

Conservation and Human Rights: Key Issues and Contexts



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*Scoping Paper for the Conservation
Initiative on Human Rights*

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with Michael Painter

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List of Acronyms

ABS	Access and benefit sharing
ACHPR	African Commission on Human and Peoples' Rights
CBD	The Convention on Biological Diversity
CBNRM	Community-based natural resource management
CCBA	Carbon, Community, and Bio-diversity Alliance
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All forms of Racial Discrimination
CIHR	Conservation Initiative on Human Rights
CRC	Convention on the Rights of the Child
EMRIP	Expert Mechanism on the Rights of Indigenous Peoples
FPIC	Free, prior and informed consent
FSC	Forest Stewardship Council
IACHR	Inter-American Court of Human Rights
ICCAs	Indigenous and community conserved areas
ICCPR	International Covenant on Civil and Political Rights
ICDPs	Integrated conservation and development projects
ICESCR	International Covenant on Economic Social and Cultural Rights
ILO	International Labor Organization
IUCN	International Union for Conservation of Nature
MEAs	Multilateral Environmental Agreements
NGOs	Non-governmental organizations
OHCHR	Office of the High Commissioner for Human Rights
PoWPA	CBD Programme of Work on Protected Areas
RBAs	Rights-based approaches
REDD+	Reducing emissions from deforestation and forest degradation
REDD+ SES	REDD+ Social and Environmental Standards
RSPO	Roundtable on Responsible Palm Oil
UDHR	Universal Declaration on Human Rights
UNDRIP	Universal Declaration on the Rights of Indigenous Peoples
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNPFII	The UN Permanent Forum on Indigenous Issues
WWF	World Wide Fund for Nature/ World Wildlife Fund

1. Background and Context

1.1 Introduction

Actions to conserve nature and natural resources are closely related to the rights of people to secure their livelihoods, enjoy healthy and productive environments and live with dignity. The pursuit of conservation goals can contribute positively to the realization of many fundamental human rights. Likewise, secure rights – for example, land tenure and participation in decision-making – can enable more effective environmental stewardship. However, conservation activities can also generate negative impacts where their links to issues of human rights and well-being are not sufficiently understood or addressed, and weak fulfilment of rights can also undermine conservation outcomes.

In recognition of these links, a group of global conservation organizations have formed a **Conservation Initiative on Human Rights (CIHR)** to strengthen integration of human rights in conservation policy and practice. Participating organizations include Birdlife International, Conservation International, Fauna & Flora International, IUCN (International Union for Conservation of Nature), The Nature Conservancy, Wetlands International, Wildlife Conservation Society, and WWF (World Wide Fund for Nature/ World Wildlife Fund). Under the initiative, each of the participating organizations has adopted a conservation and human rights framework, committing to uphold a set of human rights principles and to put in place implementation measures, including relevant policies, enhanced implementation capacity and appropriate accountability mechanisms.¹

While the goal of effectively integrating human rights principles in conservation is widely embraced, many questions remain about how best to realize this integration. Key questions concern the practical implications for the design and implementation of conservation strategies across a range of programmatic areas (e.g., climate change, protected areas), including where there are conflicts between different rights and rights holders, or conflicts with conservation objectives. Other questions relate to the kinds of policies, capacities and systems that are needed to enable conservation organizations to implement and monitor their human rights commitments. While particular conservation strategies and implementation measures are likely to vary across organizations, based on their own missions and structures, learning needs on these issues are broadly shared. Common learning needs include understanding of international human rights frameworks and key rights issues relevant to conservation, views of rights-holders and experts on issues and needs for addressing rights issues in conservation, lessons from practical experience, and experience of other sectors in putting in place systems and capacities to meet social responsibility objectives.

The aim of this paper is to contribute towards this shared CIHR learning, with a particular focus on practical issues in the design and implementation of conservation strategies. By providing an introduction to international rights frameworks, identifying key issues at the intersection of conservation and human rights, and exploring practical approaches to address these issues in conservation contexts, the paper seeks to contribute to increased dialogue and action on innovative strategies linking conservation and human rights. It seeks also to inform policy development activities of

participating organizations, by providing information on guiding principles related to key issues, and how non-governmental organizations can respect, support and promote these principles.

To support these aims, the paper includes:

- Background on the linkages between conservation and human rights concerns (Section 1);
- An overview of key international human rights frameworks and institutions, along with some initial reflections on approaches to working with rights in practice (Section 2);
- A summary of human rights frequently identified as relevant to conservation contexts (Section 3);
- Identification and discussion of key issues that arise in conservation contexts, including guiding principles and practical approaches for addressing them (Section 4);
- An introduction to conservation contexts in which key issues are likely to arise (Section 5); and
- Conclusions (Section 6).

This paper is primarily directed to, and written from the perspective of, non-governmental conservation organizations, such as those in the Initiative. However, it is hoped that the broader analysis and lessons will also be useful for others working at or interested in the intersection of human rights and conservation.

1.2 Why a focus on rights in conservation?

The work of the Conservation Initiative on Human Rights is grounded in recognition that, because of rural people's strong economic and cultural relationships to land and natural resources, conservation actions have significant potential to contribute to the realization of human rights. Responsible actions mindful of the rights of others, and of obligations to help respect, protect and promote the enjoyment of those rights, also contribute to building a climate of transparency and accountability that enhances the opportunities for long-term conservation.

At the same time, efforts to conserve biodiversity and protect ecosystem integrity affect people's access to land and other natural resources, and consequently their enjoyment of human rights. Frequently, the people who live in high-biodiversity areas are among a country's most vulnerable, and their livelihoods depend directly on ecosystem services and access to land and natural resources. From an ethical standpoint, organizations involved in conservation therefore share a responsibility to understand and address potential negative impacts of conservation actions on people whose rights or livelihoods may be affected. Conversely, not being explicitly cognizant of the rights of all actors in an area can create or fuel conflicts over land, water and other resources, which can undermine conservation efforts.

Fundamental ethical and pragmatic concerns about human well-being have been part of conservation thinking and practice for decades – providing a rationale e.g., for integrated conservation and development projects (ICDPs) in the 1980s and 1990s, and underlying more recent approaches (building on lessons about the limitations of ICDPs) such as co-management, community-based natural resource management (CBNRM) and recognition of indigenous and community conserved areas (ICCAs).

However, integration of human rights also introduces new elements to conservation practice, particularly related to:

- Grounding in defined standards, especially based on international human rights frameworks, and
- Relationships of accountability between “rights-holders” and “duty bearers” (see Box 1).

Grounding in international rights standards has become more prominent due to:

- Shifts in other sectors, especially development, to “rights-based approaches.” For example, the UN Development Group adopted a *Human Rights Based Approach to Development Cooperation* in 2003. Prominent development focused non-governmental organizations (NGOs) such as Oxfam and CARE have also adopted institutional rights-based approaches (RBAs);
- Constituencies demanding recognition of rights as a basis for any partnership – especially indigenous peoples working through international social movements for indigenous rights. For many conservation organizations, indigenous rights have been the first and remain the most robust engagement on rights issues;
- Research and experience demonstrating the importance of fulfillment of rights – such as security of land tenure – to effective outcomes; and
- Legislative processes and/or cases in a number of countries strengthening recognition of community rights as they relate to conservation and natural resources.

Similarly, emphasis on accountability of organizations involved in conservation is based on:

- A growing view that - while States are primary duty-bearers (see Box 1)² - non-State actors also share certain human rights responsibilities, even where States may fail to hold them accountable. These arguments have been directed especially towards powerful private sector actors; however, more recently, increasing public attention to the roles of NGOs has led to calls for greater accountability and transparency on social issues, based on the view that “with power comes responsibility.”³
- Concern with ensuring that rights are systematically considered in all cases in which they may be affected – both when there are synergies with conservation objectives, and also when there are tensions or conflicts.

Box 1: Rights holders, duty bearers, and the emerging role of non-state actors

All human beings are rights holders. The individuals and groups responsible for realization of their rights are duty-bearers. States have historically been, and continue to be, identified as the primary duty-bearers. It is to States that the core, legally-binding human rights conventions are directed, and thus States who ratify and take on accountability for compliance with those conventions. Today States parties' obligations under international law instruments are commonly understood to be respecting, protecting, promoting and fulfilling rights.

- **Respecting rights** refers to the immediate obligation to refrain from directly or indirectly interfering with people(s)' pursuit or enjoyment of their rights, e.g., through uncompensated and/or forced eviction.
- **Protecting rights** refers to obligations to ensure (e.g., through regulation, monitoring, investigation, and enforcement) that non-state actors, or 'third-parties', do not interfere with people(s)' pursuit or enjoyment of their rights. This obligation may require, *inter alia*, regulating the human rights related impacts of extractive industry, industrial and agricultural pollutants, and, while not often mentioned, even the work of NGOs.
- **Promoting and Fulfilling rights** refers to obligations to take active measures – e.g., legislation, regulation, budgetary policy, public policies, and/or other effective means – to create an enabling environment in which people can realize their rights (promoting). There is also an obligation to directly provide for rights when people cannot do so for themselves, e.g., food aid following a severe drought (fulfilling).

The responsibilities of non-state actors are being debated, with growing consensus that all actors have obligations to at least respect rights within the scope of their influence and power.

Adapted from Campese 2009:3

2. Key human rights frameworks relevant for conservation

This section provides an introduction to key human rights frameworks relevant for conservation. Frameworks include Treaties (such as Conventions and Covenants), which are binding on ratifying states-parties, as well as Declarations, guidelines and other sources which, while non-binding, reflect important areas of international consensus and strongly influence state and other parties' actions. The section also introduces the international system of institutions that define and regulate human rights, and some issues and challenges associated with working with rights in practice.

2.1 International human rights frameworks

The **Universal Declaration on Human Rights** (UDHR) (1948) establishes the fundamental principles of much current human rights law. It is further supported by legally-binding treaties, including:

- **International Covenant on Civil and Political Rights** (ICCPR) (adopted 1966, entry into force 1976)), which enshrines rights dealing with personal liberty and protection of the individual against violations by the state - such as rights to life and liberty; freedom from cruel punishment and slavery; and freedom of thought, religion, and assembly; and
- **International Covenant on Economic Social and Cultural Rights** (ICESCR) (adopted 1966, entry into force 1976), which enshrines rights dealing with guaranteed access to essential social and economic

values - such as rights to an adequate standard of living (including food and housing), freedom from hunger, safe and fair work, and health.

Other conventions and declarations often cited in the context of rights-conservation linkages include:

- *Convention on the Elimination of All forms of Racial Discrimination* (CERD) (adopted 1965, entry into force 1966) which prohibits persons belonging to ethnic, religious or linguistic minorities being denied the right to enjoy their own culture, profess and practice their own religion, or use their own language, including in the context of territories and natural resources use;⁴
- *Declaration on the Right to Development* (1986) which recognizes “an inalienable human right ... to participate in, contribute to, and enjoy economic, social, cultural and political development...”.
- *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW - adopted 1979, entry into force 1981) which recognizes rural women’s and men’s equal rights to participate and benefit from rural development, as well as rural women’s rights to enjoy adequate living conditions, including in relation to sanitation and water supply (Article 14); and
- *Convention on the Rights of the Child* (CRC - adopted 1989, entry into force 1990), which directs States Parties to “combat disease and malnutrition... taking into consideration the dangers and risks of environmental pollution” (Art 24(2)(c)).

