of communal lands, public officials had to enlist the support of peasants in protecting their resources within national parks. Despite a combination of persuasion and fines, cooperation from the *ejidos* was not always forthcoming."²¹ In a review of the state of Mexico's national parks, Vargas Marquez documented the sorry condition of virtually every unit in the park system.²² Of 55 park units studied by Vargas Marquez, 29 had little to no on-the-ground management. Seventy percent had human settlements inside them. In the majority of the parks, Vargas found illegal timber cutting, hunting, and grazing, and found that wildlife was scarce.

Many of the *ejido* residents of Mexico's parks could be considered indigenous people by virtue of their long residence in a particular area. However, relatively few practice earth-centered religions or



Picture 3. Dwelling of a Raramuri Indian in Mexico's Barancas del Cobre (Copper Canyon). The Raramuri fled to this remote area centuries ago to avoid the Spaniards. They now must deal with rapidly increasing tourism. (Courtesy Robert Healy)

make use of plants or animals in culturally specific ways. Ironically, the lands occupied by some of Mexico's most traditional and land-dependent groups—the Raramuri of Copper Canyon (Chihuahua), the Huicholes (remote areas of Jalisco and Nayarit) and the Lacandon Maya (Chiapas)—were not included in Mexico's pre-1970 park system.

Lara Plata notes that of several Mexican national laws protecting natural resources, none "gives particular emphasis to the right of indigenous people to manage their resources or participate in the planning, administration and management of the protected natural areas, [and] by no means specifies in a formal way their opinion regarding its establishment when it takes place near or within their territory."²³ However, he notes that indigenous cultures, which he considers highly endangered themselves, depend on use of natural resources. This spatial coincidence of indigenous people and localized resource dependence could provide the conditions for future protected areas that might support both natural values and endangered cultures.

In the mid-1970s, Mexico began to set up a system of biosphere reserves, selected to preserve representative ecosystems.²⁴ Several of the largest reserves were in such remote, economically unpromising parts of the country that their human population was quite small. However, some do follow the usual biosphere reserve model of incorporating development programs for local people into the management plan for the area. One of the most successful is Sian Ka'an, a 1.3 million acre reserve along the Caribbean coast. Set up in 1986, it contains about 2,000 inhabitants. Fortunately for reserve management, almost all are relatively prosperous lobster fishers, who primarily use

the offshore area and have made only limited, agricultural use of the interior of the reserve. Programs run by Mexican NGOs and financed by international organizations have tried to give the local residents an economic interest in keeping the reserve pristine, for example by providing boat tours to tourists from the booming Cancun corridor just to the north.²⁵ There has also been a program to increase agricultural productivity so as to avoid slash and burn practices.²⁶

Less successful has been the reserve set up in 1987 to protect the habitat of the Monarch butterfly. It occupies a densely populated forested area in central Mexico, where land belongs to *ejidos* that had heretofore made their living by timber cutting. The government has tried to involve local people in tourism—which is booming. But most of the benefits are being received by only one of eight *ejidos*.²⁷ The *ejidos* not receiving tourists, but subject to controls, have created an organization that seeks to have their land excluded from the reserve. Meanwhile, illegal logging continues, severely damaging the butterfly habitats.²⁸



Picture 4. Gros Morne, a Canadian National Park in Newfoundland. The small gateway community near the entrance to this rugged park has moved from dependence on a declining fishing industry to an expanding tourism sector. (Courtesy Robert Healy)

Rights claims and the future of Parks and people in North America

The narrative offered above demonstrates that the interaction of park creation and management with various rights of people has a long history in North America, and one which differs from place to place and which has changed greatly over time. In general, the direction of change has been toward greater formal recognition of human rights, whether the people involved are neighbors, in-holders or displaced persons. Technically, the human rights involved are property rights—the right to benefit from the use of land, wildlife and other natural resources and the attendant right to decide when and how those rights will be exercised. But in many cases some or all of these rights have no legal recognition. They can perhaps be better viewed as what A. K. Sen has termed “entitlements”—moral or political claims to use resources for one’s own benefit.²⁹ New management models, including Mexico’s biosphere reserves, Canada’s co-management areas, and the greenline parks of the US, are all intended to recognize either legal or moral property rights claims while still providing adequate protection to the park’s natural and scenic resources.

One of the most striking features of property rights claims in and around PAs is their diversity.

One of the most striking features of these property rights claims is their diversity. Some involve rights of indigenous people, such as the First Nations in Canada. Others involve rights claims by non-indigenous, and often impoverished, people with long associations with the land, such as *ejido* residents in Mexico whose farm or forest lands had been incorporated into national parks by decree. Still others are claims

by people living in gateway communities whose economic existence depends on a park. Some property rights claims involve a mix of people. For example, creation of Cape Cod National Seashore affected landowners whose families had been in the area since the 17th century and others who had bought their beachside homes only a few years ago. Some rights claimants are very poor, others quite wealthy. Even the claims of indigenous people can involve dilemmas. For example, do traditional hunting and fishing rights extend to people using modern harvest methods?

It is frankly impossible to come up with blanket statements about which rights claims should be validated and which rejected. Moreover,

The question of whose property rights claims should be validated is often rendered moot if the persons with the weakest moral claims on property rights are those with the greatest political power.

the question is often rendered moot if the persons with the weakest moral claims on property rights are those with the greatest political power or with the greatest possibility of thwarting the purposes for which the park was created. One might assert with some confidence that every potential rights claimant should be

afforded due process and a right to be heard, whether or not their claim is ultimately accepted. As we have seen from the history of parks in all three North American countries, it is only recently that this kind of participation has become regularly incorporated into park designation and management.

Beyond affording procedural due process, I believe that the best way to deal with property rights claims is to put them into a much broader and lon-

ger term context of park management. In the next several decades, the national parks of all three North American countries are likely to face a common set of serious threats. They include: demands for new types of recreational uses; overuse of certain park areas; air, water and even light pollution coming from beyond park boundaries; invasive plant and animal species; problems with reintroduction of native animals; and climate change. This last threat, which may be the most serious of all, requires some elaboration.

The species and ecosystems protected in parks, which in many cases contribute greatly to the areas' attractiveness for tourism and outdoor recreation, depend on specific combinations of temperature and rainfall. If future global climate change affects local conditions, the ecological characteristics of the park could be altered greatly.³⁰ For example, rising sea levels can cause erosion and change salinity regimes at coastal parks and the temperature and rainfall characteristics of species-rich mountain slopes may be altered. The parks, in their present location, will simply be unable to perform many of their functions.

Many of these problems are inter-related. Eradication of invasives and reintroduction of native species is made more difficult when the local human population feels injured by the park and hostile to park managers. The experience of the US National Park Service in reintroducing the grey wolf to Yellowstone in the face of local opposition is illustrative.³¹ Similarly, the support or opposition of locals can be very important if park managers seek to ban certain recreational activities or even to take direct measures to limit crowding. And if climate change affects our present systems of parks, provision must

be made for changing park boundaries or for connecting one park to another.

One approach to dealing with all of the above problems—an idea actively pursued by a number of scientists and environmental advocacy groups—is to manage individual parks as part of much larger landscapes—systems of parks, biosphere reserves, and large scale ecosystems. A pioneer in this approach has been the Greater Yellowstone Coalition, which since 1983 has advocated managing Yellowstone and Grand Teton National Parks as part of an 18 million acre “ecosystem” comprised of federal, state, private and Native American lands.³²

Looking at individual parks within this much larger landscape or ecosystem context may not only help parks respond to changing climatic conditions,

Looking at parks within the larger landscape may not only help parks respond to changing climatic conditions, but could help with problems of in-holders, indigenous people and the parks' many "neighbors".

but could help with problems of in-holders, indigenous people and the parks' many “neighbors”. What may be needed is a more flexible system of property rights, which would include rights not only within the park itself but also over the much larger area. The Canadian model of co-management of park units with local people provides lessons for what might

be done inside park boundaries. US park units such as Cape Cod and Santa Monica Mountains show how regulatory systems can be used to allow private ownership of land in or near parks while reducing the impact of development on park resources. The biosphere reserve model offers a vision of large-area zon-

ing that affords absolute protection to part of the reserve, but permits controlled human use in buffer zones.

Gateway communities can play an important part in this larger park-related landscape.³³ They are urban areas where park managers have little direct power and are unlikely to obtain it. In these places, it is probably best for the park authorities to work with local economic interests concerned with the long-term viability of the tourism industry. Today, many business interests in gateway communities are suspicious of park managers. But they could become some of the strongest regional advocates of park values. National Geographic has recently created a very useful on-line “Gateway Community Toolkit” with links to case studies, policy literature, and sources of technical assistance.³⁴ The toolkit responds to concerns raised in a survey of park management and tourism experts that indicated that the attractiveness of many parks as tourism destinations was being seriously degraded by activities undertaken in the gateway communities just outside their boundaries.³⁵ There seems to be growing appreciation within the tourism industry of the fact that tourist demand depends on the totality of the visitor experience, including both time spent in the park and time spent in the gateway.³⁶ Gateway communities represent threats to parks, but also major sources of political and economic support.

If parks are to be managed as part of much larger landscapes, the gateway communities can be regarded as a concentration of interested parties, but not the parks' only constituency. It is useful to observe that the rights asserted by these people are not constant over time. Ranchers who object to the impacts of park wolves on their

livestock may be replaced by owners of rural recreational homes, who may harbor positive feelings toward wolves, though perhaps with a little wariness. Indigenous people may discard old cultural practices, then reinvent them in altered form. Climate change will affect not only the park, but also the economics of land use outside the park. In this changing landscape, old rights demands may be terminated, and new rights claims may be asserted. The challenge for park managers is to balance these changing rights claims against the changing needs of the parks. It will not be an easy job.

Robert Healy (healy@duke.edu) is Professor of Environmental Policy at the Nicholas School of the Environment and Earth Sciences, Duke University, North Carolina, USA. He teaches a course entitled "Protected Areas, Tourism and Local Development". Among his research interests are how to link tourist purchases of handicrafts and local food products (coffee, honey) to sustainable land use in protected area buffer zones. Healy holds a Ph.D. in Economics from the University of California, Los Angeles.

Notes

- 1 Jacoby, 2003.
- 2 Keller and Turek, 1998.
- 3 Catton, 1995.
- 4 Keller and Turek, 1998.
- 5 Conservation Foundation, 1995.
- 6 National Park Service, 2002:39.
- 7 Prucha, 1984.
- 8 Catton, 1995.
- 9 US National Park Service, 2006.
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- 11 Killian, 1993:14.
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- 13 Beltran, 2000.
- 14 Peepre and Dearden, 2002.
- 15 See Quu'as West Coast Trail Group, 2007; Indian and Northern Affairs Canada, 2004.
- 16 Peepre and Dearden, 2002.
- 17 Tourtellot, 2005.
- 18 Peepre and Dearden, 2002.
- 19 Struck, 2006.
- 20 Simonian, 1995:94.
- 21 Simonian, 1995:100.
- 22 Marquez, 1984.
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- 25 Centro Ecological Sian Ka'an, 2007.
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- 27 Simonian, 1995; Chapela and Barkin, 1995.
- 28 Gomez Mena, 2004.
- 29 Sen, 1983.
- 30 Lovejoy and Hannah 2006; Saunders and Easley 2006.
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Eco-authoritarian conservation and ethnic conflict in Burma

Zao Noam

Abstract. This paper explores ethical and practical challenges faced by international conservation organizations working in Burma with the Burmese military regime (State Peace and Development Council, or SPDC) within the context of political and military conflict. The paper discusses why and how the Burmese junta attempts to exploit large-scale conservation projects by international NGOs not for the aims of conservation, but for purposes of state-building and militarization. It also describes how international conservationists are required to comply with the dictatorship's strict measures on engagement, ending up in "conservation-military alliances". With the aid of international conservation organizations, the military state

gains control of politically-disputed indigenous territory and the natural resources contained therein. The Hukawng Valley Tiger Reserve supported by the Wildlife Conservation Society (WCS) is a case in point. Meanwhile, grassroots environmentalism is taking hold in ethnic areas, although largely unnoticed by secular donors, conservationists and researchers. I argue that "eco-authoritarianism" is not the answer for successful biodiversity conservation. Ethically and socially-based solutions such as "selective environmental engagement" should rather be employed to protect Burma's environment and the people that rely upon it for their livelihoods. These solutions present a more appropriate, nuanced and just way for international conservationists to engage with Burma.



Figure 1. Map of Burma.

Burma is the largest country in mainland Southeast Asia, with a land area of 675,000 km² (Figure 1). A wide variation in altitude, latitude and climate creates high diversity of habitats and species: nine of the WWF Global 200 Ecoregions lie wholly or partly in Burma,¹ and the World Resources Institute (WRI) has described the Indo-Burmese region as one of the eight "hottest hotspots of biodiversity" in the world.² The country is blessed (or some would say cursed) with a wealth of natural resources. Its extensive forests, perhaps the largest intact natural forest ecosystem in the region, contain commercially-valuable and increasingly rare timber such as Burmese teak (*Tectona grandis*), *Pyinkado* or ironwood (*Xylia dolabriformis*), *Padauk* or rosewood (*Pterocarpus macrocarpus*) and *Kanyin* (*Dipterocarpus spp.*). Natural resources are concentrated along the frontiers with Thailand, China, Bangladesh and India, regions mainly inhabited by Burma's numerous minority ethnic groups. The combination of valuable natural resources and high ethnic diversity has contributed to political unrest in Burma, and is shaping into an "ethno-ecological crisis".

Despite (or because of) Burma's great biological, cultural and ethnic diversity, Burma remains embattled by the world's longest running civil war. The State Peace and Development Coun-

cil (SPDC), the present name for the Burmese military junta, focuses on unitary state-building through military conquest. Its goal is to end political and ethnic resistance, control all territory within Burma, bring all the people of Burma— and specifically the ethnic minorities— into the “national fold”, and exploit the natural resource wealth of the frontier regions. The SPDC now controls much of the country, but some ethnic political/military groups still have effective control over some territories. SPDC corruption and human rights violations, especially in ethnic areas, have been extensively reported upon by international and Burmese media, exiled opposition groups and international organizations. According to the latest UN Report of the Special Rapporteur on the situation of human rights in Burma, “Grave human rights violations are committed by persons within the established structures of the State Peace and Development Council and are not only perpetrated with impunity but authorized by law.” Furthermore, and with serious implications for conservation projects in Burma, there exists “... widespread practice of land confiscation throughout the country, which is seemingly aimed at anchoring military

control, especially in ethnic areas. It has led to numerous forced evictions, relocations and resettlements, forced migration and internal displacement.”³

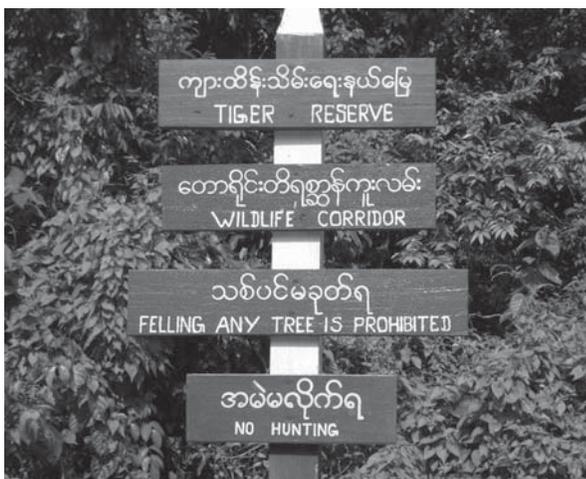
The international community is divided as to whether the best strategy for change is to isolate Burma or to en-

gage, and if so, precisely how. Although some major international conservation organizations, such as the IUCN, have purposefully chosen not to engage with the Burmese regime, others have readily moved in. The Wildlife Conservation Society (WCS) based in

The international community is divided as to whether the best strategy for change is to isolate Burma or to engage, and if so, precisely how.

New York City led the way into Burma in 1993, becoming the first INGO of any kind to initiate a program inside Burma. WCS’s primary aims are to work closely with the Burmese regime (specifically the Ministry of Forestry), to increase the area covered under Burma’s protected area (PA) system and engage in wildlife protection.⁴

WCS, and other international NGOs (INGOs) following suit, see establishing projects in Burma through the SPDC as apolitical and not constituting support for the Burmese junta. Alan Rabinowitz, executive director of the WCS Science and Exploration Program and the foremost international conservationist working in Burma, summarizes the common position of international conservation organizations working in Burma: “WCS does not sanction forced relocation or killings but we have no control over the government. We are in Burma because it is one of the highest biodiversity countries.”⁵ However, Rabinowitz has also highlighted certain advantages of working on conservation with an au-



Picture 1. Sign post demarcating the Hukawng Valley Tiger Reserve announcing new rules. (Courtesy PKDS)

thoritarian regime. "It's much harder to get conservation done in democracies than in communist countries or dictatorships; when a dictatorship decides to establish a reserve, that's that."⁶ Burmese pro-democracy leader and Nobel Peace Prize winner Daw Aung San Suu Kyi, whose house arrest was recently renewed for yet another year, has commented on political barriers to an inclusive and participatory conservation approach: "I doubt under the present circumstances you can do anything very effectively in the way of conservation. Under the kind of military regime that we have here you would not be allowed free access to all the people with whom you wish to work."⁷ However, for the type of conservation Rabinowitz advocates, this is not seen as an obstacle: "Biodiversity conservation is doomed to failure when it is based on bottom-up processes that depend on voluntary compliance...I would advocate a top-down approach to nature conservation—contrary to much contemporary political and conservation rhetoric—because in most countries it is the government, not the people around the protected areas, that ultimately decides the fate of forests and wildlife."⁸

SPDC's conservation regime

In a National Public Radio (NPR)

Forming associations with conservation NGOs enjoying a worldwide reputation can be a source of credibility for a regime with a poor international image.

interview, Alan Rabinowitz commented that "the [Burmese] government has been very receptive, more than any other country I have worked with, in terms of conservation."⁹

Why should the normally reclusive SPDC be so receptive to engagement with international

conservation organizations?

Forming associations with conservation INGOs enjoying a worldwide reputation can be a source of credibility for a regime with a poor international image. Against a background of countless reports by international organizations, NGOs and foreign governments documenting and criticizing the human rights situation in Burma (see endnote 3), Rabinowitz has argued that human rights violations have been exaggerated: "I'm not arrogant enough to say I have seen everything there is to see. But having worked in the country for ten years, traveling to the most remote areas, I think its [human rights abuses] have been blown out of proportion."¹⁰

International conservation organizations can leverage "green" discourse for money, allowing governments to access substantial funding for projects with an ostensible conservation purpose. Concepts such as 'biodiversity', 'conservation' and 'sustainable development' can be translated and concretized into

Re-zoning for conservation provides an apparently legitimate reason for the state to relocate populations, to control and patrol previously inaccessible areas of contested territory, and to claim state/military ownership of natural resources.

new regulatory regimes and institutions augmenting state power. Perhaps most importantly, there are potential economic, military and security advantages to large-scale conservation projects in Burma.¹¹ Raymond Bryant asserts, "Conservation projects provide an effective means to promote environmental conservation in a politically and eco-

nomically important part of the country at the same time as it provides a justification for tightened political control over this area. In this manner, "coercive conservation" in Burma is designed simultaneously to meet environmental and political objectives to obtain sustainable development."¹² Military state-building activities can be transformed into seemingly apolitical state conservation. Jeremy Woodrum of U.S. Campaign for Burma has stated, "They'll do anything they can, including create large forest reserves, to seize control of land that has historically belonged to a particular ethnic group."¹³ Re-zoning for conservation provides an apparently legitimate reason for the state to relocate populations, to control and patrol previously inaccessible areas of contested territory, and to claim state/military ownership of natural resources. In this way, abuses against ethnic people may continue under the guise of conservation enforcement.

The creation of the Myinmoletkat Biosphere Reserve in Karen State in the 1990s provides one example of this phenomenon. Reserve creation was facilitated by WCS and the Smithsonian Institute, and pushed through by a Thai/Burmese oil consortium as appeasement to the international community for the disastrous Yadana/Yetagon gas pipelines that were being developed, and which would run through the proposed reserve to Thailand.¹⁴ The creation of the reserve reportedly led to violent oppression of Karen communities living in the area.¹⁵ Within a few months of signing the MoU to establish the reserve, the Burmese army launched one of its biggest and most successful military offensives to secure territory away from the Karen National Union (KNU) for inclusion in the proposed reserve.

In addition, the new reserve overlapped and disrupted a Community Conserved Area already established by the Karen, known as Kaserdooh.¹⁶

Development of the PA system is a key strategy of SPDC's conservation policy. Burma's 1994 forest policy mandated an increase in the country's PA system to at least 5% of the country's total land area, with a long-term goal of 10%.¹⁷ In the early 1990s, the regime called for the area set aside as state reserved forest to increase from 14% to 30% of the total national forested area.¹⁸ Despite these policy commitments, in 1996 PAs constituted less than 1% of the total national land area. However, between 1996 and 1999, 12 new PAs were added due to increased collaboration with conservation INGOs, and by 2000, Burma had designated over 15,000 km² of PAs covering 2.3% of the total area of the country.¹⁹ Largely due to the work of WCS in Kachin State, presently Burma has designated over 40,000 km² of PAs in 38 established national parks and wildlife sanctuaries, covering about 6% of the total area of the country, with several other PAs currently in negotiation.

PAs and conservation corridors are being designated/proposed predominantly in indigenous areas and, in some cases, in areas of current political conflict (see Tables 1 and 2). Natural resources remain most plentiful in mountainous ethnic regions along Burma's many borders; ongoing conflict and peripheral location caused these areas to be beyond easy reach for large-scale resource extraction by SPDC or transnational corporations, while to some extent indigenous land management practices has protected the environment as well.

Table 1. Birdlife International *et al.* (2005) Suggested Conservation Corridors for Burma

	Conservation Corridor	Area (km ²)	No. of KBAs*
Areas dominated by Burman** Burmese people	Ayeyarwady Delta	5,300	1
	Bago Yoma Range	17,800	2
	Central Myanmar Dry Forests	15,000	2
	Central Myanmar Mixed Deciduous Forests	7,600	2
Total		45,700	7
% Grand Total		16%	13%
Areas dominated by Ethnic Burmese peoples (<i>potential conflict territories</i>)	Central Ayeyarwady River***	18,000	13
	Central Thanlwin River	11,000	0
	Chin Hill Complex	23,900	5
	Kayah-Kayin Range	13,000	1
	Lower Chindwin River	8,400	1
	Naga Hills	5,500	1
	Nan Yu Range	20,500	0
	Northern Mountainous Forest Complex	25,800	3
	Rakhine Yoma Range	53,000	5
	Sundaic Subregion (Tanintharyi)	44,200	12
Upper Chindwin Lowlands	24,400	4	
Total	(<i>potential conflict territories</i>)	247,700	45
% Grand Total		84%	87%
Grand Total		293,400	52

* KBA is designated or officially proposed as a protected area, in whole or in part.

** Burman is the majority ethnicity of Burma, living predominantly in central and delta Burma, and the ethnicity heading the military regime.

*** Some parts of this corridor fall within Burman Burmese Areas.

Source: Adapted from Birdlife International *et al.* (2005)

WCS spearheaded the establishment of Hkakabo Razi National Park in the far north of Kachin State in 1998, currently the country's largest National Park (although not the largest protected area), with an area of over 3,800 km². Within the PA resides a permanent human population engaging in hunting, fuel wood collection, non-timber forest product (NTFP) collection and shifting cultivation.²⁰ The Burmese military took control of the area in 1994, after a ceasefire agreement with the Kachin Independence Organization (KIO), the prominent Kachin political group with semi-autonomy in the region. Neither WCS nor the state informed or consulted with the KIO when the

PA was established.²¹ Since then, the number of Burmese military battalions stationed in the surrounding area has risen to over 10, as it is perceived as an important national security zone.²²

WCS published a review of Burma's PA system in 2002. It confirmed a military-conservation overlap in Burma's PAs: out of 20 PAs reviewed in the paper, 6 are recorded as having "military camps and/or insurgents indicating availability of firearms."²³ Many other PAs, according to the same article, contain plantations, mining or logging concessions operated by military-backed companies. One of the PAs mentioned is Shwe U Dawng in Shan State, which

according to a Shan environmentalist is located near the Bat Tu military compound that manufactures bombs for the Burmese Army.²⁴ The article didn't mention, however, Loimwe PA also in Shan State, which is located in a hostile area prone to fighting, and which houses a military communication tower on the mountain peak, as has been the case since British colonial times.²⁵

I am not suggesting that international conservation organizations share the vision of the SPDC and its desire to support the military state. However,

the state may appropriate environmentalism to establish resource sovereignty out of line with the conservation goals desired by practitioners and their donors.²⁶ Only authoritarian trends in conservation that can benefit the regime are promoted in SPDC-endorsed conservation projects, such as in large-scale land re-zoning for PAs. There is no room for participatory decision-making, access to environmental information, media freedom to report on environmental issues, or support for "pro-people" conservation.

Table 2. Birdlife International *et al.* (2005) Suggested Priority Corridors for Burma*

	Priority Corridor	Area (km ²)
Area dominated by Burman** Burmese people	Central Burma Dry Forests	15,000
	Central Burma Mixed Deciduous Forests	7,600
Total		22,600
% Grand Total		11%
Areas dominated by Ethnic Burmese peoples (<i>potential conflict territories</i>)	Chin Hills Complex	23,900
	Lower Chindwin River	8,400
	Northern Mountainous Forest Complex	25,800
	Rakhine Yoma Range	53,000
	Sundaic Subregion (Tanintharyi)	44,200
	Upper Chindwin Lowlands	24,400
Total	(<i>potential conflict territories</i>)	179,700
% Grand Total		89%
Grand Total		202,300

* The priority corridors represent a refined priority list of the conservation corridors in order to "maximize future conservation investment in Myanmar."

** 'Burman' is the majority ethnicity of Burma, living predominantly in central and delta Burma, and the ethnicity heading the military regime.

Source: Adapted from Birdlife International *et al.* (2005)

SPDC's control of INGO activities in Burma

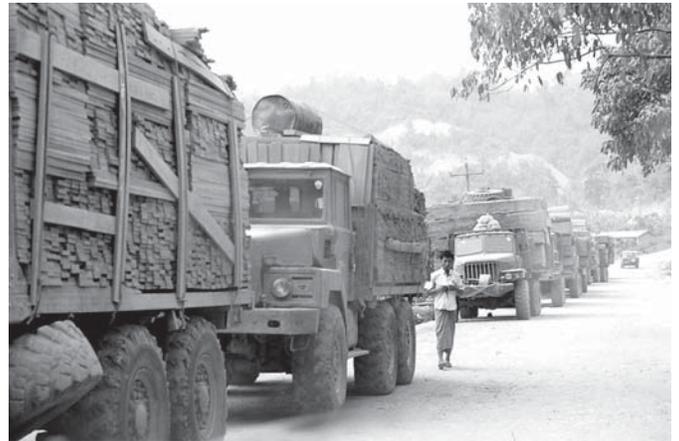
It is impossible to undertake a large-scale conservation project in Burma without engaging with the military regime. Birdlife International, in conjunction with CARE-Myanmar, Conservation International, Critical Ecosystem Partnership Fund, and UNDP-Burma, recently published a report on the status and opportunities for formal conservation

in Burma entitled "Myanmar: Investment Opportunities in Biodiversity Conservation". The report notes that "regional military commanders have considerable influence over the way [environmental] policies are implemented within their

It is impossible to undertake a large-scale conservation project in Burma without engaging with the military regime.

commands."²⁷ In addition, in areas of past/present conflict ("natural habitats with security concerns"), the Ministry of Forestry shares management responsibility with the Ministry of Defense.²⁸ In ceasefire areas ("parts of the country that have come under government influence following "peace for development" agreements"), activities must be coordinated with the Ministry for Progress of Border Areas, National Races, and Development Affairs.²⁹ The function of this ministry, known by the Burmese acronym *Na Ta La*, is summarized as follows: "*Na Ta La* projects are ordained by regime elite, imposed by the army, and implemented not to improve the lives of all individuals but to bolster the power of a few. The border development program serves primarily to secure the regime's hold on power and to enrich its supporters. *Na Ta La* projects are only participatory inasmuch as they are financed predominately through forced labor and the taxation of the rural populace. The net effect of the regime's border development policies on border residents is negative."³⁰ Or as one local Kachin informant put it: "*Na Ta La* means they just chop down trees."³¹

To operate in Burma, INGOs must negotiate a Memorandum of Understanding (MoU) with any number of relevant ministries, along with the Ministry of National Planning and Economic Development. Antony Lynam, Associate Conservation Scientist of WCS's Asia Program and working on tiger conservation in Burma, confirmed via e-mail that official permission to operate in protected areas must be issued through the Ministry of Defense and the Prime Minister (an army general). Despite these conservation-military alliances, Lynam went on to write that, if important wildlife in a country exists, then it is important for WCS to be



Picture 2. A line of Chinese trucks illegally transporting timber felled in Kachin State to China. (Courtesy PKDS)

working with the agencies responsible for managing wildlife, regardless of the politics. But the politics of Burma place great restrictions on how INGOs are allowed to operate within the country. Based on conversations with local, national and international NGOs operating in Burma, the unwritten rule is that organizations must refrain from commenting on the political situation in Burma, from having dialogue (i.e., public participation) with ethnic political groups, from implementing projects in non-SPDC-controlled areas, and from addressing any environmental threats linked to regime-backed natural resource extraction concessions.

SPDC interference in NGO activities intensified after the removal of Prime Minister and Chief of Intelligence General Khin Nyunt in October 2004. A Burmese journalist wrote that "one of the top generals has issued a directive forcing all international humanitarian organizations to deal directly with Burmese government ministries, with all major decisions going through the *Ministry of Defense*."³² Early in 2006 the Ministry of National Planning and Economic Development circulated guidelines for the code of conduct for NGOs operating in Burma; however,

the Burmese language version released was significantly different from the official English language version prepared to target expatriate staff, in that the former was much more severe with listed restrictions than the latter. According to the Burmese language version, when recruiting national staff "organizations should inform the respective ministry about the required qualifications for staff," and then the respective ministry will "provide the list of qualified staff, and the organization can choose from the list."³³ Other restrictions include project staff having to be accompanied by a "liaison officer" for "security" when embarking to the field. Also, coordination committees including members from every ministry (including the *Na Ta La* and Ministry of Defense if situated in ethnic border areas), the police and government-organized NGOs (GONGOs) must be formed from the national all the way down to the township level. The various committees are responsible for "monitoring the project team", "networking between/among NGOs/INGOs", permitting INGO staff members to travel to the project site, and "coordinating" the organizations' project activities.³⁴ These operating restrictions not only severely impede NGO's work, but more notably enable the military regime to influence the type of projects chosen and how they are carried out. Furthermore, the potential sensitivity of NGO projects create a climate of fear, causing NGO personnel (especially local staff) to work carefully and quietly for fear of repercussions, such as interrogation by police and/or the organization's MoU being revoked.

The SPDC may seek to exploit NGO activities for its own purposes. Military personnel accompany researchers on

environmental surveys in politically-sensitive ethnic areas. For example, over the past few years a Burmese Ph.D. environment student has always been accompanied by SPDC soldiers when she traveled to the field to conduct her research in ethnic areas.³⁵ In another example, military intelligence joined the 1997 survey led by WCS in Hkakabo Razi National Park in northern Kachin State, collecting information on the people encountered and their activities.³⁶

NGOs are hesitant to challenge the restrictions placed upon them and end up complying with regime politics. In one interview with a Kachin youth group, it was revealed that they were afraid to work on environment issues because of the sensitivity of the issue in Kachin State, even though they viewed environment as a key issue.³⁷ For another Kachin environment organization, the main cause of project failures was field sites being demarcated by the SPDC as logging and mining concessions, for which the NGO did not file a complaint out of fear.³⁸ But these allegations are more severe for international NGOs, of which two strong cases are presented.

The mostly foreign authors of the 2005 Birdlife International *et al.*, report consulted with few, if any, ethnic Burmese working on environment issues based inside Burma, nor did they consult with any ethnic Burmese environmentalists working outside the country, such as Burmese environmental groups based in Thailand, who follow an overtly rights-based approach.³⁹ In another current example, Burma is embarking on the National Biodiversity Strategy and

NGOs are hesitant to challenge the restrictions placed upon them and end up complying with regime politics.

