

Protected Areas and the Land Rights of Indigenous Peoples and Local Communities

Current Issues and Future Agenda

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ACRONYMS AND ABBREVIATIONS

CBD	Convention on Biological Diversity
CBNRM	community-based natural resource management
CFUG	community forest user group (Nepal)
COP	Conference of the Parties
CWH	critical wildlife habitat (India)
DENR	Department of Environment and Natural Resources (Philippines)
EPBC Act	Environment Protection and Biodiversity Conservation Act (Australia)
ha	hectare(s)
ICC	Indigenous Cultural Community (Philippines)
ICCA	indigenous and community conserved areas
ICDP	integrated conservation and development project
IPRA	Indigenous Peoples Rights Act (Philippines)
IUCN	International Union for Conservation of Nature
LGEEPA	General Law on Ecological Balance and Protection of Environment (Mexico)
Mha	million hectare(s)
NGO	non-governmental organization
OEAM	other effective area-based measure
PAMB	protected-area management board (Philippines)
RRI	Rights and Resources Initiative
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

I. INTRODUCTION

The relationship between protected areas and community land rights is important for both human rights and biodiversity conservation at a global scale. It is important for human rights because land and natural resources are fundamental to the existence, livelihoods, cultural heritage, identity, and future opportunities of Indigenous Peoples and local communities. Customary rights to land and resources, particularly for Indigenous Peoples, are clearly recognized in international human rights law. The relationship between protected areas and community land rights is important for biodiversity conservation because of the tremendous contributions that Indigenous Peoples and local communities have made historically and continue to make as stewards of the Earth's ecosystems and species. Secure rights to land and resources are essential for ensuring that these contributions continue, because they enable people to exercise their traditional knowledge and management systems, defend against external threats, and govern their lands to meet the long-term needs of current and future generations.

Over time, as the focus of international conservation has shifted from wildlife and habitats toward ecosystems, broader landscapes, and climate change, the role of protected areas has changed, but remains prominent. Historically, protected areas have been established as part of broader processes of expropriation of community lands, and have therefore been a flashpoint for conflict between conservation agencies and organizations and traditional peoples. A “new paradigm” for protected areas has been evolving for decades in which Indigenous Peoples and local communities are recognized as land and resource owners and managers, with positive results for both human rights and conservation. The transition to this new paradigm remains substantially incomplete, however.

This report aims to increase the understanding of the diverse tenure situations that exist within and outside protected areas and to direct attention to the issues associated with community land and resource rights in conservation. It assesses how protected areas in a range of countries relate to Indigenous Peoples and community land and resource rights, and the implications of these relationships for human rights and biodiversity conservation. The analysis encompasses all 17 “megadiverse” countries¹ (identified as the world's most biodiversity-rich countries, containing at least two-thirds of all non-fish vertebrate species and three-quarters of all higher plant species), as well as four other high-biodiversity countries. The countries are: Australia, Brazil, Cameroon, China, Colombia, the Democratic Republic of the Congo, Ecuador, India, Indonesia, Kenya, Liberia, Madagascar, Malaysia, Mexico, Nepal, Papua New Guinea, Peru, the Philippines, South Africa, the United States of America, and Venezuela.

Section II of the report provides an overview of the historical development of protected areas in relation to community land rights. Sections III to V present the findings of the analysis, addressing three questions:

1. What are the relationships between protected areas and indigenous and community lands in spatial terms, and the incidence of conflict?
2. How, and to what extent, are the rights of Indigenous Peoples and local communities taken into account in national legal frameworks for protected areas?
3. What is the range of community tenure situations within and outside protected areas, and what are their implications for human rights and conservation?

Section VI provides a synthesis of the information presented in sections III–V and recommends approaches for increasing the pace of change towards the new paradigm for protected areas.

II. HISTORICAL CONTEXT: PROTECTED AREAS AND COMMUNITY LAND RIGHTS

Human actions to conserve the Earth's biodiversity have a deep history, in which the main actors are Indigenous Peoples and local communities who have stewarded lands and resources across generations as part of their cultures and ways of life. This local conservation, which is inseparable from customary lands and resources, is distinct from the formal national and international conservation enterprise that took shape in the context of nineteenth-century colonialism, but has been greatly affected by it.² The chronology presented here (as background for the analysis that follows) provides a broad sweep of key historical shifts in formal conservation approaches, especially protected areas, as they relate to community land and resource rights.

Colonial conservation: Expropriation and exclusion

Conservation protected areas began to be established in an era of broader colonial conquest and expropriation of the lands and territories of Indigenous Peoples and local communities. Colonial administrations around the world claimed land, especially common land, for the state, without regard for the existing rights of ownership and use under customary tenure. This expropriated land was then allocated to new owners and for new uses, such as settlement, exploitation, and conservation. In establishing the first “modern” protected area in 1872 (Yellowstone National Park), and another shortly after in 1890 (Yosemite National Park), the United States government violently expelled the Native Americans who lived in and depended on the natural resources in those areas.³ These actions were influenced both by views of parks as pristine “wildernesses,” devoid of human occupation and use, and by the interests of powerful lobbies such as the railway industry, which wanted to develop parks for tourism; native peoples were seen as incompatible with both these interests.⁴

The exclusionary “fortress” approach to protected-area management quickly spread across North America, to Australia, New Zealand, and South Africa, and through colonial administrations in the rest of Africa, and in parts of Asia and Latin America.⁵ It remained the dominant model of protected-area management for more than a century, well beyond the colonial era, and remains influential today, although new approaches have also emerged since the 1980s. Protected areas covering 8.7 million km² were established between 1911 (when global data began to be collected) and 1980.⁶ In a 2006 global overview of evictions from protected areas, Brockington and Igoe hypothesized that most protected areas in which physical relocations have occurred were established before 1980.⁷ In addition to the direct impacts of eviction, restrictions on access to and the use of vital resources, as well as restrictions on access to cultural and sacred sites, have led to the impoverishment of customary rights-holders and the erosion of traditional cultures.

Integrated conservation and development – and “participation”

New frameworks and initiatives in the 1970s and 1980s – such as the United Nations Educational, Scientific and Cultural Organization's Man and the Biosphere Program, the 1972 United Nations Conference on the Human Environment,⁸ and the 1980 World Conservation Strategy⁹ – reflected emerging ideas about the environmental foundations of economic development and the impacts of poverty on the environment, and articulated the concept of “sustainable development.” In practice, changing views of the relationship between people and protected areas led to an increased emphasis on the participation of local people in protected-area management. Integrated conservation and development projects (ICDPs), which sought to develop economic activities that were compatible with

strict protection in core areas – to reduce pressures on protected areas and/or compensate Indigenous Peoples and local communities for restrictions on use – became a dominant approach in the 1980s and 1990s.¹⁰ But these new approaches did not fundamentally disrupt assumptions about the legitimacy of state control of lands and resources in protected areas or about people as threats to nature. For the most part, “participation” meant only superficial involvement in state-owned and managed protected areas, while ICDPs sought to provide compensation for the impacts of protected-area exclusions but often maintained assumptions about rights to land and the incompatibility of people and nature that gave rise to such exclusions.¹¹

Indigenous rights and community-based management

An overlapping wave of change in the relationship between protected areas and community land rights was driven not by developments in the conservation sector but by human-rights reforms, particularly concerning the rights of Indigenous Peoples. Indigenous and traditional peoples’ movements increasingly mobilized in the 1970s and 1980s and were able to assert the primacy of their customary rights over state claims. States, in turn, began reforms to legally recognize some of these rights, especially in South America. Under Brazil’s 1988 Constitution, for example, the recognition of the rights of Indigenous Peoples to their traditional lands set the stage for the formal titling of large areas of the Brazilian Amazon to customary rights-holders. Indigenous advocacy at the international level resulted in the adoption of International Labour Organization Convention 169 on Indigenous and Tribal Peoples in 1989, and the launch of negotiations on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was adopted in 2007. A central feature of these international legal instruments is recognition of the customary rights of Indigenous Peoples to lands, territories, and resources,¹² as well as to the restitution of lands taken without their prior, informed consent.¹³ In the conservation policy context, the Convention on Biological Diversity (CBD, adopted in 1992) primarily reflected these developments in terms of protections for traditional knowledge (Article 8j) and the customary use of biological resources compatible with conservation requirements (Article 10c);¹⁴ it also provided space for indigenous leaders to participate in and influence policy discussions.

As national struggles for the legal recognition of customary land rights advanced, the issue of protected-area infringements on indigenous lands gained prominence. A study published in 1992 estimated that around 50 percent of protected areas worldwide up to that time had been established on lands traditionally occupied and used by Indigenous Peoples; this proportion was 80 percent in the Americas.¹⁵ Related studies sought to estimate the extent to which Indigenous Peoples and other customary rights-holders had been displaced by conservation protected areas.¹⁶ New global fora for the discussion of Indigenous Peoples’ rights enabled indigenous leaders to voice their long-standing conflicts with protected areas and conservation actors. For example, one indigenous delegate described conservation as the newest and biggest enemy of Indigenous Peoples at a United Nations meeting to discuss UNDRIP in 2004. In the same year, delegates at an indigenous mapping conference signed a declaration stating: “conservation has become the number one threat to indigenous territories.”¹⁷

In parallel, and sometimes intersecting with these developments, the formal conservation sector began to increase its support for community-based natural resource management (CBNRM) by Indigenous Peoples and other local communities. This support was strongly influenced both by common property theory¹⁸ and by evidence of the significant spatial overlap between the territories of indigenous and other traditional peoples and high-biodiversity areas.¹⁹ CBNRM initiatives have

generally been grounded in some degree of formal state recognition of community rights to manage and benefit from natural resources – whether forests, wildlife, or coastal or inland fisheries – although often in areas still lacking broader land-rights recognition. Major CBNRM movements include community-based wildlife management in southern Africa (e.g. the “CAMPFIRE” program in Zimbabwe and Namibia’s national CBNRM program), community forestry (e.g. in Mexico and Nepal), and locally managed marine areas in the South Pacific and Southeast Asia.²⁰ While often outside the traditional conservation paradigm of “protected areas,” these experiences provided growing evidence that community-based management could make valuable contributions to the conservation of ecosystems and biodiversity.

The area of protected areas nearly doubled in the last two decades of the last century, from 8.7 million km² in 1980 to 16.1 million km² in 2000.²¹ But the nature of protected areas had begun to change to include an increasing proportion of protected areas that integrate cultural and sustainable-use objectives when compared with strict protected areas. Protected areas designated as International Union for Conservation of Nature Category VI (managed resource protected areas) increased during this time, from representing 9.5 percent of protected areas in 1980 to 14.6 percent in 2000. In this same time period, Category II (national parks) decreased in relative proportion, from representing 32.1 percent of all protected areas in 1980 to 24.4 percent in 2000.²²

The new paradigm for protected areas

By the time of the 2003 IUCN World Parks Congress in Durban, South Africa, strong participation from Indigenous Peoples and community leaders consolidated these directions of change into a “new paradigm” for protected areas. This paradigm, as articulated in the Durban Accord, recognizes the importance of cultural diversity and the conservation successes of local communities and Indigenous Peoples, and calls for the full incorporation of the rights, interests, and aspirations of local peoples in protected areas, mechanisms for participation and benefit-sharing, and support for community conservation areas.²³

The Durban Action Plan, which was developed based on the Durban Accord, included the following targets focused on securing the rights of Indigenous Peoples and local communities in relation to natural resources and conservation:

- **Target 8.** All existing and future protected areas are established and managed in full compliance with the rights of Indigenous Peoples, including mobile Indigenous Peoples and local communities by the time of the next IUCN World Parks Congress.
- **Target 9.** The management of all relevant protected areas involves representatives chosen by Indigenous Peoples, including mobile Indigenous Peoples and local communities proportionate to their rights and interests, by the time of the next IUCN World Parks Congress.
- **Target 10.** Participatory mechanisms for the restitution of Indigenous Peoples’ traditional lands and territories that were incorporated in protected areas without their free and informed consent are established and implemented by the time of the next IUCN World Parks Congress.²⁴

These outcomes of the World Parks Congress were used to influence the results of the 7th Conference of the Parties (COP 7) to the CBD in 2004²⁵ which (in its Decision 7.16, Section C, 15-18) notes that:

Parties should be encouraged, in accordance with national domestic law and international obligations, to recognize land tenure of indigenous and local communities, as recognized rights and access to land are fundamental to the retention of traditional knowledge, innovations and practices. Subject to national legislation and international obligations, Parties should be encouraged to pursue the fair and equitable resolution of land claims as an essential element of efforts to facilitate the retention and use of traditional knowledge, innovations and practices. Indigenous and local communities should, where relevant, be actively involved in the management of protected areas. The rights of indigenous and local communities should [be] given due respect when establishing new protected areas.

CBD COP 7 also adopted the CBD's first Programme of Work on Protected Areas, including a section ("Element 2") on governance, participation, equity, and benefit-sharing.²⁶ The goals and targets of Element 2 included new commitments on equity and benefit-sharing and the involvement of Indigenous Peoples and local communities in the management of protected areas "in full respect of their rights." Land rights and restitution were not mentioned explicitly, however, and nor were the rights of Indigenous Peoples and local communities beyond the context of participation.

In 2010, CBD COP 10 adopted the Aichi Targets on Biodiversity,²⁷ among which Target 11 refers to both protected areas and "other effective area-based conservation measures" (OECMs) as ways to safeguard ecosystems, species, and genetic diversity, opening a discussion on whether indigenous and community lands could be considered as OECMs.²⁸ The 2012 IUCN World Conservation Congress adopted a set of governance categories for protected areas which recognizes that protected areas may be governed by communities and private actors and through co-management arrangements, and not only by governments.²⁹ The Indigenous and Community Conserved Areas Consortium, meanwhile, has documented and promoted recognition of the large area of land that is already governed effectively by Indigenous Peoples and local communities in ways that contribute to conservation, regardless of whether they are part of formal protected-area systems.³⁰

These global policy shifts have significantly increased recognition of the rights and roles of Indigenous Peoples and local communities in conservation, and global data indicate that protected areas are becoming more diverse in their aims and governance. IUCN Category VI protected areas more than doubled in extent, from 2.36 to 4.96 million km² between 2000 and 2010, overtaking Category II as the protected area category with the greatest spatial coverage.³¹ Nevertheless, the active integration of community land-tenure reform in the global conservation agenda has been limited. At the national level, conservation protected-area policies and management practices remain strongly shaped by national tenure and governance regimes, which vary widely in their respect for, and protection of, community land rights. Sections III–V assess the implementation of the "new paradigm" in terms of spatial overlaps and conflicts, the recognition of community rights in national legal frameworks, and the range of community tenure situations within and beyond protected areas.

III. CONTESTED SPACES: CONVERGENCE AND CONFLICT

Community land rights remain a significant issue in protected-area management (and broader conservation practice) worldwide. One indicator of this significance is the persistence of large areas of spatial overlap between customary community lands and high-biodiversity areas, including areas under formal protection. A 2010 study in South America, for example, determined that 214 (27 percent) of the

801 national protected areas on the continent overlap to some degree with indigenous territories;³² in Central America, the proportion is as high as 90 percent.³³ While a wide range of conflictual or collaborative relationships may exist in these overlapping spaces, in all cases overlaps indicate the presence of peoples whose rights must be respected and protected.

Another indicator of the significance of community land rights in protected-area management is the documented evidence of continued widespread conflict over human-rights infringements associated with protected areas. As part of their work on human-rights standards for conservation, for example, the organizations Natural Justice and IIED compiled a list – not intended to be comprehensive – of 34 recent or current conservation conflicts in which communities have made some form of complaint or are seeking redress; the cases span 18 countries in Africa (eight countries), Asia/Pacific (seven) and the Americas (three).³⁴ Many of these conflicts are specifically associated with land rights, indicating that this is an issue that requires more attention from protected-area managers and supporters.

Table 1 summarizes illustrative data on the overlaps between indigenous and community lands and national protected-area systems in the 21 countries included in our analysis. While the data are not easily comparable across countries, they demonstrate that, in all countries where data is available, overlaps are substantial and indigenous and community land rights are a significant issue for protected-area management. Table 1 also lists current or recent conflicts over protected-area infringements of community land or resource rights, drawing on the Natural Justice and IIED compilation and other sources. This list, while not exhaustive, illustrates the ongoing incidence of conflicts over land and resource rights in these highly biodiverse countries. Land rights-related conflicts include those arising from involuntary restrictions on the traditional use of resources and access to sacred sites (often associated with historical displacement), overlapping rights to and control of land between Indigenous Peoples and local communities and the state, and outright evictions.