Regional human rights frameworks

In addition to these international frameworks, there are a number of regional human rights frameworks and instruments, overseen by regional monitoring bodies and courts. While there is substantial overlap with universal instruments, regional instruments also reflect the most important issues for a particular region. Robust human rights systems have been established in Africa, the Americas and Europe; regional instruments include:

- African Charter on Human and Peoples' Rights (adopted 1981, entry into force 1986)
- American Convention on Human Rights (entry into force 1978)
- Charter of Fundamental Rights of the European Union (adopted 2000)
- European Convention on Human Rights⁵(adopted 1950, entry into force 1953)

In Asia, while no region-wide human rights charter has yet been adopted by States, a group of NGOs developed the Asian Human Rights Charter in 1998, as a peoples’ charter.⁶

Rights of Indigenous Peoples

The rights of indigenous peoples have been a particular focus of recent developments in international human rights law, in recognition of the specific situation of indigenous peoples as distinct cultures, often in non-dominant positions in national society, and with close ties to ancestral territories. Two key instruments are:

- *Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries* (International Labour Organization (ILO) 169) (adopted 1989, entry into force 1991), which was among the first instruments to specifically recognize indigenous peoples’ relationships and rights to lands which they traditionally occupy, and their associated natural resources. The Convention prohibits peoples’

removal, except in cases where “necessary as an exceptional measure,” and with free and informed consent;⁷ and

- *Universal Declaration on the Rights of Indigenous Peoples* (UNDRIP 2007), which, while non-binding, “represents one of the most important developments in the promotion and protection of the basic rights and fundamental freedoms of indigenous peoples.”⁸ It includes provisions regarding rights of self-determination; land and resource tenure; free, prior and informed consent in relation to their lands and territories; and the enjoyment of cultural and customary institutions.

Multilateral Environmental Agreements

Several binding and non-binding Multilateral Environmental Agreements (MEAs) contain rights related provisions.⁹ The *UN Framework Convention on Climate Change* (UNFCCC) Cancun Agreement, adopted in December 2010, includes safeguards¹⁰ on respect for the knowledge and rights of indigenous peoples and members of local communities and their full and effective participation, in relation to policies and incentives for reducing emissions from deforestation and forest degradation, and conserving, sustainably managing and enhancing forest carbon stocks (collectively referred to as REDD+). The *Convention on Biological Diversity* (CBD) (adopted 1992, entry into force 1993) addresses rights and interests of indigenous and local communities in a number of biodiversity conservation contexts:

- CBD Article 8j stipulates that States Parties shall (“as far as possible and as appropriate”) “respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities embodying traditional life styles relevant for the conservation and sustainable use of biological diversity,” “promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices,” and “encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.”
- Article 10(c) stipulates that States Parties shall (“as far as possible and as appropriate”) “protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.”
- Element 2 of the CBD Programme of Work on Protected Areas (PoWPA), established in 2004, focuses specifically on governance, participation, equity, and benefit sharing in PA establishment and management. It sets goals and suggests that parties, *inter alia*, recognize and promote a broad set of protected area governance types, including areas conserved by indigenous and local communities, ensure full and effective participation of indigenous and local communities, and “[e]nsure that any resettlement of indigenous communities ... will only take place with their prior informed consent that may be given according to national legislation and applicable international obligations.”¹¹
- The *Akwé: Kon Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments*, address proposed developments that will take place on or impact sacred sites and lands and waters traditionally occupied or used by indigenous and local communities.¹²
- The *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization* (ABS), a supplementary agreement to the CBD adopted in 2010,

provides a legal framework for the fair and equitable sharing of benefits arising out of the utilization of genetic resources and associated traditional knowledge covered by the CBD.¹³

Regarding procedural rights in conservation, the *Rio Declaration on Environment and Development* (1992) calls for environmental decisions to be made "with the participation of all concerned citizens, at the relevant level" (Principle 10). The UN Economic Commission for Europe's *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Århus Convention) aims to "...contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being" by stipulating that "each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters..." (Art 1).

Environmental rights

Generally conceived of as a human right to a clean, healthy and/or safe environment,¹⁴ environmental rights are distinct from, but closely linked to, more widely recognized human rights. The Stockholm Declaration (*Declaration of the United Nations Conference on the Human Environment*) (1972) recognizes that, 'Man has the fundamental right to freedom, equality and adequate conditions ... in an environment of a quality that permits a life of dignity and wellbeing, and he bears a solemn responsibility to protect and improve the environment for present and future generations'(Principle 1). The *Draft Declaration of Principles on Human Rights and the Environment* (1994),¹⁵ while not adopted, reflects a comprehensive effort to make environmental rights a more explicit part of human rights. It states that all persons have the right to a healthy environment, and one that equitably meets the needs of present generations without impairing the ability of future generations to meet their needs. It also states that all persons have a duty to protect and preserve the environment.¹⁶ In 2010, the UN General Assembly and the Human Rights Council both endorsed specific language on the right to water – safe drinking water and sanitation – as a human right.

Environmental rights have been recognized in a number of regional human rights instruments – such as the *African Charter on Human and Peoples' Rights*, *Protocol of San Salvador* (*Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights*) (1998), and the *Revised Arab Charter on Human Rights* (2004). At the national level, close to 115 national constitutions now include reference to rights to a safe, healthy, or ecologically balanced environment.¹⁷ Environmental rights, including the non-human rights of the earth and natural systems, have also been highlighted in statements put forth by indigenous peoples, including the 'draft Universal Declaration of the Rights of Mother Earth.'

Consensus and contestation

The UDHR, ICCPR, ICESCR, adopted by the United Nations General Assembly (UNGA) in the aftermath of WWII, comprise what is commonly referred to as an "International Bill of Rights," reflecting a broad international consensus.¹⁸ However, there is still a great deal of contestation over the scope of human rights, and over how human rights are understood and interpreted. One frequent criticism is that these

international instruments reflect a “Western” cultural bias.¹⁹ Even in the “West” however, divisions remain; for example, the US is one of the few countries that has not ratified the ICESCR, tending to view economic and social rights as desirable goals rather than as rights.²⁰

Many collective rights— such as the right to sustainable development, to peace or to a healthy environment – also remain contested. Some countries do not recognize the concept of collective human rights, with the exception of the right to self-determination. In this view, while certain individual rights may be exercised collectively (e.g., collective title to a property), the right itself is not seen to be held by a community or other group.²¹ Rather, human rights are understood to be held by individuals, and developed for the purpose of ensuring protection of individual interests against violations by the state or other actors.

Similarly, there is widespread acceptance of the moral obligation of the present generation to leave a healthy planet to future generations, and some recognition of the concept of “inter-generational rights” in international declarations.²² However, the concept of inter-generational rights is not yet well accepted among rights advocates and practitioners, on the view that people who are not yet alive cannot be represented in present-day discussions about land use. Conservation organizations may have an opportunity to apply their work and experience in support of strengthening and expanding standards in this emerging discussion.

2.2 Major human rights agencies and actors

There is a large, multi-level system of bodies that define, monitor, and enforce human rights.

United Nations Human Rights Bodies

UN human rights bodies include charter-based bodies, treaty-based bodies, and the Office of the High Commissioner for Human Rights (OHCHR). Either treaty bodies or charter bodies can address human rights complaints, depending on the nature of the violation and the party bringing the complaint.²³

Charter bodies have broad mandates, including convening research and action around emerging human rights issues. The main charter body, the UN Human Rights Council (the Council)²⁴, is responsible for strengthening the promotion and protection of human rights and overseeing “special procedures.” Special Procedures are independent, volunteer experts that examine, monitor, advise and publicly report on human rights issues in specific countries, or on major worldwide issues.²⁵ They can work as individuals (e.g., the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples²⁶), or in working groups (e.g., the Expert Mechanism on the Rights of Indigenous Peoples - EMRIP²⁷). The UN Permanent Forum on Indigenous Issues (UNPFII) is another charter body which acts as an advisor to the Economic and Social Council, with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights.

Each of the core nine international human rights treaties in force²⁸ is overseen by a UN treaty body - a committee of independent experts that monitors implementation of obligations. Treaty bodies also provide interpretations on the content of these human rights instruments in *General Comments*.²⁹

The High Commissioner for Human Rights heads OHCHR and spearheads the United Nations' human rights efforts. The OHCHR supports charter-based and treaty-based bodies in various technical capacities.³⁰

Regional human rights bodies

Regional conventions have their own monitoring bodies and courts. Several of these have adjudicated cases that set important precedents regarding rights-conservation relationships. The 2001 ruling of the Inter-American Court of Human Rights (IACHR) concerning the Mayagna (Sumo) community of Awas Tingni in Nicaragua affirmed indigenous peoples' collective rights to their land, resources, and environment. The case concerned violations of the community's rights to property and judicial protection by the Nicaraguan government when it granted concessions to a Korean lumber company to log on the community's traditional land without consulting with the community.³¹ In the case of the Saramaka People v. Suriname, the IACHR decided in November 2007 that Suriname had violated rights of the Saramaka people in awarding logging and mining concessions on territories they possess, and specified safeguards the state must follow in awarding concessions, including consultation, free, prior and informed consent and environmental impact assessments.³² The African Commission on Human and Peoples' Rights (ACHPR) issued a landmark ruling³³ in February 2010 recognizing the Endorois community's natural resource and development rights in relation to traditional territories from which it had been evicted when a game reserve was created in 1973.³⁴

Other rights bodies

There are many other bodies that oversee and enforce rights norms and standards. These include national bodies, such as Human Rights Commissions, and bodies overseeing implementation and compliance with the social safeguards of international funding and lending institutions, such as the World Bank and the Inter-American Development Bank.³⁵

2.3 Issues and challenges in practice

Rights integration begins with the view that adopting standards/guiding principles reflecting internationally-recognized human rights provides a stronger foundation for equitable and effective conservation outcomes. At the same time, working with rights in practice entails a number of challenges, both in general and with particular reference to the situation of non-state actors including NGOs.

Many rights are conflicting, and constantly negotiated in practice

Human rights are universal, in that they apply equally to everyone, and indivisible, in that they are all considered equally necessary for a secure and dignified life. However, in practice, rights often exist in tension with one another, and different groups of people frequently come into conflict with one another

as they exercise their rights. It is generally recognized that the exercise of a person's or group's rights are limited to the extent that they impinge up on the basic rights of others.³⁶ In the context of natural resources management, where the resources underpinning rights are often limited or declining, this issue of competing rights can be particularly complex. For example, how can the rights of both upstream and downstream communities be met in the case of a degraded watershed, or where the population has increased (e.g., through migration) beyond the watershed's natural carrying capacity? How can local communities' rights be balanced with environmental rights of a broader public, and the rights of future generations? Competing rights may also be valued differently and negotiated within a particular group, for example where right-holders may be willing to accept environmental degradation, including increased health risks, in exchange for higher incomes and greater access to education and health care.

