Conservation and human rights: an introduction

Helen Newing, Amelia Arreguin Prado, Stephanie Brittain, Cathal Doyle, Justin Kenrick, Lassana Koné, Catherine Long, Adam Lunn, Anouska Perram, Lucy Radford, Tom Rowley and Helen Tugendhat

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ICCS (The Interdisciplinary Centre for Conservation Science), Department of Biology, University of Oxford, 11a Mansfield Road, Oxford. https://iccs.org.uk/

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Abbreviations

ACHPR African Charter on Human and Peoples' Rights

ACHR American Convention on Human Rights

ASI Aluminium Stewardship Initiative

CBD Convention on Biological Diversity

COP Conference of Parties

CEDAW Convention on the Elimination of All Forms of Discrimination Against Women

CERD or ICERD International Convention on the Elimination of All Forms of Racial Discrimination

CIHR Conservation Initiative on Human Rights

DIHR Danish Institute for Human Rights

EHRD Environmental Human Rights Defenders

ELD Environmental and Land Defenders

ELIPRD Environmental, Land and Indigenous Peoples' Rights Defenders

EMRIP Expert Mechanism on the Rights of Indigenous Peoples

ERD Earth Rights Defenders

ESIA Environmental and Social Impact Assessment

FPIC Free, Prior and Informed Consent

FPP Forest Peoples Programme

FSC Forest Stewardship Council

GBF Kunming-Montreal Global Biodiversity Framework

HCSA High Carbon Stock Approach

HCV High Conservation Value

HRBA Human Rights-Based Approach

HRC Human Rights Council

HRD Human Rights Defender

HRDD Human Rights Due Diligence

HRIA Human Rights Impact Assessment

HRRA Human Rights Risk Assessment

HWC Human-Wildlife Conflict

IACtHr Inter-American Court of Human Rights

ICCA Indigenous and Community Conserved Area

ICCN Congolese Institute for Nature Conservation

ICCPR International Covenant on Civil and Political Rights

ICDP Integrated Conservation and Development Project

ICESCR International Covenant on Economic, Social and Cultural Rights

IFC International Finance Corporation

ILED Indigenous, Land and Environmental Defenders

ILO International Labour Organisation

IPACC Indigenous Peoples of Africa Coordinating Committee

KFS Kenya Forest Service

KWS Kenya Wildlife Service

LERD Land and Environmental Rights Defender

NCPs National Contact Points

ODA Official Development Assistance

OECD The Organisation for Economic Co-operation and Development

PA Protected Area

PCA Protected and Conserved Areas

PEFC Programme for the Endorsement of Forest Certification

REDD+ Reduced Emissions from Deforestation and Forest Degradation

RSPO Roundtable on Sustainable Palm Oil

SCBD Secretariat of the Convention on Biological Diversity

TNC The Nature Conservancy

UDHR Universal Declaration on Human Rights

UNCCD United Nations Convention to Combat Desertification

UNDG United Nations Development Group

UNDRIP United Nations Declaration on the Rights of Indigenous Peoples

UNDROP United Nations Declaration on the Rights of Peasants

UNFCCC United Nations Framework Convention on Climate Change

UNGA United Nations General Assembly

UNGP United Nations Guiding Principles

UNCED United Nations Conference on Environment and Development

UNPFII United Nations Permanent Forum on Indigenous Issues

UNSR United Nations Special Rapporteur

WEHRDs Women Environmental Human Rights Defenders

Glossary

Certification schemes: Voluntary labelling schemes indicating that products conform to a specific set of social and / or environmental good practice criteria and indicators.

Customary law: refers to a set of laws based on the traditions, customs and norms of Indigenous peoples or other groups with customary traditions. Customary law may be written or unwritten (or both) and evolves with time. In many countries, it has some level of recognition within the national legal framework.

Customary international law: binding international law norms that arise because of broad acceptance and compliance by states, rather than from the text of a treaty

Collective rights: those human rights generally recognized to be exercisable by collectives (or groups of individuals) and not reducible to the individual. Some rights (such as the right to land) may have both individual and collective dimensions.

Community-based conservation: loosely, efforts to protect biodiversity in which the local community participates.

Community-based natural resource management: natural resource management approaches that emphasise community participation, usually including participation in decision-making.

Data sovereignty: the concept that data is subject to the laws of the country, region or peoples where or by whom it was generated. Indigenous data sovereignty refers to "the rights of indigenous peoples to own and govern data about their communities, resources, and lands"[1].

Duty-bearers: those who have obligations or responsibilities to respect, protect and fulfil rights (especially governments but also others).

Environmental Human Rights Defenders: individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna.

Free, Prior and Informed Consent (FPIC): consent (and consent processes) that are free from actual or perceived coercion and based on full disclosure of all relevant information in appropriate accessible formats, provided sufficiently in advance to allow a fully considered decision on whether to give consent, give it subject to conditions, or withhold it. Indigenous peoples and some other groups have a collective right to FPIC.

Fortress conservation: a conservation model based on the forced exclusion of people from protected areas.

Human rights-based approach: A conceptual framework involving supporting rights-holders to claim and realise their rights and working with duty-bearers to meet their obligations to respect, protect and fulfil human rights, in line with international law and standards. Rights-based approaches prioritise marginalised groups who face the biggest barriers to realising their rights.

Human rights due diligence: measures and procedures to assess, prevent, minimise and remedy potential and actual adverse human rights impacts.

Human rights instruments: the treaties and other international texts that serve as legal sources for international human rights law and the protection of human rights in general.

Indigenous peoples: nations or peoples who share characteristics such as social, economic and/or cultural distinctiveness from mainstream society, strong spiritual, cultural, social and economic ties to their lands, territories and resources, a historic or ongoing experience of marginalisation, and self-identification as an Indigenous people.

1 https://everyone.plos.org/2023/10/10/indigenous-data-sovereignty-and-open-data/

Intersectional discrimination: discrimination based on the interaction of two or more different factors (for example, gender and ethnicity).

Jurisprudence: Case law and other legal guidance. These contribute to the progressive development of laws and rules over time, and therefore form part of the legal system.

Land titling: the process of granting formal land rights, including to Indigenous peoples and other groups based on their collective customary land tenure.

Local communities: communities who maintain collective intergenerational connection to place and nature, for example through their livelihoods, cultural identity and worldviews, customary institutions and traditional ecological knowledge.

Protected areas co-management: the sharing of power and responsibility for protected area planning and management

Protected and conserved areas: areas that are protected for conservation and / or achieve conservation *de facto* (even if they are not formally protected in law).

Self-determination: the right of a people to determine their own destiny, including their political destiny and their economic, cultural, and social development.

Social safeguards: systems an organisation may put in place to prevent negative social impacts, including human rights impacts, occurring as a consequence of its work.

Soft law instruments: human rights instruments, agreements, principles and declarations that are not generally legally binding.

Telecoupling: interactions between geographically distant locations, related to both human and natural systems.

Voluntary standards: non legally binding standards specifying a set of requirements or criteria that businesses, non-governmental organisations and others may be called upon to meet. Many such standards combine social and environmental elements.

Summary

This guidance is intended as a resource for conservation professionals who are interested to learn more about the relationship between conservation and human rights, especially the rights of Indigenous peoples and local communities. A huge amount has been written on this topic over the past 50 years or so, but much of it is at the level of broad principles rather than their application in practice, and it is mostly targeted at large conservation organisations rather than at individual conservationists. Training opportunities on this topic are also limited, and awareness of human rights issues is currently very variable amongst conservationists. This document aims to help address this gap.

The guidance is in three Parts:

Part 1 introduces the commitments made by governments in 2022 to adopt a rights-based approach to conservation, as part of the Kunming-Montreal Global Biodiversity Framework. It then gives a brief introduction to human rights and human rights-based approaches.

Part 2 provides an overview of international norms and standards on human rights. It describes the international legal and policy framework, introduces some of the most influential international voluntary standards addressing human rights issues, and then provides a run-down of rights that are particularly relevant for conservation.

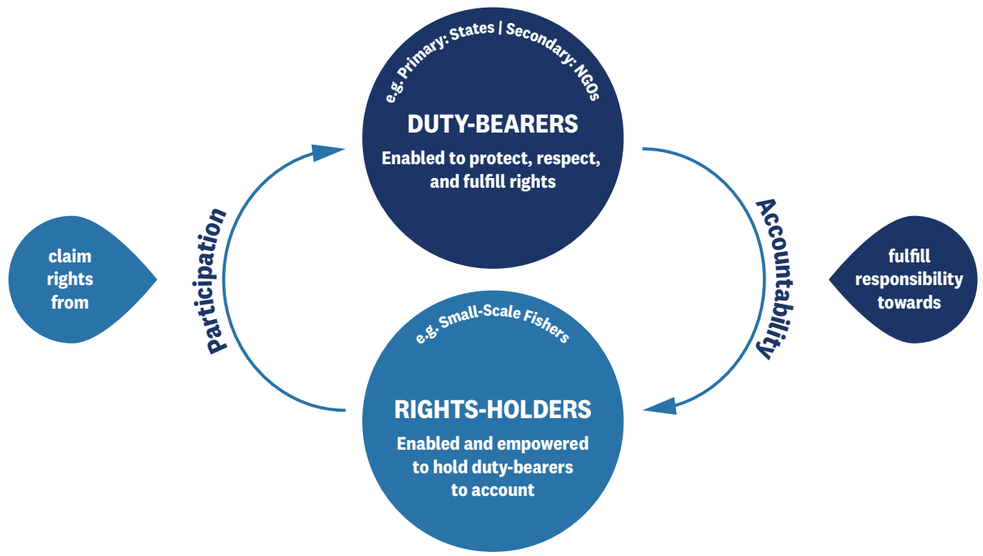
Part 3 introduces several practical tools and approaches for respecting, protecting and fulfilling the rights of Indigenous peoples and other groups with collective customary rights, showing how they apply to conservation. They include measures to guard against or remedy rights violations ("do no harm") and measures to actively support rights-holders to conserve nature themselves.

Part 1: What are human rights?

Human rights are to do with basic values such as fairness, respect, dignity and autonomy. They are protected in international law, which recognises both individual rights and collective rights. Collective rights of particular relevance for conservation include the rights of Indigenous peoples and some other distinct groups. Human rights cannot (legally) and should not (ethically) be set aside or restricted except in very exceptional circumstances (and even then, only some rights). They are defined in law as universal (inherent to all human beings), inalienable (they cannot normally be set aside, restricted or given up), indivisible, interdependent and interrelated. Where restriction of rights becomes the norm, as has happened in conservation, this is a strong indication that these rights are not being treated as rights, but only as discretionary considerations. All conservationists have both a legal and a moral obligation to avoid human rights harms, and this must be the starting point for respecting human rights in conservation activities.

What is a human rights-based approach?

A human rights-based approach involves supporting individual and collective rightsholders in claiming and exercising their rights, and at the same time, working to strengthen actions by governments and others (known as duty-bearers) to respect, protect and fulfil rights. Thus, human rights-based approaches aim to reduce power imbalances.



Governments are the primary duty-bearers, but businesses, non-governmental organisations (including conservation organisations) and others also have an obligation to respect rights ("do no harm"). They should do so according to international human rights law and standards, even where these go beyond the requirements of national law. This means they must avoid causing or contributing to rights violations and they should actively seek to prevent and mitigate violations by collaborators, including governments. Where a conservation organisation fails to effectively address repeated human rights violations by collaborators, it may be considered as causing or contributing to the violations.

Key terms in a human rights-based approach

Respecting rights: abstaining from doing anything that violates rights.

Protecting rights: preventing violation of rights by others and guaranteeing access to remedy where violations do occur.

Fulfilling rights: taking necessary measures to enable people to claim or enjoy their rights.

Conservation and human rights have an uneasy relationship. Ever since the emergence of the modern 'western' concept of conservation in the late nineteenth Century, a central strategy has been the creation of uninhabited protected areas that are protected against any human exploitation (an approach known as 'fortress conservation'). Fortress conservation commonly involves forced evictions, which can have devastating impacts on the rights and lives of indigenous peoples and local communities.

Since the 1970s, conservation organisations have made repeated commitments to respect human rights, but despite this, forced evictions and violent killings in the name of conservation remain common. These practices violate international human rights law. They are also often ineffective as a conservation strategy; for example, a recent systematic review reported that conservation by Indigenous peoples and local communities is more often associated with positive ecological outcomes than more coercive or externally driven approaches (Dawson et al, 2024).

However, in 2022, nearly 200 countries made a renewed and extended commitment to follow a human rights-based approach in conservation when they adopted the Kunming-Montreal Global Biodiversity Framework at the fifteenth Conference of the Parties to the Convention on Biological Diversity. Meeting this commitment will require a fundamental shift in how conservation is done, towards much greater support for Indigenous peoples and local communities to conserve their own nature, based on recognition of their rights under international law.

Part 2: International standards on human rights and their relevance to conservation

International human rights law is a common framework of norms agreed between States. Its primary source is international treaties and other instruments, such as declarations and principles. Respect for rights, including the right of all peoples to self-determination, is enshrined in Article 1 of the United Nations Charter, which came into force in 1945. The Universal Declaration on Human Rights (UDHR), which was adopted by the General Assembly of the United Nations in November 1948, is the foundation for a panoply of international human rights instruments that have been adopted since that time. These instruments are supplemented by other materials such as judicial decisions, authoritative guidance issued by treaty bodies, and advisory and expert opinions.

Major international human rights treaties and instruments especially relevant to conservation

United Nations instruments

The Universal Declaration of Human Rights (1948)
The International Covenant of Civil and Political Rights (ICCPR, 1966)
The International Covenant of Economic, Social and Cultural Rights (ICESCR, 1966)
} The International Bill of Human Rights

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1969)
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979)
Convention on the Rights of the Child (CRC, 1989)
Convention on the Rights of Persons with Disabilities (CPRD, 2006)
UN Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007)
UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP, 2018)
UN Declaration on Human Rights Defenders* (1998)

International Labour Organisation instruments

ILO Convention 169: Indigenous and Tribal Peoples (1989)

* Officially titled the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

While there is no international court dedicated to resolving human rights disputes, human rights may be enforced by other courts at national, regional or international levels. For example, multiple cases brought by Indigenous peoples and other groups to the African or the Inter-American regional courts have successfully challenged human rights violations by States connected with the establishment of protected areas on the lands of Indigenous peoples. Some States also grant treaty bodies the power to decide claims by individuals or groups regarding violation of a treaty.

When States ratify an international legal instrument, international law requires them to make any necessary changes in their national legal systems ('harmonise' them) so that they are consistent with their new obligations under international human rights law. However, many have not done so. Where there is an inconsistency between international law and national law, the general rule is that conservationists should apply all applicable legal standards, for example by going beyond national law when this is necessary to comply with international law. The same considerations also apply to customary law, which refers to a set of laws based on the traditions, customs and norms of Indigenous people and some other groups.

Voluntary standards

Some leading international voluntary standards and frameworks on human rights

For the conservation sector:

- IUCN Resolutions
- The Conservation Initiative on Human Rights (2009)
- UNEP Human Rights Principles (under development)

For businesses:

- The UN Guiding Principles on Business and Human Rights (UNGPs)
- The Accountability Framework Initiative (for ethical supply chains in agriculture and forestry)
- The OECD Guidelines for multinational enterprises on responsible business conduct (on international trade and investment)
- The UN Global Compact (on indigenous rights)

Conservation organisations have developed many voluntary standards for how conservation practice should be undertaken, including numerous IUCN Resolutions and good practice guidance documents. IUCN Resolutions can change practice directly, through the active efforts of IUCN Members, and indirectly, through their wider influence on conservation standards. Additionally, conservation organisations have organised themselves in voluntary networks to collectively address human rights standards in conservation. One such network was established in 2009: the Conservation Initiative on Human Rights.

There are also many voluntary standards and frameworks for the business sector that deal with human rights issues, either as their sole focus or as part of environmental and social good practice standards. Some of the most important of these are the following:

- The United Nations Guiding Principles on Business and Human Rights (UNGPs). The UNGPs were not initially framed as legal obligations but they are increasingly regarded as mandatory. They are also regarded as applicable to at least some conservation organisations as well as to businesses.
- The Accountability Framework Initiative. This consists of twelve core principles that companies apply to ensure ethical supply chains in agriculture and forestry, including on deforestation, ecosystem conversion, and human rights. This Framework is particularly relevant for conservationists who work on supply chains or on conservation spatial planning in areas where agricultural and forestry commodities are produced.
- The Organisation for Economic Cooperation and Development (OECD)'s guidelines for multinational enterprises on responsible business conduct. These are concerned with social and environmental good practice in international trade and investment. It has been affirmed in specific instances that conservation organisations fall within the scope of the OECD Guidelines.

Certification schemes such as those of the Forest Stewardship Council and the Round Table for Sustainable Palm Oil integrate social and environmental aspects of good practice. These can offer fertile ground for collaboration between conservationists and businesses on human rights issues.

Rights of particular relevance for conservation

The rights of three overlapping groups of people are often impacted by conservation and are of particular concern: those of Indigenous peoples and local communities, women, and environmental human rights defenders.

The rights of indigenous peoples and local communities

Indigenous peoples and local communities have the full range of individual rights elaborated by international human rights law. Indigenous peoples, as well as some other groups, hold collective rights to their lands, territories and natural resources; to self-determination; free, prior, informed consent and also participation in decision-making; and to their cultures and cultural integrity, among others. Conservationists have often sought to place restrictions on the rights of Indigenous peoples and of local communities, but regional courts have on multiple occasions confirmed that the right of Indigenous peoples must be respected and protected in the context of conservation other than in exceptional circumstances. These include that conservation actions must be necessary and proportionate to a legitimate public objective; appropriate consultation and FPIC processes must have been undertaken and all avenues for negotiated agreement must have been exhausted; and any restriction of rights must proceed in accordance with international, national and customary laws. Where restrictions are imposed based on these criteria, those affected are entitled to compensation and, in some cases, restitution of their lands.

Women's rights and gender justice

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) calls on governments and others, including conservation organisations and individual conservationists, to challenge gender discrimination. Gender justice goes beyond securing individual women's rights and involves challenging and transforming the underlying power structures. Indigenous, rural or local women and girls often play a particularly pivotal role in conservation, contributing significantly to ecosystem management and community livelihoods. On the other hand, women and girls often face especially high impacts from biodiversity loss, both because of their primary role in ensuring a steady supply of natural resources for household use and because of unequal power relations. Therefore, gender justice is especially relevant in conservation. Conservation organisations and individual conservationists have an important role to play in promoting, recognising, and fulfilling women's rights. However, understanding and mitigating potential or actual unintended consequences of conservation interventions requires a nuanced approach that recognises the different roles, needs and vulnerabilities of different genders in local contexts.

The rights of environmental human rights defenders

Environmental human rights defenders are people or groups who take peaceful actions to promote or protect human rights in relation to the environment. They can be Indigenous leaders or Indigenous communities, Afro-descendant or other leaders and communities, farmers, women, children, environmental journalists, environmental lawyers, conservationists, NGO staff, community organisers, or others. Due to their actions, they may face intimidation, harassment, smear campaigns, criminalisation, arbitrary detention, torture, sexual violence and even killings. Because of the traditional divide between the conservation sector and Indigenous peoples or local communities, external conservation interventions often work directly against Environmental Human Rights Defenders, whereas in fact these individuals and communities are often the unsung heroes of conservation, putting their lives on the line for the defence of their lands and territories and the nature they contain.

The rights of environmental human rights defenders are recognised in the UN Declaration on Human Rights Defenders (1998). There are also two regional treaties that afford protections to them (the Escazú Agreement in Latin America and the Caribbean and the Aarhus Convention in Europe), and fifteen countries have adopted national policies for the protection of human rights defenders. In 2000, the IUCN World Conservation Congress passed resolution 2.37, calling on its members to do more to support them.

Part 3: Respecting, protecting and fulfilling rights in conservation: some tools and approaches

Part 3 introduces several practical tools and approaches for respecting, protecting and fulfilling the rights of Indigenous peoples and local communities in conservation. When using them, it should be borne in mind that rights-based approaches cannot be reduced to a set of steps or methodologies alone. Instead, they involve a shift away from approaches in which individuals, communities and peoples are treated as the passive objects of external interventions to one in which they are supported in conserving their own lands, territories and nature. The details of what this will involve in practice will vary from case to case.

Respecting, protecting and fulfilling rights in conservation: Some practical tools and approaches

Tools and approaches for respecting and protecting rights

3.1 Social safeguards and Human Rights Due Diligence (HRDD)

3.2 Human rights impact assessments (HRIAs)

3.3 Free, prior and informed consent (FPIC) processes

3.4 Grievance mechanisms

3.5 Remedy and restitution

Tools to support rights-holders in fulfilling rights

3.6 The Whakatane Mechanism: a tool to address historic and current injustices

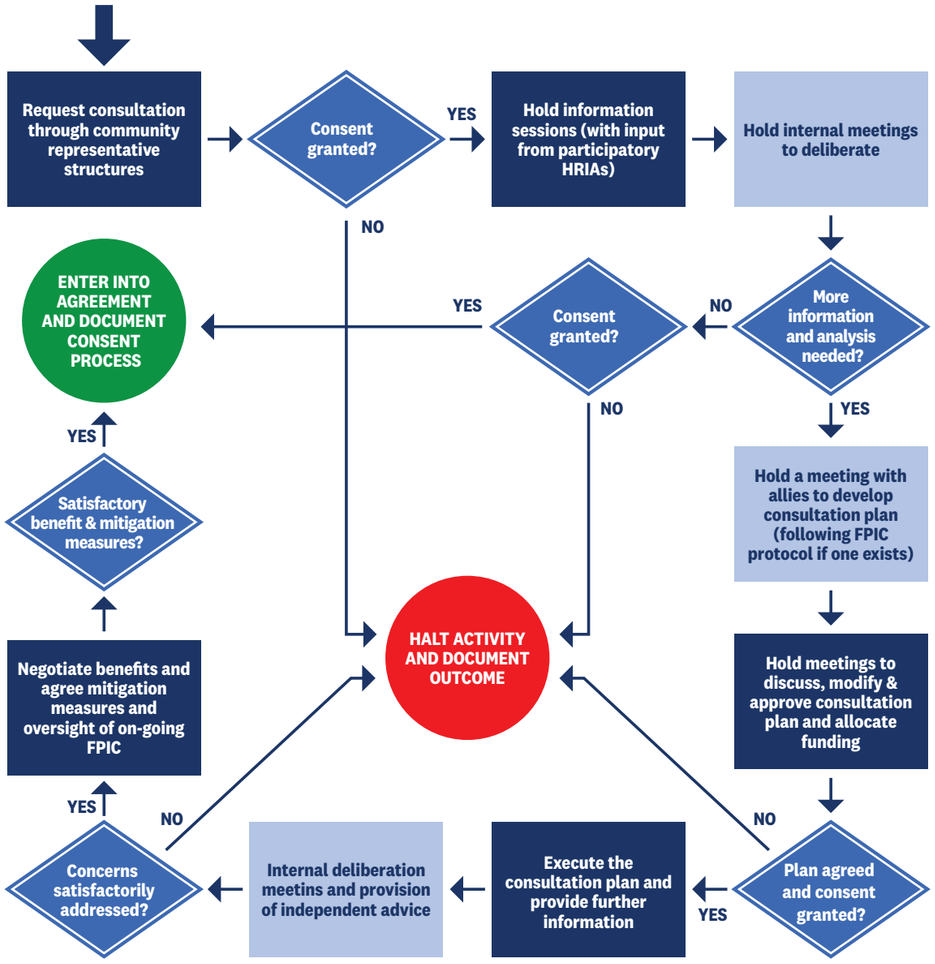
3.7 Participatory mapping

3.8 Participatory biodiversity monitoring

The first five sections describe tools for guarding against, assessing or remedying rights violations ("do no harm"). These are commonly formalised as institutional policies and procedures, but the same principles apply to the actions of individual consultants or researchers:

- **Social safeguard and human rights due diligence (HRDD) procedures:** These consist of measures to prevent harm by anticipating where it may occur and taking appropriate steps to pre-empt it. HRDD focuses specifically on the prevention of negative human rights violations (and remedy where they occur). Social safeguards systems are broader, encompassing all types of social impacts of an organisation's work. The term HRDD is often used to refer to initial assessment of the potential risks of a new project, programme or activity. Where this is the case, it is important to bear in mind that one potential outcome is a decision NOT to proceed to the next stage if the impact on rightsholders is likely to be too great.
- **Human rights impact assessments (HRIAs).** HRIAs focus specifically on past, current or potential future negative impacts on human rights. They don't consider positive impacts because human rights impacts cannot be balanced against one another; each negative impact must be addressed in its own right. Three key characteristics of HRIAs are that (i) they use international human rights standards as a benchmark; (ii) they include an analysis of the international, national and customary laws that apply, and (iii) they are carried out through a participatory process involving meaningful engagement with the rightsholders.

- **Free, prior and informed consent (FPIC) processes** are a legal requirement for all conservation actions that may potentially affect Indigenous peoples or certain other groups. This means that all those potentially affected must be fully informed about the proposed actions in advance; their collective consent must be sought, free from coercion, on whether or under what conditions the proposed action can proceed; and their decision must be respected. As part of the FPIC process, rights holders should be involved in assessing the risks of the proposed activities, and therefore there is a close relationship between FPIC and human rights impact assessments. Autonomous FPIC protocols have been developed by several Indigenous peoples and other groups that define how they are to be consulted and how their FPIC is to be sought, and, where these exist, conservationists should follow them.



- **Grievance mechanisms** are formal procedures setting out how rights-holders can lodge complaints, how these will be investigated, and how they will be remedied if they are found to be legitimate. **Remedy and redress** may include both compensation and also restitution of the situation before the rights violations occurred, as well as measures to guarantee non-repetition of the violations.

The next three sections give more detailed descriptions of some technical tools for working in partnership with indigenous peoples and local communities:

- The **Whakatane** Mechanism is a conflict resolution methodology developed by the IUCN and others to address historic and current injustices related to protected areas and the rights of indigenous peoples. It also celebrates and supports successful partnerships between peoples and protected areas. It works through multi-stakeholder dialogue, informed by a joint field evaluation to collect evidence on the situation. The Mechanism was adopted by the IUCN in 2012 and has been piloted in Kenya, Thailand and the Democratic Republic of Congo. The pilots confirmed that it is an effective tool for joint evidence-gathering and developing an agreed way forward. However, the medium- to long-term outcomes depend upon whether more powerful actors are willing to share power.
- **Participatory mapping** is a process by which Indigenous peoples and local communities map their lands and features in the lands. This has emerged as a fundamental tool for Indigenous rights and conservation. For example, it can be used to support legal titling of Indigenous lands, to monitor incursions, human rights violations, and environmental degradation by external actors, or to inform the development of community land-use plans, including for conservation, restoration and sustainable use. Increasingly, conservationists and natural resource management specialists are providing technical support for processes of this kind that integrate biodiversity values and Indigenous cultural values.
- **Participatory biodiversity monitoring** enables rights-holders to document the state of biodiversity on their lands and track changes. It provides a way for Indigenous peoples and local communities to assemble evidence of their own contributions to conservation and monitor changes in the state of biodiversity. In this way they can assess the effects of their own activities and of external activities, as well as broader patterns of environmental change. This can help them to improve their own management and monitoring. Again, conservationists are well-equipped to provide technical support for these activities, which often offer some of the most fertile ground for collaborations.

The last two sections take a different approach, exploring what a rights-based approach means for two common types of conservation intervention that often affect Indigenous peoples and local communities. These are interventions related to community livelihoods and interventions related to human wildlife conflict. We hope these sections will contribute to current discussions about what needs to be done to achieve a system-wide shift to rights-based conservation:

- Currently, many **livelihoods projects** linked to conservation start from the assumption that current livelihoods activities are damaging to biodiversity. This assumption is often made without assessing the evidence and without consulting rights-holders. A rights-based approach would involve joint deliberation with rights-holders to agree the best way forward, in order to maintain and improve both biodiversity and human wellbeing. Any interventions are subject to free, prior and informed consent, and genuine differences of interests need to be addressed through negotiation, based on respect for rights.
- **Human-wildlife conflict** can be made worse by legislation that focuses on combating wildlife crime without adequately protecting the rights of Indigenous peoples and others whose lives and livelihoods may be threatened by wildlife. The removal of the right of defence leads to an obligation for the government to protect Indigenous peoples and local communities from harm and provide reparation for damage caused by animals. In order to develop good practice in rights-based approaches to mitigating human wildlife conflict, gaps in legislation and implementation need to be addressed, and long-term solutions need to be sought through co-design with the affected peoples and communities.

Three key considerations affecting rights-based conservation in practice

Three overarching considerations affect how a human rights-based approach to conservation may work out in practice in a specific conservation initiative:

1. Is it an initiative of external actors, or of the affected rights-holders, or both?

   In external initiatives, the affected rights-holders should be consulted as early as possible in the planning process, their FPIC should be sought (and their decision about whether to give FPIC should be respected), and if the project goes ahead, they should be involved at a strategic level as fully as they wish.

2. Does it build on existing relationships, or will these need to be developed from scratch?

   Implementation is likely to be most straightforward where there are already established relationships between the conservationists and the rightsholders. Therefore, for conservationists with a long-term commitment to working in a particular geographical area, dedicating time to developing and maintaining relationships of trust is immensely valuable in establishing the foundation for successful collaborations. Specific projects and activities can then be agreed as part of ongoing discussions and exchanges, based on a mutual understanding of the context and of the different actors' perspectives, knowledge systems, and ways of making decisions and taking action.

3. What is the risk and potential severity of impacts on the rightsholders, for example through restricting their land and resource rights or impacting on their cultures?

   Potential impacts on rightsholders should be assessed jointly, through a participatory process. The greater the risk and severity of potential impacts, the more comprehensive the assessment and the FPIC process need to be.

Conclusions

For rights-based approaches to become embedded in mainstream conservation policy and practice, there needs to be a systemic shift away from treating Indigenous peoples and local communities as passive objects of external interventions towards approaches in which they are treated as active, autonomous agents, and as rights-holders rather than simply as beneficiaries (UNDG, 2003; Sarmiento Barletti et al 2023). This means building on common interests and supporting them to conserve their own nature rather than imposing external priorities and strategies upon them (Milner-Gulland, 2024). Where there are genuine conflicts of interest, ways forward need to be negotiated through deliberative discussion and knowledge-sharing, with full respect for individual and collective human rights. Improving understanding of human rights issues and practical tools for their implementation amongst conservationists is obviously not the only thing that is needed to accomplish this shift, but it is a fundamental requirement, and we hope that this guidance will help to achieve this.

PART 1: Introduction

Helen Newing, Anouska Perram, Lucy Radford and Helen Tugendhat

This guidance is intended as a resource for conservation professionals who are interested to learn more about the relationship between conservation and human rights, especially the rights of Indigenous peoples and local communities. A huge amount has been written on this topic over the past 50 years or so, but much of it is at the level of broad principles rather than practice, and it is mostly targeted at large conservation organisations rather than at individual conservationists. Training opportunities on this topic are limited: most conservation degree programmes do not include material on human rights, and there are few professional training opportunities. Therefore, awareness of human rights issues is currently very variable amongst conservationists, and they often struggle to find guidance that can inform their daily practice. This document aims to help address this gap.

Conservation and human rights have had an uneasy history. Ever since the emergence of the modern 'western' concept of conservation in the late nineteenth Century, a central strategy has been the establishment of a network of uninhabited protected areas to ensure the preservation of 'natural' landscapes, ecosystems, habitats, and the species they contain, through protection against any human exploitation. This approach, which is often referred to as fortress conservation (Brockington, 2002), has formed the basis of emerging global conservation policy since the mid-twentieth Century. Fortress conservation has devastating impacts on the rights, livelihoods and cultures of Indigenous peoples and local communities (Adams, 2005, Adams and McShane, 1992, Colchester, 2003), yet despite numerous commitments by conservation organisations to respect rights and shift to more inclusive approaches, forced evictions and violent killings are (still) commonly perpetrated across the world in the name of conservation. Some particularly striking recent examples are described briefly in Box 1.

Box 1: Recent human rights violations in the name of conservation

Hundreds of members of the **Indigenous Sengwer community in Kenya** were reported to have been evicted from their homes as part of an operation by the Kenya Forest Service (government-funded forest guards) in May 2024. This is despite a Court order which the Sengwer had secured to make sure that the forest is not destroyed and that they are not evicted from their ancestral lands. On 14th May 2024, the Sengwer Council of Elders released a press statement calling on the Kenyan government and foreign donor agencies to halt the violent evictions, which have seen at least 600 houses burned under the pretext of protecting the Cherangany Hills Water Tower from degradation (Forest Peoples Programme, 2024).

Also **in Kenya, the Mau Ogiek** have been the targets of eviction campaigns since 2004, when 100,000 people were evicted over a two year period. In November 2023, a new wave of evictions began, with 1,000 Ogiek people forcibly displaced, and their homes and belongings destroyed. This is despite a Decision by the African Court of Human and Peoples' Rights in 2017 that the exclusion of the Ogiek from the Mau Forest for conservation was neither necessary nor proportionate (Claridge and Kobei 2023).

An Amnesty International report from June 2023 detailed the abuse of **Maasai people** who were violently removed from their ancestral lands in **Ngorongoro district of Tanzania** in June 2022, ostensibly for conservation. This eviction, which went ahead without due process and with excessive force, left 70,000 people without access to the grazing lands they depend on for their livelihoods (Amnesty International, 2023).

In February 2024, Human Rights Watch released a report about **a REDD+ project in Cambodia** that had been conducting activities for 31 months before consulting **Indigenous Chong people** living in the area. These activities included crucial decisions such as incorporating eight Indigenous Chong villages into a National Park. This violated their right to free, prior, and informed consent (FPIC). Families interviewed by Human Rights Watch described being forcibly evicted from farmland they customarily relied on. In some cases, evicted people were arrested and detained for months without trial following the evictions (Human Rights Watch, 2024).

Current international legal and policy frameworks for conservation and for human rights both date from the establishment of the United Nations in June 1948, but for several decades, these two areas of law evolved separately. For example, the first global definition of National Parks stated that they "should enjoy general legal protection against all human exploitation of natural resources" (IUCN WCNP, 1962), but included no provisions to meet legal requirements for protection of human rights. Similarly, the first IUCN Resolution to mention human rights stated that Indigenous peoples' rights should be *recognised*, but it made no reference to requirements under international law to also *protect* their rights (IUCN, 1975). Since then, many new IUCN Resolutions and several major global conservation policy documents concerning human rights have been adopted, but the commitments made and their application in practice have been piecemeal and inconsistent (Witter and Satterfield, 2018).