This summary review demonstrates the need to reconcile current laws and legal obligations to Indigenous Peoples in order to resolve systemic conflicts between protected areas and community land rights, and

TABLE 1: Illustrative Overlaps and Conflicts between Indigenous and Community Lands and National Protected-Area Systems

Country	Illustrative overlaps	Recent documented conflicts, illustrating the range of issues
Australia	“All of Australia’s protected areas are established in the customary territories of Aboriginal and Torres Strait Islander peoples” ³⁵	Discontent over Djabugay native title determination, with a limited “bundle of rights” in Barron Gorge National Park ³⁶
Brazil	In Brazil, 33 federal conservation units and nine state conservation units overlap with 37 indigenous territories, affecting 12.94 million hectares (Mha); ³⁷ 38.4 percent of priority areas for conservation and the sustainable use of biodiversity in the Brazilian Amazon overlap with indigenous lands ³⁸	Of cases involving conflicts in protected areas, 44.3 percent are in the Atlantic Forest, 30.3 percent are in coastal areas, 12.6 percent are in the Amazonian region, 6.3 percent are in the <i>caatinga</i> (northeast Brazil), 5.0 percent are in the <i>cerrado</i> (savanna), and 1.2 percent are in Pantanal. ³⁹ Total overlap between the Mamirauá Sustainable Development Reserve with the Jaquiri Indigenous Territory (belonging to the Kambeba people); conflict with the Porto Praia Indigenous Territory (belonging to the Ticuna people), which was demarcated in 2003 ⁴⁰

Country	Illustrative overlaps	Recent documented conflicts, illustrating the range of issues
Cameroon	Mapping with Baka forest peoples in southeastern Cameroon showed that 40 percent of the area of Boumba-Bek National Park was used intensively for traditional hunting and gathering, and this expanded to 78 percent of the area when areas of less-intensive use were taken into account ⁴¹	Conflicts include the expulsion of Baka communities to the edges of the Dja Wildlife Reserve, where they face restrictions on customary hunting and gathering by ecoguards; ⁴² restrictions on Baka customary hunting and gathering in Nki and Boumba-Bek national parks ⁴³
China	As of 1997, an estimated 30 million poor people were living in and around nature reserves. ⁴⁴ Almost all nature reserves have people living in them –up to 2.85 million people were estimated to be residing in the core zones in 2004 ⁴⁵	There is severe conflict between local people and the administration of the Changbai Mountain Biosphere Reserve over restrictions on forest-use rights ⁴⁶
Colombia	Approximately half (24) of Colombia's 56 national parks overlap with indigenous reserves or Afro-Colombian community lands. ⁴⁷ Eighteen overlap with 53 indigenous reserves and six overlap with Afro-Colombian lands; the total area of overlap is around 2.44 Mha ⁴⁸	Displacement of local communities in the creation of the Tuparro and Katios national parks ⁴⁹
Democratic Republic of the Congo	No data available	Land rights and user rights of local people are extinguished in national parks, making them flashpoints for conflict over land; ⁵⁰ Supreme Court case ongoing on the expulsion of Batwa people from the Kahuzi Biega National Park; ⁵¹ failure to consult local communities in transformation of Itombwe Massif (inhabited by 250,000 people, including Bambuti communities) into a strict nature reserve ⁵²
Ecuador	Twelve protected areas are thought to overlap with lands of traditional peoples, affecting over 350,000 ha of community land; ⁵³ 16 of the 26 national protected areas have been created in indigenous lands and territories ⁵⁴	Much of the land-tenure conflict is due to the overlap of ancestral territories with protected areas ⁵⁵
India	Human communities live in more than two-thirds of the country's protected areas ⁵⁶	Estimates of 100,000–200,000 conservation refugees, likely an underestimate due to gaps in reporting; ⁵⁷ community prosecution for collecting honey or growing ginger in forest areas; ⁵⁸ community expulsion from Similipal Tiger Reserve ⁵⁹
Indonesia	Conservation policy in Indonesia has largely been about excluding people and human activities from the country's 534 protected areas, including 50 national parks covering a total of 28.2 Mha ⁶⁰	Community farmers evicted from their farms in and around the Tesso Nillo National Park; ⁶¹ the Kasepuhan Karang territory, including agricultural lands, infringed on by expansion of Gunung Halimun-Salak National Park; ⁶² eviction of traditional fishermen from Derawan Island ⁶³

Country	Illustrative overlaps	Recent documented conflicts, illustrating the range of issues
Kenya	The most active claims today relate to community lands overlaid by forest reserves. In 31 public forest areas, about 770,529 ha are lawfully or unlawfully occupied by about 100,000 traditional forest-dwellers ⁶⁴	Forced expulsion of Sengwer from Embobut Forest; Forced expulsion of Ogiek at Mt Elgon on the creation of Chepkitale Game Reserve in 2000 without consultation; Aweer restricted to a narrow corridor between Boni and Dodori national reserves; Yaaku facing restrictions leading to their forests being destroyed by others; ⁶⁵ Forced relocation of Samburu families due to the creation of the Laikipia National Park; ⁶⁶ the Maasai, Rendile, Turkana, and Samburu people lose court appeal and are evicted from the Lekiji Village Wildlife Corridor; ⁶⁷ African Union court ruling that expulsion of the Endorois people from Lake Bogoria National Reserve was illegal ⁶⁸
Liberia	No data available	Proposed expansion of Sapo National Park restricts community hunting, fishing, and collection of non-timber forest products ⁶⁹
Madagascar	No data available	Protected areas restrict access to natural resources for herders (e.g. land for farming and forage for grazing) ⁷⁰
Malaysia	No data available	Expulsion of Orang Asli groups from the Endau-Rompin National Park; ⁷¹ the creation of the Bakun Islands National Park ignores the land rights of the Bakun people (originally resettled due to dam project) ⁷²
Mexico	It is estimated that 36 of the 62 Indigenous Peoples' groups inhabit 57 of the country's 160 protected areas ⁷³	The Alto Golfo de California y Delta del Rio Colorado Biosphere Reserve created without Cocopah consultation; failure to recognize land and fishing rights ⁷⁴
Nepal	Most of the land area of the six national parks in the Himalayas overlaps with Adivasi Janajati traditional lands; ⁷⁵ nearly half of the Sonaha peoples (1,249 individuals) in Nepal reside in the Bardia National Park buffer zone; ⁷⁶ the population size of the indigenous fishing communities around the Koshi Toppu Wildlife Reserve is around 2,000 ⁷⁷	Local Kulung, Sherpa Yamphu, Sinsawa, Mewahang, and Bhote indigenous communities fear forest access restrictions due to army mobilization in Makalu National Park ⁷⁸
Papua New Guinea	30 wildlife management areas – 84 percent of the national protected-area system – are on indigenous land ⁷⁹	
Peru	20 of Peru's national protected areas (31 percent of all protected areas) overlap indigenous lands ⁸⁰	The Kichwa people in the Cerro Escalera Regional Conservation Area refuse eviction and face restricted access and use rights by park authorities; ⁸¹ Shipibo indigenous communities reject the establishment of the Imiria Regional Conservation Area ⁸²

Country	Illustrative overlaps	Recent documented conflicts, illustrating the range of issues
Philippines	At least 96 of the 128 areas recognized for their biodiversity (“key biodiversity areas”) in the Philippines overlap with ancestral territories, including many sacred sites; ⁸³ 69 of 99 protected areas (nearly 1 Mha) overlap with ancestral lands ⁸⁴	Despite the formalization of indigenous management rights in protected areas, participation on the ground is hampered by sociocultural, practical, financial, and political barriers ⁸⁵
South Africa	Large parts of the national park system overlap with customary lands ⁸⁶	
United States of America (USA)	The Yellowstone, Yosemite, Glacier, and Grand Canyon national parks are all on customary Indian lands, as are all Alaskan and Hawaiian national parks ⁸⁷	The prohibition and regulation of Blackfoot tribal practices in Glacier National Park ⁸⁸
Venezuela	Twenty-two of Venezuela’s national protected areas (23 percent of all protected areas) overlap indigenous lands ⁸⁹	Restriction on fire use by Pemon people in the Canaima National Park ⁹⁰

establish more collaborative relationships. The next section considers the current legal frameworks for dealing with overlaps between protected areas and community land rights in the 21 sample countries.

IV. THE EXISTING LEGAL FRAMEWORKS

This section looks at how the customary rights of Indigenous Peoples and local communities are taken into account in protected-area legislation in the 21 sample countries. The extent to which community-based rights are recognized in a country’s wider legal frameworks helps in understanding the interplay with protected-area legislation, as well as the extent to which tenure foundations are in place to enable other effective contributions to conservation in community-owned or -managed areas. Information on these wider legal frameworks is therefore also presented.

The analysis looked at relevant laws and jurisprudence to answer the following questions:

- How, and to what extent, are customary and community land and resource rights recognized in protected-area legislation?
 - » Do national legal systems recognize the right of Indigenous Peoples and local communities to the ownership of land in protected areas, including through restitution?
 - » Do national legal systems recognize the right of Indigenous Peoples and local communities to manage or co-manage land classified as protected areas (beyond owned areas)?
 - » Do national legal systems recognize the access and use rights of Indigenous Peoples and local communities in government-administered protected areas?
- Have new laws or policies been enacted or amended to strengthen respect for, and recognition of, community land/resource rights in protected areas since the 2003 IUCN World Parks Congress?

Answers to these questions provide a picture of the current status of Indigenous Peoples and community land rights in national protected-area systems. They are also relevant for assessing the realization of the Durban Accord and the Durban Action Plan, especially Action Plan targets 8–10 concerning the rights of Indigenous Peoples and local communities.

Protected-area legal regimes and recognition of community-based rights to land and resources

Table 2 provides a summary of the legal analysis of community-based rights to land within and outside protected areas in the 21 sample countries. It includes information on the broader recognition of community rights to land, legal options for recognition of ownership rights in protected areas, legal options for community rights to manage or co-manage protected areas, and protection of access and use rights of Indigenous Peoples and local communities in areas that are retained under government ownership and administration. Findings on each topic are discussed below.

See Table 2 overleaf.

Recognition of community rights to land and resources

The way in which community-based rights to land and resources are addressed in the overall legal systems of countries influences the relationship between such rights and protected areas. In addition, although the definition of what should be regarded as OECMs under Aichi Target 11 is still open for discussion, community-tenure regimes outside protected areas often provide a foundation for other effective contributions to conservation from these areas.

Based on RRI's previous analysis of legal frameworks,¹⁸⁰ and additional analyses of four countries not included in that previous work, we found that 16 of the 21 case study countries¹⁸¹ have legal regimes that recognize the following rights for certain communities: the right to exclude, the right to due process and compensation, and the right to unlimited duration for recognized rights. The combination of these rights enables those regimes to be classified as “owned by Indigenous Peoples and local communities” in RRI's tenure typology. In an overlapping set of 11 countries,¹⁸² the national legal frameworks recognize tenure outside of protected areas that are classified as “designated for use,” that is, areas in which communities have some degree of control over their lands through management and/or exclusion rights.

TABLE 2: Extent of Legal Recognition of Community Rights to Land and Resources within Protected Areas

Legal Provisions/ Countries	Does national legislation enable recognition of the ownership rights of Indigenous Peoples/local communities?			Does national legislation enable recognition of the right of Indigenous Peoples/local communities to manage or co-manage areas (beyond owned areas)?			Does national legislation recognize the right of Indigenous Peoples/local communities to resource access or use in protected areas under government ownership/administration?
	To land within protected areas		To land outside protected areas ⁹²	Within protected areas		Outside protected areas ⁹⁴	
	Through resolution of historical overlaps ⁹¹	Through voluntary inclusion		Through devolution to community-based management/co-management	Through participation in government-managed protected areas ⁹³		
Australia	Yes (native title) ⁹⁵	Yes (indigenous protected areas) ⁹⁶	Yes (native title)	No	Yes ⁹⁷	N/A	Yes ⁹⁸
Brazil	Yes (indigenous lands) ⁹⁹	Yes (Quilombola territories in private natural heritage reserves) ¹⁰⁰	Yes (indigenous lands and Quilombola territories)	Co-management only (sustainable-development reserves and extractive reserves) ¹⁰¹	Yes ¹⁰²	Yes (settlement projects)	No (integral protection units) ¹⁰³ Yes (national forests) ¹⁰⁴
Cameroon	No	No	No	Limited co-management only (community-managed hunting zone) ¹⁰⁵	No ¹⁰⁶	Yes (community forests)	No (integral ecological reserves, national parks, zoological gardens, and game ranches) Limited subsistence use is allowed in other protected areas if included in areas' management plans ¹⁰⁷
China	No ¹⁰⁸	No	Yes (collective land)	No	No	No	Only in experimental zones ¹⁰⁹
Colombia	Yes (indigenous reserves) ¹¹⁰	No	Yes (indigenous reserves and Afro-Colombian community lands)	Yes (Afro-Colombian community lands) ¹¹¹	No ¹¹²	No	Only in indigenous reserves ¹¹³

Legal Provisions/ Countries	Does national legislation enable recognition of the ownership rights of Indigenous Peoples/local communities?			Does national legislation enable recognition of the right of Indigenous Peoples/local communities to manage or co-manage areas (beyond owned areas)?			Does national legislation recognize the right of Indigenous Peoples/local communities to resource access or use in protected areas under government ownership/administration?
	To land within protected areas		To land outside protected areas ⁸²	Within protected areas		Outside protected areas ⁸⁴	
	Through resolution of historical overlaps ⁸¹	Through voluntary inclusion		Through devolution to community-based management/co-management	Through participation in government-managed protected areas ⁸³		
Democratic Republic of the Congo	No	No	No	Yes (conservation concessions allocated to communities) ¹¹⁴	Yes (local community forest concessions)	No (integral natural reserves, national parks, and botanic gardens) ¹¹⁵ Yes (forest areas and buffer zones) ¹¹⁶	
Ecuador	Yes ¹¹⁷	No	Yes (community lands and indigenous territories) ¹¹⁸	No	N/A	Mostly no, except for traditional systems of subsistence fishing ¹²⁰	
India	Only if activities or presence do not cause irreversible damage or threaten the existence of wild animals (forest rights-holders in sanctuaries and national parks) ¹²¹	Yes (community reserves) ¹²²	Yes (the lands of “scheduled tribes” and other traditional forest-dwellers)	No	Yes (conservation reserves) ¹²³	Limited (sanctuaries and national parks) ¹²⁵	
Indonesia	No	No	No	Yes (traditional, religious, or particular zones) ¹²⁶	Yes (adat forests ¹²⁷ and rural and community forests)	Only in areas classified as traditional, religious, or particular zones (national forests and natural parks) ¹²⁸	
Kenya	No	Yes (communities and wildlife conservancies and sanctuaries) ¹²⁹	Yes (community lands ¹³⁰ and group ranches) ¹³¹	No	Yes (national reserves and wetlands) ¹³²	No	

Liberia	No	No	Yes (community forests)	No	Yes (provision for advisory committee in national parks and nature reserves) ¹³⁴	Yes (communal forests) ¹³⁵	No (strict nature reserves, national parks, nature reserves, or game reserves) ¹³⁶ Yes (cultural sites) ¹³⁷
Madagascar	No	Yes (certified protected areas) ¹³⁸	Customary lands ¹³⁹	Yes ¹⁴⁰		Yes (community forest management agreements, ¹⁴¹ and Fokolonona ¹⁴²)	Limited (nature reserves, national parks, and special reserves) ¹⁴³ Yes (natural parks, national monuments and protected harmonious landscapes, and natural resource reserves) ¹⁴⁴
Malaysia	Not applicable: Issues concerning forests and land are the responsibility of the individual states in which those resources are located, as per the Malaysian Federal Constitution of 1957, Article 74(2). For comparative reasons this study only considers national legislations. ¹⁴⁵						
Mexico	Only in buffer zones ¹⁴⁶	Yes (<i>comunidades</i> voluntarily conserved areas) ¹⁴⁷	Yes (<i>comunidades</i> and <i>ejidos</i>)	Yes ¹⁴⁸		N/A	No (core zones of protection and restricted use) Yes (buffer zones of traditional use, and preservation buffer zones) ¹⁴⁹
Nepal	No	No	No	Yes ¹⁵⁰		Yes (community forests, community leasehold forests granted to communities, and religious forests transferred to communities)	Limited (national parks, reserves, and conservation areas) ¹⁵¹ Yes (buffer-zone community forests and buffer-zone religious forests transferred to communities) ¹⁵²
Papua New Guinea ¹⁵³	No	Yes (wildlife management areas and conservation areas) ¹⁵⁴	Yes (customary lands)	No ¹⁵⁵		N/A	N/A ¹⁵⁶

Legal Provisions/ Countries	Does national legislation enable recognition of the ownership rights of Indigenous Peoples/local communities?			Does national legislation enable recognition of the right of Indigenous Peoples/local communities to manage or co-manage areas (beyond owned areas)?			Does national legislation recognize the right of Indigenous Peoples/local communities to resource access or use in protected areas under government ownership/administration?
	To land within protected areas		To land outside protected areas ⁹²	Within protected areas		Outside protected areas ⁹⁴	
	Through resolution of historical overlaps ⁹¹	Through voluntary inclusion		Through devolution to community-based management/co-management	Through participation in government-managed protected areas ⁹³		
Peru	Yes ¹⁵⁷	Yes (native communities and rural communities) ¹⁵⁸	Yes (native community lands, rural community lands, and indigenous reserves)	Yes (communal reserves)	Yes ¹⁵⁹	No	Yes ¹⁶⁰
Philippines	Yes (ancestral domains and lands) ¹⁶¹	No	Yes (ancestral domains and lands)	Yes (tenure migrant community-based program areas) ¹⁶²		Yes (community-based forest management)	Yes ¹⁶³
South Africa	Yes ¹⁶⁴	Yes ¹⁶⁵	Yes (incorporated community lands) ¹⁶⁶	Yes ¹⁶⁷		Yes (forest nature reserves and forest wilderness areas)	Limited (only if the co-management agreement provides for access to the area and occupation of the protected area or portions thereof, and/or conditional on written permit) ¹⁶⁹
USA ¹⁷⁰	Yes ¹⁷¹	No ¹⁷²	Indian lands ¹⁷³	Yes ¹⁷⁴		Yes ¹⁷⁵	Case-by-case basis ¹⁷⁶
Venezuela	Yes ¹⁷⁷	No	Yes (indigenous lands)	No	Yes ¹⁷⁸	N/A	N/A ¹⁷⁹

Recognition of community rights to land and resources within protected areas

Does national legislation enable recognition of the ownership rights of Indigenous Peoples and local communities to land within protected areas?

