



Key points:

01

Two broad approaches to rights-based conservation, once land and resource rights are recognised, are (i) co-management and (ii) regulated community management.

02

In both approaches, rules and regulations need to be self-determined and implemented based on the principle of free, prior and informed consent.

03

Management rules or regulations should be the least restrictive necessary to ensure that management meets its agreed objectives.

04

In co-management approaches, special attention needs to be paid to addressing power imbalances, including by ensuring communities have independent funding to resource their own participation and contract their own technical support etc.

05

Legal frameworks should be pluralistic, accommodating customary laws. There should be maximum scope for communities to set their own rules and procedures.

06

Management rules should also address issues of individual discrimination where that arises, such as discrimination against women.

“It is the way we live that conserves”¹: Legal models for rights-based conservation

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A fundamental prerequisite for rights-based conservation is recognition of the customary land rights of indigenous peoples and other highly land-connected peoples and their communities. Once this condition is met, two broad approaches for implementation of rights-based conservation are (i) co-management, and (ii) community management that is regulated through national and customary law. In this paper, we briefly review legal models for rights-based conservation from Australia, Tanzania, Kenya, Guyana, Brazil and Canada. We then outline some lessons learned and outline some general points of good practice for successful rights-based conservation.

For many, the idea of a national park is one of a wilderness free of human presence – an idea that has persisted for some 150 years, since the creation of Yellowstone National Park in the USA in the 1870s. The 1964 US Wilderness Act defines a wilderness as ‘an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain’.² The Shoshone, Niimiipu, Apsáalooke and others who used and lived in and around Yellowstone for thousands of years would not have thought of themselves as mere visitors and would have seen a landscape rich with cultural meaning rooted in a human presence dating back at least 11,000 years.³ Yet the wilderness model of conservation has been exported across the globe,

with colonialism invariably providing the means of replication, and exclusionary “fortress” conservation – where indigenous and other peoples and communities are forcibly evicted or excluded in the creation and management of environmentally protected areas – remains prevalent today.

Advances in international law relating to Indigenous people and conservation have helped to drive a paradigm shift away from fortress conservation towards a rights-based model, at least in policy and rhetoric. International human rights law,⁴ backed by international environmental law,⁵ provide that Indigenous peoples and similarly land-connected peoples and their communities have a right to

About this briefing series: In 2003, at the 5th World Parks Congress in Durban, the conservation world made commitments to return lands to indigenous peoples that had been turned into protected areas without their consent, and to establish new protected areas only with their full consent and involvement. Those commitments have not been realised. This paper is one in a series of briefing papers that offers case studies, testimony, research, and analysis from FPP and from our partners that examine the current state of play of the relationship between conservation and indigenous peoples and local communities with collective ties to their lands. It exposes challenges and injustices linked to conservation operations, showcases practical, positive ways forward for the care of lands and ecosystems, led by indigenous peoples and local communities themselves, and reflects on pathways to just and equitable conservation more broadly.

collectively own and effectively control the lands and natural resources that they have traditionally occupied, possessed, used or acquired. This includes the right to restitution of lands from which they have been involuntarily evicted or excluded, including where this has been done in order to create protected areas for environmental conservation.

These legal advances are illustrated by several legal decisions and judgments confirming that restrictions on the rights of indigenous peoples for conservation have been unlawful. For example, in a judgment of the African Court of Human and Peoples' Rights in respect of the Ogiek of the Mau forest complex in Kenya, the Court stated that any 'interference with the rights and freedoms guaranteed in the Charter shall be necessary and proportional to the legitimate interest sought to be attained by such interference'.⁶ It went on to find that the Kenyan state had *not* substantiated its claim that the Ogiek population was 'inimical to the environment', and that 'the purported reason of preserving the natural environment cannot constitute a legitimate justification for the [Kenyan state's] interference with the Ogieks' exercise of their cultural rights'.⁷

At the same time, far from being inimical to rights-based approaches, conservation science has demonstrated that environmental outcomes in areas protected by the traditional inhabitants are often better than those for protected areas where all human presence has been excluded.⁸ Demonstrating that a rights-based approach to conservation is effective, not just the right thing to do, has been an additional step towards winning the political and moral argument. However, there is still a lack of progress in practice, in relation both to remedying past injustices, and to ensuring new area-based conservation measures are rights-based. To help inform good practice, this briefing paper provides examples of several different legal models of rights-based conservation from different countries: Australia, Tanzania, Kenya, Guyana, Brazil and Canada,⁹ and from these case studies draws out lessons and general points of good practice for successful rights-based conservation.