Meanwhile, although many more inclusive approaches to conservation have been developed since the 1980s[2], several of these do not address human rights explicitly or adequately. Even for those that do, their application in practice has varied greatly, including in the extent to which local communities have been actively involved (Pimbert and Pretty, 1985). Meanwhile, fortress conservation has continued alongside these more inclusive approaches. Sometimes this is done in the same project; for example, integrated conservation and development projects (ICDPs) typically include support for people living near a government-run protected area alongside their forced exclusion from the protected area itself, even where it overlies the ancestral lands of Indigenous peoples. This is a violation of their rights under international law. It is also often ineffective as a conservation strategy. There is substantial evidence that in most cases, genuinely inclusive approaches to conservation work best; for example, a recent systematic review concluded that conservation initiatives that are based on autonomy or primary control by Indigenous peoples and local communities are more often associated with positive ecological outcomes than more coercive or externally driven approaches (see figure 1).

2 These include conservation outreach, integrated conservation and development, community-based conservation, community-based natural resource management, protected areas co-management (Barrow and Murphree, 1998), collaborative conservation, inclusive conservation (Tallis and Lubchenco, 2014), equitable conservation (Friedman et al., 2018) and socially just conservation (Martin, 2017), among others.

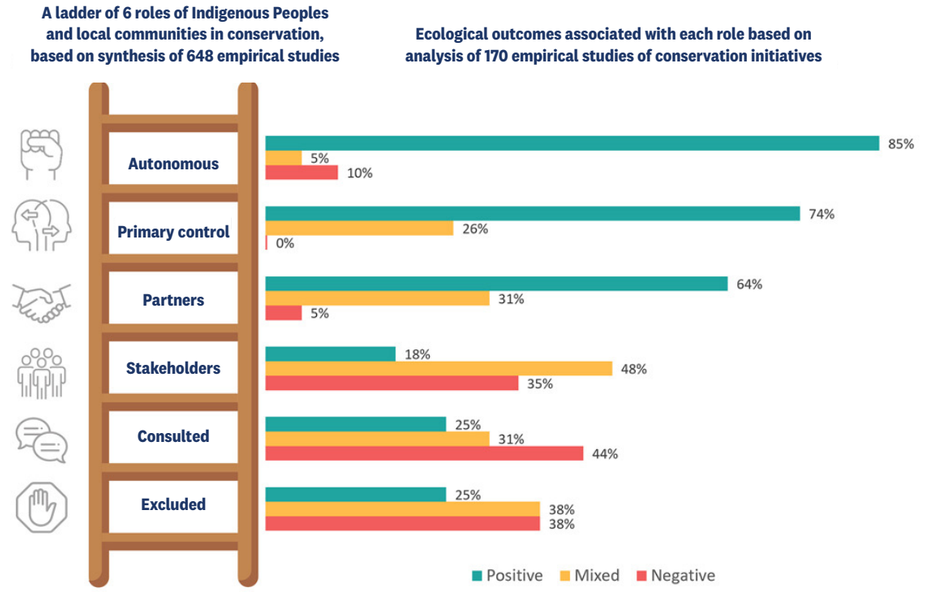


Figure 1: *Is it just conservation? A typology of Indigenous peoples' and local communities' roles in conserving biodiversity. A review and synthesis of empirical studies demonstrates that the ecological outcomes of conservation initiatives are far more positive in situations in which indigenous peoples and local communities are working autonomously or are in primary control, compared to those in which they are excluded or simply consulted. Source: Dawson et al (2024). Reproduced under creative commons licence (Attribution 4.0 International).* https://doi.org/10.1016/j.oneear.2024.05.001.

In 2022, nearly 200 countries made a renewed and extended commitment to follow a human rights-based approach in conservation when they adopted the Kunming-Montreal Global Biodiversity Framework (hereafter the GBF) at the fifteenth Conference of the Parties to the Convention on Biological Diversity[3]. A human rights-based approach involves identifying and supporting rights-holders to claim and exercise their rights, and at the same time, working to strengthen measures by more powerful actors (known as duty-bearers) to meet their obligations towards the rights-holders (UN SDG, 2003). For this approach to be applied in mainstream conservation policy and practice, there will need to be a systemic shift away from treating Indigenous peoples and local communities as passive objects of external interventions towards approaches in which they are treated as active, autonomous agents, and as rights-holders rather than simply as beneficiaries (UNDG, 2003; Sarmiento Barletti et al 2023). This means supporting them to conserve their own nature, with full respect for their rights, rather than imposing external priorities and strategies upon them, either forcibly or by seeking their support (Tauli-Corpuz, 2020, Tugendhat et.al. 2024, Milner-Gulland, 2024).

3 CBD/COP/DEC/15/4, Section C, paragraphs 8 and 14.

Figure 2: *Remote dwellings near Ifrane National Park, Morocco.*

The rest of this section gives a brief introduction to the nature of human rights and rights-based approaches. Part II gives an overview of international standards on human rights, describing the international legal and policy framework, introducing some of the most influential voluntary standards covering human rights issues, and then providing a run-down of rights that are particularly relevant for conservation. Part III introduces several practical tools and approaches for respecting, protecting and fulfilling the rights of Indigenous peoples and local communities in conservation, and identifies three key considerations that affect how these tools and approaches may apply in practice: whether conservation activities are initiatives of external actors or of the rights-holders themselves (or both), whether they could potentially have negative effects on rights-holders (and if so, how severe these could be), and whether they build on existing relationships or whether these will need to be developed from scratch.

1.1 The nature of human rights

Human rights are to do with basic values such as fairness, respect, dignity and autonomy, and are protected in international law. Human rights are:

> *"inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. They include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination."*
>
> *United Nations, 2024.*

They are recognised in international law to be universal, inalienable (they cannot be taken away), indivisible, interdependent and interrelated (UNDG 2003). Box 2 sets out the six United Nations Human Rights Principles, which are based on measures in the 1948 United Nations Declaration of Human Rights and subsequent international legal instruments.

Box 2: The six Human Rights Principles of the United Nations

"Universality and inalienability: Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The human person in whom they inhere cannot voluntarily give them up. Nor can others take them away from him or her. As stated in Article 1 of the UDHR, "All human beings are born free and equal in dignity and rights".

Indivisibility: Human rights are indivisible. Whether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human person. Consequently, they all have equal status as rights, and cannot be ranked, a priori, in a hierarchical order.

Interdependence and Interrelatedness: The realisation of one right often depends, wholly or in part, upon the realisation of others. For instance, realisation of the right to health may depend, in certain circumstances, on realisation of the right to education or of the right to information.

Equality and Non-discrimination: All individuals are equal as human beings and by virtue of the inherent dignity of each human person. All human beings are entitled to their human rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.

Participation and Inclusion: Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realised.

Accountability and Rule of Law: States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law".

Source: UNDG, 2003

In addition to individual human rights, there are also **collective rights**, including the right of all peoples to self-determination (which means they have the right to determine their own future) (UN Charter, art 1(2); ICCPR, art 1; ICESCR, art 1). This includes Indigenous peoples and several other groups of local people (see Box 3), and therefore it has significant implications for conservation interventions that may affect them. The collective rights of Indigenous peoples and some other groups are discussed in relation to conservation in Part II of this report.

Rights are distinct in law from '**privileges'**, which may be granted and / or withdrawn, usually by a government and sometimes through a process of negotiation. The granting of privileges is common in conservation. For example, Indigenous peoples and local communities may be granted access to lands, and permission to use resources, subject to certain conditions, or only at certain times, and often, subject to renegotiation every few years (for example, as part of the renewal of conservation management plans). These privileges may be withdrawn at any time, according to changes in conservation policies, priorities, and interpretations of what is causing any decline in the state of biodiversity. This is clearly different from (and incompatible with) recognition of rights, which cannot be withdrawn or taken away. However, privileges may also be granted that go beyond legal human rights requirements, including to support community actions and initiatives that are beneficial for conservation.

Figure 3: *A woman watering seedlings at a community reforestation project in Kenya*

Box 3: Who are Indigenous peoples and local communities?

International law does not formally define "Indigenous peoples". Rather Indigenous peoples are understood to include communities, tribal groups, nations or peoples who share some common characteristics (UNPFII, 2006; Martinez-Cobo, 1982), such as social, economic and/or cultural distinctiveness from mainstream society (reflected for example in their language, livelihood traditions, religion and cultural beliefs, etc); strong spiritual, cultural, social and economic ties to their lands, territories and resources; a historic or ongoing experience of marginalisation, and self-identification as an Indigenous people. As a matter of international law, Indigenous peoples are entitled to their collective rights as Indigenous peoples regardless of whether or not they are formally recognised as "Indigenous peoples" by the State in which they live.

The phrase 'Indigenous peoples and local communities' is commonly used in international conservation policy. This reflects the fact that in addition to Indigenous peoples, there are other, diverse local groups who may also be affected by conservation actions, and whose (distinct) rights must also be considered. These other groups are collectively described using the catch-all term "local communities". What constitutes a "local community" varies from place to place (Agrawal & Gibson, 1999) and this term has no universal meaning in international human rights law. However, in the context of the Convention of Biological Diversity," local communities" refers to communities who "maintain intergenerational connection to place and nature through livelihood, cultural identity and worldviews, institutions and ecological knowledge" (Hill et al, 2020). This is how the term is used in this guidance.

Some groups sometimes described as 'local communities', because of their distinct social, cultural and economic characteristics, are entitled to collective rights of the same or very similar nature to those of Indigenous peoples. Other groups called "local communities" may not be entitled to collective rights but still enjoy the full panoply of individual rights. A case-by-case assessment of the characteristics of the group is needed to determine what rights frameworks apply.

Engaging with the rights of Indigenous peoples, as well as of some other groups, is a legal requirement (Newing & Perram, 2019). It is also often a precondition for effective, legal and equitable conservation wherever local people manage their environment collectively (Armitage et al., 2020; Dawson et al., 2024). Therefore, in cases of uncertainty, best practice is to assume, extend and respect the maximum rights to all communities and peoples who may be affected by conservation activities.

Key terms:

Indigenous peoples: communities, tribal groups, nations or peoples who share characteristics such as social, economic and/or cultural distinctiveness from mainstream society, strong spiritual, cultural, social and economic ties to their lands, territories and resources, a historic or ongoing experience of marginalisation, and self-identification as an Indigenous people.

Local communities: communities who maintain intergenerational connection to place and nature through livelihood, cultural identity and worldviews, institutions and ecological knowledge.

Indigenous peoples and other groups: we use this phrase in this report to refer to all groups who have or may have collective rights (recognising that the scope of these collective rights may differ between different groups, and that Indigenous peoples have a distinct set of rights recognised under international law). In some parts of this report, especially when describing situations and actions on the ground, the word '**communities'** is used as shorthand for indigenous peoples and other groups with collective rights.

Can human rights be restricted for conservation?

Human rights must first and foremost be understood as *rights*, which means they cannot (legally) and should not (ethically) be set aside without a compelling, and legally permitted, justification. Some rights, such as the right to life, the prohibition on torture and the principle of non-discrimination, are absolute. No violation of these rights is ever acceptable. For *some* other rights, there are very occasionally *exceptional* circumstances in which they may lawfully be restricted. Broadly, these circumstances arise when two or more rights must be balanced against each other, or when a right must be balanced against conflicting public interest.

In conservation, a common question relates to restrictions on the rights of Indigenous peoples or local communities to lands, territories or natural resources (most frequently, by the establishment of government protected areas). Rights to property are not absolute, but restrictions of these rights must be based on compelling reasons and evidence and should be exceptional. Several decisions from regional courts as well as other international guidance makes clear that the rights of Indigenous peoples to their lands, territories and natural resources may only be restricted in specific and exceptional circumstances (see section 2.3.1 for more details and examples). Where restriction of rights becomes the norm, as has happened in conservation, this is a strong indication that these rights are (unlawfully) not being treated as rights but rather as discretionary considerations. All conservationists have an *obligation* to avoid human rights harms connected to their activities, and this must be the starting point for respecting human rights in conservation practice.

1.2 What is a human rights-based approach?

While there is no universally adopted definition of a human rights-based approach, the theories and practice behind this term are described in the UN Common Understanding on Human Rights (UN SDG, 2003). They were first developed and articulated in the context of development, but can be equally well applied in any area of policy and practice, including conservation. A human rights-based approach requires a commitment not to violate human rights ('respect rights'), to prevent rights violations by others as far as this is possible, ('protect rights') and to support the realisation of human rights ('fulfil rights'). Remedy for violations that do occur is also a critical part of a human rights-based approach. The underlying principles are defined in international law, and therefore, implementing a human rights-based approach requires familiarity with international human rights law (something Part 2 of this guidance aims to provide).

Human rights-based approaches rest on analysis of existing power structures. For any specific project or initiative, this involves identifying the potentially affected rights-holders and the duty-bearers (those who have obligations or responsibilities to respect, protect and/or fulfil rights). Rights-holders are supported to claim and fulfil their rights, and duty-bearers are supported and held to account to meet their obligations and responsibilities towards rights-holders.

Key terms in a human rights-based approach:

- Respecting rights: abstaining from doing anything that violates rights.
- Protecting rights: preventing violation of rights by others and guaranteeing access to remedy where violations do occur.
- Fulfilling rights: taking necessary measures to enable people to claim or enjoy their rights.

- Rights-holders: those who have rights that may be impacted.
- Duty-bearers: those who have obligations or responsibilities to respect, protect and fulfil rights (principally governments but also others).

Too often, those most likely to have their rights violated are those least able to defend their rights and interests. A human rights-based approach requires understanding these dynamics of marginalisation, and taking proactive, concrete measures to address them, enabling greater agency of rights-holders over actions that affect them and supporting their own autonomous actions. Thus, rights-based conservation incorporates but goes further than support for community conservation; it also involves working to reduce power imbalances by engaging directly or indirectly with duty-bearers as well as rights-holders. Some of the practical steps that this involves are described in Part 3.

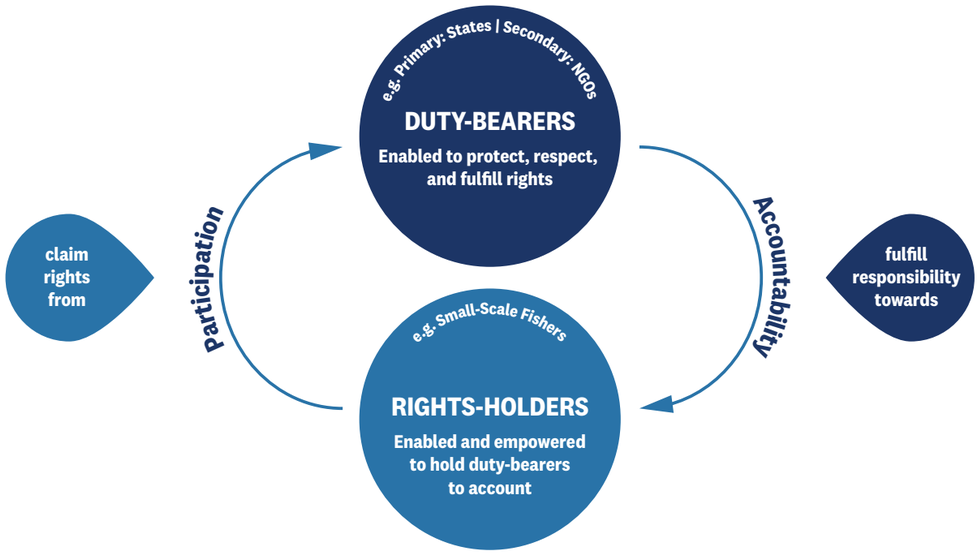


Figure 4 *The components of a human rights-based approach. (adapted from Smallhorn-West et al., 2023)*

Who are the duty-bearers?

While States are the primary duty-bearers (they hold the primary obligations to respect, protect and fulfil rights), businesses, non-governmental organisations such as conservation organisations, academic institutions and others must also respect rights ("do no harm"). This means they must refrain from any activities that cause rights violations, avoid contributing to rights violations by others, and address any rights violations which they do cause or contribute to, or have caused or contributed to in the past. Non-state actors are often called secondary duty-bearers.

What are the responsibilities of States as primary duty-bearers?

States' obligations to respect human rights mean, among other things, that they must refrain from directly infringing upon human rights through their acts or omissions. State conservation-related activities, such as establishing protected areas, policing restrictions on hunting, or developing and implementing spatial conservation and development plans, must not infringe upon human rights.

States' obligations to protect human rights also require them to take steps to ensure that third parties do not violate human rights. This may involve regulating non-state actors, including conservation organisations, funders, or companies, to ensure they respect human rights.

States must also promote human rights outside their jurisdiction, including in their trade, foreign relations, foreign aid, and external commercial activities. For example, this could mean requiring that activities funded by aid money respect human rights, promoting and signing up to international environmental and social good practice standards, and / or raising concerns internationally about human rights abuses connected to conservation interventions.

Finally, States' obligations to fulfil human rights require that they take positive action to realise the enjoyment of human rights. This could include enabling and financially supporting community-led conservation and sustainable natural resource management by Indigenous peoples, including through support for land titling and the development of community land-use plans.

These obligations under international law are often, but not always, replicated in national legislation. However, they exist regardless of whether they are re-stated in national law.

What are the responsibilities of non-state actors, including conservation organisations, as secondary duty-bearers?

While States are primary duty-bearers, some non-state actors are considered secondary duty-bearers and have particular obligations or responsibilities to respect human rights, based (at a minimum) on the norms under the UN Guiding Principles on Business and Human Rights (UNGPs). These include companies and investors (UNGPs: Principle 19) and also conservation and development organisations and their funders (FocusRight, 2022; National Contact Point of Switzerland, 2016: 7; Pillay, Knox and MacKinnon, 2020: 3).

The responsibilities of these actors are on two levels. The primary tier of responsibility requires them to avoid causing or contributing to violations in their own activities. This includes, for example, where they directly violate rights or fail to put in place adequate social safeguards and human rights due diligence procedures against violation of rights by others with whom they are collaborating. For more on social safeguards and human rights due diligence, see section 3.1. It also includes putting grievance procedures in place and providing remedy if, despite precautions, they cause or contribute to a violation (UNGPs, principle 13(a) and 22; see Sections 3.4 and 3.5 of this document).

The secondary tier of responsibility requires conservation organisations to seek to prevent and mitigate violations that are directly linked to their activities, but to which they did not contribute (UNGPs, principles 13(b)). For example, this may include a situation where, despite social safeguards and a human rights impact assessment, ecoguards employed by a government with which the conservation organisation is collaborating commit acts of violence against community members, or conservation activities themselves violate rights relating to customary natural resource use. In cases of this kind, the conservation organisation's responsibilities include using its leverage to prevent continuing violations and to address existing ones. Conservation organisations may also consider contributing to remedy (UNGPs, principles 19, 22).

Where such acts are on-going, the conservation organisation should also consider suspending or terminating the relationship (see Principle 19 of the UNGPs for further details of when this may be appropriate). Importantly, where a conservation organisation fails to effectively address repeated human rights violations by collaborators, its responsibility may shift from the secondary tier, where these violations are considered as "acts by others but directly linked to the conservation actor" to the primary tier, where the conservation organisation is considered as "causing or contributing to" the violations.

More broadly, conservationists taking a rights-based approach also work to strengthen actions by States to meet their human rights obligations in any or all aspects of conservation-related policy and practice. This may include working directly with the government, including by providing training and technical assistance, or supporting rights-holders in their engagement with the government, or working to increase transparency and hold the government to account.

Key sources of further information:

Hertz, Goossens-Ishii and Koh (2023). Adopting a human rights-based approach to biodiversity and climate action.

Newing, H. and Perram, A., 2019. What do you know about conservation and human rights?. *Oryx, 53*(4), pp.595-596.

Sarmiento Barletti, J.P., Prouchet, L. and Larson, A.M., 2023. Rights-based approaches and Indigenous peoples and local communities: findings from a literature review.

Smallhorn-West, P., Allison, E., Gurney, G., Karnad, D., Kretser, H., Lobo, A. S., Mangubhai, S., Newing, H., Pennell, K., Raj, S., Tilley, A., Williams, H., & Peckham, S. H. (2023). Why human rights matter for marine conservation. *Frontiers in Marine Science, 10*. https://doi.org/10.3389/fmars.2023.1089154

Perram et al (2022b): Transforming conservation: from conflict to justice. Forest Peoples Programme.

UNDG (2003). The Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies

PART 2: International standards on human rights and their relevance to conservation

This section provides an overview of international standards on human rights. It describes the international legal and policy framework, introduces some of the most influential voluntary standards covering human rights issues, and then provides a run-down of rights that are particularly relevant for conservation implementation on the ground.

The modern international framework of standards on human rights dates from the establishment of the United Nations in 1948. Respect for rights, including the right of all peoples to self-determination, is enshrined in Article 1 of the United Nations Charter. The Universal Declaration on Human Rights (UDHR), which was adopted by the General Assembly of the United Nations in November 1948, is the foundation for a panoply of international human rights laws and instruments that have been adopted since that time. An overview of these instruments is provided in section 2.1, together with information on human rights coverage in environmental law, a brief discussion of the relationship between international, regional, national and customary law, and an explanation of the strict limits on legitimate restrictions of human rights - something that has been central to several landmark court rulings concerning conflicts between Indigenous peoples and protected areas over the past fifteen years or so.

Section 2.2 describes some of the most influential international voluntary standards and frameworks on human rights, both within the conservation sector itself and for businesses. Within the conservation sector, these include various IUCN Resolutions and good practice guidance documents, as well as the 2009 Conservation Initiative on Human Rights. More detailed standards and good practice guidance have been developed on many human rights issues for the business sector, much of which is also applicable in conservation. They include the UN Guiding Principles on Business and Human Rights (UNGPs), which are increasingly recognised as applicable to conservation organisations (National Contact Point of Switzerland, 2016: 7; Pillay, Knox and MacKinnon, 2020: 3; FocusRight, 2022); the Accountability Framework Initiative (which relates to ethical supply chains); various guidance documents by the Organisation for Economic Cooperation and Development (OECD); the UN Global Compact (relating to Indigenous peoples' rights), and several certification schemes and other voluntary standards for commodity production in agriculture, forestry, and mining.

Lastly, Section 2.3 gives a brief run-down of rights that are particularly relevant for conservation. They are discussed in relation to three overlapping groups of people who are often impacted by and / or play a significant role in conservation implementation on the ground: Indigenous peoples and local communities, women (in the context of gender justice), and environmental human rights defenders. Obviously, conservationists have equally strong obligations to respect and protect the rights of other people, including workers and those who are vulnerable or marginalised, such as children and those with disabilities. However, considerations of these rights are broadly the same in conservation as in any other sphere of activity, and therefore they are not included here.

2.1 Legal and policy frameworks

Anouska Perram

International human rights law is a common framework of norms agreed between States. Its primary source is international human rights law treaties and other instruments, such as declarations and principles. These instruments are supplemented by other materials such as judicial decisions (at national, regional or international level), authoritative guidance issued by treaty bodies, as well as advisory and expert opinions, such as those of special rapporteurs, which elaborate in more detail the application of human rights in different circumstances. While there is no international court dedicated to resolving human rights disputes, human rights may be enforced by other courts at national, regional or international levels. Some States also grant treaty bodies the power to decide claims by individuals or groups regarding violation of a treaty.

Declarations, principles, and General Assembly resolutions are soft law instruments. As a general rule, soft law instruments are not legally binding, but instead represent guidelines. However, this does not always reflect the full picture. Soft law instruments sometimes codify, as well as expanding, existing norms that are already binding under other treaties. In addition, with time, soft law norms can come to have binding effects through their acceptance as customary international law (see glossary) or because they influence the interpretation of binding conventions. Many provisions of UNDRIP are considered to be or have become binding in this way: see for example *Ågren v Sweden* (2020): para 6.5; CEDAW (2022), *General Comment No. 39*: para 13.

Figure 5 shows the major international human rights treaties and instruments. Many do not refer expressly to the environment or conservation. However, the rights contained in all major human rights instruments are directly relevant and applicable to conservation.

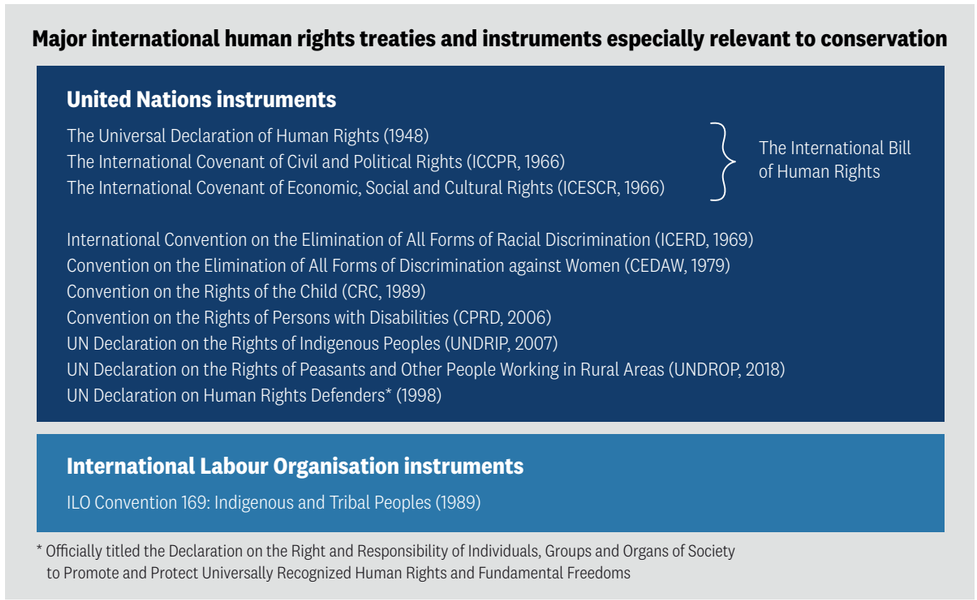


Figure 5: *The major international human rights treaties and instruments.*

Each international human rights treaty creates a treaty body, whose role is to supervise States parties' compliance with the treaty and to provide authoritative guidance on its interpretation. The treaty bodies for the major treaties are listed in Table 1. Treaty bodies do this by (i) conducting periodic reviews of each State Party (based on a report submitted by the State, as well as additional information submitted by third parties, such as NGOs or victims of rights violations), and issuing Concluding Observations; (ii) issuing General Comments[4] providing further guidance on the meaning of specific provisions of a Convention and the requirements for compliance (sometimes in specific contexts); and (iii) providing guidance on specific cases of concern, either through their decisions in communication procedures (i.e. individual or group complaints) or through other special procedures. Complaint procedures are not universally available; many States choose to opt out of these procedures, meaning complaints against them cannot be brought.

Treaty	Treaty body
ICCPR	Human Rights Committee (HRC)
ICESCR	Committee on Economic, Social and Cultural Rights (CESCR)
ICERD	Committee on the Elimination of Racial Discrimination (CERD)
CEDAW	Committee on the Elimination of Discrimination Against Women (CEDAW Committee)
CRC	Committee on the Rights of the Child (CRC Committee)
CRPD	Committee on the Rights of Persons with Disabilities (CRPD Committee)

Table 1: *International human rights treaties and treaty bodies.*

Declarations do not have treaty bodies per se. The UN has, however, created an expert mechanism to provide guidance on rights under UNDRIP. This body is called the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP).

Legal materials and sources are organised and cited in a different way from materials in other academic disciplines, and this can be a barrier for conservationists and others who are not legally trained. The box below gives guidance on how to find different kinds of legal materials.

4 For CERD and CEDAW these are called "General Recommendations".

Box 4: How to find legal materials

The website of the UN Office of the High Commissioner on Human rights (OHCHR) provides comprehensive information on human rights, including the different instruments and mechanisms. The OHCHR Dashboard gives information on which countries have ratified which treaties. Primary legal materials (such as treaties, case decisions and guidance) are usually made public as a matter of principle and many are readily accessible online. Here are some key tips for finding these materials:

- All UN treaties and many regional treaties can be found in the UN treaty database. The website of the UN Office of the High Commissioner of Human Rights (OHCHR) also has links to human rights treaties as well as a wider range of instruments (such as declarations).
- All human rights treaty bodies have pages on the OHCHR website, with links to the treaty text, decisions on specific cases, general comments or recommendations from the treaty body, as well as concluding observations on each State Party. ("Concluding observations" refers to the treaty body's periodic evaluation of each State Party). You can find links to all the treaty body pages on this page on the OHCHR website.
- Regional treaties can be found on the website of the relevant regional organisation (African Union, the Organisation of American States; the Council of Europe).
- ILO Conventions can be found on the ILO Normlex site.
- Court cases and opinions are available on the website of the court or commission that made the decision (for example, the Inter-American Court, the African Court; the European Court). You can also generally find these via a general internet search for the case name.
- Most UN documents (including many decisions, general comments etc) have a unique reference number (e.g. CERD/C/102/D/54/2013). Any document identified with such a number can usually be found easily by an internet search of that specific number.
- Domestic court decisions can often be found on national court websites. They will usually be available only in official national language(s).
- Other materials (such as OECD complaints, industry body complaints etc) can usually be found via an internet search.

Human rights and environmental law

In 1992, the United Nations Conference on Environment and Development (the 'Earth Summit') was held in Rio de Janeiro. At this Summit, three landmark pieces of international environmental law were opened for signature or drafted: the UN Framework Convention on Climate Change (UNFCCC), the UN Convention to Combat Desertification (UNCCD) and the Convention on Biological Diversity (CBD). The CBD explicitly addressed certain human rights, providing one of the first clear bridges between environmental and human rights law. CBD article 8(j) recognises the importance of the traditional knowledge and practices of Indigenous peoples and of local communities, and the rights that they have to continue to use, transmit and maintain such knowledge. Further, in Article 10(c), the Convention signatories commit to "protect and encourage customary use of biological resources in accordance with … conservation or sustainable use requirements". These two collective rights, the right to maintain and transmit cultural knowledge and the right to maintain customary use practices related to conservation, are particularly relevant for Indigenous peoples and other groups with collective rights and collective natural resource governance systems.

In 2022, the UN General Assembly recognised the right to a clean, healthy and sustainable environment, creating a further bridge between environmental and human rights law. The resolution is not legally binding but reflects a broad international consensus and builds on existing (binding) law at regional and national levels. As a soft law norm, it provides guidance for States, and may be used in interpreting other obligations and developing further binding standards (OHCHR, UNEP and UNDP, 2023).

Regional frameworks

Regional human rights frameworks consist of international human rights law applicable to a particular region. The three main regional frameworks are for Africa, the Americas and Europe. Regional human rights instruments exist also in the Arab States and Asia, but these are not universally considered to be consistent with international standards and have no enforcement mechanism, so have less influence (Rishmawi, 2015; Davies, 2014). Certain regional environmental instruments (such as the Aarhus Convention in Europe and the Escazu Agreement in Latin America and the Caribbean) also have close crossover with human rights frameworks.

Box 5: Some key regional human rights treaties

African Charter of Human and Peoples' Rights

American Convention on Human Rights

European Convention on Human Rights

Arab Charter of Human Rights*

ASEAN Declaration on Human Rights*

These treaties are complemented by a substantial body of further instruments at regional level.

*These are not universally considered to be fully compatible with the international human rights law framework.

Unlike the global system, each of the key three regional frameworks has a dedicated enforcement mechanism with an apex court. These are the African Court of Human and Peoples' Rights, the Inter-American Court of Human Rights, and the European Court of Human Rights.

Regional courts, particularly in Africa and the Americas, have played an active role in explaining and applying human rights in the context of conservation. Multiple cases brought by Indigenous peoples and other groups have successfully challenged violations by States of human rights connected with conservation activities, including the establishment of protected and conserved areas on the lands of Indigenous peoples. These include, among others, *Kaliña and Lokono Peoples v Suriname*, the *Endorois* case, the *Ogiek* case, *Xakmok Kasek v Paraguay,* the Batwa case. These cases provide important guidance on how human rights rules apply to conservation activities. Some details from these rulings are set out in section 2.3.1.

Who drives legal developments related to conservation?

In recent years, there has been increasing interest at an international level in conservation law and practice, including its relationship with the human rights sphere. Often, this interest is dominated by scholars and practitioners from institutions and organisations of the global north (of which we recognise that this publication is, for the most part, another example). It is critical that this body of law has more direct participation and leadership by Indigenous peoples and local communities, as well as practitioners and scholars from the global south, both at the international level and in determining the applicable law at national and site level, including in particular through the strengthening of and better respect for customary law.

The relationship between international law, national law and customary law

When States ratify an international legal instrument, international law requires them to make any necessary changes in their national legal systems ('harmonise' them) so that they are consistent with their new obligations under international human rights law.

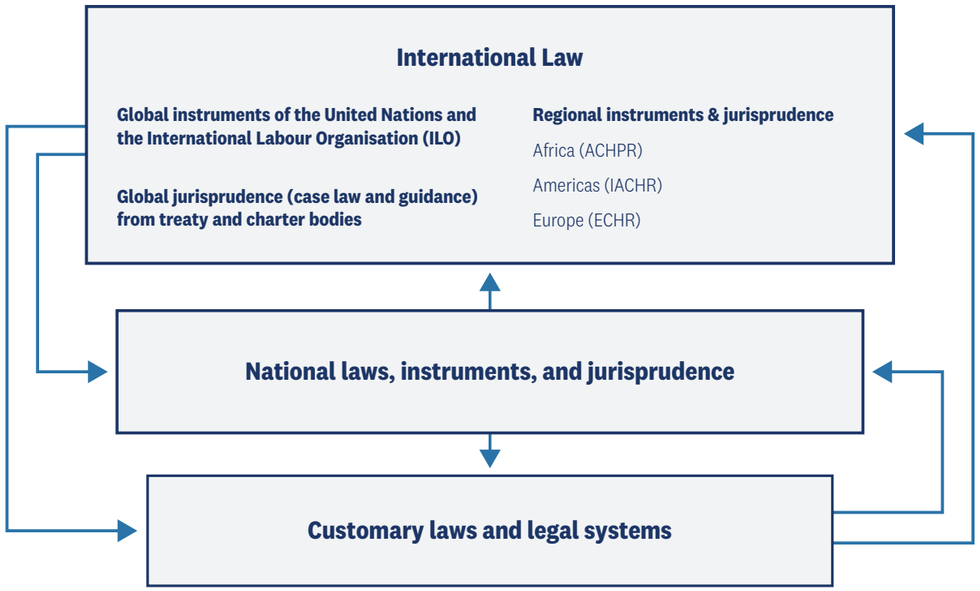


Figure 6: *The relationship between international, national and customary laws and legal systems*

Unfortunately, many have not done so, and even when laws have been harmonised, State practice sometimes falls short of legal requirements. How should different conservationists - including those working for the State - proceed when international human rights law says one thing, and national law or practice says another?

i. Apply all applicable legal standards

Conservationists, like everybody else, must comply with national law. However, the existence of inconsistencies between national law and international law does not always require contravening international law. Sometimes, international law requirements simply present higher standards than national law (or the converse may be true). The general rule in these cases is that conservationists should apply *all applicable legal standards*, going beyond national law when international law (or customary law - see below) requires this. So, for example, if national law provides only that village chiefs should be notified of a proposed project, and international law requires not only notification but also consultations and FPIC, conservationists should comply by meeting legal requirements at both levels.

ii. Look for ways to harmonise potentially conflicting requirements

A more complex situation arises where national law or practice is incompatible with international human rights law requirements. In this situation, conservationists should do the utmost to respect human rights without violating national law (OECD, 2023). For example, national wildlife laws may criminalise traditional hunting by Indigenous peoples and other groups in a way which is inconsistent with international human rights law obligations. A protected area manager tasked with enforcing the hunting law may choose not to prosecute contraventions involving traditional hunting activities, in a legitimate exercise of their discretion to prioritise prosecution of some types of infringements over others (as it is never the case that *every* infringement of *every* law can be prosecuted). This would avoid violations of international law, while still respecting national law.