While rights-based approaches cannot provide ready answers to these questions, by making these rights issues visible they can provide a useful framework for understanding and negotiating them.³⁷ In practical terms, the frequent presence of competing rights means that correctly identifying the relevant right-holders and duty-bearers, their relationships to one another, and the main underlying challenges or obstacles to full realization of their rights – including power differences – is a key starting point. Engagement on human rights will also involve ongoing processes of dialogue and negotiation. These needs, in turn, point towards the importance of a “process-oriented” approach to incorporating human rights in conservation practice, such as the ‘step-wise’ approach developed by IUCN's Environmental Law Centre, with a focus on integrating and balancing human rights and environmental considerations.³⁸ Key steps in this framework are summarized in Box 2.

Box 2: Outline of a ‘step-wise’ approach

1. Undertake a situation analysis
 - 1.1. Identify actions, stakeholders and roles
 - 1.2. Identify applicable legal rights, claims, duties
 - 1.3. Identify potential impacts of the proposed activity or project
 - 1.4. Identify potential conflict resolution mechanisms
2. Provide information
 - 2.1. Compile, publish and otherwise disseminate information in an understandable and easily accessible way
 - 2.2. Disseminate general information regarding the action
 - 2.3. Disseminate specific information regarding legal rights, claims and duties of potentially-affected persons
3. Ensure participation
 - 3.1. Undertake consultations
 - 3.2. Seek and promote free, prior and informed consent
 - 3.3. Provide and use conflict resolution mechanisms to secure rights
4. Take reasoned decisions
5. Monitor and evaluate application of the RBA
6. Enforce rights

From: Griebler et al 2010. IUCN.

Rights are articulated globally, but must be realized in diverse local contexts

While human rights standards are established internationally or regionally, the solutions to specific human rights issues are necessarily local and context-based. Thus, addressing human rights issues in particular situations requires a complex process that reflects the specifics of local ecology, history, culture, political context, and legal and governance systems. At the same time, however, solutions must uphold the fundamental standards of human dignity defined in human rights frameworks.

There are multiple sources of rights, including from customary law

Related to the previous point, there are multiple - or “plural” – sources and conceptualizations of rights, including from statutory systems and from customary laws of indigenous peoples and local communities. Such rights pluralism presents both a challenge and an opportunity for rights-based approaches. On the one hand, diversity in the sources and understanding of rights makes the aim of applying universal standards difficult. On the other, recognizing diversity in rights, and diversity in how they should be applied in a given context, can help promote development of locally appropriate solutions. One practical implication of rights pluralism is that a rights approach should promote recognition and respect for local people’s own customary laws, processes and institutions (i.e., should not be outsider-led or ‘top-down’).

Addressing rights means grappling with broader issues of governance and power

As further elaborated below, rights – conservation links are shaped by the broader enabling (or disabling) environment and governance context in which activities are carried out. And power differentials within that context – such as the relative power of different rights-holders, and between rights-holders and duty-bearers – are a key factor in determining who can, and cannot, effectively make claims and have their rights fulfilled in practice. This suggests that engaging with rights in conservation will, in practice, often necessitate engaging in complex issues of governance and empowerment of vulnerable rights-holders. This is no easy task, but the alternative may be only superficial engagement with rights issues.

There is growing recognition of roles of non-state actors, but their scope of action is also limited

States have primary human rights duty-bearer roles, including obligations to ensure that others (private companies, NGOs, etc.) are adhering to human rights standards. However, there are a number of limitations to this role. National legislation may not be aligned with international principles. States also may not adequately perform duty-bearer roles, either because of poor governance and/or because of lack of resources and capacity.

NGOs can potentially play significant roles in such contexts. One key role is self-regulation – ensuring respect for rights – for purposes of social responsibility as well as to contribute to conservation by reducing conflicts and engaging the substantial capacities of rights-holders and related constituencies. Further, NGOs can play a role, within the scope of conservation programs, in supporting and promoting actions in local contexts that align with internationally-recognized rights standards and principles.

Where existing policy and institutional frameworks are not conducive to this, NGOs can also play roles in promoting improved governance, contributing to improved rights and conservation outcomes.³⁹

At the same time, it is important to recognize that there are limits to the authority and capacity of non-governmental organizations, as NGOs cannot alone guarantee “protection” or “fulfillment” of rights in relation to states and other actors. This means that complying with obligations to respect rights may sometimes mean withdrawing from a situation, and thus losing any potential to exert a positive influence. At the same time, continuing to operate in a situation where respect for rights is not being supported by States or other actors involved poses the risk of perceived or actual complicity with negative actions. Communities often see international NGOs as having greater power and access to decision-makers, and are not sure whether or not they are working “on their side.” Conflicts can also arise from different perspectives on an NGO’s capacity to influence other, more powerful actors. In practice, these challenges point to the critical importance of maintaining working partnerships with rights-holders and support groups, conducting transparent operations to the greatest possible extent, clearly communicating and taking on board advice on roles and actions, and defining the boundaries of support for initiatives.

Practical implications of these challenges are explored further in relation to key human rights issues and contexts, and in the conclusion.

3. Specific human rights of concern in conservation

While, in broad terms, nearly all human rights can be potentially affected by conservation and vice-versa, frequent or prominent examples include the following:

3.1 Which rights?⁴⁰

Procedural rights concern access to the processes by which people can assert their rights. Procedural rights are important in themselves, and also help ensure the realization of substantive rights, including by

Box 3: Human rights of particular concern in conservation	
Substantive rights	Procedural rights
Life	Information
Health	Participation
Adequate standard of living - including food & water	Access to justice (redress)
Development	Emerging issues
Practice one’s culture	Environmental rights (inter-generational)
Work	Freedom from forced eviction
Property	Access to land/resources for basic needs
Self-determination & use of natural wealth	FPIC (broader application)
Indigenous peoples’ rights	
Traditional lands, territories and resources	Development & equitable benefit-sharing
Self-determination and FPIC	Traditional knowledge and indigenous heritage
Control and management of lands and resources	Redress
Rights of women to freedom from discrimination – gender equity	

informing rights-holders and duty-bearers about their respective rights and responsibilities, and giving rights-holders space to make effective claims in systems of mutual accountability. Procedural rights with particular relevance to conservation include:⁴¹

- **Right to information**⁴² - This includes obtaining information and being informed about the implications of environmental threats, natural resource use paradigms, and planned activities (development or conservation).
- **Right to participation**⁴³ – This includes participation in decision-making, and, as a right, should be meaningful - going beyond passive engagement of stakeholders (see below).
- **Right to access to justice (including redress)**⁴⁴ –Where rights are not being respected, or have been violated, rights-holders and other parties need accessible, fair, and effective processes to raise concerns, make claims, and, where needed, realize redress.

Substantive rights define rights to the “substance” of human wellbeing (such as rights to life, housing, water and a healthy environment).⁴⁵ Rights of concern in conservation contexts include:

- **Right to life**⁴⁶ – Conservation contributes to a healthy environment and the sustainable availability of ecosystem services and natural resources that support this most basic of human rights. However, conservation measures that restrict access to critical resources without providing for equal or better alternatives can also undermine enjoyment of this right.
- **Right to health**⁴⁷ - The right to the highest attainable standard of health is also supported by healthy, unpolluted ecosystems and the sustainable availability of environmental services and natural resources. Likewise, however, restricted physical or economic access to these resources can undermine this right.
- **Right to an adequate standard of living, including food**⁴⁸ - “Adequate” food involves sustainable *economic and physical access* to and *availability* of safe and culturally appropriate food of sufficient quality and quantity.⁴⁹ Conservation can help support *availability*, but can, where restrictive, also restrict economic or physical *access*.
- **Right to water** – The UN Human Rights Council affirmed in an October 2010 resolution that the right to water and sanitation is derived from the right to an adequate standard of living, and is therefore part of existing and binding international law.⁵⁰ As with food, natural resources conservation and management is important for ensuring water *availability* and *quality*, but restrictive approaches can also undermine *access*.
- **Right to development**⁵¹ – This includes the “right to participate in, contribute to, and enjoy economic, social, cultural and political development.” The implications of the right to development vis-a-vie conservation are debated. Sustainable development (“meeting the needs of the present without compromising the ability of future generations to meet their own needs”⁵²) implies balance between economic and social development, environmental protection, and inter-generational equity.⁵³
- **Right to practice one’s culture** - Cultural rights include the rights of indigenous and traditional peoples to pursue activities and rituals that are important to their cultural identity.⁵⁴

- **Right to work** – Sound environmental management and protections help ensure a healthy work environment. Labor standards issues may arise in employment/income generating activities linked to conservation projects, e.g., eco-tourism or PES schemes, or in development of commodity certification standards.
- **Right to property** – Conservation may impede this right where it affects the “existence, value, use, or enjoyment of that property without due consideration of and informed consultations with those having rights in the property.”⁵⁵
- **Peoples’ right to self-determination, use of natural wealth and resources, and not to be deprived of means of subsistence**⁵⁶ - This right, as codified in the ICCPR and ICESCR, is accorded to “peoples,” most often interpreted to mean ‘entire populations living in independent and sovereign states’ and ‘entire populations of territories that have yet to attain independence.’⁵⁷ UNDRIP further addresses the specific rights of indigenous peoples to self-determination and use of natural resources (see 3.2 below).

There are several other emerging issues that, while not explicitly codified as universal rights in the UN framework, are embedded or implied in other rights, such as:

- **Right to freedom from forced eviction** – The right to adequate housing has been interpreted to include protection against arbitrary or forced/unlawful eviction.⁵⁸ The right to “choose residence” protects against forced internal displacement and arbitrary denial of access to defined parts of a territory.⁵⁹
- **Right to access to land and natural resources:** International conventions on indigenous peoples recognize their rights to traditional lands, territories and resources (see below). While there is no *universal* right to access to land or natural resources codified in international human rights law, some interpretive documents argue for a basic right to land and natural resource access for vulnerable, rural people based on its importance for the enjoyment of other fundamental rights, including life, health, food, and housing.⁶⁰
- **Broader application of free, prior and informed consent (FPIC):** While the principle of FPIC is most clearly established in relation to indigenous peoples,⁶¹ in practice FPIC is increasingly being applied more broadly in situations involving local communities with rights to traditional lands and resources.

3.2 Whose rights?

While human rights are universal and the basic rights of all must be respected, there is also broad recognition of the need to pay particular attention to risks faced by those most vulnerable to infringements of their rights. In relation to conservation, the most vulnerable are often rural communities who rely directly upon natural resources for their livelihoods, cultures and wellbeing. The high incidence of poverty among rural, resource-dependent communities contributes further to their vulnerability to changes in land and natural resource use. Relative lack of power and political weakness often means that communities have difficulty defending their rights in relation to outside interests engaged in (over-) exploitation of high-value resources (minerals, forests, oil, fisheries) in their areas.