One model tried in **Australia** is based on recognition of Aboriginal ownership of land, overlain by a co-management arrangement with the state. One such example is the Garig Gunak Barlu National Park (*GGBNP*) in *Australia's Northern Territory, comprising the ancestral lands of the Iwaidja people*.¹⁰ In this case the Park is managed by a board with equal numbers of traditional Aboriginal owners and representatives of the government of the Northern Territory.¹¹ In this example, the Aboriginal owners have the casting vote because the chairperson must be Aboriginal.¹² A variation of this model is illustrated by the Uluru-Kata Tjuta and Kakadu National Parks, where freehold title is held by the Anangu traditional owners in return for a lease back to the Australian government. In principle, the government manages the park in collaboration with the Anangu. However, concerns have been raised that unequal power relations and heavy bureaucratic demands have in practice meant that the State dominates co-management arrangements, to the detriment of Aboriginal self-determination. One example is that tourists are allowed to climb Uluru rock despite Aboriginal requests for this not to be the case.¹³

In Africa, **Tanzania** became a good practice example of community land ownership and forest management following years of community empowerment and the ratification of the Land Act and the Village Land Act in 1999. Nearly 70% of Tanzania is now comprised of village land, where customary land rights are recognised regardless of their official registration.^{14,15} This has enabled the protection of multiple ecosystems, including communal areas of forests and marshlands, which can be designated within Village Land Areas.¹⁶ In studies by both independent researchers and government experts, forests managed by communities in Tanzania have been shown to grow better and exhibit lower levels of disturbance than non-community managed forests.¹⁷ Ownership of village lands helps prevent land incursions by extractive industries, for example, and it empowers communities to develop or strengthen their own systems of sustainable management and use.¹⁸ There have however been cases where communities have been pressured into surrendering land rights, because of investor interests.¹⁹

In **Kenya**, the Ogiek of Mt Elgon reoccupied their ancestral lands at Chepkitale despite the fact that they had been forcibly evicted in 2000 by the government. The eviction was carried out after the regional IUCN office advised on turning the area into a game reserve. The Elgon Ogiek tried to negotiate with the county and national government, but when this failed, they pursued court cases to halt the evictions and to secure their community lands. Meanwhile, they worked in partnership with Forest Peoples Programme and the regional IUCN office to conduct the world's first [Whakatane Assessment](#), which 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.

During this process, the Elgon Ogiek developed their own community sustainability bylaws that have guided their land use, partly as a result of their strong community governance, and partly through using [the skills they have developed in mapping, monitoring and land use planning](#). These skills have ensured they have a convincing evidence base from which to (i) show outsiders that they are powerfully effective in conserving their lands (for example, elephant numbers are flourishing) and – more importantly – (ii) ensure they collectively implement land use plans that ensure the well-being of human and non-human inhabitants alike.

Finally, [in September 2022, the Ogiek of Mt Elgon won a 14-year court case](#) against their eviction, paving the way for restitution of the land for customary sustainable use and community-led conservation purposes. They now provide a powerful example of how securing the community tenure rights of forest peoples can create a rapid, rights-based route to the [effective and sustainable conservation of their forests](#). This model for rights-based conservation has as its basis effective customary governance, as well as success in using the national legal framework to secure recognition of a community reality that the Elgon Ogiek have refused to relinquish.



Peter Kitelo Chongeywo, one of the Ogiek petitioners, celebrates their successful land rights case with the Elgon Ogiek community and visiting government and national conservation agency officials, 8th November 2024.

Credit: Justin Kenrick, FPP



Wapichan gathering, Parabara, hosted by the South Rupununi District Council, Guyana.
Credit: Vicki Brown/FPP

In **Guyana**, FPP's long-term work with the Wapichan has supported the community to map their lands comprehensively and put together a plan for the sustainable use and management of their territory.²⁰ The Wapichan have engaged in formal talks with the Guyanese government with the aim of securing legal titles to their collective territory and creating an extensive Community Conserved Forest over old growth rainforest in the Upper Essequibo basin, using the legislative framework provided by the 2006 Amerindian Act.²¹ Title negotiations for the Wapichan remain unresolved. A second example from Guyana is the Konashen Community-Owned Conservation Area (COCA),²² which belongs to the Wai Wai Amerindian people. This area has already been established, but the Wai Wai have expressed complaints about the rules governing the management of the COCA on the grounds that they were created by external conservation NGOs without effective and culturally appropriate processes for free, prior and informed consent (FPIC) over the management regime for the protected area.²³ Thus, important lessons can be drawn from its formation and management.