Conservationists can also make positive use of international law in cases of incoherence. For example, this may include advocating with national governments for progressive changes to laws to support rights-based conservation, or (even more importantly) supporting indigenous peoples and local communities, as well as local civil society organisations, to push for progressive reform to law and practice and respect for rights in specific cases.

iii. Make human rights violations a red line

On the other hand, national law can never be an excuse for conservationists to abuse human rights. While no conservationist or conservation organisation can guarantee that their activities will never cause, contribute to or be linked with human rights violations, deliberately engaging in or contributing to activities that violate human rights cannot be justified by reference to national law or practice. For example, a conservationist who knowingly participates, through providing technical support or funding, in the creation of a protected area that (in law or in fact) expropriates Indigenous peoples or other groups without FPIC or compensation is complicit in a violation of international human rights law. This is the case even if the conservationist may not have desired or had direct control over this outcome, if it was clear that it was the intended or likely outcome. Knowing participation in human rights violations cannot be justified by the failures of national law or practice to respect, protect and fulfil rights.

Similarly, where unforeseen, repeated human rights abuses emerge in the course of conservation activities - for example, the systematic use of excess force by rangers - a conservationist or conservation organisation may need to suspend, review or cease their participation in the activities. Conservation actors are equally responsible where they fail to conduct adequate checks (including about national law and practice) before undertaking an activity, or to put in place sufficient safeguards, particularly for high-risk activities or countries.

iv. Don't forget customary law

The considerations for applying national and international law together equally apply to customary law. Customary law refers to a set of laws based on the traditions, customs and norms of Indigenous peoples, as well as some other groups. Customary law may be written or unwritten (or both), and evolves with time. In many countries, it has some level of recognition within the national legal framework.

International law integrates customary law as a key element for the respect of the human rights of Indigenous peoples, as well as of local communities with customary law traditions. For example, Indigenous peoples' land ownership will often be determined by reference to customary law, and FPIC processes must generally respect a community's own decision-making processes. Wherever possible, conservationists should act in accordance with *all applicable law* - national law, international law, and customary law. This could mean for example using a community's own FPIC protocol as the basis for conducting consultations required under national law, to achieve an FPIC process that is compliant with national, international and customary law (see section 3.3).

Conservationists can also advance rights-based conservation through supporting Indigenous peoples and local communities to strengthen their customary law, and through using their relationships to advocate for its recognition and respect by national governments.

2.2 Voluntary standards on human rights

This section describes international voluntary standards relating to human rights, both within the conservation sector and also for business. Conservation organisations and businesses are both secondary duty-bearers, and therefore from a human rights-based perspective, their obligations are similar. However voluntary standards are more advanced for businesses, and therefore as well as being relevant to the many conservation professionals who work with the private sector, they are also a source of good practice guidance for other conservationists. Several specific tools and guidance documents from voluntary business standards are referenced in the corresponding sections of Part 3. Figure 7 summarises the leading international voluntary standards and frameworks on human rights, which are then described in the following sections.

Some leading international voluntary standards and frameworks on human rights

For the conservation sector:

- IUCN Resolutions
- The Conservation Initiative on Human Rights (2009)
- UNEP Human Rights Principles (under development)

For businesses:

- The UN Guiding Principles on Business and Human Rights (UNGPs)
- The Accountability Framework Initiative (for ethical supply chains in agriculture and forestry)
- The OECD Guidelines for multinational enterprises on responsible business conduct (on international trade and investment)
- The UN Global Compact (on indigenous rights)

Figure 7: *Some leading international voluntary standards and frameworks on human rights*

2.2.1 Voluntary standards within the conservation sector

Helen Tugendhat

Conservation organisations can and have developed a wide variety of internal, shared, voluntary standards for how conservation practice should be undertaken, including explicitly with regard to the rights of Indigenous peoples. Some of these are presented as illustrative examples in Part 3 of this guidance (especially section 3.1 on social safeguards and human rights due diligence, and section 3.4 on grievance mechanisms). This section will look at a few multi-actor initiatives that have set widely agreed voluntary standards, or which have tried to advance standards in relation to human rights.

The IUCN is a union of over 1,400 members representing national governments, sub-national government agencies and NGOs, and since 2016, Indigenous Peoples' organisations. In addition, IUCN also has 7 voluntary expert Commissions to support the development of guidance and standard-setting across a wide range of areas of shared interest. Box 6 gives some examples of guidance documents that are relevant for rights-based approaches to protected areas governance developed by the IUCN World Commission on Protected Areas, which is one of the voluntary expert Commissions. One particularly critical issue for area-based conservation and human rights is related to areas where government-declared Protected Areas have been established on top of the territories and areas of Indigenous peoples and other groups without their free, prior and informed consent (Stevens *et al* 2024).

Box 6: IUCN guidance documents that are relevant for rights-based approaches to protected areas governance.

The IUCN World Commission on Protected Areas has developed Good Practice Guidance across many aspects of Protected Area management. Two of these Guidance documents that are particularly relevant for rights-based conservation are the following:

Governance of protected areas: from understanding to action | IUCN Library System.

Guidelines for applying protected area management categories including IUCN WCPA best practice guidance on recognising protected areas and assigning management categories and governance types | IUCN Library System.

Both of these documents present standards and practical steps to recognise diverse governance types and management categories. Governance types include shared governance and governance by Indigenous peoples and local communities, both of which are potential elements of rights-based conservation. However, these documents are over a decade old, and additional standard-setting processes have gone beyond what is found in them.

	Governance Type			
Management Category	Governance by Government	Shared governance	Private governance	Governance by indigenous peoples and local communities
I. Strict Nature Reserve/ Wilderness Area				
II. National Park (ecosystem protection; protection of cultural values)				
III. National Monument				
IV. Habitat/Species Management				
V. Protected Landscape/ Seascape				
VI. Managed Resource				

The IUCN Protected Areas Matrix

As a Union of members, the IUCN is governed by Resolutions adopted and enacted by its membership. These Resolutions, intended to be binding on the Union's membership, are another source of important evolution of global standards on conservation. All IUCN Resolutions are available in a searchable database.

In 2003, at the fifth IUCN World Parks Congress, IUCN was part of a shift in thinking about the relationship between Indigenous peoples and local communities and the dominant practices of conservation at that time. At that Congress, new standards about consultation, co-management and restitution for harms inflicted in the name of conservation were adopted. These or very similar standards were then built into the Programme of Work on Protected Areas adopted by the Conference of the Parties to the CBD in 2004.

The IUCN membership put forward new and stronger Resolutions highlighting the linkages between human rights and conservation in subsequent years. In 2008, at the fourth World Conservation Congress, a Resolution was passed defining and calling for the adoption of rights-based conservation. At the 5th World Conservation Congress in 2012, four new Resolutions are worth highlighting:

- Resolution 5.093 - Prioritising community-based natural resource management for social and ecological resilience.
- Resolution 5.094 - Respecting, recognizing and supporting Indigenous peoples' and Community Conserved Territories and Areas.
- Resolution 5.097 - Implementation of the UN Declaration on the Rights of Indigenous Peoples.
- Resolution 5.147 - Sacred Natural Sites – Support for custodian protocols and customary laws in the face of global threats and challenges.

Taken together, these Resolutions indicated a significant change in the standards expected of conservationists. At the two subsequent Congresses, held in 2016 and 2021, additional Resolutions were adopted highlighting the importance of lands and territories conserved by Indigenous peoples and local communities, as well as the ongoing spiritual importance of areas and sites within protected areas. Resolutions were also passed addressing the responsibility of conservation organisations to protect environmental human rights defenders, to recognise community roles in delivering conservation, and to direct financing towards Indigenous peoples and local communities to advance these roles. IUCN Resolutions do not, by themselves, directly change practice except through the active efforts of IUCN Members in implementing them. However, they can also have indirect impacts, because they are informative and influential in setting the direction of travel in conservation standards more widely.

Conservation organisations have also organised themselves in voluntary networks to collectively address human rights standards in conservation. One such network was established in 2009: the Conservation Initiative on Human Rights (CIHR), which brings together seven major conservation organisations. The CIHR established four key principles to guide conservation practice (see Box 7). Within the CIHR, organisations develop and share guidance on advancing key areas of practice related to human rights, including the right to free, prior and informed consent, and approaches to rights considerations in working with eco-guards and rangers.

Box 7: Conservation Initiative on Human Rights: Four key principles

Principle 1: Respect Human Rights

Respect internationally proclaimed human rights and make sure that we do not contribute to infringements of human rights while pursuing our mission.

Principle 2: Promote Human Rights within Conservation Programs

Support and promote the protection and realisation of human rights within the scope of our conservation programs.

Principle 3: Protect the Vulnerable

Make special efforts to avoid harm to those who are vulnerable to infringements of their rights and to support the protection and fulfilment of their rights within the scope of our conservation programs.

Principle 4: Encourage Good Governance

Support the improvement of governance systems that can secure the rights of Indigenous peoples and local communities in the context of our work on conservation and sustainable natural resource use, including elements such as legal, policy and institutional frameworks, and procedures for equitable participation and accountability.

Source: The CIHR

Key sources of further information:

Conservation Initiative for Human Rights

Makagon, Jonas and Roe (2014). Human Rights Standards for Conservation Part 1. IIED.

SCBD (2012): Recognising and supporting territories and areas conserved by Indigenous peoples and local communities.

IUCN-WCPA Task Force on OECMs, (2019). Recognising and reporting other effective area-based conservation measures. Gland, Switzerland: IUCN. https://doi.org/10.2305/IUCN.CH.2019.PATRS.3.en

Stevens, S., et al. (2024). Recognising ICCAs overlapped by protected areas. IUCN World Commission on Protected Areas Good Practice Guidelines on Protected and Conserved Areas Series, No. 34. Gland, Switzerland: IUCN.

2.2.2 Voluntary standards for businesses

Cathal Doyle

The principal international voluntary standards for businesses include several international frameworks, of which the most influential is the UN Guiding Principles on Business and Human Rights (UNGPs). The UNGPs were not initially framed as legal obligations but they are increasingly embedded in binding international treaties and jurisprudence, as well as in national law requirements. Other voluntary standards include the Accountability Framework Initiative and the OECD's Guidelines for Multinational Enterprises on Responsible Business Conduct, as well as industry-specific standards such as certification systems and no-deforestation standards. These and other voluntary social and ecological standards for businesses are obviously especially relevant for conservationists who work with the business sector, providing potential benchmarks. Some of them are also applicable to conservation organisations. Also, practical guidance for their application is relatively well developed for the business sector (although there are significant weaknesses in actual implementation and reporting), and some of the guidance documents are potentially useful more widely to conservationists. Several documents of this kind are referred to in the different sections of Part 3 of this report. The rest of this section gives a brief description of the leading voluntary business standards and frameworks.

The UN Guiding Principles on Business and Human Rights (UNGPs)

The UNGPs affirm State duties to protect human rights in the context of business operations, and that business enterprises have an independent responsibility to respect all internationally recognised human rights wherever they operate. They should do this by:

a. "avoiding causing or contributing to adverse human rights impacts through their own activities, and addressing such impacts when they occur".

b. "seeking to prevent or mitigate adverse human rights impacts linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts".

This applies irrespective of their size, sector, operational context, ownership or structure. It requires them to have the following in place:

- a policy commitment to respect human rights;
- a human rights due diligence process to identify, prevent, and mitigate their human rights impacts (see section 3.1).
- processes to enable the remediation of adverse impacts they cause or to which they contribute (see sections 3.4 and 3.5).

For more detail on the obligations and responsibilities of conservation organisations under the UNGPs, see section 1.2 above.

The Accountability Framework Initiative

The Accountability Framework Initiative consists of twelve core principles that companies apply to ensure ethical supply chains in agriculture and forestry, including in relation to deforestation, ecosystem conversion, and human rights. It is particularly relevant for conservationists who work on supply chains or on conservation spatial planning in areas where agricultural and forestry commodities are produced.

Under core principle 2, companies commit to respecting internationally-recognised human rights, including the rights of Indigenous peoples and of local communities with collective customary land tenure. This includes:

1. carrying out their operations consistently with human rights instruments addressing the rights of Indigenous peoples and those addressing the rights of local communities;
2. identifying and respecting customary rights to lands, territories and resources, including ownership, use and control rights;
3. ensuring that free prior and informed consent (FPIC) is secured where rights, livelihoods or food security may be affected;
4. taking measures to realise remediation through mutually agreed procedures if there are adverse impacts on Indigenous peoples or local communities' lands, territories or resources. These may be as a result of company operations, supply chains or financial investments.

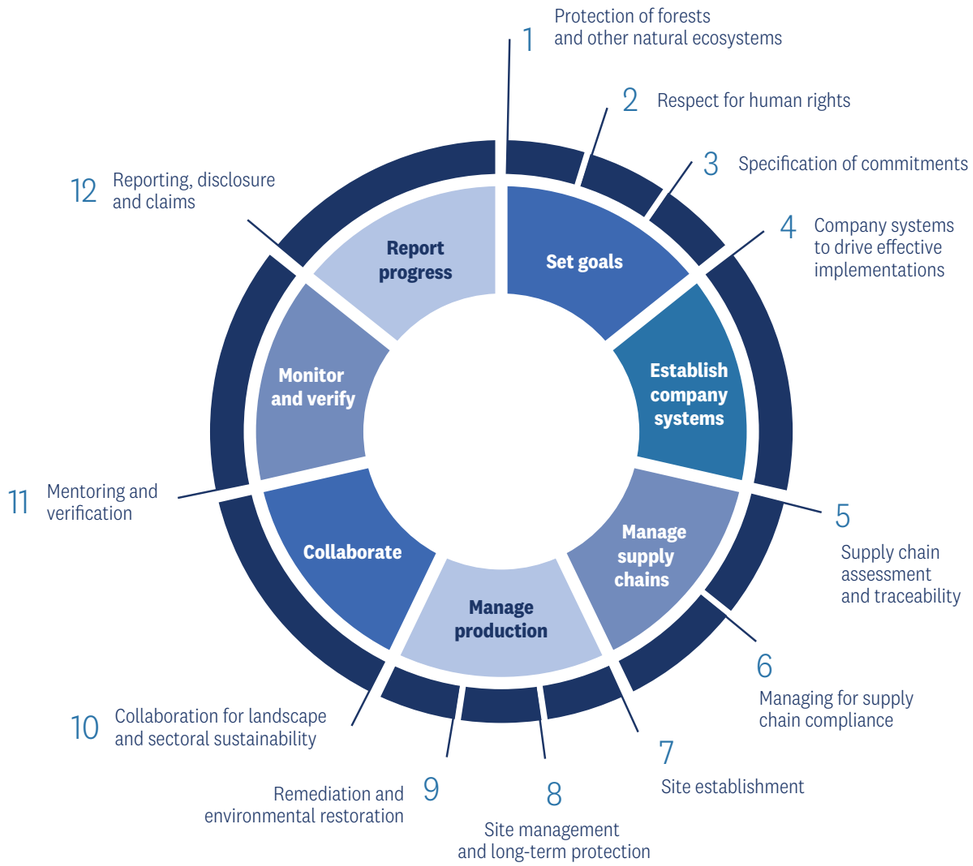


Figure 8: *The Accountability Framework Core Principles. Adapted from: Accountability Framework*

The Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises on Responsible Business Conduct

The OECD Guidelines are concerned with international trade and investment, and are therefore most relevant for conservationists who work on international finance, value chains, and telecoupling (interactions between geographically distant human and natural systems: Liu et al., 2013). The Guidelines require that business enterprises uphold their independent responsibility to respect human rights, as affirmed in the UN Guiding Principles on Business and Human Rights. This includes requirements to make a policy commitment and put in place human rights due diligence and remediation processes. Further OECD practical guidance in relation to due diligence and free, prior and informed consent (FPIC) is provided in the following two documents:

- The OECD Due Diligence Guidance on Meaningful Stakeholder Engagement in the Extractive Sector.
- The OECD-FAO Guidance for Responsible Agricultural Supply Chains.

The Guidelines also note that the United Nations has elaborated on the rights of Indigenous peoples in the UN Declaration on the Rights of Indigenous peoples.

The Environmental chapter of the Guidelines addresses how enterprises should avoid and address adverse environmental impacts and ensure the conservation, restoration, and sustainable use of biological diversity. It claims equivalence with the ***International Finance Corporation's Environmental and Social Performance Standards***, which require respect for Indigenous peoples' rights and free prior and informed consent for activities with potentially adverse impacts on their lands, territories and resources, and by extension the Equator Principles, which extend the IFC Performance Standards to a range of private financial institutions and are "intended to serve as a common baseline and risk management framework for financial institutions to identify, assess and manage environmental and social risks when financing Projects".

Under the Guidelines, OECD National Contact Points (NCPs) are mandated to address issues that arise in relation to their implementation in "specific instances" (the OECD terminology for complaints). Significantly, National Contact Points have affirmed in specific instances that conservation organisations, such as WWF, and certification bodies, such as the RSPO, fall within the scope of enterprises that have the independent responsibility to respect Indigenous peoples' rights.

The UN Global Compact Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples (UN Global Compact, 2013) .

The UN Global Compact provides guidance on actions which business enterprises and actors such as conservation organisations can take to realise their responsibility to respect Indigenous peoples' rights. These include the following:

- Developing a strong policy commitment.
- Conducting human rights due diligence.
- Holding consultations to obtain FPIC.
- Establishing culturally appropriate and effective grievance mechanisms.
- Ensuring mitigation of and remediation for any human rights harms.

Certification schemes

Certification schemes for commodities in the forestry, agricultural and mining sectors offer fertile ground for collaboration between conservationists and businesses on environmental and human rights issues (for some examples, see Box 8). Although their implementation is often poor, the guidance they have developed on human rights issues is some of the most advanced available and is much more widely applicable. This includes guidance developed as part of two standalone methodologies that are incorporated into many certification schemes and are also used increasingly in landscape and jurisdictional planning processes: the High Carbon Stock Approach (HCSA) and the High Conservation Value Approach (HCV Approach) (see Box 9). Several specific aspects of these schemes and methodologies are referred to in the different sections of Part 3.

Box 8: Examples of certification schemes with well-developed guidance on human rights requirements

The Forest Stewardship Council (FSC) certification system includes criteria on upholding the rights of Indigenous peoples (under Principle 3) and maintaining or improving the social and economic wellbeing of local communities (Principle 4).

The Programme for the Endorsement of Forest Certification (PEFC) Sustainable Forest Management Standard (PEFC ST 1003:2018), requires recognition of established human rights frameworks, including ILO 169 and the UN Declaration on the Rights of Indigenous Peoples.

The Roundtable for Sustainable Palm Oil (RSPO) certification standards include measures on respect for community and human rights (Principle 4) and respect for the rights of workers (Principle 6). The RSPO also provides guidance on **child rights, gender equality, labour auditing, living wage, and Free, Prior and Informed Consent**.

In the mining sector, **the Aluminium Stewardship Initiative** and the **Initiative for Responsible Mining Assurance** also require respect for Indigenous peoples, including their right to free prior and informed consent.

Box 9: The HCV Approach and the HCS Approach

The **High Conservation Value (HCV) Approach** is a methodology for identifying, mapping and conserving social and ecological features that are especially valuable – whether for conservation or for local people (or both). Respect for Indigenous and local community rights is a fundamental part of this approach.

The **High Carbon Stock Approach (HCSA)**: is a methodology for identifying and conserving forests that contain high levels of carbon, to meet climate change-related no-deforestation commitments. The Approach includes fourteen Social Requirements related to human rights.

The Fourteen Social Requirements of the High Carbon Stock Approach (HCSA)

Source and further details: https://highcarbonstock.org/Indigenous-community-rights/

2.3 Rights of particular relevance for conservation

This section gives a brief run-down of individual and collective rights that are particularly relevant for conservation. These are discussed in relation to three overlapping groups of people who are often impacted by or play a significant role in conservation implementation on the ground: Indigenous peoples and local communities, women (in the broader context of gender justice), and environmental human rights defenders. Obviously, conservationists have equally strong obligations to respect and protect the rights of all people, including workers and vulnerable groups such as children and those with disabilities. However, considerations of the rights of these other groups are broadly the same in conservation as in any other sphere of activity, and therefore for the sake of brevity they are not discussed in this guidance.

Figure 9: *individual and collective rights of particular relevance for conservation*

2.3.1 Rights of Indigenous peoples and local communities

Anouska Perram

Indigenous peoples and local communities have the full range of individual rights elaborated by international human rights law, as discussed in section 1.1. Indigenous peoples, as well as some other groups, also benefit from collective rights. These include collective rights to their lands, territories and resources, to self-determination and to culture, among others. Many mobile peoples also have many of these rights, which have been recognised in the Dana Declaration on Mobile Peoples and Conservation (2002), which was endorsed by the IUCN in 2008 (IUCN, 2022). This section briefly explains a few of the most relevant individual and collective rights of indigenous peoples and other groups in the context of conservation.

Right to lands, territories and natural resources

Indigenous peoples and some other groups have well-established collective rights to own, occupy, manage and use their lands and territories, including waters, as well as the natural resources found within them[5]. Lands and territories include areas under direct regular occupation and use as well as broader areas which, under customary law or tradition, are under the stewardship of the particular Indigenous people or other group. This may include for example sacred sites or lands managed for conservation purposes. Natural resources include resources above and below ground. This collective right to property complements individual rights to property, which apply to all individuals.

Box 10: Indigenous peoples' land and resource rights as set out in article 26 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

i. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

ii. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

iii. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

5 Some key sources of this right include UNDRIP, arts 25-30; ICCPR, arts 1, 17, 27 (see also General Comment No. 23 (art 27) (1994); ICESCR, arts 1, 15 (see also General Comment No. 26 on Land and economic, social and cultural rights (2022); ICERD, art 5(v)(d) (see also General Recommendation No. 23 on the rights of Indigenous peoples (1997)); CEDAW, arts 1, 14 (see also General Comment No. 39 on the Rights of Indigenous Women and Girls (2022)); ACHPR, arts 14, 21; ACHR, art 21; ILO Convention No. 169, arts 13-19.

The collective right to lands, territories and natural resources reflects the particular spiritual, cultural, social, economic and ancestral attachment of Indigenous peoples (or other relevant groups) to their territories. Lands, territories and natural resources are essential not only as part of the right to property, but also as the basis for the right to self-determination, the right to culture, and many other rights. The right includes not only ancestral lands and territories owned or occupied by Indigenous peoples, but also those that Indigenous peoples have subsequently acquired (including due to creation of Indigenous reserves, occupation of new areas after forced displacement, as well as through purchase) (EMRIP 2020: paras 18-19). Indigenous peoples have the right to have their lands delimited, demarcated and formally titled by the State in which they live (*Moiwana v Suriname*: paras 209-11; *Saramaka v Suriname*: para 115; *Lhaka Honhat v Argentina*: para 98).

Box 11: Some key court judgments and statements on indigenous land rights

... Among indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centred on an individual but rather on the group and its community. Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.

(Judgment by the Inter-American Court of Human Rights, 2001: *Awas Tingni,* para 149)

The Committee observes that, as the raison d'être of these principles, the close ties of indigenous peoples to the land must be recognized and understood as the fundamental basis of their cultures, spiritual life, integrity and economic survival. Their "relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations". In this regard, the realization of indigenous peoples' land rights may also be a prerequisite for the exercise of the right to life, as such, and to "prevent their extinction as a people".

(Committee on the Elimination of Racial Discrimination, 2020: *Agren v Sweden*, para 6.6)

... The African Commission is of the view that the first step in the protection of traditional African communities is the acknowledgement that the rights, interests and benefits of such communities in their traditional lands constitute 'property' under the Charter and that special measures may have to be taken to secure such 'property rights'.

(African Commission of Human and Peoples Rights, 2003: *Endorois*, para 187)

Regional courts have on multiple occasions confirmed that the right of Indigenous peoples to lands and territories must be respected and protected in the context of conservation. Conservationists must respect their right to own, occupy, manage and use lands, territories and resources. Access and use rights - particularly in cases where these are not genuine (irrevocable) rights, but rather "privileges" that may be unilaterally withdrawn by the State or others - are insufficient to meet this requirement. For example, in its ruling in the *Ogiek* reparations case against eviction from the Mau Forest for conservation, the African Court of Human and Peoples' Rights stated (para 110):

> *... in international law, granting Indigenous people privileges such as mere access to land is inadequate to protect their rights to land. What is required is to legally and securely recognise their collective title to the land in order to guarantee their permanent use and enjoyment of the same.*

In international law, rights to lands and territories exist regardless of whether national law has recognised or formalised Indigenous peoples' ownership, occupation or use rights. Indigenous peoples who have been illegally dispossessed of their lands and territories, but who maintain a claim or cultural connection to those lands, have a right to restitution of those lands. The right of restitution has specifically been upheld in the context of conservation, in the Ogiek case as well as others (some additional examples are given at the end of this section). There are many such extant claims by Indigenous peoples whose lands were expropriated for protected areas, even where this occurred decades ago, or longer.

The obligation to respect rights to land, territories and natural resources has particular relevance for area-based conservation, but is also relevant for those working on other aspects of conservation and land use that involve restrictions on the use of resources or on traditional activities, as well as to marine conservation (Smallhorn-West et al., 2023). This may include rules relating to wildlife or endangered species, or forestry, hunting, fisheries and agriculture, or measures related to land-use planning. For example, wildlife laws often contain absolute protections for an extensive list of protected species, with significant impacts on traditional access to faunal and floral resources by Indigenous peoples. In many cases such laws could be more respectful of human rights through using a more nuanced approach, for example by taking into account whether the risk is universal throughout the country and whether and under what conditions traditional hunting has a significant negative impact, and considering other effective means to protect the species that respects rights, for example through exemptions for Indigenous peoples (see also section 3.10).

Box 12: Some key provisions and materials supporting the land and resource rights of Indigenous peoples and local communities

International Covenant on Civil and Political Rights (ICCPR) arts 1, 17, 27; General Comment No. 23 (art 27) (1994); *Poma Poma v Peru* (2009); *Billy v Australia* (2022).

International Covenant on Economic, Social and Cultural Rights (ICESCR) arts 1, 15; General Comment No. 26 on Land and economic, social and cultural rights (2022).

International Convention on Elimination of all forms of Racial Discrimination (ICERD) art 5(v)(d); General Recommendation No. 23 on the rights of Indigenous peoples (1997); *Ågren et al v Sweden* (2020).

Convention on Elimination of all forms of Discrimination against Women (CEDAW) arts 1, 14; General Comment No. 39 on the Rights of Indigenous Women and Girls (2022).

African Charter on Human and Peoples' Rights (ACHPR) arts 14, 21; *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (2010); *ACHPR (Application No. 6) v Kenya* (2017) (*Ogiek merits decision*).

American Convention on Human Rights (ACHR) Convention art 21; *Awas Tingni v Nicaragua* (2001); *Moiwana v Suriname* (2005); *Saramaka v Suriname* (2007, 2008)

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) arts 25-30

Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) (2020), Right to land under the United Nations Declaration on the Rights of Indigenous Peoples: a human rights focus

International Labour Organisation Convention 169 on Indigenous and Tribal Peoples (ILO Convention 169), arts 13-19.

Right not to be forcibly displaced

Closely connected to the right to lands, territories and natural resources, as well many other rights (including the right to life and the right to liberty and security of person), is the right not to be forcibly displaced. Forced displacement does not refer only to eviction using physical force, but also to measures of coercion or pressure, the use of inducements, or other economic displacement (e.g. removing livelihood options so that people are forced to move to survive). This right is protected as both an individual and a collective right, including under CESCR, art 11, UNDRIP, art 10, and UNDROP, arts 12(5) and 24(2). Any type of forced displacement or eviction is considered a violation of human rights in all but the most exceptional circumstances (CESCR, General Comment Nos. 7; CESCR, General Comment No. 26, paras 22-25). In the case of Indigenous peoples, forced displacement directly contravenes the requirements of UNDRIP. Forced displacement has no place in ethical and human rights-respecting conservation.

Right to self-determination

The right to self-determination is a foundational collective right of Indigenous peoples and other peoples, and is intrinsically linked to their status as "peoples". The right to self-determination of all peoples is explicitly protected under common Article 1 of ICCPR and ICESCR. In Africa, it is also recognised in article 20 of the ACHPR *(Ogiek v Kenya (merits decision)*: paras 198-200). The specific right of Indigenous peoples to self-determination is also set out in UNDRIP, articles 3 and 4 (see also ILO 169, arts 7, 8(2), 9(1)).

The right to self-determination incorporates multiple elements. According to EMRIP, it "relates to Indigenous peoples' right to decide on their own political future, within their own institutions, to take part in the political life of the State and to direct their political, economic, social and cultural development" (2021: para 62). It includes for example the right to be recognised as an Indigenous people by the State (EMRIP, 2021), the right to self-governance and autonomy, the right to dispose freely of wealth and natural resources, and the right to determine their own development priorities. It is intimately tied to rights to lands, territories and natural resources – because without land, a people cannot exercise geographical jurisdiction as part of their self-determination – and is also a key source of the right to free, prior and informed consent. Thus, where conservation measures have been imposed on Indigenous peoples and other groups, where they are implemented "by agreement" that is the result of coercion or manipulation, or where the underlying marginalisation of an Indigenous people or other group leads to their tacit acquiescence, but they have not been able to participate effectively in a consultation or negotiation process - this violates their right to self-determination.

The right also involves recognising and respecting customary law and Indigenous (and other) peoples' legal systems, on an equal basis with other sources of law (EMRIP, 2021; *Pérez Guartembel v Ecuador*). This has implications, for example, for how governance of protected areas should be negotiated and implemented.

In the case of Indigenous peoples in voluntary isolation, the right to self-determination requires respect for their decision to remain in isolation (EMRIP, 2021).

Right to culture and cultural integrity

The collective right to culture is the right of Indigenous peoples, as well as some other groups, to practise, revitalise, maintain and enjoy their culture (UNDRIP arts 11-16, 31, 34; ICCPR, art 27; ICESCR, art 15; CERD, *General Comment No. 23*). The right to culture is broad and includes elements such as artistic and cultural expression; language; protection of cultural heritage; participation in spiritual practices; engagement in the culturally chosen way of life; and undertaking traditional occupational activities, which may include hunting, fishing, gathering, mining, grazing, production of handicrafts, construction of permanent and temporary shelters or dwellings, and so on. For example, the Human Rights Committee (the supervising treaty body of the ICCPR) adopted the following view in 2004 in a case concerning the diversion of water away from wetland pastures on indigenous land[6]:

> *Certain of the aspects of the rights of individuals protected under [article 27 of the International Covenant on Civil and Political Rights] - for example, to enjoy a particular culture - may consist in a way of life which is closely associated with territory and use of its resources. This might particularly apply in the case of the members of indigenous communities which constitute a minority. … culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them. The protection of these rights is directed to ensure the survival and continued development of cultural identity, thus enriching the fabric of society as a whole.*
>
> *Poma Poma v Peru, para 7.2 (CCPR/C/95/D/1457/2006)*

6 *See also Billy v Australia*, paras 8.13-14; Special Rapporteur on Cultural Rights, Cultural Rights: *Tenth Anniversary Report* 2019: para 13.

For most Indigenous peoples, as well as other groups with collective rights, cultural rights are closely linked to land, which is often the site of cultural heritage, the source of cultural education and traditional knowledge, essential to spiritual practices and livelihoods, and is intimately tied to practising their way of life (*Awas Tingni v Nicaragua*: para 149). Culture may change over time, and the right to culture protects practices as they evolve, rather than protecting only a static culture frozen in time, as is emphasised in the following extracts:

> *The right to enjoy one's culture cannot be determined in abstracto but has to be placed in context. In particular, article 27 does not only protect traditional means of livelihood of minorities, but allows also for adaptation of those means to the modern way of life and ensuing technology.*
>
> *(UN Human Rights Committee, Mahuika v New Zealand, para 9.4. CCPR/C/70/D/547/1993).*

> *... stagnation or the existence of a static way of life is not a defining element of culture or cultural distinctiveness. It is natural that some aspects of indigenous populations' culture such as a certain way of dressing or group symbols could change over time. Yet, the values, mostly, the invisible traditional values embedded in their self-identification and shared mentality often remain unchanged.*
>
> *(African Commission on Human and Peoples Rights (Ogiek v Kenya (merits decision), para 185).*

Because of the centrality of territory, land and nature to the practice of culture of Indigenous peoples as well as many local communities, conservation activities that restrict access to lands and territories or use of resources are likely to have direct impacts on this collective right.

Right to free, prior and informed consent

Free, prior and informed consent (FPIC) is a collective right held by Indigenous peoples and also by some other groups (see Box 3) that is closely linked to the exercise of self-determination and the right to participate in decision-making processes The obligation to seek free, prior and informed consent arises any time an administrative or legislative act, measure, activity or other step may affect the rights of Indigenous peoples (or other relevant collective rights-holders). In the case of indigenous peoples and some others, in most cases FPIC must actually be obtained, not just sought (see Box 13).

Box 13: The need to obtain free, prior and informed consent (FPIC)

> *The Committee considers that participation in the decision-making process must be effective, which requires not mere consultation but the free, prior and informed consent of the members of the community. In addition, the measures must respect the principle of proportionality so as not to endanger the very survival of the community and its members.*
>
> *Poma Poma v Peru* (Human Rights Committee), para 7.6 (CCPR/C/95/D/1457/2006)

FPIC is most frequently referred to in relation to rights to land, territories and natural resources, although its application is not limited to this. In the context of conservation, some examples of when it arises might be the creation or management of protected areas affecting Indigenous peoples' lands, the enactment or reform of protected area or wildlife laws, or changes to the methods of law enforcement that may affect local communities (for example, through increasing patrols, providing weapons to rangers, or putting in place targets for prosecution). More details on FPIC requirements and processes are set out in section 3.5.

Right to non-discrimination

The principle of non-discrimination forms part of every major human rights treaty (UDHR, art 2; ICCPR, art 2(1); ICESCR, art 2(2); ICERD, art 2(1); CEDAW, art 2; CRC, art 2(1); CPD, arts 3 and 4; ACHR, art 1; ACHPR, art 2; ECHR, art 14). The prohibition of discrimination on grounds of race and ethnicity underlies much of the specific framework of rights pertaining to Indigenous peoples, and is a key principle also in applying the human rights framework to local communities. Non-discrimination of course also incorporates issues beyond race and ethnicity, such as sex, disability, nationality, religion, political opinion, sexual orientation and other protected characteristics. It also requires consideration of *intersectional discrimination*, that is, when two or more grounds of discrimination interact to generate increased or different patterns of discrimination. One example is the experience of Indigenous women, who are marginalised both as women and as Indigenous peoples (see section 2.3.2 for further discussion of sex and gender discrimination).