Action Plan (NBSAP) process to follow up on its ratification of the Convention for Biological Diversity (CBD). Despite strong language in CBD, NBSAP and GEF (Global Environment Facility, the financier for NBSAPs) guidelines about consulting with all stakeholders and paying close attention to indigenous knowledge and equitable access and benefit sharing, so far no ethnic Burmese environmentalists— inside or outside the country— are being consulted in the process pushed by Bird-life International and facilitated by UNEP ROAP (Regional Office of Asia-Pacific) in Bangkok, Thailand.⁴⁰

Hukawng Valley Tiger Reserve

Following dialogue between WCS and the Burmese regime, in 2004 the Minister of Forestry agreed to expand the original 6,400 km² Hukawng Valley Wildlife Sanctuary to cover almost the entire Hukawng Valley, an area of nearly 22,000 km², creating the largest tiger conservation area in the world, and one of the world's largest forest PAs (Figure 2). The Hukawng Valley Tiger Reserve is a part of the massive 30,000 km² "Northern Forest Complex", promoted by WCS, which encompasses most of northwest Kachin State (Figure 3). As part of this conservation mission, WCS is assisting the SPDC in obtaining GIS information of forested regions in Kachin State in order to expand conservation operations to the "human-dominated landscape" and "into neighboring valleys".⁴¹ The Hukawng Valley Wildlife Sanctuary acts as the core protected area, where relatively few people live, but the forest surrounding it will also be protected as part of the tiger reserve to "act as a buffer to human encroachment". An estimated 50,000 people currently live within the valley⁴² and "venture into the park to hunt and collect forest products."⁴³

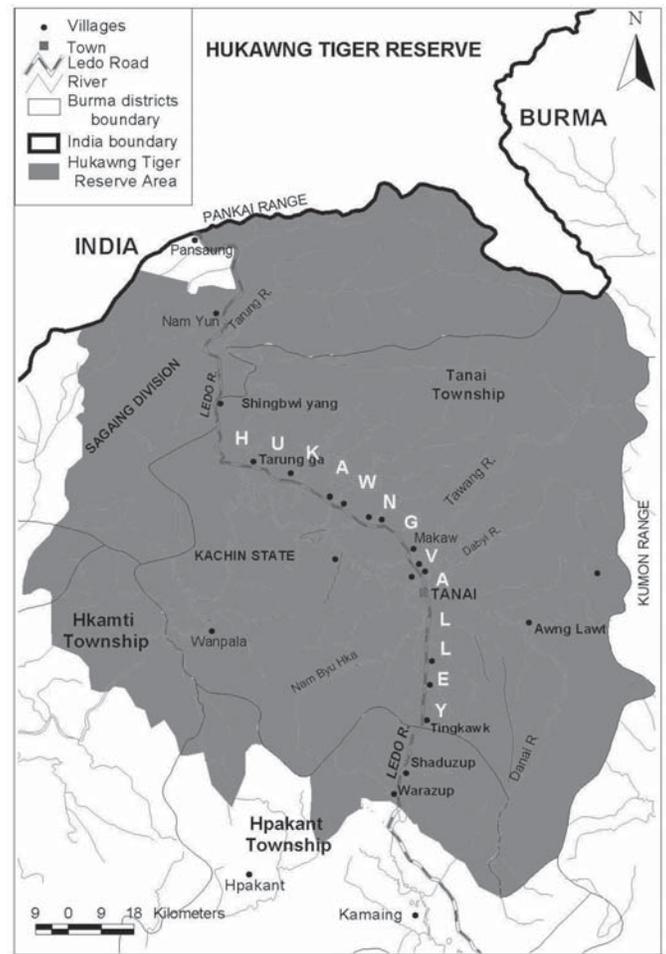


Figure 2. Hukawng Valley Tiger Reserve in Kachin State. (Courtesy Images Asia Environment-Desk)

Rumors circulated that the PA was a trick by the SPDC to secure more Kachin territory, as the Hukawng Valley is located in a politically-contested area.⁴⁴ Alan Rabinowitz of WCS confirms that one of the reasons the SPDC was so enthusiastic about the Hukawng Valley Tiger Reserve was the opportunity to engage the KIO, a major Kachin political ceasefire group who controls around 80 percent of the valley,⁴⁵ in negotiations.⁴⁶ In contrast to the situation at Hkakabo Razi National Park, Rabinowitz contacted the KIO during his visits to Hukawng Valley, despite this being against MoU regulations that prohibit dialogue with

ethnic political groups. During one visit, a KIA commander (the military arm of the KIO), interviewed in his headquarters in the proposed tiger reserve, proudly claimed: "This is our land."⁴⁷ Rabinowitz supports this assertion in his NPR interview, declaring, "The KIA rules this valley; they have autonomy over this valley."⁴⁸ Yet a WCS-Burma staff member asserted that "the SPDC controls all the areas [of Hukawng Valley]" and claimed they do not know which areas are still under the jurisdiction of the KIO or about KIO-SPDC political relations in the valley.⁴⁹ It is hard to see how participatory decision-making can be promoted and effective conservation achieved if key stakeholders in the area can not be accessed, or even acknowledged, by conservationists. Despite its success in expanding the PA system, a WCS-Burma staff member privately complained that "sometimes we are very upset because we can't work freely— we have a binding with the government."⁵⁰

The local people WCS is targeting for

conservation-development outreach are Lisu, traditional hunter-gatherers who do not yet engage in permanent cash-crop agriculture, and most importantly are not politically organized. Despite its published statements on the importance of working with local people to save the tiger, as of mid-2006 the author is not aware of WCS yet engaging in any community-focused activity in the tiger reserve, apart from demanding local Lisu villagers not to hunt the tiger or its prey.⁵¹ Community development work is outside the mandate of WCS since their concern and experience is with wildlife conservation, as communicated by one WCS-Burma staff member.⁵² Any projects to deal with the "people problem" will apparently be contracted out to development organizations, as told by a WCS-Burma staff member. NGOs in Kachin State and UN agencies in Yangon, however, have been hesitant to get involved.⁵³

The Lisu are only one ethnic subgroup in the Hukawng Valley among many others who are purposefully ignored for political reasons. Other "locals" include different sub-groups of Kachin, Naga, thousands of recent Burmese and Chinese entrepreneurial migrants, and KIO/KIA active and retired soldiers. The Naga— hunters who mostly live at the north-western border of the reserve— are politically organized as the National Socialist Council of Nagaland, and are actively engaged in conflict with both the SPDC and the Indian government. The Naga territory along the Burma-India border is excluded from the reserve.

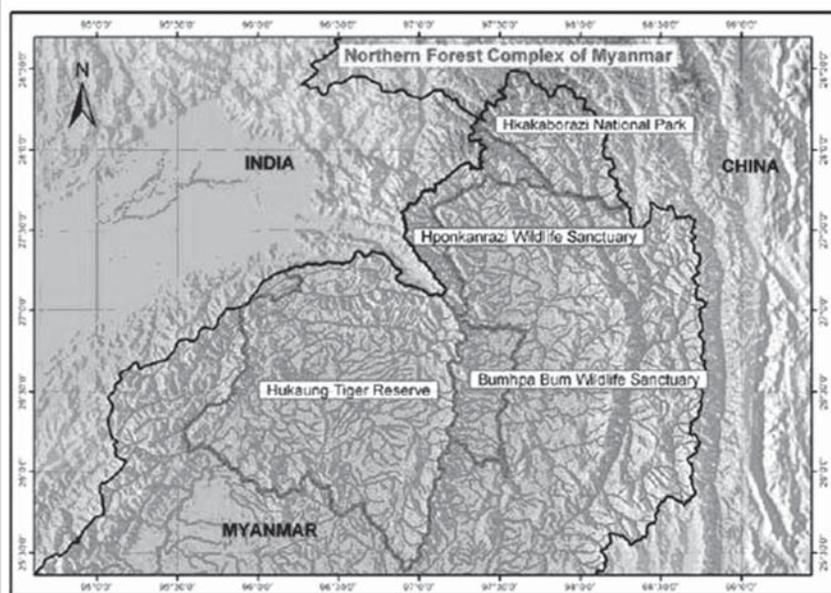


Figure 3. Map of "Northern Forest Complex" in Kachin State. (Courtesy WCS)

Lisu subsistence is neither the only nor the most important cause of tiger habitat deterioration in the valley. The same habitat is under threat from gold mining and recent agricultural plantation development with backing from the Burmese military. A recent report by Kachin Development Networking Group (KDNG) states that the number of gold mining sites in Hukawng valley alone increased from 14 in 1994 to 31 in 2006.⁵⁴ Migrants have been sweeping into the valley in search of quick profits from gold mining. Mining concessions have been granted (mostly to Chinese companies) by the SPDC, facilitated by state-sponsored infrastructure improvements (such as the infamous Ledo Road that cuts through the valley). Most recently, the SPDC has allocated thousands of acres of forested and paddy land to sugar cane and tapioca plantation development. The land is now under U Htay Myint's Yuzana Company in Yangon, which

Lisu subsistence is neither the only nor the most important cause of tiger habitat deterioration in the valley. The same habitat is under threat from gold mining and recent agricultural plantation development with backing from the Burmese military

has close political connections to the junta's vice Senior General Maung Aye.⁵⁵ It remains to be seen whether WCS will use its rare influence in the country to advocate against these wider—yet more political—threats to the tiger. WCS-Burma has asked for a ban on individual gold panning by local people, but will not ask for a ban on large operations

of SPDC-backed mining concessions which scour rivers with hydraulic equipment, destroy riverbanks and dump mercury into the river system. Perhaps more importantly, the gold

mining concessions provide employment to the thousands of migrants who provide a ready and reachable market for the tiger's prey that was non-existent prior to their mass arrival, thus transforming previous local sustainable tiger hunting into a market-orientated enterprise.⁵⁶

Subsidized by WCS, the state has also created a corps of some 60 "wildlife and conservation protection police" for the tiger reserve.⁵⁷ It has been alleged that these

According to a Karen saying, "The dog covers up the hoof print of the pig." While large-scale conservation projects attract most attention and funding, grassroots environmental activities continue virtually unnoticed.

officers have accepted bribes from locals seeking to continue their subsistence NTFP collection.⁵⁸ In all, the situation does not appear conducive to peace-building, respect for human rights or long-term tiger conservation. Any hope for achieving lasting conservation in Hukawng Valley must involve revocation of large-scale resource concessions, consultation with the KIO as major stakeholders in the area, support for Lisu traditional subsistence rather than mono-agriculture for export, and incorporation of community-based natural resource management as an integral part of the tiger conservation plan.

Grassroots environmental action in Burma

According to a Karen saying, "The dog covers up the hoof print of the pig." While large-scale conservation projects attract most attention and funding, grassroots environmental activities continue virtually unnoticed. Local communities in Burma have always undertaken conservation through in-

indigenous land management practices (including establishing Community Conserved Areas). Since the many ceasefire agreements signed between the SPDC and opposition groups in the 1990s, however, there has been a remarkable emergence of local NGOs, community-based organizations (CBOs) and (mainly Christian) faith-based organizations. Some have been working quietly with local communities in ethnic areas on projects directly or indirectly related to the environment for the past decade. Activities include capacity-building, small-scale sustainable development projects, environmental education and awareness, farmer-to-farmer information exchange programs, indigenous seed cultivar preservation and exchange, sustainable agriculture demonstration plots, community forestry, agroforestry and documentation of environmental threats, among many others. Some INGOs have been supporting grassroots environmentalism through small-scale projects carried out by local field staff, usually of the same ethnicity as their target group, working out of provincial and township offices, including projects in non-SPDC controlled areas.

Burma civil society researcher and writer Ashley South states that grassroots initiatives “undermine the ideological and practical basis of military rule, creating autonomous spaces, at least in limited spheres.”⁵⁹ He highlights the *sangha* (Buddhist clergy) and Christian churches, among the few institutions not controlled directly by the state, as potentially powerful civil society actors. With many ethnic political groups signing ceasefires with the SPDC, faith-based ethnic organizations are beginning to occupy new political space. South asserts that “these networks constitute one of the most dynamic aspects in an otherwise bleak



Picture 3. Gold mining pit in Kachin State. (Courtesy Zao Noam)

political scene.”⁶⁰ Churches, Christian institutions and theological schools are converging on the immediate environmental situation in ethnic Christian areas, using the advantage of access to international mission funds and well-educated, influential pastor leaders. Based on the author’s environmental education project with Kachin Baptist youth groups, the author witnessed a spontaneously and inadvertently emerging “Eco-Christian Network”, a coalition of Christian ethnic minority youth that engage on grassroots environmental issues directly connected to immediate livelihood problems with their communities.

Conclusion: conservation in conflict areas and opportunities for environmental democracy

In Burma an uncomfortably close link exists between exclusionary top-down conservation and the state-building strategies of a military regime associated with serious human rights abuses. I do not wish to suggest that international conservationists support the SPDC national military motives. However, although their motivations are different (build up of the state military power versus biodiversity

protection), the SPDC and conservationists may have a shared interest in the outcome of re-territorializing

SPDC and conservationists may have a shared interest in the outcome of re-territorializing strategic and resource-rich ethnic areas into state and military-controlled strict protected areas.

strategic and resource-rich ethnic areas into state and military-controlled strict protected areas. Large-scale rezoning for conservation purposes can concomitantly create "people-free" nature reserves and drive re-

settlement of ethnic people (seen as potential supporters of ethnic insurgents) from strategically important areas into SPDC-controlled villages. In addition, the re-territorialization of high biodiversity areas from land quasi-controlled by ethnic political groups at odds with the SPDC to national/military territory leads to a greater presence of state/military officials and army battalions. Superficial "greening" of the SPDC could result in conservation INGOs becoming implicated in expanded access to power, resources and funds for the Burmese military/elite at the expense of local people. The wrong type of conservation could deepen the political and environmental crisis in Burma— an "ethno-ecological" crisis. An authoritarian PA approach could lead to further human rights abuses. Where the state is in conflict with local people, and communities live in fear of the authorities, state conservation policing could lead to a backlash in which conservation initiatives aligned with the state may be viewed as hostile— driving people to become "enemies of conservation".

This does not necessarily imply, how-

ever, that conservation INGOs should avoid engagement in Burma altogether. On the contrary, there may be potential for "selective environmental engagement" to support small-scale, grassroots initiatives that could have positive impacts for environment, humanitarian relief and social development. Operating through local structures outside the control of the institutions that infringe upon peoples rights connects conservation with efforts to empower local people and strengthen civil society, which are crucial in areas experiencing long-term conflict. Conservation practitioners should observe human rights based standards in zones of conflict and rights violation, to ensure that their approaches support local livelihoods, help people facing humanitarian crisis and mitigate, rather than aggravate, conflict.

In territories not controlled by government, or where local people do not support the government, opportunities arise to more closely work with local people and grassroots organizations. This could include semi-engaging with militias on environmental education, and encouraging establishment of Community Conserved Areas.

Certain types of conflict may offer diverse opportunities to explore community-based conservation, since, in the absence of a strong state, local traditional forms of environmental governance may have survived and

An approach that ignores human rights and puts an externally-driven environmental agenda ahead of immediate local needs for nutrition, sanitation and human security is not only unethical, but will turn people against conservation and ultimately fail to achieve the long-term goal of biodiversity protection.

indeed been strengthened.

There is a debate in conservation between advocates of community-based and participatory approaches, and those who favor top-down conservation and the exclusion of people from protected areas. Opposing "eco-authoritarian" conservation does *not* equate to being anti-conservation. Biodiversity is intrinsically valuable and essential for sustainability, and its conservation should be a global human goal. However, an approach that ignores human rights and puts an externally-driven environmental agenda ahead of immediate local needs for nutrition, sanitation and human security is not only unethical, but will turn people against conservation and ultimately fail to achieve the long-term goal of biodiversity protection. Biodiversity conservation is embedded within a social and political process, and if it is to win support and achieve success it must address issues of social justice for stakeholders, such as the rights to self-representation and indigenous culture, autonomy and self-determination, the right to participate in decision-making, the right to information, and the principles of transparency and accountability. In this light, environmentalism is indeed a primary struggle for democracy.

Zao Noam (zaonoam@yahoo.com) has been conducting independent political ecology research in mountainous mainland Southeast Asia, specifically in/on Burma, for nearly a decade.

Notes

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- 3 Refer to Office of the United Nations High Commission for Human Rights website at <http://www.ohchr.org/english/countries/mm/index.htm>, last accessed April 2007; and United Nations Human Rights Council Report 2007
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- 5 Harrison *et al.*, 1997.
- 6 Shnayerson, 2005.
- 7 NCGUB, 1997.
- 8 Rabinowitz, 1999:70-72.
- 9 Montagne, 2004.
- 10 Graham-Rowe, 2005.
- 11 Peluso, 1993.
- 12 Bryant, 1996:351.
- 13 Shnayerson, 2005.
- 14 ERI, 2000; ERI, 2003.
- 15 Associated Press, 1997; Faulder, 1997; Levy and Scott-Clark, 1997.
- 16 Interview, 2006 [Here and in the following cases, the names of the persons interviewed are not disclosed for comprehensible reasons.]
- 17 Rao *et al.* 2002:361.
- 18 Bryant, 1996:349.
- 19 Rao *et al.* 2002:361
- 20 Rao *et al.* 2002:363.
- 21 Interviews, 2004.
- 22 Interviews, 2003 and 2004.
- 23 Rao *et al.* 2002:363.
- 24 Interview, 2007.
- 25 Interview, 2007.
- 26 Peluso, 1993.
- 27 Birdlife International, 2005:44.
- 28 Birdlife International, 2005:45.
- 29 Birdlife International, 2005:44.
- 30 Lambrecht, 2004:172.
- 31 Interview, 2003.
- 32 Irrawaddy News, 2005, emphasis added.
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- 34 SPDC 2007, unofficial Burmese language version.
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- 46 Whitney, 2006.

- 47 Rabinowitz, 2004:116.
48 Montagne, 2004.
49 Interview, 2004.
50 Interview, 2004.
51 Interview, 2006.
52 Interview, 2006.
53 Interviews, 2004 and 2006.
54 KDNG, 2006.
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57 Interview, 2004.
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El Ordenamiento Comunitario del Territorio— un esquema para hacer compatibles los objetivos de conservación y los derechos sociales e indígenas

Francisco Chapela y Yolanda Lara

Abstract. Mexico is recognized as a *mega-diverse* country. Its biological wealth is supported by complex landscape dynamics, which are interrelated with bio-geographical, historical, cultural and technological factors. These factors are in turn affected by the institutional arrangements used to administer local and national territories. The conventional approach to this administration used central planning and gave priority to biological factors. This weakened the recognition of rural and indigenous communities' rights, including property and customary rights that underlie the landscape dynamics responsible of the high biodiversity found within them, thus putting important biodiversity elements in peril. We discuss an approach to developing polycentric, diverse institutional arrangements used in the last 10 years by an NGO, Estudios Rurales y Asesoría, emphasizing how the full recognition of rural and indigenous communities' rights can actually help to preserve biodiversity. Finally, some insights regarding policy development on these issues are discussed.

Resumen. México se reconoce como un país *Mega-diverso*. Su riqueza biológica está alojada dentro de un sistema complejo de dinámica del paisaje, que está interrelacionado con factores biogeográficos, históricos, culturales y tecnológicos que son influidos a su vez por los arreglos institucionales que se han usado para administrar los territorios a nivel local y nacional. Un enfoque convencional ha usado enfoques de planeación central que han dado prioridad a los factores biológicos. Esto ha debilitado el reconocimiento de los derechos de las comunidades rurales e indígenas, incluso los derechos consuetudinarios y de propiedad que subyacen a las dinámicas del paisaje que son responsables de la alta biodiversidad que se encuentra en ellas, con lo que se ponen en peligro importantes elementos de la biodiversidad. Se discute un enfoque empleado en los últimos años por una ONG, Estudios Rurales y Asesoría, para desarrollar arreglos institucionales poli-céntricos y diversos, enfatizando en cómo el reconocimiento pleno de los derechos de las comunidades rurales e indígenas puede de hecho ayudar a conservar la biodiversidad. Por último, se discuten algunas ideas respecto al desarrollo de las políticas sobre estos temas.

México se reconoce como uno de los pocos países en los que se encuentra representada la mayor parte de la diversidad biológica del mundo. Al igual que otros de los llamados países megadiversos,¹ esta suerte de *Arca de Noé*, es también una de las áreas en que se deposita buena parte de la diversidad cultural mundial.² Las relaciones entre diversidad cultural y diversidad biológica, son complejas y no

han sido completamente entendidas ni explicadas. En el presente documento, presentaremos algunos antecedentes sobre el desarrollo de las instituciones que han buscado administrar el territorio y los dilemas que debe enfrentar el país, para asegurar al mismo tiempo el respeto a los derechos de las comunidades rurales e indígenas y la conservación de la enorme diversidad biológica. Discutimos algunos aspectos relevantes de enfoque que hemos

usado en los últimos 10 años para resolver dichos dilemas, para finalmente hacer una discusión del aporte que dicho enfoque puede hacer a una política de conservación que respete los derechos territoriales y la diversidad cultural de las comunidades rurales e indígenas.

Antecedentes del ordenamiento del territorio

El desarrollo histórico de las instituciones en México, ha sido en el marco de una confrontación entre propuestas extremas, que han incluido el proyecto monárquico de 1864 a 1867 de Maximilian von Habsburg (Maximiliano I), emperador de México y las propuestas anarquistas del Partido Liberal Mexicano que intentó creación de una república anárquica en 1906-1911.

Durante la época colonial, eran los representantes de la corona los que definían la política de uso de los recursos a través de las "encomiendas". Sin embargo, en muchos casos los pueblos indígenas no fueron desplazados, sino que fueron obligados a pagar tributos, manteniendo sus formas de organización interna y sus técnicas de uso de los recursos. En contraste con las colonias inglesas, la coexistencia de las formas de organización indígenas con las europeas, creó una dualidad social y política, que explica la enorme cantidad de situaciones contradictorias que se encuentran en la historia de México y de otros países que fueron colonias españolas,³ pero explica también la diversidad cultural y biológica.

Una de las confrontaciones más traumáticas, fue la revolución agraria de 1910 a 1917, que tuvo una de sus causas principales en que la élite terrateniente estaba limitando el acceso de las comunidades rurales a tierras y

otros recursos naturales. Como resultado de la revolución hubo un proceso de Reforma Agraria que permitió que a las comunidades indígenas que no gozaban de derechos de propiedad, pero sí mantenían la posesión de sus tierras, se les restituyeran sus territorios tradicionales. A la población rural que no pudo acreditar la posesión de sus territorios porque habían sido despojados de ellos y perdido contacto desde hacía mucho tiempo con su tierra, se les dotó de predios llamados ejidos. La revolución mejoró sustancialmente el acceso a la tierra y permitió un crecimiento económico y social sin precedentes. El crecimiento económico significó también el aumento en la demanda interna de materias primas y alimentos, que debía ser atendida para permitir la entrada de México a la "modernidad".

La coexistencia de las formas de organización indígenas con las europeas, creó una dualidad social y política, que explica la enorme cantidad de situaciones contradictorias que se encuentran en la historia de México, pero explica también la diversidad cultural y biológica.

El reconocimiento básico de derechos a las comunidades rurales e indígenas creó una situación especial en México, en donde el incremento en la producción de alimentos y materias primas indispensable para fomentar el nuevo modelo de desarrollo, estuvo basado más en el reparto agrario y la tecnificación agrícola que en la creación de un mercado de tierras, como sucedió en otros países. Ambos factores se convirtieron en el motor para que durante la segunda mitad del siglo XX, los ejidos y comunidades crearan un mercado nacional de productos

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agrícolas, pecuarios y forestales que al menos durante 2 décadas fueron la base para el desarrollo económico del país y que hoy se conoce como "El Milagro Mexicano".⁴

Las contradicciones del Ordenamiento del Territorio

En la época del crecimiento posterior a la revolución de 1910-1917, los responsables de diseñar las políticas públicas suponían que la tierra era un recurso abundante, que bien distribuido, podría ser la base de una economía vigorosa y que esto era un asunto de estado, pues tanto el crecimiento económico como el abastecimiento de materias primas y alimentos eran temas estratégicos para el país. En contraste con los avances constitucionales en el reconocimiento de derechos de las comunidades, se utilizaron enfoques de manejo del territorio que no tomaban en cuenta dichos derechos. Los primeros ordenamientos del territorio nacional, seguían de cerca el modelo establecido por la Tennessee Valley Authority de los Estados Unidos, que establecía una autoridad única para la planificación de toda el área comprendida dentro del territorio de una cuenca hidrográfica. Dicho modelo se estableció en las principales zonas agrícolas del país.

Tabla 1. Planificación por cuencas

Planificación de cuencas hidrográficas⁵ siguiendo el modelo de la Tennessee Valley Authority—TVA.⁶

Comisión del río Papaloapan (1944)
Comisión del río Tepalcatepec (1947),
Comisión del río Grijalva (1951),
Comisión del río Balsas (1960)

Fuente: Ángel Massiris Cabeza⁷

El esquema de tener una autoridad centralizada que decida sobre el uso del territorio, dejó de lado los derechos de las comunidades rurales e

indígenas. Se dieron incluso casos de expulsiones de comunidades de sus territorios ancestrales, para cumplir con los objetivos definidos por los planificadores centrales. Hacia el último cuarto del siglo XX, era evidente la dificultad de conciliar los esquemas de planificación centralizada con la atención a los derechos territoriales de comunidades rurales e indígenas y que en realidad la tierra y los recursos naturales eran bienes muy escasos, y que debería racionalizarse la política de uso del territorio.

Este escenario propició el establecimiento de normas e instituciones para regular el uso del suelo más en concordancia con objetivos ambientales, aunque el reconocimiento en la práctica de los derechos territoriales de las comunidades rurales e indígenas no fuera atendido. Se empezó a incorporar a las políticas públicas la planificación del desarrollo urbano y la provisión de áreas de reserva para las ciudades, así como el establecimiento de áreas naturales protegidas (ANPs), las cuales se multiplicaron hasta alcanzar lo que hoy en día equivale al 10% del territorio nacional. Finalmente, al promulgarse la Ley de Ecología se estableció el llamado "Ordenamiento Ecológico" como un instrumento de política ambiental.

Esta situación ambivalente, en donde los objetivos de desarrollo nacional parecen ser incompatibles con el respeto a los derechos territoriales de las Comunidades rurales e indígenas, plantea contradicciones que a su vez constituyen dilemas de diseño institucional que es necesario resolver, incluyendo si el manejo del territorio debe privilegiar una Visión etno-céntrica o eco-céntrica; si las instituciones para administrar los territorios deben seguir un esquema de Pla-

neación Central o Pluricentrico; si la implementación de los planes de uso del territorio debe ser Centralizada o a nivel Local; y si el seguimiento y control debe hacerlo una autoridad superior o puede hacerse mediante un esquema de Autogestión. En contraste con la tradición de planificación centralizada del Estado mexicano, durante más de 10 años, una ONG mexicana, Estudios Rurales y Asesoría, (ERA), ha desarrollado un esquema participativo de gestión del territorio, basado en La Planeación Comunitaria del uso del Territorio (PCT), que aporta alternativas para las solución de los dilemas de diseño institucional mencionados.

La Planeación Comunitaria del Uso del Territorio (PCUT)

La contradicción entre el régimen constitucional que reconoce los derechos territoriales de las comunidades rurales e indígenas y las acciones institucionales basadas en un esquema de planeación centralizada, creó tensiones y conflictos entre los programas de gobierno y las comunidades locales. En el caso de comunidades zapotecas y chinantecas de la Sierra Norte de Oaxaca, hacia 1990 existía una preocupación creciente por los daños que podrían sufrir sus tierras y bosques como resultado de la implementación de los planes de Desarrollo Rural diseñados por la Comisión del Río Papaloapan. Las propuestas de uso del territorio y las técnicas que proponía dicha Comisión, pasaban por alto muchas de las prácticas tradicionales que le habían permitido a la población subsistir por generaciones y ser autosuficientes en términos alimenticios.

Estudios Rurales y Asesoría fue invitada por las comunidades zapotecas y chinantecas de la Sierra Norte de

Oaxaca, para buscar alternativas. Por un lado, no era realista pensar en que las comunidades indígenas pudieran definir sus planes de uso de sus territorios sin considerar el contexto más amplio de las instituciones nacionales. Pero por otro lado, eran evidentes los síntomas de deterioro de los bosques y tierras y así como

Es indispensable la participación activa de la población desde el mismo diseño de los instrumentos, hasta la evaluación de su funcionalidad.

los efectos sociales del esquema de Planificación por Cuencas Hidrográficas. En este contexto, se planteó el desarrollo de un instrumento metodológico que fuera relativamente fácil de manejar por los propietarios en colectivo de un terreno, que permitiera la construcción de consensos y cuyos resultados permitieran contar con una evaluación de los usos del suelo vigentes en ese momento, las tendencias esperadas del actual patrón de uso y si estas se correspondían con las expectativas que la comunidad se planteaba a futuro. Se buscaba también el diseño de un plan estratégico de uso del suelo que permitiera corregir tendencias de deterioro de los recursos e incorporar nuevas alternativas de manejo y aprovechamiento de los mismos. Para lograr esto, era indispensable la participación activa de la población desde el mismo diseño de los instrumentos, hasta la evaluación de su funcionalidad.

Se diseñó un proceso semi-estructurado y sistemático, que abarca un conjunto de herramientas para apoyar a las comunidades que quieren emprender la revisión de sus mecanismos de regulación y control del uso de su territorio, de modo que puedan negociar y establecer un plan de uso



Foto 1. "La planeación comunitaria del uso del suelo es un proceso en el que se negocian las distintas racionalidades de priorización de los usos del suelo, tratando de construir una propuesta negociada." (Cortesía Yolanda Lara, Estudios Rurales y Asesoría)

del territorio a futuro, considerando las distintas visiones de los diferentes grupos de interés y buscando que el proceso de desarrollo de la comunidad pueda sostenerse, sin detrimento de su base de recursos naturales. La metodología empleada, reúne instrumentos ya existentes desarrollados para otros contextos, como los de la etnobiología y la agroecología y algunos desarrollados es-

pecíficamente para los fines de estos ejercicios de planeación local.

Esta metodología fue probada por primera vez en 1994 en las 4 comunidades que conforman la Unión Zapoteca-Chinanteca. Como resultado de esta prueba, se obtuvieron los primeros planes de ordenamiento del territorio comunal, en donde las propuestas locales se ponían en el contexto más amplio de las políticas nacionales, tratando de encontrar sinergias a favor de los objetivos de desarrollo de cada comunidad local. El desarrollo y sistematización del esquema metodológico inicial, derivó en una propuesta más acabada: La Planeación Comunitaria del Uso del Territorio (PCUT).⁸ En la actualidad, esta planeación territorial ha sido revisada y mejorada por los propios técnicos de la Organización de comunidades indígenas. El uso de la PCUT se ha ido extendiendo con el tiempo, y después de haber sido aplicada de manera marginal, ha logrado poner bajo planes de resguardo comunal explícito, una superficie equivalente al 58% de las áreas naturales protegidas oficialmente el estado de Oaxaca (Ver tablas 2 y 3).

Tabla 2. Áreas bajo Protección Oficial en Oaxaca.