Differences also exist among and within rural communities, with indigenous peoples and women often experiencing greater vulnerability due to relative social and political marginalization. In addition, indigenous peoples' customary institutions and customary claims to lands and territories are often not recognized in statutory law, making such communities particularly vulnerable to infringements of their rights to access and use of these lands and natural resources.

Indigenous peoples' rights

Recognition of the specific situation of indigenous peoples as maintaining customary institutions and ties to their traditional lands, often in combination with conditions of vulnerability, have resulted in provisions on indigenous peoples in core human rights treaties,⁶² as well as – in more recent decades – international rights instruments specifically addressed to indigenous peoples (particularly ILO 169 and UNDRIP, see Section 2 above). Rights of indigenous peoples include collective or group rights, which are linked to their individual rights, as collective rights (such as to territory) often need to be realized in order to fulfill individual rights (such as to food and health).⁶³ Considerable regional variation remains in the recognition of indigenous peoples and their rights by states and other actors; for example, while well advanced in Latin America, indigenous peoples in Africa and some other regions still struggle to be acknowledged.

Rights of indigenous peoples' are often particularly relevant for conservation and sustainable use of natural resources, due to the frequent overlap of high-biodiversity areas and indigenous lands, and the vulnerability of natural resource-dependent customary livelihoods to changes in access or use. Indigenous peoples' traditional ecological knowledge, traditional systems of control, use and management of lands and resources, and traditional institutions for self-governance also contribute substantially to conservation. Aspects of indigenous rights especially relevant in conservation contexts include:⁶⁴

- **Rights to traditional lands, territories and resources** –including the “right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.”⁶⁵
- **Rights to self-determination and to free, prior, and informed consent (FPIC)** - Self-determination is a collective right reflecting indigenous peoples' status as distinct peoples. UNDRIP establishes (Article 19) that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”
- **Rights to control and management of lands and resources** - through customary institutions and laws.
- **Rights to development and equitable benefit-sharing** – including to determine the development or use priorities and strategies on their lands, territories and resources and to benefit equitably from conservation and sustainable use of such areas and resources.

- **Rights to traditional knowledge and indigenous heritage**
- **Redress** – UNDRIP includes provision for redress for deprivation of indigenous peoples’ means of subsistence and development, and for lands taken without free, prior, informed consent.

Gender equality: Eliminating discrimination against women

The rights of women to enjoy human rights and fundamental freedoms on a basis of equality with men have also received attention in international law, and are relevant to conservation contexts. Women often have distinct roles and needs in relation to natural resource management, but also suffer from discrimination that can limit participation in decision-making and control over natural assets (such as land). The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, adopted in 1979) is the main international instrument addressing the equal rights of men and women. It includes provisions specifically oriented towards rural women to “ensure, on a basis of equality of men and women, that they participate and benefit from rural development,” including through rights to:

- participate in development planning,
- obtain equal access to economic opportunities and development programs, and
- receive equal treatment in land and agrarian reform as well as land resettlement schemes.⁶⁶

4. Key issues at the intersection of conservation and human rights

While a myriad of human rights related issues can arise in conservation, there are some particularly common and/or challenging issues that call for attention. The subsections below contain brief discussions of the following key issues:

- Participation in decision-making
- Free, Prior, Informed Consent
- Tenure security, especially conflicts between customary and statutory tenure
- Cultural rights and bio-cultural diversity
- Sustainable development and equitable benefit-sharing
- Displacement and restrictions on resource access
- Law enforcement

Each subsection also includes discussion of guiding principles or standards relevant to the issue,⁶⁷ and practical approaches to addressing the issue in conservation. Conservation contexts in which these issues are likely to occur are explored in Section 5.

The practical approaches suggested below are directed primarily to conservation NGOs, and are meant to reflect the scope of powers and limitations of such organizations. In particular, they reflect responsibilities of non-State actors to *respect* rights within the scope of own actions, as well as opportunities to *support and promote* fulfillment of human rights within the context of conservation. While this distinction is important, it is also noted that, in practice, the lines between respecting rights, and supporting their protection and fulfillment can often not be strictly drawn. For example, meeting a minimum standard for ensuring participation can often require proactive investments in capacity

building to ensure that rights holders can, in fact, meaningfully participate. Similarly, ‘doing no harm’ is not passive; it requires actively developing a deep understanding of often complex (cultural, socio-economic, historical) contexts to understand what the conservation and rights linkages are.

The orientation towards supporting and promoting rights reflects a recognition that rights issues that arise in conservation are in large part a function of the broader enabling (or disabling) environment and governance context in which conservation is being carried out. This means that meaningful progress in rights-based conservation is unlikely in a constraining environment without efforts to influence these broader contexts, e.g., through a focus on policy engagement and improved governance. (Otherwise, actions to respect rights in some cases would be limited to withdrawing from a negative context, and not acting on either conservation or rights concerns.) At the same time, the orientation towards supporting and promoting reflects recognition that conservation organizations will necessarily be limited in their scope of power and influence in relation to states and other powerful actors, and cannot guarantee that government obligations to protect and fulfill rights will be met. Strategic partnerships, including with other civil society and grassroots organizations, can help to enhance this influence.

Further, while specific examples are provided below for each key issue, many practical approaches are also cross-cutting, or applicable to all key issues, such as: developing a deep understanding of the context, identifying key rights issues(respecting); avoiding directly or indirectly contributing to activities that violate basic rights (respecting); supporting capacity of rights holders and duty-bearers to understand and claim their rights (supporting/promoting); and working with rights-holders to promote broader changes in relevant policy or legal frameworks (supporting/promoting).

4.1 Participation in decision-making

Participation is a procedural right that is also widely recognized – e.g., in Principle 10 of the Rio Declaration – to contribute to “better” (more informed, fair, and equitable) decisions. Participation provides people with a chance to voice their concerns about how measures may impact them, to propose and negotiate alternatives, and to engage with duty-bearers in systems of mutual accountability. In this way, participation in decision-making is fundamental to the realization of many other procedural and substantive rights. Where rights to participation are not fulfilled, decisions are also at risk of not being well understood or viewed as legitimate, with the result that people are less likely to accept or act in accordance with them.⁶⁸ Participation is also an important component of good governance, itself increasingly recognized a prerequisite for effective and equitable natural resource management.

From a perspective of rights, a distinction must be made between ‘shallow’ forms of participation (e.g., passive engagement of stakeholders to ‘inform’ them about what decisions will be, or consultations that do not include real opportunities to influence decisions), and ‘meaningful’ participation. A right to participation implies actively engaging with concerned parties, including marginalized or vulnerable right-holders, through transparent processes including appropriate power-sharing arrangements.⁶⁹ Participatory processes can occur at multiple levels (from projects to national and international policy)

and should not be exclusively government or NGO led; rather, community-led processes should also be supported and respected.

Guiding principles of meaningful participation include that:

- Participatory processes should be “well governed” (transparent, accountable, legitimate, fair and inclusive).
- There should be sufficient capacity for all involved (community members, government agency staff, civil society actors, etc) to meaningfully participate, which may require capacity strengthening for some or all groups.
- Sufficient time should be built into decision-making processes to enable genuine participation.
- Participation should be equitable, with particular attention to ensuring accessibility and ‘voice’ of those who may be marginalized or vulnerable. This may involve additional financial, technical, time, and other resources for some groups, and attention to issues of language and culture.
- Processes should be based upon and encourage mutual respect between participants, including substantive roles and appropriate power sharing.
- Representation and leadership should be inclusive and effective.
- Participation should be an integral part of any activity or project cycle, commencing at the outset of activities and continuing through project/program design, management, monitoring and evaluation.

Participation is probably the most pervasive human rights issue in conservation, relevant to national and international policy-making processes, land use planning at all levels, management of conservation and sustainable use areas and participation in development and implementation of project activities.

Practical approaches to respecting rights to participate in conservation decision-making include to:

- Build meaningful participation of rights-holders into the design and implementation of conservation organizations’ own activities – e.g, by proactively sharing information with concerned parties, understanding and respecting local people’s own decision making processes/ institutions, and establishing channels for ongoing dialogue.
- Avoid promoting or supporting environmental decision-making that circumvents meaningful participation, e.g., exclusive processes of land-use planning or protected area creation.

Practical approaches to supporting and promoting rights to participate in decision-making, within the scope of conservation, include to:

- Assist rights-holders and duty-bearers in strengthening understanding of and commitment to participatory processes that strengthen environmental decision-making.
- Provide technical or financial support to other actors for specific activities such as information dissemination, organization of processes, training/capacity-building, meetings, and establishment of co-management mechanisms in the context of conservation and sustainable use initiatives.
- Engage at a policy level to inform and advise on measures to increase participation in decision-making regarding conservation matters.

4.2 Free, Prior, Informed Consent

Free, prior and informed consent (FPIC) refers to the principle that communities have a right to give or withhold consent to actions that will affect them, particularly actions affecting their customary lands, territories and natural resources.⁷⁰ FPIC is most clearly established in relation to indigenous peoples, and is derived from collective rights to property and self-determination.⁷¹ At the same time, the principles underlying FPIC are also increasingly understood to be relevant to non-indigenous, project-affected peoples, with the right to give or withhold consent considered the main difference between them.⁷²

FPIC has evolved primarily as a protection against the severe impacts that have often affected communities when they are left out of planning and decision-making about large-scale development projects. It is also a key safeguard in relation to conservation activities, such as establishment of protected areas, which may have adverse impacts on local cultures and livelihoods. The Convention on Biodiversity also includes a provision on “prior, informed consent” in relation to traditional knowledge, stating that “*access to the traditional knowledge, innovations and practices of indigenous and local communities should be subject to prior informed consent or prior informed approval from the holders of such knowledge, innovation, and practices.*”⁷³

Guiding principles for FPIC include that processes will be:⁷⁴

- **Free** from coercion, intimidation or manipulation. Consent to protected area establishment, for example, should not be imposed or manufactured, but obtained through free consultation and voluntary negotiations.
- **Prior** to allocation of land for particular uses or approval of specific projects. Lead time should reflect respect for time requirements of communities’ own decision-making processes.
- **Informed**, based on full information about, for example, the nature and scope of any proposed project or activity; areas that will be affected; and the potential economic, social, cultural and environmental risks and benefits. Information should be in a language easily understood by the affected people and available from independent sources.
- **Consent**, based on a process that ensures sufficient time and an effective system for communicating among all affected community members and taking decisions through customary or other community-defined decision-making processes. It requires that affected people are able to say yes or no at each stage of the project. Consent should result in equitable agreements, and should be part of ongoing processes of communication and negotiation, rather than a one-off action.