Equality may not always require identical treatment, but rather adapting measures as appropriate for different groups to achieve equality of result. As Judge Tanaka of the International Court of Justice stated in his famous dissent in the *South-West Africa* cases, "to treat different matters equally in a mechanical way would be as unjust as to treat equal matters differently" (1966: p 305)[7]. As a matter of law, determining whether an act entails discrimination requires a consideration of *effects*, rather than *intentions*.

In practice, this requires conservationists to examine the potential impacts of proposed activities on different groups both *within* and *between* local communities, in order to understand how activities may be experienced differently or may disproportionately favour or harm particular groups, including Indigenous peoples and women (see also section 2.3.2).

Right to life

The right to life concerns the "entitlement ... to be free from acts or omissions that are intended or may be expected to cause unnatural or premature death, as well as to enjoy a life with dignity" (HRC, General Comment No. 36, 2019: para 3). This is a fundamental right which cannot be restricted by governments in any circumstances, including in times of war or emergency (although killing as part of war-time activities, provided it is in accordance with the laws of war, is not considered a violation).[8] As an individual right, the right to life has taken on prominence in the context of conservation because of the frequency of fatal attacks. These include, on the one hand, attacks by rangers who kill Indigenous individuals and members of local communities, including children, sometimes when they are accessing and using traditional lands and natural resources expropriated in the name of conservation. On the other hand, rangers seeking to protect protected areas or biodiversity have also been attacked and killed. Both of these scenarios are of equal concern for international human rights law, and conservationists must do their utmost to minimise risks to human life connected to conservation activities. More broadly within conservation, the right to life has obvious relevance for environmental human rights defenders (see section 2.3.3). Fatal attacks by wildlife are also a major issue in conservation where human rights are often insufficiently protected, as will be discussed in section 3.10.

Beyond the individual elements, there are also collective dimensions to the right to life when applied to a people or a culture[9]. An extreme case is genocide, but activities that threaten the physical or cultural survival of a people also invoke collective dimensions (UNDRIP, art 8). Violations of other rights, for example through forced removal from traditional lands, or restriction of subsistence activities, can also lead to violation of the right to life, including by causing morbidity linked to malnutrition and poor health (*Sawhoyamaxa v Paraguay*: paras 148ff), or by preventing Indigenous peoples from enjoying a life of dignity[10].

7 https://www.icj-cij.org/sites/default/files/case-related/47/047-19660718-JUD-01-06-EN.pdf
8 Capital punishment is broadly illegal and the pronouncements of the Human Rights Council are that it should be phased out everywhere.
9 (UNDRIP, art 7(2); ICCPR, art 6(3)).
10 (HRC General Comment No. 36: para 26; UNDRIP, art 15)

Prohibition of torture and cruel, degrading and inhuman treatment

The prohibition of torture and cruel, degrading and inhuman treatment is another absolute prohibition under international human rights law (ICCPR, art 7; HRC General Comment No. 20). It has become relevant in the context of conservation in light of revelations of widespread physical abuse, including sexual abuse, against Indigenous peoples and members of local communities, including environmental human rights defenders. Physical abuse has been perpetrated both by rangers patrolling protected areas in some countries (Pillay, Knox and MacKinnon, 2020; Amnesty International et al, 2021) and by other actors. Conservationists working on high-risk activities and in high risk countries must take extra care to assess risks of such abuses arising in the course of their work (see sections 3.1 and 3.2). Any conservation actor must also take immediate action when they come across indications that abuses may be occurring.

Right to liberty and security of person

The right to liberty and security of person (ICCPR, art 9; UNDRIP, art 7) refers to freedom from improper deprivation of liberty (e.g. arbitrary or unfair detention) and from injury to the body or the mind. In a conservation context, it is most likely to arise in particular in the context of law enforcement activities, including arrests and imprisonment for poaching, harvesting or killing of endangered species, for unlawful entry into protected areas, and so on. Again, it is also particularly relevant for environmental human rights defenders. Importantly, this requires looking beyond the lawfulness (under national law) of an arrest or detention. As explained by the UN Human Rights Committee in its General Comment No. 35 (2014: para 12):

> *An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.*

Discriminatory or disproportionate targeting of Indigenous peoples or members of local communities in conservation law enforcement activities, particularly when their contravention of national law involves their subsistence use of resources, is likely to contravene the requirements of this right. Equally, arrests and detention due to restrictions on and criminalisation of land and resource use, where this has occurred without consultation and free, prior and informed consent, and in likely violation of the rights to lands, territories and natural resources, is likely to be considered unjust and arbitrary.

Right to health

Many Indigenous peoples, as well as many local communities, and particularly those in remote areas, depend on natural resources for their pharmacopoeia. Deprivation of access to and use of these resources can therefore significantly impact access to health care. Even where alternative health care services exist - and in many places, they do not, or they are financially or otherwise inaccessible, of low quality, or discriminatory - alternative services may not offer culturally appropriate health care (EMRIP 2016: paras 23-7). In this respect, UNDRIP article 24(1) provides that Indigenous peoples "have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals." Additionally, all individuals have the right to a healthy environment, as has been discussed in section 2.1. The UN Committee on Economic, Social and Cultural Rights (CESCR) has recognised that forced displacement of indigenous peoples has a direct impact on their collective health:

> *... in Indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, the Committee considers that development-related activities that lead to the displacement of Indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.*
>
> *CESCR, General Comment No. 14, para 27*

Any conservation measures that restrict access to resources may therefore contravene the right to health, in addition to their impact on rights to land and resources.

Right to food, water and housing

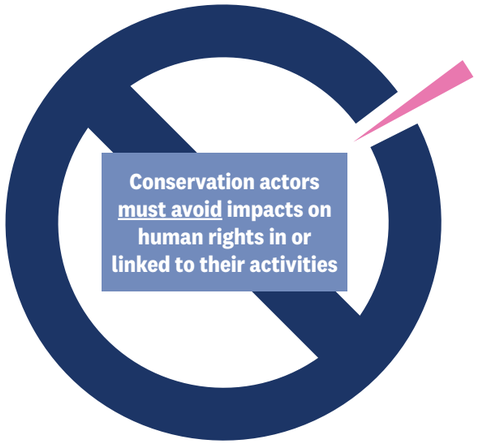
The right to food, water and housing (as well as the right to health) are economic, social and cultural rights. Governments have the obligation to realise these rights progressively, bearing in mind the total resources available and the multiple demands on these to fulfil the rights of their populations (ICESCR, art 2). However, the Committee on Economic, Social and Cultural Rights (the treaty body responsible for monitoring ICESCR) has made clear that deliberately retrogressive measures - that is, measures that worsen the enjoyment of these rights - will usually contravene the Covenant (General Comment No. 3). Food and water are also considered essential services that form part of the minimum or core obligations of States[11].

In the context of conservation, these rights are often violated by forcible evictions or restrictions on access to and use of resources. Elements of the right to food also need to be considered carefully when developing proposals for "alternative" or "sustainable" livelihoods with Indigenous peoples or local communities (see section 3.9). For example, where the proposal is to supplement or replace current sources of livelihoods, attention should be paid to the cultural appropriateness of the alternatives proposed, whether the choice to shift to alternatives is freely made by rights-holders on an informed basis, and whether the alternative food sources are (guaranteed to be) adequate, available, accessible, and of appropriate quality (UN OHCHR / FAO Factsheet no. 34) in comparison to any lost food sources.

11 CESCR, General Comment No. 12: para 14; CESCR, General Comment No. 15: para 37.

Restrictions on rights in exceptional circumstances

Conservationists have often sought to place restrictions on the rights of Indigenous peoples and of local communities, seeking to justify these limitations on the basis of their conservation objectives. However, as noted in section 1.1 above, any restriction on rights is subject to very strict conditions, and is only justifiable in exceptional circumstances (see Figure 4 and following text). Indigenous peoples and other groups have successfully challenged restrictions on their rights for conservation, particularly their rights to lands, territories and natural resources. The resulting case law sets out key conditions without which any restriction on rights are considered illegal and unjustified. These conditions are consistent with the obligation to avoid human rights harm in all but exceptional circumstances.



Human rights cannot be restricted for conservation except in exceptional circumstances, when some - but not all - rights may be limited.

Such restrictions are subject to these conditions:

1. Restrictions are proportionate and necessary to a legitimate objective
2. Consultation and FPIC processes have occured, and every attempt has been made to negotitate an agreement
3. Restriction of rights proceeds in accordance with laws
4. Where restrictions do go ahead, those affected receive just and equitable compensation - where land has been expropriated, this should generally be in the form of alternative lands

When lands are taken unlawfully, those affected generally (and indigenous people always) have a right to restitution.

Figure 10: *Human rights cannot be restricted for conservation except in exceptional circumstances.*

i. ***Restriction of the right must be necessary and proportionate to a legitimate public objective***

It is generally accepted that conservation is a legitimate public objective. However, that alone is never enough to justify restricting rights. Restriction of a right can only be justified if the restriction is *necessary* and *proportionate*.

A restriction is *necessary* if there is no other effective means to secure the conservation objective. This means that the rights of Indigenous peoples and others cannot be restricted for conservation unless there is evidence that their presence or actions are incompatible with conservation, and that there are no other options that could achieve the conservation objectives while avoiding the human rights harm, even if it is believed that these may not be equally effective.

A restriction is *proportionate* if the gravity of the harm to human rights is outweighed by the benefit to be achieved by the conservation objective - that is, it is a balancing exercise. A minor restriction of rights may be proportionate if there is a significant benefit. However, restrictions of the rights to lands, territories and resources, to culture, or to self-determination will often have severe impacts on Indigenous peoples. As such, a restriction of these rights will not be justifiable without reference to an extremely strong conservation imperative, and only then if no other less harmful way of reasonably achieving the objective exists.

Conservationists must also have valid and verified evidence to support the assertion that a restriction of rights is necessary and proportionate. For example, this was explained in the *Ogiek* merits decision of the African Court of Human and Peoples' Rights, where the Court considered whether the exclusion of the Ogiek from the Mau Forest, in the interests of conservation, was necessary and proportionate. It stated at para 130 that:

> *The Respondent's public interest justification for evicting the Ogieks from the Mau Forest has been the preservation of the natural ecosystem. Nevertheless, it has not provided any evidence to the effect that the Ogieks' continued presence in the area is the main cause for the depletion of natural environment in the area. Different reports prepared by or in collaboration with the Respondent on the situation of the Mau Forest also reveal that the main causes of the environmental degradation are encroachments upon the land by other groups and government excisions for settlements and ill-advised logging concessions. In its pleadings, the Respondent also concedes that "the Mau Forest degradation cannot entirely be associated or is not associable to the Ogiek people". In this circumstance, the Court is of the view that the continued denial of access to and eviction from the Mau Forest of the Ogiek population cannot be necessary or proportionate to achieve the purported justification of preserving the natural ecosystem of the Mau Forest.*

ii. ***All Indigenous peoples or local communities that will be affected by a proposed conservation activity must be effectively consulted prior to any proposal to restrict their rights.***

Any Indigenous peoples, as well as local communities, should be appropriately consulted on any proposed conservation activity that may affect their rights. In the case of Indigenous peoples and some other groups (see Box 3 above), the obligation extends to seeking and (except in exceptional cases) obtaining free, prior and informed consent before proceeding with the activity. The right to FPIC can only be restricted in exceptional circumstances, and even then, it is essential to show that all avenues for negotiated agreement have been exhausted before proceeding (see also sections 2.3.1 and 3.3). Consultation is also essential to be able to assess whether alternative measures might be effective, as well as to understand the impact that restriction of rights may have, so is also critical to demonstrating that any proposed measure is proportionate and necessary.

iii. ***Any restriction of rights should proceed in accordance with laws as a matter of general principle.***

For example, expropriation of lands must comply with procedural and substantive requirements under customary, national and international laws, and provide opportunity for legal challenge.

iv. ***Where restrictions on rights are imposed based on the above criteria, those affected are entitled to receive just and equitable compensation.***

Where rights have been justifiably restricted, compensation will generally need to be considered (see for example UNDRIP, article 28(1)). Where restrictions involve loss of lands, compensation should preferably be in the form of alternative lands, unless expressly requested otherwise by those affected. The failure to provide just and equitable compensation renders a restriction on rights unlawful.

Restitution of lands

Where Indigenous peoples or local communities have had their lands appropriated for conservation unlawfully, they have a right to restitution – that is, to have their lands returned to them. The right of restitution has been recognised multiple times in the context of conservation activities (see box 14). Where restitution is impossible for objectively justifiable reasons (not merely because of a lack of political will), compensation should be provided, in the form of alternative lands of equal size and quality, except where another form of compensation is specifically requested by those affected.

Box 14: Examples of court rulings on the right of restitution in the context of conservation

Both the African and Inter-American human rights systems have ordered the restitution of lands taken for conservation purposes on several occasions.

In *Xákmok Kásek Indigenous Community v Paraguay*, the Inter-American Court considered the territorial rights of the Xákmok Kásek indigenous community. The community had lodged a communal land claim with the State, under national laws, in 1990. At the time of the Court decision this had been pending for 20 years without result. In the interim, some of these lands were sold to private owners, and 10,700 hectares of their land claim was designated as a private protected nature reserve. In its decision, the Court ordered Paraguay to return the land to the Xákmok Kásek community, including the lands that had been designated as a private nature reserve (*Xákmok Kásek Indigenous Community v Paraguay*: para 313).

The *Kaliña and Lokono* case concerned the territorial rights of the Kaliña and Lokono indigenous peoples of Suriname, which remained unrecognised by the State. In addition to being affected by mining and other extractive activities, approximately 60,000 hectares (45%) of their claimed territory was within the boundaries of three nature reserves which had been created without their free, prior and informed consent. The Inter-American Court concluded that, while it did not have sufficient information to determine the exact boundaries of the claimed territory within the nature reserves, the Kaliña and Lokono peoples had the right to make a claim with the State for the restitution of their territories within the boundaries of the nature reserve (*Kaliña and Lokono v Suriname*: para 168).

The *Ogiek* case concerned the eviction by the Kenya Forest Service of the Ogiek indigenous people from the Mau Forest, their traditional lands, principally for the creation of the Mau public forest, although some other private uses also overlapped their traditional territory. Determining that the eviction was illegal, the African Court ordered Kenya to restitute and delimit, demarcate and title the Mau Forest lands (*Ogiek reparations decision*: para 116).

In the recent *Batwa* case, the African Commission considered the petition of the Batwa indigenous peoples of eastern Democratic Republic of Congo (DRC), who had been evicted from their traditional territories by the creation of the Kahuzi-Biega National Park. The Commission found the continued eviction amounted to (multiple) violations of the African Charter on Human Rights and, accepting that restitution was appropriate, ordered the DRC to take legislative, administrative and other measures to delimit, demarcate and title the territory of the Batwa within the National Park.

2.3.2 Women's rights and gender justice

Amelia Arreguín Prado

In most current societies there is often a strong gendered division of labour, with women taking on reproductive and caring roles, while men dominate decision-making and productive activities (AWID, 2004). The relationships all people have with nature is strongly defined by differentiated gender roles and stereotypes, which involve, allow or hinder certain behaviours. In rural communities, women's responsibilities commonly include cultivating crops and caring for livestock for family subsistence, and supplying the household with water and fuel. Therefore, they are in close touch with nature through their daily activities and have a strong interest in ensuring that supplies of natural resources remain adequate, of appropriate quality, available and accessible. In this context, Indigenous, afro descendant, tribal, rural or local women and girls often play a particularly pivotal role in biodiversity conservation and contribute significantly to ecosystem management and community livelihoods.

On the other hand, women and girls often face especially high impacts from biodiversity loss, both because of their primary role in ensuring a steady supply of natural resources for household use and because of the unbalanced power relations inherent in patriarchal, racist, and adult-centric socio-economic systems (Doubleday & Adams, 2019). Gender-differentiated impacts are also particularly accentuated amongst historically vulnerated groups such as Indigenous, Afro-descendant, tribal, rural and local community women and girls, due to a complex web of intersecting sources of marginalisation related to ethnicity, race, marital status, class, caste, sexuality, age, ability and location or occupation (Figueiredo & Perkins, 2011). Given these interlinked positive and negative aspects of women's relationships with the environment and biodiversity, supporting women's rights is not only a moral and legal obligation, but often, it is also critical to conservation effectiveness.

Do women have different rights?

Although the Universal Declaration of Human Rights establishes principles of equality for all, women around the world face particularly acute challenges to enjoy their rights, including because of "their position in family and community structures, the division of labour between men and women, and their access to and control over resources" (UN, 2008). In recognition of these persistent inequalities, a dedicated instrument has been developed within the United Nations legal framework to protect women's rights. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 and calls on governments and other actors, including individuals, to challenge not only discriminatory laws, but also entrenched social norms that perpetuate harmful gender dynamics. Conservation practitioners and others must therefore be committed to promoting, recognising, and fulfilling women's rights.

Practical actions that conservation practitioners may carry out for this purpose include the following:

- Working to uphold women's rights to participate effectively in political and public life, and to have a voice in decision-making processes related to environmental policy and practice. In this way, women are enabled to advocate for sustainable practices that are in line with their cultural values and traditions.
- Supporting women's rights to own land and natural resources, and recognising their role as environmental stewards. This enables them to manage their natural resources sustainably and could strengthen their connection to their ancestral lands, fostering a deeper sense of responsibility for conservation.
- Promoting adequate living conditions for rural women, including access to clean water, sanitation, and housing. This can also contribute to the health and resilience of ecosystems by reducing pressure on natural resources and minimising environmental degradation.
- Supporting women's economic rights, for example through programmes to improve income generation and social services, thus reducing short-term economic needs and enhancing women's capacity to adopt environmentally sustainable livelihood practices.
- Promoting their access to education and employment so that they can acquire the knowledge, skills and capabilities to contribute more comprehensively to conservation, including by promoting innovative and sustainable solutions to biodiversity challenges.

Box 15. Legal instruments focused on the women-and-environment nexus

i. *Beijing Platform of Action - Section K. Women and the environment (1995)*

Section K of the Beijing Platform for Action emphasises the vital link between gender equality and environmental sustainability, and sets three strategic objectives:

i) Involve women actively in environmental decision-making at all levels.

ii) Integrate gender concerns and perspectives into sustainable development policies and programmes.

iii) Strengthen or establish mechanisms at the national, regional and international levels to assess the impact of development and environmental policies on women.

ii. *CEDAW General recommendation No. 34 on the rights of rural women (2016)*

Highlighting the persistent challenges and discrimination faced by rural women worldwide, including barriers to economic empowerment, limited political and public participation, inadequate access to basic services, and labour market exploitation, CEDAW GR 34 underscores the need to address these issues and to promote gender equality. This is applicable in conservation contexts.

iii. *CEDAW General recommendation No. 39 on the rights of Indigenous women and girls (2019)*

CEDAW GR 39 is an essential tool that provides critical guidance on issues such as the need to contextualise interventions to address the complex realities in which Indigenous women and girls exercise their rights. It recognises the profound impact of climate change, environmental degradation, biodiversity loss, and barriers to access to food and water security on their lives.

Gender-based violence

Unfortunately, gender-based violence (GBV) persists in all societies and manifests itself in various forms, including verbal abuse, media portrayals, cultural sayings, physical assault, rape and femicide. Gender-based violence also affects men, manifesting itself in forms such as physical violence, armed conflicts, and expectations to be the sole provider or protector, which can reinforce toxic masculinity. However, it is far more prevalent for women and girls, who continue to fight tirelessly for their right to live free from violence.

Figure 11 *Winfred Mukandinda facilitates discussions on gender-based violence with Batwa community members in Kisoro as part of the United Organisation for Batwa Development (UOBDU) actions to eliminate gender-based violence through community-led institutions and responses. (Photo: UOBDU).*

Addressing this critical issue is essential for those working in the conservation sector, as gender-based violence and harmful gender dynamics are often embedded in, exacerbated by, or even justified by conservation initiatives. It has been documented that GBV is often used in conservation context as a tactic to intimidate, divide and dispossess Indigenous peoples and local communities. For example, in some sub-Saharan African countries, poor, unmarried or widowed women fish processors and traders are sometimes forced to offer sex in order to access and sell fish products to support their families (Castañeda et al., 2020).

However, there are many strategies that conservation practitioners can use to help unravel this complex web of violence. In addition to whistle-blowing, direct support for women suffering violence, and use of leverage to strengthen government responses to violence by other actors, these include increasing attention to, understanding of, and action to address GBV through targeted research and data collection; learning from, adapting, and using existing good practices from different sectors; ensuring that environment and sustainable development funding contributes to addressing GBV; and integrating relevant provisions into project cycles to increase opportunities to eliminate gender-based violence.

Unintended impacts of gender-blind approaches

Gender-blind or oversimplified gender approaches often fail to capture the intricate nuances of gender dynamics within a given context, potentially hindering effective conservation outcomes. Gender-blind conservation interventions can inadvertently exacerbate existing gender inequalities and social tensions within Indigenous peoples and local communities. Conservation initiatives implemented without taking gender dynamics into account may unintentionally marginalise women or disrupt their traditional roles and responsibilities, thereby disrupting community cohesion and resilience. Box 16 describes an example from Papua New Guinea.

Understanding and mitigating potential or actual unintended consequences requires a nuanced approach that recognises the different roles, needs and vulnerabilities of different genders in local contexts. By integrating an intersectional perspective into conservation strategies, practitioners can improve the effectiveness of conservation efforts while promoting women's rights and gender justice.

Box 16: Supporting handicraft production to build support for conservation in Papua New Guinea: unforeseen impacts on gender relations

In the Crater Mountain Protected Area, an NGO called Research and Conservation Foundation of Papua New Guinea (RCF) initiated an income generation project with the aim of offsetting the costs of the Protected Area to local people, including through the production and sale of 'bilum' (string bags). Bilum is very significant culturally: the bags are made by women, often sitting in groups, and this activity is central to the maintenance of their social relationships. The bags are also important gifts for significant friends and relatives, and they are a sign of womanhood. The plan was that the bags could be sold locally from the RCF office, as well as nationally and internationally.

The project was initiated by two Peace Corps volunteers at the suggestion of a few local women, but the volunteers did not collect any information on the cultural significance of the bilum, nor any social data on women's labour, nor did they analyse what the additional labour of making bilum for sale could mean for women's rights and health.

The bilum project had unintended consequences for gender relations. The income generated by sales of the bags stayed with men, who took them to market, and women's workloads increased as they were pressured by their husbands to make large numbers of bilum alongside other tasks such as cooking, cleaning, raising children and so on:

> *All day I work. All day. I get up and go to the garden. I come home and cook for my family. Then I go to the other garden, the one further away. Then, on the way home, I get the trees for the bilum or the plants to make dye. All the while my young children are with me. Where is my husband all day? He is at the RCF office, playing cards and talking conservation…I do not want to make them anymore; it is too much work, but my husband says that it is good money, and he is right, but it is too much work.*
>
> Nami, aged 40

In one case, a woman called Barbara made a bilum and gifted it to a researcher. Her son was furious, saying that the bilum was the property of the RCF Management Committee and not Barbara's to give away. This was in marked contrast to how bilum was seen before the RCF intervention, when women's labour was valued for more than market exchange and women often gave a bilum as a special gift to a person of their choosing.

For the women involved in the project, therefore, there was a direct link between the RCF and the Protected Area, the devaluation of their labour, and the increased hardship they experienced through making bilum for sale. They did not see any positive link between conservation and their own lives, and they became hostile towards the project because of its negative effects on gender relations and on their daily lives.

Source: West, 2006: 199-210.

In summary, gender justice goes beyond securing individual women's rights and involves challenging and transforming the underlying power structures that perpetuate gender-based discrimination. Conservation practitioners have an important role to play, for example by promoting inclusive decision-making processes, dismantling stereotypes, empowering women within conservation initiatives and organisations, re-educating men and boys to redefine masculinity and promote gender-equitable behaviour, benefiting all genders. In this way it is possible both to foster a more inclusive society and to increase the effectiveness of conservation interventions.

Key sources of further information:

Addressing gender issues and actions in biodiversity objectives. SCBD (2020)

Gender-based violence and environment linkages. IUCN (2020)

Best practices in gender and biodiversity. SCBD. (2022)

Understanding gender-based violence in the context of conservation. FPP (2024)

Gender-based violence and environment linkages: The violence of inequality. IUCN (2020)

2.3.3 Rights of Environmental Human Rights Defenders

Adam Lunn

Who are environmental human rights defenders?

The term human rights defender (HRD) refers to people or groups who take peaceful actions to promote or protect human rights (United Nations 1998). "Environmental human rights defender" (EHRD) is an inclusive term that refers to the subset of defenders who strive to promote human rights in relation to the environment (Forst 2016). There are also many other terms and acronyms in use that fit under the umbrella term environmental human rights defender (see Box 17). HRDs overlap with two other rights-holder constituencies that enjoy specific rights: Indigenous peoples and women.

EHRDs, like all HRDs, are identified primarily by the actions that they take to promote and protect human rights (UN 1998) as opposed to the profession, title or the name of the organisation they work for (OHCHR 2004). EHRDs can be Indigenous leaders or Indigenous communities, afro-descendant or other leaders and communities, farmers, women, children, environmental journalists, environmental lawyers, conservationists, NGO staff, community organisers, or others (Knox 2017).

Box 17: Environmental human rights defenders: different terms and acronyms in common use

Environmental human rights defenders (EHRD)

Environmental and land defenders (ELD)

Land and environmental rights defenders (LERD)

Earth rights defenders (ERD)

Indigenous, land and environmental defenders (ILED)

Environmental, land and Indigenous peoples' rights defenders (ELIPRD)

Women environmental human rights defenders (WEHRD)

The EHRD label is not always used by defenders, because it may increase their exposure to threats. Some may wish to keep a low profile and not draw unwanted attention, including from the State (Bille Larson *et al.,* 2021). Also, it has been argued that the individualistic framing of EHRDs undermines the collective nature of long-standing community resistance (Le Billon and Menton 2021). However, many groups have successfully adopted the discourse of human rights defenders to help legitimise their struggles and enhance their recognition within the international human rights framework, enabling them to mobilise financial and technical support, access protection measures, and gain assistance from support organisations (Bennett et al 2015). Box 18 describes an example from Thailand.

Box 18: Isan Environmental Human Rights Defenders in the Sai Thong National Park

Members of the Sab Wai village, Chaiyaphum province, Thailand have allegedly faced intimidation, detention, criminalization and threats of eviction after the imposition of the Sai Thong National Park, despite the community's assertion of having lived in and preserved the forest for generations (Manushya Foundation 2021). International NGOs used a framing of EHRDs to strengthen the legitimacy of their campaign (Manushya Foundation 2020), and this allowed the campaign to access support through the international human rights defender framework.

In 2019 and 2022, UN Special Rapporteurs, including the UN Special Rapporteur on the Situation of Human Rights Defenders, sent official communications to the Thai government concerning the threat of forced evictions of fourteen Isan EHRDs from Sab Wai village. The Manushya Foundation, which has led the campaign, asserts that the international attention brought to the case, including through these communications from the UN Special Rapporteur on Human Rights Defenders, successfully pressured Thai authorities not to send the EHRDs back to jail.

Sources: Manushya Foundation, 2019 and 2022

Many people become environmental human rights defenders by accident or necessity, when they stand up for their rights, or stand against harm to the environment (Castañeda et al 2020). EHRDs face a range of attacks due to their actions, including intimidation, harassment, smear campaigns, criminalisation, arbitrary detention, torture, sexual violence and even killings (ALLIED 2023). At least 1910 environmental rights defenders have been murdered since 2012 (Global Witness 2023). Environmental Human Rights Defenders are frequently identified as the most at risk group of all Human Rights Defenders and Indigenous Peoples face a vastly disproportionate number of attacks, in recent years including over 40% of all fatal attacks (Global Witness 2022).

Understanding and supporting environmental human rights defenders in conservation

Because of the traditional divide between the conservation sector and Indigenous peoples or local communities (Larsen and Lador 2021), external conservation interventions often work directly against Environmental Human Rights Defenders (Perram et al 2022b). A plethora of human rights abuses have been linked to the implementation of conservation projects, up to and including physical and sexual violence, torture, and killings (Menton and Gilbert, 2021; Picq 2021). Individuals and entire communities who are defending their territories and the natural features they contain, claiming customary lands, and defending fundamental rights in the face of rights violations driven by externally imposed conservation measures, including repressive state protected areas, are entitled to the protection and benefits afforded by the international framework related to human rights defenders, and conservationists should recognise and support them as such (Picq 2021).

There are obviously common interests between EHRDs and conservationists, given that EHRDs are acting to prevent harm to their environment. Indigenous and local community EHRDs are often the unsung heroes of conservation, and respect, protection and support for fulfilment of their rights is not only a moral and legal imperative but often also an effective conservation practice (ICCA Consortium 2022, Worsdell et al 2020). For conservationists, this includes withdrawing from any conservation programmes and actions that violate the rights of EHRDs, calling attention to violations by others, and using leverage to ensure strong government actions to clamp down on rights violations and ensure that past violations are remedied.

Specific legal and policy measures covering environmental human rights defenders

The **UN Declaration on Human Rights Defenders** (1998) (officially named the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms) specifically recognises the rights and protections accorded to human rights defenders, as well as the duties of States. Article 1 of the Declaration identifies human rights defenders as individuals or groups who act to promote, protect or strive for the protection and realisation of human rights and fundamental freedoms, and Articles 5, 12 and 13 specify further that these actions must be "through peaceful means". The Declaration, which collates principles and rights from legally binding international instruments, was adopted by consensus, which represents a strong commitment by States. The declaration emerged from growing understanding amongst the international community that for effective implementation of the international human rights framework, the work of activists and civil society groups is fundamental, and that these individuals and groups are exposed to risks. The declaration defined the right to defend human rights for the first time.

Since the declaration, there have been a series of high-level initiatives that reflect ongoing concern about the alarming levels of attacks and killings faced by HRDs and specifically EHRDs. A new position of UN Special Rapporteur on the situation of human rights defenders was established in 2000.[12] Specifically in relation to conservation, the IUCN World Conservation Congress passed resolution 2.37 in 2000 on "Support for environmental defenders", which recognizes the fundamental rights of environmental human rights defenders and the dangers of defending the environment, and calls for more to be done by IUCN members to support them.[13]

In 2019, a resolution on environmental human rights defenders was adopted by the UN Human Rights Council which expressed concern about the continued attacks on environmental human rights defenders and urged States to ensure their protection (UN Human Rights Council 2019)[14]. In 2023, on the 25th anniversary of the UN Declaration on Human Rights Defenders, another resolution was adopted by the UN General Assembly that reaffirms the important role of human rights defenders and highlights how environmental human rights defenders are among the human rights defenders most exposed and at risk (UN, 2023).

Regional norms

There are two treaties that afford protections to environmental rights defenders in relation to regional systems. The Escazú Agreement was adopted in Latin America and the Caribbean in 2018 (Packard, 2018). In Europe the Aarhus Convention on public participation and access to justice in environmental matters includes legally binding provisions safeguarding environmental human rights defenders and has established a mandate of Special Rapporteur on Environmental Defenders[15] (Larsen et al (2020) and Wijdekap (2021) provide a more detailed account of these mechanisms.)

National laws, policies and protection mechanisms

In order to implement the UN Declaration on Human Rights Defenders at the national level, several States have developed laws, policies, protection mechanisms and guidelines regarding human rights defenders, including EHRDs, both domestically and abroad (ISHR and Focus). Fifteen countries have adopted national policies for the protection of human rights defenders (Protect Defenders EU 2022). These policies vary in their scope, effectiveness, and shortcomings. The EU, Canada, USA, UK, Switzerland and Norway have also adopted their own country- or region-specific guidelines or recommendations on how their diplomatic missions should promote respect for and support human rights defenders outside their national borders (ISHR). In addition to the voluntary standards for businesses that have been set out in section 2.2.2, Specific Guidance related to respect for human rights defenders has been developed in relation to the UN Guiding Principles (UNGPs) (UN, 2021).

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12 https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/mandate
13 World Conservation Congress Resolutions (2000) https://portals.iucn.org/library/sites/library/files/documents/WCC-2nd-002.pdf
14 UN Human Rights Council (2019) Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/40/11
15 Special Rapporteur on Environmental Defenders under the Aarhus Convention, UNECE, https://unece.org/env/pp/aarhus-convention/special-rapporteur

Box 19: Are rangers environmental human rights defenders?

There is some debate around the concept of who qualifies as an environmental human rights defender and who does not, notably around the question of whether rangers should be considered EHRDs. Some academics and practitioners have vehemently opposed this conflation, seeing this as part of a trend where aggressors have started to appropriate human rights defender terminology. They have argued that calling rangers 'environmental human rights defenders' reproduces colonial forms of conservation that undermine prospects for decolonial solidarity with defenders (Menton and Gilbert 2021).

However, numerous NGOs and entities include rangers in their definitions of environmental human rights defenders. Global Witness's annual reports documenting killings of EHRDs include rangers in their dataset. However, their methodology excludes rangers linked to violence, in accordance with the UN declaration on human rights defenders, where defenders are defined by using peaceful means:

> *"We do not include in our data cases of individuals linked to violence against Indigenous or local communities in their efforts to protect natural reserves. We do, however, include cases of government officials and park rangers who have been specifically threatened or targeted while trying to protect forestland and biodiversity, where there is no known conflict with Indigenous or local communities." (Global Witness 2024).*

The International Union for Conservation of Nature Netherlands (IUCN-NL) similarly considers "park rangers protecting a nature reserve" as environmental human rights defenders. As mentioned above, it is not professional status that defines or excludes people from being human rights defenders, rather they are identified above all by their actions (Larsen and Lador 2021), protecting or promoting human rights in relation to the environment without using violence.

Key sources of further information:

Global Witness (2023) Standing firm; The Land and Environmental Defenders on the frontlines of the climate crisis.

The UN Declaration on Human Rights Defenders (the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms). 1999.

UN Human Rights Council (2019) Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development.

Wijdekop, Femke. Environmental Defenders and their Recognition Under International and Regional Law – An Introduction. IUCN NL.

PART 3. Respecting, protecting and fulfilling rights in conservation: some tools and approaches

This section introduces several practical tools and approaches for respecting, protecting and fulfilling the rights of Indigenous peoples and local communities in conservation. They include measures to guard against or remedy rights violations ("do no harm") and measures for actively supporting rights-holders in their own conservation initiatives. When using them, it should be borne in mind that rights-based approaches cannot be reduced to a set of steps or methodologies alone; instead, they are defined by support for rights-holders to claim their rights, and support for duty-bearers to meet their obligations. This involves a shift away from approaches in which individuals, communities and peoples are treated as the passive objects of external interventions to one in which they are recognised as "key actors in their own development" (UN, 2003) and supported in conserving their own nature (Milner-Gulland, 2024). The details of how this is done in practice will vary from case to case. It involves building on common interests and negotiating where there are differences in interests, with full respect for individual and collective rights as an underlying bottom line.

