

RECOGNITION AND SUPPORT OF ICCAs IN INDIA

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Case study for:
RECOGNISING AND SUPPORTING
TERRITORIES AND AREAS CONSERVED BY INDIGENOUS PEOPLES
AND LOCAL COMMUNITIES
Global Overview and National Case Studies

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List of acronyms

BDA	Biological Diversity Act
BHS	Biodiversity Heritage Sites
BMC	Biodiversity Management Committee
BNHS	Bombay Natural History Society

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BRT	Biligiri Rangaswamy Temple
CBD	Convention on Biological Diversity
CCA	Community Conserved Areas
CFM	Community Forest Management
CFR	Community Forestry Rights
Con. Res.	Conservation Reserve
CRZ	Coastal Regulation Zone
CSD	Campaign for Survival and Dignity
CSO	Civil Society Organisation
CWH	Critical Wildlife Habitat
DDS	Deccan Development Society
FD	Forest Department
FES	Foundation for Ecological Security
FRA	Forest Rights Act or the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act or the Forest Rights Act
GDP	Gross Domestic Product
GEF	Global Environment Facility
GIS	Geographic Information System
IBA	Important Bird Area
ICCA	Indigenous Peoples' and Community Conserved Territories and Area
ICSF	International Collective in Support for Fishworkers
IFA	Indian Forest Act
IUCN	International Union for Conservation of Nature
JFM	Joint Forest Management
JPAM	Joint Protected Area Management
LPPS	Lok Pashu Palak Sanstha
MoEF	Ministry of Environment and Forests
NBSAP	National Biodiversity Strategy and Action Plan
NFFPFW	National Forum for Forest Peoples and Forest Workers
NGO	Non-Government Organization
NTFP	Non-Timber Forest Produce
PA	Protected Area
PESA	Panchayat (Extension to Scheduled Areas) Act
POSCO	Pohang Company, Korea
REDD	Reducing Emissions from Deforestation and Forest Degradation
RTI	Right to Information Act
SACON	Salim Ali Centre for Ornithology and Nature
ST	Scheduled Tribe
TBS	Tarun Bharat Sangh
TILCEPA	Strategic Direction on Governance, Equity and Livelihoods in Relation to Protected Areas (formerly Theme on Indigenous Peoples and Local and Communities, Equity and Protected Areas)
TPCG	Technical and Policy Core Group
UN	United Nations
VP	Van Panchayat
WHS	World Heritage Sites
WLPA	Wild Life (Protection) Act
WWF	World Wide Fund for Nature

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Summary

Spread over 3,287,240 km² and despite a total human population of over 1,210,000,000, India represents a wide spectrum of biological, cultural and geographic diversity. It has been identified as one of the top 12 global biodiversity hotspots and has 91 eco-cultural zones inhabited by 4,635 ethnic communities. India also has amongst the largest indigenous/tribal population, constituting 8.08% of the country's population, representing 461 tribes. The term 'Indigenous Peoples' is not officially recognized in the country, instead the Constitution of India uses the term 'Scheduled Tribes'. The total forest cover is estimated to be approximately 20% of the total area of the country. About 1,70,379 villages with a population of 10,674,334 inhabit areas in close proximity of forests.

India has a rich history of community-based conservation with thousands of small and large areas where traditional forms of conservation exist or new forms of conservation have evolved. The conservation processes at these sites are deeply interlinked with the local culture, lifestyles and needs. The colonisation of India by the British in the 19th century brought about a watershed change in both consumption of biological resources and its conservation. Hunting – introduced as a sport of the elite – led to the extermination of a large number of animals; common property was nationalised by the State and handed over to centralised bureaucracy to manage; essentially State taking over rights and responsibilities over most common property resources.

As on 2011, there were 663 protected areas in India covering a total of 4.83% of the total geographic area. However, despite a rich tradition of conservation in the country, the conservation laws and policies in post independent India were not built upon them but were a continuation of or based on the colonial policies and practices. Conventional conservation in India, therefore, is viewed as a formal process within government designated Protected Areas where any form of human intervention is normally considered harmful for the ecosystem/species being conserved. This exclusionary form of conservation has led to various conflicts between local communities that use natural resources and government officials/conservationists and designated managers of these sites. Even in the recent times wildlife conservation policies and laws have continued to be more stringent towards access and use rights of the local people, while seeking nominal participation of local people by bringing in provisions such as Conservation Reserves and Community Reserves. The continued relocation of people for creating inviolate zones for conservation without following due processes is illustrative of this.

The relatively large network of conservation efforts by local people – what we will be referring to as 'Community Conserved Areas' (CCAs) – has remained largely invisible, unrecognized and hence unexplored for its potential for achieving conservation as well as their economic, cultural, and spiritual values. CCAs in India are extremely diverse, covering a variety of ecosystems, set up and managed for a range of objectives, and achieving different

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ecological, economic, cultural and social results. These include CCAs conserving forest ecosystems, marine and coastal areas, wetlands, individual species, sacred landscapes and elements, among others. The few studies that have been carried out indicate that CCAs lead to a number of socio-cultural, economic, political and ecological benefits. In addition, many government-designated protected areas in India contain or are contained within pre-existing CCAs and customary territories, indicating that substantial ecosystem/wildlife survive in the country due to past and present CCA practices. CCAs, however, face a number of internal and external threats. These threats often emanate from a lack of tenure security that most CCAs in India face, but also from inappropriate legal and administrative interventions, inadequate external support particularly from the State, party/power politics, internal inequities, changing socio-cultural scenario affecting local aspirations, exploitative and iniquitous markets, extractive and hydroelectric industry, unregulated and planned urbanization, economic disparities, among many others.

It is important therefore to provide a framework of support for CCAs in the country, which itself needs to be done in consultation with the CCAs themselves. In the absence of an existing framework it may be useful to explore what kind of support or potential support may already be available for CCAs.

In India, legally speaking there has not been any significant concrete effort by the government to recognize and support CCAs so far. However there are laws, policies and court orders that directly or indirectly provide some legal space, albeit limited, for recognition and support of community conservation as well as restoration of commons under the control of the local bodies. These include, the Constitutional provisions and Panchayati Raj Act, including 1996 Panchayat (Extension to Scheduled Areas) Act – PESA. PESA had immense potential to provide for tenure security over forest produce, one of the major constraints for forest dependent communities. The provisions of the Central Act, however, were substantially diluted in most state adaptations rendering the act nearly powerless and bringing about little real change on the ground. Community Reserves under 2002 Wildlife Protection Act (WLPA), provides some space within the WLPA for local involvement for the first time but remains highly restrictive by seeking to assert control of the forest department on the private and community lands and prescribing uniform institutional framework. 1927 Village Forests under Indian Forest Act provides a space for the local communities to manage their forests with the same rights and responsibilities as the Forest Department but remains unused in most part of the country. Even where used this remains subjective to state-made operative rules, which have substantially reduced local powers in states where it is applied. 2002 Biological Diversity Act and 2004 Rules have two provisions that can provide space for CCAs, via creation of Biodiversity Management Committees (BMCs) at the level of all panchayats and creation of Biodiversity Heritage Sites (BHS). While the former provides the responsibility to document biological resources and associated knowledge it neither provides legal security for the traditional knowledge nor any rights of access and use. The latter is a fairly new category and its usefulness still needs to be seen. Community Forest Resources under 2006 Forest Rights Act and 2008 Rules, for forest dependent CCAs this appears to be by far the best legal space as it provides to the community the right to use, manage, and conserve their traditional forests and resources there in. A combination of the BDA and CFR provisions are being used by some communities to provide a more holistic framework for governance and conservation of CCAs. In addition, the apex and high courts of the country have passed a number of judgments that can have both negative and positive impacts on the legal security of CCAs, for example various orders passed under the T.N. Godavarman Thirumulkpad v Union of India and Others, Writ Petition No. 202 of 1995. In

response to the petition, an order banned the state governments from removal of forest produce from any national park, game sanctuary or forest causing a huge impact on the livelihoods of several million people living in and around protected areas across the country. The 1988 National Forest Policy recognised that – for the first time in the history of independent India – subsistence requirements of the local people needed to be given preference over the industrial needs vis-à-vis forests. This led to the emergence of government schemes such as Joint Forest Management (JFM) in forests and Eco-development Schemes in protected areas, which sought to regenerate forests in return of some benefits that the local people received. There has been much criticism of these schemes. Barring a few successes they have largely been a failure. The successes have mostly been due to individual government officials or a more empowered community rather than the inherent strengths of these schemes. National Wildlife Action Plan 2002–2016 recognises the first rights and responsibility of the local people towards natural resources and envisaged some time-bound actions, which remain unimplemented for a variety of reasons. The 2006 National Environment Policy recognizes that communities have traditionally protected common resources, and acknowledges that the exclusionary model of conservation has undermined wildlife conservation. It calls for expanding the country's network of protected areas, "*including Conservation and Community Reserves*", but does not specify how community rights and participation are to be ensured.

All of the above mentioned legal provisions have their own strengths and weaknesses and most will need to be modified if they were to provide effective support the CCAs. Important to keep in mind is that mutual trust and respect is often more important in providing support than creating legal and administrative spaces. In India often such support is not forth coming or is counter-productive because legal provisions and government programmes are implemented in the absence of trust and respect, government machinery lacking it because of a colonial history and local communities lacking it because of a long history of governance framework which is exclusionary, denying rights and access, local livelihoods concerns, co-existence, community conservation and local knowledge. On the other hand sometimes minimal legal provisions can provide more support if all actors – government, civil society, community – have mutual trust and understanding. In addition, as CCAs gain more recognition, support has also been trickling in as funding, help in documentation, research and mapping, technical help, etc. from government and non government agencies. Although what CCAs are looking for is a more sustained mechanism for support, which is not necessarily as funding but for technical inputs, governance related inputs, ecological inputs and so on. Also a facilitation and redressal mechanism, and an active role of the State and other actors in supporting their management of resources is often envisaged by local communities, but on equal terms and in the capacity of a facilitators and advisors rather than rulers or regulators as is the current practice.

1. Country description and context

1.1. Key features of India

India is a large country spreading over 3,287,240 sq km, representing a wide spectrum of biological, cultural and geographic diversity. The 2011 census estimates the total population of India to be over 1,210,000,000. India ranks second worldwide in farm output. Agriculture and allied sectors like forestry, logging and fishing accounted for 15.7% of the GDP in 2009-10, employed 52.1% of the total workforce. Although this has been reduced to 14.5% in 2010-11 and 13.9% in 2011-12, it continues to be a significant segment of the overall socio-economic development of India. The Economic Survey 2011-12 emphasizes that this sector needs to be given special attention considering its “*share in the employment and its criticality for macro-economic stability*”. India receives an average annual rainfall of 1,208 millimetres (47.6 in) and a total annual rainfall of 4000 billion cubic metres: although the amount of precipitation received in different regions and sub-regions can vary substantially from a few mm to over 6000 mm average annual rainfall, influencing the biological and cultural diversity significantly. About 39% of the total cultivated area is irrigated. India's inland water resources include rivers, canals, ponds and lakes and marine resources comprising the east and west coasts of the Indian ocean and other gulfs and bays, and provide employment to nearly six million people in the fisheries sector. In 2008, India had the world's third largest fishing industry. India is the world's largest producer of milk, jute and pulses, and also has the world's second largest cattle population with 175 million animals in 2008. As of 2009, India was also the fourth-largest producer of electricity and oil products and the fourth-largest importer of coal and crude oil. Coal and oil together account for 66 % of the energy consumption of India. This also means that coal mining covers the largest area within the mining sector in the country (Economic Survey of India 2011-12).

Box 1: Basic governance structure in India

The Government of India is also known as the Union Government and the Central Government, is the governing authority of the union of 28 states and seven union territories, collectively called the Republic of India. It is seated in New Delhi, the capital of India. The government comprises of the executive, the legislative and the judiciary. The executive branch is headed by the President, who is the Head of State and exercises his or her power directly or through his officers. The legislative branch or the Parliament consists of the lower house (the Lok Sabha) and the upper house (the Rajya Sabha), headed by the Prime Minister. The judicial branch has the Supreme Court at its apex, 21 High Courts, and numerous civil, criminal and family courts at the district level. India is the largest democracy in the world.

All the 28 states are run by separate State government established through state assembly elections. The Chief Minister heads the state government. Power is divided between central government and state governments. The Union Territories are governed directly by the Central Government. The panchayats in rural areas and municipalities in urban areas are the basic unit of governance at the local level. Panchayats or the executive is elected by the village assembly, which is constituted by all voting members of the village. Panchayats are not necessarily at the level of a hamlet, one panchayat could represent one or more villages. The panchayats and the municipalities are the third level of government apart from central and state governments.

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The growth in India's GDP has been sustained over the last few years with an increase to by 9.6% in 2006-07 and 9.3% in 2007-08. Since then it has gone down to about 6.9% in 2011-12. Although the service sector and agricultural sector have been doing well, it is the industrial sector (particularly manufacturing, which constitutes nearly 75% of industrial value) that has been setting the mood of the economy (Economic Survey of India 2011-12). The decline in the growth rate in 2011-12 has been a matter of concern for the government and economists and has often been attributed to a number of procedural obstacles for industrial development including environment norms and policies.



Coal mine outside Tadoba National Park in Maharashtra, mining is one of the major threats to wildlife habitats in India

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India's geographic location at the confluence of three major biogeographic zones - i.e. the Indo-Malayan, the Eurasian and the Afro-Tropical – makes it extremely biodiverse in its genes, species and ecosystems. It is one of the world's 17 megadiverse countries (Mittermeier et al. 1997). India can boast of over 8.1% of the world's biodiversity supported on 2.4% of the earth's surface. An estimated 47,000 identified plant species represent 11% of the world's flora.



Kameng River in Arunachal Pradesh, representing one of the hotspots of biodiversity in India the North eastern forests.

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The cold desert mountains in Changthang Ladakh
© Sujatha Padmanabhan



The Western Ghats of India are known for their diversity and endemism of floral and faunal species. Bhimashankar Wildlife Sanctuary, Maharashtra
© Neema Pathak Broome

India is also considered to be one of the world's eight centres of origin of cultivated plants (TPCG and Kalpavriksh 2005). India's faunal wealth is equally diverse. A total of 89,450 estimated animal species represent 7% of the world's fauna. The ancient practice of domesticating animals has resulted in India's diversity of livestock, poultry and other animal breeds (TPCG and Kalpavriksh 2005). India has an equally varied cultural diversity.

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Slender Loris, a rare and threatened species, protected in parts of Karnataka because of the efforts of the local communities.

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Snow leopard in Ladakh

© Jigmet Dadul

The Anthropological Survey of India has identified 91 eco-cultural zones in India inhabited by 4,635 ethnic communities, speaking 325 languages/dialects (Singh 1992). Moreover, 67.7 million of the 220 million or so Indigenous-Tribal people in the world live in India. This makes India a country with amongst the largest indigenous-tribal populations, constituting 8.08% of the country's population, and representing 461 tribes (Anon 1998).

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Gond tribal community celebrating a festival in Kiyer village, Bhamragarh in Maharashtra.
© Ashish Kothari



Mask dance festival at Thikse Monastery in Ladakh.
© Sujatha Padmanabhan



Agro pastoralism is a common but increasingly threatened traditional livelihood for many tribal and non tribal communities in India. Villagers from Ang village in Ladakh take their livestock grazing.

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Large number of communities depend on wild foods across. Villagers in Baridapa in Maharashtra celebrating a wild vegetables festival.

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About 1,70,379 villages in India with a population of 10,674,334 are in close proximity of forests. The forest cover in the 187 tribal districts constitutes 60.04% of the total forest cover of the country whereas the geographic area of these districts forms only 33.6% of the total geographic area of the country. The total forest cover of India was estimated to be 690,899 km² (over 69 million ha) constituting approximately 20% of the total area of the country and 692,027 km² and about 21% of the total geographical area of the country (India State of Forest Report 2009 and 2011).

Box 2: Discussions about the term ‘indigenous peoples’ in India

The term ‘indigenous peoples’ and its UN definition have not been accepted by the government of India. There are a number of reasons for this and much debate in the country, considering a history different from that of the Americas and other parts of the world, that have led to the emergence of the term ‘indigenous peoples’. The term ‘indigenous peoples’ also appears to be contentious in the Indian context as there are many claimants to it; these include the Dalits (claiming their Dravidian antecedence), the Vaishnavite Meiteis of Manipur and the caste Hindus of Assam, and sometimes even the Hindu Rajput and Brahmin communities. The government of India recognises the term ‘Scheduled Tribes’. The 67.7 million people belonging to ‘Scheduled Tribes’ in India are generally considered to be ‘Adivasi’, literally meaning ‘indigenous peoples’ or ‘original inhabitants’, though the term ‘Scheduled Tribe’ (ST) is not coterminous with the term ‘Adivasi’. ‘Scheduled Tribe’ is an administrative term used for the purpose of ‘administering’ certain specific constitutional privileges, protection and benefits for specific sections of peoples historically considered disadvantaged and ‘backward’. However, this administrative term does not exactly match all the peoples called ‘Adivasi’. Out of the 5,653 distinct communities in India, 635 are considered to be ‘tribes’ or Adivasis. In comparison, one finds that the estimated number of STs varies from 250 to 593 (Bijoy & Raman 2003). The Constitution also does not use the word *adivasi* – which could be translated into English as ‘indigenous peoples’ –, but

translates ‘scheduled tribes’ to *anusuchit janajati* where *janajati* means ‘tribe’. The word ‘tribe’ has also attracted conflicting views, as it is seen by some as a colonial construct.