Categoría	Area Natural	Creación	Recategorización	Superficie (has.)
Reserva de la biosfera	Tehuacan-Cuicatlán	18-Sep-98		296, 272
Parque Nacional	Huatulco has	24-Jul-98		11,891
Parque Nacional	Benito Juárez has.	30-Dic-37		2,737
Parque Nacional	Lagunas de Chacahua	09-jul-37		14,187
Monumento Natural	Yagul	24-May-99		1,076
Santuario	Playa de Escobilla	29-Oct-86	16-Jul-02	30
Santuario	Playa de la Bahía de Chacahua	29-Oct-86	16-Jul-02	32
				275,047

Fuente: CONANP, 2004⁹

Tabla 3. Superficie Ordenada a la fecha con PCUT, en el estado de Oaxaca

Organización Regional	Comunidades	Superficie Total (Has.)	Superficie bajo Conservación	Superficie bajo Aprovechamiento
UZACHI	Comaltepec, Xiacuí, Capulalpam, La Trinidad	26, 000	13,000 Has	13,000 Has
IXETO	Maninaltepec, Jayacatlán, Zoquiapan, Aloapan	30,500	8,000	21,500
Región Mixe	Tlahuitoltepec, Totontepec, Tamazulapan, Metaltepec.	39,000	7,800	3,1200
SICOBÍ		102,000	20,400	81,800
CEPCO	Tepetotutla Teotlaxco	15,000	4,500	10,500
TOTAL		212,500	53,700	158,800

Fuentes: Estudios Rurales y Asesoría, A.C./Grupo Autónomo para la Investigación Ambiental, A.C.

Bases de la PCUT

Es común que los esquemas organizativos asociados a la planeación centralizada, se acompañen de la existencia de líderes fuertes más o

El proceso desencadenado por una acción colectiva, negociada e informada, tiende a asegurar las condiciones de vida de la gente, fortaleciendo sus derechos básicos, al mismo tiempo que tiende a lograr la perdurabilidad de los recursos naturales.

menos carismáticos o poderosos que cuando son aceptados por la mayor parte de la población conforman verdaderas instituciones locales no sólo para la regulación del uso del suelo sino para todo lo que tiene que ver con la resolución de los conflictos que normalmente se dan dentro de un grupo social organizado. Estos

informadas y democráticas de largo plazo y sí han sido más eficaces para favorecer a ciertos sectores privilegiados de la comunidad sobre el resto de sus integrantes.

Lo que hemos podido demostrar en el caso de las comunidades con las que se ha trabajado la PCUT, es que el proceso desencadenado por una acción colectiva, negociada e informada, permite explicitar la forma en que se toman las decisiones sobre el uso de un territorio, y tiende a asegurar las condiciones de vida de la gente, fortaleciendo sus derechos básicos, al mismo tiempo que tiende a lograr la perdurabilidad de los recursos naturales. El proceso de planeación democrático e informado, se vuelve asequible, transparente y eficaz. Un ejercicio de Planeación del Uso del Territorio Comunal¹⁰ (PCUT), puede incluir distintos elementos de acuerdo con las particularidades específicas de cada caso, pero tiene seis característi-

cas relevantes:

1. La Comunidad es la unidad de planeación.
2. Tiene una orientación clara hacia el ordenamiento de un territorio que es compartido por un grupo social.
3. Reconoce la existencia de actores internos y externos a la comunidad que influyen en la toma de decisiones y busca su participación para lograr equilibrios a futuro.
4. Busca reforzar la cultura propia, retomando las estructuras organizativas internas y las prácticas locales de manejo de los recursos naturales ya existentes.
5. Parte del conocimiento empírico que los integrantes de la comunidad tienen sobre su entorno para elaborar una propuesta de uso del suelo compatible con la visión de grupo.
6. Aprovecha recursos tecnológicos compatibles con la visión de futuro propuesta.

Durante los ejercicios realizados aplicando este enfoque, el resultado ha sido siempre una propuesta multifuncional del uso del suelo, en la cual se reflejan los intereses de los diferentes grupos que conforman la comunidad, e incluye áreas para la producción en sus diferentes formas e importantes áreas de protección con diferentes niveles de restricción. Por último, la PCUT promueve también la sistematización de esquemas de manejo desarrollados por los propietarios de la tierra y en donde no los hay permite la creación de estos. Gracias a ello es posible incidir desde otra perspectiva en la resolución de los problemas ambientales, biológicos o de la producción de nivel local, mejorando con ello la viabilidad de los sistemas productivos, la conservación de los ecosistemas relevantes, el suelo y las funciones hidrológicas. En los últimos

años, programas como el Proyecto de Conservación y Manejo Forestal Sustentable (PROCYMAF) de la Comisión Nacional Forestal de México, han empleado este enfoque, con lo que la PCUT ha comenzado a tomar relevancia dentro de las políticas públicas que tienen que ver con elaboración de planes de manejo u ordenamientos ecológicos. Hasta 2003, el PROCYMAF llevaba ordenadas bajo este esquema 535,685 hectáreas en 63 núcleos agrarios.¹¹

Conclusiones

Los primeros enfoques de la conservación, en las que se busca a toda costa el mantenimiento de áreas prístinas reduciendo o eliminando el impacto de la actividad humana para lograr que el *arca de noé* sobreviva al diluvio, no siempre asegura la

permanencia de la diversidad biológica que se quiere mantener. En muchos casos que ya han sido extensamente documentados,¹² la eliminación de los regímenes de gestión del paisaje que subyacen a los sistemas tecnológicos y culturales de uso de los recursos, podría significar la eliminación de los tejidos institucionales que han hecho

La eliminación de los regímenes de gestión del paisaje que subyacen a los sistemas tecnológicos y culturales de uso de los recursos, podría significar la eliminación de los tejidos institucionales que han hecho posible que países como México se encuentren en la lista de los llamados países megadiversos

posible que países como México se encuentren en la lista de los llamados países *megadiversos*. Por el contrario, un enfoque en el que se busque de manera explícita y racional establecer relaciones en las que las comunidades rurales se beneficien de

generar los servicios ambientales que demandan las poblaciones urbanas, puede ser la base del desarrollo de los tejidos institucionales que demanda un país más urbanizado, pero paradójicamente más dependiente de los servicios ambientales que pueden proveer las comunidades rurales.

La PCUT parte de constatar que las comunidades rurales que son propietarias en colectivo de un territorio, tienden a desarrollar procesos explícitos de asignación de los recursos naturales de que disponen, especialmente bosques, agua y pastos. En este sentido, ha hecho patente que el reconocimiento de los derechos de las comunidades indígenas y campesinas,



Foto 2. "Técnicos comunitarios y comuneros demarcan su plan de uso del suelo en un mapa topográfico." (Cortesía Yolanda Lara, Estudios Rurales y Asesoría)

incluyendo sus derechos de propiedad, tienden a favorecer la perduración de los recursos naturales y de la diversidad biológica, a escalas comparables con los esquemas convencionales de ANPs.

En este contexto, las culturas rurales no se desarrollarán si se les aísla de la interacción con la cultura nacional y de lo que tiende a convertirse en la función de mayor importancia en el futuro de las comunidades en las regiones de montaña: la provisión de servicios ambientales. Una visión etnocéntrica puede llevar al anquilosamiento y pérdida de la riqueza cultural que está depositada en las comunidades indígenas y rurales. Pero una visión ecocéntrica en la que se diseñen instituciones destinadas a marginar a las comunidades indígenas y rurales de la gestión de sus territorios y del paisaje, llevaría a la destrucción de los sistemas de resguardo de los ecosistemas y a la pérdida de elementos clave de la diversidad biológica.

Las nuevas redes institucionales de un país urbanizado pero con una cultura indígena y rural fortalecida como México, no pueden darse el lujo de repetir los vicios de la Planeación Central o dispersar la toma de decisiones hasta escalas no significativas. Ambos extremos son formas de evitar la participación democrática y la construcción de acuerdos de cooperación para establecer formas de organización sofisticadas, que estén al nivel que la responsabilidad de resguardar la gran diversidad del país implica. La diversidad cultural y biológica, debe corresponder también a una diversidad institucional.¹³ Los nuevos tejidos institucionales son complejos. No basta con que haya liderazgos. No basta con información técnica minuciosa. Aunque es necesario, no es suficiente

tener un marco legal para la gestión territorial del paisaje y de los ecosistemas.

Frente a estas exigencias, la PCT *La diversidad cultural y biológica, debe corresponder también a una diversidad institucional* es un esquema metodológico que contribuye a la construcción de una Nueva Visión del Desarrollo Rural con un nuevo enfoque del manejo de los ecosistemas en busca de su aprovechamiento en donde este es posible y de su protección, cuando esta es requerida. Pensamos que la aplicación amplia de esta metodología permitiría la consolidación de la capacidad de sustento a la vida en las áreas rurales, a través de favorecer entre la población rural una visión más sistematizada de su entorno y de sus expectativas con respecto a ese entorno. Las aleja de las visiones cornucopianas ingenuas y contribuye de manera importante a la toma de conciencia sobre la finitud del territorio disponible y por lo tanto de los recursos que albergan este territorio.

En segundo lugar, la PCUT contribuye al mantenimiento de la identidad cultural y al reforzamiento de la cultura propia. En la PCT se emplean herramientas metodológicas que contribuyen a la discusión de aspectos culturales relevantes que muchas veces los actores en lo individual no perciben como importantes debido a la cercanía y cotidianeidad con que son puestos en práctica. En este aspecto resulta clave la participación de actores diferentes a la comunidad y con experiencia en desarrollo rural que puedan ayudar a contrastar la actual experiencia con otros contextos y resaltar lo diferente y valioso del esquema que utiliza el grupo. Al

explicitar la visión actual y la de largo plazo del grupo social con el que se trabaja, es posible inducir un proceso de reflexión sobre las prácticas sociales y ambientales que influyen o pueden influir en la construcción de estos escenarios. Asimismo es posible que las comunidades adapten elementos tecnológicos y culturales diferentes a la *cultura propia* pero adaptándolos a su contexto de manera que complementen a las prácticas locales sin poner en riesgo la base tecnológica desarrollada localmente.¹⁴

En tercer lugar, la PCUT contribuye al mantenimiento del paisaje rural y de los ecosistemas. Las prácticas culturales reproducidas por un conjunto de actores a nivel regional conforman patrones paisajísticos que la PCT ayuda a caracterizar y a mantener. Asimismo, herramientas como los transectos sintetizan los elementos que conforman el paisaje y permiten su apreciación por los actores que lo moldean, pero dándole la dimensión colectiva que hay detrás de ellos.

En cuarto lugar, la PCUT contribuye al mantenimiento de la diversidad biológica. El enfoque teórico utilizado por la PCUT retoma gran parte de la propuesta de Daniel Janzen en lo que respecta a reproducir y mantener las condiciones de evolución de los factores naturales y humanos gracias a los cuales los ecosistemas actuales existen.¹⁵ Se asume que el paisaje está conformado por una serie de elementos bióticos y abióticos que interactúan entre sí y van generando procesos que producen diversidad biológica. El motor que impulsa estos procesos puede ser de origen natural o antropogénico. Al caracterizar estos procesos es posible dilucidar el tipo de causas que les dieron origen y planificar actividades para mante-



Foto 3. "La propuesta de uso del suelo se discute a fondo después de su promulgación como parte de la ordenanza comunitaria." (Cortesía Yolanda Lara, Estudios Rurales y Asesoría)

nerlos vivos. En este sentido la PCUT contribuye a reconocer estos procesos y las actividades o factores que los generan.

En quinto lugar, la PCUT contribuye al desarrollo local al aportar viabilidad económica a los esquemas de conservación. En la actualidad, gran parte de las ganancias provenientes de la conservación biológica están siendo copadas por los grandes consorcios para la conservación, y los Gobiernos de los países megadiversos.¹⁶ Sin embargo, muy pocos de los recursos generados a nivel mundial para cubrir este objetivo han llegado en forma directa a las comunidades y propietarios afectados por decretos que les sustraen de la capacidad de controlar sus territorios. Una de las ventajas de la PCUT es que hace visibles los esfuerzos locales de conservación y llama la atención sobre el papel que los propietarios del terreno pueden jugar en la protección de áreas silvestres y agro-paisajes. Con muy baja inversión es posible establecer conglomerados continuos y discontinuos de áreas bajo diferentes estatus de protección,

vigiladas por la misma población local. Con esto, estamos contribuyendo a la formación de activos naturales que pueden ser transformados en capital lanzándolos al mercado de servicios ambientales en sus diferentes facetas. Es posible que si parte de las inversiones realizadas para fomentar la conservación sean canalizadas a este tipo de iniciativas los resultados sean sorprendente e inesperadamente favorables al cumplimiento del objetivo de conservación.

Por último, la PCUT ayuda a asegurar la calidad del ambiente biofísico en el cual se desarrolla un grupo social y la prestación de servicios ambientales. Ya que la PCUT es un ejercicio que parte de evaluar el estado actual de los recursos naturales, es una herramienta para mantener y mejorar la base de recursos locales, contribuyendo a asegurar un medio ambiente sano en el largo plazo. Esto se logra a través de la implementación de planes de manejo específicos para las diferentes áreas asignadas a los diferentes usos. El plan de ordenamiento es regulado por un instrumento normativo interno cuya aplicación corre a cargo de las autoridades comunales. Tanto el plan de ordenamiento como el reglamento de uso del suelo y los planes de manejo conforman un conjunto de instrumentos que permiten monitorear la respuesta de cada área ecológica al plan e ir conformando planes de ordenamiento regionales. En el caso de la Unión Zapoteca-Chinanteca (UZACHI), la evaluación del plan de ordenamiento se llevó a cabo entre el 2003 y el 2004. Como producto de esta evaluación se hicieron correcciones para ajustarlo mejor a los objetivos que se habían fijado en un inicio. Sin embargo ninguna comunidad mencionó siquiera que el plan de ordenamiento fuera malo u obsoleto.

Yolanda Lara (ylara@era-mx.org) Coordinadora de la Oficina de Estudios Rurales y Asesoría (ERA) en Oaxaca, al sur de México. Ha trabajado por 20 años en capacitación y apoyo técnico a organizaciones y comunidades indígenas de Oaxaca. **Francisco Chapela** (fchapela@coinbio.org) Coordinador Nacional del Proyecto de Comunidades Indígenas y Biodiversidad (COINBIO). Ha colaborado con ONGs en temas relacionados con el uso sostenible de los recursos biológicos, incluyendo sistemas agroforestales, conservación participativa, certificación forestal y esquemas de prestación de servicios ambientales.

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Human rights— a guiding principle or an obstacle for conservation?

Naya Sharma Paudel, Somat Ghimire, and Hemant Raj Ojha

Abstract. Following a history of repressive conservation practices and related agonies and grievances, and a decade-long violent political conflict, the notion of human rights is becoming central to political discourse in Nepal, and conservation policy and practice are pressed to address this emerging agenda. This paper describes how political parties, civil society organizations, and bureaucrats take differing positions in the debate over human rights and conservation, with little consensus on how the two can be enhanced together. Meanwhile, despite the proliferation of human rights discourse, violations of some fundamental human rights continue to happen in the *practice* of protected area management... while the new political climate is encouraging the early release of notorious poachers from custody. Conservationists accustomed to securing the integrity of protected areas under an autocratic regime face multiple challenges to respond to increased demands for respecting human rights.

Inclusion of the human rights agenda in nature conservation programmes marks a significant turn in conservation discourse. The human rights agenda not only takes conservation away from a narrow focus on protection of flora and fauna, but also goes beyond the provision of economic incentives¹ to protect the environment. In the case of conservation through protected areas (PAs), the notion of human rights broadly embraces the socio-economic and cultural rights of local and indigenous people living in and around PAs.

Conservation programmes have been criticized for their negative social impacts, including violation of human rights.² It is widely recognised that the PAs approach to conservation has resulted in damage to crops and livestock, displacement of local and indigenous communities, denial of their traditional and customary user rights, limitations on their development possibilities and, in some cases, denial of their basic civil and political rights.³

Conservation policy and practice, however, reflect little consensus on the nature and scope of human rights that should be accommodated within PA governance. Some conservationists have fully defended the basic human rights of local and indigenous people, including their customary use rights in and around PAs.⁴ Others have warned that undue emphasis on human needs and aspirations may ultimately jeopardise conservation goals.⁵ They argue that democratic political systems and high respect for human rights pose serious challenges to securing PAs integrity. Although there is an emerging



Picture 1. Indigenous people discuss issues of restrictions imposed by rules protecting Nepal's Chitwan National Park. (Courtesy Naya Sharma Paudel)

consensus that some form of local participation helps PA governance, diverse approaches to understanding and addressing human rights can be observed even within the participatory or people-oriented conservation camp.

This paper discusses how human rights violations continue in nature conservation, taking the case study of Nepal's Chitwan National Park (hereafter the 'Park'). The focus of analysis is on the ongoing problem of rhino poaching and widespread abuse of human rights in relation to this. The analysis is informed by our extensive involvement in the park both as researchers and environmental and rights activists, as well as by our literature review on PA governance. We also draw on secondary information, selective interviews, and personal communications.

The paper begins with specific cases of human rights abuses in the Park and then explores historical and contextual forces leading to such abuses. Drawing from civil society-led social movements, the paper reveals seeds of hope regarding the potential integration of human rights within conservation. It concludes by exploring remaining conflicts between various conservation actors and challenges facing the integration of human rights and conservation.

Human rights violations in Chitwan National Park

On, June 15, 2006 in Narayangarh, Chitwan, almost every newspaper in town highlighted the story of Shikhar-am Chaudhary, a farmer of the local indigenous community, who died in the custody of Chitwan National Park. The park authorities had arrested him for his alleged involvement in rhino poaching. He died in custody during the process of "investigation". According to an investigation report prepared by an

independent group, he died because of torture at the hand of Park authorities.⁶

Three local people (Shikaram Chaudhary, Mangal Praja and Saman KC) have died in the past 13 months while in Park's custody,⁷ and hundreds of local people remain in custody at the time of this writing. In the Park's history, several others are known to have been shot and killed for suspected poaching, illegal use of natural resources, or encroaching the park's boundary⁸. Other reported punishments include: beatings; being forced to sleep

naked on hot sand; confiscation of fishermen's catch; and forced labour such as cleaning, cooking, collecting firewood and working in the kitchen garden of Park officials. The conservation laws and regulations ban indigenous livelihood practices of fishing, collecting wild fruits, vegetables and fodder, and animal grazing. Access routes are closed, cutting off communication and mutual exchanges between neighbouring communities in and around the Park.

Such cases of human rights abuses were by and large covered up before 1990 during the Panchayat period, a partyless political system under the leadership of the king, but this continued even under the multiparty parliamentary system, after 1990. The global discourse on conservation generated needed resources and rhetorical instruments to erect strong conservation bureaucracies which were impervious to even the radical political change. As a result, there are now highly unequal power relations be-

The global discourse on conservation generated needed resources and rhetorical instruments to erect strong conservation bureaucracies, which were impervious to even the radical political change.

tween the conservation authorities and the local and indigenous communities. The conservation authorities were empowered with military means, legal and administrative apparatus, international moral and financial support, and above all, direct backing of the reigning kings of the time and members of the royal family.⁹ The local people were hardly consulted and their social, cultural, and economic relationships with the local environment were largely ignored.¹⁰ In such contexts, concerns over human rights violations were simply ignored or intentionally suppressed by the conservation authorities.¹¹

Those living in the vicinity of the Park are mainly poor, landless *dalits*, and indigenous communities such as Tharu, Musahar, Bote, and Chepang. They have little access to local social and political institutions, including political parties, media, NGOs or other civil society forums in general. They also have little awareness of modern citizenry rights, especially political and legal rights. Abuse of human rights has therefore continued unabated or unchallenged most of the time.

Origins of conservation-related human rights violations in Nepal

Historically, Nepal's conservation movement was little familiar with human rights. The conservation agenda had been initially promoted by domestic and international conservationists with strong backing by the autocratic kings and other members of the royal family. Three factors, in particular, contributed to the establishment and consolidation of PAs in Nepal. Firstly, the ruling elites (especially late king Mahendra, a great hunter), saw their hunting paradise disappearing and were concerned about the protection of game species. Secondly, the Theory of Himalayan Environmental Degradation¹² drew inter-

national attention to the environmental protection of the Himalayan region.¹³ Thirdly, during the early 1970s, the establishment of PAs was a global phenomenon that mobilised technical and financial aid, particularly in developing countries in tropical regions. Following consultations by conservation experts from UNDP, FAO and zoological societies of London, New York, and Frankfurt, the King and a few domestic experts decided to establish hunting reserves and those were later converted into national parks and wildlife sanctuaries.¹⁴

Militarization of PAs is one of the factors that further worsened human rights conditions in the field of conservation. The Nepalese Army has been deployed for protecting the PAs. Around 5000 army personnel have been stationed in various PAs. International conservation agencies have recognised the Nepalese Army's "exemplary efforts

Militarization of PAs is one of the factors that further worsened human rights conditions in the field of conservation.

to combat poaching and illegal trade in endangered species, in particular the leopard, the rhinoceros, and the tiger".¹⁵ It should be noted that until recently (mid-2006) the Nepalese Army has been within the tight grip of the autocratic monarchy and has had a notorious history of committing serious human rights violations.¹⁶ Given this, one can hardly expect the army to respect human rights in the context of protected areas.

The feudal legacy within conservation is another factor leading to sidelining human rights. Both the royal family and the Nepalese Army, which has historically been loyal to the monarchy, have been active in conservation. Park staff also had close ties with the royal

family during the Panchayat, though this relationship slightly diminished after 1990.¹⁷ However, even after the establishment of a multiparty system, park managers and other staff saw the royal family as their true patrons and felt privileged during their recreational visits to the parks (usually for hunting).¹⁸ Their continued loyalty to the royal family is demonstrated by the following quote from a park warden: "With the compassionate affection [and the] blessed and able leadership of His Majesty, all the environmentalists and conservationists engaged in the field of biodiversity have received incessant inspiration to engage in the very noble work of conservation".¹⁹

Royal coup, democratic movement and human rights discourse

Nepal experienced over 237 years of autocratic monarchy. During this period, serious human rights violations occurred including arbitrary detention, extra-judicial killings, and enforced disappearances, in the apparent absence of a rule of law.²⁰ For the last decade, the Maoist-led violent conflict crippled the country, resulting in severe security and livelihood crises. In the shadow of Maoist insurgency, King Gyanendra, backed by the Nepalese Army, took over the executive power, dismissed the elected parliament and government, and imposed his own rule. Human rights activists both at home and abroad were frustrated by abuses by security personnel and Maoists alike during this period,²¹ as reflected in this excerpt from a human rights report: "Gross human rights violations increased after the royal takeover. After the royal takeover, the number of people killed per day has doubled. A total of 1258 persons have been killed in connection with the Maoists' 'People's War' after the royal coup, [in

which] 808 persons were killed by the state security forces and 450 by the Maoists....Extrajudicial killings, arbitrary arrests, incommunicado detention and 'disappearances' are escalating to alarming numbers".²²

At this time of increasing human rights crises, a peaceful resistance movement involving rights activists, media persons, lawyers, doctors, teachers and students gradually developed and gained influence, drawing largely on the human rights framework. Since the conflict was led by the Maoists, *i.e.* a communist party, it drew the particular attention of human rights movements, the press, and governments in the West. Intensive public education campaigns on legal literacy, women's rights, rights of *dalits*, and rights to information were launched by various development agencies and NGOs. Even government agencies, including the police and army, were coached on human rights issues. Gradually, the human rights movement became part of the democratic movement against the royal takeover. Finally, the King's direct rule collapsed, the elected parliament was reinstated, a government was formed by a seven-party alliance, and a comprehensive peace deal was signed by the government and the Maoists. A new interim parliament and interim government have been formed and will hold elections for a Constitutional Assembly.

Sikharam's death took place at the time of these democratic transitions. As a result, strict conservation approaches based on strong bio-centric beliefs have been increasingly challenged, demanding integration of the human rights agenda. Rights activists, media persons and civil society organisations considered Sikharam's death a stark viola-

tion of human rights by a 'reactionary bureaucracy'. There was widespread anger against a behaviour that continued to disregard fundamental civil rights of the citizens. The rights activists, local people, political party cadres, media and other sections of civil society formed an alliance to protest this incident. They launched a campaign including street protest, mass meetings, lobbying government ministers, and filing a court case against the park officials demanding legal redress and fair compensation to Sikharam's family.

In the face of increasing public pressure, the Ministry of Forest and Soil

The event was a catalyst for the people of Chitwan to express their agony over decades of grievances against the park authorities and security personnel. [...] poor and indigenous people could for the first time trust that the state, particularly the judicial system, would provide justice.

Conservation suspended the officers involved in the incident. The police arrested them and held them in custody, and a case was filed demanding punishment of the concerned officials. During the trial, protests against the death continued in Chitwan, largely supported by the political parties and civil soci-

ety activists. The event was a catalyst for the people of Chitwan to express their agony over decades of grievances against the park authorities and security personnel.

The court eventually declared that the death was caused by excessive use of force, and one assistant warden and one ranger working with the Chatwan National Park were found guilty and therefore sentenced with imprisonment. The local people, mainly poor

and indigenous, welcomed the verdict. For the first time they could trust that the state, particularly the judicial system, would provide justice for the poor and disadvantaged. Tej Bahadur Majhi, a local fisherman said: "It is incredible. I still cannot believe that the (assistant) warden is now in the jail. Something has definitely changed in this country." Local people appeared to see the verdict as a victory, especially those suffering the strict punitive measures of the park officials. Linking this 'victory' with the recent successful people's movement, one of the local political activists said, "Had King Gynandra's rule continued in this country, many of such events would have been buried under the soil."

Conflicting perspectives on human rights

Forestry professionals, under the leadership of Nepal Forester's Association (NFA) and Rangers Association of Nepal (RAN) opposed the arrest and trial of the park officials. They protested through a nation-wide one day strike, submitted a letter of protest to the Minister, and issued a press release. They strongly objected to officials being tried under civilian law and demanded that the case be tried under public administration law, which would take the case toward a much softer corner. They blamed the Minister for not protecting the officials involved. They argued that charging park officers for "minor" abuses of human rights would kill the morale in the bureaucracy and create disincentives to arrest, interrogate and punish the poachers. If conservation officials were constrained in their actions, they would not be able to control the poachers, who have close ties with illegal gangs both within and outside the country. These claims brought the case for human rights into question and led to reinforcement of army-based

and strict conservation practices.

Meanwhile, the problem of rhino poaching escalated in the Chitwan National Park. A sharp decrease in rhino population was noticed between two counts—from over 544 in 2000 to only 372 in 2005.²³ Since this last count, 37 rhinos have been killed by poachers. The rhinos are usually killed using guns, electric wire trap, or poison. Well organised networks of poachers with access to power centres usually involve local people in trapping and killing rhinos. Despite the high priority given to stopping rhino poaching, the park authorities have largely been unable to prevent it. Instead, there has been general rise in poaching in the recent years.²⁴

The rhino is an icon for Chitwan National Park from various perspectives. It is one of the endangered species, the major attraction for tourists, and famous in popular discourse of conservation, education, and eco-tourism. Historically the rhino had been accorded a special status. From the time of Rana Prime Ministers in the early 19th century, the rhino was identified for exclu-

In Chitwan National Park, the entire notion of conservation of biodiversity has been reduced to rhino conservation.

sive royal hunting. In fact, the primary impetus to establish the park came, in the early 1960s, from concern over the protection of rhinos. Indeed, in Chitwan National Park, the entire notion of con-

servation of biodiversity has been reduced to rhino conservation, as a result of incessant promotion of conservation discourse by conservation agencies and the government. It is no surprise that the Nepalese parliament has also devoted much time to discussing the issue of rhino poaching and protection.

Recently, a series of discussions have been organised on the problem of rhino poaching, as it has drawn wider attention from diverse sections of Nepalese society. Conservationists, park bureaucrats, politicians, civil society members and representatives of local and indigenous people have their own analysis of the problem and solutions according to their perspectives, world views and specific vested interests. Two major perspectives can be observed in the current debate on the death of Sikharam and the ongoing rhino poaching in Chitwan.

The first view favours a military solution with stringent punitive measures. It advocates empowering the park authorities with additional legal and administrative means so that they are not constrained by the “unnecessary” charges of human rights abuses. Conservationists, park bureaucrats and some politicians see the reduction of army deployment in the park due to the Maoist insurgency as the main cause of increased rhino poaching in recent years. For them, reinstatement of army posts and increases in army personnel *are* the solution. For them, the end of the autocratic rule, establishment of a democratic polity, proliferation of popular discourse on human rights, and the agenda of democratic restructuring of the state have little relevance to conservation. Indeed, conservation practice generally allows little political space for local affected people. Comparing conservation practice in Nepal with that of China and India, one park warden argues for unlimited power for park authorities to shoot any intruder.²⁵ Similarly, as noted earlier, NFA, an organization representing forest professionals and defending the park officials in Sikharam’s case, argued that the officials were simply performing their duty according to the law and had no personal interest in kill-

ing Sikharam. The secretary of the NFA made it explicit in a meeting that punishing the officials on duty might force the officials to refrain from undertaking their everyday duties.

This view proposes military solution to control the poaching and therefore recommends for more security posts, increased army personnel, increased surveillance and stringent punitive measures along with increased authority to park officials in order to curb illegal activities in the Park. Although they recognise socio-economic factors including poverty that encourage poaching, they are not ready to accept livelihoods as fundamental human rights. For them supporting local livelihoods is only a strategic move to garner local support to conservation.

Unfortunately, conservationists' self-asserted claim that they are nature's only true caretaker with a long-term outlook is at odds with the perspectives and rights of local people. Indeed, local people can share important responsibilities of protecting nature for future generations and for its intrinsic value. The problem is that the conservation agencies assume local people have too narrow a perspective and hardly share the 'burden' of their responsibility with the diverse actors in the society.

The second view emphasizes the need to understand the problem of conservation involving social, economic, and cultural rights of people. Such an outlook is largely shared by local and indigenous communities in the Chitwan valley, many civil society organisations, and some rights activists. For them, people should come first, followed by rhino. They reject the idea that Sikharam's death can be traded off with rhino conservation and link the problem of rhino poaching with exclusionary

management of PAs.²⁶ The continuous alienation of the local people for over three decades has made them indifferent towards loss of biodiversity. Moreover, for many local people the rhino symbolises their main enemy, as it causes crop damage and human casualties.

As long as they will see the Park as the government's property, they will continue to see the rhino as belonging to the state and will not feel a responsibility to conserve it. Introduction of a buffer zone programme that provides economic incentives to the local people has also been largely limited to benefiting local elites.²⁷ Consequently, the Park has not been able to garner the support of the large mass of marginalised groups in and around it. The rights activists and other civil society groups therefore argue that rhino poaching could not be controlled without improving the existing poor public support for conservation. Although some conservationists see these deaths as 'minor' incidents or 'necessary' sacrifice for larger goals of nature conservation, human rights activists strongly argue that violations of human rights can never be justified to protect non-humans' rights or those of future generations.

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Although questions like whether rhino conservation or human interests come first divide conservationists and human rights activists, broader questions such as who decides the conservation agenda and how the costs and benefits of nature conservation are distributed between the state and different groups of citizens clarify these debates. The conflict between rhino conservation

and human interests in Chitwan valley is largely a product of modern nature conservation approaches focusing on protected areas, and must be examined through discourse, institutions and actors around conservation practice. As the political ecology perspective holds, society-nature relations are reflections of broader social arrangements. In this light, conservation discourse and practice are historically produced to serve the interests of dominant groups, delegitimizing the rights of the local people who depend on park resources.²⁸

Despite the entrenched exclusionary ideologies of conservation, the recent upsurge of powerful discourses on democracy and human rights has

"The rhino does not go in for hunger strikes, burn tires, stop vehicular movement, or organize protest rallies, and that is why politicians do not listen to them."

presented significant challenges to biodiversity and environmental conservation practices. During the current transitional period (since mid-2006) political parties in Nepal have become powerful actors. As has often been the case, the political parties, particularly at the

local level, have expressed full support for the immediate concerns of people in their constituencies. They tend to think of short-term political gains rather than long-term environmental interests. As one of the political leaders put it, "rhinos wouldn't vote for our party; why should we privilege rhino over people?"²⁹ Within this joking comment lies an inherent rationale as to why politicians prefer to side with the voices of local people, rather than taking the side of the rhino. In a similar vein, Ms Rai, a columnist in a daily newspaper, has rightly pointed out that rhino does not go in for hunger strikes, burn tires, stop vehicular movement, or organize

protest rallies, and that is why politicians do not listen to them.³⁰

Lack of adequate attention by the government (at the political level) to continued rhino poaching has further increased concern among the conservation lobby. Several suspected poachers were released in early September 2005 through political decisions, a move opposed by conservation groups including IUCN and WWF.³¹ Despite constant warnings by conservationists and some sections of civil society, more and more detainees of conservation offences are being released. Many of those poachers released prior to the completion of their punishment are said to have returned to their old business. Moreover, only minimum punishment is given to even the most dangerous poachers with notorious track records.³² Although clandestine relations between politicians, bureaucrats and criminals were not uncommon during the past autocratic regime, they were less evident in relation to the poachers due to strong conservation commitment of the members of the royal family. The current early release of poachers is often attributed to recent political change and transition towards liberal democracy; there are suspicions that the poachers may take advantage of the more liberal polity by using corrupt politicians and bureaucrats to facilitate early release in exchange for benefits from vested political and economic interests.³³ As one WWF officer commented, the decision undermined the long record of conservation achievements in Nepal: "The release of these rhino poachers and traders by

A single argument runs throughout discussion, writing and policy prescriptions of the conservationists: more army posts are required to curb rhino poaching.

the government of Nepal devalues the efforts that conservationists from within the government, communities, and partner organizations, who have worked so hard to achieve in the past four decades of saving rhinos in Nepal."³⁴

Unfortunately, continued poaching has allowed further rationalisation of military solutions to the problem. A single argument runs throughout discussion, writing and policy prescriptions of the conservationists: more army posts are required to curb rhino poaching. Conservation authorities have become blind to any alternative modalities of conservation and instead continue to emphasise militarising the parks to conserve biodiversity and wildlife. Even the buffer zone management councils have recommended increasing army posts in Chitwan National Park.