Figure 12 and the text below give a run-down of the different tools and approaches that are described in the following subsections. The first five sections describe tools and approaches that are concerned mainly with respecting and protecting rights. Most of these consist of institutional policies and procedures, but the same principles apply for individual consultants or researchers.

Respecting, protecting and fulfilling rights in conservation: Some practical tools and approaches

Tools and approaches for respecting and protecting rights

3.1 Social safeguards and Human Rights Due Diligence (HRDD)

3.2 Human rights impact assessments (HRIAs)

3.3 Free, prior and informed consent (FPIC) processes

3.4 Grievance mechanisms

3.5 Remedy and restitution

Tools to support rights-holders in fulfilling rights

3.6 The Whakatane Mechanism: a tool to address historic and current injustices

3.7 Participatory mapping

3.8 Participatory biodiversity monitoring

Figure 12: *respecting, protecting and fulfilling rights in conservation: some practical tools and approaches.*

Section 3.1 describes **social safeguard and human rights due diligence (HRDD) procedures.** These consist of measures to prevent harm by anticipating where it may occur and taking appropriate steps to pre-empt it. They usually include statements of principle and/ or standards and also tools for their implementation and for monitoring outcomes. HRDD focuses specifically on the prevention of negative human rights violations (and remedy where they do occur) and is a core responsibility under the UN Guiding Principles on Business and Human Rights (the UNGPs), which are now broadly accepted as applying to at least some conservation organisations (National Contact Point of Switzerland, 2016: 7; Pillay, Knox and MacKinnon, 2020: 3; FocusRight, 2022). Social safeguards systems are broader, encompassing all types of social impacts of an organisation's work. The different components of social safeguard and HRDD procedures are described in this section with illustrative examples from The Nature Conservancy and WWF.

Section 3.2 describes the methodology for **human rights impact assessments (HRIAs).** HRIAs focus specifically on past, current or potential future negative impacts on human rights. They don't consider positive impacts because human rights impacts cannot be balanced against one another; each negative impact must be addressed in its own right. Three key characteristics of HRIAs are that (i) that they use international human rights standards as a benchmark; (ii) they include an analysis of the international, national and customary laws that apply, and (iii) they are carried out through a participatory process involving meaningful engagement with the rights-holders. In this section, the different steps in an HRIA are outlined and an example is provided of an HRIA of oil palm plantations in Indonesia. The section ends with a set of practical tips for best practice and red flags indicating likely poor practice.

Section 3.3 describes **free, prior and informed consent (FPIC)** processes and discusses some of the complexities they may involve in practice. FPIC processes are a legal requirement for all types and scales of conservation actions that may potentially affect Indigenous peoples or some other groups with collective rights. This requirement reflects the right of Indigenous peoples and some other groups to decide collectively if, and under what conditions, proposed activities that may potentially affect their rights can proceed. As part of the FPIC process, rights holders should be involved in assessing the risks of the proposed activities, and therefore there is a close relationship between FPIC and human rights impact assessments. This section summarises the component parts of FPIC processes and discusses the need for them to be locally contextualised. It then describes the different stages that are commonly involved, as well as various pre-requisites and high-level considerations. It also introduces the concept of autonomous FPIC protocols, which have been developed by several indigenous peoples and other groups to define how they are to be consulted and how their FPIC is to be sought. It ends with an example from Ecuador, where the indigenous federation CONFENIAE has developed its own decision-making protocol for large-scale consultations with assistance from WWF, as part of a UNDP-coordinated REDD+ implementation programme.

Section 3.4 focuses on **grievance mechanisms**, which are formal procedures setting out how rights-holders can lodge complaints, and how these will be investigated, fairly evaluated, and remedied if they are found to be legitimate. It describes the elements that should be included in grievance mechanisms, illustrated with examples from WCS and related to IUCN's Green List. Following on from this, section 3.5 describes **remedy and redress,** which may include both compensation and also restitution of the situation prior to the actions that led to the complaint. Examples related to restitution are provided from the USA and Kenya. Procedures for remedy and redress should also include measures to guarantee non-repetition, including by addressing the drivers of rights violations, such as ongoing marginalisation and discrimination. Institutions should have formal remedy and redress policies and procedures in place that have been agreed with rights-holders, and their implementation should be monitored rigorously (ideally through participatory processes). For independent researchers or consultants, as a minimum, information should be provided to rights-holders on who to contact, and how, if they have a complaint, and a plan should be in place for how to respond to any complaints that arise. In all cases, these mechanisms and communications channels need to be accessible for those concerned, which may mean providing details in local languages and through locally appropriate channels of communication.

The following three sections give more detailed descriptions of three technical tools for working in partnership with indigenous peoples and local communities, both to protect their rights and to support them in conserving their lands and nature. The **Whakatane Mechanism** (section 3.6) is a conflict resolution methodology that was adopted by the IUCN in 2012. It is designed for use in cases of conflicts between Indigenous peoples and protected areas, both to address historic and current injustices and to chart the way forward for successful partnerships. It works through local and high-level multi-stakeholder dialogue, informed by a joint field evaluation to collect evidence on the situation and generate agreement on next steps. After a brief description of the methodology, this section describes three pilot Whakatane assessments (from Kenya, Thailand and the Democratic Republic of Congo). All three pilots were successful in building evidence and improving relations between the different actors. However, subsequent progress in addressing conflicts and building collaborative approaches has varied, according to how far the more powerful actors have been willing to go towards sharing power. Following these pilots the mechanism fell into disuse, but at the time of writing discussions are under way on re-activating it as a tool for implementation of the Global Biodiversity Framework. Meanwhile, the collaborative methodology developed for assessing conflict situations and charting a path forward is of wider potential value for all types and scales of conservation intervention.

Section 3.7 describes **participatory mapping**, which is a process by which Indigenous peoples and local communities map the lands they use, occupy, or have other valid claims to. Participatory mapping has emerged as a fundamental tool for indigenous rights and conservation. For example, it can be used to support processes for legal titling of indigenous lands, or to monitor incursions by external actors and the human rights impacts or environmental degradation they cause, or to inform the development of participatory land-use plans, including for conservation, restoration and sustainable use. Conservationists and natural resource management specialists are increasingly providing technical support for processes of this kind (for example, see IIED 2010; USAID 2019), in some cases integrating biodiversity values and indigenous cultural values (for example, see Heiner et al., 2018). This section describes the different components of participatory mapping and provides guidance on technical aspects and resources, emphasising that the best participatory mapping processes emerge organically from community-defined priorities and processes.

Participatory biodiversity monitoring (section 3.8) can build on participatory mapping processes, enabling rights-holders to document the state of biodiversity on their lands and track changes. This can provide evidence in support of land claims, especially where lands have been expropriated for protected areas. It can also inform local environmental stewardship and sustainable use. It provides a way for indigenous peoples and local communities to assemble evidence of their own contributions to conservation, monitor changes in the state of biodiversity, and in this way assess both the impacts of external drivers and also the impacts of their own activities, helping them to improve their own management and monitoring. An example is provided from the work of the Wapichan people in Guyana. Again, conservationists are well-equipped to provide technical support for these activities, which often offer some of the most fertile ground for collaborations.

Three key considerations affect how these and other tools and approaches may apply in conservation practice: i) whether they are initiatives of external actors or of the rights-holders themselves (or both), ii) whether or not they build on existing relationships, and iii) the risk and potential severity of impacts on rights-holders.

Three key considerations in implementation of human rights-based approaches to conservation

i. Is it an initiative of external actors, or of the affected rights-holders, or both?
ii. Does it build on existing relationships, or will these need to be developed from scratch?
iii. What is the risk and potential severity of impacts on the rights-holders, for example through restricting their land and resource rights or impacting on their cultures?

To illustrate how these considerations may play out in practice, the boxes below outline three generalised scenarios that differ in these three respects.

Scenario 1: An externally driven intervention with potentially significant human rights impacts: creation of a new protected or conserved area

For an externally driven conservation intervention with potentially significant human rights impacts, such as the creation of a new protected or conserved area on Indigenous lands, **social safeguards procedures** should be triggered and **a human rights due diligence process** should be undertaken, including a **human rights impact assessment (HRIA)**. All rights-holders who may potentially be affected should be consulted as early as possible and provided with full information about the proposed intervention. Where they include Indigenous peoples and other groups with collective land rights, this is the start of **the FPIC process.** If they agree to consider the proposal and engage in further discussion, potential impacts should be explored with them as part of the HRIA. **Participatory mapping** may be needed to document their customary lands and resource use, evidencing the areas and rights that could be affected. The FPIC process should be based on meaningful engagement, including face to face meetings and ongoing two-way communications, with opportunities for either party to raise new questions, make suggestions and contributions, and call for further discussion as necessary, with appropriate measures in place to address power dynamics.

The rights-holders should then have the time and independent advice they need to reach a considered decision on whether to give consent to creation of the area, or withhold it, or give consent subject to certain conditions. If they do give consent, joint decisions should be reached on the most appropriate forms of governance for the new area. Indigenous and community-led areas are the most compatible with a rights-based approach, and often also the most effective and equitable option (see Dawson et al., 2024), and therefore this should be the default option unless the rights-holders themselves prefer otherwise. Other matters that should be formally agreed include the management measures to be put in place (including rules on use and what happens when they are broken), roles and responsibilities, **grievance mechanisms,** and procedures for **remedy** where grievances are upheld. Agreements may also include commitments on the part of the external actor to provide assistance – for example in **supporting community livelihoods** or **mitigating human wildlife conflict**, among others – especially where new restrictions on resource use could impact on rights, livelihoods and wellbeing. Finally, **participatory biodiversity monitoring** (see section 3.8) can be used to track the effectiveness of different management measures into the future and the findings can be used to inform adaptive management.

Scenario 2: A low-impact externally driven project: an ecological study on Indigenous lands

For a small, low-impact project, a more informal approach may be sufficient for due diligence and FPIC purposes. For example, this may be the case for an ecological field study on Indigenous lands. In this case, all rights-holders and the rights that are relevant still need to be identified and potential human rights impacts still need to be assessed, but it may be sufficient to do this based on a basic knowledge of international and national human rights norms, initial consultation with local experts, NGOs and government officials, and – essentially – direct discussions with the rights-holders, which should begin as early in the process as possible. Therefore, researchers need to be aware of international human rights standards and applicable laws. They also need to have a basic understanding of customary systems of governance and decision-making.

All conservation research should follow professional and institutional research ethics protocols. However, currently these don't usually include requirements related to collective rights. Therefore, individual researchers need to go beyond existing ethics protocols to make sure they abide by the international, legal and customary norms that apply in their study area regarding both individual and collective rights. This includes seeking collective FPIC, following the principles outlined in section 3.3. If the study may generate recommendations for future conservation actions that would affect rights-holders, this should be explained fully at the start, so that rights-holders can take it into consideration as they consider whether to give consent for the study to go ahead. It may also be possible to generate recommendations collaboratively, building on local knowledge and priorities. For more details on good practice for conservation research involving Indigenous peoples and local communities, see Newing et al. (2024).

Scenario 3: Conservation actions that are proposed or being implemented by rights-holders themselves: an Indigenous-led conservation initiative.

A third scenario is where conservation actions are proposed (or already being implemented) by the rights-holders themselves. For example, these may include their defence of biodiversity-rich traditional territories against large-scale construction or exploitation; their actions to develop or revitalise their own systems and plans for sustainable resource use; measures to address crop-raiding by primates or improve conservation and sustainable livelihoods; or measures to protect sacred forests or culturally significant species. Here, the role of conservationists may be simply to provide technical, financial and logistical support. However, when conservation organisations or individuals are invited to support activities of these kinds, they still need to undertake a due diligence procedure related to their own involvement (and proportionate to the size of the project and risk and severity of its potential impacts), working to ensure that they respect and protect the individual and collective rights of all rights-holders. There should also be grievance and remedy mechanisms in place. And even in these cases, the decision-making processes should be in accordance with the principles of FPIC, which for large projects may require a series of inclusive discussions and collective decisions at different levels, involving different community organisations and communities, according to processes agreed internally amongst the rights-holders themselves.

Any of these scenarios are most straightforward where there are already established relationships between the conservationists and the rights-holders. If there are no existing relationships to build on (or if relationships are not positive), it may take considerable time to build the trust and mutual understanding that is needed for genuine collaboration. Therefore, for conservationists with a long-term commitment to working in a particular geographical area, dedicating time to developing relationships of trust at the start of the process can be immensely valuable in establishing the foundation for successful collaborations (for two best practice examples, see Aini et al., 2023 and Kenrick et al., 2023). Specific projects and activities can then be agreed as part of ongoing discussions and exchanges, based on mutual understanding.

Finally, sections 3.9 and 3.10 take a different approach, exploring two types of conservation intervention that commonly affect indigenous peoples and local communities from a rights perspective: sustainable livelihoods projects, and measures to mitigate human wildlife conflict. We hope these two examples will contribute to current discussions about what needs to be done to make a systemic shift to human rights-based conservation.

Section 3.9, on **community livelihoods,** discusses the potentially problematic nature, from a rights perspective, of approaches that start from the assumption that current livelihoods activities are incompatible with conservation objectives, and focus on providing *alternative* livelihoods activities to replace them. This assumption is often made without assessing the evidence and without consulting local rights-holders or taking customary rights into account. In contrast, rights-based support for community livelihoods, (subject to the FPIC of rights-holders) would involve an inclusive process of consultation and deliberation to agree the best way forward to maintain and improve both wellbeing and biodiversity, building on local knowledge, cultural norms, and interpretations of well-being, and where relevant, informed by a joint assessment of the evidence of current drivers of environmental degradation. Often, supporting or complementing existing livelihoods activities will be a better option than replacing them with new ones, but ultimately this decision rests with the rights-holders. Conservationists can provide information, financial and technical support, and contacts – for example with community networks, potential funders, government agencies, development NGOs, companies, and other experts.

Section 3.10 discusses **Human-wildlife conflict (HWC),** which is another common focus of conservation, both in and around protected areas and more widely. Human wildlife conflict can be made worse by legislation that focuses on combating wildlife crime, for example by banning hunting, without adequately protecting the rights and livelihoods of Indigenous peoples and other local groups whose lives and livelihoods may be threatened by wildlife. The removal of the right of defence leads to an obligation for the government to secure local livelihoods, protect indigenous peoples and local communities from harm and provide reparation for damage caused by animals. Reparation may take the form of compensation, insurance, or the development of alternative sources of income. However, experiences around the world show that this often fails to achieve its objectives. In order to develop good practice in rights-based approaches to mitigating human wildlife conflict, gaps in legislation and its implementation need to be addressed to ensure rights are protected, and long-term solutions need to be sought through co-design with the affected peoples and communities.

3.1 Social Safeguards and Human Rights Due Diligence

Cath Long and Helen Newing

In this section, we consider the social safeguards and human rights due diligence (HRDD) measures that organisations need to have in place to ensure good practice in preventing or minimising human rights impacts. Social Safeguards and HRDD both consist of measures to prevent harm by anticipating where it may occur and taking appropriate steps to pre-empt it. They usually include the adoption of statements of principle, accompanied by policies and procedures to put them into practice, as well as systems to monitor implementation. HRDD focuses specifically on the prevention and remediation of negative human rights violations, whereas social safeguards systems may be broader, considering all types of social impacts. Social safeguards are distinct from “safeguarding”, which is about protecting individuals from specific cases of abuses of power (see Box 20).

The term HRDD is often used (but not always) to refer to initial assessment of the potential risks of a new project, programme or activity, and of the need to put adequate safeguards in place. This will often involve one or more **human rights impact assessments (HRIAs)** (see section 3.2). Following the impact assessment, a decision should be made on whether to proceed to the next stage of the proposed project and if so, what is needed in terms of an FPIC process (see section 3.3) and mitigation plans. **It is important to recognise that one potential valid outcome of this initial due diligence process is a decision NOT to proceed to the next stage if the initial assessment suggests that the impact on rights-holders is likely to be too great.**

Box 20: Safeguarding, Social safeguards, and human rights due diligence (HRDD).

Social safeguards are systems an organisation may put in place to prevent negative social impacts, including human rights violations, occurring as a consequence of its work. Social safeguards are designed principally to prevent social impacts as a result of its programmes, policies, projects or overall approach. Some organisations also integrate safeguarding within their overall social safeguards (for an example, see Code of Conduct in Box 21).

Safeguarding is a legal obligation under many jurisdictions, particularly in relation to children and vulnerable adults. It focuses on protecting individuals that come into contact with the organisation from abuses of power, whether by a member of staff or volunteer or others. Harm in this context can be of any sort, and includes sexual or physical abuse. Organisations are expected to have policies in place that make it clear how they will:

- Protect people from harm.
- Make sure people can raise safeguarding concerns.
- Handle allegations or incidents of harm.
- Respond appropriately, including by reporting to the relevant authorities.

BOND provides a useful series of templates for drawing up an organisational safeguarding policy.

Human Rights Due Diligence (HRDD) differs from social safeguards systems in that it is specific to human rights. It involves four steps:

i. Identifying and assessing actual or potential adverse human rights impacts that the organisation may cause, contribute to, or be linked to.
ii. Addressing those impacts and putting measures in place to guard against future impacts.
iii. Tracking the effectiveness of the measures taken.
iv. Communicating how impacts are being addressed.

Social safeguards have been in place for many years in international financial institutions (World Bank 2005), businesses (OHCHR 2012) and large development organisations (Horberry 2015). They have usually been developed following campaigns by those who have been adversely affected by the actions of such organisations (Griffiths 2005). They were put in place for REDD+ programmes in 2010 and were later further developed under the Architecture for REDD+ Transactions (ART)'s environmental and social safeguards programme. Until recently, they were less common amongst conservation organisations, but several large conservation organisations adopted comprehensive safeguard systems in the early 2020s and appointed dedicated staff focusing on human rights issues (Foyet and Mupeta, 2023), following a string of exposés that culminated in the publication of an independent review into allegations against WWF of severe human rights violations (Pillay et al., 2020).

Why are social safeguards systems and HRDD important in the conservation sector?

- HRDD and social safeguard systems serve to prevent conservation activities from violating human rights by anticipating and avoiding possible rights violations.
- They include publicly available principles and policies, enabling the peoples, communities and organisations that a conservation organisation works with to know about the standards by which it operates, and to hold it to account.
- They serve as a reminder for everyone who works for the organisation of the important principles and standards that they are all committed to.
- They allow an organisation to monitor, review and improve its own practices.
- Having robust social safeguards in place is obligatory in order to receive funding from many sources.
- Human Rights Due Diligence is a core responsibility under the UN Guiding Principles on Business and Human Rights (the UNGP) and it is now broadly accepted that the UNGPs apply to at least some conservation organisations (National Contact Point of Switzerland, 2016: 7; Pillay, Knox and MacKinnon, 2020: 3; FocusRight, 2022).

What do social safeguards and HRDD consist of?

There is no unified approach to social safeguards and HRDD; each organisation has developed its own approach. However, they generally include a set of specific organisational **standards and principles** and an articulation of the mechanisms and tools by which they are put into practice, usually in the form of policies and operational procedures. For example, The Nature Conservancy (TNC) has published a human rights guide to working with Indigenous peoples and local communities that includes nine Principles and Safeguards (listed in Box 21), for each of which a training module is provided.

Box 21: The Nature Conservancy (TNC)'s human rights guide to working with Indigenous peoples and local communities: Principles and Safeguards (2020)

i. Free Choice and Self-Determination
ii. Prior Engagement and Collaborative Relationships
iii. Informed Decision-Making
iv. Right to Withhold Consent
v. Meaningful Consultation
vi. Equity
vii. Inclusion
viii. Accountability
ix. Overarching Good Faith

Institution-wide social safeguards should be embedded in policies and procedures and considered in all circumstances. They should identify **who within the organisation** is responsible for different aspects of implementation and oversight, and they should include a **grievance mechanism**, including procedures for providing remedy and redress (see sections 3.4 and 3.5). It is also critical to ensure that the system is well understood and supported by individual staff members, which will require regular training and may require good practice to be rewarded in career advancement. It should also be well-communicated to rights-holders who might be affected by the organisation's actions, in formats, languages and places that they can access and understand easily.

Safeguard procedures should be in place that are applied to all individual activities and projects. These may cover environmental and social aspects together (for an example from WWF, see Box 22).

Box 22: Steps in WWF's Safeguard Process

i. **Screening:** Activities must be screened for environmental and social risks and issues and any opportunities that could maximise positive outcomes and benefits. The screening is informed by stakeholder engagement.

ii. **Risk Review and Prioritisation:** The *significance* of the environmental and social risks is identified, based on each risk's *likelihood* (the probability that a risk will occur) and *impact* (the consequences if the risk were to occur).

iii. **Supplementary Assessments:** The risk review may identify a need for supplementary assessments, which must then be carried out.

iv. **Consideration of Alternatives and Mitigation Planning:** Based on the results of the previous steps, mitigation planning is conducted and adjustments made. Potentially affected peoples must be consulted and enabled to participate actively and effectively in decision-making.

v. **Decision on whether or not to move forward with the activities**, based on technical and financial feasibility of the implementation of mitigation measures.

vi. **Implementation, Monitoring and Adaptive Management:** Implementation of mitigation measures must be monitored closely to ensure that they are proportionate, timely, effective, locally appropriate and specifically benefit those who are potentially affected. Monitoring should be conducted with the informed and active participation of those potentially affected.

This process also invokes other WWF safeguards, which for example include the requirement for the free, prior and informed consent of indigenous peoples.

Key resources:

FocusRight (2022). Human rights due diligence for non-governmental organisations: why it is needed and how it is done. Working Paper.

Mei, L and A Perram (2021) Stepping up: Protecting collective land rights through corporate due diligence.

UN OHCHR (The United Nations Office of the High Commissioner on Human Rights) Corporate human rights due diligence – identifying and leveraging emerging practices.

Safeguarding policy templates (BOND).

Examples of conservation organisations' safeguard systems:

Environmental and Social Safeguard System (Conservation International).

Human Rights Guide for working with Indigenous Peoples and Local Communities (TNC).

Social Safeguard Mechanisms (WCS).

Environmental and Social Safeguards Framework (WWF).

3.2 Human Rights Impact Assessments (HRIAs)

Helen Newing

Human rights impact assessments (HRIAs) differ from standard social impact assessments (SIAs) or Environmental and Social Impact Assessments (ESIAs) in that they focus specifically on past, current or potential negative impacts on human rights. They don't consider positive impacts because human rights impacts cannot be balanced against one another; each negative impact must be addressed in its own right. Within the conservation sector for example, HRIAs could be applied to a conservation NGO, a protected area, or a specific conservation project or programme. While SIAs or ESIAs *may* include everything that is required in an HRIA, they rarely do so, partly because they are not framed from a rights perspective and partly because the specialist expertise that is required is not part of the standard skillset for these kinds of assessments. Therefore, as part of HRDD, a separate HRIA is often needed. HRIAs are closely related to **human rights risk assessments (HRRAs),** but these tend to focus on reputational and liability risks for external actors (typically, companies) rather than for the rights-holders, and may be entirely desk-based.

Three defining factors of HRIAs are the following:

1. They use international human rights standards as a benchmark.
2. They include an analysis of the international, national and customary laws that apply.
3. They involve meaningful consultation with the rights-holders themselves (which requires and ideally is an integral part of a broader free, prior and informed consent (FPIC) process).

HRIAs need to be tailored to the specific aims of the exercise and to the local context. The focus should be on the perspectives and concerns of the rights-holders, and therefore they should be consulted as early as possible in the process, both to seek their free, prior and informed consent (FPIC) and to invite their input into the definition of the objectives and scope (Doyle, 2019). Nonetheless, HRIAs generally involve the broad steps that are shown in Figure 13 and summarised below. Two excellent resources with further details are the DIHR's online guidance and toolbox (DIHR, 2020a and 2020b) and the OHCHR's guidance on human rights indicators (OHCHR, 2012).

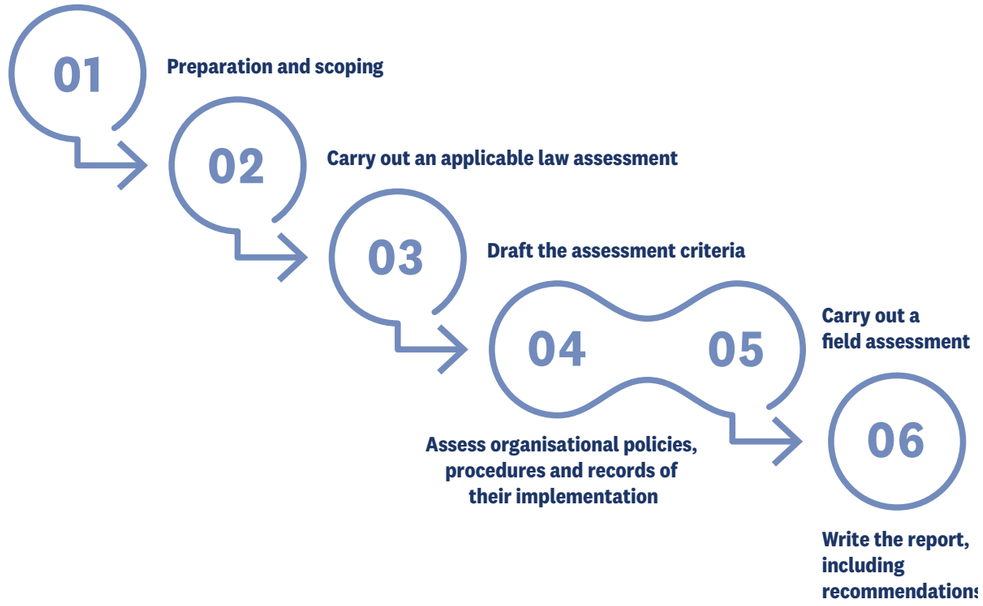

***Figure 13**: steps in a Human Rights Impact Assessment*

1. **Preparation and scoping:** This includes the following actions:
   - Assemble a multidisciplinary team with expertise in human rights law, community facilitation and qualitative social science, as well as relevant geographical expertise. The independence of the assessment team in carrying out their work and for reporting fully, regardless of what they find, must be assured (Mei and Perram 2021: 33).
     - Define the aims, objectives and scope of the study.
     - Collate the relevant available information on the study area, the organisation or project to be assessed, as well as any complaints, reports or expressions of concern related to human rights (See Annex 2 in Mei and Perram (2021) for further suggestions and details of potential sources).

2. **Carry out an applicable law assessment:** This consists of a description of the relevant international, national, subnational and customary laws that apply in the assessment site, and an analysis of the gaps, shortcomings and contradictions between laws at these different levels as well as within different local and national frameworks.

3. **Draft a set of questions, assessment criteria and / or indicators.** These should be based on the results of the above two steps and should use international human rights standards as the benchmark. Questions of this kind may be useful to organisations not only for the individual impact assessment itself, but also at an institutional level, to help identify actions that could improve human rights-related management processes (see section 3.1). Criteria and indicators may be of three kinds (OHCHR 2012: 39):
   - structural criteria and indicators (related to organisational policies).
   - process criteria and indicators (related to operational procedures, including for monitoring of implementation).
   - Outcome criteria and indicators (related to the actual human rights impacts).

Questions, criteria and indicators should be drafted or at least finalised together with rights-holders, so that they reflect their perceptions and priorities concerning the different kinds of potential rights impacts. For examples of questions, indicators and the corresponding qualitative and quantitative assessment methods, see Annex 4 in Mei and Perram (2021) and section 8.2 of Mei et al. (2022).

4. **Assess organisational policies, procedures, and records of implementation:** For example, this may include statements of principles, membership or adoption of voluntary standards, procedural documents or manuals, copies of any previous social assessment reports, and copies of any complaints received. It may be just for the organisation commissioning the assessment, or it may also include some level of scrutiny of current or potential collaborators. Where significant negative impacts on rights-holders are revealed during the field assessment, ideally (and subject to the organisation's co-operation) a more in-depth evaluation of the organisation(s) should be carried out later in the HRIA process to evaluate how effectively policies and procedures are implemented. This should include independent sources of information, including information obtained from rights-holders, as well as information from staff and written records of the organisation itself.

5. **Carry out the field assessment:** Sufficient time and resources should be allocated to fieldwork to enable the assessors to engage meaningfully with rights-holders and document their experiences and perspectives robustly. Every effort should be made to ensure that methods are culturally appropriate, and that all relevant subgroups within the population are consulted, either directly or through representatives that they have appointed for this purpose. Data are usually gathered through qualitative, open-ended methods, such as in-depth interviews, focus groups, community meetings and workshops, as well as through examination of written records, photos or maps, and interviews with other actors. Anonymous reporting can be enabled, if necessary, through the use of suggestion boxes, mobile phone apps and web platforms. Following the initial consultations, supplementary questionnaire surveys can be used to explore what proportions and types of rights-holders hold different views or share different types of experience.

6. **Write the report:** The report should include the following:

   - ***A description of the context:*** including of the site and the organisation, the different peoples and local communities present, and the other actors involved.
   - ***A detailed applicable law assessment.***
   - ***Details of the fieldwork methodology:*** including the process of free, prior, and informed consent; measures related to inclusivity and confidentiality; the criteria and indicators; sampling strategies and sizes; the methods, and a statement on the limitations of the study.
   - ***A summary of the findings:*** The main focus is on actual and potential human rights outcomes, which are typically reported in the form of narrative text for each thematic area interspersed with testimonies (direct quotes). There may also be sections on organisational policies and procedures.
   - ***A set of recommendations:*** both on how to address specific documented human rights impacts, based on the evidence that is assembled, and on how to prevent them recurring. For several examples of these two distinct types of actions, see Mei and Perram (2021: page 29).

Box 23: Human Rights Impact Assessment of Oil Palm Plantations in Kotawaringin Barat and Seruyan Districts, Central Kalimantan Province, Indonesia.

This HRIA took a participatory approach to documenting positive and negative impacts of palm oil development in villages in Central Kalimantan, Indonesia. Basic information was compiled from government and NGO sources on each of the villages selected for the assessment. The fieldwork was informed by a detailed legal analysis focusing on the human rights which are embedded in the Principles and Criteria of the RoundTable for Sustainable Palm Oil (RSPO):

- Procedural rights: consultation, participation, Free, Prior and Informed Consent.
- Representational rights: rights to self-representation.
- Property Rights: rights to lands and territories.
- Labour Rights: core labour standards (inc. child labour, slavery-like practices etc).
- Rights to non-discrimination: gender justice.
- Right to remedy: access to justice through both judicial and non-judicial procedures.
- Freedom of movement: access to services (rights to health & education).
- Protection of Human Rights Defenders: criminalization and protection.

For each of these, a short guidance statement was prepared on the applicable international standards, together with lists of open-ended questions to guide consultations with companies, workers and communities. The field methods included community workshops, focus group discussions and individual interviews. Efforts were made to cross-check (triangulate) information, especially in cases of allegations of serious human rights abuses, and measures were taken to ensure anonymity of all interviewees that requested it, to protect them from repercussions.

Source: Firdaus et al. (2022)

Reporting HRIA findings back to rights-holders in accessible formats and through appropriate channels (while taking care to ensure anonymity of individual informants) is an essential component of HRIAs and can serve to open a dialogue. Rights-holders should be consulted about the recommendations before the report is finalised, and the views that they express should be included in the report (DIHR 2020: 115).

Box 24 gives some practical tips on best practice in conducting HRIAs and red flags in HRIA reports that may indicate flaws or weaknesses, which are also useful when designing a fresh HRIA.

Box 24: Practical tips on conducting HRIAs: Best practice guidance and red flags

Best practice guidelines	Red flags that may indicate flaws and weaknesses
Allocate sufficient time, expertise and resources to fieldwork.	Time spent in the field was clearly too short for meaningful consultation and participation.
Triangulate data to ensure that the assessment team isn't overlooking any rights-holders.	There is no evidence that a variety of sources (including from the rights-holders themselves) were consulted to identify rights-holders in the area.
Agree how the HRIA will be conducted with rights-holders.	There is no evidence of agreement of the process for conducting the HRIA, or that rights-holders fully understood the process (or their rights).
Check whether a land tenure and land use study has been undertaken and whether the rights-holders are satisfied with these.	No reliable land tenure and land use studies or other documents are cited.
Offer financial support for rights-holders to engage technical advisors (including legal advisors) of their choice.	There is no evidence that rights-holders had access to independent advice and support.
Where the HRIA is on an existing project, include assessment of prior, ongoing and potential future impacts.	There is no evidence that the assessment considered prior impacts.
Use participatory research methodologies to gather data and assess impacts.	The methodology only mentions questionnaires or single community visits.
Ensure the HRIA report is translated as necessary into a language used by the rights-holders, or otherwise delivered to them for validation in an easily understood format.	There is no evidence that the HRIA report exists in the relevant indigenous or local languages and / or in an easily understood format.
Discuss options and recommendations for impact management with the rights-holders.	The report does not mention or assess possible prevention and mitigation measures, or provide details indicating that these were discussed with rights-holders (and reporting what they said).

Adapted from Mei and Perram (2021: page 44 and Annex 3).

Key sources of further information:

CBD secretariat (2004). Akwé: Kon Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities.

DIHR (Danish Institute of Human Rights) (2020a) Human Rights Impact Assessment: Guidance and Toolbox.

Götzmann, N (2019) Handbook on HRIA. Research Handbooks on Impact Assessment series. Edward Elgar Publishing Ltd.

Mei, L. and A. Perram (2021) Stepping up: Protecting collective land rights through corporate due diligence.

Mei, L., H. Newing, O. Almås Smith, M. Colchester and A. McInnes (2022). Identifying the Human Rights Impacts of Palm Oil: Guidance for Financial Institutions and Downstream Companies. Forest Peoples Programme.

UN OHCHR (The United Nations Office of the High Commissioner on Human Rights) (2012) Human rights indicators: a guide to measurement and implementation. HR/PUB/12/5.

3.3 Free, prior and informed consent (FPIC) processes

Cathal Doyle

What is FPIC and why is it important?

Free prior and informed consent (FPIC) is the framework within which Indigenous peoples and other groups with customary tenure exercise their right to collectively decide if, and under what conditions, proposed activities that impact their lands, territories and resources can proceed. In a conservation context, this would include anything from a short-term research project on indigenous lands to a proposed new protected area, spatial land-use plan, or legal measures related to hunting and other forms of natural resource use throughout the national territory.

FPIC is a core part of the right to self-determination and cannot be abstracted from that right, or from land, territory, resource and cultural rights, from which it is derived. It safeguards these rights, protects against racial discrimination, and is a minimum standard for these peoples' dignity, well-being and survival. It facilitates the determination and pursuit of their own development and territorial conservation paths that meet their needs and aspirations. FPIC is also a means to overcome power imbalances and establish relationships based on equity and respect for the diversity of distinct decision-making processes. By enabling Indigenous peoples and other groups with collective rights to govern their lands, territories and resources on their own terms, it also contributes to successful and sustainable conservation outcomes (Dawson et al 2024). Respect for FPIC as a human rights norm is one of the most tangible manifestations of the shift that is needed from past conservation practices to a rights-based approach. It is a barometer for the legitimacy of existing and future conservation activities. It is also relevant to historical injustices arising from past conservation activities imposed without FPIC (see section 3.5 on remedy and restitution).