In none of the countries studied do protected-area laws themselves establish recognition of community land ownership. Therefore, the analysis of ownership focuses on those 16 countries in which community ownership rights are recognized under other community tenure laws, and considers the interplay of these laws with protected-area legislation. We identified two ways in which ownership rights may be recognized in protected areas: 1) the resolution of overlaps between community-owned lands and protected areas; and 2) the voluntary incorporation of community-owned lands into national protected-area systems.¹⁸³

Resolution of overlaps between community-owned lands and protected areas

Many of the world's protected areas were established before the rights of Indigenous Peoples and local communities were recognized in statutory laws, leading to historical overlaps (as discussed in sections II and III). The legal recourse for addressing these overlaps varies among countries and directly affects the ability of communities to exercise their rights. In the majority of cases, despite the existence of standard processes, historical overlaps are frequently resolved on a case-by-case basis;¹⁸⁴ as a consequence, generalizing at the country level is challenging. This analysis considers outcomes that are possible within national legal systems. This does not mean that these outcomes are the only possible resolution of an overlap, or even that it is the most common case in practice.

In 10 of the analyzed countries,¹⁸⁵ the resolution of historical overlaps between protected areas and community land claims may result in the restitution of those lands to communities. In three of these countries, this prerogative is limited to specific communities: in Colombia it applies only to Indigenous Peoples (not Afro-Colombians);¹⁸⁶ in Brazil it applies only to Indigenous Peoples (not Quilombolas); and, in India, protection is only extended to “scheduled tribes and other traditional forest-dwellers” protected under the 2006 Forest Rights Act.

Despite legal options in these 10 countries, the implementation of provisions allowing for restitution has often been weak. In Brazil, for example, the predominant interpretation of laws on protected areas (Law No. 9.985/2000) and Indigenous Peoples' rights to land (Article 231 of the Brazilian Constitution) is that indigenous territories and protected areas are incompatible. The Constitutional protection of the rights of Indigenous Peoples indicates that these rights should take precedence and therefore that overlapping protected areas should be de-gazetted. This interpretation is rarely implemented, however.¹⁸⁷ Instead, overlaps remain mostly unresolved, causing insecurity of rights.

In Ecuador, the Constitution also protects the rights of indigenous and Afro-Ecuadorian communities to land, including by providing ancestral lands with immunity from seizure.¹⁸⁸ Nevertheless, an estimated 50 percent of Ecuador's forest land is subject to unresolved tenure, often where ancestral territories are claimed within protected areas and not yet formally recognized.¹⁸⁹ In Peru, the state recognizes the existing ownership rights of local communities in protected areas.¹⁹⁰ In practice, however, restrictions are sometimes placed on resource use without information or compensation, leading to conflict.¹⁹¹ In Venezuela, although Article 32 of the 2005 Organic Law on Indigenous Peoples and Communities states that customary lands within protected areas should be delimited and titled in favor of Indigenous Peoples, overlaps are often resolved by the creation of “special traditional zones” in the protected area's management plan, in which Indigenous Peoples can only exercise subsistence activities such as hunting, fishing, and farming.¹⁹²

In other countries, the legal provisions on restitution themselves contain limitations. In India, the Forest Rights Act grants rights to scheduled tribes and other traditional forest-dwellers to use and own forests they traditionally occupy, but it also creates conditions under which these rights may be modified under the 1972 Wildlife (Protection) Act in the specific case of protecting critical wildlife habitats in sanctuaries or national parks.¹⁹³ As will be seen in Section V, implementation of the Forest Rights Act has also been weak.

In Mexico, protected areas are divided into core zones¹⁹⁴ and buffer zones.¹⁹⁵ Communities may only retain ownership rights in areas classified as buffer zones, and are relocated from core zones. The relocation of communities for the creation of protected areas has been a central cause of conflict over land in Mexico.¹⁹⁶

In at least eight countries, the law authorizes the state to relocate communities for the creation of protected areas, even where those communities may have ownership rights;¹⁹⁷ in all cases, the state is required to compensate these communities. Relocation – even with compensation – is not a satisfactory resolution of overlaps from the point of view of Indigenous Peoples and local communities. Moreover, it can constitute a violation of their internationally recognized rights because their lands and territories are a fundamental part of their identities and spirituality, in addition to being deeply rooted in their cultures and histories.

Voluntary incorporation of community land into protected areas

Indigenous Peoples and local communities with recognized ownership rights may have the prerogative to voluntarily include part of their recognized territories or lands in national protected-area systems.

Nine countries have legal frameworks that allow communities to voluntarily include their lands in national protected-area systems. In five of those countries, the law is specific to Indigenous Peoples and communities;¹⁹⁸ in the other four, legislation allows the possibility that private land – including the privately held lands of communities – could be incorporated into national protected-area systems.¹⁹⁹

Typically, communities enter into conservation agreements to lease land to government or to accept restrictions on their use of land in exchange for benefits, such as financial or technical assistance, or benefit-sharing. This is the case in Australia,²⁰⁰ Brazil,²⁰¹ Peru, and South Africa. In other cases, the law does not require a conservation agreement, as community land may be declared by the state at the request, or with the consent, of the affected community. This is the case in India,²⁰² Mexico, and Papua New Guinea.²⁰³

Incorporating community land into protected-area systems necessarily involves a certain level of restriction on recognized rights because some power of exclusion and management is normally transferred to the state. In Brazil, Mexico, and Peru, the community landowner must develop and submit a management plan, which the government will then approve and help implement. In India and Papua New Guinea, legislation provides for a management committee established by the government, in which community representatives participate.²⁰⁴

Nevertheless, communities may benefit from increased protections against third-party encroachment by incorporating their lands into protected-area systems. For example, the law may impose restrictions on the government in allocating protected areas to mining, agricultural, or other concessions. This is the case in at least five of the analyzed countries.²⁰⁵ In many countries,²⁰⁶ legislation also provides for benefits in the form of technical or financial assistance, tax benefits, or shares in the revenue of activities in protected areas. In Australia, for example, leases between the government and Aboriginal communities may also include provisions for the government to pay rent or to share proceeds from tourism in the area.²⁰⁷

Does national legislation enable recognition of the right of Indigenous Peoples and local communities to manage or co-manage protected areas (beyond owned areas)?

Community management and co-management of protected areas span a wide range of situations under law. In 11 of the analyzed countries, legal frameworks enable the devolution of rights to community groups to manage or co-manage protected areas. These include frameworks recognizing relatively robust combinations of access, use and management rights, such as extractive and sustainable-development reserves in Brazil and communal reserves in Peru, as described in Section V.

In Cameroon, communities are granted more limited subsistence hunting rights and co-management in community-managed hunting zones.²⁰⁸ In the Philippines, “community-based programs” allow tenured migrants to continue exercising their tenure rights in certain parts of protected areas if they occupied those areas for at least five years before the establishment of the protected area.²⁰⁹

In another set of 16 countries, national law provides for community participation in the establishment and operation of protected areas retained under government ownership and management,²¹⁰ including the right to participate in a protected area’s consultative body. In Brazil, communities in integral protection conservation units may only participate in the consultative body, the decisions of which are not binding. In at least five of the 16 countries – the Democratic Republic of the Congo, Mexico, Nepal, Peru, and South Africa – the right to participation is further regulated and can be specified in management agreements between the government and communities.

Participation and co-management agreements can be highly centralized, however. In most cases, government institutions are responsible for approving an area’s management plan, which determines the allowed activities. In other cases, although community members may participate in protected-area management boards, those boards are presided over by government officials. Moreover, some national laws (e.g. in Nepal) require the incorporation of communities as legal entities before they may participate in co-management. Such incorporation is beyond the financial and technical capacities of many communities.

Does national legislation recognize the right of Indigenous Peoples and local communities to resource access or use in protected areas under government ownership/administration?

The rights of communities to access and use protected areas that are under government ownership or administration is generally recognized only for subsistence purposes. Moreover, this usually applies in only a few types of protected areas (normally those in IUCN’s management category VI) or to limited zones within (e.g. traditional or cultural-use zones) or adjacent to (e.g. buffer zones) the protected area, and access and use may also require permits or specific provisions in the protected area’s management plan.

In South Africa, for example, although access and use rights are authorized under the law, they can only be exercised conditional to permits or the inclusion of specific provisions in management plans. In Mexico, Nepal, and Indonesia, access to and the use of resources in protected areas are limited to specific zones or buffer areas. In Cameroon, Liberia, and Madagascar, access rights are only recognized within sustainable-use protected areas.

Protected-area legal reforms and community-based rights since Durban

Legal reforms undertaken since the World Parks Congress in Durban in 2003 provide a measure of the response of countries to the “new paradigm” articulated in the Durban Accord. A review of new legislation in the period 2003 to mid-2014 shows that this **has largely been a missed opportunity.**

Only eight of the 21 countries enacted or reformed their protected-area legislation related to community land and resource rights in the period 2003 to 2014. Where such reforms occurred, they mostly focused on enabling co-management or making provisions for communities who already own land to include their lands in national protected-area systems. Since Durban:

- Only one country – Venezuela²¹¹ – created a law requiring the formal recognition of customary land where protected areas have been established. Venezuela’s law requires that customary land in protected areas should be delimited and titled in favor of Indigenous Peoples.²¹²
- India,²¹³ Mexico,²¹⁴ Kenya,²¹⁵ and South Africa²¹⁶ introduced reforms to enable both private and community landowners to voluntarily include conservation areas on their lands in national protected-area systems.
- India,²¹⁷ Indonesia,²¹⁸ Madagascar,²¹⁹ the Philippines,²²⁰ and South Africa²²¹ – introduced or further enabled the co-management of protected areas by communities.
- In Indonesia,²²² new regulations also created a system of zoning for protected areas that includes the establishment of zones within protected areas for the benefit of traditional and religious uses.

Recently, the Democratic Republic of the Congo introduced enabling legislation for both protected-area co-management and management; however, while it is applicable it is not focused on local communities.²²³

In conclusion, although some progress has been made in the past decade, **national laws still fall far short of guaranteeing respect for customary rights in protected areas.** Although the co-management of protected areas is a globally popular approach, communities have restricted access and use rights to resources in the majority of protected-area types and can only exercise resource ownership in areas classified as protected areas (should they wish to) in very specific circumstances.

V. RANGE OF COMMUNITY TENURE SITUATIONS IN AND OUTSIDE PROTECTED AREAS

Historical processes of protected-area establishment, combined with more recent legal and policy reforms, have resulted in a wide range of relationships between indigenous and community land rights and protected areas. In this section, we analyze and categorize these relationships in terms of their underlying statutory tenure for local people, and how they interact with protected-area status. We also explore the implications of these relationships for both community rights, particularly land and resource rights, and conservation outcomes.

The categories of statutory tenure used here are based on RRI’s tenure typology,²²⁴ which was developed to characterize types of forest tenure but is applied more broadly in this paper. In light of discussions around OECMs in the Aichi Targets, the relationships described here also take into account areas under community tenure that may contribute to conservation outcomes, even when they are not part of formally recognized protected areas. Box 1 summarizes these types of relationships.²²⁵

Government-administered

Under RRI’s tenure typology, government-administered lands are areas legally claimed by governments under statutory law. Many of these areas continue to be held by Indigenous Peoples and local communities

under customary tenure regimes that governments have not formally recognized. The majority of forest lands (and likely other communal lands) worldwide are government-administered, although the percentage of forest under community ownership and control increased between 2002 and 2013 (Figure 1). Community land and resource rights are particularly vulnerable to infringements from the establishment of protected areas in government-administered areas due to the lack of formal recognition of these rights.

Exclusionary protected areas

Exclusionary protected areas that overlap with customary lands without meaningfully taking into account the customary rights of Indigenous Peoples and local communities continue to operate in many countries. In some cases, this is because the country has not reformed its broader community tenure or protected-area frameworks; in those countries, even new protected areas are likely to be established without free, prior, and informed consent and to conflict with customary rights. In other contexts, legal frameworks may have been reformed to create options for the recognition of rights and the reconciliation of land conflicts, but these reforms have not yet been applied in existing protected areas.

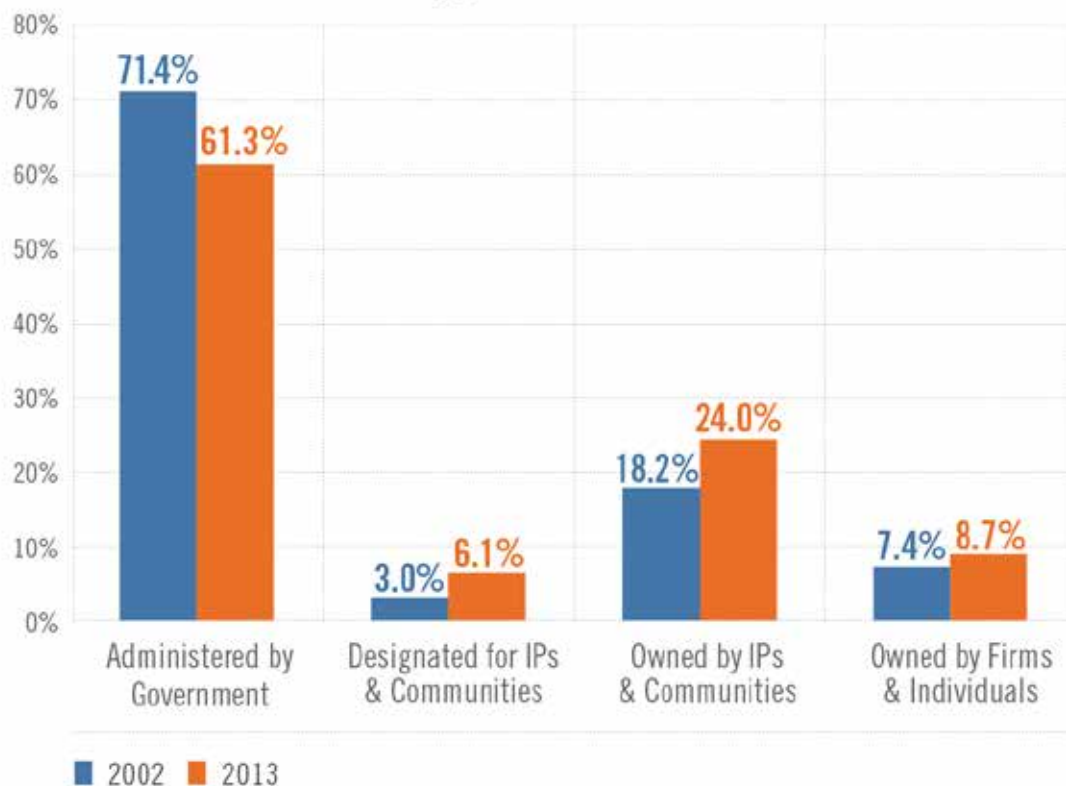
In Cameroon, for example, legislation and policies for protected areas generally do not include protections for customary rights or allow for community management. The legal framework protects only community usufruct rights for “personal” use, which may be extinguished if found incompatible with the conservation objectives of a protected area.²²⁶ The Forest Law does include a provision for Indigenous Peoples to be compensated for the loss of rights to forest resources in protected areas; the implementation of this provision, however, has been limited.²²⁷

Other countries have more progressive legal frameworks but maintain exclusionary protected areas due to weak implementation. In India, the Forest Rights Act, 2006, vests multiple rights in forest-dwellers,

BOX 1. TYPES OF RELATIONSHIPS BETWEEN COMMUNITY LAND RIGHTS AND PROTECTED AREAS

1. Government-administered lands
 - Exclusionary protected areas
 - State protected areas with some co-management and/or sanctional use
2. Lands designated for use by Indigenous Peoples and local communities
 - Protected areas designated for community management or co-management
 - Areas designated for sustainable use outside protected areas
3. Indigenous and community-owned lands
 - Co-managed protected areas on community-owned land
 - Community-owned and managed protected areas
 - Areas contributing to conservation that are not formally part of protected-area systems

FIGURE 1: Percent Change in Statutory Forest Tenure, Low- and Middle-income Countries, 2002–2013



including community and individual rights over forests, and specifically extends these rights to protected areas. The Act also forbids the acquisition of such rights in protected areas without first settling the rights under the Forest Rights Act and without the free, prior, and informed consent of the concerned communities, thereby protecting forest-dwellers from displacement. Displacement is allowed only in what the Forest Rights Act defines as “critical wildlife habitats” (CWHs), which must be determined through a participatory, scientifically rigorous process. Forest-dwellers can be displaced from such CWHs only if it is scientifically determined that the exercise of rights is damaging the habitat irreversibly and that co-existence is not possible. The Forest Rights Act stipulates that even this displacement can be carried out only after obtaining free, prior, and informed consent. In practice, however, marginalized forest-dwellers are still being displaced from protected areas across India, in open violation of the legal provisions of the Forest Rights Act as well as the recently amended Wild Life (Protection) Act, through a combination of misinterpretation, coercion, and inducement.²²⁸

Exclusionary approaches to state protected-area management are often associated with human-rights abuses beyond the underlying land-rights violations, as local people are subjected to evictions, harassment, and conflicts with park law-enforcement personnel over access to their vital resources. In terms of conservation outcomes, exclusionary protected areas also interfere with the longstanding land and resource stewardship activities of local people. Lack of legal recognition and associated recourse mechanisms also limit the ability of local people to join in combatting broader governance failures such as allocation of mining and other extractive activities in these areas.