FPIC is increasingly recognized as “best practice” in conservation and development, to avoid conflicts and ground activities in equitable agreements, including to fair benefits from activities on customary lands.⁷⁵ In addition to protected areas, FPIC has received significant attention in the context of REDD+ (see Section 5, below). At the same time, practical challenges to effective realization of FPIC remain. A number of recent publications and processes seek to address these – including practical guidance for communities on FPIC published by Oxfam Australia,⁷⁶ new guidelines from RECOFTC /GIZ on FPIC and REDD,⁷⁷ and a dialogue stream sponsored by The Forest Dialogue on practical approaches to FPIC,

especially for forest companies.⁷⁸ FPIC processes also have limitations when approached in isolation rather than as part of a broader rights-based approach.⁷⁹

Practical approaches to respecting FPIC in the context of conservation include to:

- Secure FPIC to an organization’s own activities affecting customary lands and resources – for example, by making information available in locally accessible languages/formats, committing sufficient time and resources to ensure an in-depth process in line with the community’s decision making processes, engaging neutral third parties to support facilitation of the FPIC process as appropriate, and establishing agreements about how consent can be obtained, documented and monitored.
- Stay informed of the extent to which consent processes are being upheld by others, and do not support establishment of conservation or development activities in indigenous lands that have not secured FPIC.

Practical approaches to supporting and promoting FPIC within the scope of conservation programs include to:

- Support indigenous peoples and other local communities to strengthen representative institutions and engage in negotiations and dialogues.
- Provide resources for communities to debate problems and projects at early stages, and then as an ongoing process, rather than “consenting” to pre-determined project objectives and concepts. Secure (technical, financial) resources for community-driven impact assessments.
- Support other stakeholders (government, private sector, other civil society actors) to strengthen their understanding of and commitment to FPIC, e.g., through dialogue and information sharing.
- Promote and support adoption of FPIC principles at a policy level to increase the sustainability of project-level approaches and promote broader application.

4.3 Tenure security, including conflicts between statutory and customary tenure

One of the most prominent issues at the intersection of conservation and human rights is weak tenure, and especially the gap between statutory and customary rights to lands and resources. In many parts of the world, governments (often colonial governments) claimed as state land areas that were traditionally owned and governed by indigenous peoples and local communities, often as common property systems. Where people have maintained continuous attachments to their lands, there are likely to be situations of “legal pluralism” – i.e., overlapping systems of statutory tenure (codified in state law) and customary tenure (derived from ancestral ties and regulated through traditional institutions).

Over time, there has been growing recognition that tenure derives not only from statutory law but also from customary laws and institutions. Collective rights of indigenous peoples to traditional lands, territories and resources are specifically recognized under ILO 169 and UNDRIP. Many national constitutions have also recognized some customary rights, though often in limited ways that leave questions of land tenure unresolved.⁸⁰ More generally, statutory devolution of natural resource ownership and management rights and responsibilities, especially of forests, is underway in many

countries.⁸¹ However, even where there are clear statutory provisions, lack of knowledge or enforcement of tenure laws, or poor governance in general, can leave people vulnerable to violations of their rights.

Box 4: Bundles of Rights Associated with Types of Holders (from Schlager and Ostrom 1992).

Tenure can be understood as a “bundle of rights” – including access, use (“withdrawal”), management, exclusion, and alienation. Both customary and statutory systems involve complex and varied sets of these rights for different actors, over different resources, sometimes at different times (seasons). The table below provides an example of how different rights-holders may possess different bundles of rights.

	Owner	Proprietor	Authorized Claimant	Authorized User	Authorized Entrant
Access	X	X	X	X	X
Withdrawal	X	X	X	X	
Management	X	X	X		
Exclusion	X	X			
Alienation	X				

Access: Right to enter a defined area and enjoy non-subtractive benefits.

Withdrawal: Right to obtain units or products of a resource system.

Management: Right to regulate internal use patterns and transform the resource by making improvements.

Exclusion: Right to determine who will have an access right, and how that right may be transferred.

Alienation: The right to sell or lease management and exclusion rights.

Tenure security is often very important to conservation and sustainable use, as well as to the realization of other substantive rights (e.g., food, water, and health). While not sufficient on its own, tenure security creates enabling conditions for local people to invest in sustainable use and conservation of resources over the long term, and provides a basis for excluding use of land and resources (and thus increased environmental pressure) by others.⁸² Community-based management of forests, wildlife, and other natural resources offer alternatives to state management activities that have often been ineffective in stopping deforestation and degradation. Clarity of tenure decreases contestation and conflict over lands and resources. Conversely, lack of understanding or attention to how conservation activities may impact tenure increases risks of territorial and land rights being negatively affected, for example in relation to state-managed protected areas.⁸³

Guiding principles relevant to gaps/conflicts between customary and statutory rights, and tenure rights more generally, include that:

- Rights of indigenous peoples to the lands, territories, and resources that they have traditionally owned or otherwise occupied or used should be recognized and effectively protected (in accordance with ILO 169).
- Customary rights-holders should be engaged as rights-holders (e.g., in consultations), along with others possessing statutory rights.

- Changes in land/resource tenure should not contribute to further interference with customary rights, or perpetuate exclusions (e.g., through transfer of lands or their designation under new land uses).
- Tenure recognition processes should take account of customary forms of land and resource tenure, especially – in the context of conservation – collective tenure that supports integrated land, resource management.
- New tenure arrangements for community-based natural resource management use (e.g., community forestry) should enable sustainable livelihoods (e.g., avoiding cumbersome requirements/costs that outweigh benefits that can be derived from sustainable use).⁸⁴

Practical approaches to respecting tenure rights in the context of conservation include to:

- Conduct due diligence processes to understand all tenure claims, including customary claims, and their respective status under national law, with attention to potentially competing, legitimate claims. Participatory mapping has been widely used since the late 1980s as a means for community members to map their areas, including to identify areas that are important to them for vital resources or cultural importance.⁸⁵
- Avoid supporting conservation activities that violate customary tenure rights, or block resolution of ongoing conflicts.

Practical approaches to supporting and promoting increased security of tenure within the scope of conservation programs include to:

- Support community mapping and related activities (such as inclusive spatial planning) that enable local people to document and make their customary land/resource rights visible to others and engage in negotiations with other claimants.
- Help set up conservation and sustainable use activities based on local (site-based, interim) arrangements for greater tenure security, as pilot models that can inform broader policy.
- Support interested communities in on-ground titling processes, in cases where the legislative framework is in place but actual lands have not yet been titled. Appropriate caution should be taken to ensure that titling does not dispossess vulnerable groups (such as women or mobile peoples) from land rights, or undermine other access or use rights.
- Undertake and disseminate research about tenure rights and their links to conservation and sustainable use.
- Engage with communities and other civil society actors to advocate for changes in the policy or legislative framework – based on common agendas and understanding of policy openings.
- Strengthen the understanding and capacity of other duty-bearers (e.g., government authorities, private sector, other civil society organizations) to support secure tenure as part of conservation initiatives, e.g., through technical assistance, training and facilitation of multi-stakeholder dialogues.

4.4 Cultural rights and bio-cultural diversity

There are often strong positive synergies between rights of communities to their cultures and biodiversity conservation objectives. Perpetuation of many traditional cultures depends on maintenance of healthy natural systems and species diversity. Traditional governance institutions and practices, knowledge, beliefs and values also often contribute significantly to maintaining and enhancing natural systems. These inter-linkages between peoples' ways of life and their environments, and the role of cultural groups in valuing, stewarding and enhancing biodiversity are increasingly referred to as *bio-cultural diversity*. As one example of these broader cultural values and links, many cultures maintain sacred areas such as forests or mountains that have historically protected these areas, even if for very different reasons and with different understandings than those of outside observers. These positive synergies highlight the importance of recognizing traditional cultural knowledge, values and practices, and ensuring their place in decision-making.

At the same time, conflicts may arise between cultural rights and conservation practices – as when state protected areas block access to areas that are culturally important. Such conflicts may also contribute to loss of bio-cultural diversity – as when conservation activities take an external “managerial” approach that does not build on cultural values, knowledge and institutions. Concerns about the commercial use of traditional knowledge have led to establishment of protections for traditional knowledge that conservation initiatives need to take into account⁸⁶ and development of tools (e.g., research protocols) to support their implementation. Protections for traditional knowledge relevant to the use of genetic resources are also part of the international access and benefit sharing (ABS) regime approved by the CBD in 2010.⁸⁷

Guiding principles related to cultural rights and their contributions to bio-cultural diversity include:

- Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements (Convention on Biodiversity, Article 10c).
- CBD Article 8j calls on Parties, as far as possible and as appropriate, to:
 - respect, preserve and maintain the knowledge, innovations and practices of indigenous and traditional communities relevant for the conservation and sustainable use of biodiversity
 - Promote the wider application of traditional knowledge, innovations and practice, with the approval and involvement of knowledge-holders
 - Encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices.

Practical approaches to respecting rights in relation to bio-cultural diversity are many and include to:

- Develop understanding of the cultural context, including customary institutions and practices, before planning or undertaking activities;

- Avoid undertaking or (directly or indirectly) supporting actions that undermine local people's cultural rights/ institutions, or that fail to fairly share benefits arising from bio-cultural resources. One safeguarding mechanism is working with community institutions, and other partners they identify/approve, to establish agreements prior to action, based on communities' existing standards.

Practical approaches to supporting and promoting rights in relation to bio-cultural diversity include to:

- Support indigenous peoples' and local communities' own initiatives – where they desire such support, and through appropriate means⁸⁸ - to improve conservation and natural resource management through their traditional institutions, management systems and knowledge (e.g., through forms of community-based natural resource management or indigenous and community conserved areas).
- Support indigenous peoples' initiatives to preserve, document, strengthen, and innovate traditional knowledge and institutions, as well as to control access, e.g., through appropriate support for research protocols.
- Raise awareness of and respect for bio-cultural diversity and customary rights among other duty-bearers (e.g., government, private sector, civil society), e.g., through supporting multi-stakeholder dialogue.
- Support local people's access and opportunity to influence national / international policy processes that impact their cultural rights, including - where appropriate - to achieve greater recognition of and protections for bio-cultural diversity in local, national, and international systems.

4.5 Sustainable development and equitable benefit-sharing

For many rural people, a healthy environment is a primary foundation for development⁸⁹ and generation of economic benefits. Thus, there are strong motivations for rural people to use natural resources in ways that maintain these key "assets" for the future. At the same time, even where communities have strong ties to and dependence on natural resources, it is unrealistic to expect that they will forego opportunities for poverty reduction, especially to meet basic needs. There are inherent tensions in the Brundtland Commission's definition of sustainable development – "to meet the needs of the present without compromising the ability of future generations to meet their own needs" – as conserving resources for future generations often involves limitations or modifications on present use and/or limitations on future development options. Efforts to resolve this tension through support for low-impact activities have sometimes been criticized for locking in subsistence-level livelihoods.