For this paper we will not be using the term ‘indigenous peoples’ in the Indian context. To identify different ethnic groups we will use the word tribal communities and local communities as may be appropriate and locally acceptable. Accordingly, instead of ICCAs, we will be using the term Community Conserved Areas or CCAs.

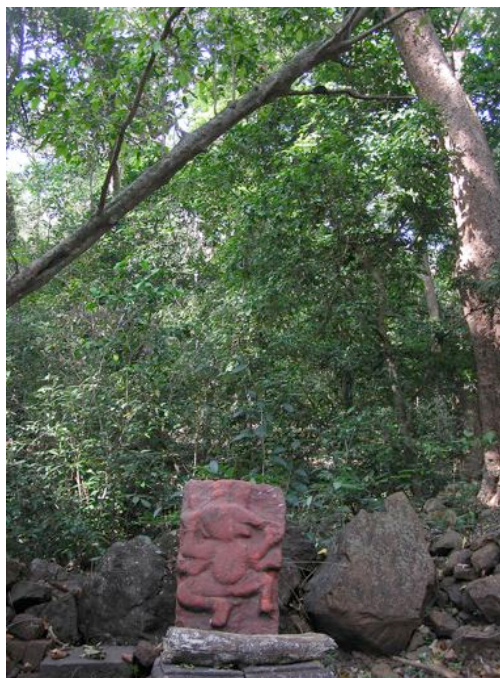
1.2. Brief history of conservation, state- and community-based

India has a rich history of community-based conservation with thousands of small and large areas where traditional forms of conservation exist or new forms of conservation have evolved. The conservation processes at these sites are deeply interlinked with the local culture, lifestyles and needs.

One of the best-known examples of such conservation is the practice of protecting sacred landscapes and elements. Essentially this involves leaving areas and/or species largely untouched because of the religious sentiments associated with them. They could include patches of forest, lakes and ponds, high-altitude valleys or peaks, islands, marine stretches, mangroves, grasslands and nearly every other kind of ecosystem. Such sacred areas were associated with certain deities that are believed to reside in them, and fear of the deity bringing ill-fortune on them prevented people from violating the rules of these sacred spaces. Extraction of resources, if at all, was carried out after following intricate religious rituals. Many of these sacred elements continue to survive even today, although, because of changing social and cultural environments, they too are slowly being eroded³.

According to one estimate, sacred sites and species were once extremely widespread across India, covering perhaps 10% of many regions. Although considerably limited now, there probably still are between 100,000 and 150,000 such sites remaining in the country (Malhotra et al. 2007). In general, such areas are quite small (sometimes only a handful of trees), but there are also large ones like the Mawphlang sacred grove in Meghalaya that covers 75 ha. These could also include large landscapes (Tiwari et al. 1999), such as the entire Yuksam region of Sikkim, which includes seven holy lakes surrounding Khangchendzonga, the sacred river Rathong Chu, and 109 ‘hidden’ lakes. Every landscape of highland, middle-land and lowland, and every river, stream, cave, and big tree is believed to have guardian deities (Ramakrishnan et al. 1998).

³ Not all sacred landscapes and elements, however, can be called CCAs. Only those which are still strongly associated with a many local community/ies that actively take decisions and actions to ensure their conservation can be called CCAs. These would include sacred sites that belonged to the local community in the past but have subsequently been taken over by state agencies, and consequently, the traditional relationship and systems that were in place for its governance and management would also be taken over. These would also not include sites under religious institutions such as monasteries, temples and churches when they have little or no connection with the surrounding community except that of faith.



Thousands of habitats and landscapes are protected because of sacred sentiments associated with them. Some of these like Bhimashankar Sacred Grove are now part of formal protected area network.

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Among the earliest recorded examples of state conservation is one from around 300 BC, during the time of Emperor Ashoka. Historic records indicate that the administration of Emperor Ashoka had a clear-cut policy of exploiting as well as protecting natural resources (including wild fauna), and specific officials were charged with the duty of their protection. In subsequent years, many different rulers followed similar policies. Analysis of the history of environment and ecology shows that the evolution of the political State has often led to control and consolidation of resources, which has affected local communities and community conservation regimes (and practices). Accounts of history written from the local community's perspective often recount struggles by local and indigenous communities to protect their common resources and governance regimes, institutions, culture, etc. from exploitative political States. In fact the dynamic interplay between these two historic processes has shaped modern polity and democracy. In the present context this interplay is also shaping up legislative interventions on tenure and forest rights in India, which are likely to have an impact on forest and biodiversity governance in years to come.

The colonisation of India by the British in the 19th century brought about a watershed change in both consumption of biological resources and their conservation. British officers and Indian rulers (who were under their patronage) engaged in extensive hunting for sport. Although hunting for food was common in the society, this level of hunting was unmatched in Indian history. Although the Indian society was attuned to state appropriation of resources, the scale at which local resources, governance and management systems, institutions and powers were appropriated and impacted was unprecedented.

The British implemented a policy of extension of agriculture to be able to maximise taxes from peasants, and the extermination of carnivores that preyed on herbivore species that the elite preferred to hunt. A centralised forest institution in the form of the Forest Department was set up in 1864 by the British government and the enactment of forest laws and policies

followed. The Indian Forest Act was the first. Enacted in 1878 and revised in 1927, it led to the British take over of control over forests through a process referred to as 'nationalisation' of forests and also of common property in general) in India, which they needed to earn revenue from timber and other forest products. They also restricted the use of these forests, grasslands and other areas by local people who they believed were destroying the forests.

It is an established fact now that the enactment of the forest laws and the subsequent consolidation of forests led to an increase in forest revenues at the cost of rights deprivation, dismantling of commons and community practices, alienation and political marginalization of communities (Gadgil & Guha 1996).

As a result of these practices, by the early 20th century, the wild animal (particularly mega fauna) populations began to decline and with that a new interest group emerged. These were the 'conservationists', mainly rulers and hunters who were concerned about depleting populations of their quarry. Most of these people had no connection with the masses, nor did they understand their needs, knowledge and practices. Local people were largely considered the greatest threat to wildlife populations as they shared the same space and resources as wildlife. To create the first national park (called Hale National Park, set up in 1936, since renamed 'Corbett National Park'), existing villages were shifted out, and people on the periphery were no longer allowed to enter the forest.

Biodiversity conservation and local communities, in period after the Indian Independence from British in 1947, has been impacted by two kinds of laws, those meant specifically for conservation of biological diversity and wildlife and those that have been enacted for natural resources in general.

(i) Biodiversity conservation and wildlife protection laws

When the British first come to India, in the 17th century, first as traders and then as colonial rulers, co-existence of humans and biodiversity, including wildlife was difficult for them to understand. For them forests were meant for economic gain; and animals (where they existed) needed to be hunted either for food or for sport or as vermin. In 1878, in a small village called Vedanthangal, near Chennai, British soldiers shot some storks in the local wetland (Gupta 2005). The villagers stormed the collector's office and made him issue an order that no one would harm the nesting birds in future. This is, by no means, the only example of its kind; Indian history is peppered with such examples. Among the best known are the Bishnois, in Rajasthan, Punjab and Haryana who are famous for their self-sacrificing defence of wildlife (Pathak 2009).

Despite this rich tradition, conservation laws and policies even in post independent India were not built upon them but were either a continuation of or based on the colonial policies and practices. Conventional conservation in India, therefore, is viewed as a formal process within government designated Protected Areas where any form of human intervention is normally considered harmful for the ecosystem/species being conserved. This form of conservation has led to various kinds of conflict between local communities that use natural resources, and government officials/conservationists and designated managers of these sites. The relatively large network of conservation efforts by local people in India has remained largely unrecognized and hence unexplored for its potential as a successful model of conservation in addition to being recognised for their economic, cultural, and spiritual value.

RECOGNITION AND SUPPORT OF ICCAs IN INDIA

Wildlife conservation policies and laws have continued to be more stringent towards access and use rights of the local people. The Wildlife Protection Act of India was enacted in 1972. Till the year 2002, this act recognised only two main types of protected areas: National Parks and Wildlife Sanctuaries.⁴ An amendment to the Act, passed in 2002, included two more categories: Conservation Reserves and Community Reserves. A further amendment that was passed in 2006 added another category: Tiger Reserve. Conservation Reserves were considered a landmark in Indian wildlife law since they allowed, for the first time, local residents to be consulted before a protected area is declared. Community Reserves were considered an equally significant development, allowing communities themselves to be responsible for conservation in such areas.

Until the enactment of the Forest Rights Act in 2006 (see section 4.1.v), few rights of people were recognised in any of the protected areas (barring Community Reserves and Conservation Reserves). Removing wildlife or forest products from a National Park is strictly forbidden by law, except with a permit and strictly “*for meeting the personal bona fide needs of the people living in and around the National Park and shall not be used for any commercial purpose*”. General interpretation of the law has been that all villages must eventually be relocated from every National Park. Similar provisions for resource extraction exist for a sanctuary as well, except that grazing or movement of livestock may also be permitted by the Forest Department.

The category of Tiger Reserves is meant to have a core area and a buffer area. The core areas are expected to be ‘inviolable’, which has been interpreted by the Forest Department as ‘totally free of human interference’ and hence mandating relocation of all villages from within the core. The buffer area is meant to be the zone for exploring co-existence but not necessarily co-management or shared governance. Government orders and notifications clearly state that the procedures related to full form here or Forest Rights Act (FRA) need to be completed before initiating relocation of villages from the core area of a Tiger Reserve; however, these orders and notifications are being violated, even as this paper is being written, in the course of relocation of villages out of various Tiger Reserves across the country (Guptabhaya & Pathak 2011).

The Forest Rights Act in 2006, before its enactment was subject to much heated and polarised discussions in the country, sharply dividing the staunch conservationists and those believing in the rights of the local people. One of the concerns from the conservation lobby was that implementation of this Act would cause serious harm to wildlife populations in protected areas. This concern led to the inclusion of provisions for declaring Critical Wildlife Habitat (CWH) within protected areas. The CWH would be strictly protected zones within existing PAs, notified if it was proven by scientific data that wildlife populations are under grave threat in these areas and need strict protection. Before creating CWH the local communities rights would be established and recognised over the land and forest resources. Subsequently, these rights could be altered in consultation with the communities to ensure long-term survival of the concerned species, if need be.

As of 2011⁵, there were 663 protected areas in India covering a total of 4.83% of the total area of the country. These included 99 National Parks (NPs); 516 Wildlife Sanctuaries (WLSs); 4 Community Reserves (Com. Res.); and 44 Conservation Reserves (Con. Res.). 39

⁴ Original version had a third category called the Game Reserves, which were subsequently removed converted to national parks or sanctuaries.

⁵ See: http://oldwww.wii.gov.in/nwdc/pa_list.pdf

of these PAs have also been declared Tiger Reserves. No CWH have been declared anywhere in the country, as the two drafts of the guidelines that have been produced so far have led to much opposition from the communities and civil society groups working with them. New guidelines have not been finalised at the time of writing this paper.

In addition to the above-mentioned protected areas, the government of India has also initiated a number of other programmes for protection and revival of populations of highly threatened large animals such as the Rhino, Gharial, Elephants, and Tigers. This has been done by launching programmes such as Project Tiger, which was launched by the Government of India in the year 1973 to save the endangered species of tiger in the country⁶. While these programmes have been successful in arresting the fast decline in the population of many of these species, they have also often been entrenched in conflicts with the local communities.

There are also areas that are protected either through other national acts or under international conventions and treaties.

As of 2010, there were 28 World Heritage Sites in India, of which five are Natural Heritage Sites, all declared in the period between 1985-88. The process followed for their declarations is not clear. In 2012 the proposal for declaring the Western Ghats as a new World Heritage Site was rejected by the World Heritage committee after much protest from local groups claiming that there has not been enough local consultations while preparing the proposal (IUCN 2012). The Government of India, with support from UNESCO, is also currently running a programme in 4 WHS, Kaziranga National Park and Manas National Park in Assam, Keoladeo National Park in Rajasthan and Nandadevi National Park in Uttarakhand. This four-year programme, 'Building Partnership to Support World Heritage Programme in India', was initiated in 2010. The programme brings in financial resources to achieve a number of objectives including participation and livelihoods support for local communities.

India also has 17 Biosphere Reserves, which have been created mainly in and around existing PAs. Declarations of Biosphere Reserves have not been preceded by any consultation with the local people and indigenous communities. This designation has not led to any added restrictions for the local communities but there continues to be a resentment against these in some areas because of their association with the PAs and also because the department managing these are the same as that in charge of the PAs (Kothari & Pathak 2011).

In addition, 465 Important Bird Areas (IBAs) have been identified in India by Bombay Natural History Society (BNHS) in a comprehensive document and published in 2004 (Islam & Rahmani 2004). Interestingly, an assessment carried out for the same publication also indicated that a large number of identified IBAs are also CCAs, or have been CCAs in the past but are currently part of a PA. The IBA criteria, however do take into account the role of local communities in conserving these sites. There have been some interactions between advocacy groups such as Kalpavriksh and conservation organisations such as Bombay Natural History Society (BNHS) to ensure that while identifying IBAs, if an area is an existing CCA, the fact is also documented. A number of other recommendations have been advocated, some of which include (Kothari & Pathak 2004a):

- Identification of such IBAs where communities have been protecting or have a potential to be involved.

⁶ See: <http://www2.wii.gov.in/nwdc/tigerreserves.htm>

- While providing support and legal backing to such IBAs, ensuring that their existing systems of conservation and management are not imposed upon and that all such recognition happens with prior informed consent of the concerned communities.
- Before assigning categories to such sites, ensuring that rights, responsibilities and roles are firmly established with the communities.
- Building capacity and bringing about attitudinal changes in all those who would have an interface with such sites, including government officials, NGOs, donors and others.
- Ensuring that in local/district, state, and national planning, all such areas are off limits to destructive forms of development projects, including village development activities.

There are 25 wetlands in the country that have been designated as Ramsar Sites (Islam & Rahmani 2008). An assessment on how many of these are also CCAs has not been carried out yet, but many of these are likely to be either well functioning CCAs or were CCAs in the past.

(ii) Laws and policies relating to natural resources in general

A number of laws and policies relating to natural resources have had an impact on the conservation of biological diversity and local communities dependent on it, which is detailed out in section 4 below. The enactment of Forest Conservation Act in 1980, although with the good intent of controlling diversion of forest areas for non-forest uses, further centralized powers and responsibility of forest governance. Continuous local resistance and unrest due to such policies led to the Forest Policy of 1988. This policy recognised for the first time the dependence of local communities on the forests and giving their needs a preference over industrial requirement. This resulted in the launch of schemes such as the Joint Forest Management (JFM) Schemes, which envisaged some involvement of the local people in forest management but still through the exclusive and centralised bureaucracy and without any participation of the concerned local communities in the decision-making. Such schemes, therefore, have largely been top-down and distrustful of the local people. The economic liberalization policy, which was adopted in the early 1990s, increased the thrust on resource-extractive projects like mining, further marginalising those dependent on these resources (Kothari 2011).

Cumulatively, all these developments towards conservation as well as economic liberalisation impacted adversely the rights of local communities and importantly led to further dismantling of community regimes (community governance and control) and also affected community conservation. In recent times, as a result of local movements and social resistance, some legislative changes have been brought about such as the Forest Rights Act. However, similar legislative changes for other ecosystems such as marine, grasslands, and so on are still needed.

2. Features of CCAs

2.1. Range, diversity, and extent of CCAs

CCAs in India are extremely diverse, covering a variety of ecosystems, set up and managed for a range of objectives, and achieving different ecological, economic, cultural and social results. This diversity arises from the diverse ecological, social, cultural and political context that they are located in. CCAs in India include those that existed in the past and are continuing as a traditional practice, as well as those initiated in more recent times because of

a diverse set of reasons or motivations. The boxes below are an attempt to reflect some of this diversity⁷:

Box 3: CCAs for forest ecosystems

- The Gond tribal community in Mendha-Lekha village of Gadchiroli District, Maharashtra, initiated protection and de facto control over 1800 hectares of forest over two decades ago, and have now claimed a legal right of use, management and conservation under the Forest Rights Act, 2006.
- Jardhargaon village in Uttarakhand has regenerated and protected 600-700 hectares of forest, and revived several hundred varieties of agricultural crops. They are now trying to find solutions for the increasing-human wildlife conflicts in the area.
- *Van panchayats* ('forest council') like Makku in Uttarakhand are protecting tens of thousands of hectares of high-altitude pasturelands and forests; but also currently struggling to deal with the government's constant interference through new Van Panchayat rules.
- Villagers of Shankar Ghola in Assam are protecting forests that contain the highly threatened golden langur.
- Community forestry initiatives in several thousand villages of Odisha have regenerated or protected forests. Elephants are reportedly being sighted there now.
- Areas in Nagaland have been conserved as forest and wildlife reserves by various tribes in dozens of villages, including a people's sanctuary for the endangered Blyth's tragopan in Khonoma village.
- In Tokpa Kabui village of Churachandpur district in Manipur, 600 hectares of regenerated village forest have been preserved in the Loktak Lake catchment by the Ronmei tribe.
- With help from the NGO Tarun Bharat Sangh (TBS), several dozen villages in Alwar district have restored the water regime, regenerated forests and, in one case (Bhaonta-Kolyala), declared a *lok abhayaranya* (people's wildlife sanctuary).