State protected areas with some co-management and/or sanctioned use

A second category of protected areas consists of those on government-administered land that allow for some degree of community rights of access, use, and/or management. This category spans a wide range of situations, often reflecting more limited reforms put in place as part of ICDPs or efforts to resolve conflicts arising from exclusionary state protected areas. In some cases, reforms have been established in law, while, in others, they remain pilot initiatives or adaptations. This category includes buffer zones around state-owned protected areas that are legally established as “designated for use” by communities but could not exist independently of the government-administered protected area (i.e. they are not autonomous).

In Nepal, where most national parks overlap with the customary lands of indigenous and traditional communities, legislation passed in the 1990s established buffer zones for community resource use, as well as mechanisms for sharing 30–50 percent of annual tourism revenues and support for alternative livelihoods projects with buffer-zone community groups. In some areas, these mechanisms have been accompanied by limited provisions for the direct use of park resources, such as grasses and building materials; however, essential customary-use practices such as hunting, fishing, and swidden agriculture remain prohibited.²²⁹ In Indonesia, the Ministry of Forestry formally adopted a policy of collaboration in the management of conservation areas in 2004, in a context of frequent overlaps and conflicts between parks and community lands. Under the policy, community groups and other parties may participate in co-management boards and undertake activities that contribute to conservation-area management.²³⁰ In Cameroon, while not enshrined in law, limited local measures have been put in place in specific areas, such as a memorandum of understanding in the Campo Ma’an National Park, which allows indigenous communities to carry out most subsistence activities in the park and participate in certain regular consultations with park managers.²³¹

These limited measures in state protected areas represent an incremental improvement compared with the situation in fully exclusionary protected areas, but they do not address fundamental infringements of customary land rights, and nor do they compensate for the absence of such rights. In economic terms, a 2006 Global Environment Facility review of 132 protected-area projects seeking to provide local benefits found that “in general, income-generating activities and ecotourism were not able to act as a substitution for livelihood sources lost as a result of projects.” The review though indicated that improved social assessment and design might be leading to improvements in new projects.²³² In conservation terms, weak co-management structures, where they exist, and restrictions on activities in large areas of customary land, mean that Indigenous Peoples and local communities are unable to bring to bear their significant knowledge and demonstrated contributions to conservation in these areas.²³³ Addressing these limitations will likely require significant changes in land and resource rights. In Indonesia, for example, a 2013 Constitutional Court ruling is expected to have significant implications for the rights of customary-law (adat) communities in conservation areas, particularly in how communities interact with state agencies to ensure conservation (see Box 2).

Designated for use by Indigenous Peoples and local communities

The “designated for use” tenure category comprises a wide range of situations in which governments have designated areas for use by Indigenous Peoples and local communities under tenure regimes that recognize certain combinations of rights to access, use, and manage natural resources, but which fall short of recognizing ownership. These include areas established under protected-area laws as well as areas established through legal frameworks for broader sustainable-use and conservation objectives.

Protected areas designated for community management or co-management

Among the countries included in this analysis, 11 have designated areas for management or co-management by Indigenous Peoples and local communities as part of national protected-area systems. In Brazil, extractive reserves, which are areas for the sustainable use of traditional rubber-tapper communities,²³⁴ are one of several types of “sustainable-use conservation units” in the national conservation system.²³⁵ As of 2014, at least 69 extractive reserves (44 federal and 25 state) had been created in the Amazon region alone. In Peru, communal reserves are a category of protected area established for wildlife conservation and the benefit of neighboring rural communities. As of 2013, ten communal reserves had been established covering more than two Mha of forestland.²³⁶

In terms of recognition of indigenous and community land rights, these situations have often reflected compromises and/or strategic alliances with environmental interests. In Peru, for example, communal reserves are less secure than native community title lands (in that the ownership of communal reserves

BOX 2. MK35 AND CONSERVATION IN INDONESIA^a

The Ministry of Forests classifies approximately 22 Mha of Indonesian forests as conservation areas. If the term “conservation area” is applied liberally to include fragile watersheds and protection forests, this area increases to 52 Mha, which is almost 40 percent of Indonesia’s forest estate. Over 70 million Indonesians claim to be members of customary-law communities who have rights over their forests. In 2013, Constitutional Court Decision No. 35 (MK/35) ruled that customary forests (*hutan adat*) are distinct from the state forest zone. This ushered in new possibilities for the recognition and registration of *adat* lands, especially with the new Village Law (UU6/13) and its implementing regulations (Permen 52/14), which allow for the district-level designation of areas for customary-law communities. The Ministry of Forestry responded with Implementing Regulation No. 62/13, which calls for the complete excision of *hutan adat* from state land, once determined by local regulations, and sets up a tedious process for the registration of customary lands. The biggest challenge for conservation areas is whether a robust co-management mechanism can be developed when those areas fall within customary-law community claims (and therefore outside the permanent forest estate).

The position of AMAN, Indonesia’s national Indigenous Peoples representative federation, is that the excision of customary community lands from the state zone unduly relieves the Ministry of Forests of its duty in and management responsibility for protecting the national patrimony, and that this exercise has implications beyond the transfer of rights from the state to indigenous communities. Essential elements of conservation, as understood by local customary-law communities, include integrity, connectivity with other traditional ecological landscapes and seascapes, and the ability to maintain shared values around the collective ownership and stewardship of territories in healthy ecosystems. Several attempts over the years to map and sign agreements on co-management and partnerships, most notably in the Kayan Mentarang National Park, have been successful only to the extent that there is a locally trusted governance mechanism that integrates community rights and traditional ecological knowledge and systems with the shared jurisdictional authority of national and local governments.

In the context of implementing MK 35/2012, there is a need for a thorough assessment and participatory documentation of thriving customary community conservation initiatives as they interface with state forest areas and customary territories so as to better understand the key elements and dynamics of successful partnerships. This assessment and documentation will have to be accompanied by support for building local capacity in planning and undertaking effective legal/policy/institutional reforms at the local to national levels. With such capacity will come a more comprehensive, trustworthy, and beneficial mechanism for co-equal management that respects community ownership.

a. Text provided by Nonette Royo, Executive Director of the Samdhana Institute.

remains with the state), but they provide a way in which Indigenous Peoples can maintain access, use, and management rights to larger contiguous areas of customary land than is currently possible through land titles.²³⁷ Conflicts between communities and the National Institute of Natural Resources (Instituto Nacional de Recursos Naturales, the Peruvian government's main agency for natural-resource management) have persisted, however, over the level of autonomy in the internal management of communal reserves.²³⁸

Protected areas designated for management or co-management by Indigenous Peoples and local communities often play critical conservation roles. Extractive reserves, for example, form part of a mosaic of indigenous lands and conservation units that has enabled dramatic reductions in deforestation in the Brazilian Amazon – from 2.78 Mha per year in 2004 to 460,000 ha per year in 2012, a decrease in the annual deforestation rate of 74 percent.²³⁹

Areas designated for sustainable use outside protected areas

Eleven of the 21 countries sampled in this analysis have legal frameworks that enable areas outside protected areas to be designated for community management and sustainable use. These CBNRM frameworks encompass a wide range of approaches to the devolution of rights to access, use, and manage natural resources (such as forests, fisheries, and wildlife) to communities. Although mainly designed to meet sustainable-use objectives, CBNRM frameworks often include conservation objectives and produce significant conservation outcomes.

While Namibia is not in the sample of 21 countries, its national CBNRM program is perhaps the most significant and well-known example of community-based management of wildlife. Under a national law enacted in 1996, communities that fulfill certain requirements – such as the formation of a community institution (called conservancies), the development of a management plan, and the demarcation of boundaries agreed upon by neighbors – are granted legal rights to use and benefit from wildlife on their lands. The national CBNRM program has grown to encompass almost 20 percent of Namibia's land area.²⁴⁰

Nepal's national community-forest program encompasses about 25 percent of the country's forests. In the past 35 years, community forest user groups (CFUGs) have taken on the management and use of forests for both subsistence and commercial purposes.²⁴¹ As of 2013, more than 17,000 CFUGs distributed throughout the country were managing approximately 1.6 Mha of forests, benefiting 32 percent of the population through the production of forest products.

In addition to substantial income-generation, community-based wildlife management in Namibia has resulted in dramatic growth in wildlife populations, especially in areas that had formerly been subject to heavy poaching.²⁴² Community forestry in Nepal has also generated significant environmental benefits: 93 percent of CFUGs report improvements in the condition of their community forests, and local studies have demonstrated significant increases in forest regeneration.²⁴³

CBNRM initiatives typically entail certain requirements that communities must fulfill in order to gain rights to defined resources, including setting up local resource-management institutions (such as CFUGs in Nepal and conservancies in Namibia), and developing management plans. A key limitation of many CBNRM frameworks is that they include only limited rights to prevent other entities from accessing and using particular resources (i.e. the right to exclusion), meaning that these areas and communities remain vulnerable to a range of outside threats.²⁴⁴ In addition, the lack of full ownership means that communities must often contend with shifting government policies and support (see Box 3 for an example from Nepal).

Owned by Indigenous Peoples and local communities

As noted in Section IV, Indigenous Peoples and local communities are considered to own lands when they have a certain composition (or “bundle”) of statutory rights that includes the right to exclude, the right to due process and compensation, and the right of unlimited duration. This analysis identifies two types of protected areas on community-owned lands – co-managed and community-managed – and also discusses a third category of community lands outside protected areas that contribute to conservation.

Co-managed protected areas on community-owned land

Co-managed protected areas on lands owned by Indigenous Peoples and local communities are those in which the owners formally co-manage the protected areas with the government (generally a national protected-areas authority). This co-management has often come about where state protected areas were gazetted before the recognition of the land rights of Indigenous Peoples and other traditional communities.

In the Philippines, for example, the national protected-area system was established in 1992, before the passage of the Philippines’ Indigenous Peoples’ Rights Act (IPRA) in 1997. IPRA recognizes the right of Indigenous cultural communities (ICCs) to claim ownership of traditional lands, waters, and natural resources.²⁴⁵ It also includes a provision that protected areas within or overlapping ancestral domains will remain as protected areas but that ICCs have primary responsibility for maintaining, developing, and

BOX 3. CONTROVERSIAL DECLARATIONS IN THE CHURE REGION, NEPAL

The Chure region of Nepal is a fragile ecosystem on the southern plains of Terai acclaimed for its biological, hydrological, and ecological abundance. In the face of significant degradation and biodiversity loss, this area, spanning nearly 56,000 ha, was declared a conservation zone by the government in June 2014, with an accompanied ban on foraging, tree-felling, and the excavation of sand, stone, and minerals. The designation was made without any social and environmental impact assessments and community consultation, despite indisputable repercussions for the five million residents of Chure, of whom at least half belong to minority ethnic groups.

Underlying this decision was a historic lack of understanding of both the complexities of the region and the potential for synergy between conservation efforts and local land rights – indeed, research has shown that providing secure land rights is likely to be an effective conservation strategy for Chure’s extensive forests.^a However, at least 60 percent of Chure’s households are considered “illegal settlers”^b despite government encouragement to settle the area more than half a century ago. Such a state of landlessness significantly undermines the role of local people in government decision-making and in conserving the very lands they depend on.

Fearing a possible repeat of the situation in the controversial Chandragiri-Phulchowki area, a watershed that was later declared a national park and in which the military was deployed to keep the residents out, the people of Chure, with support from organizations invested in community land and resource rights (such as the Federation of Community Forest Users Nepal) and environmental research organizations, have launched a strong effort to overturn the conservation designation and the restrictions on their rights.^c This campaign does not oppose Chure’s conservation; rather, its aim is to persuade the government to adopt a conservation policy that will benefit the region’s entire ecosystem – of which its people are an integral part.

a. Community Self Reliance Centre. 2005. *International Churia Conservation, Livelihood and Land Rights: Unravelling the Complexities*. Kathmandu: CSRC.

b. Kandel, Pem. 2014. Department of Soil Conservation and Watershed Management, Nepal. *Conservation of Chure-Terai-Madesh is Possible through Integrated Watershed Management*.

c. Astha Rai, Om. 2014. Chure declaration deepens state-community mistrust. June 19. Available at: www.myrepublica.com/portal/index.php?action=news_details&news_id=77408.

protecting such areas.²⁴⁶ A 2001 joint memorandum between the National Commission on Indigenous Peoples and the Department of Environment and Natural Resources (DENR) further confirmed the primary responsibility of ICCs in managing the areas, with assistance from DENR, along with requirements for establishing protected-area management boards comprising representatives of both government and indigenous communities. While IPRA establishes a strong legislative foundation for the rights of Indigenous Peoples in protected areas, ICCs have raised concerns about the power of the management boards relative to the traditional management and leadership structures of the ancestral domains (Box 4).

In Colombia, the 1959 law establishing national parks also did not make reference to the rights of Indigenous Peoples and local communities inhabiting the areas concerned or require the participation of Indigenous Peoples and local communities in protected-area creation and management.²⁴⁷ The 1991 Colombian Constitution, however, recognized both the customary lands of Indigenous Peoples (“indigenous reserves”) and Afro-Colombian community lands. To reconcile contradictions between the 1959 law and the Constitution, the Social Participation in Conservation Policy, adopted in 2001, established co-management options in protected areas that fully or partially overlap with indigenous reserves and Afro-Colombian community lands. The policy establishes “special management regimes” between the national park authority and traditional indigenous authorities in areas where national parks overlap with legally defined indigenous reserves.²⁴⁸

BOX 4. PHILIPPINE LAWS AND POLICIES RECOGNIZING THE RIGHTS OF INDIGENOUS PEOPLES IN PROTECTED AREAS^a

In the Philippines, the national Indigenous Peoples’ Rights Act (IPRA) recognizes the rights of Indigenous Peoples to possess and occupy their ancestral domains, as well as all other rights that come with land ownership. These include rights to use all the natural resources within the land, to develop the land, and to exclude other persons from the land. At the same time, at least 96 of the 128 areas recognized for their biodiversity (“key biodiversity areas”) in the Philippines overlap with ancestral territories, including many sacred sites.

Despite the recognition of Indigenous Peoples’ rights under Philippine law, ensuring the realization of these rights in areas of overlap between ancestral domains and existing protected areas remains a challenge. The law governing protected areas in the Philippines, the National Integrated Protected Areas Act, calls for Indigenous Peoples participation in protected-area management boards (PAMBs), but there are a number of obstacles to effective participation. For example, indigenous communities have raised concerns about the composition of PAMBs in areas where populations are predominantly indigenous. Further, participation in PAMBs is impeded by a lack of training and orientation for Indigenous Peoples on their roles and responsibilities, the fact that meetings are conducted using overly technical language, the long travel distances required to attend meetings, and limited resources for travel.