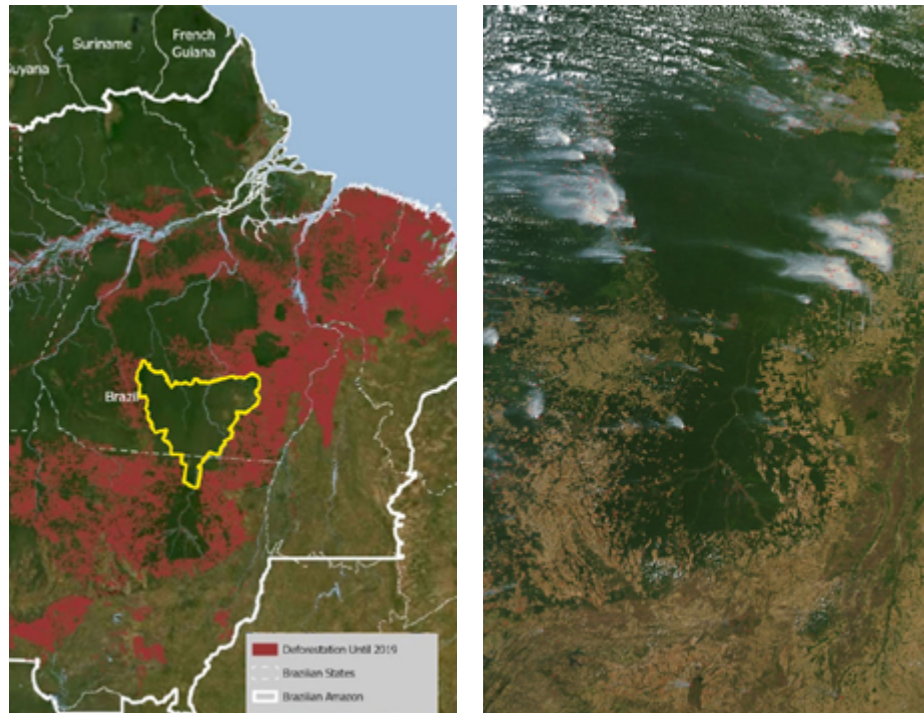
The first indigenous territory to be recognised in Brazil was the Xingu Indigenous Park ("Xingu") which was designated as a national park in 1961²⁴ but was subsequently renamed as an Indigenous Park. Fourteen distinct indigenous peoples, including the Kayapo, live in Xingu. Analysis of deforestation in different areas of the Brazilian Amazon has shown that indigenous lands have been most effective overall at preventing deforestation,²⁵ and that Xingu National Park has been particularly effective at doing so. In the 1990s, the indigenous peoples of Xingu created the Xingu Indigenous Land Association (ATIX) to act as their representative institution in discussions with the government, as part of a move towards greater autonomy. Today, the indigenous groups are still working together and attempting to bridge differences, including by creating a consensus-built Territorial Management Plan for their future cultural and economic survival and the protection of their environment.



Kamaiurá village in Xingu Indigenous Park.

Credit: Wikipedia.org, Creative Commons 2.5

However, shockingly discriminatory colonialist attitudes to indigenous peoples remain part of Brazil's legal framework. The Indigenous Statute from 1973 is still in force, which describes indigenous peoples as 'minors' who are 'relatively incapable' of exercising their rights. Also, while the Constitution recognises indigenous peoples' rights to the use and possession of their lands, land ownership is retained by the state. Therefore, the only safeguard against incursions onto indigenous lands is a weakly implemented²⁶ right to consultation, which falls well short of the international legal requirement for free, prior and informed consent (FPIC).



Satellite imagery of Kayapo lands (in yellow) and much of Xingu Indigenous Park, demonstrating stark contrast between the burning and deforestation outside the Indigenous protected lands, compared with the darker green primary forest areas within. (Source: <https://kayapo.org/territory>)

One challenge many Indigenous peoples face is the effective exclusion they experience while their land claim is being fought for – an exclusion that can fatally compromise the survival of their culture whatever the outcome of the land claim. In **Canada** there are a large number of unresolved land claims by First Nations, some of which relate to lands which were designated as national parks without their consent. Despite this fact, some first nations have been able to successfully negotiate interim management agreements with the State that provide for their continued use of, and travel and shelter within, the parks for livelihood and cultural activities.