Tzula village in Nagaland is protecting their forests and along with a number of other villages protecting the catchment of Dikhu river. Tzula (Dikhu) Green Zone, Nagaland.

© Neema Pathak Broome

⁷ These boxes are based on case studies published in Pathak (ed.) 2009.

Box 4: CCAs for wetland, coastal and marine habitats

- Uttar Pradesh is a locus of traditional wetlands conservation. In Amakhhera village of Aligarh district, the traditional wetland is used for irrigation and fishing. The wetland hosts a large number of migratory birds, which villagers are careful not to disturb. Patna Lake in Etah District is home to up to 100,000 water birds in favourable seasons. The lake, declared a Wildlife Sanctuary in 1991, has been protected for centuries as a sacred pond. Sareli village in Kheri District supports a nesting population of over 1000 openbilled storks, considered harbingers of a good monsoon.
- Communities in hundreds of villages across India have protected heronries (e.g. Sareli in UP, Nellapatu in Andhra Pradesh and Chittarangudi in Tamil Nadu). At Kokkare Bellur, Karnataka, villagers provide the heronry all protection against hunting and untoward treatment, sometimes even foregoing their tamarind yield so that nesting birds are not disturbed. In Tamil Nadu, the 700 ha Chittarangudi tank attracts storks, ibises, herons, egrets, cormorants and other migratory birds. Villagers forbid all hunting or stealing of bird eggs. They have given up crackers during Diwali⁸, and have banned commercial fishing. Local communities are protecting similar tanks throughout coastal and wetland regions of India.
- Fisherfolk in Mangalajodi and other villages at the Chilika lagoon, Odisha, are protecting a large population of waterfowl (once extensively hunted).
- A number of coastal communities are protecting critical coastal wildlife habitats such as mangroves (in Odisha) and beaches preferred by sea turtles for nesting activity (in Odisha, Goa and Kerala).



Protection of migratory birds in Mangalajodi village in Orissa.

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⁸ Festival of lights celebrated by Hindus to rejoice over the victory of good over evil.

Box 5: CCAs for protection of individual species

- Protection of sea turtle eggs, hatchlings and nesting sites by fisherfolk communities is taking place at Kolavipaalam in Kerala, Galgibag and Morjim in Goa, and Rushikulya and Gokharkuda in Odisha. In 2006 and 2008, over 100,000 Olive Ridley turtles are reported to have nested at Rushikulya.
- Youth clubs from villages around Loktak Lake (Manipur) have formed the Sangai Protection Forum to conserve the greatly endangered brow-antlered deer, which is endemic to this wetland. They take part in the management of the Keibul Lamjao National Park, which forms the core of the lake.
- The Buddhist Morpa community in Sangti Valley in Arunachal has co-existed with the endangered blacknecked cranes for generations, viewing them as harbingers of better rice yields.
- In Khichan village in Rajasthan, the local population provides refuge and food to a wintering population of up to 10,000 demoiselle cranes, ungrudgingly spending several hundred thousand rupees annually on grains for their feed.
- The Bishnoi community in Rajasthan, famous for its self-sacrificing defence of wildlife and trees, continues their strong traditions of conservation. In neighbouring Punjab, lands belonging to the Bishnois have been declared as the Abohar Sanctuary in recognition of their wildlife value. At all Bishnoi sites, blackbuck and chinkara are abundant.
- At Buguda village in Ganjam District, Odisha, inhabitants have been protecting blackbuck for centuries. Buguda was recently awarded the Chief Minister's Award for wildlife conservation.
- Andhra Pradesh is rich in nesting sites of water birds. In Veerapuram village, painted storks, pelicans and black-headed ibis have been nesting since time immemorial, at times exceeding 5,000 in numbers. Pedullupalle village of Cuddapah district protects painted storks, white ibises, and cormorants, which have been nesting for over a century. Nellapattu and Vedurapattu, in Nellore district, have been visited by openbilled storks, white ibis, and cranes since ancient times. Villagers in all these villages have zealously looked after these birds and protected them from external threats. Due to its ecological importance, Nellapattu was declared a wildlife sanctuary in 1997.



A local person from Kheechan village feeding Demoiselle cranes who visit the village every year and are looked after by the villagers.

© Asad Rahmani

Box 6: Sacred sites as CCAs

- Sacred groves⁹ and landscapes are found throughout India, serving to protect rare and endemic species, as well as critical biodiversity assemblages. Such groves also help meet the religious, cultural, political, economic, health and psychological needs of communities. Local livelihood needs are sometimes met through restricted harvesting of biomass. Sacred forests (*orans*) in the desert regions of Rajasthan are typically managed by the *gram sabhas* (village assemblies). Some are open to limited grazing by livestock. *Orans* are important components in the recharge of aquifers in the desert, where every single drop of water is precious. In most *orans*, particularly in western Rajasthan, the dominant tree, *Prosopis juliflora* (khejari), is worshipped for its immense value, as the tree enriches soil nitrogen, and provides bark that, during drought and famine, can be mixed with flour for human consumption.
- The Khasi Hills of Meghalaya are characterised by pockets of rich biodiversity that have been protected by the Khasi tribe and form the basis of nature worship practices in the area, manifested in the trees, forests, groves and rivers. The Khasi people believe that those who disturb the forest will die, and that sacred animals such as the tiger bring prosperity, happiness and wellbeing. In fact, the people of Thaianing believe that the destruction of their forest by their forefathers has caused 'good luck' (i.e., the tiger) to leave, leading directly to suffering due to a scarcity of medicinal plants, wood, water and fertile soils. Sacred groves are often quite limited in size, but there are at least 40 of them in Meghalaya (out of a total recorded 79) that range from 50-400 ha, including the well-known Mawphlang sacred grove covering 75 ha.
- There are several thousand sacred groves in Maharashtra, some still managed well, others under grave threat. These include the famous Bhimashankar and Ahupe *deorai* in Bhimashankar Wildlife Sanctuary, Durgubaicha Killa and others between Bhimashankar and Kalsubai Harishchandragad Wildlife Sanctuaries. Ajeevali village in Pune district manages a protected site for both spiritual and commercial reasons.
- Often entire landscapes are considered sacred (e.g. the Rathong Chu/Khangchendzonga valley in Sikkim), helping to conserve many of its elements.

In addition to the kind of examples mentioned above there are many communities who have traditionally led relatively sustainable lifestyles, such as the Changpas of Ladakh. Such initiatives and lifestyles, although highly threatened by today's fast-changing socio-economic conditions, have been responsible for maintaining biological diversity in many parts of India to a great extent.

⁹ Patches of forests protected for spiritual or religious reasons.



Changpa Nomadic settlement in Changthang, Ladakh.

© Sujatha Padmanabhan

In these times when India is on the fast track to economic development and globalisation, community conservation initiatives of the kind mentioned above are crucially supported or complemented by grassroots activism against destructive development. Indeed many CCAs are located within areas where these movements exist and could have either led to or resulted from them. Several large hydroelectric projects, such as those in Bhopalpatnam-Ichampalli ? (Maharashtra and Chhattisgarh), Bodhghat (Chhattisgarh), and Rathong Chu (Sikkim) that would have submerged valuable forest ecosystems and wildlife habitats, have been stalled by mass movements. Hundreds of communities across Odisha, Chhattisgarh, Jharkhand and other states are fighting against large and powerful mining companies and industries, and are often brutally killed in the process. Many fisher communities across India are struggling against destructive fishing, including demanding a ban on commercial trawling and fighting for implementation of the coastal regulation zone (CRZ) notification. Their struggle will also help to save coastal and marine ecosystems from destructive development activities (Kothari & Patel 2006).

In recent times, new rights-based legislation such as the Forest Rights Act, 2006, (section 4.1.v below), has also encouraged communities, particularly those based in forest ecosystems, to either reclaim their traditional lands and traditional systems of conservation, or to start afresh.

2.2. Key ecological, cultural, socio-economic and political values of CCAs

Whether traditional practices or new initiatives, both are envisaged by the communities as leading to certain cultural, economic or political benefits. Our analysis also indicates that most communities have benefited from the conservation initiative socially, economically, and politically¹⁰. Some such benefits include security of long-term availability of biomass, increased financial and employment related benefits because of well-managed forest products and effective marketing, benefits from eco-tourism, and so on.

¹⁰ Politically this means self-empowerment of the communities, including the power to negotiate terms with government and non government agencies.

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Benefits could be of a political nature, such as a greater negotiating power, great recognition, greater move towards self-governance and so on. Recognition of the CCA often means greater interaction with the people and processes from outside the village and increased levels of awareness and greater familiarity with governance and capacity building processes. In the state of Maharashtra, Baripada village changed from a desolate village with an overused forest to an economically thriving, socially cohesive and politically strong village after the conservation activities were initiated. Furthermore, this village – which constantly faced water scarcity – today has managed to help recharge small check-dams that are now a source of water for five other villages downstream.

Socio-cultural benefits are among the highest as conservation process, reasons and systems are a means for bringing together the community. Community cultural activities, discussions, etc. enhance or lead to greater community cohesiveness. Although this is not to say that all benefits are necessarily spread equitably across and at all levels of the community. However, the more the benefits are equally spread the stronger is the long-term sustainability of the initiative.



Decisions made by the general assembly or the gram sabha is one of the common decision making process in CCAs in India. A gram sabha meeting in progress in Mendha village, Maharashtra.

© Vivek Gour-Broome

An analysis of 140 case studies in India indicates that 99 community conserved areas have benefited from enhanced and hence sustained availability of resources; 62 have financially benefited from the sale of resources etc.; 67 have socially benefited, which meant improved living standard, greater social equity etc.; 52 seem to have culturally benefited, leading to greater cohesiveness within the community, revival of abandoned cultural practices and so on; while 22 have managed to garner better employment opportunities (each site mentioned above enjoyed more than one benefit). Efforts towards conservation are also often path towards self-rule or self-determination for many indigenous and local communities. Political or governance related benefits are an important aspect of CCAs.

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Ecological studies in CCAs are rare in India, though there are a few published in relevant journals or newsletters¹¹. In the absence of such studies, ecological impacts of these initiatives can only be judged based on visual impressions and interactions with local people. For example, in Nagaland, are widespread (over 80% of the state has forest cover) but it is very difficult to come across signs of faunal species. Exceptions to this rule are a few community-protected areas where one frequently encounters birds, mammals, insects and other species, including some extremely threatened species. The Golden Langur – endemic to the state of Assam – is protected because of the local communities in Chakrashila Wildlife Sanctuary and surrounding community forests. In the last few years some ecological studies have been carried out, particularly in community forests. Also see boxes 3 to 6 in the previous section, with site-specific examples of CCAs leading towards ecological benefits. In villages like Jardhargaon and Bhaonta-Kolyala, wild animals have returned to the conserved village forests after decades. Many endangered birds such as the spotted pelican and the great Indian bustard, as well as animals like the blackbuck, survive today thanks to the protection provided by the local villagers, like in Kokare Bellur, Khichan, and other villages. Many of the sacred groves are known to have preserved a number of local species threatened elsewhere. All CCAs are conserving habitats that support wild populations in varying degrees and of varying national and global significance.



Regenerating forests of Jardhargaon in Uttarakhand along with the village forest watchman.

© Ashish Kothari

Nevertheless, it is also important to note that the quality of ecosystems and resources is not merely controlled by the forces within the communities. Several factors beyond the control of the conserving communities often have a direct impact on the conserved area, particularly activities of others in the surrounding area, very much like in case of government PAs.

It must also be noted that many government-designated protected areas in India contain, or are contained within, pre-existing CCAs and customary territories. In many cases this may have resulted in the CCA becoming defunct as control was taken away from communities, while in others communities may still be conserving the area. In any case it needs to be acknowledged that substantial ecosystem/wildlife survival may have been due to past CCA practices. Examples of areas where CCAs continue to exist within PAs include Van

¹¹ See for instance Subramanya 2006.

Panchayats in the Askot Sanctuary of Uttarakhand, sacred groves in Bhimashankar Sanctuary of Maharashtra, Chakrashila Wildlife Sanctuary in Assam, and Biligiri Rangaswamy Temple Sanctuary in Karnataka, among others (many of the present PAs have been created out of customary territories of communities such as the Baiga Chak area of Chhattisgarh, or the sacred groves in many parts of the country including Orans (pasturelands associated with sacred sentiments and protected) in Rajasthan, among many others.)

2.3. Main threats to CCAs

Internal threats

Internal social inequities, conflicts, political rivalries, etc. exist in some form or another in most societies, including communities managing CCAs; however they become a threat to the site when they begin to impact the success of the initiative. Below are given some such factors that have an influence on a CCA and can threaten its existence:

(i) Traditional social inequities

Communities are often highly stratified with many decisions made by the dominant sections of society (men, large landowners, 'upper' castes) without considering their impacts on the less privileged (women, landless, 'lower' castes). Such disparities in decision-making can create local dissatisfaction and affect the long-term sustainability of the initiative. This is particularly true in present times when human societies are less tolerant of inequity and non-democratic ways.

(ii) Demographic changes

Human and livestock populations have increased manifold in several areas. As a result of this (and due to a number of other reasons too) the natural habitats have degraded and the total available resource base has shrunk. This leads to conflicts and to over-exploitation of resources that communities are sometimes not able to curb on their own.

(iii) Reduced availability of resources

In some places, previously sustainable levels of resource use may now be causing over-exploitation, as a number of extraneous circumstances may have led to the decline in the extent or abundance of these resources. This is the situation, for instance, with traditional hunting of wild animals where the populations of these species have declined due to various factors emanating within and outside the community.

(iv) High cost of conservation

Communities sometimes find it difficult to deal with issues such as investment in time and labour, paying salaries for village forest guards, conflicts with other communities, human-wildlife conflicts, dealing with powerful outside offenders, inability to earn livelihoods, etc. If they do not receive support at these critical times then the initiative itself comes under threat. In Jardhargaon in the state of Uttarakhand, for example, the increased human-wildlife conflict is discouraging the people as they have not been able to find any solutions for protecting their forests. It is important to note here that comparative costs of conservation in a CCA and a government protected area show that community protection involves much lower

cost for the State as this cost is voluntarily borne by the local people (Somanathan et al. 2009).

External threats

(v) External development projects and processes

Many CCAs are faced with detrimental developmental and market pressures. Often the community initiative itself is a response to such threats, but many times these pressures could undermine the efforts of the conserving communities. Many CCAs across the country are facing threats from such development, which is made worse by the fact that they are not the legal owners of the land that they are protecting. For example, in Jharsuguda district in Odisha, one of the oldest forests managed by the village community of Lapanga is now threatened by an industrial project. CCAs such as Niyamgiri in Kalahandi and Juang areas in Keonjhar (also in the state of Odisha) are threatened by mining and industrial projects.

(vi) Smuggling and poaching

In communities like that of Shankarghola in Assam, the villagers have to be very vigilant against poachers and timber smugglers. The situation is particularly difficult in areas where forests support valuable species of flora and fauna such as medicinal plants, large mammals, and commercially important species of trees. This puts extreme pressure on the communities.

(vii) Attitudes of others

Attitudes of conservationists and government agencies towards some ecological issues can sometimes be a major stumbling block in resolving certain issues related to CCAs. For instance, the official opinion that shifting cultivation is necessarily harmful to the environment or unsustainable in all situations may differ substantially from that of the local population, and its imposition would affect local management practices and autonomy. Also, a general distrust of the local communities and their willingness and capacity to be able to manage and conserve surrounding resources exists. This attitude results in well-intentioned government policies and laws either not being implemented or implemented in a top-down manner causing disruption within the CCA. These attitudes have hampered implementation of those provisions of the Forest Rights Act, that can help CCAs get a legal status, or have imposed unfamiliar institutions upon a CCA without much consultation, all in the name of providing 'support' through various schemes and so on.

(viii) Climate change mitigation (REDD)

One of the fast-emerging threats to CCAs in India is from climate change mitigation measures, particularly REDD. As has been shown by the REDD readiness phase (MoEF 2011) that targets community lands for monoculture plantations – it results in a strengthening of the forest bureaucracy and institutions; further centralization of forest management and governance powers; reducing the diversity of community practices like shifting cultivation, grazing, collection of minor forest produce; commodification of forests through a carbon market, and so on. All these practices contradict and conflict with CCAs.

(ix) Global market forces

Global economic policies and market forces make it difficult for communities to establish and maintain local and decentralised economic systems and markets, affecting their financial sustainability.

Other threats

(x) Breakdown of traditional institutions and knowledge

Traditional institutions and knowledge systems have been eroded to a great extent because of a number of reasons, including colonial or centralised administration and politics, and an education system which does not take into account such knowledge and the dominance of modern science. This has weakened communities' abilities to manage their own environment. This often makes them dependent on constant external facilitation and inputs.