One way that sustainable development and conservation may be made more compatible is through the generation and equitable sharing of *increased* benefits from natural resources, through "green economy" and alternative economic growth paths, or (often in more limited ways) from additional income streams linked to protected areas or payments for environmental services. Questions of equitable benefit-sharing also often arise in the context of broader development activities carried out on community lands, by community members themselves, or through agreements with outside actors

(commercial forestry, agriculture, energy development, mining, etc.). Widening the concept of development benefits beyond material and commercial benefits can also be a way of reconciling conflicts between conservation and sustainable development.

Guiding Principles for respecting sustainable development rights, and further contributing to well being through, *inter alia*, benefit generation and equitable benefit sharing, include the following:

- In all cases, do not exacerbate poverty or make vulnerable people worse off (do no harm);
- Implement “constructive programs that benefit local communities, such as capacity training that can provide income alternatives (especially where use reductions are necessary) or assistance in diversifying management capacities and implementing sustainable use methods” (from Addis Ababa Principles). This can include facilitating access to financing and markets, and other supportive actions.
- Ensure that “an equitable share of the benefits of sustainable use regimes remain with the local people (in the case of foreign investment), considering both monetary and non-monetary benefits” (from Addis Ababa Principles).
- Ensure that diversified livelihood activities support/ do not economically or socially displace the most vulnerable people within communities.
- Recognize and respect communities’ own values and visions of development.

Practical approaches to respecting rights in relation to sustainable development and equitable benefit-sharing include to:

- Conduct participatory research to understand the development priorities and plans of indigenous peoples and local communities, and to assess social impacts of conservation activities (including all costs and benefits, and their distribution).
- Avoid undertaking or supporting conservation initiatives that unnecessarily restrict sustainable resource use, or that undermine equitable benefit/cost sharing.

Practical approaches to supporting protection and fulfillment of rights in relation to development and benefit-sharing include:

- Support rights-holders’ capacity and opportunity for enhanced sustainable development and benefit generation and sharing through conservation (e.g., various local and landscape-level natural resource-based community development activities).
- Support other duty-bearers’ (e.g., government, private sector investors, civil society actors) understanding, capacity, and commitment to supporting sustainable community development, e.g., through training, pilot projects, information sharing, and dialogue.
- Working with appropriate partners, promote and facilitate policy changes that support greater opportunity for sustainable development and benefit sharing (e.g., substantively decentralized natural resources management), and that put in place protections for people’s basic rights where restricted access/ use is necessary.

4.6 Displacement and restrictions on resource access

Displacement has been one of the most contentious issues at the intersection of conservation and human rights. Displacement is commonly understood as physical relocation, but can also be economic – as when access to resources that people depend on for livelihoods is restricted, affecting enjoyment of basic rights (e.g., food, health). In 2001, the World Bank changed the coverage of its Involuntary Resettlement policy to include “involuntary restriction of access to legally-designated parks and protected areas, resulting in adverse impacts on the livelihoods of displaced persons.”⁹⁰ The right to adequate housing and the right to “choose residence” have also both been interpreted to protect against arbitrary or forced/unlawful eviction, though the specific implications of these interpretations for conservation require further exploration.

Taking of land or restrictions on resource access are generally based on considerations of broader global or national benefits. However, it is increasingly recognized in conservation (as in the case of large-scale development) that local people often bear the main costs. A statement from the 2003 World Parks Congress recognized, for example, that “many costs of protected areas are borne locally – particularly by poor communities – while benefits accrue globally ...”⁹¹. Where people have secure property rights, and where the rule of law is sufficient to enforce those rights, mechanisms are usually in place to compensate for the loss of property when takings occur, e.g., through eminent domain.⁹² However, in many cases (as noted above under tenure) land and natural resources are considered to be owned by the state under statutory law, while customary ownership and use rights are not recognized – with the result that mechanisms are not in place to address the adverse impacts of taking of land/resources. More generally, even legally recognized land tenure may not be respected by the state or other actors where governance systems are weak. Problems are exacerbated where taking occurs in context of non-democratic political systems, e.g., as in the case of colonial regimes under which many protected areas have been established.⁹³

The prominence of displacement/involuntary resettlement issues in large-scale development has led to a number of key principles, which have become especially established in multi-lateral development bank policies, but are also beginning to be adapted to conservation contexts:⁹⁴

- Avoid displacement and restrictions on access of resource-dependent communities as much as possible and, where necessary, minimize and mitigate their impacts.
- Pay particular attention to impacts on and needs of vulnerable groups. Particularly avoid displacement of indigenous peoples and, where necessary as an exceptional measure, only with their free, prior, informed consent.⁹⁵
- Affected people should be compensated for the loss of land, resources and other assets to which they have legitimate (customary or statutory) rights, and alternative resources should be sustainable and (at least) economically and culturally consistent with the losses incurred. Priority should be given to land-based resettlement strategies for those losing (customary or statutory) rights to land.

All affected persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs, including access to appropriate grievance mechanisms.⁹⁶

Practical approaches to respecting rights in relation to displacement issues include:

- Conduct up-front assessments of potential social and economic impacts of project activities, along with research on current patterns or trends in human use to clearly identify their relationship to conservation objectives. Advise/promote/support the least restrictive alternatives needed to address incompatibility (e.g., avoiding use of a particular resource rather than broader restrictions on access to an area or relocation), with the aim of ensuring that in all cases enjoyment of basic rights (e.g., food, health) is not undermined.
- Refrain from directly or indirectly supporting any forced relocation activities, including those carried out by the state or other parties.

Practical approaches to supporting protection and fulfillment of rights in relation to displacement include:

- Advise relevant authorities on guiding principles. Present information, advise authorities, and otherwise advocate against/actively oppose displacement or restrictions on resource access that are not compatible with equity principles or basic human rights.
- Support or conduct assessments of the rights/claims of people to the lands/resources in question (statutory and customary rights) and of potential social and economic impacts.
- Inform people about their rights, working with and through appropriate local partners.

4.7 Law enforcement

Enforcement of laws and regulations governing biodiversity protection and sustainable use of natural resources is one necessary element of conservation and resource management. Law enforcement protects natural systems, the species that inhabit them and the rights of people who own use and/or depend upon them. Good governance requires application of the rule of law, including its fair and just enforcement. At the same time, some of the sharpest conflicts between conservation and human rights concerns are associated with law enforcement activities.

One set of issues relates to the legitimacy of the laws or regulations being enforced; for example, where enforcement is based on statutory laws that do not accord with customary law, or were established in a top-down way that did not involve local people or take their rights and needs into account (e.g., anti-poaching measures that conflict with customary rights or that do not provide for reasonable alternatives in contexts of food insecurity). Other conflicts arise between enforcement regulations and broader civil and political rights; for example, shoot-to-kill provisions for poachers in some countries have come under particular criticism for being in conflict with basic rights of due process.

A second set of issues concerns how laws are carried out. 'Selective' law enforcement – where laws are enforced against some but not others – often results in a greater burden of the law falling on the most

vulnerable. In other cases, there are concerns regarding how humanely activities are carried out – e.g., where law enforcement personnel may engage in abusive treatment. While conflicts with customary law are most relevant to indigenous and traditional communities, these issues of fair and humane treatment are also relevant to situations involving refugees, internally-displaced people, in-migrants and others that may not have tenure rights to an area, under either statutory or customary law, but that nonetheless have other basic rights. Along with these potential conflicts, the importance of law enforcement *for protecting human rights* should also be noted, such as where tenure rights are enforced to help protect local communities from illegal natural resources extraction or development that would undermine their livelihoods.

Guiding principles include:

- Laws and regulations should be socially legitimate, developed through consultative process and recognizing the validity and legitimacy of customary laws and rights of indigenous peoples and local communities.
- Laws and regulations should be fairly applied, and avoid ‘selective’ enforcement.
- Priority should be given to non-violent and peaceful methods of conflict resolution.
- Law enforcement activities should not be carried out in ways that are inhumane, or result in unnecessary suffering to any human being.

Practical approaches to respecting rights in relation to law enforcement issues include:

- As a basis for support to law enforcement measures, assess:
 - activities for their legitimacy
 - legal frameworks for their alignment with human rights standards
 - record/capacity of actors involved in law enforcement
- Refrain from supporting law enforcement measures that are inhumane, illegitimate or incompatible with human rights standards.

Practical approaches to supporting protection and fulfillment of rights in relation to law enforcement include:

- Support training of enforcement actors – especially in human rights, community relationships and conflict resolution.
- Support collaboration of local people in law enforcement activities (e.g., through co-management arrangements) to bring local people, their priorities, customary practices and social networks into the process
- Promote attention to “drivers” of illegal activities including roles of powerful actors
- Promote/inform changes in legal frameworks towards alignment with customary laws and practices and/or compliance with human rights principles.
- Promote greater reliance on positive incentives for conservation.

5. What are main contexts in which key issues are likely to emerge?

While the human rights issues examined in section 4 arise in relation to a wide range of conservation strategies or approaches, there are several contexts in which rights issues are most prominent or likely to emerge. This section briefly reviews these contexts, to highlight situations in which experience has shown that attention to rights issues is particularly critical. While a detailed examination is outside the scope of this paper, the subsections below provide a brief introduction to each context, notes on how the issues are relevant and information on context-specific guidelines or resources, where available.

Contexts reviewed in this section include:

- Protected areas
- Climate mitigation (REDD+)
- CBNRM
- Species conservation
- Private sector engagement/commodity certification

In all these contexts, rights issues are relevant for conservation work at multiple levels. Often rights linkages are most clear on on-ground work, but are also relevant to activities where they may be less visible, such as broader spatial planning, addressing drivers, influencing policy and governance frameworks, and establishing financing mechanisms for conservation activities. Integrating rights issues into these broader frameworks also helps to promote enabling conditions for on-ground work, and “scaling up” of rights-based approaches to conservation.

5.1 Protected areas

Historically, protected areas are the conservation context in which human rights concerns have been most prominent. In recent years, this conflict has been addressed to some extent by greater attention to improving the quality of protected areas governance, including respect for human rights, transparency, accountability, participation, equity and benefit sharing. There has also been broader recognition of and support for diverse governance arrangements. Today, it is commonly recognized that protected areas may be governed by governments, by private individuals or companies, by communities (e.g., indigenous and community conserved areas - ICCAs), or by combinations of these (i.e., co-management). In relation to key issues:

- **Tenure/resource rights:** Lack of recognition of customary tenure is a primary issue underlying many conflicts between protected areas and rights of indigenous peoples and local communities. Conversely, new protected area paradigms recognizing the community rights to own and manage protected areas provide a foundation for positive synergies.
- **Participation and FPIC:** The broader context of State claims to land has also often centralized decision-making and impeded effective participation and prior consent processes in relation to protected areas. In contrast, co-management of protected areas seeks to institutionalize shared decision-making, while broader approaches to participation in protected area establishment and

management reflect recognition that agreements jointly developed with local communities are more likely to be sustained.⁹⁷ There is also growing recognition and implementation of community-based governance systems such as ICCAs.