What are FPIC's component parts?

FPIC has procedural and substantive aspects. The procedural aspect is embodied in the "Free" "Prior" and "Informed" elements of the good faith consultations required to obtain consent. Consent is the substantive component and embodies the right to say "yes" or "no" or "yes but" to proposed activities.

- "**Free**": implies the absence of actual or perceived coercion, intimidation or manipulation, and the freedom not to participate in consultation processes.
- "**Prior**" means sufficiently in advance of any decisions or actions which may impact on a peoples' enjoyment of their rights, providing the time and flexibility they need to make decisions in accordance with their own consensus-building processes.
- "**Informed**" indicates full disclosure of all information, and access to any independent advice needed, to meaningfully assess potential risks and benefits of an activity. Information must be provided in a format understandable to, and through a process agreed by, the concerned peoples and local communities. Financial considerations should also be disclosed, such as expected commercial revenues (e.g. through nature markets).
- "**Consent**" is the self-determination and customary tenure based right to decide what happens in Indigenous peoples' or local communities' territories. It means that all parties respect their freely taken and informed decisions, irrespective of whether the choice is to accept, conditionally accept, or reject a proposal. FPIC is an on-going process, not a once-off event.

Why are contextualised FPIC processes so important?

Consultations must be culturally appropriate and enable Indigenous peoples or local communities with customary land tenure to exercise their own decision-making processes without interference. This is broader than simply saying yes or no to proposals; it means they determine how third parties engage with them. FPIC guidelines must be developed with their full and effective participation and agreement, and where they have developed, or plan to develop, their own FPIC protocols, laws and rules, these must be respected. As noted by the UN's Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), these should never be subordinated to State or private actor FPIC guidelines. There is therefore no one-size-fits-all model of FPIC.

Nonetheless, Figure 14 shows a series of stages that are often included, including actions that are internal to Indigenous peoples or other groups, actions that also involve conservationists or other actors, and decision points.

Community prerequisites for good faith consultations

Certain conservation activities may have significant, and potentially intergenerational, impacts on a people's or community's way of life and rights. This can give rise to refusal by the rights-holders to engage in consultations until preconditions they deem necessary for good faith consultations are met. These could include carrying out internal community processes, and seeking assistance from conservationists for this, such as:

- developing their own autonomous FPIC protocols (see Box 25) or otherwise articulating their rules governing engagement.
- strengthening or creating new governance institutions and decision-making processes.
- initiating or completing land titling in accordance with customary tenure.
- realising self-directed participatory mapping and strengthening their environmental monitors and guards.

Other pre-conditions could require action on the part of conservationists who are already present in their territories or require conservationists to use their leverage to encourage States to meet these conditions and fulfil their human rights duties to implement laws, address grievances or ensure remedies (see sections 3.4 and 3.5). For example, these might include the following:

- resolving conflicts over land claims between communities or with third parties who have gained control over their lands and resources without FPIC.
- obtaining remedies for on-going grievances or historical harms related to conservation activities, including those involving the use of force.
- strengthening relationships with local or national government actors with responsibilities for oversight and enforcement of conservation and land laws.

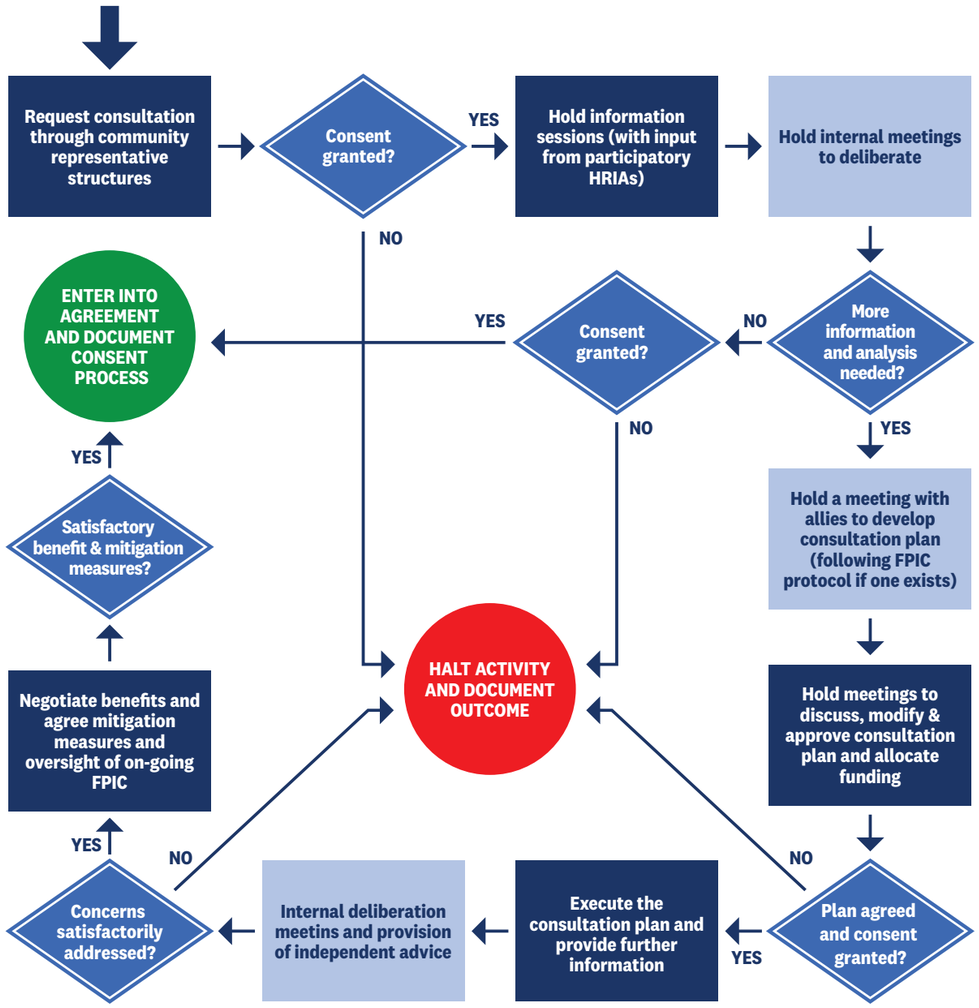

Figure 14: *Typical broad stages and actions in an FPIC process.*

Key: *Actions of rightsholders alone* *Actions involving external actors as well as rightsholders* *Key decision points* *Final outcomes*

Box 25: Autonomous FPIC protocols

Several Indigenous peoples and other groups with customary land tenure have codified their laws and governance rules in the form of publicly available autonomous FPIC protocols. These define how they are to be consulted and how their FPIC is to be sought. Some FPIC protocols contain high-level principles, in accordance with customary, national and international law. Most of them specify rules governing specific stages in consultation and FPIC processes. These typically include the following:

a. communication of requests to the communities.
b. initial internal discussions on whether to consent to engage in consultations.
c. development of a consultation plan based on the nature and scale of the proposed activity.
d. information-gathering meetings (premised on the conduct of approved participatory impact assessments addressing their collective rights and respect for traditional knowledge).
e. internal discussions at community and peoples' or pan-peoples' levels.
f. follow-up information-gathering meetings and negotiations.
g. internal decision-making meetings.
h. negotiation of agreements in cases where FPIC is granted, stipulating the requirement for on-going FPIC and monitoring.

Some protocols also identify activities which the concerned peoples deem incompatible with their cultural integrity or physical survival, for which FPIC will not be issued. Some protocols establish specific rituals to be conducted at various stages of these processes.

Example of protocols:

The protocol of the peoples of the Xingu Territory, Brazil
The protocol of the Juruna people, Brazil
The FPIC law of the Resguardo Cañamomo Lomapreita, Colombia

The following are two databases of protocols:

Indigenous Peoples' FPIC Protocols
Observatório de Protocolos Comunitários

Six high-level considerations

The form and duration of the FPIC process will depend on the nature of the proposed project or activity, the extent of its potential impacts, and the local circumstances. FPIC is not a once-off decision; there are multiple points in an FPIC process where consent is required to proceed to the next step. The following five high-level considerations should be considered:

1. ***Understand the impacted Indigenous peoples' or local communities' representative institutions and decision-making structures with whom to request consultations.***

A precursor to consultations is to identify the potentially affected peoples and their representative institutions. Where there is no previous relationship with the communities, identifying their representative structures may require initial broad-based engagement with different actors at an appropriate scale. For example, this may mean engaging with one

or more national or regional organisations of Indigenous peoples or other groups in the first instance, but FPIC rights are vested in the concerned peoples and local communities, and not in national or regional level organisations. Trusted civil society organisations and academics working with the peoples concerned can often offer advice.

2. ***Clarify applicable law for FPIC processes***

If the applicable law analysis (see section 3.2) identifies gaps between national law and international law, conservationists should commit to respecting the higher standard, as well as ensuring that FPIC processes are consistent with the concerned communities' customary laws. Any conflicting claims over lands and resources that may need to be resolved prior to the start of consultation processes should also be identified.

3. ***To engage in FPIC processes, conservationists will need to understand:***

- the rights basis of FPIC and that it is required for all land held under customary tenure, irrespective of whether it is titled or untitled.
- the existence of autonomous FPIC protocols or life plans, or community plans to develop these, and whether independent technical assistance is being sought for this purpose.
- the role of government, non-governmental and other actors that communities deem appropriate to participate in the consultation processes.
- any consultation prerequisites, and the role of the conservationists in realising them.
- other relevant local contextual factors, including any existing or recent armed conflict in the area, or armed groups that may impinge upon "free" consent, or conflicts and tensions related to previous conservation interventions.

4. ***Obtain FPIC to initiate consultations, and reach agreement on the form of subsequent consultations***

Following the initial approach and provision of information on the proposed activity, communities must be given the time and space they require to discuss internally if they wish to enter into consultations and if so, under what conditions. If consent to enter into consultations is not forthcoming, the process should be halted, and the initiative abandoned. If consent is forthcoming, discussions on how the consultation process should be structured can be initiated. This step is referred to by the UN Special Rapporteur on the rights of Indigenous peoples as "consultations on consultations" and should ensure respect for any autonomous FPIC protocols that exist. At any stage during these discussions, communities may decide to withdraw, thereby withholding their FPIC.

Discussions on how to hold a consultation process may span a broad range of topics, such as the following:

- **Representation**: confirmation of community representatives or decision-making structures to engage with, and the corresponding conservation contact points or representatives, and their decision-making power.
- **Timeframes and resources**: the need for flexibility to cater to customary decision-making processes that may be iterative and time consuming. Decision-making on small-scale, low-impact projects (such as a request to carry out ecological research) will be less time- and resource-intensive than for large-scale or potentially high-impact projects.
- **Scale**: For a project covering an extensive geographical area, the involvement of multiple communities or multiple peoples, and if or how the concerned peoples and communities will coordinate their engagement and decision-making processes.
- **Inclusive processes:** Culturally appropriate modalities to facilitate the participation of all sections of communities.

- **Appropriate information-sharing:** including the type and comprehensiveness of information to be provided and accessible formats, languages and timeframes in which it is to be shared.
- **Inter-community exchange:** any requirements communities may potentially have for exchanges with other communities who have had similar experiences.
- **Customary laws and practices:** customary laws and rules on where, how and when consultations to obtain FPIC are to be held, or when consultations are deemed void; also community conceptions of lands, territories and resources and intercultural dialogue.
- **Technical support:** gaps in communities' legal or technical knowledge, and provision of independent support.
- **Benefit agreements:** Negotiations of benefits, roles and responsibilities.
- **Documentation:** documenting FPIC and considerations around transparency, confidentiality, intellectual property rights, and maintaining on-going FPIC.

5. ***Respect community internal decisions, document FPIC processes and outcomes and enter into agreements***

Once the communities have reviewed all the information and had adequate opportunities to seek clarifications on the activity and its potential impacts (including cumulative impacts arising in conjunction with other existing or foreseeable activities) and risks, as well as any proposed mitigation measures and expected benefits associated with the activity (see also section 3.2 on the conduct of HRIAs), they can decide to give or withhold consent. Consent may be given straight away to proceed with the project, if they regard it as unproblematic or beneficial, or they may propose to continue further consultations and negotiations. If consent is withheld at any point in the process and an agreement cannot be reached, consultations should stop, and the activity cannot proceed.

FPIC negotiations may be iterative in nature. In some cases, as part of their deliberations, communities may decide to seek changes to the proposed conservation activity to eliminate, minimise or mitigate risks to their rights, to ensure compensation for any harms caused, or to maximise their participation in and control over the activity and any potential benefits arising from it. These changes and conditions may then in turn be accepted or revised by the external actors.

Conservationists should continue good faith negotiations aimed at reaching a consensual legal agreement addressing all the aspects raised in the discussion. As part of the agreement, communities may also wish to formalise the role of their legal systems and mechanisms in resolving disputes. The agreement should also include details of the available escalation avenues, such as mediation, arbitration and adjudication, and establish rules on information transparency, confidentiality and ownership. It should also document the consultation process and outcome in a form that is acceptable to the concerned peoples or communities, and useful both for their internal records (for example in the communities' own language) and for external demonstration and independent verification of compliance with good faith FPIC processes and the collective rights they safeguard. This could include minutes of meetings, video, audio recording, photos, posters, FPIC methodologies and protocols, community statutes and laws, official communications and information on land titles and claims.

6. ***Monitor and maintain FPIC over the course of the conservation activity***

On-going FPIC provides a framework within which changes can be made, periodic reviews of the agreement conducted, and community consent maintained throughout the life of a conservation activity and obtained as necessary for any future changes. This is inherent to the on-going nature of human rights due diligence responsibilities under international human rights law standards (see section 3.1).

Box 26: Case Study of an Indigenous decision-making protocol for large-scale consultations: The CONFENIAE Participatory Decision-Making Protocol for its REDD+ Implementation Plan

Between 2020 and 2022 CONFENIAE, the Ecuadorian Amazonian Indigenous Peoples organisation, developed an implementation plan for REDD+ through a participatory process with Indigenous peoples with assistance from WWF as part of a UNDP coordinated programme. To select the projects to implement, CONFENIAE developed a "Protocol for decision-making about projects". The Protocol is a scaled down version of Ecuador's National REDD+ Consultation and FPIC Guide, which had previously been developed with input from CONFENIAE.

As it does not cater to externally proposed activities, CONFENIAE and its members do not call it an FPIC protocol. However, the Protocol nevertheless embodies the principles of FPIC in a process consisting of the following steps:

i. **Preparation:** In conjunction with CONFENIAE, its member organisations:

- Develop a high-level flexible consultation plan for all REDD+ actions, addressing who to involve, where, how and with what resources.
- Document the peoples' governance structures, decision-making processes, statutes, models for women and youth participation, and land tenure arrangements.
- Prepare an agenda in conjunction with the governance structures, and call communities to participate using a range of media (written material, community radio, community assemblies), providing background information on the REDD+ plan.

ii. **Participatory event(s):** The peoples' representatives present the objective to a community assembly, and CONFENIAE and supporting organisations present information on possible risks and mitigation measures. Agreement is reached with the communities on how consent, if forthcoming, will be given (written or verbal) and documented, in the knowledge that they can reject, approve or suggest changes to the project. Comprehensive information is provided on the project and its potential impacts, and a dialogue is held with the communities to ensure all their queries are addressed .

iii. **Decision-making:** The community follows its internal processes and norms to hold deliberations and decide on the proposal. During this process it can request information from the CONFENIAE technical team, who otherwise do not participate. There are three possible outcomes:

- If the community rejects the proposal, the process is concluded. The community can subsequently change its mind, in which case a new participatory process is initiated.
- If the community wishes to proceed, its consent is documented and CONFENIAE will implement the actions in accordance with the recorded agreement.
- If the community has concerns or suggestions for change, a new assembly may be held, the proposal modified, and consent sought again.

The community's organisational structure and statutes, topics discussed, changes made, decision-making outcomes and any agreements reached are documented, and this information is made publicly available.

iv. **Follow-up:** A commission is appointed by the community to monitor and follow up the agreements and to resolve problems, together with CONFENIAE and the organisation that represents the community and receives the funds. The community can revoke its consent at any time by adopting a decision through its own processes. Once the project is completed, an evaluation is coordinated by CONFENIAE, the organisation of which the community is a member, and the community organisation itself, assessing outcomes achieved, compliance with agreements, lessons learned, and participation of women and youth.

Key sources of further information:

Doyle, C et al. 2019. 'Free Prior Informed Consent Protocols as Instruments of Autonomy: Laying Foundations for Rights-based Engagement'

Forest Peoples Programme. 2008. "Key Elements to the Initiation, Performance and Maintenance of Good Faith Consultations and Negotiations with Indigenous and Tribal Peoples and Communities".

Buppert, T and A. McKeehan. 2013. Guidelines for Applying Free, Prior and Informed Consent: A Manual for Conservation International. (CI).

Mckeehan, A. and Buppert, T. 2014. "Free, prior and informed consent: empowering communities for people-focused conservation." Harvard International Review, 35(3) 2014, 44

Anderson, P. "Free, Prior, and Informed Consent in REDD+ Principles and Approaches for Policy and Project Development" (RECOFTC, GIZ 2011)

3.4 Grievance mechanisms

Cath Long

Grievance mechanisms are mechanisms by which individuals, local communities, Indigenous peoples and their supporters might raise a concern about the impact of an initiative on them, get a response, and where it is upheld, have it acted upon. Grievance mechanisms clarify how people can raise a concern without endangering themselves, provide accessible mechanisms for doing so, and provide clarity on what response people should expect. Responses should include acknowledgement that a grievance has been raised, giving clarity about timescales and possible procedures, including investigation of the grievance, communication of the findings, and proposed next steps. These might include, among others (and depending on the nature and seriousness of the grievance): direct negotiation, facilitation, conciliation, mediation, further investigation, adjudication, arbitration, remedy, and redress. However, one common weakness of grievance mechanisms is a failure to actually provide remedy when grievances are upheld. For example, in Lobéké National Park, Cameroon, a system was implemented that kept track of complaints and responses, but had no means to initiate or enforce any process for remedy and redress (Nsioh et al 2022). Therefore, it was really a tracking and monitoring system, not a grievance mechanism.

Why are grievance mechanisms important?

Grievance mechanisms need to be in place to ensure that people can raise concerns about the human rights impacts of an organisation's activities and obtain a formal response from the organisation concerned. These mechanisms set out the ways in which people can raise concerns and the means by which those concerns will be addressed. Ideally, a grievance mechanism will be developed *with* the local communities and Indigenous peoples concerned, so that it is socially and culturally appropriate to the context, and so that people have a good understanding of how it will work, and how they can access it. A grievance system also has to be adequately resourced, with appropriate training and budgets allocated, so that the organisation has staff who can respond to any grievance submitted in a timely manner and take appropriate action.

It is important to note that using a grievance mechanism does not exclude people from using any other routes to highlight an issue and obtain redress, up to and including legal action. It is also important to note that many peoples and communities will have their own processes for dealing with grievances within the community. These need to be understood to make sure that the grievance mechanism is complementary to existing processes and does not impose a structure that causes confusion or division.

What should grievance mechanisms include?

A grievance mechanism should include:

1. Accessible routes to submit a grievance.
2. A clearly defined process for dealing with any grievance submitted, including logging it, investigating, and responding to the complainants, with clear timescales for each step.
3. A defined process for agreeing remedy if a grievance is upheld, and information about how to challenge a decision if it is not.
4. Implementation of the agreed remedy.
5. Monitoring and review.
6. Communication and information provision.

Each of these is described in the following text.

1. **Accessible routes to submit a grievance.** These have to be safe and as easy to use as possible. For example, they need to use appropriate languages and communications media, and clear advice must be provided (and made accessible) on what information is needed. For an example from WCS, see Box 27. Provisions may also need to be made to ensure geographical accessibility for remote communities.

   Barriers to accessibility are not always obvious, but developing the grievance mechanism *with* the communities concerned can help to identify barriers that may otherwise be invisible. For example, people might not feel they can take their grievance to the local team, either because of lack of trust or because of other local political issues. Therefore, there should always be a way for them to submit the grievance to non-local staff of the organisation or an independent body. They should also be able to submit a grievance anonymously, or if it is agreed that names should be provided to aid with subsequent investigations, have a guarantee of confidentiality. This means that the organisation has to have a secure system for recording grievances, and to ensure that any individuals named in the grievance do not learn the names of the person/people making the grievance.

Box 27: WCS's guidelines on what information a grievance should include

"A grievance should contain sufficient detail about the alleged conduct or activity to permit an investigation to be conducted and an appropriate response implemented. Grievances should include, at a minimum, the following information:

i. Name(s), affiliation(s), address(es) and other contact information of the complainant(s) and/or their representative(s).

ii. A description of the specific facts, circumstances and events giving rise to the grievance: location, date, time, names and descriptions of individuals involved, statements made including exact quotes where possible, actions observed or witnessed, and names or descriptions of any witnesses. The more specific and detailed information provided in support of the grievance, the more thoroughly and effectively the grievance can be investigated and addressed.

iii. An explanation of the harm suffered and how the rights of an individual or community were violated. The complainant may refer to codes of conduct, standards, policies or other frameworks (e.g., FPIC) pertinent to the case and, where applicable, should describe any efforts to resolve the grievance through other available redress mechanisms.

iv. A description of the relief requested, where relevant or appropriate. Representatives must identify the person(s) on whose behalf the grievance is made and provide evidence of the authority to represent such person(s); or complainants may remain anonymous. Note, however, that anonymous grievances may limit WCS's ability to properly investigate and respond to the grievance. Confidentiality will be maintained to the extent possible."

2. **A clearly defined process for dealing with a grievance.** This should include the following steps:

   i. ***Acknowledgement of receipt.*** This should be immediate – a receipt should be provided in some form as soon as the grievance is submitted. The receipt should also let the complainant know who they can communicate with about their grievance, how to get in touch with them, and when they should expect a response.

   ii. ***Recording the grievance.*** Organisations should log all grievances submitted and keep track of their progress and outcome.

   iii. ***Investigation***, which should be done as soon, as quickly and as thoroughly as possible. Depending on the nature of the grievance, this might be done internally, jointly with rights-holders or others, or purely externally by a third party. Alternatively, the grievance may be accepted with no further investigation.

   iv. ***Sharing the outcome*** of the investigation with the complainants, informing them of what they can do if they are not satisfied with the outcome, and telling them what the next steps are (and on what timescale) if the grievance is upheld or partially upheld.

   v. ***Taking action in response if the grievance is partially or wholly justified***. This should include both appropriate remedy and restitution (see section 3.5) and action to ensure that such an abuse of rights does not happen again.

Box 28: The need for clear, realistic timescales: The IUCN Green Listing of the Cordillera Azul National Park in Peru

Grievance mechanisms should include clear and realistic targets on the timing at each stage of the process (from acknowledgment of receipt, to investigation, to decision to provision of remedy), and there should be operational procedures to ensure these targets are met. However, this is often not the case. For example, the IUCN Green List global standard sets out a response time of 30 days (IUCN and WCPA 2017: 52) but when the Kichwa people submitted a trigger alert about the listing of the Cordillera Azul National Park in Peru on the Green List, IUCN took more than 10 months to send a brief acknowledgement. Delays such as these in the process - including in the actual provision of remedy - mean that problems persist and becomes more entrenched. They can also seriously damage relationships.

3. **Monitoring and review.** Once a remedy has been agreed, its implementation should be monitored, and the form this takes (and the timescale) should be agreed between the parties concerned. This is not only to check that those who have promised to take action or make changes do so, but also to monitor whether the effect of any changes or actions are what was hoped for. It is important that everyone involved is aware of what is being monitored and how the results are recorded, shared and analysed by everyone affected. Communities may also develop their own monitoring systems.

4. **Clear communication:** Whatever form the mechanism takes, information about it and how it works must continue to be shared as widely and as accessibly as possible. There should be a repository of grievances, findings and responses, and this should be available to anyone who wishes to consult it. An example of such a repository produced by a carbon market organisation can be seen here.

Box 29: Factors increasing the likelihood of success in mediation processes

Analysis of mediation processes between private companies and communities in conflict over land in Indonesia suggest that the following factors increase the likelihood that mediation processes will be successful:

- The presence of a skilled mediator who is able to advise on possible solutions when negotiations become deadlocked, and who is already known to at least one of the partners.
- Each party selects their own representatives, who are then treated equally during the mediation.
- The presence of NGOs and government representatives as observers. This improves perceived fairness and accountability.
- Support for rural communities, including for the cost of negotiations and for effective campaigning.
- Agreeing codes of conduct in advance that set out the mediation objectives, the agenda, the identity and roles of participants, and rules on the moderation process.

Source: Dhiaulhaq et al (2018)

Key resources:

Storey, H (2020). Non-judicial grievance mechanisms as a route to remedy: an unfulfilled opportunity. Forest Peoples Programme.

Hossain, N., Joshi, A., & Pande, S. (2023). The politics of complaint: a review of the literature on grievance redress mechanisms in the global South. *Policy Studies, 45*(2), 139–158. https://doi.org/10.1080/01442872.2023.2193387

Some examples of grievance mechanisms of conservation organisations

Accountability and Grievance mechanism (Conservation International)

WCS Grievance Redress Mechanism.

Standard on Grievance Mechanism, 2021 (in draft, WWF).

Accountability and Grievance Redress Mechanism (WWF, for projects that are funded by GCF).

Conflict Resolution - TNC Human Rights Guide (this includes guidance on dialogue, mediation and grievance procedures).

3.5 Remedy and Restitution

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When a grievance is upheld, the complainants are entitled to remedy and redress. These two terms are used in similar ways in different systems and both mean responses that, as far as possible, wipe out and/or compensate for all the consequences of the violation of a right, and re-establish the situation which would have existed if the violation had not been committed. Remedy may include elements of both restitution and compensation, as well as actions linked to rehabilitation, satisfaction, and guarantees of non-repetition.

Developing the details of the remedy will involve a process of discussion and agreement with the complainants and any other actors who have been affected. Ideally this process will have been agreed while developing the grievance mechanism. It may involve mediation and conciliation, possibly using a mutually agreed mediator who is regarded by both parties as neutral. There may well be existing, customary conflict resolution systems already in use by communities that could be appropriate for negotiating an agreed remedy.

It is likely that the process of reaching an agreement on appropriate remedy will take time and several rounds of discussion and mediation. It should start as soon as possible after the grievance has been upheld, and a schedule should be agreed that allows sufficient time for everyone concerned to reach a conclusion that they are satisfied with. Remedy may include some or all of the following:

Restitution: Restitution involves returning the complainants to the situation they were in before the issues identified in the grievance arose. Full land restitution consists of transferring ownership rights back to customary landowners (see section 2.3.1: rights to lands, territories and natural resources) but the practicalities will depend on local circumstances and the legal framework in place (Alden Wily 2023). A negotiated solution may involve restoring access and full or partial management responsibilities rather than ownership. For example:

- In the case of the Confederated Salish and Kootenai Tribes' National Bison Range, control and management responsibilities were transferred wholesale directly to the Tribes from the US Fish and Wildlife Service. The disputed land is still officially US Federal land, but it is now permanently held in trust for the Tribes.
- The Mau Ogiek of Kenya, who have a legal ruling in favour of land restitution, developed a detailed series of proposals as to how it should take place (Claridge and Kobei 2023), although, despite this, they are still unable to return to their lands.

Another option to remedy land dispossession involves negotiated co-management arrangements. This may be a stepping stone to full control by Indigenous peoples or local communities, or to some other mutually agreed arrangement. It requires all parties to come to terms with their changed role. For example, organisations that have been involved in directly managing protected areas and will no longer be doing so may have to undergo significant organisational and cultural change, which can be complex and demanding.

Tackling vulnerability and marginalisation: These often contribute to the deprivation of rights in the first place. Tackling them may involve support, including training and information-sharing, for Indigenous peoples and other groups to develop their confidence and autonomy through their own organisations. It may also involve tackling marginalisation and discrimination in conservation organisations and other institutions, including by ensuring that any further incidents of discrimination or marginalisation are dealt with appropriately, sending a clear zero-tolerance message to all concerned. Additionally, Indigenous peoples and local community members may be recruited to the organisation's staff and enabled to take up decision-making positions.

Compensation: Payments may be made in compensation for harm suffered and damage done, both material and non-material. To date, the few decisions on compensation that directly involve damage from conservation have been imposed following legal action by local communities or Indigenous peoples (Dominguez and Luoma 2020), but there is no reason why any organisation shouldn't enter into a process of negotiation to agree payments that are fair and proportionate, and that include consideration of cultural and spiritual damage as well as material damage.

There are real challenges in negotiating collective compensation because in formal legal processes, damages are often awarded on an individual basis. However, for many Indigenous peoples and local communities, the collective nature of the community or people as a whole is critically important: damage is done to the whole community as well as to particular individuals. This needs to be carefully negotiated so that both individual and collective claims to compensation are taken into account.

Rehabilitation: Rehabilitation measures support people to recover from the impact of the damage done. As an example, women who have experienced gender-based violence in the context of conservation should be offered appropriate medical and psychological support as a minimum.

Satisfaction: In addition to stopping violations from continuing and taking action against individuals or institutions that committed violations in the past, acknowledgement of harm done, and apologies for these harms are of critical importance. For example, in a case in Brazil where, 40 years after the original case was brought, reparations were eventually awarded to Indigenous Ashaninka communities in Acre, the inclusion of an apology from the logging companies concerned in the agreement was considered to be the key element in the communities' decision to accept it (Hofmeister 2020).

Guarantees of non-repetition: A robust examination of the causes of rights violations and the possible solutions to prevent them occurring again is essential. This process must include consultation and negotiation with communities. All possible options should be considered, particularly those proposed by communities themselves. Structural changes may be required, up to and including making changes in the law.

One of the mechanisms that helps to ensure non-repetition is ongoing monitoring. Frequently, communities develop their own human rights monitoring systems, and the remedy process might include financial or technical support for these, as well as agreement by all actors to be open to being monitored. There may also be agreement to independent monitors or regular independent review. Incorporating learning from community monitoring and other feedback into changes in practice is a critical element in ensuring non-repetition.

Key resources:

Alden Wily, Liz. 2023. Critical Next Step in the Decolonisation of Land Relations: Restitution of Protected Areas to Indigenous Communities. Transforming Conservation 3. FPP, Moreton-in-Marsh, U.K.Bangiev, A. and Claridge, L. 2021. The right to remedy for indigenous peoples in principle and in practice. Forest Peoples Programme.

The Forest Stewardship Council's Remedy Framework is probably the most progressive guidance available on integrated social and environmental remediation for certification schemes.

3.6 The Whakatane Mechanism: a tool to address historic and current injustices

(Helen Newing and Justin Kenrick)

The Whakatane Mechanism is a conflict resolution methodology developed by the IUCN and others to address historic and current injustices related to conflicts between Indigenous peoples and protected areas, based on respect for Indigenous' peoples' rights. It also celebrates and supports successful partnerships between peoples and protected areas. The Mechanism works through local and high-level multi-stakeholder dialogue, informed by a joint field evaluation to collect evidence on the situation. It enables park authorities, government, and the peoples affected to develop a common strategy to address conflicts in the protected area concerned and enable wider good practice. The Mechanism was adopted in the 2012 IUCN World Conservation Congress following pilot assessments in Kenya and Thailand (Freudenthal et al., 2012), and a third pilot was carried out in the Democratic Republic of Congo in 2014. The three pilot cases are described below.

The Mechanism is designed to be activated when Indigenous peoples and/or local communities at a particular site request an Assessment. Conservationists can play a useful role in making communities aware of the Mechanism, encouraging them to request an assessment where there is a conflict, and helping to source funds and initiate the process. They may also be involved in specific assessments.

Following the pilots, the Mechanism fell into disuse, but in 2023, dialogue recommenced between IUCN, FPP and others on re-activating the Mechanism. Meanwhile the collaborative methodology developed for assessing conflict situations is of wider value for all types and scales of conservation intervention as a valuable tool in the implementation of rights-based approaches.

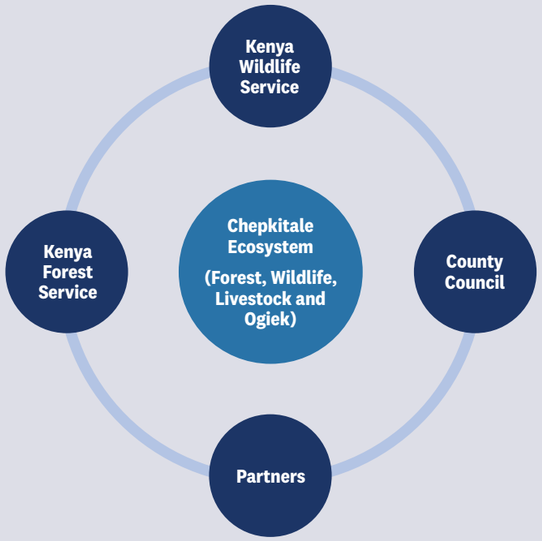
Methodology

Requests for an Assessment are considered by a Steering Committee consisting of indigenous peoples' organisations, the IUCN Commissions, Secretariat and Members. Once the decision is made to go ahead, a task force is established, including representatives of all the parties concerned, including the Indigenous peoples and / or local communities, the protected area authority, and others such as supporting NGOs and other government departments. The task force undertakes the following steps:

- **Initial consultations and dialogue** with community leaders and (often separately) with other relevant actors to present the situation and confirm their engagement in the process.
- **1st Roundtable** bringing all relevant stakeholders together to discuss and agree on the process.
- **Joint Field Evaluation** to collect evidence through consultations and direct observations, validate the findings with the Indigenous peoples and local communities, and generate recommendations.
- **2nd Roundtable, at the local or national level**, to discuss the findings and recommendations and agree possible next steps.
- **Implementation, joint follow-up and monitoring.**

Box 30: The Mount Elgon Assessment, Kenya

The aim: The Ogiek people of Mount Elgon had been evicted from a large part of their ancestral lands, Chepkitale, including for the creation of a National Park, two forest reserves and a National Reserve. In 2011 they requested a Whakatane pilot assessment to help them respond to these evictions.



The different actors at Mount Elgon who needed to be reconciled. Source: https://whakatane-mechanism.org/kenya

The process: Following the initial request from the Ogiek leaders, meetings were held in each community to fully explain the risks and potential benefits of the assessment. The communities agreed unanimously to go ahead. FPP and the regional IUCN office (IUCN ESARO) then entered into dialogue with the Kenya Wildlife Service (KWS), the Kenya Forest Service (KFS) and the World Bank, which was funding a natural resource management project on Mount Elgon. A first Round Table was held at the IUCN regional office in November 2011 with a much wider group of stakeholders and formulated the following question:

> *In relation to Chepkitale: how best can the forest and wider ecosystem be preserved, the wildlife be protected, the Ogiek live in a way that ensures their cultural, social and livelihood needs are met, and eco-tourism revenue be generated? (Kenrick et al., 2023).*

The Assessment was then carried out by a team including representatives of the Ogiek, the Mount Elgon County Council, IUCN, FPP, the Indigenous Peoples of Africa Coordinating Committee (IPACC), KFS and KWS. The team sought to assess whether the presence of the Ogiek on their ancestral lands at Chepkitale, Mt Elgon, Kenya, sustained or threatened the conservation of their lands. The results were presented at a second Round Table attended by the same stakeholders, plus the Office of the President and the Ministry of Forest and Wildlife.