All these threats are inter-related and interdependent, thus they often create vicious circles. For instance, in the indigenous territory of Dzongu in Sikkim, the changing market forces, breaking down of traditional systems, and the entrance of destructive yet economically alluring development projects have resulted in changes in the aspirations and basic concepts of subsistence and need in the community. These changes have caused rifts in the community and reduced the number of people who believe in continuing the traditional lifestyles of Dzongu.

3. Governance and management of CCAs

3.1. How are CCAs governed and managed?

Different CCAs follow different practices of management and governance depending on a number of local factors. In some the governance and management practices are a continuation of traditional systems, such as the Kolbari-Tokbi, Malong Kisir and Goalpara CCAs in Assam and Meghalaya. The Conservation initiative of Thembang village of West Kameng district of Arunachal Pradesh is an example where traditionally the forests were being protected but the traditional systems have not been very effective in recent times, leading to degradation of the forests. An intervention by a WWF-India team re-initiated the effort with new and more effective systems of management adapted by the community in consultation with the team. Mendha-Lekha village (Maharashtra state) did not have a formal governance system, although informally some village elders occasionally met to take village-related decisions (mostly related to village functions and festivals). Once the village adopted a policy of self-rule, advised by some outside friends, it decided to follow the system of consensus decision-making. All issues are constantly under discussion until a final decision is taken; it is mandatory for about 70% of the men and women (in equal numbers) to be present in such decision-making meetings. Consensus decision-making is one of the most common systems in villages heading towards self-rule in India, which is implemented with varying degrees of success. In Odisha thousands of villages across different landscapes and ecosystems have a multitude of de facto governance regimes, employing diversified institutional mechanisms of management and protection of forests. Customary territories or biocultural landscapes of indigenous communities across different parts of India form distinct governance regimes, some of which are legally recognized in states like Jharkhand.

CCAs use a variety of institutions to fulfil their objectives. These range from a single institution for all decisions in a village to multiple institutions established for different purposes. Thus they could be *gram sabhas*, women's groups, youth groups, elected groups etc. It is important to keep in mind that the categorization is not hard and fast, as local variations within each of the categories is encountered from community to community. These committees might be set up by the village, by external bodies, or a combination of these two entities. Sometimes conservation is implemented as a traditional or newly-introduced practice without any particular institution established for the purpose, instead many decisions are taken at informal village assemblies, which are convened as and when needed. Such systems are more common in relatively smaller and more cohesive communities, where it is easier to come together as and when needed. Many villages also employ a system where sub-groups that hold the responsibility of carrying out the activities, such as the justice committee, the water committee, and so on. In Dzongu in Sikkim, the protests against the dams are being launched by a group of youth from the community. Not all the people of the community necessarily support the views of this group, however the latter does command the respect of a majority of the people. In Thembang in Arunachal, the community and WWF were together exploring the possibilities of this area being declared a Biodiversity Heritage Site under the Biological Diversity Act 2002. The community wants a mechanism to avoid excessive interference from the government and so established a committee from among themselves with WWF-India and government officials playing an advisory role. In Goalpara in Assam, the villagers have constituted a forest protection committee, which has a one-year term, while an executive committee implements the rules and regulations. In all the kinds of traditional institutions documented in India however, women play a negligible role in decision-making. Women are not necessarily excluded in all situations but the traditional social set up does not facilitate their participation in decision-making.

Experience with hundreds of CCAs across India indicates that each CCA has its own unique way of regulating the use of resources within it, although broadly these can be categorised as:

- CCAs with elaborately worked out rules and regulations (written or oral) and definite systems of monitoring;
- CCAs where people have a common understanding about what should or should not be done, and where social taboos and relationships work as monitoring systems.

Within these two categories however there are a range of situations, and rules could range from the very traditional to the very new. They are dynamic and often change to suit different locations and situations. Rules range from strict 'no use of resources' to extraction during specific periods or certain amounts and no commercial extraction of resources etc. In some cases the enforcement of these rules is strictly monitored while in others it is not. Penalties could include social sanctions, fines, or direct confrontations with the offenders. Not surprisingly, in general, in situations where livelihoods are highly dependent on the concerned resources and where threats to the resources are high, the regulatory and monitoring systems are more strict, while traditional religious and cultural practices require least amount of monitoring. This is so because of the cultural ethos based on religious beliefs like fear of a wrathful deity who will strike down those who violate the rules.



Village meeting in Murambadi village in Gadchiroli Maharashtra discussing future management of their community forest.

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3.2. Key issues faced in governing and managing CCAs

All the factors mentioned in section 2.3 have a great influence on the management and governance of CCAs. These include the education system that alienates the youth; the market economy that rapidly changes local aspirations and traditions; external development projects and companies associated with them that often bring about a divide in the community.

The following external factors make governance and management even more challenging:

(i) Panchayati Raj System and National and/or Party politics

Many CCAs are – either as a village or as a group of villages – part of the *Panchayati Raj* System (in which the *panchayats* are the smallest elected unit of state governance). CCA institutions are often not the same as the *panchayats* and are based on either traditional institutions or are made of smaller interest groups such as youth groups, women's groups and so on. CCA institutions are rarely a part of the power politics of the village and come in conflict with the powerful institutions such as the *panchayats*, except where the CCA institution is exceptionally empowered. When National party politics enters the CCA, it results in various factions within the village with political rivalries supporting their party allegiance rather than the local issues of the village.

(ii) Lack of legal backing and tenurial security

Until very recently, there was a lack of spaces for CCAs to legally secure their future. There still is no comprehensive government policy to support CCAs in their existing form and

diversity. Many CCAs stand on lands owned by the government, over which the community does not have ownership or recognised access rights. The government can decide to change the land-use or lease the land for any other purpose without consulting or even informing the conserving communities. For example, in Odisha state, 156.81 hectares of reserve and protected forest land had been informally protected by 1500 villagers from Rajharan, Jandijore, Golabandha and Similisahi villages for 15 years, when the government decided to grant permission for coal mining and for a thermal power plant in this area. Villagers continue to oppose this, unfortunately without much success. The implementation of the Forest Rights Act 2006 since the year 2008 has changed this scenario to a certain extent for forest-based CCAs, where the communities can claim management and governance rights over forest lands which they have been protecting (see section 4.1.v). The situation for non-forest based CCAs – particularly marine CCAs, CCAs protecting inland waters, etc. – remains uncertain and without legal protection.

(iii) Institutional monocultures

Conservation policies intending to provide space for community participation are top-down and often impose a uniform and rigid institutional framework on CCAs, for example in case of Conservation Reserves and Community Reserves or Joint Forest Management. These institutions often conflict with community institutions and, in many cases, end up replacing community institutions with representative imposed institutions which are prone to corruption.

(iv) Inappropriate or government support of lack of any support

The lack of a support policy or programme to deal with the above kinds of situations, negative intervention or influence by government agencies or policies, and indifference towards CCAs have been found to be major reasons for discouraging communities in many of the documented CCAs. There are very few CCAs where positive/ truly encouraging support is given to the villagers by the government agencies.

4. Recognition and support to CCAs

In addition to legal spaces and administrative procedures, recognition of CCAs is closely related to an environment of trust and openness. As may emerge from the analysis that follows, sometimes minimal legal provisions can also be useful if all actors – government, civil society, community – have mutual trust and understanding. However, the best legal provisions can still not achieve the objectives if those who are in power and position of implementation are unwilling to do so, or do not show the required trust and respect for the concerned community. The reverse is also true, if the community does not trust the law or the implementing agency because of any historic reasons, the law is not likely to be implemented. An environment of trust and openness can be built by creating a governance framework that is inclusive of rights, local livelihoods concerns, co-existence, community conservation and local knowledge, along with scientific knowledge related to conservation.

4.1. Legal Provisions: how far do they support CCAs?

In India there has not been any significant concrete effort by the government to recognize and support CCAs. However there are laws, policies and court orders that directly or indirectly provide legal space for recognition and support of community conservation as well as

restoration of commons under the control of the local bodies. We discuss some of them in this paper.

(i) Constitutional provisions and Panchayati Raj Act, including the Panchayat (Extension to Scheduled Areas) Act, 1996

A very good example of reluctance in bringing about real change on the ground towards empowering local communities – and handing over powers for governance of areas and resources around them – is the case of the Panchayat Extension to Scheduled Areas Act (PESA Act), 1996. Historical events that led to its enactment exemplify the continuous colonisation and exploitation of tribal areas, people and resources through the British and post-British era, despite the fact that these areas and people have been legally or administratively ‘protected’ since the British times.

This Act is aimed at approximately 8.08% of India’s population that has been designated as Scheduled Tribes (STs). As mentioned above, the arrival of British colonial power and their quest to gain control over the natural resources of the land had a serious impact on local people in general, and the *adivasis* or what are commonly known as tribal communities in India, in particular. This led to unrest in several areas, resulting in revolts, beginning with the Mal Paharia uprising in 1772 (Vagholikar & Bhushan 2000). In 1874, the British implemented the Scheduled Districts Act XVI, which envisaged the areas inhabited by the tribal communities to be outside the jurisdiction of the normal administration, to provide possible exemption from laws and policies implemented in the rest of the country. Through this legislation, any part of British India could be declared a ‘scheduled district’, and was provided any necessary protection. The 1935 Government of India Act classified ‘excluded areas’ and ‘partially excluded areas’. The former would be an enclave or an area inhabited by a compact *adivasi* population. Several areas in the North-East were assigned the category of ‘excluded’ areas. Whenever the area under consideration had an *adivasi* population mixed with other communities, it was classified as ‘partially excluded’. Large areas in peninsular India were categorised as ‘partially excluded’. These areas were placed under the rule of the Governor, and no law of the central or provincial legislature would apply to them. The Governor, however, was authorized to apply such laws with modifications as necessary. These provisions were also incorporated – with a few changes – into the Constitution of independent India. ‘Wholly excluded’ areas were incorporated into the Sixth Schedule and ‘partially excluded’ areas into the Fifth Schedule of the Constitution¹². Article 244 (I) of the Constitution provides for a Fifth Schedule, which can be applied to any state other than those in North-East India. The Governors of the concerned states have been given extensive powers, and may prevent or amend any law enacted by Parliament or the State assembly that could harm the *adivasi* interests. The general consensus of the committee that drafted the Constitution was that of non-imposition of mainstream culture and allowing the people to develop along the lines of their own genius. Amongst other things it clearly expressed the need for respecting tribal rights over land and forests. Subsequently, however this agenda was put on the back burner as Central government busied itself with ‘nation building’ activities post independence. Thus the process was now that of ‘internal colonisation’ in which a small ruling elite of the country decided the fate of the country and enhanced the process of resources being sucked away from rural areas for urban and industrial interests (Vagholikar & Bhushan 2000).

¹² Certain tribal areas had not been listed as ‘partially excluded’ or ‘excluded’ by the colonial rulers in 1874. This had not been remedied till now and there is pressure to include certain tribal dominated areas in ‘schedule V’. Parts of Kerala, Tamilnadu, Karnataka are in this category of having been excluded from the Fifth Schedule.

As the movement towards decentralization gained momentum, the Seventy Third Amendment to the Constitution was brought about, which elaborated on provisions relating to democratic local self-government in rural India. A section, entitled 'The Panchayats' was included as Part IX of the Constitution. This section deals with the structure, duties and responsibilities of the *Panchayat* in the village. This meant that a village or a group of villages would elect members from their Assembly to form an executive committee that would be the basic unit of governance at the level of a village or cluster of villages (depending on the population of the village). In December 1996, these provisions were extended to the Scheduled Areas by passing the Panchayat Extension to Scheduled Areas Act (PESA).

The most important aspect of this act was the definition of the *gram sabha* (assembly of all adult members of a village) and accepting this as the basic unit of governance. One of the major points of criticism of the Panchayat Act has been that *panchayats* are often formed at the level of village clusters and being representative bodies do not necessarily reflect the true interests of their constituency and have little accountability. Also they get closely linked to the national level 'party' politics. For PESA the *gram sabha* was visualised as "*all people of the village who are on the electoral rolls*" at the level of a single village or hamlet. PESA also conferred some very important governance rights and responsibility to the *gram sabha*, such as:

- 4(a) A State legislation on the *Panchayats* that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources.
- 4(d) Every *Gram Sabha* shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.
- 4(i) The *Gram Sabha* or the *Panchayats* at the appropriate level shall be consulted before acquiring and in Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be co-ordinated at the State level.¹³
- 4(j) Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to the *Panchayat* at the appropriate level.
- 4(k) The recommendations of the *Gram Sabha* or the *Panchayats* at the appropriate level shall be made mandatory prior to grant of prospecting license or mining lease for minor minerals in the Scheduled Areas.
- 4(l) The prior recommendation of the *Gram Sabha* or the *Panchayats* at the appropriate level shall be made mandatory for grant of concession for the exploration of minor minerals by auction.
- 4(m) While endowing *Panchayats* in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, the State Legislature shall ensure that the *Panchayats* at the appropriate level and the *Gram Sabha* are endowed specifically with:
 - Ownership of minor forest products;
 - Power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any illegally alienated land of a Scheduled Tribe;

¹³ An order has been passed under this section, outlining the "*Procedure to be followed for acquisition of land and organising Relocation and Rehabilitation in 5th Schedule Areas*".

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- Power to exercise control over institutions and functionaries in all social sectors;
- Power to control local plans and resources for such plans including tribal sub-plans.

Eight states in India have Schedule V areas: Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Odisha and Rajasthan. The Central Act was seen as revolutionary and something that would bring about a paradigm shift in the governance of natural resources in particular and governance in general, in tribal areas. However, the provisions of the Central Act were substantially diluted in most state adaptations, except in some states such as Madhya Pradesh, rendering the act nearly powerless and bringing about little real change on the ground. Implementation of this Act in its true spirit and letter would have provided appropriate legal support to many CCAs, in the tribal dominated Scheduled 5 areas of the country, which have been facing serious threats from forest and land acquisition by the state for industrial development.

(ii) Community Reserves under 2002 Wildlife Protection Act-Provisions for Community Reserve

Two categories of PAs – ‘Community Reserves’ and ‘Conservation Reserves’ – were added in the Wildlife Protection Act (WLPA) on India in 2002. Community Reserves can be declared by the government on privately-owned or community lands (the definition of which is not clear). Conservation Reserves can be declared by the government on government-owned lands in consultation with the local people. In both cases, the proposal for declaration and the declaration itself can be done by the government only. There is no space for communities to be able to declare their own CCAs.

While Community Reserves can provide legal support to CCAs on private or community lands only, Conservation Reserves – for the first time in wildlife conservation history – provide a space for consultation with local people before declaration of the reserve and seek their inputs in the management of the reserve; yet it remains a process completely driven by the government and communities only have an advisory role in decision making.

Given the language used and the fact that the category ‘Conservation Reserves’ specifically mentions government lands, it appears that ‘Community Reserves’ allow inclusion of non-government owned lands only. Most documented CCAs in India exist on government lands (which is mainly because most commons other than in north-east India have been taken over by the State), so may not be eligible to be declared Community Reserves. In addition, Community Reserves cannot be declared in existing Protected Areas (PAs) and existing PAs cannot be converted to Community Reserves without de-notifying them first.

Most critically, the act mandates a uniform management institution for Community Reserves, which is inappropriate to the very large diversity of management arrangements that communities have developed in CCAs across India. Most communities would not like to declare their CCAs as Community Reserves because the category does not recognise existing systems of community management and the overall in-charge remains the Chief Wildlife Warden (the senior-most wildlife conservation bureaucrat in the State), with the community’s role being largely advisory.

(iii) Village Forests under Indian Forest Act, 1927

Provision for Village Forest, under section 28 of the 1927 Indian Forest Act (IFA), provides for handing over of forests used by the communities to them as Village Forests, along with the responsibilities of the Forest Department. Existing since 1927 (and in fact a grudging acknowledgement by the British that villagers could indeed manage forests), this provision could have been used to back community-based forest conservation and management, but it has hardly been used anywhere in India. The State of Odisha has formulated Village Forest Rules in 1985, under the 1972 Odisha Forest Act, for protection and management of the village forests by the local communities. More recently, the provision has actually been used in an inappropriate way, to encompass Van Panchayats of Uttarakhand within the ambit of the IFA rather than the more independent legislation it was under (see section on Van Panchayats below). Also, the framework under IFA is not rights-based and community-oriented.

(iv) 2002 Biological Diversity Act 2002 and 2004 Rules

This law regulates access to biological diversity for commercial use and other specified purposes. It provides for the protection of intellectual property rights with respect to biological resources and associated knowledge, the sharing of benefits arising from their use, the conservation of biological diversity, and related matters. The powers to address and regulate all of these however lie directly with the State and central authorities, with little power to local institutions. The law allows state governments to declare 'Biodiversity Heritage Sites' (BHS) in areas of 'biodiversity importance'. This is done "*in consultation with the local bodies*". Rules for the management and conservation of such areas are framed by state governments in consultation with the central government. State government may "*frame schemes*" to compensate individuals or communities "*economically affected*" by the designation of Biodiversity Heritage Sites. The provision for schemes to compensate those who are 'economically affected' by the declaration of Biodiversity Heritage Sites is a strong indication that user rights in such areas will be restricted, and implies that local communities may be excluded. It also implies that communities can be moved out of areas that are so declared. This could include CCAs where communities not only protect the area but also make use of its resources for subsistence purposes.