The challenge of embracing human rights in conservation

Sikharam's death demonstrates the significance of human rights within conservation efforts. The sheer mass and diversity of local people and others who sympathised with the death of Sikharam and expressed their anger against the park authorities is a testa-

Historically, the disregard for human rights has been a symptom of conservationists' unequal power relations with local people

ment to the level of human rights abuse by the park authorities. On the other hand, the responses of conservationists and forest bureaucrats reveal the strong bio-centric position that has been institutionalised within conservation programmes in Nepal: conservationists put nature first. Historically, the disregard for human rights has been a symptom of conservationists' unequal power relations with local people. Today, current institutional contradic-

tions are exposed by the early release of dangerous poachers while demands for increased army posts and stringent punishment for offenders fail to receive local support.

The establishment of a democratic polity and popular discourse on human rights appears to have induced two parallel but opposing processes. Local people, various civil society organisations, and rights activists in particular are now enjoying enough space to raise issues of social, economic and cultural rights to local environmental resources. Local people are now better organised, have gained communicative competence and are defending their customary rights. As the case of Chitwan National Park shows, they have become influential in bringing park officials to justice, ultimately making the officials accountable for their actions. Now the officials have to change their practice drastically and think twice before using excessive force. This is, however, seen as a serious setback for the enthusiasm and efficiency of the park officials who have long been acquainted with conventional approaches to control poaching.

From the opposite end, a liberal democratic polity and human rights discourse have given leeway to the government for early release of many detainees and for soft punishment.³⁵ Although the early release of many detainees was part of political generosity shown by the newly formed democratic government, some of the dangerous criminals also benefited from this de-

Bureaucratic disposition and the relative comfort conservationists enjoyed during autocratic regimes have made it difficult to embrace new principles of human rights and to transform conservation practice.

cision. As demonstrated by increased rhino poaching, generous treatment of poachers often has negative impacts on protection. Such government decisions have rewarded the criminals while demoralising some of the park staff who are honestly engaged in rhino protection. Apart from weakening their enthusiasm and willpower to arrest and detain suspected poachers, these kinds of interferences alienate park officials from protection tasks and jeopardise the sustainability of the PA system in Nepal.

During personal interviews and conversations with local people and authorities around the Chitwan National Park over the past several years, conservationists openly admit that they have been facing enormous difficulty in addressing the growing human rights movement on issues related to national parks. It appears that their bureaucratic disposition and the relative comfort they enjoyed during autocratic regimes have made it difficult to embrace new



Picture 2. Local fisherman repairing his fishing net. (Courtesy Naya Sharma Paudel)

principles of human rights and to transform conservation practice.

Conclusion

The heavy influence of a protectionist conservation ideology, the use of the military as the sole protector of flora and fauna, and a strong legacy of feudalistic attitudes nurtured by the ruling elites have historically contributed to the abuse of human rights in Nepal's conservation programmes. During the Panchayat period, the autocratic political regime supported exclusionary management of PAs so that violations of human rights were covered up or suppressed. The legacy is so entrenched that even the recent radical political changes have only partially exposed the practices that are counter to human rights standards.

After a decade-long violent conflict, a democratic political system with an increasingly powerful human rights discourse has been established. Conservation authorities who used to enjoy unlimited power against anyone violating the park rules regulations are now facing immense resistance from the burgeoning civil society. While this may be good news for many victims of exclusionary PA management, the authorities have found themselves in a very difficult situation in fighting against the poaching mafia. Poachers have benefited from liberal political trends by manipulating corrupt politicians and bureaucrats. Further, the anti-poaching image of conservation authorities is blurred by the overt and covert associations of some of the officials with poaching networks, making it difficult to fully rely on conservation officials to meet anti-poaching goals. Conservation authorities still tend to assume sole responsibility for protecting PAs, and are reluctant to share their role and responsibilities with other stakeholders including local people. Consequently, they have been found

too weak in facing challenges of either protecting the integrity of the park or adequately respecting local people's human rights including economic, cultural, and other citizens' rights.

Conservation authorities, due to their long association with the autocratic political regime, are reluctant to embrace issues of human rights. They are also not trained to work in collaboration with empowered stakeholders who cannot be easily controlled. The fundamental issue here is that human rights have not been perceived as guiding principles for the conservation authorities but as a burden posing a serious challenge to protecting the integrity of the PAs. In this situation, a small and emerging network of critical civil society groups provide an important source of hope for substantive change. These groups expose the practices of human rights violations and empower the victims by helping them to organise. In so doing, they challenge two facets of the problem—the bio-centric legacies of conservation authorities, which undermine the fundamental human rights of local people, and the feudalistic legacies of politicians, who lack both environmental sensitivity and public accountability.

Naya Sharma Paudel (nsp@forestaction.wlink.com.np) works as Coordinator of ForestAction, a Kathmandu-based NGO working on environmental governance and forest resource management. **Somat Ghimire** (cdonepal@wlink.com.np) works with Community Development Organisation, also in Kathmandu. **Hemant Raj Ojha** (hro@forestaction.wlink.com.np) works with the Environmental Resource Institute in Kathmandu.

Notes

- 1 Economic incentives that attempt to address livelihood needs of local people have recognised social and economic needs only as strategic means to conservation. Conservation programmes have yet to recognise these needs as basic human rights irrespective of their contribution to conservation.
- 2 Brockington, 2003; Brockington and Schmidt-Soltau, 2004; Chapin, 2004.
- 3 Kothari *et al.*, 1996; Homewood and Brockington, 1999; Brockington *et al.* 2006

- 4 Colchester, 1997; Schwartzman *et al.*, 2000.
- 5 Terborgh and Schaik, 2002.
- 6 CVICT, 2006; CITES, 2006; Ghimire, 2006.
- 7 Ghimire, 2006.
- 8 Poudel, 2006; Ghimire, 1992; Shrestha and Conway, 1996.
- 9 Paudel, 2005; Soliva *et al.*, 2003.
- 10 Paudel, 2003; Paudel, 2005a.
- 11 Paudel, 2005a.
- 12 A term coined by Ives and Messerli (1989) to describe the body of literature, particularly a treatise on hill deforestation by Eckholm (1976), that highlighted environmental degradation in the Nepalese hills. This was largely attributed to the increased hill population and 'primitive' farming practice leading to environmental degradation including deforestation, erosion, and landslides in the region.
- 13 Eckholm, 1976.
- 14 Muller-Boker, 1999.
- 15 CITES, 2006.
- 16 Amnesty International, 2006.
- 17 Bhatt, 2003.
- 18 Bhatta, 2003.
- 19 Upadhyaya, 2001:vii.
- 20 INSEC, 2006.
- 21 HRTMCC, 2005.
- 22 INSEC, 2005: 4.
- 23 GoN, 2006.
- 24 TRN, 2007.
- 25 Kunwar, 2007.
- 26 Ghimire, 2007.
- 27 Paudel, 2005b.
- 28 Brockington, 2004; Guha, 1987.
- 29 Quote from one of the party leaders of Nepal Sadbhawana Party (Aanandidevi).
- 30 Rai, 2007.
- 31 WWF, IUCN and NTNC, 2006.
- 32 CITIESNEPAL, 2007. Also evident by a recent case in which a park warden hearing a case of a notorious poacher with a record of illegally possessing over 17 rhino horns has imposed only a minimum sentence.
- 33 CITIESNEPAL, 2007.
- 34 Williams, 2007. Statement made by Christy Williams, coordinator of WWF's Asian Rhinoceros and Elephant Action Strategy.
- 35 See Ojha (2006) for an overview of how technocratic mindset under liberal democratic polity dominates forest governance in Nepal.

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The Rights of Indigenous Nomadic Pastoralists— a guarantee for rangeland conservation in Iran

Mansoor Khalighi

Abstract. In Iran, nomadic users of natural resources migrate seasonally as a double strategy for the conservation of nature and sustainable livelihoods. There are some 700 of these indigenous tribes in the country whose very identity depends on this mobility. Since the 1920s, however, a number of governmental policies and practices have consistently attempted to undermine the nomadic livelihoods and lifestyle. Among those are forced and induced sedentarisation policies, “development” initiatives (e.g., creation of urban areas and infrastructures, mining explorations and agricultural fields that have interrupted the migratory patterns), the nationalisation of rangelands, and the active undermining of the social organisation of the nomadic tribes. In this historical context, the nomadic communities were even considered a “barrier” to national development and modernisation, and their social identity suffered as a consequence. This paper discusses the socio-economic and ecological significance of migratory pastoralism and emphasises the role of local knowledge in conservation and its great potential when coupled with a respect of collective rights. Customary forms of governance and management of natural resources can foster harmonious relationships among people, livestock, and the broader environment.

It can be argued that the critical reason for the deterioration of the natural resources of Iran has been the nationalisation of the country’s forests and rangelands. This policy was closely connected to the expansion of capitalism and the industrialisation of the country, which go back to the early 1960s.



Picture 1. Because of their dependency on pastureland, migrating pastoralists have tended to manage it sustainably and help to improve its quality—with results generally far superior to those attained in the pasture used by sedentary villagers. (Courtesy CENESTA)

Capitalism is based on the exploitation and control of labour force and natural resources. It is a system that relies on mass production and permanent innovation, driven by over-consumption. Under such a system, “conservation of nature” is a neglected value, and so are human rights—in particular the collective right of people to determine their lifestyles and preserve their cultural identity. The most distinctive character of capitalism is domination over the relations between the labour force and the means of production, including through the ownership of such means. Land is a most significant element in the pattern. In its relentless expansion, capitalism has consistently ignored the rights of peoples, and particularly so of foreign nation and indigenous peoples. Its success has depended on gaining control over land and other resources, usually previously held by local communities. In some countries where capitalism developed rather unevenly, the state machinery

also played a crucial role, paradoxically behaving like a private capitalist actor. In the last centuries and accelerating during the XXth century, nearly all over the world community governance over natural resources has been steadily nearly completely substituted by private governance (individual or corporate landowners) or centralised state governance. Iran represents a case in point.

After World War II, capitalism expanded all over the world and came to affect the environmental and socio-economic situation of most countries. During the second monarch of the Pahlavi dynasty (1941-1979) the Iranian government centralised the ownership and governance of natural resources. The nationalisation of forests and rangelands paved the road for the domination of the state over traditional modes of production, land, and people. The latter were actually needed as labour force in capitalist development and the Iranian state acted as the agent of the capitalist force in itself, extending its control to economic, natural and human capital. It also gave free reign to foreign investments, which negatively affected both national capitalism and the traditional, community-based lifestyles, left with very little space to manoeuvre. Ambitious economic development plans led an economic growth that carried with itself detrimental social and environmental consequences. The adoption of industrialisation as a national policy

is more a political choice than an inevitable historical process; in Iran, the government played a decisive role in this choice. The State became the sole owner and manager of natural resources, with a policy objective of obtaining and consolidating its power over the national economy as a whole. State domination and the expansion of its own bureaucracy were pursued at the cost of human rights of the indigenous peoples of Iran and customary governance institutions, local knowledge systems and the sustainable use of natural resources.

The nationalisation process and its consequences severely harmed the nomadic pastoralists that were dependent on rangelands for their livelihood. The “land reform” of 1963, including the nationalisation of natural resources—which many experts and local communities now consider a grand catastrophe in which legitimate customary rights and resource management institutions were sacrificed for the sake of moving small producers and indigenous nomadic pastoral tribes off the land—led to development plans that ignored the basic rights to natural resources, and the needs and priorities of nomadic communities and in many instances also of other local communities such as forest peoples, fishing folks and small farmers.¹ The conflicts between the government and the indigenous tribal confederations, and the disintegration of their social organisation, tore apart

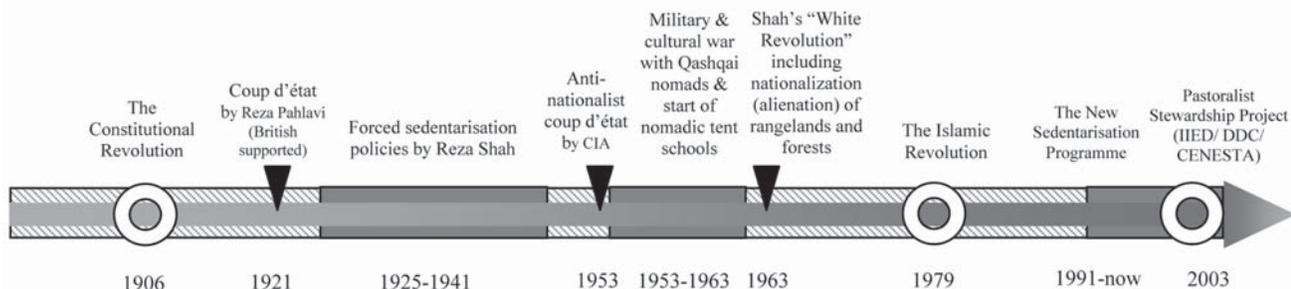


Figure 1. Historic events in Iran affecting nomadism & rangelands (Courtesy P.Ghoddousi, N.Naghizadeh, & T.Farvar)

the traditional relations of governance of natural resources and the customary use of, and care for, the land. Nomadic pastoralists became increasingly isolated. At the same time, agriculture, particularly large scale industrial farming, was let entirely free to expand, contributing to soil erosion, environmental pollution, and sucking up ground water in unsustainable ways. The pastoralists suffered increasingly and directly from the impact of this water shortage.

The fall of the Pahlavi dynasty and its replacement by the Islamic Re-

public of Iran did not bring about any fundamental change in state policy towards the mobile nomadic pastoralists. State management of rangelands went on the same way, pushing for the sedentarisation of nomadic tribes in either their wintering or summering territories. The best of the rangeland areas were earmarked for state sedentarisation schemes without the prior informed consent of the nomadic peoples, causing great stress on the already weakened livelihood and natural resource management systems of the indigenous nomadic peoples.

Forced sedentarisation was imposed on us in the twentieth century. Various governments seized our rangelands and natural resources throughout the last centuries. All sorts of "development" initiatives including dams, oil refineries, and military bases interrupted our migratory paths. Our summering and wintering rangelands were consistently degraded and fragmented by outsiders. Not even our social identity was left alone. Our story is similar to the story of nomadic pastoralist peoples all over the world, under all sorts of regimes that do not bear to let us manage our lands and lives...We, pastoral peoples, have always considered our land what you would call a "protected area". We have always embraced "conservation" not as a professional activity but as intimate duty and pride of every member of our tribes, as the heart of our livelihood, because our very subsistence depends on it, because we pray on the same lands, and we take care of them as sacred places. I hear you talk of ecosystems, landscapes and connectivity. We have always known about this without using your terms.

(Source: Speech of Uncle Sayyad, Elected Head of the Council of Elders of Kuhi sub-tribe and the Shish Bayli Tribe of the Qashqai Confederation of Nomadic Pastoralists, World Parks Congress of 2003)

The failure of externally imposed natural resource management systems

It is now clear that centralised government management has failed to effectively replace the customary rangeland management systems. There appear to be several reasons underlying this failure. The first reason is that nomadic communities broadly mistrust the government and are unwilling to "participate" in its initiatives and plans. Other reasons that contribute to explaining the government's failure include its inappropriate institutions for the economic transition, its limited financial and human resources—unable to match the tasks, and the lack of appropriate laws and

regulations. In fact, the interference of the state in customary management of rangelands *created* severe and damaging competition among villagers, pastoralists, and ex-landlords. The traditional methods of rangeland management were plunged into total confusion. As an example, sedentary villagers who own livestock enter the rangelands illegally in the spring, before the migrating pastoralists arrive to graze their flocks on the same land during the summer. When the pastoralists later migrate to their wintering territories, the villagers return to graze their flocks in the same rangelands, or plough the soil for cultivation. Rangelands are thus used 240270- days per year instead of the customary 7590- days....

"The routine violations of our rangelands leave us with no motivation to take care of them. If only we had security of tenure over the rangelands, we would apply our customary ways of land use. At present, knowing that some villagers will plough our grazing lands before we get there, forces us to migrate earlier than expected. If the government prevented the villagers from cultivating the land, the nomadic pastoralists would care for the rangeland themselves."

— from an interview of the author with a Qashqai nomadic pastoralist)

Governance (including the new ownership norms) is a critical difficulty facing pastoralist community rights. It is widely understood that the present system, based on the individual "grazing permit", is not effective and has failed to properly replace the previous system of rangeland governance. A permit entitles most livestock breeders to use the rangeland for only 50 animal units. This number is too low for pastoralists whose livelihood depends on livestock. Besides, the regulation is based on an outdated estimation of rangelands carrying capacity, developed over 30 years ago. It should also be noted that "ranching" projects—the only written and approved government programme dealing with the topic—have faced many serious challenges. According to official reports,² the very fact that numerous ranching projects were either not approved, not carried out, or stopped before their completion indicates the extent of problems they have encountered and the lack of a well thought-out and coherent range management policy. The latest statistics show that half of the submitted proposals were never approved. The nearly 3,000 approved project would have covered only seven million of the 90 million hectares of rangeland in the country. Furthermore, many approved projects have failed to meet the goals envisaged in the proposals that are hastily drawn up by private consulting firms who have no obligation to ensuring the success or even relevance of their mass-produced project proposals, as they are paid by the government agencies, some of whom have had dubious relations of corruption with the consulting companies in the past. It is reported that the local communi-

ties, the main actors supposed to implement the projects, are not even aware of what the projects entail, and do not see any benefits in them. The projects have failed miserably to promote any sense of "ownership" among the people supposed to carry them out.³

The main weakness of many of the above mentioned projects lies in their incompatibility with the local situation. Many project plans are based on models originated in foreign universities and rely on inventories of rangeland resources conducted by "specialists" with limited local field experience. Some such experts barely pay perfunctory visits to the rangelands that are the subject the ranching proposals and spend little time analyzing its geomorphology, water resources, soil characteristics, climate, grass coverage, wild life and, even more importantly, the social and cultural characteristics of the communities involved. Such specialists do not believe in indig-



Picture 2. Expansion of cities blocks the migratory routes.
(Courtesy Mansoor Khalighi)

enous knowledge or in the participation of local communities in designing and elaborating the land management plans.

The current official policies still aim at sedentarising mobile nomadic pastoralists. The authorities claim three reasons for their blatant invasion of community rights in forcing nomadic pastoralists to abandon their yearly migration patterns.

First, it is asserted in the most simple-minded misconception that migration happens because of lack of amenities and comforts by mobile pastoral communities. Some even say it is because they lack appropriate means to keep themselves warm in the winter and cool in the summer! In other words, if they had houses they would not have a need to migrate. It is also declared that nomadic pastoralists keep moving in search of food for their livestock. Once they are provided with sufficient feed for their livestock they will stop migrating. These are not valid reasons to force sedentarisation upon them. And, as a matter of fact, about 70% of nomadic tent-holds do own some sort of dwelling units or houses in either their wintering or summering territories and many of them use fodder to feed their herd. Yet, they still continue to migrate. The co-existence of tents and houses in the villages, the building of concrete stables for livestock, and even the eviction of some nomadic settlements are examples of mistakes made by government authorities in their hope of stopping the people's drive to migrate.

Second, authorities claim that livestock, too abundant in number, damage the rangelands and cause quantitative and qualitative deterioration of the environ-

ment during migration. This claim is also invalid since the expansion of urban areas, the construction of roads, the opening of new mines, the development of industries and military bases, and the transformation of rangelands into agricultural land have all harmed the territories to a much greater extent than livestock has or can ever do. According to the remarks of the Head of the Technical Bureau of Forest, Rangeland and Watershed Management Organisation (FRWO), the migrating nomadic pastoralists are the ones who have damaged rangeland *the least* compared with the destructive interventions of others.⁴ But his opinion is isolated. Local communities are broadly blamed as scapegoats for damaging natural resources. And this is taken as an excuse to support the forced sedentarisation of migratory nomadic tribes.

Third, the authorities assert that many studies and statistics indicate the willingness of the mobile nomadic communities to settle. The construction of houses in either wintering or summering grounds is given as proof to this claim. However many pastoralists consider the construction permit they use as a sort of "compensation" from the government. They are ready to use their new houses, but will keep migrating with their livestock at the prescribed seasonal times. In other words, they do not wish to quit their main job as herders, even if they agree to take on agricultural activities as secondary sources of livelihood. Some have been known to even use the rooms in the miserable housing provided by government contractors for keeping their animals while they continue to use their tents as preferred settlement for the household.

Some laws and regulations are enforced to make the migrant pastoralists so desperate as to give up their main source of livelihood. When pastoralists cannot make their ends meet, they sell their herd. In this way, small scale livestock breeding is replaced by large scale animal husbandry under state control or other forms of land use.

— from an interview of the author with a government specialist on pastoralism)

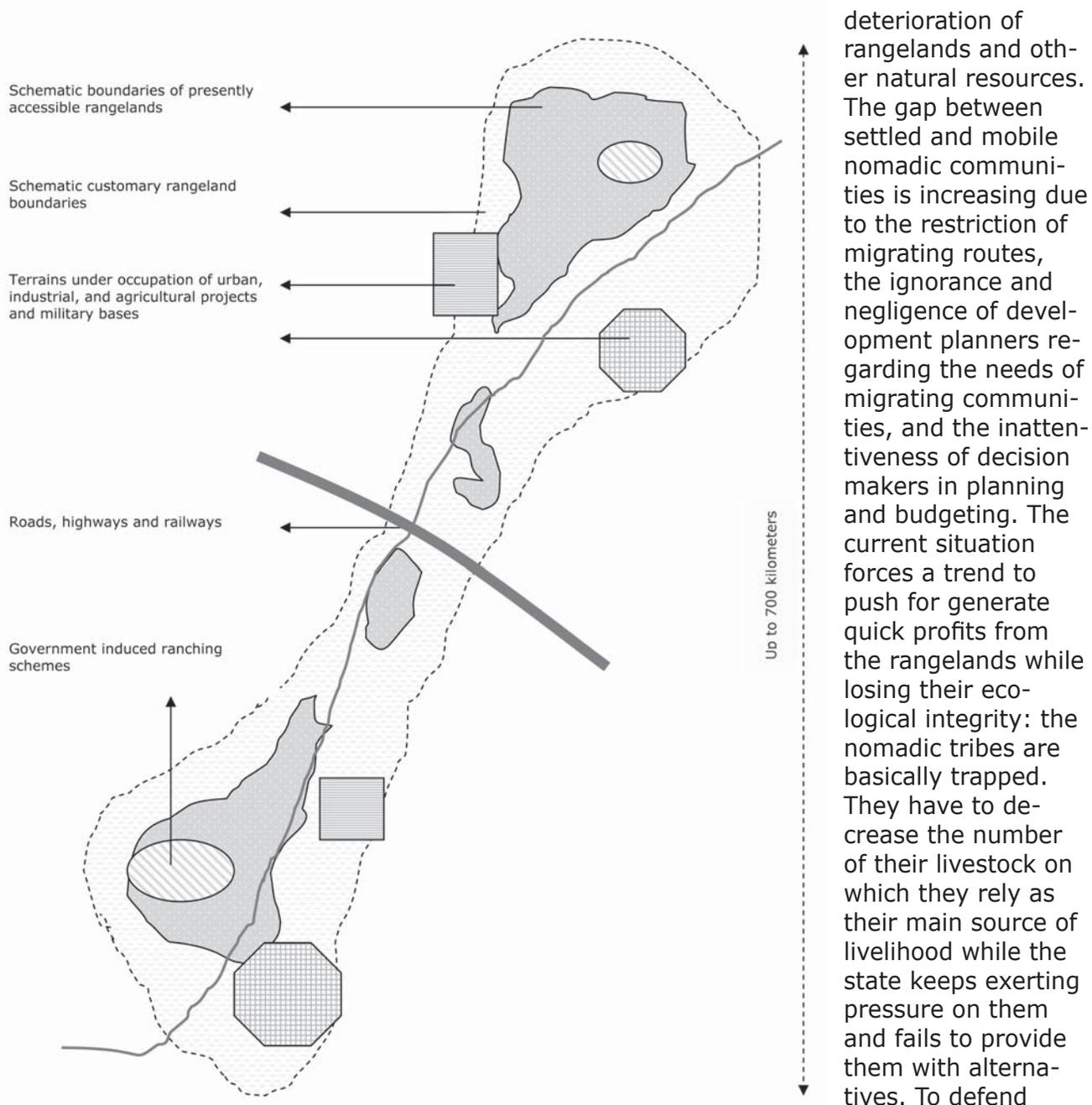
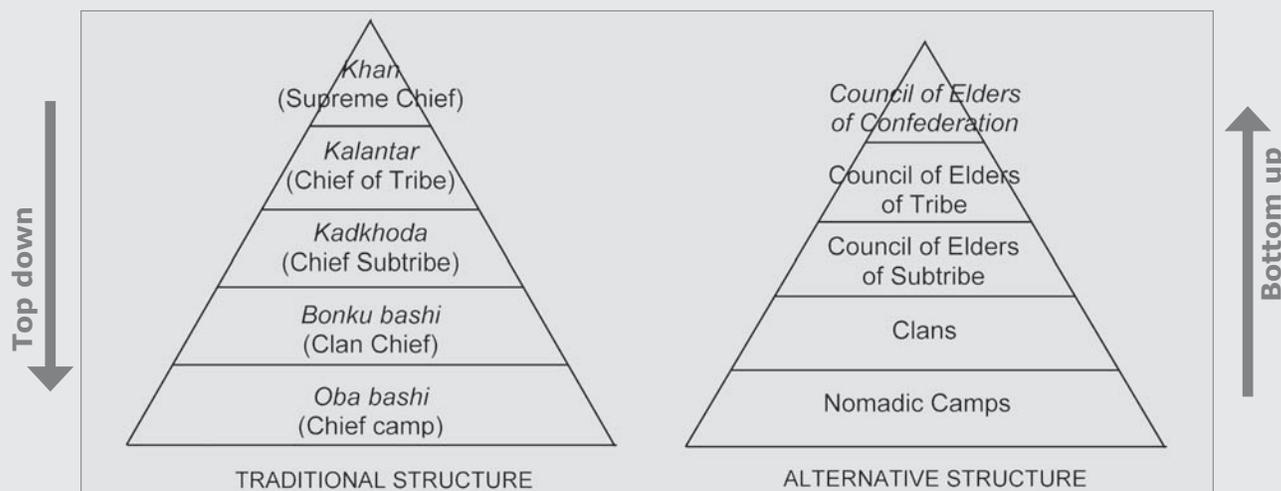


Figure 2. Invasion of customary community rights over natural resources in indigenous nomadic territories—a schematic representation. See table page 318. (Indicative map courtesy Pooya Ghoddousi)

The nomadic tribes face numerous challenges. Their territories are increasing appropriated by state or private companies. Their livestock can never be food-secure because of a plethora of restrictive rules and regulations and the extensive

themselves, some nomadic tribes have decided to strengthen their traditional institutions and cultural heritage. They are striving to revive their identity and to reorganise themselves in their social, political, and economic structures by preserving control over their territories, nourishing their cultural identities, and maintaining their economic independence. Some of them are powerfully succeeding! They intend to keep their migratory lifestyle indefinitely...

One of the projects CENESTA initiated and implemented with the support of IIED (International Institute for Environment and Development) and the Dryland Development Centre of UNDP has offered an alternative to the current situation of the nomadic pastoralists in Iran. The project helps mobile nomadic communities to reorganise themselves in two related social and economic institutions— the Councils of Elders and the Community Investment Funds (sanduqs) for which the former act as the “board of directors”. These are in all cases organised through a process of participatory action research along the lines of tribal organisation, at the level of sub-tribes, tribes and where applicable, tribal confederations. Through innovative and flexible plans, the local community is thus elaborating its own socio-economic self-management structures. This model derives from tribal traditions but encourages the community members to elect their representatives along customary lineage groups to run the Councils and their corresponding sanduqs. The ideal shift in the characteristics of decision making powers is presented schematically here.



The restructuring of the nomadic tribes enables the least advantaged community members to find a voice in decision making. It also strengthens the position of nomadic pastoralists in gaining their rights for sustainable livelihoods and better access to vital rangeland resources. Making such a change in the structure of tribal communities is not an easy process. For best social and economic outcomes, a coalition of local-level stakeholders was developed to foster social communication and discussions. The project also engaged in raising the awareness of other social actors, especially policy makers and government technocrats, about the capacities of mobile nomadic pastoralists for sustainable land and natural resource management. It has also attempted to build the capacity of community members and elders.

The collaboration of CENESTA with government departments, such as the Forest, Rangeland and Watershed Management Organisation (FRWO), set the stage for making positive changes at the national levels. The FRWO has shown interest in recognising the nomadic tribal traditional territories, with their summering and wintering grounds and the migration corridors in between. This is an important result since it can facilitate the process of solving the current legal conflicts over rangeland uses. It is one step towards redressing their rights, and consequently improving the governance and management of the country's rangelands.

Rights based conservation from “within”: building upon local knowledge and customary natural resource management systems

Because of the close dependency on the quality of rangelands, migrating pas-

toralists have tended to manage them sustainably and help to improve its quality—with results generally far superior to those attained in the rangeland used by sedentary villagers. Nomadic communities have accumulated their knowledge of biodiversity conservation

and sustainable livelihoods for a long period and have passed it on from one generation to the next. Their knowledge helps them in using the resources in sustainable ways, which naturally interplay with cultural practices and are in harmony with the local beliefs and conditions. Another significant character of customary management systems is that they are low-cost, and depend on local solutions, tools and equipment, and are continually tested in

the real situation. For these reasons, nomadic management systems should be recognised and considered as the basis for natural resource management nationwide. Indigenous knowledge and technology are also cost effective and save natural resources. They were gained through centuries of observation and practice and are generally far more sensible and applicable than those based on academic theories.

Invasions and threats to community rights over natural resources

Wintering grounds

- ▶ Oil and gas refinery
- ▶ Land invasion by sedentary farmers & industrialized farming
- ▶ Expansion of urban and rural settlements
- ▶ Government-induced ranching schemes—privatization of the commons
- ▶ Land grants to unrelated stakeholders

Migration routes & middle grounds

- ▶ Factories, e.g., cement plant
- ▶ Land invasion by settled farmers and industrial farming
- ▶ Allocation of land for urban development
- ▶ Orchards obstructing migratory routes
- ▶ Military bases
- ▶ Road/highway invasions
- ▶ Land confiscation for governmental protected areas

Summering grounds

- ▶ Land invasion by settled farmers
- ▶ Water source takeovers
- ▶ Conversion of wetlands to agricultural lands
- ▶ Land grants to unrelated stakeholders
- ▶ Decimation of wildlife and habitats
- ▶ Government-induced ranching schemes—privatization of the commons

The relation among the different components of nature and the interaction among natural forces has been the centre of attention of the nomadic pastoralists, generating an attitude that can be described as both holistic and systematic. The nomadic pastoralists take opportunistic advantage of a variety of management techniques from subdividing rangelands to their

enrichment through the spreading of seeds and burning dry rangeland, from combining bottom-up decision making to decentralised systems, from expert assessment to combination of grazing patterns, from keeping diverse livestock to enclosing territories, from separating different types of livestock to changing its composition, from reducing livestock numbers to using imported fodder...