- **Cultural rights and bio-cultural diversity:** Protected areas may interfere with customary activities through which traditional knowledge and practices are maintained, particularly where such areas overlap with unrecognized traditional territories. At the same time ICCAs, or co-managed areas that are grounded in traditional institutions, can support or enhance bio-cultural diversity.
- **Displacement and restrictions on resource access:** Protected areas are the primary context in which displacement and restrictions on resource use arise in conservation, and have been the primary focus of criticisms of conservation from a human rights perspective. Concerns about displacement associated with protected areas have prompted development of safeguards (e.g., related to participation, FPIC and tenure) as well as new paradigms for the appropriate recognition and support of indigenous and community conserved areas.
- **Sustainable development and equitable benefit-sharing:** The limitations that protected areas generally establish on how resources can be used economically affect local communities' development options, requiring investment in alternatives. Direct benefit-sharing is also relevant where protected areas are generating income, e.g., from tourism, from lands customarily used by indigenous and local communities.
- **Law enforcement:** Protected areas are also a primary context for conflicts associated with law enforcement issues, related both to disconnects between protected area and customary regulations, and the enforcement of protected area boundaries and/or regulations (such as anti-poaching).

Guidelines on addressing rights in relation to protected areas include: CBD Program of Work on Protected Areas; IUCN-WCPA-WWF Principles and Guidelines on Indigenous Peoples and Protected Areas (IUCN et al 1999); Indigenous and Local Communities and Protected Areas: Towards Enhanced Equity and Conservation (Borrini-Feyerabend et al 2004, IUCN Best Practice Guidelines series).

5.2 Climate mitigation (REDD+)

Discussion of human rights – including rights of indigenous peoples – has been prominent in development of frameworks for REDD+ because of concerns that REDD+ implementation could adopt exclusive, centralized management approaches (similar to those characteristic of “traditional” protected area management), or otherwise adversely impact vulnerable forest communities.

- **Participation in decision-making** about REDD+ has been adopted as a key safeguard in the 2010 UNFCCC Cancun Agreement, and other international REDD+ social and environmental standards, reflecting recognition that full and effective participation of all stakeholders is necessary to develop REDD+ programs that will minimize adverse impacts and generate broad climate, biodiversity and social benefits.
- **Free, Prior, Informed Consent:** FPIC has received significant attention in the context of REDD+ because of recognition that, depending on how they are carried out, changes to forest land use

associated with REDD+ may support or undermine the rights and livelihoods of indigenous peoples and local communities. FPIC enables communities to guard against negative impacts, and shape REDD+ initiatives to increase their positive benefits.

- **Land tenure and resource rights:** Clarification and strengthening of land and resource rights contributes to effective stewardship of land and resources – which is necessary to reduce emissions from deforestation - and acts as a safeguard against displacement risks. Land and resource rights will also substantially influence who will receive benefits from REDD+.
- **Cultural rights and bio-cultural diversity:** The role and contribution of indigenous peoples' traditional knowledge, innovations and practices has been emphasized in relation to development of international and national frameworks for REDD+. (Traditional knowledge and customary strategies are also increasingly recognized as important contributions to (ecosystem-based) climate change adaptation.)
- **Sustainable development and equitable benefit-sharing:** A key source of interest in REDD+ is its potential to generate benefits for indigenous peoples and local communities, as historic stewards of forests. However, benefits will depend on financial mechanisms that prioritize incentives for forest communities, and effective governance of those mechanisms to ensure that benefits are equitably distributed.
- **Displacement and restrictions on resource access:** REDD+ safeguards, such as for full and effective participation, FPIC and protection of customary tenure, are largely aimed to prevent displacement or involuntary restrictions on resource use that might otherwise result from schemes to reduce emissions by curtailing forest use.

Guidelines addressing social dimensions of REDD+ include⁹⁸

- Guidance and Safeguards contained in Annex 1 of the UN FCCC Cancun Agreement;⁹⁹
- Standards being developed by REDD+ donors, including the Forest Carbon Partnership Facility and UN-REDD Programme;¹⁰⁰
- REDD+ Social and Environmental Standards (SES), for national and sub-national programs;¹⁰¹ and
- CCBA REDD+ project standards.¹⁰²

5.3 Community-based Natural Resource Management (CBNRM)

In general, CBNRM has emphasized positive approaches that link community rights and livelihoods with enhanced conservation, including by building on traditional management systems and knowledge. At the same time, changes in resource use and new formal obligations associated with CBNRM policies or regulations mean that issues may arise in relation to the following:

- **Participation in decision-making:** particularly ensuring that community participation is inclusive and does not result in negative impacts on more vulnerable members and/or “elite capture” of benefits.
- **Free, Prior, Informed Consent:** FPIC is particularly important where a CBNRM initiative, such as community forestry, involves changes in tenure (e.g., registering an area under a government community forestry lease), new land and resource management obligations, and/or changes in access to and use of resources.

- **Land tenure and resource rights:** CBNRM often contributes to greater security of land tenure and resource rights. At the same time, as noted above, issues may arise in relation to the specific terms available, how flexible or restrictive they are and how well they align with customary tenure systems.
- **Cultural rights and bio-cultural diversity:** CBNRM may support cultural values and practices but may also approach resource management in particular ways that do not accord with cultural perspectives.
- **Sustainable development and equitable benefit-sharing:** Here again, while a main objective of CBNRM is to contribute to community development by generating benefits from sound management of natural resources, initiatives also often imply additional costs in terms of management and forgone use which need to be balanced with benefits. Equitable distribution of benefits within the community may also be an issue.

5.4 Species conservation

Many of the issues relevant to species conservation are noted above under protected areas (as a main strategy for species conservation); however, there are other human rights issues that arise in the context of species conservation activities taking place outside protected areas.

- **Participation** issues may arise in relation to policy decisions about species protection measures, especially those that may be significant for subsistence or cultural heritage, as well as in decision-making about species protections in particular places.
- **Cultural rights and bio-cultural diversity:** Many traditional peoples have strong cultural ties to specific wildlife species as well as traditional knowledge, which may support or be impeded by conservation measures.
- **Sustainable development and equitable benefit-sharing:** Devolution of rights to wildlife to communities has contributed to sustainable development under community-based wildlife management programs; benefit-sharing issues also arise in the context of wildlife management on traditional lands and human-wildlife conflicts.
- **Law enforcement:** Species protection measures such as anti-poaching activities (within and outside protected areas) are a primary context for conflicts associated with law enforcement.

5.5 Industry engagement/commodity certification

Human rights issues surrounding conservation engagement with private sector actors are often particularly fraught, due to the negative human rights record of many industries – especially extractive industries – that have operated in high cultural and bio-diversity areas, and the resulting mistrust with which many indigenous peoples, local communities and human rights organizations view them. All the key issues identified in this paper as relevant to conservation are also relevant to private sector actors, and in general have been the subject of much sharper conflicts with local people. For example:

- **Participation and FPIC:** Historically, participation of indigenous and local communities in decision-making about industrial commodity production in their areas has been very weak. Free, prior, informed consent developed primarily as a response to the devastating impacts on

communities that have occurred as a result, and is gradually becoming adopted as a best practice standard in industry sectors.

- **Tenure/resource rights:** Industry concessions (oil/gas, mining, logging) are often granted in areas that are formally considered to be State lands but overlap with customary claims – resulting in conflicts and weakening customary tenure.
- **Sustainable development and equitable benefit-sharing:** Industrial operations can contribute to local economic development and share benefits; however, development may not be sustainable or benefit-sharing equitable.
- **Displacement and restrictions on resource access:** Large-scale infrastructure and industrial developments have been significant drivers of displacement over time, leading to establishment of involuntary resettlement standards that aim to minimize negative impacts.
- **Law enforcement:** Issues that arise in relation to industry include both the imposition of restrictions on resource access and use contrary to customary rights, and the use of force to guard and secure local operations.

The implications of these issues for private sector engagement by conservation organizations are two-fold. On the one hand, engagement – such as to develop and support implementation of commodity certification and other good practice standards – offers opportunities to further human rights, through adoption and implementation of rights-based standards on FPIC, tenure, equitable benefit-sharing and other key issues. On the other, engagement carries risks of being implicated in cases where weak standards are adopted and/or in cases of poor human rights adherence in on-ground activities.

Guidelines: A number of useful human rights assessment and compliance tools have been developed for the business sector, including a *Human Rights Compliance Assessment* developed by the Danish Institute for Human Rights to help businesses to identify areas of potential human rights concern.¹⁰³ Other general human rights guidance and tools for businesses are available from the Business & Human Rights Resource Centre.¹⁰⁴ Guidelines on addressing rights issues in particular industries are included in a range of industry-specific standards such as those of the Forest Stewardship Council (FSC) and Roundtable on Responsible Palm Oil (RSPO).

6. Conclusion

Implementing adherence to human rights principles challenges an organization to promote locally grounded solutions to complex and sensitive issues, within an understanding of broader shared principles and compliance standards. This depends on a combination of “center out” processes of policy and guidance development on evolving human rights standards, and “bottom up” dialogue and decisions about appropriate action in particular cases, based on local conditions and engagement with local constituencies. Robust links between policy and practice are needed to ensure that – as programs are designed, implemented and monitored – they are informed by both human rights standards and local contexts.

By scoping key issues at the intersection of conservation and human rights, and guiding principles associated with them, this paper aims to contribute to development of relevant policies and/or guidelines on human rights issues in conservation, particularly among organizations participating in the Conservation Initiative on Human Rights. At the same time, the paper seeks to promote dialogue and action among conservation organization staff, rights-holders, experts and other partners on experience and “best practices” for integrating human rights in conservation in particular contexts. It also identifies issues that could be taken up as a focus of more in-depth learning and exchange through CIHR activities, and provides a foundation for future work of the Initiative in support of measures by participating organizations to enhance capacity, develop program integration tools and establish accountability mechanisms.

As this work moves forward, some lessons from international development organizations that have implemented rights-based approaches include that:¹⁰⁵

- such integration takes substantial time, financial resources, and technical capacities, including expertise and understanding that organizational staff may not readily possess; and
- respecting rights in some cases will mean difficult trade-offs with conservation objectives (and thus may be seen as a challenge to the organization’s mission) - though positive synergies are also often possible.

These challenges indicate that comprehensive and effective rights integration will require new resources, strategic partnerships, and deep organizational commitments that will take time to take root. Organizations must develop their own paths towards rights integration, including determining how to make the ‘bottom up’ and ‘center out’ meet in effectively in addressing complex, localized rights issues. Documenting adherence to rights principles will be essential, both for internal efforts, and to support commitments to transparency and accountability in relationships with other actors including communities, governments, donors and the interested public. Finally, ongoing learning from experience will be needed to improve and adapt approaches to addressing human rights issues in diverse settings over time.

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For additional resources, see:

- RBA to Conservation Portal (www.rights-based-approach.org)
- Conservation Initiative on Human Rights website (www.conservation-rights.org)

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Notes

¹ For more information on the CIHR Conservation and Human Rights Framework, and on CIHR generally, see www.conservation-rights.org.