The law does contain certain provisions that may be of relevance to CCAs. First, every local governance body is required to constitute a biodiversity management committee (BMC) to promote "*conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity*". In taking decisions related to the use of biological resources and associated knowledge, national and state-level authorities established under this act must consult these committees. Within their areas of jurisdiction, biodiversity management committees are allowed to charge a fee for access to or collection of any biological resource for commercial purposes. Biodiversity management committees can be authorized to deal with intellectual property rights, and can claim benefits from the use of local resources and knowledge. The act provides for village communities to carry out detailed resource mapping and create biodiversity inventories, which would be crucial for establishing management strategies. But the mechanical process of documenting local knowledge on biodiversity could also be prone to misuse and biopiracy, in the absence of clear legal protection of such knowledge. The act does not address the rights of biodiversity

management committees or their access to the resources they manage. Biodiversity management committees have the potential to be robust local institutions for conservation but their potential has been curtailed in the rules framed under the act, limiting their role largely to the preparation of biodiversity registers and advising the state authorities on matters related to granting approvals. The act does not specify whether biodiversity management committees have the power to deny access to resources that higher bodies have permitted.

The act does provide for the creation of local biodiversity funds in areas where “*any institution of self-government*” is functioning. Grants and loans from national and state-level authorities, fees collected by local biodiversity committees and monies received through other sources, as may be decided by state governments, are paid into the fund. The fund is to be used for the “*conservation and promotion of biodiversity*” and for the “*benefit of the community in so far as such use is consistent with conservation of biodiversity*”.

Under the 2004 Biological Diversity Rules, the National Biodiversity Authority can – in consultation with the local bodies – restrict or refuse access to biological resources for commercial use on a number of grounds, including if access to biological resources is likely to result in an “*adverse effect on the livelihoods of the local people*”. Benefit-sharing arrangements are also to be decided in consultation with local bodies and ‘benefit claimers’. Rules do not provide direct rights to the BMCs, except in states like Madhya Pradesh, Karnataka and Sikkim, which have enacted their own rules, providing for greater empowerment of communities by delegating responsibilities for biodiversity conservation and management¹⁴.

Although the 2002 Biological Diversity Act – section 37 provides for declaration of Biodiversity Heritage Sites, it does not define them. The National Biodiversity Authority has subsequently issued detailed guidelines, according to which these are well-defined areas that are unique, ecologically fragile ecosystems – terrestrial, coastal, inland waters and marine – having rich biodiversity comprising one or more of the following components: richness of wild as well as domesticated species or intra-specific categories; high endemism; presence of rare and threatened species, keystone species, species of evolutionary significance, wild ancestors of domestic/cultivated species or their varieties; past pre-eminence of biological components represented by fossil beds and having significant cultural, ethical or aesthetic values and important for the maintenance of cultural diversity, with or without a long history of human association with them. This provision is useful for identifying and declaring eco-cultural sites conserved by local communities. However the provision is hardly being used to support CCAs in India. There are only a few examples of BHS in India, and none, thus far, covering a CCA¹⁵.

(v) Community Forest Resources under 2006 Forest Rights Act and 2008 Rules

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act FRA is a potential legislation that provides for rights and empowered authorities to the local communities and *gram sabhas* to protect, conserve and manage community forest resources. Provisions that support community governance and management of resources are:

- Section 3(1)(i), which provides the right to protect, regenerate, conserve and manage community forest resources;

¹⁴ See the Karnataka Biological Diversity Rules 2005 and the Sikkim State Biological Diversity Rules 2006.

¹⁵ See <http://www.nbaindia.org/ut.htm> for information on BHS declared.

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- Section 3(1)(k), which provides for right of access to biodiversity and community rights to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
- Section 3(1)(j), which provides for customary and traditional rights; and
- Section 5 (along with rules drafted under the Act), which provides for empowered authorities to the *gram sabhas* and local communities to protect forests and biodiversity.

The Rules under the law provide for constitution of committees by the *gram sabhas* for protection of forests and biodiversity. FRA, like PESA, provides for a rights-based framework for community governance and management of forests. Unlike PESA, FRA has begun to be used by local communities and community conservation groups to claim recognition of rights including management rights over community forests and customary territories. For example, in the state of Odisha, community forestry groups and their federations such as Maa Maninaga Jungle Suraksha Parishad (MMJSP), a federation of community forestry groups has facilitated claims on community forests in more than 200 villages. Similarly, the Odisha Jungle Manch – which is a state level federation of community conservation groups – has facilitated claims in more than 1500 CFM villages. Apart from the community forestry areas, customary territories and culturally-conserved areas are claimed by Juang community in Keonjhar, Dongria Kondhs in Niyamgiri. Community conservation groups in protected areas of Badrama and Karlapat Wildlife Sanctuary have used FRA to claim management rights and have initiated process for developing plans for conservation of forests and critical wildlife habitats. It is important to mention here that these claims and assertion of rights under FRA have also helped in protecting some of the community forestry and indigenous areas from mining and industrial projects, as in the case of Dongria Kondhs whose claims on their ancestral forests in Niyamgiri has resulted in the government withholding clearance for a mining project in this biodiversity-rich area. In other states, FRA has been used by communities to strengthen local governance and community protection¹⁶. In Gadchiroli district of Maharashtra, Mendha Lekha village has secured community forest rights and has used the rights to strengthen governance and management of local forests through a strong *gram sabha*. In fact, Gadchiroli district administration of Maharashtra has received claims for and established the highest number of Community Forestry Rights (CFR) in the country under the Forest Rights Act 2006. These include community rights over forest resources as well as rights to manage and protect forests that they have traditionally been managing and conserving. Over 700 titles to forest land have been granted, of which about 400 are under section 31(i) that grants the rights and responsibilities for using, managing and conserving forest resources within the claimed boundaries. Such rights have been received by both tribal and non-tribal villages, including some with populations as high as 10,000 people.

¹⁶ See an article on Forest Rights Act experience from Odisha which discusses how FRA has been used by community conservation groups at http://cmsdata.iucn.org/downloads/policy_matters_17_pg_15_54.pdf.



Having claimed the right to use, manage and protect their forests, Mendha-Lekha village in Maharashtra, villagers have devised a system to monitor sustainable use. Bamboo harvesting being monitored by village elders in Mendha-Lekha.

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Most significant is the process in Mendha-Lekha village, which received a CFR title over a spread of 1800 ha of forests.

Box 7: Strengthening livelihoods and conservation in Mendha-Lekha village, Gadchiroli, Maharashtra

In the last two years, Mendha-Lekha village has lead a number of assertive movements to ensure that the communities are granted the rights that the FRA provides for. After having secured their rights, they have drawn out a set of rules and regulations and decided to commercially harvest bamboo (which till now was being harvested by the Forest Department). They earned revenue of over 3 million rupees. While this money – deposited in the account of the village – is now being used to generate livelihoods for the village through activities related to forest development, creating wildlife habitats, etc., rules and regulations have also been established to ensure sustainability and conservation. The village is now able to provide fair wages and timely loans not only to the residents but also to other villagers who would like to work in the village (as long as they follow all rules and regulations)

In BRT Wildlife Sanctuary of Karnataka, Soliga communities have claimed and secured / been granted rights over forests and sacred sites traditionally protected by them. Using provisions of FRA, the Soligas have started developing a community conservation plan for the BRT wildlife sanctuary (Kothari et al. 2011).

Although this provision can provide much legal and tenorial security to a number of forest-based CCAs, its implementation – particularly claiming CFR rights – has been very poor until 2012, resulting in an abysmally small number of claims being made by the local communities and even fewer titles being granted to them. Where does the success in Gadchiroli then lie? A simple analysis reveals that this success lies in the historical

coordinated civil society action in this district, and because these communities are comparatively more mobilised in most areas and have a tradition of community action (Jathar & Pathak 2012).

A very rough calculation based on available data indicates that there is a potential for over 30 million ha of forests (about 50% of the total forest area in India) being claimed by communities under this provision (Mathan 2010). As this report is being written, many social movements and NGOs are lobbying for better implementation of the act in their respective states as well as at the Centre. This has pushed the government to come up with a number of notifications and orders for better implementation of the act and currently the rules under the act are being considered for amendment to ensure that the act achieves its potential. If a sufficient number of claims are made under this law and a process put in place for effective support for post-claim governance and management, it has a potential to change forest governance in India radically and fundamentally.

(vi) Court orders and judgements

The judiciary has, in recent times, become the main medium to deal with the ineffective implementation of laws and policies related to conservation, which also holds true for decisions related to the role of local communities and indigenous peoples in conservation. Box 8 below presents significant judicial decisions that relate one way or another to community conservation. While some of these could play an important role in promoting community based conservation in the country by setting a precedent, others – by neglecting community voices or discouraging community initiatives – can have a negative overall impact on the future of CCAs in India. Sometimes, the statement preceding the main judgement has analysis and/or opinion of the judges, which can be of great significance and be used in future for arguments in the court of law depending on the context of a given case.

Box 8: Examples of court orders

- In a landmark judgment in the case of Jagpal Singh & Ors, the Supreme Court of India has held that there is an urgent need of saving and restoring the common lands to its original purpose, so that the same may be used by the people at large for its common use and has directed all the State Governments to take steps for restoration and preservation of common lands. Following this order the State of Rajasthan has launched a program for protection of common land and has also announced the draft Rajasthan Common Land Policy, 2010¹⁷. Although not used specifically for the purpose of community conservation, this pronouncement could be useful in providing legal help to the communities protecting community resources and commons targeted by industrial and mining projects.
- Viewing the lack of settlement of rights processes under the WLPA in Protected Areas as one of the reasons for their ineffective management, WWF-India filed a case in the Supreme Court, urging it to direct states to implement the WLPA in full spirit and letter (*Centre for Environmental Law v Union of India and Others*¹⁸). The resulting order in 1997 directed the “concerned State Governments/ Union territories to issue

¹⁷ For details on the Supreme Court order and related developments, see the blog <http://claim-for-commons.blogspot.com/>

¹⁸ *Centre for Environmental Law v Union of India and Others* WP(C) No. 337 of 1995.

proclamation under Section 21 (related to settlement of rights) in respect of the sanctuaries/ national parks within two months and complete the process of determination of rights and acquisition of land or rights as contemplated by the Act within a period of one year...". After this judgement, in their hurry, most state governments either ignored a huge number of existing rights or accepted all human uses without any justified process. Pre-existing CCAs in such protected areas were not recognized. The process of settlement of rights, both because of its nature and the haste with which it was carried out, also ignored customary rights and conservation practices.

- In 1995, a petition was filed by T.N. Godavarman Thirumulpad against the large scale deforestation activities occurring in Gudalur Taluk of Nilgiri in Tamil Nadu (*T.N. Godavarman Thirumulpad v Union of India and Others*, Writ Petition No. 202 of 1995). In response to the petition, a series of orders affecting forest conservation are being passed by the Supreme Court of India¹⁹. One such order is the 14 February, 2012 order restraining the state government from ordering the removal of dead, diseased, dying or wind fallen trees, drift wood and grasses from any national park, game sanctuary or forest. On 28 February, 2000 the order was modified to remove the word 'forest'. The Order ignored the fact that several million people living in and around protected areas across the country (Kothari et al. 1995) derive livelihood support from the collection and sale of non-timber forest products. The Order was followed by a 2002 amendment to the Wildlife Act (Sections 29 & 35 (6)), which prohibited the commercial use of forest products taken from protected areas. A subsequent circular issued by the Ministry of Environment and Forests clarified that henceforth "*rights and privileges cannot be enjoyed in protected areas*"²⁰. These measures led to a complete ban on the removal of non-timber forest products from national parks and sanctuaries for any commercial purpose, including minor local transactions, all over India, causing severe hardship and starvation for, many forest dwellers (Kothari & Wani 2007).
- With respect to community-based conservation efforts, the denial of access to forest products alienates communities from the ecosystems they have traditionally conserved and managed. An example where such a denial has affected local management practices of a community is the *soligas* of Biligiri Rangaswamy Temple Wildlife (BRT) Sanctuary in Karnataka. In BRT, before the declaration as a sanctuary, the *soligas* had their traditional way of forest management. They subsisted on shifting cultivation, along with gathering of non-timber forest produce (NTFP) for subsistence purposes and some amount of hunting, engaged in a customary practice of setting litter fires annually. As a consequence of a mixture of Supreme Court orders and WLPA provisions, their traditional practice of setting litter fires (which had ecological and cultural significance) was banned. The *soligas* claimed (and there have been other research reports supporting the claims) that the suppression of traditional fires has led to a degradation of the area with increase in the spread of invasive species *Lantana camara*. The 2006 ban on NTFP collection in BRT – because of the above mentioned order – also led to increased tensions between the local community and the Forest Department and an increase in unemployment and wage labour.

(vii) 2010 Wetlands (Conservation and Management) Rules²¹

¹⁹ *T.N. Godavarman Thirumulpad v Union of India and Others*, Writ Petition No. 202 of 1995.

²⁰ Circular F.No. 2-1/2003-FC, dated 20 October 2003.

²¹ See <http://infochangeindia.org/201104208764/Environment/Politics-of-Biodiversity/How-not-to-save-wetlands.html>

RECOGNITION AND SUPPORT OF ICCAs IN INDIA

In December 2010, the Ministry of Environment and Forests (MoEF) notified the Wetlands (Conservation and Management) Rules, under the Environment Protection Act of 1986. No such specific legal mechanism to protect freshwater or inland wetlands existed till then; unlike for the coasts, which have had a Coastal Regulation Zone Notification since 1991.

Inland wetlands in India are crucial in the lives of several hundred million people, not only for water but also for food, livelihoods, medicine, cultural sustenance, and recreation. Equally important, they are home to unique, often endemic wildlife, many species of which are threatened. Wetlands are also actively protected by many local communities in India: documentation published in 2009 states that 11% of CCAs in India are inland wetlands and a number of other CCAs contain wetlands within them (Pathak (ed.) 2009). Yet wetlands are amongst the most abused of the country's ecosystems and seriously threatened. The intention of the rules was to provide legal protection to the crucial ecological, biodiversity, economic, social and cultural benefits that wetlands provide, building on India's commitment to the Ramsar Convention and the 2006 National Environment Policy.

The notification prohibits a number of activities such as reclamation and new industries (or expansion of existing ones), among others. Exceptions to these can be made only with the permission of a central authority, to be set up under the Rules. The Rules establish a Central Wetlands Regulatory Authority, comprising officials from the Ministries of Environment and Forests, Tourism, Water Resources, Agriculture, Social Justice, and the Central Pollution Control Board, and four independent scientists. Its powers and functions include processing proposals for notification of wetlands, enforcing the Rules, granting clearances for regulated activities, determining the 'zone of direct influence', all in consultation with local authorities. It will also specify threshold levels for regulated activities, and issue directions to the states for conservation and wise use.



Murambadi wetland is managed by the local villagers and supporting migratory birds. Will the wetland rules affect their powers?

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Wetlands are indeed highly threatened and these threats need to be regulated or stopped outright. Legislative backing for this is necessary but as per these rules such backing can only come through centralised bureaucracies. The Rules do not envisage any role for fishing,

farming, pastoral communities and other villagers and city-dwellers living adjacent to wetlands in the identification, management, and regulation of wetlands. There is no recognition of the history of these wetlands, their management and traditional knowledge associated with the same. The rules lack citizens' involvement, particularly those who may be currently managing and conserving these wetlands. This is a violation of the basic principles of democracy and knowledge-based decision-making. There is a danger that if this notification is implemented strictly it would lead to further breakdown of community institutions currently governing these wetlands.

(viii) State-specific Laws

Some state-specific laws also provide spaces for CCAs. The Village Council Act of Nagaland that mandates Village Councils (the local governance body) to manage wildlife within their jurisdiction, is one such example. Unlike in rest of India, most land in Nagaland is under community or private ownership. Under this act, dozens of CCAs are being established and protected in Nagaland. It provides them with a strong legal tool for fighting against commercial and industrial pressures.

The Uttarakhand state has had a history of legally-notified forest areas under the management of local communities called the *Van Panchayats* (VP) or Forest Councils. VPs are the outcome of people's struggle against British when they wanted to annex the forests belonging to the communities, in the Kumaon region of Uttarakhand. This region had a strong culture of forest management before the British began nationalisation or state annexation of forests, with informal institutions such as the *lath panchayats* (rotational system or forest patrolling). As a result of this struggle, in 1925, autonomous VPs were formed, and in 1931, rules were framed for their governance and management under the Scheduled District Act 1874. Till 1976 this system continued and VPs governed and managed the forests. In 1976 new rules were formed and VPs were brought under the Indian Forest Act of 1927, curtailing the powers of the people to a great extent. In 2001 and 2005, further changes in the rules strengthened the role of the Forest Department (FD). Attempts were also made to bring VPs under the Joint Forest Management programme. A strong people's movement started in 2005 against these new rules and greater powers of the FD in the management and governance of *Van Panchayats*. The state government however has remained adamant and has refused to give in to the demands of the people. This meant that there is now a much reduced freedom and space for CCAs that were functioning as VPs till now. Currently, there are about 12,000 VPs in the state, covering about 12-13% of its forest area. There is much frustration among many of these about their reduced governing and fiscal powers and they have been discussing bringing back their autonomy by re-claiming their VPs under the Community Forestry Provision of the 2006 Forest Rights Act (Nagarwalla & Agarwal 2009). There has, however, been little implementation of this act in the state.