The results: The assessment provided concrete evidence of the ways in which the Ogiek were contributing to protection of their forests, moorlands and fauna. One recommendation of the team was for follow-up surveys of biodiversity to gain a deeper understanding of long-term sustainability, and this is now under way.

The follow-up: Following the assessment, the Ogiek passed a Declaration setting out their bylaws for sustainability, including bans on charcoal burning, poaching, and commercial farming, and formally establishing a system of community scouts to enforce the bylaws in collaboration with KWS and KFS. More broadly, the Assessment contributed significantly to improved relations and increasing collaboration over a period of several years. An immediate key success, from 2012, was much-improved dialogue between the Ogiek and the County Council, which had previously asked for the Ogiek to be evicted. In 2013 Mount Elgon County Council unanimously passed a resolution requesting that Chepkitale National Reserve revert back to the Ogiek community and this laid the groundwork for increasingly good relations with KWS (from 2013) and eventually, KFS (from about 2022), although further improvements are still needed. These changes helped create the conditions for a High Court ruling in September 2022 that the Ogiek's community land had wrongfully been turned into the Chepkitale National Reserve, and create the conditions for strong community governance in support of their sustainability practices. Today, Chepkitale provides an inspiring example of effective community-tenure-based conservation.

Box 31: The Ob Luang Whakatane Assessment, Thailand

The aim: At the time of this assessment, there were legal barriers to people living inside National Parks in Thailand, but Ob Luang National Park was unusual in having active joint management processes that enabled Indigenous peoples to remain inside the park. The assessment aimed to collect evidence on the outcomes of these joint management processes to inform discussions about reforms to national laws and policies, with the ultimate aim of replicating joint management in other protected areas.

The process: The Ob Luang Whakatane Assessment was carried jointly by Indigenous peoples, IUCN, Forest Peoples Programme, the national protected areas authority, and several other local and national NGOs. They visited communities and local government staff to collect information on their perspectives, experiences and recommendations related to joint management.

The results: Joint management proved to be universally supported due to its visibly positive effects, both for communities and for conservation. These included reduced tensions between the government and communities, increased forest and watershed protection, and improved local livelihood security.

The follow-up: Following the assessment, a national forum was held to review the findings and identify a path forward. The main recommendations generated were to continue joint management practices at Ob Luang, develop a special law or policy to enable joint management of protected areas throughout Thailand, and advocate for greater decentralisation of natural resource management to local authorities. However, reform of the existing laws was deemed too problematic to attempt, and this has remained a barrier to follow-up.

Box 32: The Kahuzi Biega Whakatane Assessment, Democratic Republic of Congo

The aim: Indigenous Batwa/Bambuti clans had been forcibly evicted from their traditional territory in 1973 to make way for the Kahuzi Biega National Park. The aim of the assessment was to chart a way to address this injustice. Kahuzi Biega is one of the most prominent ancestral territories of the Batwa/Bambuti, and also contains significant populations of the lowland gorilla and other large primates.

The process: The Batwa/Bambuti Indigenous peoples requested the assessment to help them open a dialogue with the national government, the Congolese Institute for Nature Conservation (ICCN) and IUCN towards recognition of their rights to their ancestral lands, and to improve management of this critical primate habitat, based upon the combined knowledge, expertise and participation of all those concerned. The first step consisted of a 21-day participatory mapping process with some 64 Batwa representatives from all the main clan groups and communities around Kahuzi to produce a 3-dimensional map of their forests. This was presented to the National Park authorities, local authorities, IUCN and ICCN at a first roundtable, where the Batwa also outlined their extensive knowledge of the forest, their cultural and social dependence on it, and their concerns, ideas and hopes for the future. There was then a three-day joint field assessment involving the different actors to gather information on the perspectives of the Bambuti/Batwa communities, followed by a second roundtable with a wider group of actors, including the Provincial Parliament's President, Environment Deputy and Ministers.

The results: The immediate results included the 3-dimensional map and documentation of Batwa / Bambuti traditional knowledge and cultural and social dependence on their forests. The Whakatane process also succeeded in opening dialogue between the Indigenous Batwa and the park managers and the joint development of a proposed road map that included both short-term measures to address immediate needs (for land, education, health, jobs and access to forest resources), and longer-term measures, including capacity-building among the Batwa to collectively organise and manage their forests sustainably, initially in pilot areas on the edge of the PKNB to be identified jointly. The road map also included work towards changes in local and national law and policy, to enable the development of rights-based conservation approaches. The Whakatane process succeeded in opening dialogue between the Indigenous Batwa and the park managers.

Follow-up after the assessment: No agreement was reached over whether the Batwa would ever regain formal recognition of their rights inside the Park, and following the assessment, the ICCN park manager - a positive participant in the process - was replaced by a manager with a military background. This, and the lack of support by ICCN more generally, meant genuine dialogue fell away. Nonetheless in subsequent years, although the conflicts have continued and intensified, one result of the process has been that the Batwa have begun building strong capacity and – despite a lack of meaningful ongoing dialogue - many have returned to live in the Park.

In 2024, the African Commission on Human and Peoples' Rights found that the continued eviction of the Batwa amounted to (multiple) violations of the African Charter on Human Rights and, accepting that restitution was appropriate, ordered the DRC to take legislative, administrative and other measures to delimit, demarcate and title the territory of the Batwa within the National Park. This decision could help create the conditions for genuine dialogue and long-lasting solutions that build on the joint findings of the Whakatane assessment and the strengthened capacity of the Batwa.

Lessons learned

The impacts of the pilot projects continue. The pilot in Kenya has created the basis for much of the current excellent collaboration between the Mount Elgon Ogiek and Kenya Wildlife Service, as well as between the Ogiek and Bungoma County Council, and recently there have also been improvements in relations with the Kenya Forest Service. Meanwhile, the proposed way forward developed by the pilot in DRC has been mirrored in the recent ruling of the African Commission on Human and Peoples' Rights that the eviction of the Batwa of Kahuzi-Biega amounted to multiple violations of the African Charter on Human Rights, that restitution is appropriate, and that the DRC must take legislative, administrative and other measures to delimit, demarcate and title the territory of the Batwa within the National Park. This decision could help create the conditions for genuine dialogue and long-lasting solutions, building on the joint findings of the Whakatane assessment and the strengthened capacity of the Batwa. The Ob Luang assessment demonstrated the effectiveness of joint management approaches. Thus, the pilots demonstrate that the Whakatane Mechanism can be an effective tool for joint evidence-gathering, enhanced communications and exchange, and co-developing an agreed way forward. However, the medium to long-term outcomes, in the words of the original IUCN conference that designed the mechanism, depend on whether more powerful actors "are willing to engage in sharing power". This builds on one of the African Commission on Human and Peoples' Rights key insights that "conflicts do not arise because people demand their rights but because their rights are violated" (2006: 12).

The Mechanism has not been used elsewhere beyond the three pilots, and the hoped-for wider shift to a rights-based approach to conservation has failed to materialise on the ground. Indigenous peoples who have been involved in the pilots have been surprised at how hard it still seems to be for many government and non-governmental conservation organisations to accept that basing conservation on the tenure rights of ancestral communities is both fundamental to a human rights-based approach and fundamental to ensuring the collaboration and trust-building required for conservation to be effective. However, in 2023 dialogue recommenced between IUCN, Forest Peoples Programme and others on re-activating the mechanism as part of the shift to rights-based implementation of conservation that is called for in the Kunming-Montreal Global Biodiversity Framework. Meanwhile, the collaborative methodology developed for assessing conflict situations is of wider value for all types and scales of conservation intervention as a valuable tool in the implementation of rights-based approaches.

Key sources of further information:

The Whakatane Mechanism

IUCN Resolution 4.052 (2008) that led to the establishment of the Whakatane Mechanism:

Kenrick, J., Rowley, T. & Kitelo, P. (2023) 'We are our land'- Ogiek of Mount Elgon, Kenya: securing community tenure as the key enabling condition for sustaining community lands. Oryx, 57, 298–312

Freudenthal, Emmanuel, et al (2012) "The Whakatane Mechanism: Promoting Justice in Protected Areas." Nomadic Peoples, vol. 16, no. 2, 2012, pp. 84–94.

3.7 Participatory mapping

Tom Rowley

In participatory mapping, community groups are supported to map the lands they use, occupy, steward, or have other connections or claims to. Appropriate external technical expertise is often essential in support, at least initially, but control should rest firmly with the community, and community members should be trained in technical aspects of mapping as fully as they require, over an adequate period of time. Maps based on community knowledge, land use, values, and histories are designed to describe, inform and support fulfilment of specific community-defined objectives. These could be to document the extent, usage and status of customary lands, to locate and measure key features, resources or issues to inform internal decision-making, and/or to provide information to external actors and processes, such as for legal cases and land titling. Community maps can include features of high biodiversity value such as species, habitats and ecosystems as well as features of cultural, social and bio-cultural value. The maps can be used by communities in the development of participatory land-use plans and/or to inform community-led habitat restoration, biodiversity management and monitoring, and customary sustainable use. They can also be used to design rapid alert systems or to describe and evidence encroachment, degradation or other alienation of customary lands by outsiders, which are often accompanied by human rights violations communities may wish to document.

Participatory mapping ranges from producing simple freehand sketch maps, including by making marks on the ground and using locally available representative objects, to digitised, geo-referenced maps using GPS technology and appropriate mapping software. Commonly, initial maps are sketched in community workshops using pre-prepared base data for context and reference, and these are then worked into more detailed, geo-referenced maps through iterative cycles of gathering and reflecting on data. In this way, there are successive cycles of learning involving workshops, field data-gathering, and tracing data directly from aerial imagery, with cross checking, validation and refinement of community data holdings and their presentation (see figure 15). As mapping is such an iterative process, it also lends itself to monitoring activities as information-gathering becomes more systematised.

Participatory mapping can be conducted with different stakeholder groups in ways that can enable disaggregation and/or integration of data, to objectively compare or contrast different perspectives within neutral and independently verifiable overviews. For instance, neighbouring communities can compare map data in order to agree shared boundaries or reciprocal usage agreements. This could equally apply to negotiations with government agencies over conservation gazettements or better integrated spatial planning, and also within the local communities, disaggregating perspectives on land use and livelihoods by gender or age set, for example.

The best participatory mapping processes emerge organically from community-defined priorities and processes to serve self-identified needs. Often, these are connected to struggles to gain official recognition to defend or advance communities' rights. They may involve mapping the boundaries of customary lands, describing the spatial elements of customary use and practices, evidencing historical or ongoing injustices, land violations and degradation effects, or mapping natural features of particular value, including high biodiversity values. However, community motivation, mobilisation and free prior informed consent (FPIC) are essential for community mapping efforts to be appropriate, effective, and sustainable.

Guidance on the different activities in participatory mapping

There is no fixed recipe for community driven mapping processes, but the following activities are usually included and can be iterated as needed (see Figure 15):

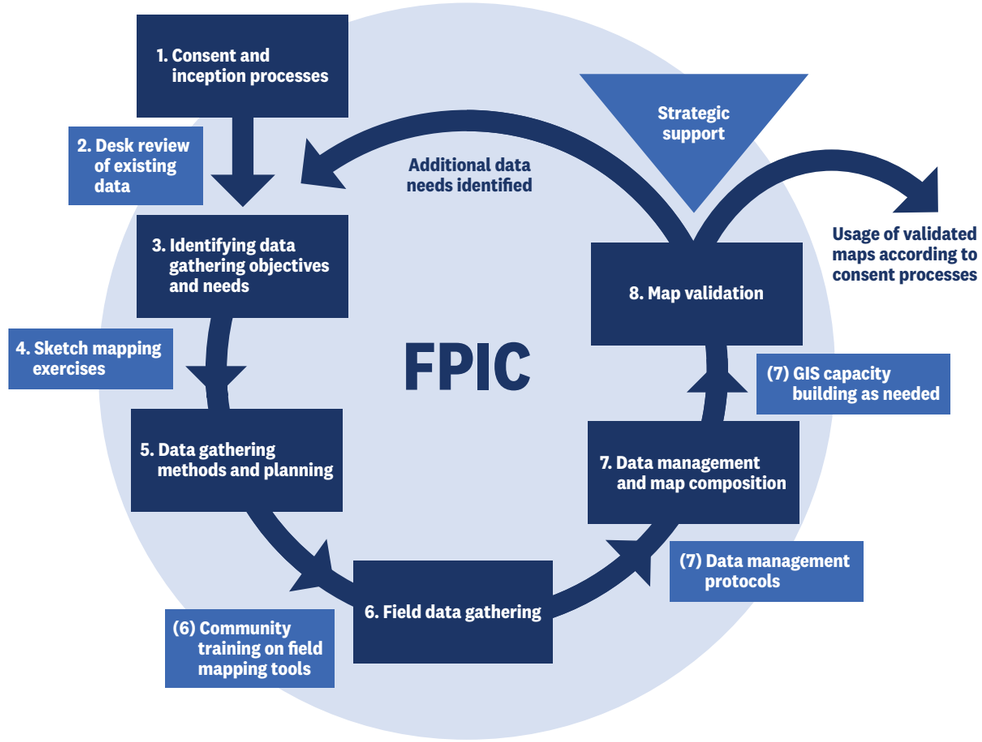


Figure 15. *Idealised cycle of participatory mapping activities*

Key: *Community based processes* *Selected activities to support each step*

1. **Consent processes and inception**

Where community-based mapping is initiated by outsiders for their own purposes, comprehensive FPIC processes are essential (see section 3.3). They should include negotiation of agreements, procedures and safeguards over Indigenous knowledge, community ownership of data, and intellectual property. Internal consent processes with rights-holders are also important where mapping is proposed by an indigenous organisation or groups of representatives, and may include discussion and agreement (or confirmation) of the objectives of the mapping exercise, what to include on the maps, for which audiences, and in what forms and formats. In all cases, FPIC should specifically address any risks that may be incurred during field data collection, whether related to remoteness of the site or to conflicts and security issues, as well as the risks of exposing traditional knowledge and data describing it to outsiders. Consent should always be viewed as ongoing and returned to as the dynamics of land issues, community struggles and data describing them emerge from the mapping processes.

2. Desk review of existing data

This involves a simple collation of useful third-party data, with the key features of likely importance clearly styled and labelled, as appropriate. Base data can be displayed interactively on a projector to help evolve priorities for field work, and to trace visible features into GIS (see figure 11.). Data from desk reviews of third-party sources can also be used in the construction of 3D models or to make 2D paper print-outs, pre-prepared with key features for participants to use for reference, and added to as needed.

Useful data sets include topographic / hill-shading and terrain models, hydrology, recent and historical aerial imagery, geo-referenced scans of historic maps, current open data (for example, Open Street Maps, administrative boundaries, protected areas), amongst many more. It is important to prioritise reference data that support, rather than supplant, Indigenous world views and points of reference. Selected combinations of existing data can help communities pick up on aspects of the land familiar to them, orient themselves, and indicate additional features or issues of importance in turn. Once areas remaining under customary management systems become visible, along with threats arrayed against them, further participation and investment in mapping, as well as integration of maps into community decision-making and information strategies, can emerge. Such mobilisation is essential for gathering detailed, high-quality data based on local knowledge, including the knowledge held by different groups (such as men and women).

3. Identifying data gathering objectives and needs

Mapping workshops are the mainstay of community-based mapping processes and generate geographical data by supporting two principle types of data gathering:

i) the design and implementation of field data collection processes, including selection of, setup and training on appropriate field mapping tools (see Figure 19).

ii) direct tracing of data describing local knowledge from known reference points in study review data, aerial imagery, and in later iterations, field data that have already been collected on the ground (see Figure 18).

Workshops are also important spaces to develop and sustain community cohesion and ownership of the mapping process and for more expansive discussions around consent, data strategy/advocacy, validation and cross-checking, and data management/sovereignty. They provide essential forums for discussing community objectives and issues, the data or evidence that would best serve them, how to gather this information, the risks involved, and what roles will be taken. These are the processes through which mapping activities are situated in and connected to the issues faced by communities via their information strategies, advocacy and internal decision-making processes. However, maps are inevitably a simplification, meaning careful consideration by the participants is needed about what features they wish to prioritise, bearing in mind the trade-off between depth and richness of information and the accessibility, transferability, and impact of the maps for their intended audience.

Workshops are often most useful and legitimate if they incorporate and serve customary institutions such as Councils of Elders, women's groups, community planning committees and so on. However, for participation and map data to be as complete as possible, this should be balanced with the need to involve as many different voices, roles, interests and knowledges within the community as possible. This trade-off should be discussed in advance with the community and ideally, strategies should be agreed for proactive inclusion of different groups (for example, men and women, hunters, farmers and fishers, different ethnic groups or age groups, and so on).

4. Sketch mapping

Sketch mapping Is a process of drawing freehand map features and adding icons and labelling to create a geographical overview from memory, reflecting the way features and issues or land are perceived. This is very useful, although not compulsory, to support communities collectively or in groups to:

i) evolve map legends, listing different types of map features, designing icons to show them and information tables containing the key attributes that give them meaning, to create a community owned data structure (see section 5).

ii) become familiar with the concepts of point, line, and polygon data, and facilitate discussion on suitable data collection methods for each (see section 5).

iii) improve participation, allowing different priorities to be explored and pooled from different members of the community who may work on different maps or draw different types of features according to their priorities.

iv) build on or make adjustments to data or labels to support map validation processes.

Importantly, sketch mapping allows community perceptions to be explored in neutral and non-leading ways, allowing participants to express how they see and prioritise spatial information.

Figures 16, 17. *Patamona community members pooling local knowledge onto a base map using desk review data for reference, Region 8, Guyana (Photo: Tom Rowley 2017)*

5. Data gathering methods and planning

Once the map objectives and data sets needed to serve them are agreed, any sketch maps drawn, and pre-existing third party data sets composed and agreed on as a basis on which to build, communities can plan how best to collect missing data describing the additional things they want to include to complete their map.

This involves decisions in three main areas:

- Data layers: the layers of data describing different types of features of interest using lists of coordinates, also called feature classes (e.g. road, school, sacred site etc.) These can be described using point data (for example, icons showing location of a spring or a sacred tree), line data (for example, for paths or hunting lines), or polygons (for example, for a dry season grazing area or a reserved area). The different feature classes are displayed using colours or icons to represent them, listed in the map legend. This can be collectively designed and referred back to throughout the process, and used as the basis for the structure of the communities' GIS.

- Attributes: usually a data table is attached to each data layer that gives meaning to the coordinates in that layer. It shows the key characteristics (attributes) of each data layer, which are chosen for their usefulness in representing and labelling features on a map, and in proposed analyses or decision making. For example, for a water source, attributes could be name/label, type/icon, capacity, seasonality, water quality, and so on.
- Collection methods: Data collection methods will vary according to the characteristics of each data layer or feature class (for example, their visibility in aerial imagery, the need for direct measurements or evidence to be collected on the ground, and the complexity of shape and ease of capture with a handheld device).

Most point data are often best collected on the ground (for example, for a specific tree, a spring, or a cave). However, some features best described by a point may be visible in aerial imagery (for example, buildings). Nonetheless, field data-gathering remains important where there are key attributes that need to be described *in situ*, where measurements need to be taken, or where photos or other evidence is needed.

Complex line or polygon data that are visible in aerial imagery, for example for grazing areas or areas of deforestation, are best traced from the imagery directly into a data layer in the GIS (see Figure 18) rather than walking around them in the field with handheld GPS. Care should be taken to make sure participants are well-oriented when approaching direct tracing of data. Local knowledge is also needed to label and add extra information describing the various attributes of map features. Examples include the ways different river reaches or forest zones are known and managed by communities.

For some features that are both complex in shape and hard to infer from imagery (for example, current community habitation or historical occupancy), multiple iterations of field data-gathering, discussion, and tracking from aerial imagery may be required, using a range of different reference points to triangulate and cross check features as they are traced in and adjusted.

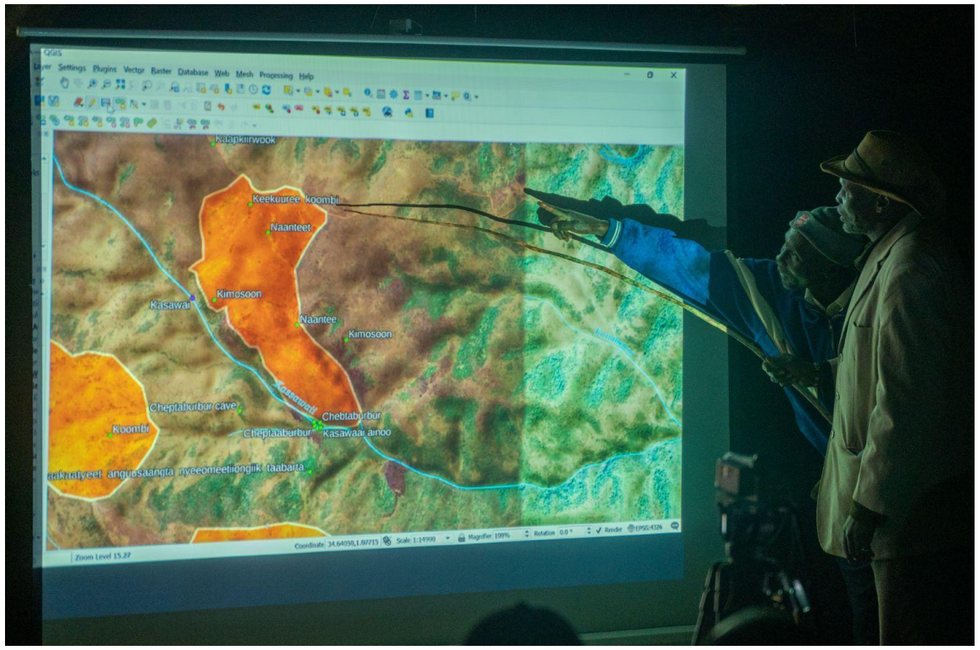


Figure 18. *Ogiek elders mapping out customary spatial planning zones, Mount Elgon, Kenya. (Photo: Rudo Kemper 2022).*

6. **Community mapping training and conducting field data gathering**

For map features that require field data, an ever-evolving range of tools is available. At the time of writing this ranges from handheld GPS such as Garmin models with paper notebooks for writing down attributes and meaning of points recorded, to bespoke configurable applications such as ESRI field maps, survey 123, and their non-proprietary equivalents designed for community use such as Co-Mapeo and, Sapelli. The selection of tools for gathering data should take into account the desired form of the data, ease of data gathering, requirements for gathering additional data to create attribute tables, the need for multimedia such as photos or audio, ease of data management, processing and analysis requirements (often a trade-off with ease of data-gathering), offline or peer-to-peer functionality, data sovereignty, conspicuousness of tools where security may be an issue, reliability, cost, and so on. The key resources box at the end of this section gives sources of information on some participatory mapping tools and selection considerations.

Data collection protocols can range from entirely opportunistic, where community members gather data informally in their day to day lives using personal devices, to systematic sampling, with often significant logistical and planning needs. For any approach, it is important to ensure data are synchronised or pooled in a way that best enables community examination, ownership and management, and minimises the risks of data loss or breach.

It can be helpful to lean into, rather than attempt to standardise, the differentiation of community roles, and map data-gathering efforts that describe them. For example, often, planning oversight and tracing of data is overseen by elders, who hold the deepest knowledge, whereas field data-gathering is carried out by youth with better mobility and technical literacy. Women often have specialist ecological knowledge (see section 2.3.2), and even if there is some cultural differentiation in, or barriers to, participation in certain mapping activities, complementary spaces should be created to enable the most equitable contributions possible. For example, this may be through mapping workshops where community data priorities are decided on or where key features are directly traced into GIS (see Figure 18). Opportunities for knowledge exchange within communities, intergenerational knowledge transfer, and building solidarity are many, as are the galvanising effects of collectively viewing shared maps built from data pooled from many different contributions.

Figure 19. *Ogiek community members and trainer practise using Mapeo app to gather field data, Mount Elgon, Kenya. (Photo: Rudo Kemper 2022).*

Training is often best carried out using a training-of-trainers approach, where technical knowledge is first transferred to a small number of individuals within communities and/or their support organisations, who can then provide training in a standardised way throughout the communities, using locally appropriate language and protocols (see Figure 19). Training can also be a learning process for trainers and support organisations, through feedback on data structure, protocols, priorities, and consent considerations.

7. Data management, map composition and capacity-building

Data-gathering protocols should be designed with robust systems for pooling, synchronising, organising and backing up community data, ensuring as far as practicable that communities remain in control and can easily access and manage the data (this may increase over time as local technical expertise is developed). Data may be collated together at a central hub such as a community centre, or synchronised (for example, village by village or area by area) before being combined for discussion and validation. Robust management and organisation of community data can be supported by systematic export from GIS to a database with different data sets organised according to data usage needs. Communities may decide they prefer and trust support organisations to take on some of these roles, taking into account the need to balance the risks of external dependencies against the burden of unwarranted or unrealistic technical responsibilities (a trade-off that can change over time).

Map compositions are iterative in nature. Generally, participatory maps will consist of underlaid base layers such as aerial imagery or terrain, with data layers composed of points and lines from a combination of fieldwork, aerial imagery tracing (see fig 11) and third-party sources overlaid. The map data are enclosed by additions such as grids, scale bars, legend, as well as contextualising text, photos, legal disclaimers and any traditional conventions, designs or imagery decided by the community.

8. Collective examination, adjustment and validation of maps and data

Whether during the initial orientation and exploration of pre-existing third party data sets or the final validation needed to sign off a finished map, deep and empowered collective examination of maps and map data is essential. Workshops are required for collective exploration and decision-making on map data layers for inclusion, labelling, colours and style and so on, which can be cross-checked and adjusted to best reflect the issues communities want to describe for their agreed purpose. Collective examination, adjustment and validation of map data may be used for a particular data set, decision-making overview, or for stand-alone maps composed for specific external use or internal community purposes.

For full map compositions, validation begins with exploration of the map and its implications in relation to the pre-designed aims of the community. Participants may decide on alterations or additions to the data, or that some features or information should be omitted. Breakout groups can be useful, and large printed copies of the maps can be used to capture proposed revisions with pens. Any original sketch maps should also be to hand, to allow comparisons to be made. It can also be useful to use a projector to interactively present and explore data layers and attribute tables, and allow changes to be captured directly into the GIS during cross-checking. If major needs for more data are identified, further field cycles of data-gathering and subsequent integration and validation of new data are designed and carried out as necessary.

As well as accurate representation, icon design and data styling are an important aspect of conveying community information in accordance with indigenous knowledge and ways of knowing. Often, a great deal of supporting information is needed to contextualise somewhat flattened distillations of complex histories, knowledge and management systems. Icon design and data styles can be supported and returned to at different stages in the process, for example during sketch mapping exercises, configuration of field data collection applications, and again during validation. Often, a balance must be struck between following mapping conventions that allow map information to be more transferrable, and the sheer depth of indigenous knowledge, different aspects of which could be portrayed for different purposes. See the key resources listed below for guidance and toolkits currently available, as well as more discussion on the pitfalls of using Western cartographic conventions to represent aspects of indigenous knowledge.

Key resources:

Earth Defenders Toolkit

Our Rivers are not Blue: Lessons, Reflections and Challenges from Waorani Map Making in the Ecuadorian Amazon

Indigenous Guardians' Toolkit

Mapping for change: the power of participation.

3.8 Participatory biodiversity monitoring

Stephanie Brittain

The motivation behind biodiversity monitoring often stems from a desire to preserve biodiversity, understand human impacts, develop sustainable practices, or evidence community conservation efforts. Despite a growing emphasis on involving Indigenous peoples and local communities in conservation, challenges remain in aligning diverse values, ensuring participation, and integrating local monitoring data into broader conservation metrics.

Community-based biodiversity monitoring under a rights-based approach empowers communities to initiate and decide on monitoring and action, with external support tailored to their needs and capacities where desired. This approach enhances local decision-making, respects legal rights to resource management, and aligns with international policies protecting collective Indigenous rights. It serves not only as a tool for local resource management but also as a strategy for improving the sustainability of biodiversity management at the community level.

Many different approaches to participatory biodiversity monitoring have been developed, with different levels of technical requirement, financial support, and levels of community engagement throughout the whole process. What's specific to a rights-based approach is the emphasis on process, on communities deciding what they want to do and why, how much or little involvement they want from partners, and on empowering communities to do it for themselves.

In this section we describe the key steps included in a rights-based approach to community-based biodiversity monitoring that has been developed for use by community-based organisations and those who work with them. Each stage includes some key questions that the community and their supporting partners should consider to ensure the suitability and sustainability of the resulting monitoring programme.

Steps in Participatory Biodiversity Monitoring

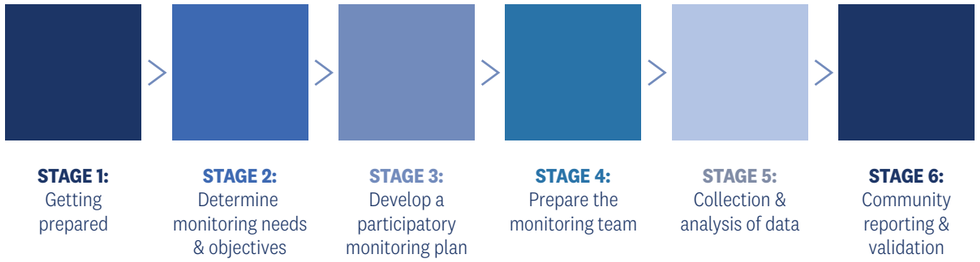


Figure 20: *Overview, showing the different stages of developing a participatory biodiversity monitoring plan.*

STAGE 1: PREPARATION

A successful monitoring programme demands realism, long-term dedication, and adequate financial and technical support — factors frequently overlooked in the development stages of a monitoring programme. Initially, assessing readiness through key questions helps determine if planning for community monitoring can proceed or if further preliminary steps or fundraising are necessary. This evaluative phase is critical when communities seek external support for problem-solving through monitoring, guiding the local organisation on the importance of readiness, resource evaluation, and the need for strategic preparation.

Some key questions for the community and partner organisations to ask at this stage include:

- Do the available funding, skills, and resources align with the programme's ambition for long-term self-sustainability?
- Have initial discussions with the community assessed their monitoring aspirations and need for potential support?
- What risks to community members or the wider community could arise from participating in or being excluded from monitoring?
- Has the community identified potential external collaborators, if desired?
- Is there an agreed communication strategy and organisational structure for effective teamwork and collaboration with the community and all participating partners?

STAGE 2: IDENTIFY MONITORING PRIORITIES

Next, collaboration with the community focuses on identifying the data users and how the data will be used, selecting biodiversity features for monitoring, defining desired changes to track, and establishing the necessary timeframe and scale.

Some key questions for both the community and partner organisations to ask at this stage include:

- Has the community identified who will use the monitoring data and established a knowledge-sharing policy to protect their data rights, especially when shared with external actors?
- Is the community clear on their monitoring targets and reasons, ensuring the chosen biodiversity characteristics align with end-user needs?
- What specific changes (e.g., in species diversity, distribution, or environmental contamination) does the community aim to track? How do these support their wider monitoring objectives and meet end-user expectations?
- Have the monitoring time frame and geographic area for monitoring been tailored to the community's requirements and capacity?

STAGE 3: DEVELOP A PARTICIPATORY MONITORING PLAN

During this phase, the community selects suitable monitoring methods, designs surveys to minimise bias, and chooses indicators signalling changes. These choices hinge on the monitoring objectives and available resources. Some of the different methods are illustrated in Figure 21. At this stage, communities and their partners could consider the following:

- Has the community chosen monitoring methods suited to their goals, considering their needs and resource limitations?
- Have indicators for tracking biodiversity changes been selected, ensuring they're relevant to the features and changes observed, useful to data users, and feasible within available resources?

Participatory mapping

Participatory video

Seasonal calendars

Icon-based sighting logs

Story-telling

Camera trapping

Remote sensing

eDNA

Transect surveys

Quadrat surveys

Point surveys

Figure 21: *Illustrations of different participatory and ecological monitoring methods*

At this juncture, communities and their partners could assess the landscape-wide monitoring design, revisiting it with previous stages in mind to confirm that the data collection can be informative yet within budget constraints. Here are four critical questions to guide the community monitoring team in developing their plan:

- Have the monitoring teams finalised the survey and strategy details, including location, personnel, frequency, and timing?
- Has the community considered potential biases in survey design, and assessed their ability to detect biodiversity changes?
- Is there flexibility in the monitoring plan to adapt to unexpected events, perhaps by blending general biodiversity surveillance with targeted monitoring of key biodiversity aspects?
- Has there been preparation for data analysis, ensuring the data collected can provide solid answers to the community's questions and that there's support available for analysis if required?

STAGE 4: TRAINING AND CAPACITY BUILDING

Offering training and capacity-building on the chosen monitoring methods is crucial. Such efforts not only empower and motivate community members but also expand overall support for the project. Ensuring capacity-building is integral to the programme's planning, development, and implementation is vital for its success. Following the training, some key questions for the community and their partners before they continue to the next stage are as follows:

- Is the community knowledgeable about the available monitoring methods and skilled in their application?
- Is there clarity and consensus on the survey's design, participants, timing, frequency, and methodologies?
- Does the community possess the required data collection skills, including data entry, storage, and cataloguing?
- Has the community established data management protocols, including format, storage practices, and responsibilities?
- Are data analysis skills present within the community, and do the proposed data align with monitoring goals? Is there support for data analysis and capacity-building as needed?
- Are there planned opportunities for learning and adaptation, along with established communication channels for addressing issues between meetings?

STAGE 5: DATA COLLECTION & ANALYSIS

With the community monitoring teams trained and ready, data collection can begin. Ongoing support and additional training for community leaders are crucial, particularly in the early stages of monitoring when processes and equipment are new. Identifying further training needs through data verification is key before moving to data analysis and results production. Communities and their partners should now:

- **Address and solve early issues in data collection and entry:** Check if data collection and compilation are on track and if roles are clearly understood. Determine if extra assistance is required.
- **Generate and evaluate preliminary results:** Assess the ease of deriving results from the data, consider changes for more straightforward result creation, and ensure the results align with monitoring objectives and are understandable to the monitoring teams.