A PhD student working on his dissertation remembers his first encounter with a local community. He felt embarrassed when the pastoralists asked him, "How is it that despite studying for 24 years you are learning things from us just now?" He also recollects he was laughed at while taking down notes that sounded so basic to the pastoralists but quite new to him...

(Source: Barani, 2002.)

Migration is the seasonal moving of people and animals between summering and wintering grounds, based on the needs of both herds and rangelands. As seasons change, in fact, the rangeland in summering and wintering grounds

are alternatively used and let to rest, with time to regenerate. Depending on location, rangelands are generally used for five to seven months per year. This brings about a rather natural equilibrium between livestock and rangelands.⁵

As seasons change, the pastures in summering and wintering grounds are alternately used and let to rest, with time to regenerate

pastoralists can be to the needs of their natural environment. When pastoralists sedentarise, they end up using the same local rangeland during 8-9 months per year, with obviously more severe environmental impacts.

Especially before the nationalisation of rangelands it was the customary organisation of the nomadic pastoralists that determined the timetable of the migration and the appropriation of the rangelands. The particular hierarchical social organisation of the nomadic tribes—based on their kinship relations and a system of community elders, implied that the decisions were taken by interaction of lower and higher levels as needed, and the whole system worked almost meticulously. This system had many advantages, including a strong sense of belonging of the people and the land to each other, regardless of the formal status of ownership. The composition and number of livestock, the time of livestock movement and the appropriation of the rangelands were all under careful control. The ecological appropriateness of the system was a heritage left over from the early domestication of wild relatives of the animals of the nomads, who were migratory in their natural state, and all humans had to do was learn to follow them and the innate knowledge and urge of the wild animals to migrate in order to protect the range and guarantee their survival.

For centuries, the nomadic pastoralists assessed the conditions of rangeland, water and precipitation through scouts sent in advance to the summering/wintering grounds before the onset of

migration. On the basis of information on climate and rangeland availability in the summering and wintering grounds and in the migration corridors, the tribal leaders would then determine the date of the onset of migration and the internal land use access rights—including the number of animals and people allowed to migrate, based on their assessment of the carrying capacity of the destination rangelands. The pastoralists were well aware of the significance of the natural and human spreading of seeds in the rangelands, and of the consequences of avoiding grazing for a season or more to restore degraded rangelands. This system, called *qoroq* in many of the 700 Iranian tribes and tribal confederations—exists in most of the other nomadic regions, recognised as *hima* in Arabia, *mahjar* in Yemen and *agdal* among the Amazigh (“Berber”) peoples of north Africa. It is a form of what we call “Community Conserved Areas”. They used to spread seeds of useful plants during the migration and selected wisely the herd size and composition. The combination of diverse livestock reflects the wealth of households but also helps in improving the biological and economic utilisation of rangelands. A herd composition of different species, sex and age feed differently and on different plants, creating less intensive grazing.⁶ Furthermore, the combination of their animals is made to vary with respect to climate and quality and quantity of grass. During a drought, the nomadic pastoralists sell more of their livestock or slaughter them.⁷ Prior to nationalisation of the rangelands, migrating pastoralists used the efficient conservation technique of land enclosures (*qoroqs*). This meant that some rangelands were withdrawn from grazing until certain plants managed to flower. It was only then that livestock would be allowed to enter the range. Using fodder and letting the livestock graze on farms and orchards after

harvest were also ways to regulate the livestock food consumption.⁸

Prior to nationalization of the pasturelands, migrating pastoralists used the efficient conservation technique of land enclosure [...] grassland was withdrawn from grazing until certain plants managed to grow into flowers

The nomadic social organisation adjusts itself in such a way that the balance between humans, livestock and rangeland is broadly maintained. In this sense, the inherent flexibility of the nomadic life requires the separation of tent-holds and the creation of independent clans whenever the number of livestock gets out of balance with people. Under such circumstances, even tent-holds with no livestock join other clans.⁹

The construction of more than 40,000 hand-made subterranean water canals called *qanats* or *karezes*, besides innumerable terraces for cultivation on mountain slopes, and small irrigation dams and other water harvesting schemes indicates how skilful and knowledgeable the local communities are in conserving water resources, in harmony with existing supplies.¹⁰ Iran is an arid and semi-arid country and regularly faces water crisis. At present, drilling deep and semi-deep boreholes and wells has forced the government to forbid pumping water in 200 out of the existing 600 plains. The genius of nomadic pastoralists in managing water should be fully acknowledged, as for generations they have been able to direct water resources and grow the plants they needed. Among some tribes, such as the Shahsevan Confederation in Azerbaijan, water sources in the summering grounds are managed in a rotating scheme to irrigate the natural pastures, given them a seasonally

sustainable rotating grazing pattern.

Finally, traditional resource management systems appear superior to modern management systems insofar as many modern technologies cause environmental damage, produce unhealthy foods and decrease the self-reliance and stability of agro-ecosystems. Migratory pastoralism supports extensive organic food production as nomadic tribes graze livestock in grasslands free from artificial fertilisers and chemical pesticides, while the rangeland plants have medical properties for the animals and, indirectly, for the human consumers of the animal products. Furthermore, the attention of nomads to rangeland and water resources is a guarantee of their sustainability. At the minimum, development planners should respect the rights of mobile pastoralists to produce according to their customary management systems. In so doing, they would also promote sustainable agro-ecosystems.

To demonstrate the economic value of migratory pastoralism, the analytical framework of Simon Kuznet¹¹ can be applied. He argues that an economic activity can be recognised as valuable "employment" when it meets some of the five requirements below:

- ▶ provision of labour force;
- ▶ provision of food production and/or raw industrial materials;
- ▶ increasing capital;
- ▶ expanding markets;
- ▶ supporting financial balances .

Migratory pastoralism possesses all the above mentioned factors and can thus be considered economically valuable. According to the latest official statistics in Iran,¹² the unemployment rate of the nomadic tribal community is 3.9 % whereas the overall rate in the country is 14%. In terms of food production, the nomadic pastoralists currently



Picture 3. Traffic on roads blocks the migration.
(Courtesy CENESTA)

offer 140,000 tons of meat annually valued at US\$600,000,000. Their dairy products amounted to nearly 400,000 tons in 1998. Adding the value of wool, handicrafts, and medical products to the above items, the official figures themselves declare that the contribution of the Iranian tribal society is more than US\$ 1,000,000,000 per year, although migrant pastoralists comprise less than 2% of the total population and constitute only 11% of total number of livestock breeders. Furthermore, the monetary cost of the food the nomadic pastoralists use for their livestock is minimal; therefore, they achieve a higher rate of "net national production". The contribution of the nomadic tribes to the national capital is largely made through sale of their products to local markets (and purchase there of a variety of products). Limiting food imports increases the demand for local products, but also gives the government the opportunity to control the price of agricultural and animal products. Migratory pastoralism is also playing a vital role in

the import/export balance: on the one hand it produces red meat to the extent that the country is self sufficient, and on the other, it produces export items such as carpets, rugs, animal hides, and medicinal plants.¹³

The economic and social characteristics of the migratory nomadic pastoralists in Iran necessitate their inclusion in the development planning of the country. Few other societies would be ready to throw out a system that contributes a billion dollars to the GNP and creates 6 digit employment. This would be akin to killing the goose that lays the golden egg. Their rights to keep their lifestyles in an enabling environment should be recognised as the ground on which their productive capacities and their capacity to manage natural resources in a sustainable way can best be developed. Encroaching upon such rights appears to go hand in hand with the deterioration of rangelands and many other economic, social, ecological and cultural losses.

Conclusion

To make their policies relevant and sustainable, the Iranian development planners should start centring their programming exercises on human capital rather than on physical capital alone. Such a change requires more information about local communities, and more effective communication with them. What is already abundantly clear, however, is that the customary management of livestock, rangeland and water by mobile communities can play a major role in conservation, revival, development, and appropriation of the country's rangelands.

The active violation of the human—including and community rights of break up of pastoralist social organisation, the demise of customary leadership, and the absence of alternative structures have caused enormous damage to

migratory pastoralism and its efficient management of natural resources. If the outright revival of the old structures is nearly impossible, the development of appropriate options based on them is today essential. Certain policy-makers and specialists have begun doubting the appropriateness of their decisions in favour of forced or induced sedentarisation and "modernisation" of rangeland economies. The resistance of pastoralists has also spurred some change of mind among government staff. It was generally assumed that as soon as the economics of pastoralists' livelihoods would change because of sedentarisation, farming would replace livestock breeding and "de-tribalisation" would occur. Instead of this, and despite the new imposed conditions and the internal and external conflicts they created, the tribal social structures have essentially remained alive. A most urgent and important task for Iran is now their strengthening as appropriate, so that these institutions become fully aware of their capacities and their rights to be recognised so that they can continue to be positive actors in society.

Mansoor Khalighi (khalighi@cenesta.org) is a PhD student at the University of Tehran, pursuing a dissertation on different exploitation methods of rangelands and their influence on ecological and eco-social sustainability. He has been working with CENESTA (Centre for Sustainable Development) since 2002. He is a member of CEESP-TSL. The author is deeply grateful to Nastaran Moossavi (nastaran@cenesta.org), Pooya Ghoddousi (pooya@cenesta.org), Ali Aqili (bozqurt@cenesta.org) and Taghi Farvar (taghi@cenesta.org) for helping in the preparation of this article, and to Grazia Borrini-Feyerabend (gbf@cenesta.org) and Jessica Campese (Jessica@cenesta.org) for their assistance in editing it for inclusion in this issue of *Policy Matters*.

Notes

- 1 The impetus for this "land reform" came from the policies of the United States, which were dominant in Iran at the time, following the CIA-led *coup d'état* of 1953 against the popular nationalist parliamentarian/ prime minister Mohammad Mosaddeq, which brought the unpopular Shah back to Iran as a puppet regime to serve the geopolitical and energy resource ambitions of the United States and its allies. A team of high level policy "advisors" from the United States told the Chair of CENESTA, then a Vice Rector of Avicenna University, that their basic aim in the agricultural sector was the "com-

plete elimination of small producers" such as farmers and pastoralists, and their substitution with large scale domestic and international agribusiness corporations.

- 2 Farhadi, 1994.
- 3 Alizadeh, 2000.
- 4 From a formal correspondence between CENESTA and Mr. Negahdar Eskandari, the Head of Technical Office of Forest, Rangeland and Watershed Management Organisation of Iran.
- 5 Ansari, 1998.
- 6 Ardakani, 2004.
- 7 Farhadi, 1994.
- 8 Ardakani, 2004.
- 9 Afshar Naderi, 1968.
- 10 Ardakani, 2004.
- 11 Quoted in Najafi, 2003.
- 12 The latest nation-wide census was conducted in 1998.
- 13 Najafi, 2003.

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Beyond the instrumental view of Corporate Social Responsibility— a human rights and natural resource conservation perspective

Rajat Panwar & Eric Hansen

Abstract. Commonly prevailing corporate perception regarding corporate social responsibility (CSR) is based on its economic or instrumental utility. However, this perception has limitations in a changing society and does not promise to achieve the goal of sustainability. Alternative views of CSR might provide more meaningful motivation for companies to embrace CSR. It can be argued, for instance, that the integration of human rights protection and natural resource conservation perspectives can ameliorate the weaknesses of the instrumental view of CSR. A holistic approach incorporating a broader CSR definition, broader stakeholder categories, and a broader concept of capital could harmonize many of the apparently discordant dimensions of CSR.

The concept of corporate social responsibility (CSR) has attracted growing attention in business management

literature during the past two decades. There has been considerable scholarly debate over the distinction between CSR and corporate philanthropy (CP).

In simple terms, CSR commonly refers to the responsibilities of a business in the course of conducting business whereas CP refers to post-profit “giving back”, usually in the form of monetary contributions.

Scholars have conceptualized CSR in different ways. The classical model of CSR, often associated with Friedman,¹ is that the business of business is business and that the only standard it should adhere to is meeting legal requirements. The neo-classical model of the next wave of CSR allows corporations to seek profit while obeying a “moral minimum”.² Other notable conceptualizations include Carroll’s pyramid of social responsibility, assigning business four sets of responsibilities: economic, legal, ethical and philanthropic.³ This hierarchical classification has provided a concrete platform for CSR research and has, arguably, dominated conceptualization efforts up to now. According to the World Business Council for Sustainable Development (WBCSD), CSR embodies the commitment of business to sustainable development, which requires integration of social, environmental and economic considerations.⁴ WBCSD has pointed out that lack of an all-embracing and commonly-accepted definition leads to confusion surrounding CSR.⁵ The multitude of definitions suggests the role of business in different spheres of life can

Around half of the hundred biggest economies in the world are now corporations, not nation states.

be understood from a range of perspectives.

A changing economic world order has been marked by the emergence of transnational corporations. Around

half of the hundred biggest economies in the world are now corporations, not nation states.⁶ Such enormous increase in corporate power has contributed to a

fresh investigation of business-society interaction. Issues such as the influence of transnational business activities on foreign culture are attracting increasing attention. Campaigns led by civil society organizations and international initiatives like the UN Global Compact⁷ reflect a shift in the perceived role of the business in contemporary society.⁸

Parallel to global socio-economic changes, the concept of sustainable development has also been changing. For example, in its recent release, the United Nations Commission on Sustainable Development (CSD) has included 50 new sustainable development indicators, which encompass themes such as education, governance, demographics, health, poverty, fresh water and oceans, seas, and coasts.⁹ There is a growing consensus about the legitimacy of CSR. Yet, academics, consultants and companies alike face practical problems defining areas of intervention and motivations for business to embrace CSR. Garriga and Mele have suggested a four-quarter scheme to group different rationalizations of CSR:¹⁰

► *Instrumental or Economic view of CSR*

This perspective sees CSR as a tool for economic utility. It is assumed that a corporation is an instrument for wealth creation and that it can use CSR as a means to reach the end of profit making. Garriga and Mele identify three CSR approaches under the instrumental category:¹¹ maximizing shareholder value; securing competitive advantage; and cause-related marketing, in which the company offers to contribute a specified amount to a particular social cause when customers buy its products, aiming at sales enhancement or building customer relationships based on brand positioning through social

responsibility.¹²

► **Political view of CSR**

Scholars have also explained CSR based on political theories, focusing on the power and responsibility dictums

The main argument is that businesses are powerful social institutions and that they should use this power in a responsible manner.

in a social context. The main argument is that businesses are powerful social institutions and that they should use this power in a responsible manner. Garriga and Mele include two major concepts in this category: corporate constitutionalism and corporate citizenship.¹³ Corporate constitutionalism refers to a philosophical understanding of power distribution in a social system where all power constituencies limit each other's powers and responsibilities and prevent encroachment on them, in the same way as under a governmental constitution. Corporate citizenship or business citizenship rests on developing a sense of belonging in the local community, and has attracted increasing interest because of globalization of company activities.

► **Integrative view of CSR**

This view is built on the premise that business depends on society for its existence and growth, suggesting that business must operate in a way that is acceptable within a societal value system at a given point of time. It implies that there is no single action that companies need to perform throughout their lifetimes, and indicates a dynamic response to social demands at different times and in different contexts in order to secure social legitimacy. Under this category, Garriga and Mele have included issues management, the principle of public responsibility, stakehold-

er management and corporate social performance.¹⁴ Issues management is a process-based approach that suggests institutionalizing understanding of and commitment to social issues across the whole organization. As opposed to the broader concept and process of social responsibility, the principle of public responsibility promoted by Preston and Post (1975) dictates that business should involve itself in responsibilities that are stipulated in public policy and should not carve out its own domains of activities.¹⁵ Stakeholder management entails integrating in corporate decision making all groups that have a stake in the organization, those that affect or are affected by the decisions that an organization makes. Corporate social performance is an outcome-oriented variant of CSR espoused by Carrol which consists of three basic elements: definition of corporate social responsibility; identification of the issues that an organization will address; and specification of the response that the organization embraces to address these issues.¹⁶

► **Ethical view of CSR**

This view suggests that CSR should be embraced for ethical reasons. Garriga and Mele have identified four ethical approaches: normative stakeholder, universal rights, sustainable development, and common good.¹⁷

The universal rights approach incorporates human rights, justice and labor rights approaches.

Donaldson and Preston suggested a normative stakeholder approach in which stakeholders should be identified based on their interest in an organization, irrespective of the organization's interest in them.¹⁸ The universal rights approach incorporates human rights, justice and labor rights approaches. The common good approach proposes

that being a part of society, business must contribute to the common good. In this sense, Fort argues that business is a mediating institution and that it should be purely a positive contributor to the well-being of the society.¹⁹

Windsor points out that the managerial conception of CSR has been dominated by an economic view and thus, generally, corporate motivations to embrace CSR rest on instrumental or economic utility.²⁰ As a result, analyzing the link between CSR and financial performance has been a topic of interest among scholars and several studies have tried

to establish correlation between the two. For example, Paine and Kotler and Lee have suggested numerous business benefits of adopting CSR.²¹ However, Griffin and Mahon point out that empirical studies mapping the relationship between CSR and financial performance have not provided consistent conclusions.²²

In separate interviews that we recently conducted for analyzing CSR in the forest products industries in the USA and India, two interesting responses emerged that further illustrate the dominant perception linking CSR with financial performance:

"If the profitability is not at least 25% of the investment, no social responsibility is possible."

—An industrialist in India

"CSR proponents should stop evangelizing the business."

[Stop trying to convert them into something that they are not]

—An NGO employee in the US

No conclusion can be drawn from these two responses, but they indicate one problem—the philosophical underpinning of CSR is not yet holistic. Within the context of the instrumental view of CSR, these two responses are understandable: if CSR is not fulfilling the objective of corporate profitability, it could be dispensed with. However, acceptance of such viewpoints will take us back to the era of the "Robber Barons".²³ Meanwhile, the resources of the earth are being depleted at an alarming rate, pollution is rising and billions of people are still living at or below the subsistence level. An instrumental approach to CSR is neither likely to be adequate in the changed society nor can it contribute effectively to sustainable development objective promoted by the World Business Council for Sustainable Development.²⁴ This calls for fresh thinking regarding CSR and its

role in a global society facing the crises of ecological imbalance and socio-economic inequity.

Bringing human rights into the CSR landscape

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. In addition to its preamble, the Declaration consists of 30 articles, setting forth the human rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled, without any discrimination.²⁵ In brief, the human rights declaration seeks to ensure equality of opportunities to all people without discrimination while securing individual liberty in matters of belief as well as providing for freedom of expression.²⁶

Welford (2002) argues that concerns raised about the impacts of globalization predominantly focus on the economic perspective, leaving social, political and cultural implications undetermined. He further argues that growth in organized civil society and increased use of information technology will likely add to the public voice currently speaking out against dominating corporations, and asking for more transparency. Carroll maintains that stakeholders are those groups or persons who have a stake, a claim or an interest in the operations and decisions of the firm.²⁷ Mitchell *et al.* have comprehensively documented earlier efforts to define "stakeholders" based on their possession of one or more of the attributes power, urgency, and legitimacy.²⁸ They provide a theoretical basis to identify relevant stakeholders.

The increasing role of business in people's lives, and globalization-induced

Growth in organized civil society and increased use of information technology will likely add to the public voice currently speaking out against dominating corporations, and asking for more.

issues such as invasion of indigenous cultures, mean that business organizations could be faced with increasing demands to be responsive to broader society and to include the protection of human rights in CSR programs. This might lead corporations to broaden the types of stakehold-

ers included in their decision making beyond the definitive and dependent categories, such as employees within a company. Since the universal declaration of human rights in 1948 most debate has been confined to governmental and inter-governmental levels. With globally increasing public-private

partnerships, human rights protection could potentially be the mainstay of the social dimension of CSR programs. However, Welford voices a word of qualification:

"Such a change will not, however, be easy. The economics of globalization emphasizes (not surprisingly) competition, capital investment, free trade, growth and the transformation of markets. These do not sit easily alongside the priorities for activists keen to promote the rights of people including women, minority groups, indigenous populations and children. What we need therefore is not an agenda based around capital but one which attempts to develop an agenda which gives us the opportunity of finally achieving the global objectives first set out by the United Nations in 1948. The technology and developments which have created the conditions for globalization to take place need to be put to use to serve humankind as a whole and not the vested interests of corporate boardrooms."²⁹

Conservation of natural resources: the need for a non-conservative approach

Sanderson maintains that untouched wild places have shrunk to one-sixth of the earth's land surface, leading to reduced avenues for wildlife habitat conservation and human recreation.³⁰ He acknowledges that this situation has a human origin, and that economic expansion, population growth, urbanization and development are the foremost reasons for such rapid loss. Shepard and Sivacolundhu note that the world's forests have been shrinking by around 200 square kilometers every day.³¹ Emphasizing the economic importance of forests, they further note that around 24% of the global population depends on the forest for its livelihood. Direct

impact is clear from the statistics that wood products contribute more than 150 billion US Dollars annually to global trade and that the forest products industry globally provides employment to around 13 million people. Such estimates make a logical case for sustainable management of forests. However, this market-based case would

The aim of CSR, per se, is sustainable development, yet the commonly prevailing instrumental view of CSR does not lead to this desired end.

entail adopting an instrumental view of CSR and does not provide a rationale for conserving the non-commoditized species vital for the health of any ecosystem. Therefore, there is a need for intrinsic valuation of forest ecosystems from an ethical rather than instrumental viewpoint in order to achieve ecological sustainability. The same argument holds for other industries or occupations that are directly dependent on natural resources, such as fisheries.

In search of a synthesis

The aim of CSR, *per se*, is sustainable development, yet the commonly prevailing instrumental view of CSR does not lead to this desired end. As discussed above, human rights and ethical approaches to CSR can contribute to global objectives of human rights protection and ecological sustainability. However in the current world order, the interface of economy, social issues and ecology is full of imbalances. Sanderson has summarized the issue as follows: "If development has ignored conservation, conservation has paid too little attention to development. Economic policymakers have concentrated on growth, developmentalists on the distribution of the benefits of the growth, and conservationists on the costs and consequences of growth for

nature and environment. The result has been an agreement to disagree, with the growth, development, and conservation communities proceeding down separate paths. In practice, the concept of sustainable development has proven less a viable middle ground than an empty rhetorical vessel."³²

Typically, in a capitalistic society, business has been the engine of growth, government has taken the development role, and some governmental and non-governmental organizations have worked for the cause of natural resource conservation. With increased global business activity, the concept of business as a mediating institution becomes particularly relevant. Fort³³ suggests that with increased time-association of employees at work, business can provide for associational needs that have traditionally been fulfilled by social institutions such as the family and religious groups. This would provide broader room for CSR to incorporate hitherto-neglected human development activities. Typically, however, most corporations would undertake activities that improve employee satisfaction based on instrumental reasons rather than a belief in human values. This development is not robust enough for the broader stakeholder inclusion warranted by earlier discussion.

Depending on varying economic and socio-cultural contexts, the integration of mediating institutions might take different shapes, and such a discussion needs separate investigation. Here the focus is on making a conceptual foundation for a paradigm shift that corporations need to make in order to move beyond embracing CSR for instrumental reasons.

Paradigm shift for broadening the CSR conceptualization

Freeman suggests that most business

and ethics discussions in the past have considered each separately.³⁴ Adolphson³⁵ has built a new perspective integrating ethics, ecology and economics, primarily based on the biophysical approach espoused by Cleveland *et al.*³⁶ and Hall *et al.*³⁷, which suggests that natural resources are the limiting factor in our ability and ways to perform any activity. Adolphson argues that from a biophysical perspective there are three types of work that contribute to the

economic well being of humankind: work performed by humans with and without direct exchange of money, and work performed by nature independent of human interaction (see Table 1).³⁸ Accordingly, Adolphson classifies three types of capital—Financial Capital, Human Capital and Natural Capital, and integrates them succinctly: "*natural and human capital form the invisible arm that drives the invisible hand*"³⁹

Table 1. Types of work and corresponding examples from a biophysical perspective (adapted from Adolphson (2004))

Type of work	Examples
Work performed by humans with an exchange of money	Most business and economic activities— e.g., buying a house, etc.
Work performed by human without direct exchange of money	A parent helping children, volunteer work, homemakers' non-paid work, etc.
Work performed by nature independent of human interaction	Photosynthesis, soil building process, water and air filtration, etc.

Financial capital is rather easy to define, but human and natural capital might be viewed differently depending on economic model and industry type. Lucas advocates that human capital should also encompass communities or cultures, going beyond the narrower view that only focuses on individuals' education and training.⁴⁰ All industries are directly or indirectly dependent on natural capital, for their clientele exists because of natural capital. This broader view of "capital" might help to create the corporate mindset necessary for embracing CSR for non-instrumental reasons.

Desjardins⁴¹ has criticized the classical and neo-classical models of CSR, based on two adequacy requirements of corporate environmental responsibility: firstly, it should address the entire range of environmental and ecological issues affected by business so as to

turn the "tide" of environmental and ecological deterioration; secondly, it must be capable of influencing business policy. He maintains, "*it seems to me that much of the work done by business ethicists to date fails the first criterion; much work done by environmental ethicists fail on the second.*" Desjardins argues that the two prevailing models of CSR operate with legal and moral constraints, respectively. To meet the two criteria of adequacy he suggests embracing the idea of sustainability in human consumption of natural resources. Notably, Desjardins advocates a rights-based approach allowing human consumption of individual elements as long as the sustainability of the whole ecosystem is not disturbed. Finally, he prescribes a three-fold principle and a general approach for industries that he deduced based on arguments by Frosch and Gallopoulos:

- ▶ renewable resources should not be used at rates that exceed the system's ability to replenish itself;
- ▶ non-renewable resources should be used only at the rate at which alternatives are developed or loss of opportunities compensated;
- ▶ wastes and emissions should not be generated at rates that exceed the capacity of the ecosystem to assimilate them.

"In such a system the consumption of energy and materials is optimized, waste generation is minimized and the effluents of one process— whether they are spent catalysts from petroleum refining, fly and bottom ash from electric power generation or discarded plastic containers from consumer products— serve as the raw material for another process".⁴²

Only the integration of business, societal, and natural cases makes a "right case" for adopting CSR.

Whither from here

Matten *et al.* advocate for a corporate citizenship approach arguing that it broadens the operational scope of mainstream CSR approaches to include all interlinked elements of the corporate environment.⁴³ Based on Dyllick and Hockerts' extended framework for corporate sustainability,⁴⁴ Figure 1 illustrates how an integrated conceptualization can provide the necessary synergy for different approaches that are generally perceived as conflicting. This is analogous to the broader view of capital discussed earlier and suggests that financial capital is not sustainable unless accompanied by the feeding components, social and natural capital. Only the integration of business, societal, and natural cases makes a "right case" for adopting CSR. To adopt CSR for instrumental reasons is insufficient: it cannot be separated from the entire-

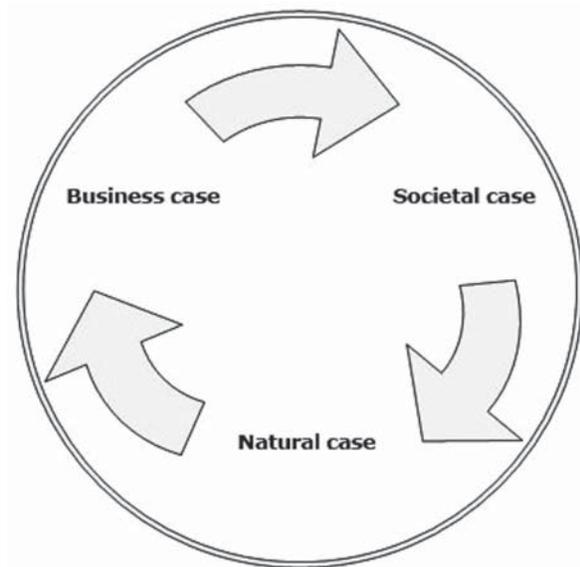


Figure 1. Integration of three dimensional motivations to adopt CSR. Adapted from Dyllick and Hockerts, 2002

ty of the ecosystem and its associated social and natural dimensions.

As an integrative effort, based on the ecosystem conceptualization of the business environment, Panwar and Hansen have provided a broader definition of CSR: "CSR is a unique, context-specific and wholesome business philosophy, translated into corporate strategy and fused with organizational culture, aiming at ethically-guided initiatives that sustainably protect and promote the interests of the ever changing components of a corporate ecosystem".⁴⁵

How will it happen? There could be different yet equally valid and promising answers in varying contexts, and the corresponding justification might vary according to the focus area. We propose adoption of the ecosystemic definition of CSR as a potential solution to the problem of achieving the goal of sustainability through CSR for the following reasons:

- ▶ it integrates the three CSR cases as described above;

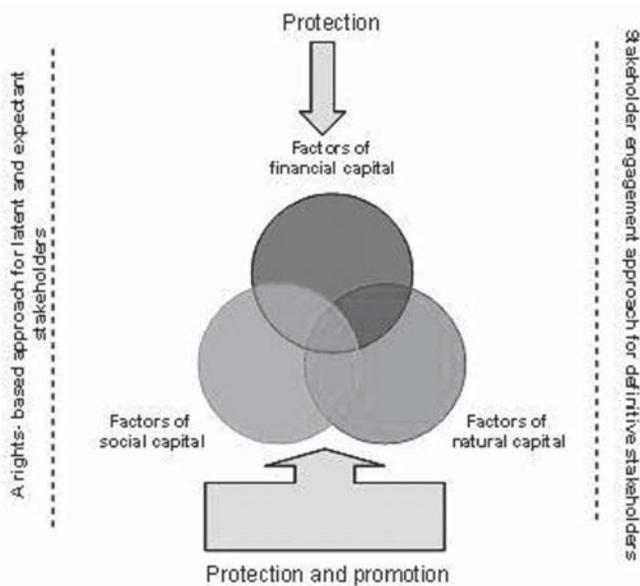


Figure 2. Conceptual framework for an integrated approach for eco-systemic CSR

- ▶ it encompasses the stakeholder approach, while also extending to the concept of corporate citizenship;
- ▶ it diminishes the distinction between CSR and CP, a desirable convergence to alleviate present social and environmental crises in which some more deteriorated areas need philanthropic contributions in addition to responsible business practices.

Figure 2 provides a conceptual framework for an integrated approach to ecosystemic CSR. It incorporates the wider view of “capital” discussed earlier. We would like to draw attention to two important components of the ecosystemic definition: protection and promotion. These could be considered in other words as “maintenance” and “enhancement” respectively. In Figure 2 we assume that factors of financial capital involve definitive stakeholders— those combining the attributes of power, legitimacy and urgency, such as shareholders, industry associations, etc. Such stakeholders are likely to have dominated past company decisions and, in a given economic context,

to have served their own interests in all possible ways. Hence for this set of stakeholders, measures that maintain their interests are required. On the other hand, factors of natural and social capital have generally deteriorated due to past practices and hence need both maintenance and enhancement effort. A broader set of stakeholders, especially latent and expectant stakeholders at the far reaches of a corporate ecosystem (e.g., the wider society), should be given intrinsic value. A rights-based approach is needed to respond to these stakeholders.

Conclusion

Business profitability and CSR are not dichotomous in nature and CSR is not about conversion of business into some abstract philanthropic institution. However, an instrumental perspective of CSR is inadequate in a changing global society and will not achieve the objective of sustainability. We recommend adopting a broader view of the concept of capital and shifting linear relationships with stakeholders to an eco-system view and, accordingly, define the areas for protection and enhancement, with engagement policies for definitive stakeholders and a rights-based approach for latent and expectant stakeholders. A holistic CSR vision should incorporate enrichment from diverse perspectives and could harmonize many apparently discordant dimensions of CSR.

Rajat Panwar (rajat.panwar@oregonstate.edu) is graduate research assistant with the Forest Business Solutions Team, College of Forestry, Oregon State University, Corvallis (Oregon, USA). His interests include corporate social responsibility, issues management, CSR standards, business ethics and international trade, and social entrepreneurship. **Eric Hansen** (eric.hansen2@oregonstate.edu) is Professor of Forest Products Marketing and leads the Forest Business Solutions Team in the same College of Forestry. His interests include innovation management and corporate social responsibility in the forest products industries. He has published extensively on certification issues in the forest sector and has co-authored the book “Strategic Marketing in the Global Forest Products Industries”.