4.2. Policies and schemes: how supportive are they?

(i) 1988 National Forest Policy

The National Forest Policy recognised— for the first time in the history of independent India — that subsistence requirements of the local people needed to be given preference over the industrial needs vis-à-vis forests. Basic objectives of the Policy include conserving natural heritage, preserving remaining natural forests, and meeting subsistence requirements of rural and tribal populations. The policy notes that forest management should include tribal

communities in the protection, regeneration and development of forests, and should safeguard their customary rights and interests. The strategy outlined in the Policy to achieve this includes social forestry, recommending that village and community land “*not required for other productive uses*” should be used to develop tree crops and fodder resources, with the revenues generated from such activities going to local *panchayats* or communities. The Policy also suggests that some ownership rights over trees could be vested in the individuals, with the beneficiaries entitled to “*usufruct*” and in turn responsible for “*security and maintenance*”. In doing the above, the policy emphasises on giving preference to the “*weaker sections*” of the population “*such as landless labour, small and marginal farmers, scheduled castes, tribal communities and women from all sections of society*”. As per the policy the rights and concessions in state forests “*should always remain related to the carrying capacity of forests*” and should primarily be for the *bonafide* use of the communities living within and around forest areas, specially the tribals. It also emphasises that the rights and concessions enjoyed by “*tribals and other poor living within and near forests*” should be “*fully protected*”, and their domestic requirements should be “*the first charge on forest produce*”. Although the Policy supports the recognition of customary and traditional rights, and endorses subsistence use by forest-dependent communities, it takes a dim view of the traditional practice of shifting cultivation, advising that it be discouraged and alternative livelihood activities provided. It also calls for the regulation of grazing in forest areas with the involvement of communities, some areas to be “*fully protected*” and the levy of grazing fees. The Policy notes that “*encroachment*” on forestlands must be curbed, and no regularisation of existing encroachments should be permitted.

It was under this policy that the Government Resolution on Joint Forest Management was issued in 1990²². However, JFM continues to be implemented in project mode, without legalising participation in forest management or recognising the rights of the conserving communities.

(ii) Joint Forest Management (JFM)

Two years after the Forest Policy was adopted in India, the central government issued a circular to all state governments²³, recommending the involvement of local communities in the management of degraded forests and urging state governments to involve non-government organizations to facilitate the process. The programme was promoted through the Forest Policy and implemented through resolutions at the state level²⁴. By the year 2000, JFM was operating in 22 of India’s 28 states. Currently, JFM is operating in all 28 states, with 106,479 forest protection committees (22 million participants) covering 22.02 million hectares of forest. The area under JFM is now comparable to the area under the protected areas network²⁵.

Under JFM, local communities participate in the regeneration, management and conservation of degraded forests, in partnership with government forest departments, through the establishment of joint committees. Village communities are entitled to share in the benefits arising from such forests, but the extent and conditions of sharing arrangements are determined by state governments (Apte & Pathak 2003).

²² Circular No. 6.21/89-FP dated 1 June 1990.

²³ Circular No. 6.21/89-F.P. dated 1 June 1990.

²⁴ See http://www.inspirenetwork.org/ford_forestry.htm

²⁵ See http://www.inspirenetwork.org/ford_forestry.htm

In general, JFM involves the handing over of degraded forestland to villagers for the purpose of raising valuable timber species. Plantations are created and forests regenerated, with forest departments and village communities jointly responsible for forest management. After a period of five to 10 years, timber is harvested and the villages involved are entitled to receive a share of the revenue generated. This amount varies from state to state, with some communities receiving as little as 25%, as is the case of West Bengal (Palit 2001).

JFM has had varying success in different parts of the country. Its success or failure has depended on individual state policies and methods of implementation, and often on individual forest officers or local communities. The local context has also played an important part in the outcome of JFM initiatives. In states where community rights over resources had been totally extinguished through earlier government actions, JFM has provided an opportunity for communities to participate in forest use and management (Palit 2001). But where indigenous systems of forest use and management had survived, JFM has in many cases given rise to conflict and proved detrimental to community interests (Sarin 2001). As opposed to an entire village making decisions, under JFM decisions were taken by a few selected individuals along with the forest staff concerned. This left ample scope for non-transparent financial dealings and corruption, consequently encouraging distrust and politicisation of the entire initiative. JFM has also been criticized for taking a top-down approach in general, and for not handing over decision-making power to communities (Sundar et al. 2001).

In addition, many communities which participated in JFM received negligible or no benefits from the harvest. In the recent times some communities such as Mendha-Lekha, taking advantage of the transparency laws such as Right to Information Act (RTI), have asked the government to disclose the amount of profits received and share 50% (as per the resolution for Maharashtra state) with the local communities. After much resistance some figures have been released which “*by no means present the real scenario*” as per the local people.²⁶ Much debate and discussion in the country in last few years about the FRA had taken away the focus from JFM; however, as more and more communities are filing claims for the CFR provision, which unlike JFM gives both use and management rights to the people, in an effort to continue its hold over the forests, it has revived efforts to bring more areas under JFM. Forest Department, therefore, has faced serious criticism for hindering implementation of FRA, while promoting JFM. In some states such as Odisha, the forest dependent communities and groups working on CCAs have demanded that schemes such as JFM are scrapped and more focus is given to effective implementation of FRA.

(iii) Eco-development Schemes

Whereas JFM has been implemented in forests outside protected areas, Eco-development schemes have been implemented within protected areas since 1990. A big push for this approach came in 1995, when the India Eco-development Project was launched with World Bank funding in and around seven protected areas²⁷. There was no legal basis for this project, which was testing a particular approach. It aimed, among other things, to eliminate the dependence of people on forests by creating alternative sources of income. In some cases, ‘eco-development’ has been successful in reducing the pressure on forests or in eliminating

²⁶ Personal communication by Subodh Kulkarni and Mohan Hirabai Hiralal, Vrikshamitra, Maharashtra; and email exchange with State Forest Department in May 2012.

²⁷ Five of these were tiger reserves, one was an elephant reserve within a national park and the last was a National Park. See Shahabuddin 2007.

conflict²⁸. But in general, the eco-development approach has remained largely within the conventional bounds of top-down conservation, with little or no involvement of local people in protected area management, no reinforcement or granting of traditional resource rights, and little encouragement of traditional resource conservation practices or knowledge. A few exceptions to this include the initiative in Periyar Tiger Reserve, where greater efforts were made to empower and involve *adivasi* or tribal communities in conservation and ensuring sustained livelihoods (Kothari & Pathak 2004b).

The key limitations of these schemes were their top-down approach, uniform and straight-jacketed institutions, non-adaptability to local specifications and needs, and heavy dependence for funds on external financial institutions such as the World Bank. In the recent revisions in 2011, however, the governments in some states such as Maharashtra and Odisha has made some efforts to overcome a few of these limitations to ensure that these schemes link with local political systems – like the *panchayats* – and are financially supported by internal sustainable government funding. The new JFM and eco-development resolutions (as mentioned above) have been strongly opposed by community conservation groups in Odisha on the grounds that government orders and schemes such as JFM have no relevance in the times when governance regimes need to be provided under laws such as FRA and PESA. These schemes can (and in some areas are) be used as a mechanism to restrain people from gaining legal recognition and assert greater powers of the Forest Department where communities can claim all governance powers under FRA.

(iv) National Wildlife Action Plan 2002–2016

This action plan outlines policy imperatives and strategic actions for a wide range of matters related to wildlife conservation within and outside protected areas, including the management of protected areas, the prevention of illegal trade in endangered species and the promotion of ecotourism. It stresses the importance of *in situ* conservation and recognizes that the livelihoods of millions are tied to forest resources. It aims to ensure community participation in conservation generally, and supports the involvement of communities residing in and around protected areas in particular. Local communities are also to be included in the development of ecotourism in wildlife areas.

One of the policy imperatives outlined in the action plan is ‘Peoples’ Support for Wildlife’. It states: “*Local communities traditionally depend on natural biomass and they must, therefore, have the first right on such resources. Such benefits must be subject to assumption of a basic responsibility to protect and conserve these resources by suitably modifying unsustainable activities.*” It goes on to say that conservation programmes must attempt to reconcile livelihood security with wildlife protection through “*creative zonation*” and by adding new protected area categories “*such as an inviolate core, conservation buffer, community buffer and multiple use areas*” in consultation with local communities.

²⁸ One of the sites included in the project, the Periyar Tiger Reserve in Kerala, is perhaps the best such example but its success has depended on the innovative way in which local staff have used the project, rather than something inherent in the project design (Kothari & Pathak 2004b). Officials worked with villagers to eradicate their debt, obtain better prices for agricultural products, introduce new income-generation activities linked to wildlife tourism, and even to help with social problems such as the trafficking of drugs and women. In response, villagers have taken to patrolling the reserve, reporting poaching and wood theft, managing a part of the large tourist inflow, and assisting with management in other ways. See Lockwood et al. 2006.

While the plan encourages community involvement in the formulation of management plans and their representation in management committees, it does not explicitly call for decision-making powers to be transferred. The role of communities in conservation is supplementary to that of government wildlife protection bodies and agencies. The plan specifically endorses the idea of Community Reserves and Conservation Reserves. This is the only specific recognition of CCAs (or potential CCAs) in the plan, apart from recommendations for two ‘priority projects’: one for the restoration of degraded habitats outside protected areas, which involves identifying “*sites of community managed areas [...] where endemic or localised threatened species may continue to exist*” and supporting their continued conservation (section IV-1.2); and the other for ensuring peoples’ participation in wildlife conservation, which involves “*encouraging*” people to help protect and manage wildlife habitats outside protected areas, “*including community conserved forests, wetlands, grasslands and coastal areas*” (section VIII-9.3).

The action plan does contain a number of provisions that could benefit CCAs. Key among them are the recommendations concerning benefit sharing from tourism activities (section X-1.1) and the provision of financial and other incentives to communities participating in conservation efforts (section VIII-2.3 and VIII-9.2).

Also of potential relevance for CCAs are recommendations concerning the creation of a new central government-sponsored scheme to assist state governments in protecting wildlife and habitat outside protected areas (section III-2.1); and the development of special schemes for the welfare of local people outside protected areas “*where critically endangered species are found*” (section III-2.3). This recommendation resulted in the inclusion of a scheme in the 11th Five Year Plan of India (with adequate financial resources) for support of wildlife conservation, including through CCAs, outside PAs (see section 4.2.v below for details on the scheme).

The recommendations for studies of “*ethnic knowledge*” to apply this knowledge to wildlife management and to obtain intellectual property rights to benefit local communities (section VI-4.1) may be of relevance in CCAs with a long history of traditional management.

The action plan also calls for “*time bound*” programmes to assist voluntary relocation and rehabilitation of communities living in national parks and sanctuaries (section I-2.2); comprehensive guidelines on voluntary relocation from protected areas, starting with national parks in the first phase and including sanctuaries in the second phase (section VIII-6.1); the identification of strict conservation zones within protected areas (section II-1); all identified areas around protected areas and wildlife corridors to be declared as ‘ecologically fragile’ under the Environment (Protection) Act of 1986 (section III-5.2); and ‘ecologically fragile’ status also for crucial ‘wildlife corridors’, all biosphere reserves, World Heritage Sites, Ramsar sites and other areas declared or notified under international environmental treaties (section XI-5.2).

Despite the fact that specific timelines have been identified for achieving these objectives, there are few cases in which moves have been made for implementation, particularly on those issues related to participation of local people and recognition of CCAs. This is mainly because of the absence of specific legal provisions under which the action plan could be implemented. The action plan’s recommendations to involve people in the management of wildlife are not supported by the provisions of the Wildlife (Protection) Act.

(v) 2006 National Environment Policy

As with most policy documents, the National Environment Policy contains many broad statements concerning the importance of community participation in various initiatives aimed at conservation. The Policy recognizes that communities have traditionally protected common resources such as “*water sources, grazing grounds, local forests [and] fisheries*” through “*various norms*” but notes that such norms have weakened (section 2). It acknowledges that the exclusion of local communities from the protected area declaration process and the loss of traditional rights in such areas have undermined wildlife conservation. It calls for expanding the country’s network of protected areas, “*including Conservation and Community Reserves*” (section 5.2.3), but does not specify how community rights and participation are to be ensured. The eco-development model is to be promoted in “*fringe areas*” of protected areas, to compensate communities for access restrictions within protected areas (section 5.2.3).

What may be of particular relevance to CCAs is the idea of ‘incomparable values’: “*Significant risks to human health, life, and environmental life-support systems, besides certain other unique natural and man-made entities, which may impact the well-being, broadly conceived, of large numbers of persons, may be considered as ‘Incomparable’ in that individuals or societies would not accept these risks for compensation in money or conventional goods and services. A conventional economic cost-benefit calculus would not, accordingly, apply in their case, and such entities would have priority in allocation of societal resources for their conservation without consideration of direct or immediate economic benefit*” (section 4.vi). The Policy calls for the establishment of mechanisms and processes to identify such entities and recommends the inclusion, under this nomenclature, of “*forests of high indigenous genetic diversity*”, ancient sacred groves and ‘biodiversity hotspots’, among others.

(vi) Final Technical Report of the National Biodiversity Strategy and Action Plan (NBSAP) 2004²⁹

This document – prepared after an extensive 4-years consultative process – recognizes community conservation initiatives and stresses on legal, administrative and other kinds of support for CCAs. It also stresses on developing guidelines for implementation of Joint Protected Area Management (JPAM). It contains a number of provisions for supporting ICCAs and JPAM. Unfortunately, the final National Biodiversity Action Plan released by India in 2008, contains very little of the specific detail of this document.

4.3. Administrative, Funding and Policy Support

Many successful CCAs have received no external funding or support. Some communities set up a fund with contributions from within the community, or with money raised by imposing fines and penalties. Others have managed to obtain funds from government line agencies under various government programmes and schemes. Examples are now emerging where CCAs are generating their own funds through management and harvesting of non timber forest produce such as in Mendha-Lekha village, mentioned above. Although there continue to be examples of donor-driven or externally driven community conservation programmes

²⁹ Available at: <http://www.kalpavriksh.org/index.php/conservation-livelihoods1/72-biodiversity-and-wildlife/national-biodiversity-strategy-action-plan/224-nbsap-final-technical-report.html>

that collapsed as soon as the donor pulled out or funding stopped.

Providing ecologically sensitive and yet appropriate sources of livelihood is a major issue for many communities. In the recent times, a few government schemes have taken this into consideration. Communities who are aware and assertive are able to take advantage of these cumulative schemes, such as the National Rural Employment Guarantee Scheme (NREGS), which makes it mandatory for the government to provide village-based employment for a minimum of hundred days per year to anyone who demands employment. Some villages have taken advantage of it by planning activities such as developing water sources, drinking water facilities, farm improvement activities and tree planting activities within their village, and getting paid for it under this scheme.

The Development of National Parks and Wildlife Sanctuaries scheme was introduced by the Central Government in the 10th five-year planning period to support state governments in carrying out conservation activities in wildlife areas. Under the 11th Five-Year Plan, this scheme was re-named as Integrated Development of Wildlife Habitats, and its scope widened to include the “*management, protection, and development*” of protected areas. Among the initiatives that were to be taken under this scheme were the establishment of a system for surveys, inventories and socio-economic analysis to be used in management planning for protected areas, including Community Reserves and Conservation Reserves. The 11th Five-Year Plan called for “*participatory management with village eco-development [as a component of the programme]*.” It states that assistance should be provided for the management of “*identified special vulnerable habitats of high conservation value*” outside protected areas³⁰. In the year 2008-09, Ministry of Environment and Forests constituted a committee to draft a set of guidelines for the implementation of this scheme. The guidelines focusing on CCAs, were reportedly finalised and circulated, but their current status of implementation could not be ascertained. While support for conservation outside protected areas may directly benefit CCAs that operate without formal recognition, the promotion of the eco-development model could hinder community conservation, depending on the manner in which the initiative is implemented on the ground.

The UNDP-India, through the Ministry of Environment and Forests, has initiated a programme in two states – Arunachal, Odisha and Madhya Pradesh – to support CCAs. In the first phase of the programme, mapping of CCAs was carried out in these states. Current status of the programme could not be ascertained.

FRA has provided opportunity for mobilization of funds as post recognition of community rights villages in Maharashtra have been able to harvest and sale minor forest produce like Bamboo and has got direct benefits which was not possible before. These funds are being utilized for conservation and natural resource development.