These barriers were recognized in a 2006 report by the Protected Areas and Wildlife Bureau, which acknowledged that insufficient measures had been taken to enhance the capacity of Indigenous Peoples and local communities to participate in PAMB decision-making. Going forward, only the full recognition of the voices of Indigenous Peoples in planning and managing protected areas will allow the realization of their rights and the safeguarding of their interests in protected-area project development.

a. Tebtebba. 2008. Philippine Indigenous Peoples and Protected Areas: Review of Policy and Implementation (Working draft). Baguio City, Philippines: Tebtebba. Available at: <http://www.forestpeoples.org/sites/fpp/files/publication/2010/04/wccphilippinespareviewwkgdftaug08eng.pdf>.

In Australia, co-management approaches have been used to address a similar problem involving the overlap of indigenous lands and existing protected areas. In 1993, when enactment of the Native Title Act enabled the restitution of lands to Aboriginal (indigenous) communities, protected areas had already been established on many of these lands. In resolving some claims, the government has required not only that the protected areas remain, but also that their indigenous owners lease the areas back to the national protected-area authority for co-management, generally for 99 years.²⁴⁹

Generally these co-management arrangements have required that the areas remain under protected area status, including requiring lease-backs as a condition for the transfer of ownership in some cases in Australia. The lack of an option to decline protected-area status has limited the exercise of free, prior, and informed consent.²⁵⁰ Governance is often also subject to co-management requirements, management plans, and other environmental regulations. At the same time, co-management has enabled the restitution of ownership rights, while putting governance arrangements in place that offer strong enabling conditions for indigenous land and resource management. On the Pine Ridge Reservation in the United States, the Oglala Sioux are building a pathway from co-management toward full management rights in the South Unit of the Badlands National Park (Box 5).

Community owned and managed protected areas

Protected areas in this category are those established on lands owned by Indigenous Peoples and local communities and also formally recognized as part of national protected-area systems. In most cases, these protected areas exist in areas where governments have enacted broad legal reforms recognizing community rights to relatively large territories. Communities have then established protected areas on their own lands.

Indigenous protected areas in Australia are a prominent example of this relationship. The 1993 Native Title Act, and related legislative reforms in Australian states and territories, created the conditions by which Aboriginal peoples could secure titles to their lands. Indigenous protected areas may be brought voluntarily into the national reserve system;²⁵¹ doing so makes the owners eligible for funding for land management activities without the loss of autonomy associated with other protected-area co-management options in Australia.²⁵² As of 2013, indigenous protected areas in Australia extended across 48 Mha and covered an area equaling approximately 36 percent of the national reserve system.²⁵³

BOX 5. THE OGLALA SIOUX PINE RIDGE RESERVATION AND BADLANDS NATIONAL PARK

In the United States, the South Unit of the Badlands National Park, consisting of two areas within the Oglala Sioux-owned Pine Ridge Reservation, has been co-managed by the Oglala Sioux Tribe and the United States National Parks Service since 1976. This co-management arrangement superseded several decades of occupation and control of the two areas by the United States government, which relocated 800 Oglala Sioux families and took over the areas as a bombing range in 1942. The Oglala Sioux and the United States National Park Service have been drafting legislation to make this area the United States' first tribal national park, with the rights to manage the land and operate the park returning to the tribe. As a step towards this, the tribal council voted in June 2013 to phase out all cattle leases on the land by October 2015.^a

a. Eilperin, Juliet. 2013. In the badlands, a tribe helps buffalo make a comeback. *The Washington Post*. 23 June. Available at: www.washingtonpost.com/national/health-science/in-the-badlands-a-tribe-helps-buffalo-make-a-comeback/2013/06/23/563234ea-d90e-11e2-a016-92547bf094cc_story.html.

An agreement signed by the Pintupi traditional owners in September 2014 to declare the Kiwirrkurra Indigenous Protected Area has added 4.2 Mha to the indigenous protected-area system and helped create the largest protected area of arid land on Earth.²⁵⁴

In addition to the possibilities of funding and technical support, a frequent reason for seeking protected-area status is to increase protection from third-party encroachment. Limitations on the power of the government to allocate concessions to third parties is particularly important given that, in most cases, laws recognizing the property rights of Indigenous Peoples and communities exclude subsoil resources from formal legal protection. This exception is a source of conflict in many parts of the world. In Peru, for example, the government has allocated extractive concessions over almost all statutorily recognized Indigenous Peoples' territories.²⁵⁵

Areas contributing to conservation that are not formally part of protected-area systems

A third situation on lands owned by Indigenous Peoples and local communities is the effective protection of biodiversity outside national protected-area systems. Research in the last decade has documented strong evidence of the correlation between secure indigenous and community tenure and positive conservation outcomes – often better than those achieved in areas managed under state tenure and governance.²⁵⁶ Positive conservation outcomes are especially associated with indigenous territorial rights and management.

Indigenous lands in Brazil are a well-known example of this. Brazil's 1988 Constitution recognizes the right of Indigenous Peoples to live on the lands they traditionally occupied in accordance with their traditional ways of life, and it vests the federal government with responsibility for protecting Indigenous Peoples' lands. As of June 2014, 693 indigenous lands covering 113.2 Mha (13.3 percent of Brazil's land area) had been demarcated, mostly in the Amazon region.²⁵⁷

There is strong evidence of the effectiveness of Brazilian indigenous land in resisting deforestation. For example, an analysis by Nolte et al. in 2013 compared state protected areas, sustainable-use conservation areas, and indigenous lands and concluded that indigenous lands “were consistently estimated to face the highest levels of deforestation pressures and to have achieved the greatest avoided deforestation.”²⁵⁸ Similarly, Nepstad et al. found, in 2006, that indigenous lands “strongly inhibited deforestation in the active agricultural frontier.”²⁵⁹ A deforestation analysis of the Brazilian Amazon by the World Resources Institute found that, from 2000 to 2012, forest loss was 7.0 percent outside indigenous lands and only 0.6 percent within them.²⁶⁰ Despite the contributions of indigenous lands to conservation as well as to the realization of human rights, protections for Indigenous Peoples' land rights are at serious risk of being rolled back by the agribusiness interests that currently dominate Brazil's legislature.²⁶¹

In Mexico, as a result of extensive land reforms, approximately 70 percent of the nation's forests are in the hands of *ejidos* and “agrarian communities” (community lands).²⁶² In addition to strong recognition of rights to land and commercial use, the Mexican government has supported training for communities in sustainable forest use, market access, and related technical support. Secure forest tenure coupled with this support has enabled *ejidos* and agrarian community forest owners to minimize deforestation on their lands. In the Yucatan, for example, community forests demonstrate lower deforestation rates than state protected areas.²⁶³

These positive conservation outcomes on lands owned by Indigenous Peoples and local communities also extend to the marine realm. Some Pacific Island nations have widely implemented community marine tenure arrangements.²⁶⁴ It is estimated that more than 500 communities in 15 Pacific Island countries

manage 12,000 km² of coastal resources, 1,000 km² of which have full no-take protection.²⁶⁵ An example of a strong conservation outcome associated with this management is the community-enforced no-take zones in Fiji, which have resulted in dramatic increases in clam populations. In the village of Sawa, a no-take area established by the local community also led to a 250 percent annual increase in mangrove lobsters. In the Solomon Islands, the Arnavon Community Marine Conservation Area has brought about a 400 percent increase in populations of endangered species, as well as increases in coral reef fish and hawksbill turtles.²⁶⁶

Conclusion

In conclusion, on government-administered lands, the customary lands of Indigenous Peoples and local communities remain vulnerable to infringements arising from the establishment and management of protected areas. Lands designated for use by Indigenous Peoples and local communities, as part of or outside protected area systems, have achieved impressive conservation results while increasing income for Indigenous Peoples and local communities, although the absence of full and secure land tenure means that such lands are vulnerable to outside pressures and to shifting levels of governmental support.

On lands owned by Indigenous Peoples and local communities under statutory law, some historical overlaps have been resolved through co-management agreements with governments that enable the restitution of lands and provide the traditional owners with a voice in management, although such agreements often limit rights by requiring the continuation of protected-area status. Increasing the capacity of indigenous communities to participate equally in decision-making will be necessary to strengthen the realization for Indigenous Peoples and community rights in such co-managed areas. In other cases, Indigenous Peoples and local communities have voluntarily established protected areas on their lands with the aim of obtaining benefits such as assistance in managing their lands and protection from third-party encroachment. Finally, many lands owned by Indigenous Peoples and local communities, while not formally part of national protected-area systems, nevertheless contribute substantially to global conservation outcomes.

VI. MAKING INDIGENOUS PEOPLES AND COMMUNITY LAND RIGHTS A GLOBAL CONSERVATION PRIORITY

The land and resource rights of Indigenous Peoples and traditional communities provide essential foundations for the realization of their human rights as well as the continuity and security of their local conservation systems and practices. The extent to which legal frameworks formally recognize indigenous and community tenure often determines the degree to which local people can establish and enforce rules and customary norms around the governance of their lands, territories, and resources. As demand for land and natural resources rises around the world, formal tenure recognition is increasingly needed to enable Indigenous Peoples and local communities to protect their lands and livelihoods against external pressures.

The “new paradigm” emerging a decade ago from the 2003 Durban World Parks Congress reflected a growing recognition of the key roles of Indigenous Peoples and local communities in conservation of the Earth’s biodiversity and the need to fully incorporate their rights and interests in protected areas. However, the picture that emerges from the preceding analysis is one of a transition to the “new paradigm” that is partially underway, but substantially unfinished. As national actors have worked to resolve conflicts arising from the historical imposition of protected areas in customary lands, the spaces in

which indigenous territories or community lands overlap with protected areas now include examples of innovative collaborative arrangements, though few in which communities assert full control over their lands. At the other end of the spectrum of experience, conflicts persist over physical and economic displacement and underlying rights to land.

The broader context of tenure recognition plays a significant role in the extent to which protected areas enable “rights-based conservation;” that is, conservation that respects Indigenous Peoples’ and communities’ rights and supports local conservation systems and practices. The fact that in many parts of the world, communities and Indigenous Peoples are effectively prevented from exercising their rights to land and resources presents a significant challenge to rights-based conservation. Globally, only about 15 percent of forest lands are formally recognized as owned or controlled by Indigenous Peoples and local communities, despite customary claims and de facto management over much larger areas, and relatively few countries account for much of this recognized area.²⁶⁷ Large areas of forest land remain formally under government control, including 99 percent of forest land in the Congo Basin and peninsular Southeast Asia and at least 73 percent of forest land in archipelagic Southeast Asia.²⁶⁸

The following main findings from this analysis of 21 countries – including all 17 “megadiverse” countries – indicate the range of challenges and emerging solutions for rights-based approaches to conservation within and beyond protected areas.

National laws and practice still fall far short of guaranteeing respect for Indigenous Peoples and customary rights in protected areas.

In protected areas retained under government administration, the rights of Indigenous Peoples and local communities to access and use natural resources is generally recognized only for subsistence purposes, within a few types of protected areas, and/or is limited to zones within or adjacent to the protected area. The exercise of these rights may also require permits or specific provisions in the area’s management plan. Participation of Indigenous Peoples or communities in the management of protected areas retained under government administration is possible within 16 countries’ legal systems. However, even where these options are implemented in practice, decision-making authority tends to remain highly centralized in governments. Local people are most vulnerable to infringements of their rights where legal frameworks for community tenure are lacking or weak; however, exclusionary protected areas also persist in situations where rights are recognized under law but have not been implemented. Relocation of communities from protected areas is still possible under the law even in eight of the countries that have recognized indigenous territory and community land ownership rights.

Broader recognition of indigenous and community land rights is a key enabling condition for rights-based conservation.

Recognition of indigenous and community rights to customary lands has created a foundation for resolution of historical conflicts and rights-based approaches. For example, in ten of the 16 countries that recognize community ownership, the legal framework can allow for restitution of Indigenous Peoples and local communities’ rights to land where there have been historical overlaps of these lands and protected areas. However, implementation has been weak in several countries, and significant unresolved overlaps continue. Moreover, restitution has often involved requirements that the overlap area remains under protected area status, with an ongoing role for state protected area agencies through co-management or other arrangements. While communities may prefer to maintain protected area status and protections for their lands, such requirements limit the exercise of free, prior, informed consent.

Formal recognition of indigenous and community lands enables their substantial contributions to the conservation of ecosystems and species.

Approximately 25 percent of the Amazon region is formally recognized as indigenous territories,²⁶⁹ and significant conservation outcomes are associated with these land rights, especially in Brazil. Extractive and other sustainable-use reserves form a significant part of the network of low-impact management regimes that has helped stem deforestation there. A recent comprehensive analysis of research across 14 countries around the world found that deforestation rates inside community forests with strong legal recognition and government protection are dramatically lower than in forests outside those areas.²⁷⁰ Positive conservation outcomes in areas under community tenure are also found in the Pacific region, where communities manage extensive coastal and marine areas, and in relation to wildlife management in Southern Africa.

Community ownership also provides a foundation for voluntary participation in protected-area systems. In nine of the 16 countries where Indigenous Peoples and local communities have ownership rights, legal frameworks offer them the choice to voluntarily include areas of land in national protected-area systems. While incorporating indigenous and community land into protected-area systems necessarily involves certain restrictions on land use, potential benefits include financial or technical assistance for land management, as well as increased protections against third-party encroachment. In Australia, such Indigenous Protected Areas cover an area equaling approximately 36 percent of the National Reserve System.

Despite high-level commitments, few reforms of protected area legislation to address Indigenous Peoples' and communities' rights have occurred in the decade since the 2003 World Parks Congress in Durban.

Where reforms were enacted, with the exception of Venezuela, they did not focus on restitution of lands to Indigenous Peoples and communities but rather on enabling co-management or provisions for communities who already own land to include their lands in national protected-area systems.

Recommendations

These findings point to the critical need to prioritize indigenous and community land and resource rights within global conservation agendas, as both a human rights and a conservation imperative. The following actions will be needed to ensure that conservation policies and practices comply with the rights of Indigenous Peoples and local communities and enable them to contribute to conservation across broader landscapes and seascapes.

Sharpen the focus on Indigenous Peoples and community land rights in international conservation policy.

While much of the focus in conservation policy processes such as the CBD and IUCN is on protected areas governance and laws, this analysis indicates that realizing a rights-based approach in conservation will depend on broader legal recognition of indigenous and community land and other natural resource rights. Engagement on community tenure reform in global conservation policy can also be advanced by strengthening links with related tenure policy processes, which have gained prominence in recent years due to concerns over large-scale land acquisitions. Legal recognition can be supported and promoted by adopting a more explicit recognition of indigenous and community land and resource rights as a central element of indigenous and community conserved areas (ICCAs). While the CBD definition of what should be regarded as “other effective area-based conservation measures” is still open for discussion, areas and territories conserved by Indigenous Peoples and local communities generate significant conservation outcomes and

should be recognized as contributing toward the fulfillment of CBD targets where communities choose such recognition.²⁷¹ Another key step toward the new paradigm is to add Indigenous Peoples and local communities' tenure status and claims to the indicators used for global monitoring of protected areas.

Link conservation reform agendas with tenure reform agendas at national levels.

In the absence of significant reforms to secure their rights over land and natural resources, local communities and Indigenous Peoples will remain limited in their ability to create and sustain their own conservation areas and territories, and an enormous opportunity for conservation will be lost. Instead, governments would be wise to acknowledge and act on the connection between recognizing rights of Indigenous Peoples and local communities to their lands and seas, and achieving their countries' conservation, climate resilience, and socio-economic goals. In some cases, tenure recognition within protected areas will require changes in conservation or protected area legislation, as well as other legal changes to ensure alignment among laws that support broader indigenous and community rights reforms.

Increasing collaboration among Indigenous Peoples, communities, and conservation organizations over the past decade has included joint efforts in some countries to secure local land rights within existing laws and policies.²⁷² For conservation organizations, additional advances in indigenous and community land and resource rights will require going beyond the implementation of existing legal frameworks to encourage tenure reform in countries where rights are not yet recognized. Progress in securing land and territorial rights will also require that divides between conservation and land rights interests are bridged, in order to overcome barriers that have inhibited reforms. Plans for a new Global Call to Action on Indigenous Peoples and Community Land Rights, building on the outcomes of an international conference in Interlaken in 2013,²⁷³ provides one opportunity to leverage and expand commitments among conservation organizations to support recognition of Indigenous Peoples' and communities' rights.

Prioritize the implementation of recognized rights, including restitution of land rights, within and outside protected areas.

Existing legislation – both indigenous and community tenure and protected areas legislation – has opened opportunities that have not yet been implemented, or only implemented to a very limited extent. For example, the legislative frameworks in several Latin American countries allow for restitution of protected areas overlapping indigenous and community lands, but limited implementation has allowed conflicts to endure. Some tenure and protected area reforms are very recent, for example in the Democratic Republic of the Congo. Governments must move forward to implement recognized rights, including within state protected areas, and these efforts should be supported by conservation organizations and donors. Raising community awareness of the opportunities available to them and supporting local efforts to secure rights under existing legislative frameworks will be central to these implementation efforts.