Notes

- 1 Friedman, 1970.
- 2 Bowie, 1991.
- 3 Carroll, 1979.
- 4 World Business Council for Sustainable Development, 2000.
- 5 World Business Commission on Sustainable Development, 2000.
- 6 <http://www.corporations.org/system/top100.html>
- 7 In an address to the World Economic Forum on 31 January 1999, the former Secretary-General of the United Nations, Kofi Annan, challenged business leaders to join an international initiative— the Global Compact— that would bring companies together with UN agencies, labor and civil society to support universal environmental and social principles. The Global Compact's operational phase was launched at UN Headquarters in New York on 26 July 2000. Today, thousands of companies from all regions of the world, international labor and civil society organizations are engaged in the Global Compact, working to advance ten universal principles in the areas of human rights, labor, the environment and anti-corruption. See <http://www.unglobalcompact.org/AboutTheGC/index.html>
- 8 Boele *et al.*, 2001.
- 9 A detailed account of these themes and indicators can be found at the web-link <http://www.un.org/esa/sustdev/natlinfo/indicators/fact-Sheet.pdf>
- 10 Garriga and Mele, 2004.
- 11 Garriga and Mele, 2004.
- 12 Vardarajan and Menon, 1988.
- 13 Garriga and Mele, 2004.
- 14 Garriga and Mele, 2004.
- 15 Preston and Post, 1975.
- 16 Carroll, 1979.
- 17 Garriga and Mele, 2004.
- 18 Donaldson and Preston, 1995.
- 19 Fort, 1996.
- 20 Windsor, 2001.
- 21 Paine, 2003; Kotler and Lee, 2005.
- 22 Griffin and Mahon, 1997.
- 23 This term is used for the American industrial or financial magnates of the late 19th Century, who became wealthy by unethical means, such as questionable stock-market operations and exploitation of labor.
- 24 WBCSD, 2000.
- 25 <http://www.ohchr.org/english/about/publications/docs/fs2.htm>
- 26 <http://www.ohchr.org/english/about/publications/docs/fs2.htm>
- 27 Carroll, 1991.
- 28 Mitchell *et al.*, 1997.
- 29 Welford, 2002: p2.
- 30 Sanderson, 2002.
- 31 Shepard and Sivacolundhu, 2006.
- 32 Sanderson, 2002: p163.
- 33 Fort, 1996.
- 34 Freeman, 1994.
- 35 Adolphson, 2004.
- 36 Cleveland *et al.*, 1984.
- 37 Hall *et al.*, 2001.
- 38 Adolphson, 2004.
- 39 Adolphson, 2004: p206. The invisible hand is a metaphor coined by classical economist Adam Smith to illustrate how seeking wealth by following one's individual self-interest inadvertently boosts the economy and helps in achieving social welfare.
- 40 Lucas, 1988.
- 41 Desjardins, 1998.
- 42 Desjardins, 1998 : p834.
- 43 Matten, *et al.*, 2003.
- 44 Dyllick and Hockerts, 2002.
- 45 Panwar and Hansen, 2006: p74.

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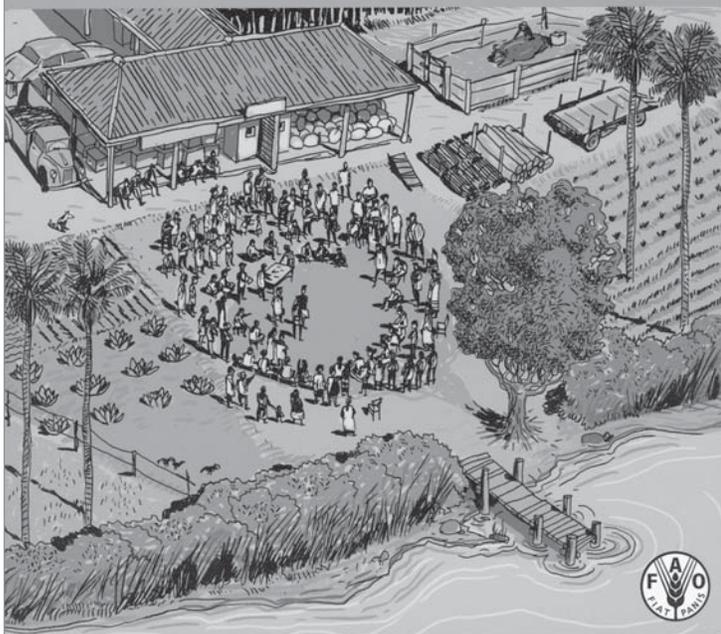


Negotiation and mediation techniques for natural resource management

By Antonia Engel and Benedikt Korf,
FAO (Rome), 2005. 219 pp.

Short review by Steve Collins

Negotiation and mediation techniques for natural resource management



This guide, while developed mostly in the forestry context, is a timely response to one of the critical issues facing all practitioners dealing with natural resources, protected areas and rural development. Many problems are exacerbated by a lack of good conflict management processes leading to crisis and ongoing disputes. A recent cover of National Geographic proclaimed "People versus Parks", clearly showing that for many parts of the world over-population, poverty and development are in conflict with the conservation agenda.

This guide was produced by the FOA's Livelihood Support Program and attempts to do the following:

- 1) Integrate conflict management into the broad framework of collaborative natural resource management
- 2) Show how to establish and mediate a process of consensual negotiations which emphasises stakeholder buy-in and choice
- 3) Acknowledge the cultural and social dimensions of the different contexts faced around the world.

The guide is set out in a user-friendly way with a section explaining the terms used in natural resource and conflict management, useful pictures and diagrams and, importantly, at the end of each section a summary that pulls together the lessons. These valuable summaries could be pasted on the wall of natural resource workers as useful reminders.

In my view the guide succeeds in its three aims. It begins with an introduction into

the kinds of conflicts that could occur, and explains how practically conflict can be managed in the natural resource context through consensual negotiations. It then moves on to a step-by-step process of how to gain entry, analyse the conflict, broaden stakeholder engagement, build agreements and lastly how to exit the process.

The guide also includes a short section on collaborative management, several tools on how to analysis conflict, and two case studies.

The guide is available in English, Spanish and French and can be accessed at <http://www.fao.org/docrep/008/a0032e/a0032e00.htm>

Steve Collins (Steve.Collins@gtz.de), GTZ TRANSFORM, is a South African mediator with 20 years of experience dealing with political, development and natural resource conflicts.

Les conventions locales de gestion des ressources naturelles et de l'environnement. Légalité et cohérence en droit sénégalais

par Laurent Granier,
IUCN (Gland, Suisse et Cambridge, Royaume-Uni), 2006. 44pp.

Revue brève par Aboubakry Kane

L'étude sur la cohérence et la légalité des conventions locales de gestion des ressources naturelles et de l'environnement (CLGRN) par rapport aux lois sénégalaises vient à son heure. En ratissant large, elle a permis de voir les avancées mais aussi les limites de la décentralisation de la gestion des ressources naturelles (RN) et de l'environnement à travers l'analyse de la genèse, de l'utilisation et des problèmes vécus par le développement de l'outil « convention locale ».

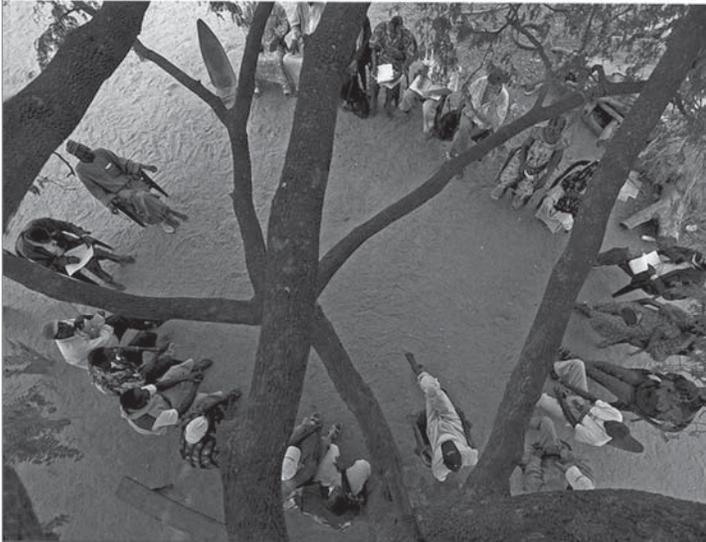
Tout d'abord le premier mérite de l'étude est d'avoir clos le débat sur la cohérence et la légalité des CLGRN, ou au moins identifié et éclairci les bases juridiques de cette cohérence et légalité. L'étude a aussi prouvé le caractère légitime de ces outils, facteur important pour leur appropriation et mis en œuvre. Les conventions locales sont donc un instrument pertinent et efficace pour une meilleure réalisation de la régionalisation, opérée au Sénégal dès 1996 avec l'avènement des lois portant sur le transfert de plusieurs compétences dont l'environnement. Ce travail ressort dans l'analyse approfondie

UICN
Union mondiale pour la nature

Les conventions locales de gestion des
ressources naturelles et de l'environnement

Légalité et cohérence en droit sénégalais

Laurent Granier



UICN, Droit et politique de l'environnement, n° 65

faite par Laurent Granier tant au niveau de la constitution que des codes concernés (Codes des collectivités locales, des Eaux et Forêts, de l'Environnement) que du statut des différents acteurs (signataires et ou engagés) vis-à-vis des CLGRN. Ainsi, les CLGRN apparaissent comme des formes de contrats administratifs conclus entre collectivités locales, les populations et représentants de l'état, dont les bénéficiaires directs sont les communautés locales et l'environnement. Ces contrats sont le plus souvent établis et mis en œuvre au Sénégal grâce à l'appui de partenaires (ONG, services techniques locaux et projets), dont la collaboration est nécessaire à cause des difficultés des services de l'Etat à s'approprier des orientations politiques nationales et à les traduire en processus pertinents, adaptés aux problématiques et aux contextes régionaux et locaux.

Malgré leur large développement depuis près d'une quinzaine d'années et leur contribution appréciable à la gestion locale et participative des RN, les CLGRN continuaient de susciter des doutes sur leur légalité. L'étude se bonifie d'analyses pertinentes et de recommandations, elle dévoile la profusion des concepts qui

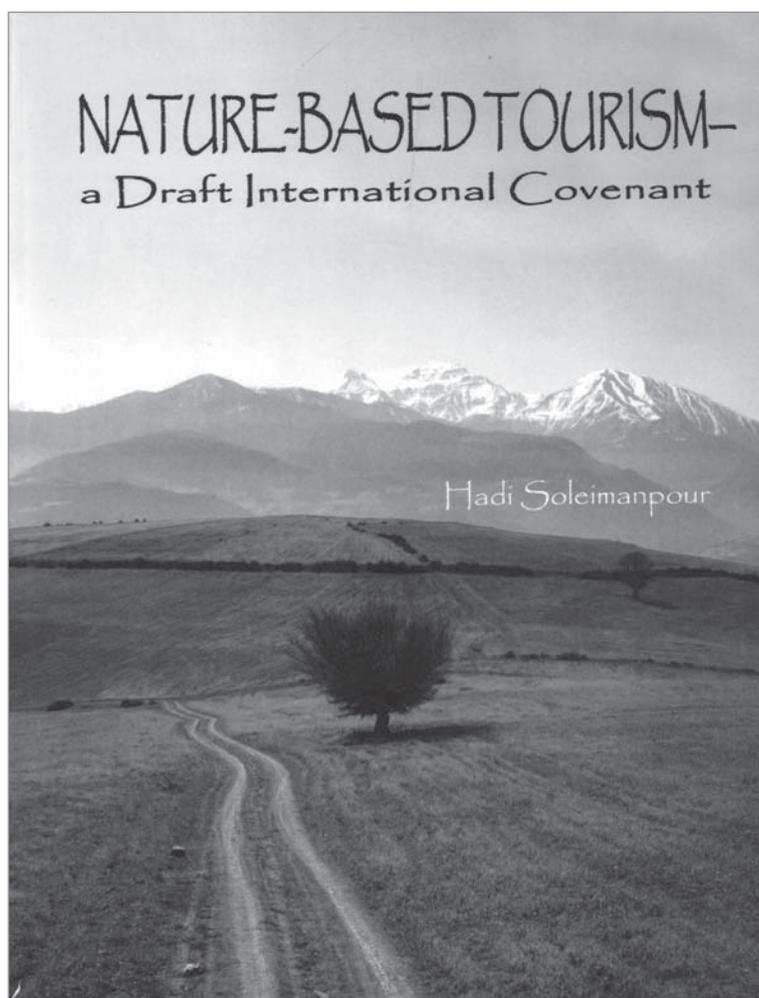
ajoutent à la confusion, les acteurs oubliés— tel que la commune qui est pourtant gestionnaire de ressources, la nécessité de disposer de moyens financiers et techniques pour élaborer les CLGRN (alors que l'Etat n'a pas délégué ces moyens), l'implication massive des ONGs et des projets qui a été à la base du grand développement des CLGRN, la réticente de certains services de l'Etat à collaborer considérant qu'il est de leur prérogative unilatérale de gérer. L'étude permet ainsi de percevoir le vide juridique existant pour que le droit sénégalais reconnaisse formellement les CLGRN.

Le travail de Laurent Granier, exhaustif sur le plan documentaire, mérite d'être complété par un travail d'enquête sur le vécu des CLGRN par tous les acteurs, depuis leur élaboration jusqu'à leur mis en œuvre. Cette enquête devrait analyser les méthodes, les outils et les processus de validations populaires et fournir des propositions en mesure de garantir la participation et la prise en compte des préoccupations de tous les acteurs, et en particulier des acteurs marginalisés.

Aboubakry Kane (aboubakry.kane@iucn.org) est Chargé de projet Réserve de la Biosphère du Delta du Saloum, UICN Sénégal. **Laurent Granier** (Laurent.Granier@iucn.org) est Conseiller en droit de l'environnement du Bureau de l'UICN au Sénégal et Point focal de l'UICN pour le droit de l'environnement en Afrique de l'ouest. Laurent est membre associé du CEESP/TGER.

Nature Based Tourism— A Draft International Covenant

by Hadi Soleimanpour,
CENESTA for IUCN/CEESP, Tehran 2006



Short review by Sylvie Blangy

Hadi Soleimanpour has been researching existing international development and environmental agreements that address Nature-Based Tourism (NBT) and assessing the contributions of recent major international conferences. On the basis of his analysis, he has written a book about a Draft Covenant to regulate tourism within environmentally and culturally sensitive areas. The book proposes an international common language and code of conduct for responsible nature-based and community-based tourism. The Covenant he outlined is based on 47 principles previously agreed by many world countries, and is intended to fill a gap in international agreements. The book is dedicated to the indigenous peoples and local traditional communities of the world.

The first chapter of the book lists the most commonly used definitions of ecotourism and sustainable tourism and offers a new interpretation of the term "nature-based tourism" that incorporates the precautionary principle in relation to possible impacts on biodiversity, ecosystem integrity and local communities. In the second chapter, the international development instruments are revisited with NBT in mind, in particular regarding the roles played by the Commission on Sustainable Development and the UN Conference on Trade and Development after the Rio Summit. The third chapter focuses on the work of the UN Environ-

ment Program (UNEP) on tourism. It discusses basic principles, voluntary initiatives, an environmental code of conduct, ecolabels, and guidelines for planning tourism in protected areas. It also addresses the role of UNEP in the World Summit on Sustainable Development and the achievements of the Convention on Biological Diversity in particular regarding the ecosystem approach. Part of the UNEP initiatives have been conducted in conjunction with the UN World Tourism Organization, but the point is hardly mentioned in the text under review.

In chapter five, Soleimanpour has carefully chosen forty-seven principles based on his review and analysis of existing proposals and broadly accepted principles (e.g., sovereignty, polluter pays, human rights, poverty alleviation...). Some of the most notable innovations of the Covenant he outlines in chapter 6 are the establishment of a national system of Nature-Based Tourism Areas (NBTAs) identified on specific criteria such as the ecosystem approach, and a national and international multi-stakeholder body (NMB) to serve as a participatory planning forum. Soleimanpour also stresses the importance of facilitating and enhancing the participation of indigenous people in all NBT processes and encourages a greater and more meaningful involvement and responsibility on the part of the tourism industry. He sets out a series of EIA procedures for the NBT developments, which should begin by a pre-assessment process. He suggests establishing NBT Awards and a Committee of Experts to facilitate the implementation of the Covenant.

The Draft Covenant on NBT proposed by Hadi Soleimanpour is very detailed and well illustrated by existing declarations and recommendations. And yet, one can wonder whether this agreement and new sets of guidelines will ever be implemented. Previous attempts at developing similar Covenants proved to be of limited interest to the different parties. Academics and students in the pursuit of their research program do mention them in their publications, but the tourism industry and indigenous people are hardly aware of these attempts. Possibly, if the tourism industry has shown little interest and public authorities have provided limited support so far it is, at least in part, because they were not actively involved in their preparation process. Hopefully, this comprehensive attempt will receive better attention.

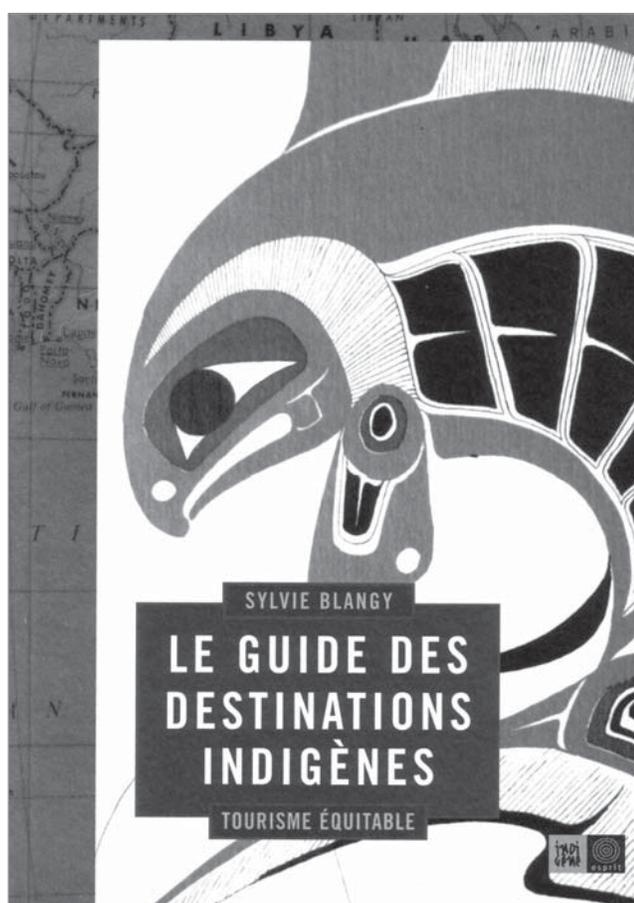
Soleimanpour's Draft Covenant should be of great interest to the IUCN Business and Biodiversity Unit and, in general, to all the members of CEESP and other Commissions interested in governance of natural resources, alternative livelihoods, pro-poor conservation, protected areas and the accountability of the private and public sectors.

Sylvie Blangy (sylvie.blangy@rogers.com) is currently a researcher at the Geography & Environmental Studies Department of Carleton University in Ottawa, funded on a European Marie Curie fellowship for 3 years. She is studying the role and impact of indigenous tourism on biodiversity and sustainable livelihoods. Sylvie has been a consultant in ecotourism for over 20 years. She is a board member of TIES— the International Ecotourism Society, and a long-time member of CEESP/TGER.

Le Guide des destinations indigènes

Edited by Sylvie Blangy

Indigènes éditions (1, Impasse Jules Guesde, 34080 Montpellier, France), 2006. 383 pp



Short review by Alain A. Grenier

Travel initiatives proposing to mix the values of fair tourism with those of ecological travel in natural settings are on the rise, with indigenous tourism initiatives receiving more attention. Yet, few (if any) attempt to list and describe the possible destinations and travel products offered in relation to indigenous people.

Le Guide des destinations indigènes (published in French) answers that specific need. Its author, Sylvie Blangy, has cumulated extensive experience of indigenous people and their home environments, over years of travel. Her guide is the product of her passion for both these people and their environments.

With the assistance of people she met over her travels, Blangy has compiled a list of 183 indigenous tourism initiatives spread over 60 countries, from nearly every region and climate. The guide illustrates the diversity of

travel products currently offered by native people. They cover different motivations, degrees of comfort and types of activities. These range from fishing or wildlife viewing to staying within a remote community, sharing the villagers' activities. Some of the products listed involve the hunting and killing of wild animals to feed participants, which some potential travelers may find challenging, according to their concept and perception of indigenous and ecological tourism.

The initiatives are small scale tourism, with many operators practicing environmental management, opting among other practices for a restricted number of participants. Some locations are more accessible than others. Most are little known on the international scale.

The destinations listed in the guide were selected according to many criteria, includ-

ing the originality of the destination, the authenticity of the contact provided by the community members and their capacity to use tourism to further development and to sustain their culture. At least half of the initiatives presented in the guide aim at financing different conservation projects including ecological restoration, the reintroduction of native species that have disappeared or the protection of endangered ones.

The book is organised in 180 sections (of countries and sub-regions), providing a general but remarkably good overview of the situation of indigenous people and tourism in each country listed. Each section is then supplemented by a tour of the initiatives and travel products offered by (or in relation with) indigenous people. The information provided in the book includes the localisation of the product, local cultural features, the type of excursions offered and contact people (including phone numbers and e-mail addresses). Some sections are more detailed than others, providing information about the recommended seasons to travel, clothing, weather conditions and prices to expect. A list of organisations working for the indigenous people discussed is also provided. In addition, every destination is illustrated by black and white photographs (1 to 3 per destination), which work as teasers for each destination and product proposed.

Some may see a contradiction in a book that makes "destinations" out of indigenous people, their localities, cultures and natural environments. Yet, all the tours presented in this book occur in communities which *have chosen* to host visitors. In addition to providing practical information about indigenous travel products, the book helps illustrate how indigenous tourism is not only about environmental and social duties but also about the pleasures of discovering another pace of life.

Alain A. Grenier, PhD (grenier.alain@uqam.ca), is a professor of nature tourism and sustainable development at Université du Québec à Montréal (UQAM) in the École des sciences de la gestion.

Visionaries of the 20th century. A Resurgence anthology

Edited by Satish Kumar and Freddie Whitefield,
Green Books, Foxhole, Dartington, Totnes, Devon, (United Kingdom), 2006. 224pp.

Short review by David Pitt

"Visionaries of the 20th Century" is an anthology which provides an excel-

lent, indispensable, introduction to the conservation— human rights interface, particularly the primordial right for

peace, including 100 of the key contemporary thinkers and activists from the last century. We are all familiar with *Resurgence* magazine which, from 1966, drew on seminal ideas of those like E. F. Scumacher who argued that "small is beautiful". *Resurgence* has provided a thoughtful forum for those who believe, as the editors put it, that "all wars on humans and on nature are ultimately futile" and has become the spiritual and artistic flagship of the green movement. *Resurgence* has consistently advocated a different peaceful world of mutuality, reciprocity and solidarity based on sustainability, spirituality and frugality in stark contrast to the world of consumerism, materialism and militarism, a world in which nature is no longer an enemy. Many of the visionaries were ignored at the time they wrote or worse, persecuted, imprisoned and tortured. But today there is a wide recognition of the need for sustainability and for global social and "earth" justice in a holistic world. Each of the articles is well written (with excellent photo portraits) often by those who will undoubtedly become the new generation of visionaries.

The biographies are divided into three groups of visionaries - ecological, social and spiritual. To give an idea of the diversity of approaches those included amongst the ecologists are Arne Naess, Vandana Shiva, Julia Butterfly Hill, Petra Kelly, Edward Goldsmith, Aldo Leopold, Masanobu Fukuoka, Wangari Maathai. The social visionaries start with Gandhi and Martin Luther King but also include Anita Roddick, Aung San Suu Kyi, Muhammad Yunus, John Maynard Keynes, Arundhati Roy, Rianne Eisler, Ivan Illich, Alber Schweitzer, Oscar Arias Sanchez. The spiritual visionaries come from most of the great faiths and feature such iconic figures as the Dalai Lama, Desmond Tutu, Tagore, Starhawk, etc., but also lesser known but very interesting figures such as Thomas Merton, Seyyed Hoosein Nasr and Kahlil Gibran.

The lives and works of 100 inspiring ecological, social and spiritual visionaries, from D.H. Lawrence to Gandhi, from Rachel Carson to Wangari Maathai

Visionaries of the 20th Century

A Resurgence Anthology



Edited by Satish Kumar and Freddie Whitefield

Of course there are other visionaries that could and should have been included. As the editors recognize, any list is subjective, and those associated with *Resurgence* are only a sample, even if the cutting edge. Starting to compile a list of visionaries for the 21st century, there might be much more "from below", from many more cultures, both traditional and newly emerging, as well as the multitudes of communities, not least thanks to the miracle of the Internet and the rage of blogging. Much more will come from women (only about one in four of the visionaries in this book are women) and from increasingly vocal young people.

Although looking back, the collection is very relevant for the future too. The 20th century was a time of ubiquitous war and violence not least against nature, a situation which continues today, indeed intensifies as the arms race again escalates, national, regional

and religious rivalries re-emerge demonizing each other, and multinationals dictate through branding and marketing, obliterating cultural and natural diversity as more and more rural ecosystems are exploited and destroyed by the megalopolis. Nature in the context of global warming is becoming a new apocalyptic devil. International bodies seem only to look on, weak and ineffective, and the scene seems more a reversion to the gun diplomacy and jingoism of 19th century than the sunlit uplands of peace promised after World War II. If this century, (which has not started well and is indeed for many a real disaster), is to do any better, the "ordinary" person certainly needs to be better informed, inspired, and more active. I think it was Einstein who said that if a small number (2 or 3%) were conscientious objectors (or refused to pay taxes), nations could not go to war. If consumers used their enormous purchasing power there could not be Coca-colonization. If citizens protested, especially now through the telecommunications revolution, abuses of conservation and human rights could not continue. But the lesson of this collection is not for confrontation, certainly not violence, but the need for a middle, conciliatory, soft, dialogical approach building bridges (or re-erecting them) even as Jonathon Porritt argues with big business. The bottom line is for an ecological as well as a more general pacifism. This book should be in every school and library lest we forget and repeat the mistakes of the past and so that we have the inspiration and ideas to build on, so as not to reinvent the wheel.

David Pitt (pittdelacure@bluewin.ch) is a member of IUCN/CEESP and is on the Executive Council of the Geneva International Peace Research Institute (GIPRI).

Sharing power—
learning by doing in co-management of
natural resources throughout the world

By Borrini-Feyerabend, G., M. Pimbert, M. T. Farvar, A. Kothari and Y. Renard,
IIED and IUCN/CEESP/CCMWG, Cenesta, Tehran, 2004. 461 pp.

Short review by Jacques Pollini

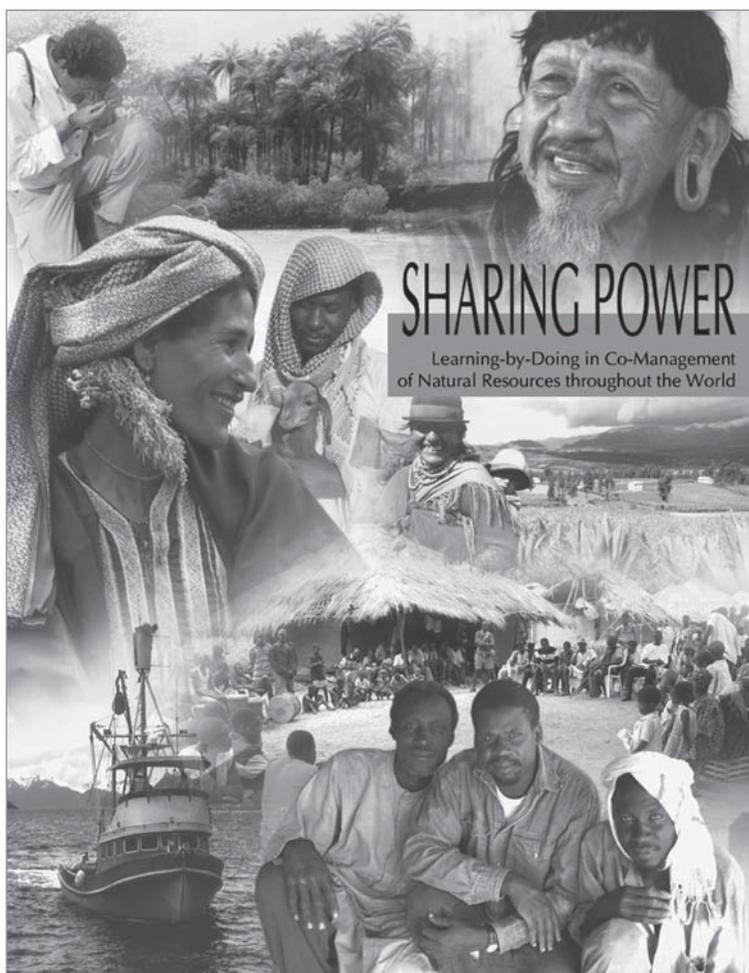
This book provides excellent guidelines for the implementation of co-management approaches for natural resources conservation and sustainable use. It proposes a toolkit for the identification of management issues and for the design, implementation and evaluation of co-management approaches from within

communities. It shows that centrally designed management policies often have adverse effects on local communities' livelihood, favor unequal resources appropriation, and sometimes lead to human rights violation. More than a guide for efficient resources management, this book is a strong advocate for the empowerment of local communities. It draws on political economy of natural resources management and raises essential issues such as the relationships between the local and the global, the legal and the legitimate, nature and culture, science and politics, and tradition and modernity.

This review aims to identify, beyond these qualities, the limits of this book in order to envision a possible next step for the improvement of natural resources management approaches while respecting communities' livelihoods. In order to achieve this, I propose to set the problematic of natural resources management in its largest possible frame, by envisioning two distinct levels.

The first level concerns the issue of unequal resource appropriation. Globalization and the development of markets favor the appropriation of resources by the most powerful actors and the marginalization of the powerless. Powerful actors often come from outside the areas where resources are found, while the powerless are often indigenous groups living in close proximity to, and directly dependent upon, localized natural resources. I call this dynamic colonization, in the

sense (not restricted to the case of relations between developed and developing countries) that a group of people settles or appropriates resources to the detriment of another group that settled before and was already using these resources.



The second level concerns resources utilization, independently of inequity aspects. Groups of people utilize the resources of their environment to satisfy their needs, while population growth forces these groups to create new modes of resource use. I call this dynamic development. Inquiry over long time periods is necessary to understand its impacts. Development and colonization are, however, not independent. Colonization can be seen as a development strategy adopted by a group in the detriment of another, when its resources become insufficient.

There are increasing evidences that colonization, or the appro-

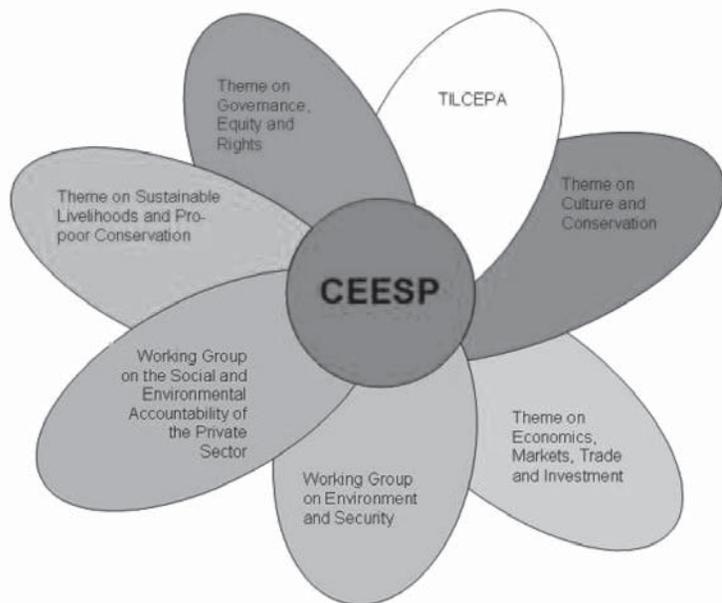
priation of resources by the most powerful groups, is a more important cause of natural resources degradation than the development of local societies. The transmigration programs in Indonesia and the colonization of the Amazonian basin provide good examples. For this reason the empowerment of indigenous groups, which can help them to resist to colonization by other groups, must be a central concern in all conservation programs. This book has the capacity to address the issue of empowerment in depth, which is not an easy task because conservation programs themselves are often a form of colonization.