³⁰ Although the 11th Five-Year Plan does not mention financial support for CCAs, a government report prepared in 2006 notes that “*several community initiated and driven conservation programmes*” exist, and recommends that budgetary support is provided to them: “*Such CCAs exist in a wide spectrum of legal regimes ranging from government owned lands (both forest department as well as revenue department owned) as well as private owned lands. Such CCAs [community-conserved areas] may not necessarily be officially notified but should still be eligible for financial support as an incentive for community-led conservation practices*” (Government of India 2006).

4.4. Support by Civil Society Organisations

India has a number of civil society organisations (CSOs) working on various issues related to local and tribal communities, most of these issues have direct or indirect bearing on community conserved areas.

(i) Supporting local movements and struggles

There are examples from British times and subsequently of the local *adivasi* and non *adivasi* communities having resisted appropriation of their territories by the colonial government, followed by the national government after the independence. Local movements supported by civil society networks such as National Forest Peoples and Forest Workers Network (NFPFW), Campaign for Dignity of Survival (CSD), and many others, have struggled for legal security of land tenure for these communities, resulting into the enactment of rights-based legislations such as the Forest Rights Act 2006, which has become one of the main legal spaces for forest-based CCAs in India in the recent times. Similarly, networks such as International Collective in Support of Fishworkers (ICSF) have continued a mass movement for support of tenurial security of the fishing communities. Many NGOs such as NFPFW, Lok Pashu Palak Sanstha (LPPS), Anthra and others have been supporting the movements for the rights of pastoralist and other grazier communities. Organisations such as the Deccan Development Society (DDS) have supported the movement for the rights of the *dalit* women and their efforts to protect and promote the agricultural diversity (and are now demanding a Biodiversity Heritage Site status for the area, under the Biological Diversity Act). Similarly, movements of local communities to protect their territories and resources from destructive development such as extractive industry, hydro-electric dams, etc. have been supported by a large number of civil society groups and individuals including Kalpavriksh, Vasundhara, Dakshin Foundation, and many others.



Consultation with local villagers on Forest Rights Act in Bodadha village, Maharashtra. NGOs have played an important role in ensuring that this Act is implemented on the ground and villagers are made aware about its potential.

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(ii) Legal support

NGOs and individual lawyers have played a very important role in providing local communities legal guidance as and when required and also fighting cases in the local, High or Supreme Courts. Most of these have been voluntary support and have resulted in landmark judgements. A large number of NGOs attempt to bring in legal knowledge and information to the local communities and facilitate the process of implementing these laws on the ground. Community forestry groups and indigenous communities in Odisha, Maharashtra and other states have been provided technical support and training to use FRA for claiming rights over management of the forests and rights over customary territory. Discussion has been initiated with the community conservation groups, civil society groups and government agencies to evolve a suitable conservation model which is based on the rights legislations like FRA and PESA for the areas conserved by local communities.

(iii) Documentation, mapping and advocacy

Non-governmental agencies like Kalpavriksh, Vasundhara, and others have carried out extensive study and documentation on community conservation initiatives in different parts of India³¹. In Odisha, Vasundhara has documented and studied community forestry and conservation initiatives and has worked with the federation of the community conservation groups to advocate for their legal recognition. Information on community conservation initiatives has been shared on the website (www.cciori.org) and workshops have been organized to promote the community conservation approach³². These NGOs have also been lobbying for the recognition of CCAs both in national and international forums. Kalpavriksh has worked on detailed set of guidelines for the Ministry of Environment and Forests for recognition and support of CCAs in the country. Similarly, inputs are made on all laws and policies which have a bearing on CCAs on a regular basis, including organising local consultations to seek local feedback, letters and submissions to the relevant government agencies, national consultations, multi-stakeholder consultations and so on to bring about relevant changes in the laws and policies. A few civil society groups and local community representatives have come together in 2011 to starting a learning and advocacy process, through which information about implementation of Community Forestry Rights under the FRA is being collected. Based on this information this network has been lobbying for better implementation of provisions related to community rights, towards achieving the twin objective of establishing community rights over forest resources and achieving biodiversity conservation³³.

NGOs such as Nature Conservation Foundation, some local units of WWF-India and many others, are working with local communities towards strengthening their governance as well as facilitating conservation of small and large wild animal and plant species. Among the successful examples, we can include the Thembang community in Arunachal Pradesh.

Realising that livelihoods security is one of the key factors influencing CCAs, GEF - Small Grants Programmes and numerous other local, state and region based NGOs (including Foundation for Ecological Security - FES) work towards enhancing livelihoods security of

³¹ See for example Pathak (ed.) 2009.

³² See news on the symposium on community conservation initiatives at:
<http://www.hindu.com/2007/11/23/stories/2007112352450300.htm>

³³ See
<http://www.fra.org.in/new/document/A%20National%20Report%20on%20Community%20Forest%20Rights%20Under%20FRA%20-%20Status%20&%20Issues%20-%202012.pdf>

local communities, including CCAs. In the year 2006, after a series of consultations with the CCAs and government agencies in the state of Nagaland (carried out by Kalpavriksh, NEPED, and the forest department), a number of issues were identified towards supporting and helping CCAs in the state. Salim Ali Centre for Ornithology and Nature (SACON) initiated an ambitious programme to provide technical and livelihoods support to about 30 CCAs in the state. The programme came to an end in 2010 but currently discussions are on among a few organisations including NEPED to take this forward.

(iv) Academic research and writings

A number of historians and academics have written about the fact that the Indian history is peppered with numerous examples of local tribal and non tribal communities governing, managing and conserving species, ecosystems, and territories. Some of these include Chandran and Kalam (1997), Chandrashekhara and Shankar (1998), Das and Malhotra (1998), Gadgil (1995), Gadgil and Guha (1962), and P.S. Ramakrishnan (1998). Many of these continue to bring about academic papers on various aspects of conservation by local communities.

4.5. Key issues for the recognition and support to CCAs

The key issues related to recognition and support of CCAs are:

- Lack of information and database at the government level on community conservation initiatives and groups.
- Non-implementation of rights legislation like FRA and PESA by the government implementing agencies, for legal recognition of tribal and local community rights in general, and community conservation in particular.
- Lack of any FRA-like law for non-forest ecosystems, thereby providing no cover for fishers (inland and coastal/marine), and many pastoralists.
- Inappropriate recognition in WLPA and BDA (see sections 4.1.ii and 4.1.iv above), and continuation of bringing in centrally governed and implemented programmes such as the recent notification on the Wetlands (see section 4.1.vii above) or encouraging schemes such as JFM and Eco-development when laws like FRA can be implemented (see section 4.2.ii and 4.2.iii above).
- Non implementation or weak implementation of the Constitutional and legal provisions for rights of indigenous communities over customary territories and sacred areas (see section 4.1.i above).
- Diversion of natural ecosystems and customary territories protected and used by the local and indigenous communities for resource extractive projects like mining, or industries and infrastructure projects (see section 3.2 above).
- Resistance within the forestry establishment on changes and non-adoption of community conservation as an approach in the official conservation paradigm, among the official and some conservation fraternity. This includes lack of inclusion of CCAs in the official training and research institutes.

- Externally-aided natural resource management programmes, which are implemented by the state agencies in conventional manner with negligible or in appropriate participation of and consultation with the concerned local communities, leading to confusion and corruption at the local level. Many of these programmes are target-oriented and not process-focused and cause major impediments in CCAs.
- Proposed measures for climate change mitigation such as REDD and Green India Mission, which have implications on rights, local governance and community conservation.
- One of the major issues continues to be with marine ecosystems, where the issue of rights and legal recognition is ridden with problems, as communities have limited and unclear tenure rights over marine areas and resources. In addition, since marine resources are not area-based and move seasonally, the concept of sedentary conservation efforts do not work. They often have systems of conservation that move with the fish that they depend on. Recognizing this reality has been a problem for any laws, policies and programmes. For those coastal communities whose conservation efforts are area-based, a lack of tenurial security is a major deterrent. In Odisha and Sundarbans in West Bengal, communities who have lived there for generations, are still considered migrants or immigrants as they do not have legal papers to prove their existence, and the traditional institutions of the fishing communities (although very active and effective) are not involved in any form of formal governance systems, as they are not considered part of the local *panchayats*. This has often led to political conflicts.

5. The future

5.1. Future activities planned by the communities, the government, and the civil society; especially in relation to issues of recognition and support

At present Forest Rights Act has given an opportunity to community conservation groups and indigenous communities to get legal recognition and support. In many parts of India community conservation groups are now in the process of claiming management rights and rights over customary territories and landscapes protected and used by them. Groups working on marine areas are augmenting their efforts to bring in legislation similar to the Forests Rights Act for marine areas.

5.2. Recommendations

(i) Recognition of rights and a mechanism for larger support

A sense of belonging or custodianship towards an area, its resources or the species being protected is one of the most important factors in a community's decision to carry out conservation. This sense of belonging develops over time through subsistence, livelihood, economic, social, cultural and spiritual association and interaction with these resources. Legal backing for community rights is not a pre-requisite for conservation to be initiated; but for the initiative to be sustainable – particularly in the face of growing internal and outside threats and challenges – community rights and conservation systems must be secured. It is also

important to ensure that communities cannot be deprived of legal recognition, and that changes to the status of the area are not made without consultation.

So far just about a handful of CCAs have been able to show that it is possible to make creative use of legal provisions by combining available rights under different laws; but most communities have not been successful in acquiring rights or securing their CCAs in this manner. This is partly because of the lack of knowledge and awareness about such provisions, but more importantly because of a lack of faith in statutory law and government institutions. This also points towards need for a change in the government functioning to be more trustworthy, providing the communities the certitude that their interest and that of biodiversity is primary in implementing the laws. This will also require a watershed change in the attitude and functioning of government agencies, particularly Forest Department as compared to their conventional manner of functioning.

A paradigm shift in the governance framework is the need of the hour, particularly in view of the enactment of rights legislation like FRA and PESA. These laws provide rights-based framework for recognition of community conservation and local governance of natural resources and need to be implemented with focus on relevant provisions under these laws (such as section 3(1)i on community forest rights and management rights). This process needs be complemented with an initiative at the government level to review the existing forest and conservation governance systems and institutions and to make changes which would adapt to, be supportive of and be instrumental in bringing about and supporting the changed political, social and ecological situations in forest governance.

Role of the CSOs is also very significant in being able to facilitate the process of implementation of legal provisions, as procedures are often complicated and difficult to understand. To be able to make the best use of existing legal provisions and suggest appropriate future changes and also to provide technical, procedural and any other support required by CCAs, it is important to create a multi-actor support structure for CCAs at all levels of governance, which are strongly represented by CCA representatives.

(ii) Site-specific approaches

In a country like India, framing a single law that provides adequate legal cover for the wide range of CCAs – or any other support that is uniformly prescribed – is not practical. It is perhaps more important to ensure that key principles required to support and strengthen CCAs are included in a common legal framework and/or policy, which is then used for any site-specific legal support or other kind of support to CCAs. It is also important that such a policy clearly identifies and specifies processes and provisions that undermine the operation of CCAs and the rights of communities. Such processes and provisions are legally not sanctioned and kept in mind while detailing a process of recognition of CCAs and local communities in general. Review needs to be done to identify laws, policies, programs which conflict with the rights under FRA, PESA and others that complement the assertion of community rights.

The law must recognize the importance of site-specific management, and allow for the existence of variety of institutions and practices. Systems of management and community institutions already in place, and operating successfully, should be strengthened and supported, rather than superimposed by new statutory arrangements.

(iii) CCAs and Protected Areas

Laws governing protected areas need to be more flexible, to encompass the wide variety of CCAs, not only with respect to management categories but also, importantly, with respect to land ownership arrangements. The provisions of the WLPA would need to be amended to give clear rights, powers, and roles to communities in and around protected areas, including appropriate recognition of CCAs where communities want it. For forest-based CCAs, acts like FRA and PESA can be used to do this, while for other ecosystems similar acts will need to be brought about.

The FRA provides the strongest support for CCAs, and for forest-dwelling communities, specified scheduled tribes and pastoral communities. However, given the complex nature of land occupation and ownership, as well as the migration and movement of communities, the success of this Act will depend largely on how it is implemented in each state, and that state's ability to deal with local complexities. Additionally, this Act applies only to forest resources and no other ecosystems or land types are covered. It is important that the Act is implemented in all categories of Protected Areas including Tiger Reserves. The current violation of the Act while relocating communities from protected areas must be stopped.

The legal regime is already broad in its scope with respect to the objectives for establishing protected areas. These include biodiversity conservation, the protection of landscapes, the creation of corridors or buffer zones, the preservation of cultural heritage and sacred sites, and the protection of indigenous knowledge. The language of most laws is thus broad enough to encompass all of the many purposes for which CCAs are established. This will also help in achieving the Aichi targets of the Convention on Biological Diversity in the country.

In seeking legal recognition for their protection and conservation activities, communities must not be forced to forego their decision-making powers. This should be done while ensuring that principles of good governance, including equity, transparency, accountability, information and dialogue, are adhered to at all levels (also a requirement in the Element 2 on governance under the programme of work on protected areas of the CBD).

(iv) Protection against external threats

Development projects – particularly extractive industry, hydroelectric projects, nuclear projects and many others – impacting community resources and indigenous territories should not be imposed on CCAs; and the requirements of full recognition and respect of rights, and of Free Prior Informed Consent of the communities need to be mandatorily followed. Provisions for this already exist in various laws, so while clearing the projects it must be ensured that processes related to local consent have been implemented in a fair and just manner.

(v) Sharing information and creating a database on CCAs

Adequate and correct information is often the key for effective decision-making. Processes must be put in place to make information available to the conserving communities on a regular basis. Help in establishing regular contact with outside agencies, particularly with the government agencies, should be provided to be able to resolve misunderstandings, conflicts and carry out regular and open dialogues.

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Documenting, publicising and providing public recognition to CCAs helps encourage them as well as motivates others.

Often help is needed in developing detailed maps using participatory technologies and GIS, possibly through a series of site-specific workshops with the local communities to seek their inputs. These maps could be used for both asserting rights over traditional territories and for effective management of the conserved sites.

Finally it is of utmost importance that a national level database on CCAs is maintained, similar to the one on government-designated protected areas; however this should be done after obtaining Free Prior Informed Consent of the communities and preferably by themselves.

(vi) Financial backing

Critical financial and other support is needed / necessary for handling issues of payment to watchers, establishing boundaries, incentives (not necessarily financial) for families who have donated their private lands and resources for conservation, and access to alternative resources during the time when the conserved area is completely closed for regeneration. This could be done by convergence of a number of existing government schemes being implemented in these areas. Huge external funds may not be needed to support CCAs.

It is important to explore and support locally generating resources through appropriate means, either sustainable management of resources (as is being done by Mendha-Lekha village, see above), through benefit-sharing mechanisms such as under the National Biodiversity Authority, eco-tourism initiatives, among others. Some communities may require a transparent process of facilitation in the above and a mechanism for support price and sustainable harvest for some of the resources that may be commercially utilised to create a local economy.

The kind of support provided must be decided in consultation with communities and with their consent. Similarly, where funding is involved, systems of accountability and transparency need to be developed at all levels, in consultation with communities. Implementation mechanisms must provide for a participatory system of monitoring as well as for external evaluation if a need is felt by the conserving communities.

(vii) Recognition of customary law

The strength of long-standing CCAs in India comes in large part from the customary laws and rules or more contemporary local laws and rules. Where statutory law has provided backing to local rules, this has been an effective means to secure the continuity of conservation initiatives. But in general the statutory regime governing conservation in India does not recognize or endorse customary law. This is one area where legal amendments or implementing regulations are urgently needed. Meanwhile, laws such as the FRA contain broad provisions for the recognition of customary practices (Section 3(1j)), while similar provisions need to be enacted for non-forest ecosystems as well.

It is also important to keep in mind that not all customary laws necessarily ensure equity or social justice (for example, traditional rules that exclude women from decision-making).

Issues of equity and fairness, where they arise, will need to be resolved case by case, in consultation with the communities concerned.

(viii) Landscapes, buffer zones, connectivity

CCAs, much like any other protected area, are vulnerable to the impact of activities taking place outside their perimeters and in most cases they do not have the machinery of the State operating in their favour. It is important therefore (and this has been recognised in the text of many policies) that an area is looked at as a landscape rather than small islands of conservation. Provisions in the law already provide for some measure of control over such harmful activities, such as the provisions under the FRA and the notifications by the government about seeking consent of the local people prior to giving forest clearance for development projects. Here, too, the issue for CCAs is to be able to make use of these provisions effectively, which would require amendments in the law to facilitate the participation of people and provide recognition for CCAs.

(ix) Livelihood issues

For many communities, conservation is not an isolated activity but encompasses an entire way of life, and includes the carefully managed use of resources for subsistence purposes. In fact, the success of many CCAs across India comes from the fact that community conservation efforts take place in tandem with livelihood activities. Conversely, experience has shown that in many statutory protected areas conservation efforts have failed because the livelihood needs of local communities have been neglected.

Given the diversity of CCAs in India and the variety of landscapes in which they exist, it is essential for the laws, policies and processes for recognition of CCAs to make provisions for mandatory coordination between various government agencies. This would include, for example, measures to improve coordination between Wildlife and Forest Departments, and agencies responsible for land administration. It would also include a mechanism to ensure that development or conservation projects implemented by the government do not undermine conservation efforts and institutions that are already operating in such areas.