One such example is the *Nahanni National Park Reserve* (NNPR) in Canada's Northwest Territories (established in 1976), which is the traditional territory of the Dehcho First Nation. Another example is the establishment of the *Thaidene Nëné National Park Reserve*, following agreements between the Łutsël K'e Dene First Nation (ŁKDFN)²⁷, the Northwest Territories Métis Nation (NTMN) and Parks Canada. One key advantage for the ŁKDFN is that they managed to raise a trust fund of 30 million Canadian dollars to support training and community monitoring, and for the development of ecotourism.²⁸ Arguably, this will have served to significantly strengthen their autonomy and agency in the relationship with Parks Canada and the federal government.

In summary, the examples of conservation on Indigenous lands illustrated by the case studies examined in this paper can be divided into two broad types: (1) those involving a co-management arrangement, and (2) those involving community management, regulated by national and customary law. A full analysis of these examples is beyond the scope of this paper as it would require detailed consultation and reflection with those directly involved, particularly the indigenous peoples themselves. However, some broad lessons can be drawn.

Firstly, a co-management arrangement can appear consistent with rights, but all too easily come at the expense of failing to guarantee enjoyment of rights in practice. This quite easily arises if the community does not have the independent financial and technical resources to enable it to act and participate on sufficiently equal terms with their state-resourced counterparts. Tilting the balance of power in favour of the community will invariably require significant effort and resourcing to remove the barriers to effective exercise of self-determination. None of the examples outlined above appear to have achieved this, with the potential exception of the Thaidene Nëné National Park Reserve as a result of the trust fund raised by the Łutsël K'e Dene First Nation.

Secondly, while regulated community ownership and management should provide greater community autonomy in theory, self-determination can still be rendered illusory by imposed rules and regulations (as in the Konashen COCA example from Guyana). That does not mean there is no case for state regulation, but that any such regulation should be limited to those measures which are necessary, proportionate and non-discriminatory, so as to avoid violating rights. Instead, regulation should be tailored as much as possible towards accommodating and enabling communities'

self-determined customary sustainable use norms and practices. State regulation may also be necessary to safeguard against discrimination, as illustrated by the case study from Tanzania where the legal framework includes safeguards to address discrimination against women.²⁹ Whether via a co-management arrangement, or a regulated community management arrangement, the management rules or regulations should:

1. be the least restrictive necessary to ensure that management meets its agreed objectives;
2. maximise the scope for communities to set their own rules that are culturally rooted and accommodate customary laws through legal plurality;
3. be developed with the meaningful participation and FPIC of the communities concerned;
4. address issues of individual discrimination, including against women.

In conclusion, while the examples highlighted in this paper have their pros, cons and contextual specificities, they lend support to the idea that rights-based conservation is well within our grasp, as well as being crucial to realising a sustainable and enduring win-win for biodiversity, climate, cultural survival and human flourishing.