However, even if these 'colonization issues' are solved, empowerment of local people will not necessarily solve the trade-off that could exist between satisfaction of conservation and development objectives. There is still no consensus about what constitutes sustainable development. At global level, it has been decided that biodiversity conservation is one of the conditions for sustainability. This objective is rarely regarded as essential by agricultural societies, which focus on resource use and see primary ecosystems as areas to be converted into agricultural land. The second level (local agricultural development) is hence not addressed in a satisfying manner by this book.

The book asserts for example that there are cases where "environmental sustainability and livelihood security need to be pursued together if they are pursued at all" (p.130). Many questions arise from this assertion and it is doubtful whether it is applicable in a wide range of situations. Livelihood securitization can lead to the appearance of new needs and the increase of investment capacity, resulting in the conversion of more forest land to agriculture. Environmental sustainability, on the other hand, usually requires restricting access to resources, with a cost at the level of livelihoods. Local communities can benefit from improved management in a context of colonization by outsiders, because the new rules are the only way to stop the appropriation of resources by these colonists. But in absence of colonization, unsustainable use can be a strategy for maintaining livelihoods. When a resource is depleted, another one can often be found or other strategies can be developed. The economic logic of local communities is often to adopt a succession of strategies, rather than to put in place a sustainable one. Resources are then sacrificed one by one in the name of development. In the context of agricultural frontiers, which are the areas where natural resources are put under higher pressures, the tradeoff between environmental sustainability and economical sustainability is obviously acute. Solving livelihood issues may not often solve natural resources management issues in such cases. The reasons why the two issues have to be solved together may be more ethical than technical.

The book further asserts, page 155, that "the most important result sought by a genuine co-management initiative is not for people to behave in tune with what some experts [...] believe is right for them, but for people to think, find agreement and act together on their own accord". In a context of generalized top-down approaches, still prevalent in conservation and development projects and programs, it is necessary to make this assertion. There are however essential issues, such as mass extinction and global warning, that cannot be perceived by local stakeholders, though the solution to these issues depends in part on the decisions of such stakeholders, which renders external expertise necessary.

CEESP Network Highlights



The flower petal model shown here illustrates how all of CEESP's Themes and Working Groups are linked through shared concerns and strong collaboration. As we continue to follow the mandate received at the 3rd IUCN World Conservation Congress in Bangkok (November 2004), the Executive Committee of CEESP and the members all over the world are undertaking innovative work at multiple levels at the interface of environmental, economic and socio-cultural arenas. A few highlights are shared below. As always, please visit us at <http://www.iucn.org/themes/ceesp/> for more information, including many recent publications.

Working Group on the Social and Environmental Accountability of the Private Sector (SEAPRISE)

Areas where oil companies and other extractive industries operate are also often areas of high biodiversity and low governance/ civil society capacity to engage with the companies. SEAPRISE works on capacity building of civil society and governments in these areas, and toward greater accountability of these industries.

Mining in Philippines. SEAPRISE participated in a fact-finding mission to the Philippines to assess the environmental and human rights impact of mining activities. The findings are published in a report¹ that was simultaneously launched in press meetings in Manila and London in January 2007. Their findings reveal the devastating effects of mining, including severe erosion, destruction of water catchments and marine environments, decreased food security, over 800 related extra-judicial killings... and virtually no economic gains for the country! Unfortunately the country government is keen on expanding rather than curtailing mining activities, which raises strong suspicions of corruptions and wrongdoing.

Assessment of war-related oil spill Lebanon. In August 2006, in collaboration with the Lebanese NGO Green Line and the WESCANA IUCN regional office (dealing with West Asia, Central Asia, and North Africa), SEAPRISE member Prof. Richard Steiner carried out a rapid environmental assessment of the war related oil spill in Lebanon. He prepared a report and conducted a follow up mission to Israel to discuss reparation measures with the offending government. The Theme on Environment and Security supported this work by offering a Report Addendum on legal implications.

Oil production in the Niger Delta. Throughout 2005 and 2006, supported by PRCM (Programme Régional de Conservation de la Zone Côtière et Marine de Afrique de l'Ouest), FIBA (International Foundation for the Banc d'Arguin), and WWF, SEAPRISE accompanied to Nigeria representatives from governments and civil society from Gambia, Guinea Bissau, Kenya, Mauritania, Mozambique, Senegal, and Tanzania. These people could see first hand the environmental and social impacts of oil production activities in the Niger delta and met with top officials and local residents. The visit dramatically raised their awareness about the need to prevent similar devastations in countries soon to become oil and gas producers in Africa.

Looking ahead, SEAPRISE hopes to further raise, and directly address, the many and profound human rights implications of the extractive industry impacts on which it engages.

Theme on Sustainable Livelihoods (TSL)

Forum for Food Sovereignty. From more than 80 countries, over 500 representatives of organizations of peasants and family farmers, artisanal fisherfolk, indigenous peoples, landless peoples, rural workers, migrants, pastoralists, forest communities, women, youth, consumers and environmental and urban movements gathered in the village of Nyéléni in Sélingué, Mali from 23 – 27 February 2007 in the name of the food sovereignty movement. They did so to share experience and strengthen the global movement. TSL co-chairs facilitated two of the five main workshops units and several CEESP members participated actively in them. The Forum provided an opportunity for partners across sectors to continue the rethinking of food and agriculture outside the dominant neo-liberal model.

GMOs Website. In response to a request by the IUCN Council, TSL has developed and launched a website [www.iucn.org/themes/ceesp/nogmo.htm] which links to information and action on genetically modified organisms (GMOs), including the IUCN policy/resolutions on GMOs, related IUCN activities, and links to external sources.

WAMIP General Assembly. TSL and the World Alliance of Mobile Indigenous Peoples (WAMIP) are organizing the first WAMIP General Assembly in Spain, September 2007, co-funded by the Spanish government and coinciding with the 9th Conference of the Parties to the UNCCD.

Strategic Direction on Governance, Communities, Equity, and Livelihood Rights in Relation to Protected Areas (TILCEPA)

The work of this joint Theme of CEESP and WCPA is closely linked to the work of TGER.

Protected Areas Governance. With the support and advocacy of TILCEPA and TGER, the IUCN governance matrix was approved at the categories summit in Almeria for incorporation into the revised IUCN Guidelines for Protected Areas (PA). This matrix helps clarify and provide a framework for identifying PA governance type,

as distinct from PA category.² At the WCC in Barcelona, a workshop is planned with the government of Catalonia to present an analysis of their PA system using the government matrix. Other governments that were present in Almeria will go through similar assessments and will likely present their results in Barcelona. The next step in the governance discussion is to look beyond Protected Areas, at the landscape level. The forthcoming IVth WCC is an opportunity to start reflection on this.

Community Conserved Areas. TILCEPA and TGER are currently conducting two studies of governance of biodiversity and CCAs (see the article on page 350)

Alerts. TILCEPA is supporting a number of alerts related to flagrant violation of rights of communities living within or close to protected areas, or communities whose CCAs are endangered by commercial interests. The co-chairs have recently written to the President of the Republic of Paraguay, requesting him to protect the Ayoreo People and their territory and reconsider the proposed deforestation of more than 23,857 ha of pristine forest in Amotocodie, northern Chaco .

Theme on Governance, Equity, and Rights (TGER)

Regional Learning Networks on Collaborative Management. Two learning networks are on-going with technical support provided by TGER members: one in South-East Asia, on co-management of protected areas with indigenous peoples, and the other in West Africa, focusing on co-management of marine protected areas. Each learning network has sites from different countries (Vietnam, Laos, Cambodia, The Philippines, Thailand, Indonesia, and Malaysia in South East Asia, and Mauritania, Senegal, Cap Vert, The Gambia, Guinea and Guinea Bissau in West Africa) has representatives from NGOs, indigenous peoples, and government. Groups from each participating site come together to compare experience and support each other in learning- a fact that has also managed to advance policy and practice by the pressure of positive example.

Conservation and Human Rights. In addition to this special issue of Policy Matters, TGER and its members and partners are coordinating a forthcoming Occasional Paper on conservation-related displacement, a concept paper on human rights approaches to conservation, a symposium on conservation and human rights at the 2007 Society for Conservation Biology Meeting, and a related field-based workshop in the Baviaanskloof protected area (South Africa).³

Co-Management practice and policy in China. CEESP members have been working in China to sustain a large scale pilot initiative (two township- eleven villages) on co-management of natural forests. They are now preparing to support policy innovations for the whole country.

Innovative training for PA management in Morocco. A new specialization option for PA managers is being piloted at the National School for Forest Engineers (ENFI) in Salé (Morocco). For the first time, engineers are trained in conservation issues, participatory processes and issues of PA governance.

Governance of Biodiversity in the South. (see the article on page 350)

Theme on Culture and Conservation (TCC)

Developing a Working Definition of Culture. TCC is working on a series of concept papers developing a working definition of culture and cultural policy for IUCN. The paradigm of cultural conservation is more and more part of IUCN and its new programme, and such a working definition will become increasingly important in that work.

New and forthcoming publications and tools. TCC members are working on a resource book on biocultural diversity and on rapid cultural impact assessment tools for Protected Areas. A TCC member edited a recently published collection entitled *Pacific Genes and Life Patents, Pacific Experiences & Analysis of the Commodification & Ownership of Life*.

Working Group on Environment and Security (E&S)

Forces for Sustainability Conference (Peace Palace). E&S, in partnership with the Institute for Environmental Security, and with the support of several other CEESP Themes and Groups, coordinated the *Forces for Sustainability Conference*, (March 2007, Peace Palace, the Hague). Here, CEESP members (in particular from SEAPRISE) and military and private sector representatives engaged in fruitful discussion and furthered efforts to increase coordination across sectors to address environmentally-related security issues.⁴

Theme on Environment, Markets, Trade and Investment (TEM TI)

The Chair of TEM TI is raising funds to launch the Theme's activities over the next three years. A partnership with the IUCN secretariat is being developed. TEM TI's core research project will focus on macroeconomic policies and practices and environmental change with a focus on the South American region. The Theme aims at producing and disseminating research results that advance the quality of the debate on economics and environment issues.

Notes

- 1 Doyle *et al.*, 2007.
- 2 For more information on this, see the Almeria Summit papers available from the IUCN/WCPA site and Borrini-Feyerabend *et al.*, 2006.
- 3 For the latter two events, we are grateful for the partnership with the International Institute for Environment and Development (IIED) and the South Africa's Cape Action for People and the Environment Programme (C.A.P.E.).
- 4 For more information, see www.envirosecurity.org/sustainability.

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- Doyle, C., C. Wicks and F. Nally, Mining in the Philippines Concerns and conflicts Report of a Fact-Finding Trip to the Philippines July-August 2006, Society of St. Columban, (West Midlands) UK, 2007. Available at http://www.iucn.org/themes/ceesp/Wkg_grp/Seaprise/Mining%20in%20the%20Philippines%20-%20Concerns%20and%20Conflicts.pdf (30 May 2007).

Governance of Biodiversity and Community Conserved Areas: new and on-going projects with CEESP's TGER and TILCEPA

Grazia Borrini-Feyerabend and Barbara Lassen

Governance of biodiversity is a relatively new—although rapidly expanding—field of interest in the conservation community. For instance, the 2003 World Parks Congress, the 2004 CBD Programme of Work on Protected Areas and the 2005 Congress on Marine Protected Areas paid special attention to governance, explored its applications and developed relevant recommendations and plans. Community Conserved Areas (CCAs) are among the most innovative concepts and areas of work that emerged out of these reflections. Paradoxically, they are very effective protected areas (the definition is demanding it) but possibly not legally recognized as such. How is it possible? CCAs comprise natural and/or modified ecosystems containing significant biodiversity values, ecological services and cultural value that have been conserved in a voluntary, self-directed way by indigenous peoples or local communities. Such communities have usually done so through customary laws, as only some have legal ownership or are recognized by the state as the legal managers of the natural resources.

Some CCAs were established centuries ago (some have over 1000 years of recorded history), others have recently evolved by taking advantage of new conditions or legislation. All share three basic characteristics. First, a strong bond linking a well defined community and a well-defined body of resources—a body that may have to do with culture, livelihoods, spiritual or other values. Second, the actual *de facto* capacity of the community to take decisions and implement those decisions regarding the management of the natural resources (what to do about them, what objectives to pursue, how to pursue them...). Third, the observation that the community management is successful in conserving biodiversity, possibly despite the other (cultural, socio-economic, spiritual, security-related, etc.) objectives that took precedence in the intention of the community itself. Remarkably, this makes the CCA definition more demanding than the IUCN or CBD definition of “protected area”, which refers to areas dedicated or managed for the conservation of biodiversity, but not necessarily successful at that...



Even in marine environments, sometimes considered the ecosystem where people act solely as “resource extractors”, one can find amazing examples of traditional values, care and effective conservation practices. (Courtesy Pierre Campredon)

While a few CCA examples may be said to be thriving, others face pressing threats from a variety of phenomena. Most of all, there is still a huge knowledge gap about where CCAs exist, what “types” exist, how do they function, what are their strengths and weaknesses, and how they can be supported for both conservation and community benefits. The IUCN Commission on Environmental, Economic and Social Policy (CEESP) has been seeking resources to study biodiversity governance, and in particular community conserved areas, for some time. At the end of 2006 it was successful in launching two initiatives that seek to both advance knowledge and positively influence policy. One of the initiatives is run by TGER—its Theme on Governance, Equity and Rights. The other is run by TILCEPA—its joint Theme with the World Commission on Protected Areas (WCPA).

Participatory action research on governance of biodiversity in nine countries of the South

CEESP/TGER is collaborating with a large, multi-partner research project exploring how governance processes and institutions can best contribute to the conservation of biodiversity. The project is EU-funded and works through a large partnership in Europe. Outside of Europe, CEESP is coordinating, and partially carrying out in a direct way, a total of nine participatory action research studies in specific sites rich in biodiversity. The sites are in Bolivia, Argentina, Indonesia, Nepal, Turkey, Mongolia, Iran, Niger and Ethiopia. Most of them are Community Conserved Areas and a few engage communities in some form of co-management and/or broad landscape conservation efforts. TGER’s coordination is stressing the active involvement of community members in the development of the studies, whose results will feed into a broad EU analysis and report. In the Fall 2007, a workshop among representatives from the Southern countries will draw lessons from the participatory action research and develop policy recommendations for EU aid policy and other international processes.



The Kaya forests, in Kenya, are an example of Community Conserved Areas. They were developed for security purposes but they are successful in conserving biodiversity. (Courtesy Grazia Borrini-Feyerabend)

Regional reviews of Community Conserved Areas

In cooperation with Swedbio, CEESP is promoting a number of regional reviews of Community Conserved Areas. The goal is to deepen the understanding of CCAs and their relevant needs and opportunities in varying historical/regional contexts. From that understanding, policy recommendations will be drawn and supported at various levels, in particular through the CBD Programme of Work on Protected Areas. While working on the above, CEESP/TILCEPA will also identify and support one or more CCA in need of urgent field-based support. So far, studies are being carried out in the following regions:

- ▶ Eastern Himalaya (including North-East India, Eastern Nepal, Bhutan, the Chittagong Hill Tracts of Bangladesh and Northern Burma (Myanmar))

- ▶ East Africa (Tanzania, Kenya, Rwanda, Congo Democratic Republic, Uganda)
- ▶ Southeast China (the biodiversity hotspot in NW Yunnan, NW Sichuan, Southeast of Tibet A.R, South of Qinghai and southwest of Gansu)
- ▶ The Arctic tundra region (Canada, Russia, Norway)
- ▶ Mesoamerica (with a particular focus on Mexico, Belize and Guatemala)

For more information on either of these initiatives, please contact Barbara Lassen (barbara@cenesta.org) and Grazia Borrini-Feyerabend (gbf@cenesta.org)



Nyéléni Forum for Food Sovereignty Sélingué, Mali - February 2007

From more than 80 countries, over 500 representatives of organizations of peasants/family farmers, artisanal fisherfolk, indigenous peoples, landless peoples, rural workers, migrants, pastoralists, forest communities, women, youth, consumers and environmental and urban movements gathered from 23 – 27 February 2007 in the village of Nyéléni (Sélingué, Mali) to share experiences and strengthen the global food sovereignty movement. What follows are a few extracts from the Synthesis Report of that gathering.

Nyéléni¹ was the inspiration for the name of our Forum for Food Sovereignty in Sélingué, Mali. Nyéléni was a legendary Malian peasant woman who farmed and fed her peoples well— she embodied food sovereignty through hard work, innovation and caring for her people. We, peasant farmers, pastoralists, fisherfolk, indigenous peoples, migrant workers, women and young people, who gathered at Nyéléni 2007 are food providers who are ready, able and willing to feed all the world's peoples. Our heritage as providers of food is critical to the future of humanity. This is especially so in the case of women and indigenous peoples who are historical creators of knowledge about food, agriculture and traditional aquaculture. But this heritage and our capacity to produce healthy, good and abundant food are being threatened and undermined by neo-liberalism and global capitalism.

We debated food sovereignty issues in order to deepen collective understanding, strengthen dialogue among and between sectors and interest groups, and formulate joint strategies and an action agenda. Our debates gave food providers as well as environmentalists, consumers and urban movements the strength and power to fight for food sovereignty in Mali, the rest of Africa and worldwide. Through our alliances, we can join together to preserve, recover and build on our knowledge in order to strengthen the essential capacity that leads to sustaining localised food systems. In realizing food sovereignty, we will also ensure the survival of our cultures, our peoples and the Earth.

Food sovereignty puts those who produce, distribute and need wholesome, local food at the heart of food, agricultural, livestock and fisheries systems and policies, rather than the demands of markets and corporations that reduce food to internationally tradable commodities and components. It offers a strategy to resist and dismantle this inequitable and unsustainable system that perversely results in both chronic under-nutrition and rapidly rising obesity. Food sovereignty includes the right to food – the right of peoples to healthy and culturally appropriate food produced through socially just and ecologically sensitive methods. It entails peoples' right to participate in decision making and define their own food, agriculture, livestock and fisheries systems. It defends the interests and inclusion of the next generation and supports new social relations free from oppression and inequality between men and women, peoples, racial groups and social classes. It promotes a genuine agrarian reform and defends access to, and the sharing of, productive territories free from the threat of privatisation and expulsion.

Food sovereignty defends the interests and the right to food, and to produce food, of peoples and communities, including those under occupation, in conflict zones, facing and/or recovering from disasters, as well as those who are socially and economically marginalised, such as *dalits*, indigenous peoples and migrant workers. Food sovereignty provides a policy framework for food, farming, pastoralism, fisheries and other food production, harvesting and gathering systems determined by local communities.



Picture 1. More than 500 representatives from more than 80 countries and a wide range of social movements gathered together in the village of Nyéléni in Sélingué, Mali to strengthen a global movement for food sovereignty.
(Courtesy Nahid Naghizadeh)

At Nyéléni 2007, we strengthened dialogue among and between sectors and interest groups. This was through the main work of the forum which was spent discussing seven themes related to food sovereignty: local markets and international trade; local knowledge and technology; access and control of natural resources; sharing territories; conflicts, occupation, and disasters; social conditions and forced migration; and production models. (Background papers on each of these topics were collaboratively developed by the social movements and



Picture 2. Instead of holding the conference in a hotel in the city, the village of Nyéléni was built and donated to the social movements of Mali for their future events using local labour and materials and traditional, ecologically sustainable architecture. (Courtesy Nahid Naghizadeh)

are available at <http://www.nyeleni2007.org/spip.php?rubrique18>).

...[W]e deepened our collective understanding of Food Sovereignty which:

1. Focuses on Food for People: Food sovereignty puts the right to sufficient, healthy and culturally appropriate food for all individuals, peoples and communities, including those who are hungry, under occupation, in conflict zones and marginalised, at the centre of food, agriculture, livestock and fisheries policies; and rejects the proposition that food is just another commodity or component for international agri-business.

2. Values Food Providers: Food sovereignty values and supports the contributions, and respects the rights, of women and men, peasants and small scale fami-

ly farmers, pastoralists, artisanal fisherfolk, forest dwellers, indigenous peoples and agricultural and fisheries workers, including migrants, who cultivate, grow, harvest and process food; and rejects those policies, actions and programmes that undervalue them, threaten their livelihoods and eliminate them.

3. Localises Food Systems: Food sovereignty brings food providers and consumers closer together; puts providers and consumers at the centre of decision-making on food issues; protects food providers from the dumping of food and food aid in local markets; protects consumers from poor quality and unhealthy food, inappropriate food aid and food tainted with genetically modified organisms; and resists governance structures, agreements and practices that depend on and promote unsustainable and inequitable international trade and give power to remote and unaccountable corporations.

4. Puts Control Locally: Food sovereignty places control over territory, land, grazing, water, seeds, livestock and fish populations on local food providers and respects their rights. They can use and share them in socially and environmentally sustainable ways which conserve diversity; it recognizes that local territories often cross geopolitical borders and ensures the right of local communities to inhabit and use their territories; it promotes positive interaction between food providers in different regions and territories and from different sectors that helps resolve internal conflicts or conflicts with local and national authorities; and rejects the privatisation of natural resources through laws, commercial contracts and intellectual property rights regimes.

5. Builds Knowledge and Skills: Food sovereignty builds on the skills and local knowledge of food providers and their local organisations that conserve, develop and manage localised food production and harvesting systems, developing appropriate research systems to support this and passing on this wisdom to future generations; and rejects technologies that undermine, threaten or contaminate these, e.g. genetic engineering.

6. Works with Nature: Food sovereignty uses the contributions of nature in diverse, low external input agroecological production and harvesting methods that maximise the contribution of ecosystems and improve resilience and adaptation, especially in the face of climate change; it seeks to heal the planet so that the planet may heal us; and, rejects methods that harm beneficial ecosystem functions, that depend on energy intensive monocultures and live-stock factories, destructive fishing practices and other industrialised production methods, which damage the environment and contribute to global warming.

The following joint strategies and action agenda to realise food sovereignty were developed, presented below in summary, based on actions to **promote the food sovereignty agenda, to resist policies and practices that undermine it and to strengthen the movement.**

We will **promote** strategies, policies and lifestyles that strengthen community control, ecological sustainability, local knowledge and autonomy, and traditional wisdoms to assert food sovereignty in all of its dimensions as well as our associated Rights. We will identify and strengthen existing autonomous practices that provide food sovereignty as well as push our governments to respect and protect our rights to food sovereignty.



Picture 3. Local women prepared the food for the participants using local ingredients and recipes and served in calabash dishes: food sovereignty in action!
(Courtesy Nahid Naghizadeh)

Local markets: we will assert the right of food providers and consumers to have autonomous control over local markets as a crucial space for food sovereignty.

Local knowledge: we will assert that local knowledge and cultural values are paths to realising food sovereignty and will identify local, collective, and diverse experiences and practices, as examples, recognising that they are ever changing and dynamic— not static— and gather strength through exchange and solidarity.

Agroecological production and harvesting: we will promote socially and environmentally sensitive production systems that can be controlled by local food providers.

Use of international instruments and programmes: we will assert food sovereignty and associated rights by utilising international legal instruments.

Agrarian reform and community control of territories: we will fight for a comprehensive genuine agrarian reform that upholds the rights of women, indigenous peoples, peasants, fisherfolk, workers, pastoralists, migrants and future generations and enables the coexistence of different communities in their territories.

We will **resist** the corporate-led global capitalist model and its institutions and policies that prevent communities from asserting and achieving food sovereignty.



Picture 4. Malian girls carrying local food products during the opening ceremony. In the background appears one of the messages of the conference: for an agriculture with peasants; for fishing with fisherfolk; for livestock with pastors! (Courtesy Ahmad Taheri)

This includes challenging government policies that facilitate corporate control of our food production and distribution, as well as taking direct

action against corporate practices.

International trade: we will combine fights against trade liberalisation with struggles to promote local production and markets and thus build food sovereignty.

Transnational corporations: we will fight against the corporate control of the food chain by reclaiming control over our territories, production, markets and the ways we use food.

Conflicts and occupation: we will join struggles against occupation and fight the walls and militarization of borders that splinter peoples and prevent their

access to local food and productive territories, recognising that conflicts and occupations present a serious threat to food sovereignty and that asserting food sovereignty is crucial for peoples and communities to survive and thrive under adverse conditions.

Toxic technology: we will continue to fight against genetically modified crops, animals, and trees; against industrial aquaculture; against cloned livestock; and against the irradiation of food.

Monocultures & agrofuels: we will mobilise and engage in international campaigns against the industrial production of agrofuels; these are often under the control of transnational corporations and have negative impacts on people and the environment.

Climate change: we will denounce industrial agriculture as a contributor to climate change and question the utility and effectiveness of carbon markets to reduce emissions and ensure climate justice.

Strengthen the movement: we will strengthen the movements for food sovereignty through mobilisation, alliance building, education, communication and joint action among movements throughout the world; and we will win.

Mobilisation: we will mobilise across sectors in our joint struggles against those governmental policies, corporations and institutions that prevent the realisation of food sovereignty.

Alliance building and strengthening our own movements: we will build the movement for food sovereignty by strengthening organisations, cooperatives, associations and networks, and building strategic alliances among diverse constituencies such as consumers, students, academics, health practitioners, religious communities, the environmental justice movement, water justice move-

ments and people affected by large dams, extractive industry, wars, occupation and disasters.

Education: we will promote political education in order to assert food sovereignty.

Communication: we will strengthen our own means of communication based on our cultures and local conditions, in order to counter corporate propaganda, challenge the globalised industrial food system and highlight good local experiences and knowledge.

Days of action: we will coordinate and participate in days of action that are organized and promoted by allied organizations, bringing a focus on food sovereignty and encouraging the participation of all constituencies, especially women.

Notes

- 1 Text is adapted by Maryam Rahmanian from the *Nyéleni 2007 Synthesis Report* (Forum for Food Sovereignty International Steering Committee, 2007)

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For more information on this event and its outcomes, including the Food Sovereignty Action Agenda discussed by sectors, interest groups, and regions represented at the Forum, please see <http://www.nyeleni2007.org> or contact contact@nyeleni2007.org.

Pour d'avantage d'informations concernant cet événement ainsi que d'autres documents en français, incluant l'Agenda d'Action de Souveraineté Alimentaire, voyez <http://www.nyeleni2007.org> ou contactez contact@nyeleni2007.org.

Para más información así que otros documentos en Español, incluyendo la Agenda de Acción de Soberanía Alimentaria, ver <http://www.nyeleni2007.org> o contactar contact@nyeleni2007.org

A Co-Management Learning Network builds bridges between protected areas and indigenous peoples in South East Asia!

Jeremy Ironside, Grazia Borrini Feyerabend, and Jannie Lasimbang

The Co-Management Learning Network (CMLN) was established in December 2005 to implement and exchange protected areas co-management (CM) experiences among seven pilot "learning sites" in seven countries of South East Asia (see table below). In light of the problems of 'coercive' approaches to protected area management, and of the strained relationships between indigenous communities and protected area authorities, this initiative promotes cooperation and mutual respect towards more effective and sustainable opportunities to conserve Southeast Asia's important biodiversity.

Co-management Learning Sites in South-East Asia

Country	Participating Site	Indigenous Communities
Indonesia	Kayan Mentarang National Park (KMNP)	Dayak (several groups)
Malaysia	Crocker Range Park (CRP)	Dusun and Murut
Thailand	Ob Luang National Park (OLNP)	Karen, Hmong, Khon Muang
Cambodia	Virachey National Park (VNP)	Brao, Kavet
Laos	Xe Piann National PA (XPNPA)	Brao, Jrouk Dak
Vietnam	Mu Cang Chai Species/Habitat Conservation Area (MCC SHCA)	Hmong
Philippines	Mt. Guiting-Guiting Natural Park (MGGNP)	Sibuyan Mangyan Tagabukid

The Co-management Learning Network is a partnership among “CM learning sites” engaged in similar processes towards shared governance (co-management) of protected areas. In Phase I of the initiative (December 2005 to June 2008) teams from each site— including government agency staff, indigenous peoples representatives and civil society organisations— are working towards:

- ▶ Supporting CM practice in each learning site and reflecting upon that practice in local participatory action research processes;
- ▶ Promoting mutual support and common learning within the regional CM network;
- ▶ Enhancing the capacity to develop and maintain co-management (policies, processes, agreements and institutions) in all the learning sites,
- ▶ Enhancing understanding, awareness and recognition of CM practices beyond the learning sites— in all concerned countries and in the region.

While co-management learning networks have been successfully implemented in other parts of the world, this is a new initiative for the South East Asia region. Acceptance of indigenous peoples' rights to participate in the management of protected areas varies greatly across the participating



Picture 1. The first regional meeting of the CMLN took place in Crocker Range National Park (Sabah, Malaysia) in March 2006. (Courtesy Grazia Borrini-Feyerabend)



Picture 2. Field visits help people recognise the commonalities and diversities of their issues. (Courtesy Grazia Borrini-Feyerabend)



Picture 3. Cultural pride is part of indigenous peoples' sense of identity.
(Courtesy Grazia Borrini-Feyerabend)



Picture 4. The exchange among the participants from different sites is intense
(Courtesy Grazia Borrini-Feyerabend)

countries. In the Philippines, for example, the Indigenous Peoples Rights Act of 1997 allows indigenous communities to claim their land ownership and resource management rights, and in some cases this has resulted in protected area authorities and local indigenous communities negotiating co-management agreements. In Indonesia, government decrees issued since 2002 have mandated the collaborative management of Kayan Mentarang National Park through a joint policy board, including the participation of an independent indigenous organization (FoMMA). This policy advance is slowly being transformed into concrete action on the ground. In other countries, the policy discussion and acceptance of CM is only in a budding stage and still lacks legal provisions for 'sharing power' in protected area management.

In the learning sites of the CMLN network, the rights and responsibilities to co-manage all or part of the protected areas are being defined in a variety of ways, including:

- ▶ Negotiating watershed management agreements in which upstream indigenous communities receive benefits for maintaining the health of the watershed supplying water to downstream communities (The Philippines);
- ▶ Negotiating, demarcating and developing sustainable resource use plans for community areas inside protected areas (Malaysia, Cambodia);
- ▶ Strengthening dialogue and cooperation between lowland and upland indigenous communities in watersheds, partially one included in a protected area (Thailand);
- ▶ Demonstrating the value of indigenous traditional knowledge for protected area management (Laos);
- ▶ Using pilot co-management activities for policy level advocacy (Vietnam); and
- ▶ Defining protocols for sharing management tasks and responsibilities, and establishing indigenous representative structures (Indonesia);

These experiences are the focus of participatory action research in each site, regularly exchanged and discussed in the network's regional workshops. The workshops are dedicated to mutual support and common learning among teams from each site. The teams include representatives of indigenous peoples, PA authorities and supporting civil society organisations. In addition, study tours are held between the sites, and technical support is provided through networks such as TGER and TILCEPA. The lessons learned in the CMLN are being documented and will be disseminated as the activities in each of the sites and the broader network develop and evolve. Reports on progress will be shared through the CMLN's own web site (available soon!).



Picture 5. The second regional meeting of the CMLN took place in Mu Cang Chai (Vietnam) in December 2006. (Courtesy Grazia Borrini-Feyerabend)

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Jeremy Ironside (jeremy@camintel.com) is the Project Coordinator of the Co Management Learning Network (Chaing Mai, Thailand) and a long time member of TGER. **Grazia Borrini Feyerabend** (gbf@cenesta.org) is Chair of TGER and Co-chair of TILCEPA. **Jannie Lasimbang** (aipp@loxinfo.co.th) is Secretary General of the Asia Indigenous Peoples Pact Foundation (Chaing Mai, Thailand) and a member of TGER.