(x) Recognition of the role of the local leadership

Considering that a large amount of the local community's time must go into earning a livelihood, it is sometimes difficult to sustain the fervour for protection activities, especially if there are no immediate threats. In such circumstances, an individual or a group of individuals from within the community plays an extremely important role in motivating the community, carrying out important tasks and guiding the entire initiative. Often the initiative itself is a result of mobilisation by such social leaders. Sometimes there appears to be a heavy dependence on these leaders, with no one to take over in their absence. In some areas efforts are being made towards including the youth in the village processes. In developing a decentralised conservation law or policy, it is important that efforts are invested in developing or creating circumstances for such leadership within the community to continue and elements of the same to be passed on to the next rung of leadership. Often such leaders have to pay an enormous personal price to play the required role, a phenomenon that can at times be a hurdle towards a smooth transition to the second line of leadership. It is important to bear in mind that such leaders, working largely for the social cause, cannot be replaced by leadership emerging out of financial, political, and other selfish motives.

(xi) No imposition of external laws, policies and systems

Implications of developments in the context of climate change mitigation – like the REDD and Green India Mission – on community conservation need to be studied, and full consultations undertaken with communities and civil society before decisions on them are taken. Similar, any other schemes, plans or laws must go through a process of Free Prior Informed Consent before being implemented in an area. Legal status of the CCA should not be changed unless the community wishes it to, and is fully aware of the implications of such a change and the implications of not changing. The existing system (institutions, rules and regulations) should be accepted, if needs with some modifications in cases where such institutions are not inclusive and just. The kind of support to be provided (social recognition, legal backing, funds, technical inputs, etc) must be decided only in consultation with and the consent of the community. Systems for accountability of funds provided or for monitoring the impact of the help provided should be worked out with the community.

5.3. Conclusions

In conclusion, the communities often realise the difficulty of managing natural resources on their own, especially given the internal and external social dynamics and political and commercial pressures. There is no existing system by which the above-mentioned support could easily reach the villagers.

An active role of the State as a partner in the management of resources is often envisaged by local communities, but on equal terms and in the capacity of a facilitator and guide rather than a ruler or police person as is the current practice. For example, in Mendha villagers requested the Forest Department for help in establishing systems for sustainable harvest and marketing of Bamboo (see section 4.1.v for details). Unfortunately, such support either never comes or comes with conditions of greater power being exercised by the government agencies.

If government interventions are made with a serious intention of helping the local communities to achieve conservation, then such official interventions will have to be very carefully thought and developed in consultation with the concerned communities and implemented in their true spirit. Based on the experience so far, it appears that the external agencies can play an important role in providing the following support:

(i) Greater recognition and support

- ✓ Correct and adequate information for being able to make informed decisions.
- ✓ Establishing regular contact with outside agencies, particularly with the government agencies, through regular, open and transparent dialogues.
- ✓ Documentation, popularising and awarding positive efforts.
- ✓ Helping in making detailed maps using GIS with the local communities, which can be used both for asserting rights and effective management of territories and areas.
- ✓ Maintaining and updating a national level database on CCAs.

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- ✓ Creating national, state or sub-state systems and/or institutions for continuous support, guidance and monitoring of CCAs. This could include support and facilitation of regional cooperation and the building of coalitions/federations among CCAs or newer bodies similar to those of State Wildlife Advisory Boards constituted under Wildlife Protection Act.

(ii) Site-specific technical, financial or other help (with the consent of the community)

- ✓ Providing critical financial and other support for handling issues of payment to watchers, establishing boundaries, incentives and access to alternative resources during the time when the conserved area is completely closed for regeneration.
- ✓ When required and asked by the communities, help resolve conflicts with the neighbours and other communities also using the conserved resources.
- ✓ Supporting local institutions, systems, rules and regulations, and giving such rules and regulations the status of statutory provisions.
- ✓ Helping to strengthen local institutions and facilitating greater equity and transparency in their decision-making process.
- ✓ Helping in formulation of management plans for conserved resources and species, and helping to establish community documentation and monitoring system.
- ✓ Facilitating the adaptation of appropriate ecological technologies for enhancing their livelihoods, and where appropriate, linkages with consumers and sensitive markets in order to generate resources. This includes developing fair and equitable models of eco-tourism. Such interventions should however be carried out with a strong precaution that new technologies and markets can also cause disruption and damage, if not carefully controlled.
- ✓ Presently, even remotely located communities are linked to markets and dependent on them to a varying degree for cash income. However, the markets with which these communities interface are often highly exploitative, and government policies often end up supporting the exploitation. Most communities need help with such interface, whether it is to do with marketing of non-timber forest products, products from other ecosystems, or any other.
- ✓ Action to tackle the critical threats such as action against powerful offenders, timber smugglers, poachers; and fighting against industrial forces such as mineral industry and hydropower. To deal with these matters, it is proposed that the project clearance process for CCAs should be also like that of any other government PAs in the country.
- ✓ Making local education more sensitive to local ecosystem, culture and processes would help youth connect better with their surroundings and conservation efforts.

(iii) Technical support related to ecological, social, and economic issues

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- ✓ Conducting some detailed studies on the ecological and other aspect of CCAs to help them establish their role in conservation. Such studies will also help communities to resolve issues related to specific species and their needs, and impacts of extraction of resources on biodiversity. Such studies could be used by the communities to formulate management plans for their sites, helping them to regulate use and manage ecosystems more effectively. Often community members themselves would be interested in carrying out such studies with technical help and guidance from outside experts.
- ✓ Help in reducing human-wildlife conflicts, particularly to deal with damage to crops, livestock, and property. Communities usually do not want to take retaliatory action in such cases, but unless urgent supportive measures are considered by governments and NGOs, their tolerance levels may be crossed if the damage increases.
- ✓ Conducting awareness and training programmes for communities on the importance of biodiversity conservation in the national and global context, gender and social equity, fair trade, sustainable harvests, and local governance issues.
- ✓ Supporting and conducting youth (leadership) programmes to facilitate their interest in the initiative.

(iv) Legal and policy measures

- ✓ Considering a range of possible legal options (only if desired by the community and with full consent of the community) for providing protection and support to each CCA, including those available within the Wildlife (Protection) Act (Community and Conservation Reserves), the Forest Rights Act (community forests), the Environment Protection Act (Eco-sensitive Area), the Forest Act (Village Forest), and others, including state-level laws such as the Village Council Act of Nagaland.
- ✓ Bringing about changes in existing policies and laws to further facilitate and enable community-based approaches, and, meanwhile, preparing clearer guidelines to maximize the available spaces in these policies and laws. This includes amendment of the community reserves provision of the Wildlife (Protection) Act, to encompass community-conserved government lands as also to empower a diversity of community institutions. Among the critical changes/strengthening needed is the tenurial rights and responsibilities of local communities over natural resources. However, legal provisions for any area should only be considered after an open and transparent consultation with the communities and only if desired by them. It should be ensured that no legal recognition leads to cooption or disruption of the initiative.
- ✓ Incorporating of community-based approaches into relevant conservation schemes and programmes, including through the orientation of staff implementing these programmes.
- ✓ Through a consultative process, developing and finalising guidelines for legally and otherwise supporting CCAs where they exist, and facilitating their replication in other areas.

For any agency interested in a positive intervention in ICCAs, it is important to understand that:

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- Any negotiations at the start of the intervention need to be done at the level of the village or hamlet assembly/community council (involving all adult members, irrespective of caste, class, gender, etc.) or community groups, and not any representative/executive body selected by the intervening agency, or *panchayats*, if the *panchayat* is not at the hamlet level.
- Any decision-making bodies that are established need to be transparent and acceptable to all in the community.
- Along with a decision-making body, it is important to have an open forum for discussion that will lead towards well-informed decisions by the community. External agencies could play a critical role at these discussion forums and bring in the larger perspectives often not so easily perceived by the villagers. In turn, outsiders could learn from the detailed site-specific information that the local people have.
- Decentralised decision-making systems need to be supported by decentralised supra local systems, along with a central (state and national) framework (including legal and policy regimes) that facilitates such a system. Such support structures have organically emerged in many states or sub-state levels, like the CFM federations in Odisha or Nagaland states. In areas where such structures do not yet exist, but where there is a potential, the government or NGOs could provide need-based support. Many multi-stakeholder groups already exist at the national and state level but their mandates and representativeness is currently falling way short of what is required.

In areas where there is currently no possibility of such systems developing organically, intervening agencies may need to create such forums with complete participation of the local people and taking into account local dynamics and politics. Such a forum, if created, should be well represented by government line agencies, non-government agencies, individuals associated with the initiative, and members of the concerned community. It is important that this forum:

- Gains an understanding of the local systems in operation in the community conservation sites in the area.
- Carries out an independent assessment of the strengths, weaknesses, needs, and limitations of these initiatives.
- Creates a mechanism for regular interaction and information/experience sharing.
- Encourages and supports the community to overcome its limitations, constraints and weaknesses, appropriately taking into account local sensitivities.
- Organises capacity building programmes whenever necessary.
- Helps communities monitor the impacts of their activities.
- Helps communities create an appropriate and non-exploitative market link.

While doing all of this, the forum should be careful about not creating dependence on itself and to remember that communities must be trusted and treated as equals and with respect.

References

- Anon. 1998. *Adivasi / Indigenous Peoples in India – A Brief Situationer*. South Asia Regions, New Delhi.
- Apte, T. and Pathak, N. 2003. *International Forestry Networks in India*. A report for CIFOR, Bogor, Indonesia.
- Bijoy, C.R. and Raman, K.R. 2003. The Real Story: Adivasi Movements to Recover Land. *EPW*, Vol. 38, No. 20. Cited in Roy Burman, J.J. 2009, Adivasi: A Contentious Term to denote Tribes as Indigenous Peoples of India, *Mainstream*, Vol.XLVII, No. 32.
- Economic Survey of India 2011-12. Available at: <http://indiabudget.nic.in>
- Gadgil, M. and Guha, R. 1996. *This Fissured Land: An Ecological History of India*. Oxford India Paperbacks, Delhi.
- Government of India. 2006. Operational Guidelines for the Centrally Sponsored Scheme: ‘Intensification of Forest Management’. Available at: <http://moef.nic.in/divisions/forprt/OPERATIONAL.pdf>
- Government of India. 2010. *Mathan, Report of a National Committee on Forest Rights Act*. A Joint Committee of Ministry of Environment and Forests and Ministry of Tribal Affairs, Government of India, December 2010.
- Gupta, B. 2005. Vedanthangal Bird Sanctuary: The oldest bird sanctuary in India. Available at: <http://travellady.com/Issues/May05/1489Vedanthangal>.
- India State of Forest Report 2009 and 2011. Available at: http://www.fsi.org.in/final_2011.pdf
- IUCN. 2012. Evaluation Report, May 2012, 59p. Available at: <http://whc.unesco.org/archive/2012/whc12-36com-inf8B2-en.pdf>
- Islam, M. Z. and Rahmani, A. R. 2004. *Important Bird Areas in India: Priority Sites for Conservation*. Indian Bird Conservation Network. Bombay Natural History Society and Birdlife International, UK, pp xviii + 1133.
- Islam, M. Z. and Rahmani, A. R. 2008. *Potential and Existing Ramsar Sites in India*. Indian Bird Conservation Network. Bombay Natural History Society, Birdlife International and Royal Society for the Protection of Birds. Oxford University Press, 592p.
- Jathar, R. and Pathak, N. 2012. Implementation of Forest Rights Act In Maharashtra. In Vasundhara and Kalpavriksh, 2012, *A National Report on Community Forest Rights under Forest Rights Act: Status and Issues*.
- Kothari, A. 2011. Globalisation and its alternatives in India. *Policy Matters* 18, Special issue: Macroeconomic Policies, Livelihoods and Sustainability. IUCN-CEESP, Gland.
- Kothari, A. and Patel, A. 2006. *Environment and Human Rights*. National Human Rights Commission, Delhi.
- Kothari, A. and Pathak, N. 2004a. Can Communities Conserve Important Bird Areas? In Islam, M. Z. and Rahmani, A. R., 2004, *Important Bird Areas in India: Priority Sites for Conservation*, Indian Bird Conservation Network, Bombay Natural History Society and Birdlife International, UK, pp xviii + 1133
- Kothari, A. and Pathak, N. 2004b. Periyar Tiger Reserve: Of People and Participation. *The Hindu Survey of the Environment 2004*.
- Kothari, A. and Pathak, N. 2011. Lata Revisited. *The Hindu Sunday Magazine*. October 2, 2011.
- Kothari, A., Rai, N. and Madegowda, C. 2011. Green approach. *Frontline*, Vol.29, No. 1.
- Kothari, A., Singh, N. and Suri, S. 1995. Conservation in India: A new direction. *Economic and Political Weekly*, October 28, 1995.
- Kothari, A. and Wani, M. 2007. Conservation and people’s livelihood rights in India. Final Report of a Research Project Conducted Under the UNESCO Small Grants Programme.

- Available at:
<http://www.kalpavriksh.org/fl/f1.2/UNESCO%20CNL%20project%20final%20report.pdf>
- Lockwood, M., Worboys, G. and Kothari, A. (eds.). 2006. *Managing Protected Areas: A Global Guide*. Earthscan, London.
- Malhotra, K. C., Gokhale, Y., Chatterjee, S., Srivastava, S. 2007. *Sacred Groves in India*. Aryan Books International, New Delhi, and Indira Gandhi Rashtriya Manav Sangrahalaya, Bhopal, 170p.
- Mittermeier, R.A., Mast, R.B., del Prado, C.P. and Mittermeier, C.G. 1997. Peru. In Mittermeier, R.A., Robles Gil, P. and Mittermeier C.G. (eds.), *Megadiversity: Earth's Biologically Wealthiest Nations*, CEMEX, Monterrey, Mexico.
- MoEF. 2011. National Mission for a Green India. Available at: <http://moef.nic.in/downloads/public-information/GIM%20presentation%20Feb%2022%202011.pdf>
- MoEF. 2009. Report of the Committee for looking into the management and funding of Community Conserved Areas. New Delhi.
- Nagarwalla, D.J. and Agarwal, R. 2009. Uttarakhand. In Pathak, N. (ed.), *Community Conserved Areas in India: A Directory*, Kalpavriksh, Pune/Delhi, supplemented by field visit by author in March 2012.
- Palit, S. 2001, Overview of Joint Forest Management Status, West Bengal. Draft paper prepared for a book on Joint Forest Management by Common Wealth Forestry Association, India Chapter. In Collaboration with Winrock International India and Ford Foundation, New Delhi.
- Pathak, N. 2009. Community conserved areas in India: An overview. In Pathak, N. (ed), *Community Conserved Areas in India: A Directory*, Kalpavriksh, Pune/Delhi.
- Pathak, N. (ed.). 2009. *Community Conserved Areas in India – A Directory*. Kalpavriksh, Pune/Delhi.
- Ramakrishnan, P.S., Saxena, K.G. and Chandrashekhara, U.M. (eds.). 1998. *Conserving the Sacred for Biodiversity Management*. Oxford and IBH Publishing Co. Pvt. Ltd., pp. 337-347.3.
- Sarin, M. 2001. *De-Democratisation in the Name of Devolution? Findings from Three States in India*. CIFOR, Indonesia.
- Singh, K.S. 1992. *People of India: An Introduction*. Anthropological Survey of India and Laurens and Co, Calcutta.
- Somanathan, E., Prabhakar, R., and Singh Mehta, B. 2009. Decentralization for cost-effective conservation. *PNAS*, Vol. 106, No. 11. Available at: <http://www.pnas.org/content/106/11/4143>.
- Guptabhaya, S. and Pathak, N. 2011. Policy Brief on Status of Rights Recognition and Pre-Conditions for Relocation in Critical Tiger Habitat as Specified by The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA) 2006 (FRA) and Wild Life (Protection) Amendment Act (WLPA), 2006.
- Shahabuddin, G. 2007. India Ecodevelopment Project: A fragmented legacy. In G. Shahabuddin, *Conservation at the Crossroads*, Permanent Black, Delhi.
- Subramanya, S. 2006. Pelicans bounce back. *World Birdwatch*, Vol. 28, No.2, p. 4.
- Sundar, N., Jeffrey, R. and Thin, N. 2001. *Branching Out: Joint Forest Management in India*. OUP, New Delhi, pp. 26-27.
- Tiwari, B.K., Barik, S.K., and Tripathi, R.S. 1999. *Sacred Forests of Meghalaya: Biological and Cultural Diversity*. Regional Centre, National Afforestation and Eco-Development Board, North Eastern Hill University, Shillong.

RECOGNITION AND SUPPORT OF ICCAs IN INDIA

- TPCG and Kalpavriksh. 2005. *Securing India's Future: Final Technical Report of the National Biodiversity Strategy and Action Plan*. Prepared by the NBSAP Technical and Policy Core Group, Kalpavriksh, Delhi/Pune.
- Vagholikar, N. and Bhushan, S. 2000. Panchayat (Extension to scheduled areas) act, 1996 - A Study of Complementarities and Contradictions with Laws and Policies relating to Natural Resource Conservation. Kalpavriksh, Unpublished Report.