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Endnotes

- 1 The quote in the title comes from a statement by a member of the Mt. Elgon Ogiek community, and rather than being individually attributed should properly be interpreted as a manifestation of the cultural consensus held in common by the Mt. Elgon Ogiek indigenous people.
- 2 Per Section 2(c) definition of ‘Wilderness’.
- 3 As acknowledged by the US National Parks Service, see for example at <https://www.nps.gov/yell/learn/historyculture/associatedtribes.htm>. The Niimiipu and Apsáalooke are autonyms for the Nez Perce and Crow peoples respectively. For more information on the indigenous connection to lands in and around Yellowstone National Park, see for example, Prof. Douglas H. MacDonald, *Before Yellowstone: Native American Archaeology in the National Park*, (2018: University of Washington Press).
- 4 *Xákmok Kásek Indigenous Community v. Paraguay*, Inter American Court of Human Rights (IACtHR), Judgment of August 24, 2010. Series C No. 214; *Kaliña and Lokono Peoples v. Suriname* IACtHR Judgment of November 25, 2015. Series C No. 309; Centre for Minority Rights Development and Minority Rights Group International (on Behalf of the Endorois Welfare Council) v Kenya, Communication 276/2003, ACHPR (2010); African Commission on Human and Peoples’ Rights v. Republic of Kenya, ACtHPR Judgment 26 May 2017, Application No. 006/2012 – hereafter referred to as ACHPR (Ogiek v. Kenya); Minority Rights Group International and Environnement Ressources Naturelles et Développement (on behalf of the Batwa of Kahuzi-Biega National Park, DRC) v. Democratic Republic of Congo (DRC), Communication 588/15, ACHPR (2022, plus 2024 corrigendum). The issue has also been dealt with by various UN Treaty bodies, including in the Concluding observations of the Committee on the Elimination of Racial Discrimination: Botswana. 23/08/2002. UN Doc. A/57/18, paras.292-314; Ethiopia. 20/06/2007. UN Doc. CERD/C/ETH/CO/15, at para 22; Sri Lanka. 14/09/2001. UN Doc. A/56/18, paras. 321-342; Namibia. 19/08/2008. UN Doc. CERD/C/NAM/CO/1; Botswana. 4/04/2006. UN Doc. CERD/C/BWA/CO/16, at para 12; Congo. 23/03/2009. UN Doc. CERD/C/COG/CO/9, at 13; as well as by the Human Rights Committee, see for example the Concluding observations of the Human Rights Committee: Australia 28/07/2000. UN Doc. CCPR/CO/69/AUS, at paras. 10 and 11. The issue has been dealt with at length recently in the Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, Victoria Tauli-Corpuz, in relation to Indigenous Peoples and Conservation, 29 July 2016, UN Doc. A/71/229.
- 5 The world’s cornerstone international treaty on environmental law, the UN Convention on Biological Diversity (CBD), via its articles, notably Article 8(j) and 10(c), decisions of its regular ‘Conference of the Parties’ (“COP”), and the 2022 Kunming-Montreal Global Biodiversity Framework (GBF), recognises the valuable contribution to conservation from indigenous peoples’ and local communities’ ways of life, and requires state parties to protect and integrate the rights and way of life of indigenous peoples and local communities into biological conservation measures. See inter alia Decision VII/28 on Protected Areas, adopted by the COP 7 (2004), at para 22; Decision X/31 ‘Protected Areas’ of COP 10 (2010) at paras 31 and 32(c), and the GBF, inter alia targets 1 and 3.
- 6 ACHPR (Ogiek v. Kenya), at para 188. The Charter referred to is the African Charter on Human and Peoples’ Rights.
- 7 Ibid, 189.

- 8 See for example the following research: Chhatre, A. and Agrawal, A. (2009), Trade-offs and synergies between carbon storage and livelihood benefits from forest commons, PNAS vol. 106 no. 42, pp.17667-17670; Dawson, N. et al (2024), Is it Just Conservation? One Earth vol 7 no 6, pp 1007-1021; <https://doi.org/10.1016/j.oneear.2024.05.001>; Nelson A, Chomitz KM (2011) Effectiveness of Strict vs. Multiple Use Protected Areas in Reducing Tropical Forest Fires: A Global Analysis Using Matching Methods PLoS ONE 6(8): e22722. doi: 10.1371/journal.pone.0022722; and Porter-Bolland et al (2011) Community managed forests and forest protected areas: An assessment of their conservation effectiveness across the tropics, Forest Ecology and Management, Forest Ecol. Manage., doi:10.1016/j.foreco.2011.05.034; Seymour, F., La Vina, T., Hite, K., (2014) Evidence linking community-level tenure and forest condition: An annotated bibliography, Climate and Land Use Alliance (CLUA).
- 9 Note that this is only a selection and summary of a range of examples, compiled in order to give a sense of the kinds of models that have been tried and lessons that can be taken from those cases. The experience and perceptions of the communities concerned were not captured, as would be necessary to fully evaluate their success.
- 10 Removed in the 1950s, they were able to return to their lands further to the Cobourg Peninsula Land and Sanctuary Act 1981. Jennifer Carter, Thinking Outside the Framework: Equitable Research Partnerships for Environmental Research in Australia, Carter' (March 2008) 174(1) 'The Geographical Journal', 63, 66. Australian Government Department of the Environment and Energy, 'Cobourg Peninsula and Indigenous Australians' (Australian Government) <<http://www.environment.gov.au/water/wetlands/coburg-peninsula-indigenous-australians>> accessed 13 June 2017.
- 11 Toni Bauman, Chris Haynes and Gabrielle Lauder, 'Pathways to the co-management of protected areas and native title in Australia' (May 2013) (32) AIATSIS Research Discussion Paper, 23.
- 12 Vanessa Dekoninck, 'Deconstructing the stakeholder: A case study from Garig Gunak Barlu National Park, Australia', (2007) 3(2) International Journal of Biodiversity Science and Management, 77 <<http://www.tandfonline.com/doi/pdf/10.1080/17451590709618164>> accessed 17 July 2017, 81.
- 13 Ibid, 101.
- 14 Liz Alden Wily, Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa. Five Briefs, 2012, 61-62.
- 15 Liz Alden Wily, 'The Fate of Res Communis in Africa: Unfinished Business' in Kameri Obote P. & Collins Odote (eds.) The Gallant Academic: Essays in Honour of Professor Okoth-Ogendo, (University of Nairobi Press forthcoming 2017), 111.
- 16 Ibid, at 113.
- 17 Ministry of Natural Resources and Tourism, Participatory Forest Management in Tanzania: Facts and Figures (2012), 3-4. Community-run Forest Reserves have added 2.3 million hectares of land to Tanzania's protected area sector (Liz Alden Wily, 'The Fate of Res Communis in Africa: Unfinished Business', 2017, p. 113) Tom Blomley, Lessons Learned from Community Forestry in Africa and their Relevance for REDD+, 2013, 6.
- 18 Liz Alden Wily, 'The Fate of Res Communis in Africa: Unfinished Business', 2017, 114.
- 19 Liz Alden Wily, 'The Fate of Res Communis in Africa: Unfinished Business', 2017, 114; Liz Alden Wily, Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa. Five Briefs, 2012, 60.
- 20 Forest Peoples Programme, 'Press Release: Wapichan people in Guyana showcase community proposal to save tropical forests on their traditional lands', 7 February 2012, <http://www.forestpeoples.org/topics/environmental-governance/news/2012/02/press-release-wapichan-people-guyana-showcase-community>, accessed 5 May 2017.