Poverty Indicators for Protected Areas: Report from a workshop hosted by UNEP-WCMC in collaboration with the Poverty and Conservation Learning Group

Alessandra Giuliani

UNEP's World Conservation Monitoring Centre (WCMC) recently hosted an international workshop at its offices in Cambridge (UK) to explore the potential for developing a set of poverty indicators that could be associated with the World Database on Protected Areas. This workshop was intended to both share experience on a key poverty-con-



Picture 1. Group picture from the Vision 2020 workshop.
(Courtesy Edmund McManus)

servation issue (one of the objectives of the Poverty and Conservation Learning Group) and to feed into UNEP-WCMC's "Vision 2020" project – an initiative that is intended to evaluate the contribution that protected areas make to conservation and development, and how that contribution is evolving over time.

Protected areas (PAs) play a key role in conserving biodiversity. In recent decades, however, and especially in the last few years, they have come under increased scrutiny for their alleged negative impact on people living within or around them. The literature on protected area impacts is, however, quite patchy and often based on anecdotal evidence. Through the Vision 2020 project, UNEP-WCMC hopes to collect a body of objective evidence assessing the contribution of

PAs to biological diversity and their impact on communities, as well as the effectiveness with which such areas are managed.

The workshop brought together representatives from conservation and development NGOs from around the world interested in studying the impact of protected areas in more depth. The meeting had two key objectives: first, to review the current state of knowledge on methodologies for assessing the socio-economic impacts of PAs on local communities and, second, to explore the feasibility of and institutional partnerships necessary for assessing PAs' contribution to conservation and development goals.

The workshop started with a series of presentations from participants to frame the discussion - an exciting opportunity for all present to share experiences and lessons learnt on the linkages between poverty and PAs. The rest of the workshop evolved around breakout sessions and open discussions. Many stimulating debates took place during the two day meeting, owing to the outstanding level of expertise, goodwill, and commitment to the topic of all the participants. Fruitful discussions resulted in agreement on several key issues:

- ▶ the development of an internationally recognized set of criteria and methods to assess the governance process and well-being impact of protected areas is both desirable and timely;
- ▶ the first step towards the creation of such a set of criteria and methods is to undertake an in-depth analysis of indicators and methodologies that have been developed and utilised thus far in this field and to summarise the lessons learned;
- ▶ the development of such criteria and methods is a complex task and should be performed by a partnership of concerned organisations; and
- ▶ UNEP-WCMC is well situated to lead the process of partnership development and fundraising for this work.

More generally, the workshop confirmed the high level of interest currently present at the international level in the linkages between poverty and protected areas.

In the closing session, many participants expressed their personal or organisational

interest in maintaining involvement in the project. As an immediate next step, TILCEPA and TGER members agreed to take a lead in developing a toolkit of methodologies and indicators to assess the socio-economic impacts of PAs, in collaboration with UNEP-WCMC, the PCLG and others.

Alessandra Giuliani (pclg@iied.org) is the PCLG Research Assistant. Alessandra is a member of TGER and TILCEPA.

For more information about this workshop, the participants' list, and the Vision 2020 project concept, please visit UNEP-WCMC website at: <http://www.unep-wcmc.org/protectedAreas/dsp/Vision2020Index.htm> or contact Charles Besançon, the Project Coordinator (Charles.Besancon@unep-wcmc.org). For more information about the Poverty and Conservation Learning Group please visit our website at www.povertyandconservation.info or contact pclg@iied.org.

Amélioration des modes de vie et de l'équité par la foresterie communautaire : un nouveau projet de CIFOR

M. Kante Bocar and Bouda Henri-Noël

Les objectifs du millénaire pour le développement (OMD) constituent la référence pour les bailleurs de fond. Ces objectifs sont loin d'être atteints. La forêt est considérée comme une ressource pouvant contribuer à atteindre ces objectifs, car elle fonde des modes de vie et répond aux besoins de base des personnes en énergie, alimentation, santé, etc.

Les rencontres internationales concernant l'aménagement forestier durable, en particulier celles prenant place au sein du Forum des Nations Unies sur les Forêts (UNFF), attirent l'attention sur l'importance des produits forestiers non ligneux (PFNL) dans la réduction de la pauvreté. Un rapport 2005 de World Resources Institute (WRI) montre l'importance des PFNL dans la réduction de la pauvreté. Ainsi le NFP (National Forest Programme) Facility et PROFOR (un partenariat des bailleurs associé avec la Banque Mondiale) financent des projets de séminaire tendant à montrer la contribution des forêts dans l'aménagement forestier durable.

La gestion durable des forêts adopte aujourd'hui dans beaucoup de pays une approche de décentralisation et participation, censées substituer la méfiance à l'égard des populations locales par leur responsabilisation. Cette approche, qui répond à un souci de bonne gouvernance, soulève un vif intérêt au sein de CIFOR (Center for International Forestry Research), une organisation internationale bien connue dans le domaine de la recherche forestière. Dans le cadre de son programme sur la gouvernance forestière,

celui-ci a lancé avec d'autres partenaires une initiative sur les Droits et les Ressources (Rights and Resources Initiative), sous-tendue par le projet de recherche « Amélioration des moyens de subsistances et de l'équité dans la foresterie communautaire ». Ce projet de recherche vise à contribuer à l'objectif de réduction de la pauvreté par le moyen des ressources forestières. L'initiative est soutenue par un financement conjoint de la Fondation Ford et du CRDI (Centre de Recherche pour le Développement International).

Le projet « Amélioration des moyens d'existence et de l'équité dans la foresterie communautaire »

C'est de l'initiative « Resource Rights Initiative » que découle le projet « Amélioration des moyens d'existence et de l'équité dans la foresterie communautaire ». Ce projet met l'accent sur les droits et le bien-être des populations les plus vulnérables. L'objectif général du projet est d'appuyer les politiques, les stratégies, les processus institutionnels à divers niveaux ainsi que les pistes innovantes favorables aux pauvres et qui apportent une plus-value à la foresterie communautaire en respectant l'écologie durable, les bénéfices du bien-être et l'équité sociale en faveur des femmes et des autres groupes marginalisés dans les pays et sites sélectionnés. Les pays d'intervention du projet sont :

- ▶ en Asie: Inde, Laos, Philippines
- ▶ en Amérique Latine: Brésil, Bolivie, Guatemala, Nicaragua
- ▶ en Afrique: Burkina Faso, Cameroun et Ghana.

Les objectifs spécifiques de ce projet sont :

- ▶ identifier et répondre aux demandes spécifiques d'information et de renforcement de capacités ;
- ▶ renforcer les capacités institutionnelles pour la recherche, l'analyse, le suivi et le plaidoyer en faveur de la gestion durable des forêts ;
- ▶ identifier et développer les mécanismes pour promouvoir le dialogue effectif des acteurs ;
- ▶ renforcer les programmes et activités de sensibilisation en faveur de la gestion durable des forêts, initiés par les partenaires et autres organisations.

Pour atteindre ces objectifs, le projet prévoit les activités suivantes à réaliser :

- ▶ mise en place d'un réseau de partenaires intervenant dans la foresterie communautaire ;
- ▶ mise en place d'un comité de pilotage et tenue de rencontres périodiques ;
- ▶ sélection des sites d'interventions ;
- ▶ identification des besoins de formation des communautés et de renforcement des capacités des partenaires ;
- ▶ organisations de rencontres des acteurs de la foresterie communautaire en vue d'échanger sur les démarches de plaidoirie en faveur de la gestion durable des forêts
- ▶ réunions de consultation des partenaires sur les rapports produits ;
- ▶ séminaires avec les communautés ;
- ▶ rédaction de rapports et campagnes de diffusion.

Ces différentes activités doivent aboutir aux produits suivants :

- ▶ rapport national de synthèse final ;
- ▶ renforcement des compétences et capacités des partenaires locaux ;
- ▶ appui au dialogue et à la communication entre les multiples acteurs ;

- ▶ diffusion des résultats du projet à travers les médias et les canaux de prise de décision.

Ainsi ce projet de recherche revêt une logique participative et cherche à avoir un impact durable sur les différents partenaires, avec répartition des responsabilités entre eux.

La répartition des responsabilités entre les partenaires

CIFOR adopte une approche collaborative dans la recherche et développe des partenariats dans divers secteurs et avec diverses catégories de structures (municipalités, universités, organismes de recherche et de formation, ONG régionales ou locales, groupes de base et fédérations tels que les groupements de femmes ou les communautés locales, propriétaires de forêts et associations d'exploitants). Ces différents partenaires sont sélectionnés sur la base de leur expérience ou de leur intérêt pour la promotion des politiques favorables aux plus démunis, les mécanismes institutionnels, la participation des acteurs à la base et les programmes relatifs à la foresterie communautaire et à la réduction de la pauvreté.

Dans le cadre du projet, les partenaires nationaux seront réunis au sein d'un comité de pilotage. CIFOR jouera surtout un rôle de facilitateur. Les partenaires décideront en commun de la méthodologie de recherche et se répartiront les tâches. Ils auront aussi la faculté de proposer des sites de recherches qui seront soumis aux critères de sélection des sites définis par CIFOR et ses partenaires stratégiques.

Les critères de sélection des sites

Au maximum, trois sites seront sélectionnés dans chaque pays par CIFOR, et leur sélection tiendra compte de l'existence de processus organisationnels et de production relatifs au foncier, aux systèmes de gestion collective des forêts, aux stratégies de développement, et aux impacts et implications institutionnels. Les critères de sélection incluent :

- ▶ la demande et l'intérêt pour la foresterie communautaire par les populations locales (particulièrement les groupes les plus vulnérables), les organisations non gouvernementales, les organisations de recherche et les structures administratives compétentes pour le ressort territorial des sites ;
- ▶ l'existence de problématiques non résolues dans la recherche ou de priorités dégagées dans des études antérieures ;
- ▶ l'importance des forêts sur les revenus des exploitants locaux ;
- ▶ l'existence de conflits entre les exploitants et/ou d'opportunités de partenariat et de collaboration entre les multiples acteurs.

Conclusion

Le projet de recherche « Amélioration des moyens d'existence et de l'équité dans la foresterie communautaire » s'inscrit dans le sillage des objectifs du millénaire pour le développement et la démarche participative lui permet d'impliquer les partenaires dès le début de la réflexion et de la mise en œuvre au niveau national. Les résultats devant être produits par cette recherche devraient bénéficier des multiples acteurs dans le domaine de la foresterie communautaire.

M. Kante Bocar Oumar (bokante@gmail.com) est juriste de formation. Dans le cadre d'un mémoire de DEA, il a travaillé sur « la protection nationale du patrimoine mondial au Sénégal ». Il est actuellement inscrit en thèse à l'École doctorale de droit public et fiscal de l'Université Paris 1 Panthéon Sorbonne, en France. Parallèlement il travaille au bureau de l'Afrique de l'Ouest de CIFOR comme cadre associé au programme Gouvernance forestière. **Bouda Henri-Noël** (h.bouda@cgiar.org) est forestier, chercheur associé au bureau régional du CIFOR en Afrique de l'Ouest. Il s'occupe depuis 2003 des thèmes de recherche relatifs à la décentralisation et la gestion des ressources naturelles. Il partage son temps entre le programme "Forêts et Gouvernance" et le programme "Forêts et Moyens de Subsistance".

Declaración oficial de Chake Ñuha - South American farmers' movements reject biofuels

An Introduction by Simone Lovera

Concern about the existing and potential negative impacts of biofuels (or rather, agrofuels as social movements prefer to call them) is rising, and not only amongst environmental NGOs. At a seminar on agrofuels that took place in April 2007 in Asunción, Paraguay, the most representative Paraguayan farmers' movements and a large number of NGOs adopted a joint statement that rejects what is called the "trap" of agrofuels. The statement warns that the large-scale production of agrofuels under the current agro-industrial model will strongly exacerbate existing problems related to the export-oriented production of soy and other monocultures, including rural unemployment and depopulation; contamination and degradation of soils; watersheds, deforestation, biodiversity destruction; the introduction of genetically modified crops; and an increase in health problems related to pesticide intoxication. Similar concerns were raised at an informal strategy meeting of Latin American NGOs and farmers' organizations that took place at the occasion of an international conference on the impacts of Eucalyptus plantations organized by Via Campesina-Brazil in April. What follows is the Paraguayan statement, in Spanish and English respectively.

Declaración oficial de Chake Ñuha— Seminario Nacional sobre las trampas del agrocombustible y los servicios ambientales en el Paraguay

Paraguay se ha puesto como meta el exportar agrocombustibles a corto plazo. Los planes son exportar al menos 50 millones de dólares en el término de cuatro años, y simultáneamente dejar de importar por lo menos 150 millones de dólares de carburantes fósiles en el mismo período. Según ciertas investigaciones científicas este cálculo no sale; investigadores como Pimentel¹ afirman una ecuación energética negativa en la producción de agrocombustibles porque necesitan más insumos fósiles para producción, elaboración y transporte que emiten después en la combustión en el motor del coche.



Picture 1. Soya crop expansion is causing deforestation in the district of San Pedro, Paraguay (Courtesy Simone Lovera)

El auge de la superficie cultivada con plantas energéticas solo se puede realizar a través de una expansión exponencial de monocultivos en gran escala a cuenta de la tala de los remanentes del bosque, sustitución de cultivos ya existentes o expulsión de pequeños productores campesinos e indígenas. Esta expansión de por sí significa más consumo de combustibles fósiles y emisión de dióxido de

carbono de lo que se espera generar y ahorrar con los agrocombustibles.

La expansión del monocultivo es la causa directa de la grave situación que vive actualmente la mayoría del pueblo paraguayo, con una economía volcada a la exportación de soja forrajera, con un costo en salud de miles de personas contaminadas, la casi desaparición del Bosque Atlántico con la consecuente pérdida de biodiversidad, la disminución del empleo rural y la pérdida de la cultura indígena y campesina, un constante éxodo del campo a la ciudad donde los emigrantes rurales se enfrentan a la miseria y el desempleo. Las cifras de crecimiento macroeconómico no significan una mejora de las condiciones de vida de la mayoría si no el enriquecimiento desmedido de una delgada capa social egoísta y sus aliados transnacionales.

Planteamos un rechazo a todas las medidas políticas y económicas que promueven el desarrollo de agrocombustibles y la expansión de monocultivos de gran escala:

1. Rechazamos la renovación de la ley de biocombustibles que solo significa alivios fiscales para que las transnacionales instalen la infraestructura necesaria para profundizar el saqueo de nuestros Recursos Naturales. Esta nueva industria no implica ningún progreso para la población, repite el esquema de los silos de soja transgénica, son industrias sin trabajadores que se alimentan de un agro sin agricultores. Tal como el modelo sojero que se ha expandido sin contribuir a las mayorías, ahora Paraguay se vende a los nuevos agronegocios energéticos con la presión fiscal más baja de la región y ofreciendo sin mayores escrúpulos, los remanentes de bosques y las tierras de las comunidades campesinas e indígenas.
2. Denunciamos la "Alianza del Etanol" y la propuesta de que Paraguay suministre al alcooducto brasileño por ser este un proyecto que tendrá graves consecuencias en la población y el medio ambiente. Esta alianza estratégica con el Brasil en la producción de alcohol carburante, es para la exportación a EE.UU., Europa y Japón. Los acuerdos económicos sobre agrocombustibles de Paraguay con EEUU y la Unión Europea están en la misma línea.
3. Asimismo denunciamos el Primer Congreso Americano de Biocombustibles a realizarse entre el 10-12 de Mayo en Buenos Aires, Argentina,² donde participarán el ex vicepresidente de los Estados Unidos, Al Gore; el ex presidente de Colombia, Andrés Pastrana; el ex Embajador de Estados Unidos en Chile, Gabriel Guerra Mondragón y Alberto Moreno, director ejecutivo del Banco Interamericano de Desarrollo (BID). Este evento parece ser la presala del remate de los recién inaugurados fondos del BID, fondos que se estiman pueden llegar a un monto de US\$ 200.000 millones para aprovechar y dominar la producción de los agrocombustibles. El mismo BID junto con el gobierno de Brasil estrechamente ligado al empresariado paulista y de los EEUU aunarán este fondo.
4. No se reconoce que estas estrategias implican inherentemente expansión de infraestructura de comunicación, tales como carreteras, puertos, ductos etc que promoverán mayor deforestación y no resolverán los obstáculos de comercialización y aislamiento que sufren los campesinos e indígenas paraguayos. Esta expansión de infraestructura implica la concreción del mega proyecto del IIRSA (Iniciativa para la Integración de la Infraestructura Regional Surameri-

cana).

5. Este desarrollo de mercado no es para resolver la pobreza del país ni para aliviar el cambio climático, aspira esencialmente a abastecer el nuevo mercado de la industria automotriz del norte especializado en agrocombustibles y tampoco resuelve la dependencia del Paraguay de importaciones de combustibles fósiles.
6. Asimismo, rechazamos todas las propuestas de implementación de servicios ambientales por que son estrategias maquilladas para expropiarse de nuestros recursos naturales y territorios.

Nuestra propuesta es:

1. Que las políticas públicas favorezcan la permanencia de las comunidades rurales e indígenas, apostando por su desarrollo comunitario y territorial con una reforma agraria integral y la recuperación de la Soberanía Nacional (Alimentaria, Territorial y Cultural) como eje principal de la democracia de nuestra sociedad.
2. Que en vez de promover la producción a gran escala de agrocombustibles, se planteen medidas serias para asegurar la Soberanía Alimentaria y Energética en América Latina con medidas de disminución de consumo de energía en el Norte a la vez que se aseguren mejores condiciones de abastecimiento en el Sur y se apueste por el arraigo y la repoblación del campo.
3. Exigimos una moratoria global para los monocultivos de agrocombustibles y el comercio internacional de agrocombustibles, incluyendo en estos el comercio de bonos de carbono. Requerimos de una moratoria para evaluar las potencialidades y los peligros de este desarrollo, denunciarnos que somos víctimas de la consecuencia de los monocultivos industrializados y tememos que el mercado de agrocombustibles pueda producir consecuencias aun más catastróficas. Entendemos que el fenómeno del cambio climático requiere medidas urgentes, pero estas inevitablemente tienen que primeramente ser resueltas en el nivel de consumo de los países del Norte y no a través de potenciar el Modelo Agroexportador y generar mas presión sobre nuestra tierra y nuestra población.

Official Declaration of Chake Ñuhá on the Agro-fuels and Environmental Services Traps— Asunción, Paraguay, 24 April 2007

Paraguay has set a short term goal of exporting agro-fuels. The plan is to export at least 50 million dollars worth of agro-fuels in the next four years and in the same time frame to stop importing at least 150 million dollars worth of fossil fuels. However, according to scientific research, the math of this proposal does not add up. Researchers like Pimentel³ argue that the net result of the energetic equation for agro-fuel production would be negative, not positive, because more fossil fuels are needed for production, processing and transportation than would be conserved by burning agro-fuels instead of fossil fuels to power a car.

Furthermore, in order to increase the cultivation surface dedicated to energy plants, large scale monocultures will be exponentially expanded. This expansion would entail cutting down the remaining forests, substituting current crops and forcing the eviction of small farmers and indigenous peoples. Expanding agro-fuel

monocultures also requires more fossil fuel consumption and releases more carbon dioxide emissions than the agro-fuels hypothetically produced and the emissions hypothetically avoided. The expansion of monocultures is the direct cause of the dire situation that the vast majority of the Paraguayan people endure. It is a pillar of the soy feed export economy which destroys the health of thousands of people intoxicated by soy plantation fumigations, promotes the clear cutting of the Atlantic Forest, the corresponding loss of biodiversity, causes the loss of rural jobs and the loss of the cultures of indigenous peoples and small farmers, as well as the constant exodus from the countryside to the city where the rural emigrants face unemployment and misery. The statistics of macroeconomic growth do not mean that there is an improvement in the living condition of the majority, but rather indicate the disproportionate accumulation of wealth of a tiny oligarchy and its transnational allies.

We reject all policy and economic measures that promote the development of agro-fuels and the expansion of large scale monocultures:

1. We reject the reform of the biofuels law which will only give tax breaks to transnational companies for putting in place the infrastructure needed to accentuate the pillaging of our natural resources. This new industry does not bring any progress to the people. It just duplicates the GMO soy silos paradigm, that is to say that it is an industry without workers that is based on agriculture without agricultural workers. Just like it did with the soy model which has not brought any benefits to the majority of the population, Paraguay is selling out to the new agro-energy business offering the greatest tax incentives in the region and, with nary a twinge of conscience, offering up the last remaining forests and the lands and territories of indigenous peoples and small farmers.
2. We denounce the "Ethanol Alliance" and the proposal whereby Paraguay will supply the Brazilian "Alcoholoduct" because they will have grave consequences for the people and environment. This strategic alliance with Brazil for carburant alcohol production is for exporting to the U.S.A., Europe and Japan. The economic agreement between Paraguay and the U.S.A. and the European Union on agro-fuels are drawn up in similar terms.
3. We also denounce the First American Congress on Biofuels to be held May 10th to 12th in Buenos Aires, Argentina with the participation of a former vice-president of the United States, Al Gore; the former president of Colombia, Andrés Pastrana; the former U.S. Ambassador to Chile, Gabriel Guerra Mondragón, and Alberto Moreno, Executive Director of the Inter-American Development Bank (IDB). This event seems like a pep rally for the recently approved IDB funding that is estimated at something like USD 200 billion to control and shape agro-fuel production. The IDB in conjunction with the Brazilian Government which is closely tied to a Sao Paulo business community and the European Union will administer this fund.
4. There is no acknowledgement that these strategies necessarily include expanding communication infrastructure, like highways, ports, pipelines, etc, that will cause greater deforestation and will not remove the obstacles faced by Paraguayan small farmers and indigenous peoples for marketing their products nor will it mitigate their isolation. This infrastructure expansion is part of the implementation of the IIRSA mega-project (Initiative for the Integration of South

American Regional Infrastructure).

5. The development of this agrofuel market is not intended to help diminish the poverty of the country nor mitigate climate change, nor lessen Paraguay's dependence on fossil fuels. Rather it aspires to supply the new agrofuels market of the Northern auto-industry.
6. Furthermore, we reject all proposals for implementing environmental services schemes which are thinly disguised strategies for expropriating our natural resources and territories.

Our proposal is:

That public policies promote the permanence and well-being of rural and indigenous communities by promoting community and territorial development as part of an integral agrarian reform and the recuperation of National Sovereignty (including Food, Territorial and Cultural Sovereignty) as the principal axis of the democracy of our society.

Instead of promoting agro-fuel production, we need sound measures for ensuring Food and Energy Sovereignty in America Latina as well as measures for diminishing energy consumption in the North and better energy supply in the South and special efforts to support rural communities' permanence and the repopulation of the countryside.

We demand a worldwide moratorium on agro-fuels monocultures and the international trade in agro-fuels, including the trade in carbon credits. We need a moratorium to evaluate the potential impact and the dangers of this market. We denounce that we are victims of the adverse impacts of industrialized monocultures and that we fear that the bio-fuel market could result in even more catastrophic consequences. We understand that the climate change phenomenon requires swift responses. But climate change mitigation strategies have to focus on decreasing the consumption of the North and must not hinge on promoting agro-export models that put the screws on our land and peoples.

Organizaciones firmantes:

ALTER VIDA, ASAGRAPA, BASE IS, CCDA, CEIDRA, CMB, CNOCIP, CONAMURI, Federación de Pueblos Guaraníes, GRR (Arg), IDECO, Iniciativa Paraguaya de Integración de los Pueblos, MAP, MCNOC, ONAC, SEPA, SERPAJ, PY, SOBREVIVENCIA/Friends of the Earth-Paraguay, Universidad Nacional de Pilar

Notes

- 1 <http://www.news.cornell.edu/stories/July05/ethanol.toocostly.ssl.html>
- 2 Un evento que pretende perfilarse "la principal plataforma de intercambio de ideas, tendencias y proyectos en el sector emergente de los biocombustibles. Se analizarán proyectos ya en curso en América y Europa, así como la manera de replicarlos e incluso optimizarlos en América Latina."
http://www.biofuelscongress.org/index_esp.asp
- 3 A proposed pipeline for ethanol transport

Simone Lovera (simonelovera@yahoo.com) is managing coordinator of the Global Forest Coalition, a worldwide coalition of Indigenous Peoples' Organizations and NGOs promoting rights-based forest conservation policies. She also works as a volunteer forest campaigner at Sobrevivencia/Friends of the Earth-Paraguay.

CEESP STEERING COMMITTEE 2005-2008

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Michel Pimbert (michel.Pimbert@iied.org) International Institute for Environment and Development (IIED), Principal Associate Sustainable Agriculture and Livelihood Programme	Vice Chair for the Theme on Sustainable Livelihoods (TSL)	UK / France
Elizabeth Reichel-Dolmatoff (elizareichel@yahoo.fr) Independent Consultant	Vice Chair for the Theme on Culture and Conservation (TCC)	Colombia/ Switzerland
Clive Wicks (Clive.Wicks@wicksfamily.plus.com) Independent Consultant	Vice Chair for the Working Group on Social and Environmental Accountability of the Private Sector (SEAPRISE)	UK
Senior Advisors and Regional Vice Chairs		
Alejandro Argumedo (ipbn@web.net) The Indigenous Peoples' Biodiversity Network (IPBN), Coordinator	Vice Chair for Latin America; Senior Advisor for Indigenous Peoples Policy	Peru
Li Bo (qianhushan@gmail.com) Centre for Biodiversity and Indigenous Knowledge(CBIK), Affiliate	Vice Chair for China	China
JoJi Cariño (tongtong@gn.apc.org) Tebtebba Foundation, Indigenous Policy Adviser and European Desk Coordinator	Senior Advisor for Indigenous Peoples Policy	Philippines/ UK

Richard Cellarius (richard@cellarius.org) Sierra Club (USA), Vice President for International Affairs	Vice Chair for North America	USA
Michael Cernea (Mcernea@worldbank.org) George Washington University, Research Professor of Anthropology and International Affairs, Senior Adviser for GEF/ World Bank	Senior Advisor for Social Policy	Romania/ USA
Ali Darwish (ali@greenline.org.lb) Green Line Association, President	Vice Chair for the Arab Region	Lebanon
Chachu Ganya (cganya@pisp.org) Pastoralist Integrated Support Program (PISP) Executive Director; and World Alliance of Mobile Indigenous Peoples (WAMIP) Member, International Coordinating Council	Vice Chair for the East Africa; Senior Advisor for Indigenous Peoples Policy	Kenya
Augusta Henriques (augusta_sh@hotmail.com) Tiniguena (This Land is Ours), Secretary General	Vice Chair for West Africa	Guinea Bissau
Ricardo Melendez (melendez@ictsd.ch) International Centre for Trade and Sustainable Development (ICTSD), Executive Director	Senior Advisor for Trade and the Environment	Colombia/ Switzerland
Jurgenne Primavera (nykjprim@skyinet.net) Aquaculture Department of the Southeast Asian Fisheries Development Centre, Senior Scientist	Vice Chair for South East Asia	The Philippines
Marcela Villarreal (marcela.villarreal@fao.org) UN Food and Agriculture Organisation (FAO), Director of Gender and Population Division	Senior Advisor for Gender and Population Policy	Colombia/ Italy
Jacques Weber (weber@linogent.cirad.fr) (weber@mnhn.fr) Institut français de la biodiversité, Director	Vice Chair for Europe	France
Afriyie Allan Williams (landnetcaribbean@tstt.net.tt) Independent Consultant	Vice Chair for The Caribbean	Guyana/ Trinidad
CEESP Staff Contact Persons		
Tasneem Balasinorwala (tilcepa@vsnl.net); +91 20 25654239	Member Co-ordinating Team TILCEPA	India
Jessica Campese (jessica@cenesta.org)	TGER Focal Point for Conservation and Human Rights	USA/ Switzerland
Ron Kingham (rkingham@envirosecurity.org)	Executive Officer, Working Group on Environment and Security	The Netherlands
Barbara Lassen (barbara@cenesta.org)	Executive Officer, Theme on Governance, Equity and Rights (TGER)	Germany/ Switzerland
Nastaran Moossavi (nastaran@cenesta.org); +98 21 66-972-973	CEESP Executive Officer	Iran
Nahid Naqizadeh (nahid@cenesta.org); +98 21 66-972-973	Associate Programme Officer, TGER	Iran
Aghaghia Rahimzadeh (aghaghia@cenesta.org)	Programme Officer Theme on Sustainable Livelihoods (TSL)	Iran/ USA
Maryam Rahmanian (maryam@cenesta.org)	CEESP Associate Executive Officer	Iran
CEESP Main Office C/o CENESTA: Centre for Sustainable Development & Environment 142 Azerbaijan Avenue, 13169 Tehran, Iran Telephone: +98 21 66-972-973 Fax: +98 21 66-400-811 Email: ceesp@iucn.org; CEESP web site: http://www.iucn.org/themes/ceesp		
IUCN Secretariat Focal Points Gonzalo Oviedo , IUCN Senior Advisor, Social Policy (gonzalo.oviedoa@iucn.org); telephone: ++41 22 999 0287 Joshua Bishop , IUCN Senior Advisor, Economic Policy (Joshua.bishop@iucn.org); telephone: ++41 22 999 0266		

Policy Matters is the journal of the IUCN Commission on Environmental, Economic and Social Policy (CEESP). It is published approximately twice a year and distributed to CEESP's 1000 members and the IUCN Secretariat offices, as well as at relevant conferences and meetings throughout the world. When possible, it is published concurrently with major global events as a thematic contribution to them and to the civil society meetings around them.

IUCN, The World Conservation Union, is a unique Union of members from some 170 countries including nearly 90 States, over 200 government agencies, and some 1000 NGOs. Over 10,000 internationally-recognised scientists and experts from more than 180 countries volunteer their services to its six global Commissions. The vision of IUCN is "A just world that values and conserves nature".

IUCN's six Commissions are principal sources of guidance on conservation knowledge, policy and technical advice and are co-implementers of the IUCN programme. The Commissions are autonomous networks of expert volunteers entrusted by the World Conservation Congress to develop and advance the institutional knowledge, experience and objectives of IUCN.

CEESP, the IUCN Commission on Environmental, Economic and Social Policy, is an interdisciplinary network of professionals whose mission is to act as a source of advice on the environmental, economic, social and cultural factors that affect natural resources and bio-cultural diversity and to provide guidance and support towards effective policies and practices in environmental conservation and sustainable development. Following the mandate approved by the **3rd World Conservation Congress** in Bangkok, November 2004, CEESP contributes to the IUCN Programme and Mission with particular reference to seven thematic areas:

- ▶ Theme on Governance of Natural Resources, Equity and Rights (**TGER**),
- ▶ Theme on Sustainable Livelihoods (**TSL**, including poverty elimination and biodiversity conservation)
- ▶ Working Group on Environment and Security (**E&S**)
- ▶ Theme on Economics, Markets, Trade and Investments (**TEMTI**)
- ▶ Theme on Culture and Conservation (**TCC**)
- ▶ Working Group on the Social and Environmental Accountability of the Private Sector (**SEAPRISE**)
- ▶ Theme on Indigenous Peoples & Local Communities, Equity, and Protected Areas (**TILCEPA**, joint between CEESP and the IUCN World Commission for Protected Areas)

Each issue of **Policy Matters** focuses on a theme of particular importance to our members and is edited by one or more of our Themes/working groups focusing on the seven thematic areas. Past issues have focused on themes such as "Poverty, Wealth and Conservation", "Community Empowerment for Conservation", "Collaborative Management and Sustainable Livelihoods", "Trade and Environment", "Environment and Security" and the Caspian Sturgeon, including issues of trade, conflict, co-management, and sustainable livelihoods for communities of the Caspian Sea ("The Sturgeon" issue). For more information about CEESP and to view or download past issues of **Policy Matters**, please visit our website: <http://www.iucn.org/themes/ceesp>.

CEESP is hosted by the Iranian Centre for Sustainable Development and Environment (**CENESTA**). For more information about CENESTA please visit <http://www.cenesta.org>. Please send comments or queries to ceesp@iucn.org. We look forward to hearing from you!

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