² It is to States that international human rights instruments are directed, and thus States who ratify and take on accountability for compliance.

³ Campese 2009:4

⁴ Siegele et al., 2009

⁵ Formally the *Convention for the Protection of Human Rights and Fundamental Freedoms*

⁶ Asian Human Rights Charter: A Peoples' Charter, from the Asian Human Rights Commission website

(http://material.ahrchk.net/charter/mainfile.php/eng_charter).

⁷ While binding for States parties, relatively few states have ratified this instrument; as of September 2010, 22 States had ratified the Convention.

⁸ UN OHCHR 1997: 5

⁹ See Siegele et al., 2009 regarding other relevant MEAs

¹⁰ FCCC/CP/2010/7/Add.1

¹¹ CBD Programme of Work on Protected Areas 2.2.5 at <http://www.biodiv.org/programmes/cross-cutting/protected/wopo.asp?prog=p2>

¹² Adapted from Siegele et al., 2009

¹³ For more information, see <http://www.cbd.int/abs/about/>

¹⁴ This conceptualization of environmental rights is distinct from, but related to: the rights of non-human species and the environment itself, as well as a "human rights approach to environmental protection", in which widely recognized human rights are used for enforcing environmental protections (see Sensi 2007; Kravchenko 2007; Boyle and Anderson 1996).

¹⁵ The *Draft Declaration of Principles on Human Rights and the Environment* (1994) was submitted as an appendix to a report from the UN Special Rapporteur on Human Rights and the Environment (see UN Doc. E/CN.4/Sub.2/1994/9).

¹⁶ Svadlenak-Gomez 2007: 7-8

¹⁷ Greiber et al 2009: 7

¹⁸ Svadlenak-Gomez 2007: 2

¹⁹ Siegele 2009.

It should be noted, however, that regardless of whether there is a Western origin to some of the rights guaranteed, today every state in the world has accepted at least one of these instruments and thus is bound to implement the corresponding rights and obligations in good faith (pers comm. Dinah Shelton).

²⁰ Svadlenak-Gomez 2007: 3

²¹ e.g. see *Collective Human Rights*, United Kingdom, Foreign and Commonwealth Office, cited in "Towards A U.N. Declaration On The Rights Of Indigenous Peoples: Injustices And Contradictions In The Positions Of The United Kingdom" 2004. <http://www.gcc.ca/pdf/INT000000003.pdf>

²² The rights of future generations were first expressed in the Stockholm Declaration (1972), and then restated in numerous international instruments (Rio Declaration Principle 3; Framework Convention on Climate Change Article 3; Convention to Combat Desertification; and Convention on Biological Diversity, preamble). (See Campese and Guignier 2007)

²³ Specific uses, advantages and disadvantages are explained in detail in the UNOHCHR Fact Sheet 7, Complaints Procedures

²⁴ The Human Rights Council was established in March 2006 (GA resolution 60/251). It replaces and continues the work of the Commission on Human Rights, which concluded its final session in March 2006.

²⁵ Section adapted from UN OHCHR website (<http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>)

²⁶ For a current and complete list see <http://www2.ohchr.org/english/bodies/chr/special/themes.htm>

²⁷ For more on EMRIP, see <http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/index.htm>

²⁸ See <http://www2.ohchr.org/english/bodies/treaty/index.htm> for a complete list and more information on these Treaty Bodies and the Conventions (treaties) they monitor.

²⁹ For relevant examples from the Committee on Economic, Social and Cultural Rights, see: CESCR General Comment No. 3: The nature of states parties' obligations (UN Doc. 14/12/90); CESCR General Comment No. 4: The right to adequate housing (UN Doc. E/C. 13/12/91); CESCR General Comment No. 12: The right to food (UN Doc. E/C.12/1999/5); CESCR General Comment No. 15: The right to water (UN Doc. E/C.12/2002/11)

³⁰ Adapted from <http://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx>

³¹ Adapted from Cultural Survival International at <http://www.culturalsurvival.org/ourpublications/csq/article/inter-american-court-human-rights-rules-favor-nicaraguan-indians>

³² The court found that the state must adhere to specific safeguards when granting concessions for the extraction of natural resources from lands occupied by Saramaka people:

1. Effective consultations in every event;
2. Free, prior and informed consent in connection with investment and development projects with major impacts;
3. Sharing of benefits derived from development plans; and
4. Prior and independent environmental and social impact assessments.

Case description adapted from Orellana 2008

³³ See *The Centre for Minority Rights Development and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*,

³⁴ See Morel 2010

³⁵ See Siegele et al., 2009 for specific examples, including in the context of self-regulation by NGOs and statements by indigenous peoples

³⁶ Greiber et al., 2009: 9

³⁷ For further discussion see, e.g., Campese 2009; Blomley et al., 2009

³⁸ See Greiber et al., 2009

³⁹ This approach is reflected in the CIHR Conservation and Human Rights Framework, which includes a principle on encouraging good governance, in addition to those on respecting, support and promoting rights, with particular attention to the vulnerable.

⁴⁰ See also Svadlenak-Gomez 2007 and Greiber et al. 2009 for discussions of rights especially relevant to conservation.

⁴¹ Also, the right to be free from discrimination (UDHR, CERD, ICCPR Art 26 and Right to equality before the law (UDHR, ICCPR Art 26) .

⁴² See Rio Declaration Principle 10; Aarhus Convention

⁴³ See Rio Declaration Principle 10; Aarhus Convention; UDHR Art 21

⁴⁴ UDHR Art 8

⁴⁵ Blomley et al. 2009, 7

⁴⁶ UDHR Art. 3; ICCPR Article 6.1

⁴⁷ ICESCR Art 12

⁴⁸ ICESCR Art 11.1; See also ICESCR Art 12.2 which recognizes the right to be free from hunger

⁴⁹ See CESCR General Comment No. 12: The right to food (UN Doc. E/C.12/1999/5)

⁵⁰ See UN Human Rights Council Resolution A/HRC/15/L.14.

⁵¹ See UN Declaration on the Right to Development and African Charter on Human and Peoples' Rights (Articles 22, 24).

⁵² Brundtland Report 1987

⁵³ Adapted from Svadlenak-Gomez 2007: 8,9

⁵⁴ Svadlenak-Gomez 2007: 8

⁵⁵ Greiber et al., 2009: 19

⁵⁶ Article 1 of the ICCPR and the ICESCR.

⁵⁷ Adapted from Siegele et al., 2009

⁵⁸ UN Doc. A/HRC/4/18

⁵⁹ Siegele et al., 2009:53

⁶⁰ See, e.g., *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari*, 31, 33, UN Doc. A/HRC/4/18 (Feb. 5, 2007)

⁶¹ Particularly in the UNDRIP. The CBD does also contain a provision on "prior, informed consent" or indigenous and local communities specific to traditional knowledge – see section 4.2 below.

⁶² See, for example, ICCPR Art. 1 and 27; ICESCR, and CERD

⁶³ Larsen and Springer 2008: 28

⁶⁴ Adapted from Larsen and Springer 2008. See ILO 169 and the UN Declaration on the Rights of Indigenous Peoples.

⁶⁵ UNDRIP Art 29

⁶⁶ CEDAW, Article 14.

⁶⁷ Sources include human rights and environmental instruments, guidelines, and standards adopted by major international lending institutions.

⁶⁸ Greiber et al., 2009:14

⁶⁹ Regarding 'degrees' of participation or power-sharing, see various versions of the 'ladder or participation' (originally from Arnstein 1969), or the continuum of power-sharing arrangements from government-management to community-management in the context of co-management

⁷⁰ "Informed Consent" is also a standard applied in research involving human subjects. While also relevant for conservation where research involves human subjects, it is not highlighted in this paper as one of the most prominent rights issues in conservation.

⁷¹ Seigele 2009

⁷² Hill et al., 2010:3. “Non-indigenous, project affected peoples have the right to consultation and negotiation in decision-making processes in ways that are consistent with the principles underlying the right to FPIC.” “The right to give or withhold consent is the most important difference between the rights of Indigenous Peoples and other project-affected peoples.”

⁷³ CBD CoP5, *Decision 5/16, 2000*.

⁷⁴ These guiding principles are based on UNPFII 2005. Report of the International Workshop on Methodologies Regarding Free, Prior and Informed Consent and Indigenous Peoples. Document E/C.19/2005/3

⁷⁵ Colchester 2010.

⁷⁶ Hill et al 2010.

⁷⁷ Anderson 2011

⁷⁸ More information available at <http://environment.yale.edu/tfd/dialogues/free-prior-and-informed-consent/>

⁷⁹ Janis Alcorn, personal communication.

⁸⁰ See Cuskelly 2010

⁸¹ Sunderlin 2008

⁸² At the same time, it cannot be assumed that secure tenure will result in land use choices that are consistent with conservation objectives or sustainable use. Capacity-building, viable economic opportunities and appropriate environmental regulation are still relevant even where tenure is fully secure.

⁸³ Springer and Alcorn 2007.

⁸⁴ According to Roldán Ortega (2004:20), “[t]he security and permanence of their control and use of the natural resource base is actually more important to most indigenous groups than direct ownership of the land itself’.

⁸⁵ Colchester 2007

⁸⁶ CBD Article 8j, *Elements of a code of ethical conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities*.

⁸⁷ See <http://www.cbd.int/abs/ir/>

⁸⁸ It is important to ensure that support is appropriate, as inappropriate or undesired support can undermine these systems (Borrini-Feyerabend et al 2010).

⁸⁹ The Declaration on Right to Development (1986) states that “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development...”

⁹⁰ World Bank OP4.12 – Involuntary Resettlement

⁹¹ IUCN 2005, *Benefits Beyond Boundaries*, Proceedings of the WPC

⁹² Svadlenak-Gomez 2007:17

‘Eminent domain’ refers generally to the state taking/ seizing private property (typically with appropriate monetary compensation, but not necessarily with the owner’s consent) for public use or economic development

⁹³ Viet and Benson 2004

⁹⁴ See, for example, the 2007 WCS Policy On Human Displacement and Modification of Resource Access To Achieve Conservation Objectives

⁹⁵ In accordance with ILO 169

⁹⁶ The third and fourth points especially reflect the World Bank Operational Policy 4.12 on Involuntary Resettlement.

⁹⁷ A 2010 study of protected areas management effectiveness found that three of the seven indicators most closely correlated with successful protected areas were social issues, including community participation, benefits and communication (IUCN-TILCEPA 2010).

⁹⁸ For further reviews of such standards see Merger et al 2011 and ProForest 2010.

⁹⁹ FCCC/CP/2010/7/Add.1 Annex I

¹⁰⁰ See all references from FCPF and UN-REDD

¹⁰¹ See REDD+SES Initiative 2010

¹⁰² See CCBA 2008

¹⁰³ Danish Institute for Human Rights 2006

¹⁰⁴ See <http://www.business-humanrights.org/>

¹⁰⁵ See Harris-Curtis et al. 2005



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