Establish and implement accountability mechanisms for infringements on rights associated with conservation measures.

Increased recognition of the impacts of conservation, particularly protected areas, has prompted efforts within the conservation sector to develop guiding policies based on international human rights standards. These include IUCN Member resolutions adopting the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and other rights standards, the human rights framework of the Conservation Initiative on Human Rights, and institutional policies of conservation organizations. However, mechanisms to promote and ensure adherence to human rights principles and standards remain

a significant gap. No conservation agency has proposed an accountability mechanism similar to those of the multilateral development banks' safeguards and standards. The Whakatane Mechanism has been piloted by the Forest Peoples Programme and IUCN as a mediation space for communities and governments to assess negative impacts of protected areas and develop joint solutions and processes to implement existing safeguards and standards. Clearer standards and reporting systems, such as have been developed for REDD+, and commitments from conservation agencies and organizations to adhere to them, could help to ensure greater consistency in terms of how conservation practices respect community and Indigenous Peoples' land rights.

Mechanisms established through the international human rights system can also provide avenues of recourse for Indigenous Peoples and local communities to address infringements on rights associated with protected areas. For example, the former UN Special Rapporteur on the Rights of Indigenous Peoples recommended in his 2009 Nepal country report that the government provide redress to indigenous communities for loss of land or access to resources, including through establishment of protected areas.²⁷⁴ A landmark case brought before the African Court on Human and Peoples Rights by the Endorois pastoralist community of Kenya resulted in a 2010 order to the Kenyan government to restore Endorois ancestral land that was incorporated in the Lake Bogoria reserve.²⁷⁵ While action before regional courts is an expensive alternative that can only address a few cases, such international mechanisms offer one alternative for Indigenous Peoples and local communities to seek remedies where national action has not provided them.

Support Indigenous Peoples and community institutions to develop and sustain their own conservation initiatives.

There are significant opportunities for conservation agencies and organizations to collaborate with Indigenous Peoples and communities based on recognition of their rights. In addition to support for protection from encroachment and for demarcation of lands, indigenous and community institutions may welcome capacity-building support for their environmental stewardship, technical or financial assistance for integrating conservation into their development or life plans, and/or assistance to develop sustainable resource-based enterprises.

Join in efforts to protect indigenous and community lands from extractive and infrastructure development, within and outside protected areas.

Biodiverse spaces already contested between customary lands and protected areas are increasingly overlaid by extractive concessions and infrastructure developments, such as widespread mining and logging in Indonesia.²⁷⁶ Indigenous lands and community-managed protected areas contributing to conservation are also subject to threats from industrial development, such as the extensive coverage of oil blocks in the Western Amazon.²⁷⁷ These threats provide a basis for common cause between customary rights-holders and conservation interests, including protected area managers and supporters. Protection against such industrial impacts is one of the main reasons Indigenous Peoples and local communities seek collaboration with conservation actors. Conservation and protected area advocates are also seeking broader societal support to address these threats. Collaborative strategies may include documentation and public advocacy, engagement with companies or investors, and/or advocacy with governments, including to strengthen and implement requirements for relevant social and environmental impact assessments.

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⁹¹ Overlaps are frequently resolved on a case-by-case basis and as a consequence generalizations at the country level are challenging. The studies considered “yes” when the legal system of country admits the possibility of Indigenous Peoples and community ownership of resources within protected areas as a result of overlap conflict. This does not mean it is the only possible resolution of an overlap, or that it is the most common case in practice. Cases include those where recognition of community ownership may result in degazettement of the protected area.

⁹² Data in this column is based on Rights and Resources Initiative. 2012. What Rights? A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights. RRI: Washington D.C. See also: Rights and Resources Initiative. 2014. What Future for Reform? Progress and Slowdown in forest tenure reform since 2002. RRI: Washington D.C.

⁹³ These areas include buffer zones attached to government-managed protected areas.

⁹⁴ Data in this column is based on Rights and Resources Initiative (2012), as cited above in Endnote 92. N/A is used in this column in cases where all current legal options to recognize customary rights are considered as ownership.

⁹⁵ In Australia, native titles are recognized and protected by the Native Title Act, 1993. Native titles cannot be extinguished except in specific circumstances determined by law (Part 2, Division 1, sections 10 and 11, Native Title Act, 1993). These extenuating circumstances include the validation of past and future Acts of a state or territory. Past Acts are those that occurred before 1 July 1993 or 1 January 1994 (Part 15, Division 2, Section 228, Native Title Act, 1993). Future Acts are those occurring after 1 July 1993 or 1 January 1994 (Part 15, Division 2, Section 233, Native Title Act, 1993). Under this provision, as interpreted by the subsequent High Court decision in *Western Australia v. Ward*, native title consists of a bundle of rights, which can be individually extinguished. In the government reservation of land, the right of exclusion may be extinguished and other rights retained. This could occur in the creation of protected areas. Alternatively, Aboriginal Australians could apply for the granting of native title to land within protected areas under the procedure established by the Native Title Act, 1993. Furthermore, Section 8 of the Environment Protection and Biodiversity Conservation Act, 1999 (Cth) (EPBC Act) states that “nothing in this Act affects the operation of Section 211 of the Native Title Act of 1993.”

⁹⁶ Indigenous protected areas are included in the Australian National Reserve System and cover 4.75 percent of Australia (www.environment.gov.au/topics/land/nrs/about-nrs/ownership). They are created by agreement between the traditional owners and the Commonwealth or state or territory governments.

⁹⁷ “All parks are subject to joint decision-making by the director and boards of management that have traditional owner-nominated majorities and chairs, although the exercise of statutory discretion remains with the director (EPBC Act, ss 353–359B).” Moreover, Direction 32 of “Directions for the National Reserve System—a Partnership Approach” states that a process for the engagement of indigenous communities in protected-area management is to be in place in each jurisdiction by 2005.

⁹⁸ Section 8 of the EPBC Act states that “nothing in this Act affects the operation of Section 211 of the Native Title Act of 1993,” including the protection of the rights of use and access.

⁹⁹ The predominant interpretation of both the law regulating the Brazilian protected-area system (Law No. 9.985/2000) and Indigenous Peoples' constitutional rights to land (Article 231 of the Brazilian Constitution) is that indigenous territories and protected areas are incompatible and that, given the constitutional nature of the protection of Indigenous Peoples' rights, these rights should have precedence and the limits of protected areas should be reviewed, including for possible degazettement. This understanding is rarely implemented in practice, however (see Fany, Ricardo), “Terras Indígenas e Unidades de Conservação da Natureza e o Desafio das Sobreposições. Available at www.socioambiental.org/sites/blog.socioambiental.org/files/publicacoes/10144.pdf).

¹⁰⁰ Under Law No. 9.985/2000, lands collectively titled to Quilombola communities can be declared as private natural heritage reserves by agreement between the communities and the government agency.

¹⁰¹ Law No. 9.985/2000, articles 18 and 20.

¹⁰² In the case of integral protection conservation units and national forests, traditional populations may participate in consultative bodies, presided over by a government body, and composed by civil-society organization and landowners (Law No. 9.985/2000, articles 17 and 29). Furthermore, conservation units may be managed by NGOs, including those established by traditional populations (Law No. 9.985/2000, Article 30). See also Decree No 5.758 of 13 April 2006 establishing the Strategic Plan of National Protected Areas.

- ¹⁰³ Although Law No. 9.985/2000 does not authorize the permanence of traditional peoples in areas classified as integral protection conservation units (articles 9.1, 10.1, 11.2, and 19.1), it allows the possibility that traditional populations will remain within the limits of protected areas until the process of relocation is completed (Article 42). No time period has been established for the completion of this process, which, in practice, often continues indefinitely.
- ¹⁰⁴ Traditional peoples may use national forest resources for subsistence and traditional purposes (Law No. 12.651/2012, Article 32). The right to use is dependent on the terms of the management plan and terms of use (*termo de uso*) (National System of Nature Conservation Units Law No. 9985/2000, Article 17(2); Decree No. 4340/2002, Article 25; Decree No. 6063/2007, Article 18).
- ¹⁰⁵ In community-managed hunting zones, management is subject to the terms of management agreements and dependent on the participation of local administrative authorities (Decree No. 466/1995, sections 23 and 27).
- ¹⁰⁶ Article 2(4) of Decree No. 466/1995, which calls for participatory approaches to wildlife resources, could be broadly interpreted as allowing co-management between government and local communities. This has not been the case in practice, however.
- ¹⁰⁷ Law No. 01/1994, Section 26(1); written comments by Mbile; and Decree No. 466/1995, Article 4.
- ¹⁰⁸ Collectively owned land can be expropriated to meet the needs of public interests (Property Law/2007, Article 42). Regulations of the People's Republic of China on Nature Reserves, 1994 (Article 27), requires this to be the case for residents living in the core areas of nature reserves. Article 25 of the same regulations, however, states that: "residents in nature reserves must comply with administrative regulations and subject themselves to management authority." This implies that residents are allowed in nature reserves; thus, at least in some cases, overlaps between collectively owned land and nature reserves will result in residents staying in the reserve.
- ¹⁰⁹ *ibid.*
- ¹¹⁰ Decree 622/1977 states that the declaration of a national natural park is not incompatible with the constitution of an indigenous reserve. It stipulates that the Colombian Institute of Agrarian Reform and the Colombian Institute of Anthropology should work together in designing a special regime to respect the permanence of communities and their right to the economic use of their lands, using technologies compatible with the objectives of the protected area (Article 7). The 2001 Policy of Social Participation in Conservation attempts to achieve such regimes through processes for community participation in protected-area management. Under this policy, the state enters into legally binding agreements that create special management regimes on a case-by-case basis.
- ¹¹¹ 21 Article 25 of Law No. 70, 1993, provides that if environmental authorities find it necessary to create special nature reserve areas on Afro-Colombian communities' lands for the protection of species, ecosystems, or ecological life systems, the affected communities should participate in the delimitation, conservation, and management of those areas.
- ¹¹² Article 31(3) of Law No. 99, 1993, as amended by National Decree No. 141, 2011, calls for policies that promote and develop the participation of communities in environmental protection activities and programs, sustainable development, and the proper management of natural resources. However, National Decree No. 141, 2011, was considered to be unconstitutional (Corte Constitucional sentencia C-276 of 2011).
- ¹¹³ Indigenous Peoples may exercise access and use rights in areas of overlap as defined by the area's special regime (Decree 622/1977, Article 7).
- ¹¹⁴ Article 24 of Law 14/003 establishes that the state, province, or decentralized local authority may delegate, partially or totally, the management of a protected area for 25 years.
- ¹¹⁵ Article 38 of the Forest Code, 2002.
- ¹¹⁶ Law No. 14/003 is silent on the specific rights of local communities in protected areas. In cases of overlap between community land and buffer zones, Article 28 of the same law establishes that, within buffer zones, authorized activities should respect the right of communities to use forest resources, as recognized in other laws. Article 36 of the Forest Code establishes that local people have withdrawal rights regarding forest products for their own subsistence needs, as established by their customs and local traditions.
- ¹¹⁷ The Ecuadorian Constitution protects the rights of indigenous and Afro-Ecuadorian communities to land, including immunity from seizure, for ancestral land (Article 84). Nevertheless, an estimated 50 percent of Ecuador's forestlands have unresolved tenure issues. These conflicts typically occur where ancestral territories are claimed but not formally recognized within protected areas. Conflicts are resolved on a case-by-case basis through negotiation with the executive branch and presidential decrees. Source: USAID. 2012. Country Profile: Property Rights and Resource Governance, Ecuador. United States Agency for International Development. Available at <http://usaidlandtenure.net/country-profiles>.
- ¹¹⁸ The Ecuadorian Constitution guarantees collective rights to retain possession of community land (*tierras comunitarias*) and indigenous territories (*tierras ancestrales*) (Article 84(2,3) of the 1998 Constitution and Article 57(4, 5) of the 2008 Constitution). The rights of exclusion (Article 57 of the 2008 Constitution and Article 39 of the Forest Law), due process (Article 57(5) of the 2008 Constitution), and unlimited protection of all other recognized rights (Article 57(4) of the 2008 Constitution).

- ¹¹⁹ Article 28 of the Law of Environmental Management, 1999, establishes that all persons, including Indigenous Peoples, blacks, and Afro-Ecuadorians, have the right to participate in environmental management. In the context of protected areas, the right of participation has led to the creation of protected-area management committees and technical advisory groups in which various protected-area stakeholders, including Indigenous Peoples, participate in the coordination of protected-area activities and conflict resolution. In practice, however, there are few successful cases of these participatory approaches and, in certain contexts, the creation of these management committees and technical advisory groups has led to the emergence of new conflicts. See also Alex Rivas Toledo. Comp. 2006. *Gobernanza de los Sistemas Nacionales de Áreas Protegidas en los Andes Tropicales: Diagnóstico regional y análisis comparativo*. UICN, Quito, Ecuador. P.34. Available at <https://portals.iucn.org/library/efiles/documents/2006-065.pdf>.
- ¹²⁰ Article 87 of the Forest, Conservation and Natural Areas and Wildlife Law prohibits the unauthorized hunting, fishing, and use of explosives and poisonous substances, with the exception of traditional systems of subsistence fishing by Indigenous Peoples, black, and Afro Ecuadorians.
- ¹²¹ The Wild Life (Protection) Act, 1972 (sections 24 and 35(3)), provides processes for addressing rights' conflicts in the creation of sanctuaries and national parks. The process involves the determination of the rights of rights-holders within these areas, and then decisions on whether to acquire the rights, exclude the affected land from the sanctuary or park, or permit continuation of the right within the sanctuary or park. Without a permit, no person may reside in a sanctuary. The Forest Rights Act, 2006, grants rights to scheduled tribes and other traditional forest-dwellers to use and own forests they traditionally occupy, and Section 4(2) creates conditions under which these rights may be modified in the specific case of protecting critical wildlife habitats in sanctuaries or national parks under the Wild Life (Protection) Act.
- ¹²² According to Section 36(C)1 of the Wild Life (Protection) Amendment Act, 2002, the state government (and not the communities) may, where the communities or individuals have volunteered to conserve wildlife and its habitat, declare any private or community land not contained within a national park, sanctuary, or conservation reserve as a community reserve for protecting fauna, flora, and traditional or cultural conservation values and practices.
- ¹²³ Article 36(A-B) of the Wild Life (Protection) Amendment Act, 2002. However, even in these cases, management is the responsibility of the elected gram panchayats and not the traditional local institutions. Elected gram panchayats may participate in the management bodies (in conservation and community reserves) and advisory bodies (wildlife sanctuaries) of these protected areas. Only in cases where such elected gram panchayats do not exist, members of village assemblies or gram sabhas may also participate (adapted from Broome, Neema Pathak, Shalini Bhutani, Ramya Rajagopalan, Shiba Desor, and Mridula Vijairaghavan. 2012. *An Analysis Of International Law, National Legislation, Judgements, And Institutions As They Interrelate With Territories And Areas Conserved By Indigenous Peoples And Local Communities*. Report No. 13 India. Published by Natural Justice. Available at <http://naturaljustice.org/library/our-publications/legal-research-resources/icca-legal-reviews>; and Upadhyay, personal communication, 2014). Decision-making power rests with the central and state governments and management jurisdiction with the chief wildlife warden of the state.
- ¹²⁴ Communities may also participate in forest management in India through a joint forest management agreement. Under these terms, the state (represented by the Forest Department) and a village community enter into an agreement to jointly protect and manage the forest land adjoining villages and to share the responsibilities and benefits of such endeavors." (Asian Development Bank. 2009. 202). This policy was implemented by Circular N° 6-21/89-P.P. This circular is an executive order and as such not legally binding. It was, however, adopted as law by several state governments seeking to implement the guidelines (Kothari et al. 1994). It was not included in our analysis because subnational tenure regimes are not being reviewed for this study.
- ¹²⁵ The Wild Life (Protection) Act, 1972, allows for some use of resources for subsistence purposes within "community reserves" and some restricted protected areas. Sections 29 and 35(6) restrict access to resources within sanctuaries and national parks, except with the permission of chief wildlife wardens and state wildlife boards. Resource extraction is only allowed if it is beneficial for wildlife and extracted resources can only be used to meet the bona fide subsistence requirements of local communities. In the case of sanctuaries, grazing or movement of livestock may also be permitted (Section 29, read with Section 33(d)). In the case of fishing communities, although the India Marine Fishing Policy 2000 (adopted in 2004) does talk about ensuring the socioeconomic security of the artisanal fishermen whose livelihoods solely depend on this vocation, there is no specialized formal legal framework recognizing the tenure or rights of fishing communities dependent on marine and coastal ecosystems (Adapted from Broome et al. 2012). Nevertheless, the Forest Rights Act, 2006, recognizes some right to fishing on forestlands, including mangroves declared as reserve forests (Upadhyay, personal communication, 2014).
- ¹²⁶ Government Regulation PP. No.28/2011 regarding the management of nature reserves and conservation areas. , Art 1(7-9) of Minister of Forestry Number: p.56 / Menhut-II / 2006 About Zoning Code National Park. See also, No P 19/Menhut/2004. Regarding collaboration in the management of wildlife sanctuaries and national parks.
- ¹²⁷ The implementation of Constitutional Court decision "PUTUSAN – Nomor 35/PUU-X/2012," which ruled that adat forests should not be classified as "state forest areas," will significantly affect the legal status of customary community land in Indonesia.
- ¹²⁸ Articles 35-38 of Government Regulation PP. No. 28/2011 on the management of nature reserves and conservation areas and Article 1(7-9) of Minister of Forestry Number p.56/Menhut-II/2006 on the National Park Zoning Code.
- ¹²⁹ Under the Wildlife Act, 2013 (Article 1), established "conservancies" may be recognized by the wildlife authority through the declaration of "communities and wildlife conservancies" or sanctuaries.