STAGE 6: COMMUNITY INFORMATION & SHARING OF RESULTS

The final and crucial step is in regard to sharing the monitoring results with the entire community and strategizing for maximal impact moving forward, if relevant. This period also allows for discussions on how the findings affect ongoing natural resource management. Monitoring serves various purposes, from internal resource management to externally showcasing biodiversity trends to entities like the government. The style and focus of reports will reflect the community's specific monitoring motives. Some questions to reflect on at this stage are as follows:

- **Review progress:** Have discussions been held with both the monitoring team and community to reassess the original goals and evaluate progress?
- **Discuss results:** Has the wider community been given the chance to view and discuss the findings?
- **Incorporate feedback:** Is there a process for including the monitoring team and community's input into the plan?
- **Apply adaptive management:** If applicable, have the community and partners consulted guidance on sustainable use and adaptive management to determine actions for more sustainable biodiversity use or next monitoring steps?
- **Result dissemination:** Have the community and partners reflected on the initial purpose of monitoring, identified the results' intended users, and strategized on the optimal way to share the findings to meet the community objectives?

Case study: Wapichan Monitoring Programme in Guyana

(Source: FPP et al., 2020)

The South Rupununi District Council (SRDC), the institution representing the majority of Guyana's Indigenous Wapichan people, established a monitoring programme in 2013 that focuses in part on mining activities. SRDC monitors use handheld GPS, smartphones and drones to collect data and report to village councils and the SRDC.

One focus of the monitoring programme has been illegal mining in Marudi Mountain, sacred to the Wapichan and also an important watershed. Many streams are polluted, directly affecting fragile ecosystems and communities. For example, sampling by the Wapichan, with the support of WWF, has revealed that local women in one village have mercury contamination levels above WHO recommended safe limits.

Reports produced by SRDC's monitoring programme and advocacy efforts have led the Guyanese government to strengthen the enforcement of mining regulations in Marudi so that illegal mining in the area is reduced. The efforts of the SRDC and its monitoring programme have led to the establishment of a government working group that works with the SRDC to collectively address issues affecting the Wapichan territory. The model is being replicated in other regions with environmental problems.

Key sources of further information:

- Brittain, S et al. (2024). Introduction to community-based environmental monitoring: practical guidance for monitoring of natural resources by Indigenous Peoples and local communities.
- FPP et al (2020) Local Biodiversity Outlooks 2: The contributions of Indigenous peoples and local communities to the implementation of the Strategic Plan for Biodiversity 2011–2020 and to renewing nature and cultures. A complement to the fifth edition of the Global Biodiversity Outlook

3.9 Supporting community livelihoods

Anouska Perram

Usually, the principal aim of support for livelihoods activities within conservation projects is to improve conservation outcomes, with improved livelihoods considered as a secondary benefit or means to that end (Wicander and Coad, 2018; Walpole and Wilder, 2008). Typically, projects may include promoting alternative activities that seek to substitute benefits from forms or levels of natural resource use that are perceived to be incompatible with conservation objectives, providing compensation for restrictions on access to and use of natural resources, or seeking to incentivize behaviour change to reduce use of natural resources (Wright et al, 2016). However, many livelihoods activities within conservation projects are implemented without fully considering and integrating a human rights-based approach. Communities' underlying rights to use resources, including their customary rights to those resources, are not fully taken into account, and participation and FPIC processes are often inadequate. This is one reason why livelihoods projects can have unforeseen negative impacts on the peoples concerned, and why they may be unsuccessful in terms of the conservation outcomes (for two examples, see boxes 16 and 33). There is equally – and not unrelatedly – very little monitoring of impacts, and therefore little evidence that livelihoods interventions within conservation projects have typically had positive impacts on either conservation or livelihood outcomes (Wicander and Coad, 2018; FFI, 2013). This section looks at some of the considerations that apply to supporting community livelihoods from a rights-based perspective.

Start from rights

The starting point for designing livelihood initiatives from a rights-based perspective must be the recognition of and respect for the collective and individual rights of Indigenous peoples, as well as of local communities, that may participate in a livelihoods initiative. Rights to customary lands, territories and resources, to culture, to food, to protection against unlawful interference in privacy, family and home, and (in the case of peoples) to self-determination, among others, protect traditional and culturally important livelihood activities. In different contexts, this may imply rights to hunt, to fish, to gather, to collect, to make use of timber and other forest products, to mine, to graze or herd animals, or to undertake many other livelihoods activities that conservationists may wish to restrict[16] (see also sections 2.3.1 on the right to culture and the right to food). Traditional and culturally important livelihoods activities may be undertaken on a subsistence basis or to generate income - they are equally protected in both cases. The example in Box 33 illustrates the importance of understanding customary rights and tenure systems before starting any intervention to improve local livelihoods.

16 UNDRIP, arts 20, 24, 25, 26, 32; UNDROP, art. 5; *Poma v Peru*, para 8.6; *Billy v Australia*, para 8.13; *Pereira v Paraguay*, paras 8.3 and 8.6; *Statnett v Fosen Vind*, esp para 134; CESCR (2022), *General Comment No. 26 on Land and Economic, Social and Cultural Rights*, E/C.12/GC/26, para 16.

Box 33: Harpy eagles and local conservation income generation in Papua New Guinea: the perils of ignoring customary tenure systems

In Papua New Guinea, a conservation organisation started to pay local individuals as harpy eagle watchers, as part of a larger project to improve livelihoods and provide economic incentives for community conservation. The role of harpy eagle watchers was to report sightings of eagles and spread the word that live eagles were worth money. After a few years, one harpy eagle watcher reported that there was an eagle nest on his land, and the villagers were informed by a conservation researcher that this would bring a lot of money both to him and to the community. Meanwhile he gained status and other benefits from his association with the project.

However, another man also claimed the land, and one day, in a fit of rage that his claim wasn't recognised by the project, he cut the tree down. Customary property rights, including rights to land, were deeply embedded in social relations and in the history of land use, stretching back over several generations. Different claims to the land where the nest was found related both to its past use as a hunting ground, and to kinship and descent lineages.

A conservation employee made the problem worse by saying that if only they could find out who owned the land, it would solve the problem. In fact, each claim had grounds for justification, but the conflicting claims had only become problematic once the land was perceived to be highly valuable. Formerly, conflicts of this kind would have been resolved through customary mechanisms, but now, people turned to the conservation organisation to decide which claim was valid and who they would pay, putting the latter in a very difficult position.

The conflict between the two men escalated into a knife fight and disrupted relationships between their kinship lineages, which was especially damaging because they belonged to the same larger descent group. One woman in the group, who was the sister of one man and the mother of the other, said: "This fight, it is not good. It makes trouble in my life. If I saw the bird, I would shoot it myself.'

Thus, rather than strengthen local support for eagle conservation, the project may have had the reverse effect.

Source: West, 2006: 189-199.

Conservationists' responsibilities and obligations to respect human rights, which have been described in parts 1 and 2 of this guidance, extend to all activities that may affect communities, including livelihoods projects. Consistent with these responsibilities and obligations, conservationists must frame communities' livelihoods activities as rights, rather than merely as "behaviours" (to be prohibited, restricted or manipulated). Doing so centres the decision-making over whether and how to alter activities with the rights-holders – that is, Indigenous peoples or members of local communities. It brings to the fore the requirements for proper consultation and FPIC processes (described in section 3.3).

Framing livelihood activities as rights also makes evident why projects should avoid seeking to impose, or manipulate communities into adopting, "alternative livelihoods". This implies that they must surrender their traditional occupations, and therefore it shows a lack of respect for their rights from the outset. Instead, projects should support communities to develop their own ideas for sustainable livelihoods projects (FFI, 2013; Wright, 2016), which will provide a better understanding of the context. Oftentimes, assumptions that existing community activities are unsustainable may not be borne out by closer examination, and / or it may become apparent that it would be more effective to support communities' existing activities to become more sustainable rather than introduce alternatives.

On a purely instrumental level, there is plenty of evidence that respecting the rights of local actors is critical to effectiveness in local resource management (Cooney et al, 2018; People not Poaching, 2022). Evidence also suggests that "addressing immediate needs such as food security rather than income, and strengthening or building on existing, familiar livelihood options before introducing alternatives, is a good place to start" (Walpole and Wilder, 2008). Taking this approach does not mean excluding conservation objectives: it means explaining conservation concerns to communities, listening to their perspectives, offering support and advice on possible ways to address conservation and community concerns, and accepting communities' decisions.

Where projects depart from this approach and seek to impose restrictions on, or influence communities to restrict, their access to and use of lands and resources, these are subject to considerations of international human rights law. These include, in particular, whether restrictions are proportionate and necessary to a legitimate objective, whether affected communities have been consulted through an appropriate, inclusive process and (where applicable) have given their free, prior and informed consent, and whether compensation for any restrictions has been offered (see section 2.3.1 on restrictions on rights in exceptional circumstances).

Free, prior and informed consent

Many conservationists recognise that livelihoods activities conducted within conservation projects should be subject to free, prior and informed consent. In practice, however, FPIC processes related to livelihoods activities often fall short of requirements. Badly-planned or implemented livelihoods projects - often linked to a lack of co-design (see below) - can have many and serious negative impacts on communities, undermining cultural practices, weakening community cohesion and increasing intra-community marginalisation and inequality, including in relation to gender (as illustrated by the examples in box 33, above, and in box 16 in section 2.3.2). A lack of proper consultation also makes livelihoods projects more likely to fail. Where, through a process of free, prior and informed consent, new livelihoods activities are agreed as compensation for restrictions on community access to and use of resources, the failure of proposed compensation can mean that restrictions violate international law requirements, as has been explained in section 2.1. At the same time, it can put conservation objectives in jeopardy.

Co-design and options

Too often, conservation projects arrive in communities with livelihoods options already fully planned and budgeted. At best, communities may be offered a choice between a small range of options, often focused on income generation, which have been pre-determined by the project implementer. This often leads to the implementation of projects that do not reflect the interests, needs or priorities of communities, are not culturally appropriate, and are imposed with insufficient respect for rights. Instead, projects need to be planned, implemented and evaluated based first and foremost on locally-relevant understandings of well-being (Woodhouse et al., 2015).

The most effective way to respect the self-determination of communities in supporting livelihoods activities is to arrive with an open canvas and a set budget, explain the conservation problem you are hoping to address (such as overhunting), open a dialogue, and if communities agree to collaborate, ask them to take the lead in deciding how to make their livelihoods more sustainable, with technical support and facilitation where needed. This activity should be as open as possible – including through unrestricted grants to communities where feasible. Where more support and guidance may be needed (including because of weaknesses in community governance), communities should be given wide latitude to collectively choose how to use funding, supported by facilitation that enables consideration of potential costs, benefits, challenges and opportunities of different options, and pays particular attention to equity concerns (Coad et al., 2019). For example, in addition to direct revenue-generating activities, communities may wish to invest in community assets or infrastructure (e.g. wells, mechanical milling machines, solar panels, etc) that will relieve them of backbreaking work, or may have other investment priorities (such as paying school fees for children).

When communities take the lead on proposing livelihoods projects, there will obviously often be budgetary restrictions that need to be communicated and kept in mind. It is also, however, the conservationists' responsibility to make sure they are proposing a budget which is realistic and adequate to achieve results, and not merely tokenistic.

Understand and be honest about the objectives and potential benefits

When proposing livelihoods activities, conservationists should understand the rationale for the activity clearly themselves (Walpole and Wilder, 2008) and also explain clearly to communities their principal objectives – that is, *why* they are proposing livelihoods activities, and what they hope to achieve. Failing to do this - or worse, deliberately concealing this information, seeking to avoid communities taking it into consideration - will mean co-design and consultation processes are not informed, as information being provided to communities is neither complete nor objective. Equally, it is important that conservationists do not seek to "sell" a project to communities, for example by overstating potential benefits or minimising costs. If information is deliberately concealed, exaggerated or understated, it will mean consultations are not being carried out in good faith. This will violate requirements for consultation and vitiate any consent given[17]. Understanding the motivation of conservationists and obtaining impartial information is essential for communities to assess the information being given to them, to understand potential bias as well as tradeoffs, and potentially seek independent advice. Honesty on these points is also critical to building relationships of trust.

There are important legal and ethical differences between proposing a livelihoods activity as compensation for restrictions on resources, proposing a livelihoods activity with the intention of changing community behaviour, and proposing an activity which is implemented with the sole intention of providing livelihoods support to poor communities (perhaps with the ancillary benefit of generating goodwill towards conservationists). Where an activity is imposed as compensation for restrictions on access to and use of lands or resources, compensation is a matter of *right* (see section 2.3.1: Restrictions on rights in exceptional circumstances). Therefore, where a livelihoods project is proposed as compensation, conservationists should explain first that communities have the right to refuse any restrictions, but that if they do accept the restrictions, they are entitled to effective, equitable and just compensation for restrictions. If communities wish to negotiate further, conservationists should facilitate community consideration of whether (or under what conditions) the livelihoods activities proposed would sufficiently compensate for their loss. They should also make clear that without compensation the restrictions will be unlawful. Where a livelihoods project is proposed with the intention of changing behaviour, or even simply to provide support to poor communities with no other objective, this activity may have implications for the right to culture, or other rights - in ways that are not always evident to an external party - which communities should be invited to consider. In addition, the right to FPIC still applies and therefore these intentions should be shared with the communities concerned.

Facilitating in-depth consultations and consideration

In-depth, repeated discussion of livelihood projects, and active participation by communities in their planning and implementation, is critical to a proper consultation and FPIC process, and to effective results. In many cases, communities may be proposing, or being offered, activities that are outside their direct knowledge and experience. Having a full understanding of the nature of the activity, its challenges, and its tradeoffs is critical if communities are to give informed consent. Even where communities are particularly enthusiastic (which many will be at the promise of enhanced livelihoods), it is important that project proposers take the time to counter unrealistic expectations and ensure communities fully understand potential positive and negative implications, and what would be required for a project's success.

Ensuring proper information may require bringing in technical expertise to answer community questions about different proposals, and providing for skilled and impartial facilitation of a discussion process, with particular attention to elements of intra-community equity and power differentials. Another method which can be effective is enabling, during the discussion process, community-community exchanges, so that community members who are considering engaging in an activity can hear about the experience of other communities who have implemented the same type of activity, whether successfully or unsuccessfully.

17 UNDRIP, arts 18, 19; ILO 169, art 6; *Sarayaku v Ecuador*: paras 185-6; UNPFII (2005): 46; see also section 3.3 above.

Livelihoods are often made up of many different kinds of activity, some of which generate income whereas others are important for daily subsistence. Before any major changes are planned, such as the introduction of a new activity, communities should be encouraged to think about what the effects might be on their existing activities. For example, starting community-based tourism often takes people away from farming for food, which may have implications for food security. The time requirements to develop handicrafts for market may compete with other demands on time, particularly for women, such as child care and food provisioning (see box 16 for an example). Implications for community cohesiveness, governance, culture and traditions, as well as the implications for different groups (see equity below) should be explicitly discussed. Any discussions of income-generating activities should focus on how a livelihoods project will achieve benefits for communities, not merely support them to produce (more or more effectively) saleable commodities or services. This involves giving consideration to subsistence use of resources and to wider factors including access to markets, bargaining power, price variability, risk and diversity within livelihoods), as well as opportunity costs and unintended negative impacts that may arise.

Cultural appropriateness

Livelihoods and use of resources can be central to cultural identity. Proposed livelihoods activities should be respectful of cultural norms, while also acknowledging changing dynamics and pressures on the continuation of cultural norms (of which proposals for livelihoods activities may be one source) (Ingram, 2020). As noted above, projects which deliberately seek to alter cultural practices, without explicit discussion, consultation and consent, risk violating the right to culture (as well as the right to self-determination, and the right to food, which includes a dimension of the *cultural acceptability* of food). From a more utilitarian perspective, for livelihoods projects to be effective they need to be culturally appropriate or they are likely to be abandoned, or else cause very significant harm. For example, a project that supports livestock-rearing among semi-nomadic hunter-gatherers who prefer eating wild meat is almost certainly destined to fail.

Sufficient budgets and time

Insufficient budgets, and insufficient time to embed activities and achieve results (which can take many years in some cases), are a perennial problem for some types of livelihoods projects. Where budgets or project deadlines are tight, project proponents should consider whether the project is *genuinely* able to deliver a benefit, and whether it is *actually* likely to be equitably sustained after the end of the project. Where timelines or budgets are unrealistic, different forms of support to communities may need to be considered. This is also a reason to engage in co-design with communities from the outset. It also means project providers should often aim to provide continued support beyond project timeframes, where this is possible, lest any gains be reversed (Gurney et al., 2014).

Equity and power

In facilitating community discussions of potential livelihoods activities, it is important to actively support the effective participation of different segments of the community. Women, men, youth, elders, people of different ethnicities, or disabled persons, among others, may have very different priorities – and also different levels of power and voice within a community. Projects that do not take this into account can exacerbate inequality and marginalisation within communities (Woodhouse et al, 2015). For an example, see Box 16 in section 2.3.2.

Similarly, projects may need to assess and address risk of elite capture of control and benefits, both during the project and also at the end of the project, including where ownership of the project is handed over to the community (Woodhouse et al, 2015).

Box 34 gives an example of practical guidance from conservation that applies several of these considerations.

Box 34: Practical guidance on community-centred approaches to designing wild meat alternatives

IIED's practical guidance for designing wild meat alternatives emphasises the critical importance of integrating local community priorities, experiences and perspectives. It also emphasises the importance of several key principles of rights-based approaches to conservation. These include:

- The principle of Free, Prior, and Informed Consent (FPIC). Projects developed without proper FPIC and local input not only violate rights but also risk being ineffective or even detrimental, leading to wasted resources and community disillusionment.
- An emphasis on co-design, and participatory evaluation of potential impacts with the community before implementation. This approach ensures that initiatives are not only technically viable but also socially acceptable and culturally relevant.
- The role of conservation practitioners not just in providing financial and technical support but also in facilitating connections with broader networks, including other communities, potential funders, government agencies, and NGOs.

Sources: https://www.iied.org/17661iied and https://www.iied.org/why-eat-wild-meat

3.10 Human wildlife conflict

Lassana Koné

Human-wildlife conflict occurs when an animal species poses a direct and recurring threat to the livelihoods or safety of people, leading to the persecution of that species, to disagreements between groups of people, and to negative impacts on people and/or wildlife (IUCN SSC HWCTF, 2020). For example, when elephants forage on crops, seals damage fishing nets or jaguars kill livestock, people can lose their livelihoods (IUCN, 2023). The most common human wildlife conflict incidents are livestock loss, crop loss, human injury and death, and structural/property damage, all of which can be measured in terms of economic, asset or human loss (Sjoegren & Matsuda, 2016). Human wildlife conflict is increasingly being reframed as 'human-wildlife interactions'. However, coexistence, understood as a dynamic state in which humans and wildlife co-adapt to shared landscapes and in which human interactions with wildlife are effectively managed to ensure that wildlife populations persist in a socially legitimate manner that ensures tolerable levels of risk, remains an aspiration or key goal of conservation. It is not a panacea (Pooley & Vasava, 2021).

There are three main drivers of human wildlife conflict: increases in wildlife abundance, density or range, changes in economic activities (such as logging and mining) that displace animals such as elephants and gorillas from more remote areas into villages (Perram et al, 2022a), and human encroachment into wildlife areas that limit habitat availability and bring humans into direct contact with wildlife.

Human wildlife conflict occurs in a variety of contexts and can lead to negative impacts on people and/or wildlife, including persecution of wildlife in retaliation for damage to crops and livelihoods, or physical damage to human beings (including fatalities), and disagreements between groups of people. For example, the interests of agricultural farmers may conflict with those of livestock breeders when the livestock of the pastoralists destroy the crops of the farmers, or there may be a conflict between Indigenous peoples, local communities or local farmers and a protected species (such as the conflict between Indigenous Sami and wolverines in northern Sweden: Sjoegren & Matsuda, 2016). However, while human wildlife conflict can be an issue throughout a landscape, it is often particularly serious for communities living near or within protected areas. Box 35 gives a particularly shocking example from Malawi and Zambia.

Box 35: Elephant translocation leads to seven deaths in Malawi and Zambia

In July 2022, more than 250 elephants were moved from Liwonde national park in southern Malawi to the country's second-largest protected area, Kasungu National Park. In the days after the translocation, two people were killed by elephants near Kasungu, and a third person was killed in September 2022.

Communities warned of growing problems of conflict with the elephants, and a community leader accused the NGOs involved in the translocation of caring more about animals than people, pointing out that an electric fence meant to protect people on the edge of Kasungu had not been completed prior to the elephants being moved.

The total number of deaths caused by the elephants stands at seven people at the time of writing, with people killed on both the Zambian and Malawian sides of the park. The deaths have left children orphaned and affected families' ability to get by, and additional people have been attacked and left with traumatic injuries.

The chair of an association of villages on the Malawian side of Kasungu said,

> *"We want the introduction of some form of a human-wildlife conflict insurance scheme to offset losses suffered by victims. This is against the background of our experience with the translocation to date and the reality that human-wildlife conflict is exacerbating inequality since it affects already poor and marginalised communities living in hard-to-reach areas on the edge of the park"*

Sources: https://www.theguardian.com/environment/2024/feb/16/prince-harry-malawi-elephant-relocation-project-dead-aoe and https://www.ft.com/content/c5947f73-6e3a-46a7-8ac1-18a64e7b8888

Figure 22: *Elephants moving through a landscape.*

Human wildlife conflict can be a critical source of physical insecurity and a serious threat to food security, particularly where it affects people's ability to meet subsistence needs. Restrictions on traditional livelihood activities due to human wildlife conflict can deprive communities of essential basic needs, in violation of the human right to food and an adequate standard of living (CESCR, 1999). Community support for and benefits from conservation are easily undermined by these kinds of impacts and by recurrent negative interactions with species close to their land, fields and homes. The degree to which local rightsholders participate in decision-making related to biodiversity also affects human-wildlife interactions at the local level. Indigenous peoples and others often resist the implementation of laws, development projects or public policies that they perceive to be unfair or unjust (Pooley et al., 2017) and therefore, it is important to consult and engage rightsholders from the outset of projects to promote ownership and acceptance of initiatives, or better still, develop initiatives jointly. Low awareness of the potential benefits of human-wildlife coexistence can contribute to community resentment of wildlife in the context of protected areas.

Human wildlife conflicts are notoriously difficult to manage. Faced with urgent pressure to address the visible damage or threat, organisations and governments trying to mitigate the situation are often pressured into rushed physical interventions to control damage and retaliation. However, interventions to address human wildlife conflict have foundered in many places for a range of reasons, including limited financial resources available to governments and conservation organisations, but also failure to involve indigenous peoples and local communities, high opportunity costs of effective livestock protection methods, resistance to perceived infringements on freedom of behaviour (Barua et al. 2013), or as a result of epistemological disagreements over what causes predator attacks (Pooley, 2016). Efforts to manage human wildlife conflict often do not seek to understand and address the underlying drivers that shape these situations sufficiently, and mitigation methods are sometimes elusive, or are not implemented in a socially or economically sustainable manner (IUCN, 2023; Dickman & Hazzah 2016). Understanding human-wildlife interactions requires consideration of historical conservation legacies, gaps in protected area designation, impacts of particular concern to affected communities, and an assessment of the effectiveness of relevant specific policies or laws.

Inadequate regulatory frameworks can fuel human wildlife conflict

Wildlife and protected area legislation often focus on combating wildlife crime, to the detriment of the human rights of communities. Restrictions on the killing of protected species, such as elephants and tigers, means that communities are often left without the right to legitimate self-defence against these animals. If the lives and livelihoods of communities are threatened by the presence of wildlife, they may develop anger and resentment towards the endangered species, the conservationists and the lawmakers themselves (Woolaston et al., 2021).

The removal of the right of defence leads to an obligation for the government to provide reparation for damage caused by animals. There are three categories of mitigation mechanisms for human wildlife conflict: compensation, insurance, and the development of alternative sources of income. *Compensation* schemes typically provide Indigenous peoples and local communities with a predetermined monetary amount to cover losses relevant to human wildlife conflict incidents. *Insurance* schemes operate in much the same way as compensation, with the key difference being that people pay a premium into a pooled fund, from which payments are then distributed following a verified human wildlife conflict incident (Leslie, Brooks et al, 2019). *Alternative income* schemes involve payments distributed to communities through the various reparations mechanisms to enable them to find alternative sources of income. In addition, government or conservationists can help secure *alternative livelihoods* through income-generating activities such as cattle, goat or fish farming, beekeeping, etc (see also section 3.9).

In addition to these three mechanisms, there are also preventative mechanisms, such as the installation of electric fences, early detection and warning systems, crop selection, strategic warnings, the use of repellents, community-based monitoring (for example, where a community takes responsibility for guarding and maintaining a certain part of a fence), and others.

However, the ability of restorative mechanisms or reparation policies to address human wildlife conflict costs has been questioned in the literature, as various experiences around the world show that compensation often fails to achieve its objectives (Bulte & Rondeau, 2007). There are several reasons for this, including the fact that the compensation process is often controlled by a cumbersome bureaucratic procedure, depriving local people of the bargaining power necessary to negotiate beneficial outcomes (Scott 1998). The lack of adequate compensation when local livelihoods are destroyed also increases animosity between communities, conservationists and policymakers. In summary, existing compensation schemes often fail to address human wildlife conflicts and reconcile people and wildlife for a variety of reasons, including lack of political will and funding, lack of understanding of the roots of the conflict, lack of time spent with local people to build trust, poor design and poor implementation of the schemes, e.g. slow payments, excessive bureaucracy, and elite capture.

Translocations are management interventions to restore locally extinct or depleted species (IUCN, 2013). Translocation can be a useful conservation strategy, but it is rarely conducted in spaces that are totally devoid of people, and failure to consider the human dimension at every stage of the intervention could lead to acute human wildlife conflict as well as jeopardising the success of a conservation translocation project (Consorte-McCrea et al., 2022). Therefore, a human rights due diligence process should be undertaken, and a strategy should be in place to seek the FPIC of any indigenous peoples or other groups with customary rights who may be directly and/or indirectly affected by a relocation. As part of this process, there should be an awareness-raising and communications strategy to inform communities and carry out a participatory human rights impact assessment concerning the potential risks and dangers of species translocation, including to people's health or physical integrity, and possible mitigation measures (Consorte-McCrea et al., 2022)

Box 36: The failure of a compensation scheme: a case study from the Republic of Congo

In the Republic of Congo, the way in which the law affects human-wildlife conflicts is direct and obvious. For example, legislation provides strict protection for certain species, such as forest elephants, but less protection for human interests or livelihoods, or inadequate compensation. Gaps in existing legislation, including rules on natural resource management and measures on FPIC, access to information, participation in decision-making and access to justice, also affect human-wildlife interactions. The legal framework does not allow Indigenous peoples and local communities with strong ties to their customary lands to participate in key decision-making processes. The legal framework also does not provide for participatory management or benefit-sharing mechanisms. Wildlife and protected area legislation focuses on combating wildlife crime, to the detriment of the human rights of communities living near protected areas.

Legislation in the Republic of Congo contains no provisions or mechanisms for compensation for damage caused by wildlife to crops and farmland belonging to Indigenous peoples and local communities. A 1986 presidential decree provides for a compensation mechanism in the event of the destruction of fruit trees and farmland by public utility activities, but this outdated law is the only legislation in place for crop damage. The compensation scale for cassava is 37 FCFA per 'cut', which is less than $1. Compared to the current price of a cassava plant, which varies between FCFA 1,000 and 1,500 depending on whether it is in a rural or urban area, the price set for compensation is completely disproportionate to the value of the crops destroyed.

There is no formal law or policy for the specific case of human wildlife conflict in the context of protected areas, which includes the destruction of crops by legally protected species, in particular the elephant.

Sources: Perram et al (2022a: 10) and personal experience of the author.

The common challenge in many landscapes is that payments are too slow, too small and the process is not understood. The following three criteria are therefore crucial (Brooks et al, 2019):

- **Compensation must be timely:** payments must be distributed to communities within a reasonable time to enable them to find alternative sources of income.
- **Compensation must be reliable:** the payment process should be well understood and trusted. After experiencing an incident, impacted communities should feel confident that payment will occur as designed.
- **Compensation must be perceived to be fair:** affected communities should feel that the extent of damage is accurately assessed and that the resulting payment is of sufficient value. Human wildlife conflict often involves situations where lives and livelihoods are at very serious risk, requiring urgent attention from policy makers and conservationists, in addition to research, experimentation, dialogues and conflict mediation. Interventions such as fencing, deterrents and compensation schemes are often urgently needed, especially when there is pressure on agencies, governments and conservation organisations to deliver solutions (IUCN, 2023).

Box 37 presents a checklist of good practice approaches to human wildlife conflict.

Box 37: Good practice checklist for approaches to Human Wildlife Conflict

Addressing gaps in legislation

- Conduct a cross-sectoral review of gaps in existing legislation.
- Ensure FPIC, effective consultation and meaningful engagement with affected communities in developing new legislation.
- Rebalance the focus between wildlife crime and respect for community rights and livelihoods.
- Ensure effective implementation of compensation and other reparation schemes.

Integrated, sustainable, rights-based approach to human wildlife conflict

- Human wildlife conflict requires more integrated and sustainable approaches, including rights-based approaches, pursued through sustained, collaborative and process-driven efforts, with the effective involvement of Indigenous peoples and local communities (IUCN, 2023).
- Human wildlife conflict needs to be addressed using both short- and long-term approaches, which should begin with planning how people and wildlife can share a landscape (IUCN, 2023).
- Human wildlife conflict interventions must provide long-term solutions and not lead to unforeseen impacts on the environment, wildlife or people (IUCN, 2023).

Context awareness and understanding of legal, social and political backgrounds are crucial

- Acknowledge the multiple direct and indirect impacts of wildlife on human health, welfare, livelihoods and economic activities. These impacts need to be quantified, recognised and addressed in parallel with attempts to manage wider social conflicts (IUCN, 2023).
- Don't overly focus on damage interventions: while mitigation schemes are essential for securing Indigenous and forest peoples' livelihoods, damage interventions also need to pay attention to social dynamics and be culturally appropriate (LLF, 2023).

Co-design of solutions

- Long-term solutions must involve communities in the design of human wildlife conflict mitigation measures and their economic and socio-political perspectives.

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Legal materials

By convention, legal materials are referenced differently from other sources, and therefore they are listed separately in this section. Box 4 in Section 2.1 gives some general guidance on how to find legal materials.

Court decisions and complaints

African Commission on Human and Peoples' Rights v Kenya (26 May 2017) African Court of Human and Peoples' Rights. Communication No. 6/2012 (Ogiek v Kenya (merits decision))

African Commission on Human and Peoples' Rights v Kenya (23 June 2022) African Court of Human and Peoples' Rights Communication No. 6/2012 (Ogiek v Kenya (reparations decision))

Ågren v Sweden (26 November 2020) Communication No. 54/2013 CERD/C/102/D/54/2013 (CERD)

The Case of the Mayana (Sumo) Awas Tingni Community v Nicaragua (31 August 2001) Inter-American Court of Human Rights. Series C No 79

Billy v Australia (22 September 2022) Communication No. 3624/2019 CCPR/C/135/D/3624/2019 (HRC)

Case of Moiwana village v Suriname (15 June 2005) Inter-American Court of Human Rights. Series C No 124 (Moiwana v Suriname)

Case of the Kichwa Indigenous People of Sarayaku v Ecuador (27 June 2012) Merits, reparations, costs. Inter-American Court of Human Rights. Series C No. 245 (Sarayaku v Ecuador)

Case of the Saramaka People v Suriname (28 November 2007) Preliminary objections, merits, reparations, costs. Inter-American Court of Human Rights. Series C No. 172 (Saramaka v Suriname (merits decision))

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Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya (2 February 2010) African Commission on Human and Peoples' Rights. Communication No. 276/2003 (Endorois v Kenya)

Kaliña and Lokono Peoples v Suriname (25 November 2015) Merits, reparations, costs. Inter-American Court of Human Rights. Series C No 309

Case of the Indigenous Communities of Lhaka Honhat (Our Land) Association v Argentina (6 February 2020) Merits, reparations, costs. Inter-American Court of Human Rights. Series C No 400

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African Commission on Human and Peoples' Rights. Communication No. 588/15 (Batwa v DRC)

Pereira v Paraguay (21 September 2022) Communication No. 2552/2015 CCPR/C/132/D/2552/2015 (HRC)

Pérez Guartembel v Ecuador (26 July 2022) Communication No. 61/2017 CERD/C/106/D/61/2017 (CERD)

Poma Poma v Peru (24 April 2009) Communication No. 1457/2006 CCPR/C/95/D/1457/2006 (HRC)

State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity: interpretation and scope of articles 4(1) and 5(1) in relation to articles 1(1) and 2 of the American Convention on Human Rights (15 November2017) Advisory Opinion OC-23/17, Inter-American Court of Human Rights. Series A No. 23

South-West Africa (Second Phase), [1966] ICJ Reports, Advisory Opinions and Orders, Judgment of 18 July 1966, Dissenting Opinion by Judge Tanaka.

Statnett v Fosen Vind (11 October 2021) Supreme Court of Norway, HR-2021-1975-S

The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria (27 May 2002) African Court of Human and Peoples' Rights. Communication No. 155/96 (Ogoni v Nigeria)

Treaty body guidance

CEDAW, General Comment No. 39 on the rights of Indigenous women and girls (31 October 2022) CEDAW/C/GC/39

CERD, General Recommendation No. 23 on the rights of Indigenous peoples (18 August 1997) Contained in document A/52/18, annex V

CERD, Concluding observations on the combined twenty-third and twenty-fourth periodic reports of Mongolia, 17 September 2009, CERD/C/MNG/CO/23-24.

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CESCR, General Comment No. 7: the right to adequate housing (forced evictions) (20 May 1997)

CESCR, General Comment No. 12: the right to adequate food (12 May 1999) E/C.12/1999/5

CESCR, General Comment No. 14: The right to the highest attainable standard of health (11 August 2000) E/C.12/2000/4

CESCR, General Comment No.15: The right to water (20 January 2003) E/C.12/2002/11

CESCR, General Comment No. 26 on Land and economic, social and cultural rights (22 December 2022) E/C.12/GC/26

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HRC, General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment) (10 March 1992) A/44/40

HRC, General Comment No. 23 (art 27) (26 April 1994) CCPR/C/21/Rev.1/Add.5

HRC, General Comment No. 35: Article 9 (Liberty and security of person) (16 December 2014) CCPR/C/GC/35

HRC, General Comment No. 36: Article 6, right to life (3 September 2019) CCPR/C/GC/36

International and regional instruments

Additional Protocol to the American Convention on Human Rights (adopted 17 November 1988, entry into force 16 November 1999) (Protocol of San Salvador)

American Convention on Human Rights (adopted 22 November 1969, entry into force 18 July 1978)

African Charter on Human and Peoples' Rights (adopted 27 June 1981, entry into force 21 October 1986)

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entry into force 30 October 2001) (Aarhus Convention)

Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entry into force 3 September 1981)

Convention on the Rights of the Child (adopted 20 November 1989, entry into force 2 September 1990)

International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entry into force 4 January 1969)

International Covenant on Civil and Political Rights (adopted 16 December 1966, entry into force 23 March 1979 (article 41: 28 March 1979))

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976)

International Labour Organisation Convention No. 169, Indigenous and Tribal Peoples Convention (adopted 27 June 1989, entry into force 5 September 1991)

United Nations Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007)

UNGA Res 76/300 (28 July 2022) A/RES/76/300


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