- 21 Cymraeg isod, 'Government of Guyana to open land-rights talks with Wapichan thanks to Welsh support' (Size of Wales, 2016) <http://sizeofwales.tumblr.com/post/142629322842/government-of-guyana-to-open-land-rights-talks>, accessed 5 May 2017.
- 22 'Amerindian Tribes of Guyana' (Guyana Chronicle, 17 September 2010) <https://guyanachronicle.com/2010/09/17/amerindian-tribes-of-guyana>, accessed 13 July 2017. The Amerindian Act 2006 (Section 58(1)) provides for Amerindian protected areas to be established.
- 23 Pers. Comm., Dr. Tom Griffiths, Coordinator of the Responsible Finance Programme at Forest Peoples Programme (NGO); information provided during discussions with individuals from the Wai Wai in Guyana.
- 24 Peoples and communities that reside in the Indigenous Territory of Xingu in conjunction with the following associations: Associação Terra Indígena Xingu (ATIX), Instituto de Pesquisa Etnoambiental do Xingu (IPEAX), Instituto Socioambiental (ISA), Coordenação Regional do Xingu (FUNAI). 'Plano de Gestão de Território Indígena do Xingu', 2017 (not yet released), 8.
- 25 Soares-Filho, B. et al, 'Role of Brazilian Amazon protected areas in climate change mitigation' (2010) 107(24) 'Proceedings of the National Academy of Sciences of the United States of America', 10821, 10822. See Fig 1.
- 26 <https://www.forestpeoples.org/en/rights-based-conservation-cultural-identity-knowledge/news-article/2017/it-way-we-live-conserves> Carmen Santana dos Santos, Broken Promises – Bleak Future; Are indigenous peoples and the Amazon paying the price for the world's appetite for natural resources? (Society for Threatened Peoples). http://assets.gfbv.ch/downloads/endfassung_englisch.pdf, accessed 13 July 2017, 4. 'Brazil's Belo Monte Dam: Sacrificing the Amazon and its Peoples for Dirty Energy' (Amazon Watch), see <http://amazonwatch.org/work/belo-monte-dam>, accessed 13 July 2017.
- 27 Lutsel K'e Dene First Nation. Thaidene Nënë Fund. <https://www.landoftheancestors.ca/thaidene-nene-fund.html>. Accessed 2 September 2025.
- 28 Where a Village Council managing community land applies customary law, it must be applied in line with the written law of the land and without discrimination to any group, including women. In addition, lands are presumed to be jointly held by spouses (Land Act 1999, (No. 4 of 1999), s.161), and spouses must consent to any transfer of land, allowing for greater protection of women's land rights (as discussed in Liz Alden Wily, 'The Fate of Res Communis in Africa: Unfinished Business', 2017, 113-114.) In addition, women are explicitly granted the same rights to hold land as men in both the Land Act 1999 and the *Village Land Act 1999* (as discussed in G. Sundet, 'The 1999 Land Act and Village Land Act- A technical analysis of the practical implications of the act' (Working Draft) FAO: 2005).