- ¹³⁰ Article 63 of the 2010 Kenyan Constitution recognizes community lands. However, the mechanisms by which communities can secure ownership over community lands are not yet set by law, and, as a consequence, rights under this tenure regime are not clearly defined and cannot be implemented in practice.
- ¹³¹ Previous RRI assessments did not consider “group ranches” as a community tenure regime because they are specific to vast arid and semi-arid parts of the country and not specifically related to forests, which was the focus of those publications. Group ranches are regulated by the Land (Group Representatives) Act, 1969 (Cap. 287), and its subsidiary regulations.
- ¹³² The Wildlife Act, 2013, provides for the co-management of national reserves and wetlands (articles 33(2) and 35 (3)). For national parks and marine conservation zones, this law requires public consultation before they are established (articles 32 and 36(3)).
- ¹³³ Wildlife Act, 2013; Article 41(e) and sections 45-48 of the Forest Act, 2005.
- ¹³⁴ Section 17 of the Wildlife and National Parks Act, 1988, and Section 28 of the same Act, which states that: “The Authority: (a) shall consult with and take into account the views of local residents in the administration and management of National Parks and Nature Reserves; (b) may create a Local Advisory Committee consisting of local residents to assist in the management of a National Park or Nature Reserve”.
- ¹³⁵ The protected-area system includes communal forests as a form of buffer zone. These forests are declared by statute, not voluntary incorporation. National Forestry Reform Law, 2006; Act for the Establishment of a Protected Forest Area Network, 2003.
- ¹³⁶ National Forestry Reform Law, 2006.
- ¹³⁷ Access rights are recognized in communal forests and cultural sites. Subsistence use rights to non-timber and timber resources are not allowed within cultural sites, but they are allowed in communal forests (National Forestry Reform Law, 2006, Section 9.10).
- ¹³⁸ Public or private landowners may request that their land is declared as a protected area; this also applies to community-held land (Code of Protected Areas, Article 71; Decree No. 2005-13, Article 92).
- ¹³⁹ Law No. 2005-15 sets out land-tenure types in Madagascar but specifically excludes forestland and protected areas. Law No. 2006-031 establishes a procedure for recognizing community rights to customarily held land.
- ¹⁴⁰ The body in charge of the national system of protected areas may delegate operational management to another public or private entity (including communities) after examining its technical and financial capacity and given the favorable opinion of the Ministry of the Environment (Code of Protected Areas, Article 31; Decree 2005-848, Article 24).
- ¹⁴¹ Madagascar was not included in previous RRI assessments (RRI, 2012; RRI, 2014). Community-forest management agreements are regulated by Law No. 97-017 of August 8, 1997, on the forestry regime; Law No. 96-025 on the local management of natural renewable resources; Decree No. 98-782 on the forest harvesting regime; Decree No. 2000/27 regarding local communities responsible for the local management of renewable natural resources; Decree No. 2001/122 regulating the implementation of the contractualized management of state forests; and articles 24 and 34 of Decree No. 98-781 regulating the implementation of Law No. 97/017.
- ¹⁴² Madagascar was not included in previous RRI assessments (RRI, 2012; RRI, 2014). Fokonolona (a traditional form of village-level governance) is regulated by Article 152 of the Madagascar Constitution; Law No. 97-017 of August 8, 1997, on the forestry regime; and Decree No. 2004-299 on the organization and Decree No. 2007-151 on the functioning and attributions of Fokontany.
- ¹⁴³ Article 41 of the Code of Protected Areas establishes that: “in all categories of protected areas in order to meet the vital needs of the local population or to respect their tradition, and if no other alternative is available, some activities can be done in exceptional circumstances, especially when taking an herbal remedy for non-commercial use or in case of mortuary ritual, after prior approval of the area’s manager. In addition, slaughter, hunting and capture of animals and the destruction or collection of plants are prohibited (...).”
- ¹⁴⁴ Subsistence use rights are allowed in natural parks subjected to management plans and only within the limits of zones where these activities are authorized (Decree No. 2005-848, Article 3) – in national monuments (Decree No. 2005-848, Article 6) and “protected harmonious landscapes” (Decree No. 2005-848, Article 8). Commercial use rights are allowed in natural resource reserves (Decree No. 2005-848, Article 9).
- ¹⁴⁵ In Peninsular Malaysia, the Protection of Wildlife Act (Act 76), 1972, and The National Parks Act (Act 226), 1980, allow very limited use rights; an Orang Asli may shoot, kill, or take certain wildlife for the purpose of providing food for himself or his family. While usufruct rights of the Orang Asli may not be curtailed in such parks, their right to own and control their traditional territories is under serious jeopardy. The National Forestry Act, 1984, also states that forest produce is the property of the state and that harvesting requires a license (adapted from Nicholas, Colin. 2012. The Law on Natural Resource Management as it affects the Orang Asli. Available at www.coac.org.my/beta/main.php?section=articles&article_id=20). In Sabah, “The Parks Enactment does not provide legal rights for Indigenous Peoples to remain in protected areas, but each park manages the issue of communities separately. In the Crocker Range National Park, for example, Sabah Parks allows communities to remain in their traditional areas and is working with them to designate community use zones within the park area, which will be addressed in the park’s management plan. In other parks, some villages have been relocated outside park boundaries.” (PACOS, 2008. Securing Indigenous Peoples’ Rights in Conservation: Reviewing and promoting progress in Sabah, Malaysia, p.8. Available at <http://rightsandresources.org>)

www.forestpeoples.org/sites/fpp/files/publication/2010/04/wccmalaysiapareviewwkgdftsept08eng.pdf). Under the Forest Enactment, 1968, the state has the right to evict forest communities from forest reserves where the communities are seen as “encroachers” and “there were many cases where houses of people who have been residing in the area were burned down and crops destroyed by the authorities” (PACOS. 2008.) Indigenous communities directly affected by buffer zones should be involved in deciding on the demarcation of such zones and in the management of such buffer-zone areas. As it is now, buffer zones often create limitations on the use of and access to the area by the affected peoples. Under the Wildlife Conservation Enactment, 1997, there is no restriction on local residence and local use as long as these are described in the proposal (Sections 21-22). Similarly, in the case of sanctuaries, the native or traditional rights specified in a proposal may continue to be exercised (Section 20) adapted from Vaz, Justine. 2012. *An Analysis Of International Law, National Legislation, Judgements, and Institutions As They Interrelate With Territories And Areas Conserved By Indigenous Peoples And Local Communities*. Report No. 15 Malaysia. Published by Natural Justice. Available at <http://naturaljustice.org/library/our-publications/legal-research-resources/icca-legal-reviews>. In Sarawak, protected areas are regulated mainly by the Wildlife Protection Ordinance, 1998, and the National Parks and Nature Reserves Ordinance, 1998. Both ordinances recognize rights held by natives or native communities when the legal process of constituting a protected area begins, provided that the rights date back to at least the 1950s. These rights depend on the degree of prior use of the area, and vary widely. “Rights and privileges are set out in the Declaration establishing the protected area; there is no mechanism for reviewing them at a later date. In many cases no restriction was placed on the use of the resources harvested, and they can be harvested for sale. This applies to the older protected areas, where it was probably assumed that trade in wild animals and plants would be insignificant. Several protected areas have enclaves which are legally excluded from the protected area, even though they lie within the protected area boundary. In two Parks the enclaves consist of land subject to Native Customary Rights; the extent and position of these was not defined at the time of establishing the Park, and it is not clear which land comes under the jurisdiction of NPWD [National Parks and Wildlife Division, Sarawak Forestry Department]. Apart from these enclaves, the only people who may reside in a protected area are the nomadic Penan in Mulu [National Park]”. Both the Wildlife Protection Ordinance and the National Parks and Nature Reserves Ordinance have provisions for “special committees” for national parks and wildlife sanctuaries, the aim of which is to involve nearby communities in the management of protected areas in the state and to move towards a system of co-management (Adapted from Tisen; Oswald Braken, Sapuan Haji Ahmad, Elizabeth L. Bennett, Michael E Meredith. 1999. *Wildlife Conservation And Local Communities In Sarawak, Malaysia*. Available at: http://www.mered.org.uk/mike/papers/Communities_Pakse_99.ht).

¹⁴⁶ Federal protected areas can contain land held under any type of tenure (General Law on Ecological Balance and Protection of Environment [LGEEPA], Article 63). The LGEEPA requires the executive to establish programs to regularize tenure in protected areas to provide landowners and occupiers with legal security. Mexican protected areas are divided into core zones and buffer zones, where core zones consist of protection zones in which only environmental monitoring and scientific research are permitted, and zones of restricted use, where educational and tourism activities are also permitted. Buffer zones are oriented to sustainable resource use, including by local communities.

¹⁴⁷ The Mexican protected-area system includes voluntary conservation areas, established at the request of Indigenous Peoples, social organizations, and other landowners. These areas can be established by ejidos or communities within their territories, on the agreement of the relevant ejido or community assembly (LGEEPA, Article 77bis).

¹⁴⁸ Indigenous Peoples and communities can have the right to manage protected areas transferred to them (LGEEPA, Article 67), and the state can sign agreements with ejidos and communities for the co-management of protected areas (LGEEPA, Article 158 (I)).

¹⁴⁹ Article 47 Bis, LGEEPA.

¹⁵⁰ Communities may manage and co-manage protected areas, provided they are organized as institutions (Section 16(b) of the National Parks and Wildlife Act, 1973). However, Stevens (2014) notes that, despite this provision, “neither natural resource management nor the protection and care of sacred places has been legally delegated to Indigenous peoples in any national park.” Stevens, Stan (ed). 2014. *Indigenous Peoples, National Parks, and Protected Areas: A New Paradigm Linking Conservation, Culture, and Rights*. Chapter 11. Tucson, AZ, U.S.: University of Arizona Press.

¹⁵¹ Sections 2(e2), 3(a), 4 and 16(c) of the National Parks and Wildlife Act, 1973. Communities also have some management rights within buffer zone community forests (Art. 21, Buffer Zone Management Regulations, 1996) and buffer zone religious forest transferred to a community (for religious purposes only, Art. 22, Buffer Zone Management Regulation N° 2052/1996).

¹⁵² Articles 2 and 22 of the Buffer Zone Management Regulations, 1996.

¹⁵³ There is no comprehensive protected-area system in Papua New Guinea, mostly because of the limited area of public land, which comprises only 3 percent of the country’s total land mass and is mostly occupied by towns and urban centers.

¹⁵⁴ The National Parks Act, 1982, also allows the establishment of reserves, parks, and gardens, which may be of restricted access, but only on state-owned land (i.e. not on customary lands).

¹⁵⁵ National Parks Act, 1982.

¹⁵⁶ See Endnote 153.

¹⁵⁷ According to legislation on protected areas, existing ownership rights are to be respected and, if possible, use prerogatives should be maintained. But landowners are not provided with adequate information on the restrictions imposed on their rights, and sometimes these restrictions are imposed without compensation. In other cases, existing uses are allowed, even if they have an adverse impact on the

management objectives of the area. To date, there have been no land expropriations, and nor have compensatory measures been taken for landowners affected by the establishment of protected areas (Pedro Solano, Legal Framework for Protected Areas, IUCN).

- ¹⁵⁸ Peru's protected-area law, as implemented by Supreme Decree No. 009 2006-AG, provides for the voluntary inclusion of private property in private conservation areas (áreas de conservación privada) by agreement between the landowner and the state protected-area system. Native communities and peasant communities with titles to their lands could be eligible to enter into such agreements. Furthermore, protected areas can be established on communal land (propiedad comunal) with the free, prior, and informed consent of the owners. Because communities holding rights to communal land do not have the right of exclusion, and because this process resembles a process of consultation rather than voluntary incorporation, it is not included here.
- ¹⁵⁹ Article 31 of the Protected Areas Act establishes that "(...) The state shall promote the participation of (native and rural) communities in setting and achieving the goals and objectives of the protected natural areas." Article 108 (2) establishes that "civil society has the right to participate in the identification, delineation and protection of national protected areas and the duty to cooperate in achieving its goals; the State shall promote their participation in the management of these areas, according to Law." Article 28 of the Protected Areas Regulation defines the types of co-management.
- ¹⁶⁰ Article 90 of the General Law of Environment regulating Ancestral Use states that: "In all protected natural areas the State shall respect all ancestral uses linked to the livelihoods of peasant and indigenous communities and human groups in voluntary or initial or sporadic contact isolation. Likewise, the State shall promote mechanisms to reconcile the aims and objectives of protected areas with these traditional uses. In all cases, the State must ensure safeguarding the public interest. The Supreme Decree No. 009, 2006-AG is an example of operationalization of this right in the context of Punos, Ramis and Lake Titicaca." Article 110 of the Protected Areas Act regulating the property rights of peasant and native communities states that: "The State recognizes the right of ownership of ancestral peasant and indigenous communities on land they own within the National Protected Area and their buffer zones." The General Law of Environment also promotes the participation of such communities according to the aims and objectives of the national protected-area system.
- ¹⁶¹ In establishing and managing the national protected-area system, the Secretary of DENR is empowered to resettle the occupants of certain areas, with the explicit exception of members of indigenous communities (National Integrated Protected Areas System Act, 1992, Section 13). The National Integrated Protected Areas System Act recognizes the absolute right of Indigenous communities to retain occupancy of their ancestral lands.
- ¹⁶² In addition to implementing the absolute rights of indigenous communities to retain occupancy of their ancestral lands, the Community-based Program in Protected Areas also gives "opportunities to organized tenured migrant communities to manage, develop, utilize, conserve and protect the resources within the zones of the protected area and buffer zones consistent with the Protected Area Management Plan" (DENR Administrative Order No. 2004-32, Section 2). These areas are implemented through Protected Area Community Based Resource Management Agreements (PACBRMAs) which provide for the creation of a multi-sectoral Protected Area Management Board (PAMB). Tenure migrant communities' representatives are entitled to participate.
- ¹⁶³ Section 13 of the National Integrated Protected Areas System Act, 1992, and DENR Administrative Order No. 2004-32 on the Revised Guidelines on the Establishment and Management of the Community Based Program.
- ¹⁶⁴ Protected areas may be degazetted if communities are incorporated under the Communal Property Associations Act (Act No. 28 of 1996). In such cases, incorporated communities are entitled to restitution due to past discriminatory dispossession of land rights established by the Restitution of Land Rights Act (Act No. 22 of 1994). Where land claimed under the Restitution of Land Rights Act is in a national forest or a protected area, the Land Claims Court must determine the feasibility of restoring such land, the nature of the rights restored, and alternative compensation, if appropriate.
- ¹⁶⁵ The National Environmental Management: Protected Areas Act (Act No. 57 of 2003) creates five main legal types of protected areas: special nature reserves, national parks, nature reserves, protected environments, and marine protected areas. The Act provides for the possibility of incorporating private land into any of these types (except marine protected areas) by written agreement with the landowner (articles 18(3), 20(3), and 23(3)). In addition, the National Forests Act (Act No. 84 of 1998) provides for the declaration of forest nature reserves; forest wilderness areas; and any other type of protected area recognized in international law or practice, at the request or with the consent of the registered owner of the land. Communities incorporated under the Communal Property Association Act would be considered landowners for the purposes of this mechanism.
- ¹⁶⁶ South Africa was not included in previous RRI legal assessments. Under the Communal Property Association Act (No. 28 of 1996), a community may register a communal property association to own land in common. The Act applies to communities receiving restitution under the Restitution of Land Rights Act (Act No. 22 of 1994) or otherwise receiving property from the state or a private party, including through purchase. A registered association is recognized as a juristic person with the capacity to buy, own, and sell real property.
- ¹⁶⁷ The management authority may enter into a co-management agreement with a local community (Protected Areas Act, s 42). Furthermore, Section 2 of the same Act states that one of the objectives of the Act is to "to promote participation of local communities in the management of protected areas, where appropriate."
- ¹⁶⁸ South Africa was not included in previous RRI legal assessments. The National Forests Act of 1998 allows communities to enter into community forestry agreements with the relevant Minister in order to undertake activities in a state forest for which a license is required and/or to manage a state forest or part of it. Offers to enter into community forestry agreements can be initiated by communities or the Minister of Water and Forest

Resources. Any community can make an offer to enter into a community forestry agreement to do anything in a State forest for which a license is required, which the Minister may accept or reject (section 29(1)(a)). If the forest is a trust forest, including land referred to in the KwaZulu Ingonyama Trust Act, the Minister may only enter into a community forestry agreement if the competent trust authority agrees (section 30(2)).

¹⁶⁹ National Environmental Management: Protected Areas Act (Act No. 57 of 2003), sections 42(2)(e), 46, and 51.

¹⁷⁰ Making generalizations about the United States legal systems for the purposes of this comparative legal analysis is particularly challenging because applicable law varies by tribe and by location depending on individual treaties and individual protected area statutes.

¹⁷¹ Land claims by Native American tribes are resolved on a case-by-case basis. The resulting settlements are incorporated into the US Code (US Code Chapter 19: Indian Land Claim Settlements).

¹⁷² In the United States, national parks and national forests are federally owned. Native American tribes have ownership rights to Indian forestlands, which can be federally owned in trust for tribes or owned by tribes in “restricted fee.” In addition, tribes can own land privately as legal entities. Tribes are eligible for government assistance in forestry and in conservation of forested land; however, this does not involve the incorporation of the land into the national protected-area system (25 US Code Chapter 33, National Indian Forest Resources Management). Native American tribes also govern separate systems of protected areas, outside the national parks system, such as the Navajo Tribal Parks in Arizona, Utah and New Mexico (See: navajonationparks.org).

¹⁷³ The United States was not included in previous RRI legal assessments. Native American tribes in the United States are legally considered to be domestic dependent nations, with inherent sovereign powers (*Cherokee Nation v. Georgia*, 30 US 1 (1831)). The United States government has assumed a fiduciary obligation to protect the rights, lands, and resources of federally recognized tribes, which is implemented through the Bureau of Indian Affairs (bia.gov). In accordance with this fiduciary obligation, the federal government has reserved approximately 56.2 million acres (22.7 mha) of federal land in trust for Native American tribes and individuals. In addition, tribes can hold land subject to federal restriction against alienation. Finally, tribes and individuals can own land as private property in fee simple, subject to state and local laws (bia.gov). Note that, for historical reasons, “Indian” is used as a legal term of art referring to native tribes within the United States, including Alaska (Code of Federal Regulation (CFR) Title 25; 25 US Code 211 et seq).

¹⁷⁴ Some tribes have legally enforceable reserved treaty rights that provide the basis of co-management agreements. Authority for this includes, among others, Executive Order No. 13175, Consultation and Coordination with Tribal Governments (2000).

¹⁷⁵ See Endnote 171.

¹⁷⁶ Though general national legislation does not provide for tribal resource use in protected areas—for example, the Wilderness Act prohibits logging, mining, mechanized vehicles, road-building, and other forms of development in wilderness areas while pre-existing mining claims and grazing ranges are permitted (Wilderness Act, 1964) – tribal traditional resource use in protected areas is allowed on a case by case basis through agreements or legislation pertaining to individual protected areas. For example, the Grand Canyon National Park Enlargement Act of 1975 provides for use of certain park land for traditional purposes including hunting and gathering (16 USC 228). Subsistence management and use by Alaskan Natives and non-natives is allowed in the case of public lands in Alaska (TITLE VIII, Alaska National Interest Lands Conservation Act, 1980).

¹⁷⁷ Article 32 of the Organic Law on Indigenous Peoples and Communities, 2005, states that customary rights to land should be respected where protected areas have been established and that customary land within protected areas should also be delimited and titled in favor of Indigenous Peoples. Moreover, according to IUCN, planes de ordenamiento y reglamento de uso may establish zones of “special traditional uses” where “autonomous communities” may continue to exercise subsistence hunting, fishing, and farming (see Cisneros, Pául; James McBroom. 2010 Superposición de territorios indígenas y áreas protegidas en América del Sur: Resumen Ejecutivo, UICN. Available at http://cmsdata.iucn.org/downloads/informe_final_superposicion_ti_ap_sur_1_2.pdf).

¹⁷⁸ Article 146(9) of the Organic Law of the Indigenous People and Communities, 2005, states that: “it is the responsibility of the National Institute of Indigenous Peoples to encourage the exercise of co-responsibility between the State and Indigenous Peoples and communities in areas concerning the conservation and management of the environment and natural resources, national parks and protected areas, and sustainable development in habitat and indigenous lands.”

¹⁷⁹ Article 32 of the Organic Law on Indigenous Peoples and Communities, 2005, states that customary rights to land should be respected. We have considered these areas to be owned by Indigenous Peoples.

¹⁸⁰ Rights and Resources Initiative. 2014. What Future for Reform? Progress and Slowdown in Forest Tenure Reform since 2002. Washington, DC: Rights and Resources Initiative.

¹⁸¹ Australia, Brazil, China, Colombia, Ecuador, India, Kenya, Liberia, Madagascar, Mexico, Papua New Guinea, Peru, the Philippines, South Africa, USA, and Venezuela.

¹⁸² Brazil, Cameroon, Democratic Republic of the Congo, Indonesia, Kenya, Liberia, Madagascar, Nepal, the Philippines, South Africa, and USA.

¹⁸³ Only Indigenous Peoples and local communities with sufficient recognized rights have the prerogative to voluntarily include parts of their

recognized territories or lands in national protected-area systems, which they may wish to do, for example as a way of protecting their lands against threats from extractive industries or to receive financial or technical assistance in managing their resources.

- ¹⁸⁴ In the United States, for example, land claims by Native American tribes are resolved through negotiation with the government, and the resulting settlements are then incorporated as law into the US Code. Chapter 19: Indian Land Claim Settlements.
- ¹⁸⁵ Australia, Brazil, Colombia, Ecuador, India (forest-dweller rights-holders), Peru, the Philippines, South Africa (communities that faced past discriminatory dispossession), the United States, and Venezuela.
- ¹⁸⁶ The law explicitly states that Afro-Colombian land is incompatible with protected areas.
- ¹⁸⁷ Instituto Socioambiental (2004), as cited above.
- ¹⁸⁸ Article 84, Constitution of the Republic of Ecuador.
- ¹⁸⁹ USAID (2012), as cited above; Cisneros and McBreen (2010), as cited above; Holland, M.B. et al. 2014. Complex tenure and Deforestation: Implications for Conservation Incentives in the Ecuadorian Amazon. 55 *World Development* 21.
- ¹⁹⁰ Government of Peru, Article 89.1 Supreme Decree No. 038-2001.
- ¹⁹¹ Solano, Pedro. 2009. *Legal Framework for Protected Areas*. Gland, Switzerland: IUCN.
- ¹⁹² Cisneros and McBreen (2010), as cited above.
- ¹⁹³ Government of India. Section 4(2). *Forestry Rights Act, 2006*.
- ¹⁹⁴ Core zones consist of zones of protection, where only environmental monitoring and scientific research are permitted, and zones of restricted use, where educational and tourist activities are also permitted. Article 47 Bis, LGEEPA.
- ¹⁹⁵ Buffer zones are oriented to the management of sustainable resource use, including by local communities. Article 47 Bis, LGEEPA.
- ¹⁹⁶ Von Bertrab Tamm, Alejandro I. 2010. Conflicto Social Alrededor de la Conservación en la Reserva de la Biosfera de los Tuxtles: Un Análisis de Intereses, Posturas y Consecuencias. *Nueva Antropología*, vol. XXIII, núm. 72, enero-junio, 2010, pp. 55-80, Asociación Nueva Antropología A.C. México. Available at: <http://www.juridicas.unam.mx/publica/librev/rev/nuant/cont/72/cnt/cnt4.pdf>; Mendoza, Elva. 2012. Áreas Naturales Protegidas: el disfraz del despojo. *Contralinea*. Available at: <http://contralinea.info/archivo-revista/index.php/2012/11/13/areas-naturales-protégidas-el-disfraz-del-despojo/>.
- ¹⁹⁷ Brazil (traditional populations' lands, except indigenous territories), China, Colombia (Afro-Colombian lands), India, Liberia, Mexico, Papua New Guinea, and the United States.
- ¹⁹⁸ Australia, India, Kenya, Papua New Guinea, and Peru.
- ¹⁹⁹ Brazil (Quilombo lands), Madagascar, Mexico, and South Africa.
- ²⁰⁰ Indigenous protected land.
- ²⁰¹ Quilombo land in Private Natural Heritage Reserves.
- ²⁰² Community reserves.
- ²⁰³ Wildlife Management Areas and Conservation.
- ²⁰⁴ Government of Papua New Guinea. Fauna (Protection and Control) Act 1966, Sections 17 and 18; Government of India. Section 36D Wild Life (Protection), 1972 as amended by Wildlife Protection Amendment Act 2002-2003.
- ²⁰⁵ Australia, Mexico, Papua New Guinea, Peru, and South Africa.
- ²⁰⁶ Australia, Brazil, Mexico, Peru, and South Africa all provide technical assistance.
- ²⁰⁷ See, for example, the Uluru-Kata Tjuta lease.
- ²⁰⁸ Articles 23 and 27. Cameroon. Decree No. 466/1995 (Decret N° 95 /466/ PM DU 20 JUILLET 1995 Fixant les modalités d'application du régime de la faune).

- ²⁰⁹ Section 2. The Philippines. DENR Administrative Order No. 2004-32.
- ²¹⁰ Australia, Brazil, Democratic Republic of the Congo, Ecuador, India, Indonesia, Kenya, Liberia, Madagascar, Mexico, Nepal, Peru, the Philippines, South Africa, USA, and Venezuela.
- ²¹¹ Venezuela. 2005. Article 32, Ley Orgánica de Pueblos y Comunidades Indígenas, Gaceta Oficial. No. 38.344 del 27 de diciembre de 2005.
- ²¹² *ibid.*
- ²¹³ India. 2003. Wild Life (Protection) Amendment Act, 2002.
- ²¹⁴ Mexico. 2008. Reform to the General Law of Ecological Equilibrium and Environmental Protection (Ley General del Equilibrio Ecológico y la Protección al Ambiente).
- ²¹⁵ Kenya. 2013. Wildlife Conservation and Management Act.
- ²¹⁶ South Africa. 2003. National Environmental Management Protected Areas Act 57.
- ²¹⁷ See Endnote 213.
- ²¹⁸ Article 5(4), 6 and 7(4). Indonesia. 2006. Ministry Decree No. P.56/Menhut-II/2006 Regarding National Park Zoning Guidelines; 2011. Government Regulation: PP. No.28/2011 Regarding Management of Nature Reserves and Conservation Areas.
- ²¹⁹ Madagascar. 2002. Law No. 2001/05 on Law on the Management of Protected Areas (Code de Gestion des Aires Protégées); 2005. Decree No. 2005-13 (Décret n° 2005-13 organisant l'application de la loi n° 2001-005 portant Code de gestion des aires protégées).
- ²²⁰ Philippines. 2004. DENR Administrative Order No. 2004-32 on the Revised Guidelines on the Establishment and Management of the Community Based Program in Protected Areas; 2013. Republic Act No. 10629 amended the NIPAS Act, allowing PAMBs to retain 75 percent of the income generated by the protected area (from park entrance fees, lease payments, and contributions) for the protection, management, and development of the area.
- ²²¹ South Africa. 2003. National Environmental Management Protected Areas Act 57 of 2003; 2011.
- ²²² Government of Indonesia. 6 and 7(4) and Government Regulation: PP. No.28/2011 Regarding Management of Nature Reserves and Conservation Areas.
- ²²³ Loi No. 14/003 of 2014.
- ²²⁴ RRI (2014), as cited above.
- ²²⁵ Note that multiple types of relationships may exist within a single country, depending on how and whether legal frameworks are implemented in practice.
- ²²⁶ Forest Peoples Programme. 2009. Securing Indigenous Peoples' Rights in Conservation: Reviewing and Promoting Progress in Cameroon. Moreton in Marsh, UK: Forest Peoples Programme. Available at: www.forestpeoples.org/sites/fpp/files/publication/2010/04/wcccameroonpareviewjul09eng.pdf.
- ²²⁷ Nguiffo, Samuel (Centre for Environmental Development, Cameroon). 2014. Personal communication.
- ²²⁸ Kumar, Kundan (Rights and Resources Initiative). 2014. Personal communication.
- ²²⁹ Stevens (2014, Chapter 11), as cited above.
- ²³⁰ Indonesia. 2004. Regulation of the Minister of Forestry No P 19/Menhut/2004 regarding collaboration in the management of wildlife sanctuaries and national parks.
- ²³¹ Nguiffo, Samuel (Centre for Environment and Development, Cameroon). 2014. Personal communication.
- ²³² Global Environmental Facility. 2006. The Role of Local Benefits in Global Environmental Programs. Evaluation Report No. 30. Washington, DC: Global Environment Facility Evaluation Office. Washington, DC: Global Environmental Facility. Available at: www.thegef.org/gef/sites/thegef.org/files/documents/Local_Benefits-report-light-3meg.pdf.

- ²³³ Stevens, Stan. 2013. National Parks and ICCAs in the High Himalayan Region of Nepal: Challenges and Opportunities. *Conservation and Society* 11(1):29-45.
- ²³⁴ Rubber-tapper communities became organized politically in the 1980s, led by Chico Mendez and the Rubber Tappers Council.
- ²³⁵ Instituto Socioambiental. 2015. *Advances and Setbacks in Territorial Rights in Brazil*. Brasilia, Brazil: ISA.
- ²³⁶ Forest Peoples Programme. 2013. Indigenous organisations denounce initiative of Peruvian government to weaken their control of Communal Reserves. 18 June. Moreton in Marsh, UK: Forest Peoples Programme. Available at: www.forestpeoples.org/topics/rights-land-natural-resources/news/2013/06/indigenous-organisations-denounce-initiative-peruv.
- ²³⁷ Newing, Helen. 2004. Benefiting Local Populations? Communal Reserves in Peru. Indigenous Lands or National Park? *Cultural Survival* 28(1). Available at: www.culturalsurvival.org/publications/cultural-survival-quarterly/peru/benefiting-local-populations-communal-reserves-peru.
- ²³⁸ Forest Peoples Programme (2013), as cited above; Newing (2004), as cited above.
- ²³⁹ Instituto Socioambiental (2015), as cited above.
- ²⁴⁰ Convention on Biological Diversity. Country Profile: Namibia. Available at: www.cbd.int/countries/profile/?country=na.
- ²⁴¹ Magrath et al. 2013. *Nepal Forest Sector Survey: Policy Priorities and Recommendations*. Washington, DC: World Bank, Program on Forests.
- ²⁴² NACSO. 2013. *The State of Community Conservation in Namibia: A Review of Communal Conservancies, Community Forests and other CBNRM Initiatives*. 2012 Annual Report. Windhoek: Namibian Association of Community Based Natural Resource Management Support Organisations.
- ²⁴³ Stevens et al. 2014. *Securing Rights, Combating Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change*. World Resources Institute and Rights and Resources Initiative. Available at: www.wri.org/securingrights.
- ²⁴⁴ Jonas H.D. et al (2014a), as cited above.
- ²⁴⁵ Government of the Philippines. 1997. *Indigenous Peoples Rights Act, 1997*.
- ²⁴⁶ *ibid*, Section 58; Tebtebba (2008), as cited above.
- ²⁴⁷ Uribe Botero, Eduardo. 2005. *The Policy for the Social Participation in Conservation: Case Study*. Documentos CEDE No. 5. Centro de Estudios Sobre Desarrollo Económico, Bogotá, Colombia.
- ²⁴⁸ Colombia. 2001. *Política de Participación Social en la Conservación*. Unidad Administrativa Especial del sistema de Parques Nacionales Naturales. Bogotá, Colombia.
- ²⁴⁹ For example, in Uluru-Kata Tjuta National Park, Booderee National Park and Kakadu National Park. See: Farrier, David and Michael Adams. 2009. *Indigenous–Government Co-Management of Protected Areas: Booderee National Park and the National Framework in Australia*. International Union for Conservation of Nature EPLP No. 81; MacKay (2002), as cited above.
- ²⁵⁰ MacKay (2002) as cited above.
- ²⁵¹ Farrier and Adams (2009), as cited above.
- ²⁵² *ibid*.
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RRI is a global coalition of 14 Partners and over 150 international, regional, and community organizations advancing forest tenure, policy, and market reforms. RRI leverages the strategic collaboration and investment of its Partners and Collaborators around the world by working together on research, advocacy and convening strategic actors to catalyze change on the ground.

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