

## SECTION 2



# INITIATIVES OF RIGHTS-HOLDERS

There are many long-standing and emerging ways to protect and promote the diversity of rights and customary ways of life of Indigenous peoples and local and mobile communities in relation to the sustainable use and management of their territories and resources. Understanding and exercising rights can be a challenging but empowering process (Jonas *et al.*). Communities are gaining significant ground in the recognition and realization of rights related to livestock keepers (Köhler-Rollefson and Mathias), sacred sites in Guatemala (Gomez *et al.*) and Canada (Mameamskum *et al.*), protected areas in the United States (Villalba), Indigenous peoples' and community conserved areas in Australia (Kennett *et al.*) and India (Mishra), forests in Indonesia (Johnstone), Cameroon (Oyono *et al.*), and Brazil (Gomes *et al.*), and access and benefit sharing in India (Hariramamurthy and Nair). These experiences and insights illustrate the complexities of applying rights-based approaches within local realities, as well as innovative ways that communities and other rights-holders are taking ownership over the diversity of conservation laws, policies, and practices that affect their lives.





# BIOCULTURAL COMMUNITY PROTOCOLS AND CONSERVATION PLURALISM

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## Abstract

Despite an increase in the number and scope of rights enshrined at the international and national levels, States' obligations vis-à-vis communities are often unfulfilled at the local level. Communities face inherent challenges when engaging with legal and policy frameworks that undermine their ability to ensure their local self-determination. Rights-based approaches to conservation are an attempt to address this issue, but remain a limited response if communities are not empowered to engage with implementing and other agencies as equal partners. By integrating legal empowerment with endogenous development processes, communities are better placed to overcome a variety of challenges associated with engaging with government agencies, researchers, and non-governmental organizations. Biocultural community protocols are community-led, rights-based instruments that enable communities and their local institutions to affirm their right to self-determination in ways commensurate with their values, customary laws, and traditional institutions. They also provide a means for communities to advocate for their right to diversity, including respect for their customary laws (in essence, legal pluralism) and rights to manage their territories according to their customary knowledge, innovations, and practices (in essence, conservation pluralism).

Four seemingly unrelated events have taken place in separate parts of the world over the last 12 months. The Raika community filled the streets of Sadri, Rajasthan, India, to protest their arbitrary exclusion from the Kumbalgarh Forest and to call for the reinstatement of their customary grazing rights for their livestock.<sup>2</sup> In Mpumalanga, South Africa, a group of traditional healers engaged in multi-stakeholder dialogue to discuss their proposals about how to conserve endemic medicinal plants and protect their traditional knowledge.<sup>3</sup> In Copenhagen, Denmark, a procession of local community and non-governmental organization (NGO) representatives marched through the last climate Conference of the Parties, chanting the slogan, "No Rights, No REDD!"<sup>4</sup> In Cochabamba, Bolivia, the World People's Conference on Climate Change culminated with a draft proposal for the Universal Declaration on the Rights of Mother Earth.<sup>5</sup>

Despite their geographic dislocation, these otherwise disparate events are intrinsically related. Collectively, they represent a growing moral and legal claim of Indigenous peoples and local and mobile communities<sup>6</sup> to the right of self-determination<sup>7</sup>, to manage their natural resources according to their customary values, and to ensure that any environmental laws and policies respect their rights to decide whether, how, and by whom the laws will be implemented. These events are part of

1 For their contributions to the theory and practice of biocultural community protocols, Natural Justice thanks the communities with whom we have worked for placing their trust in a young NGO. For their ideas, inspiration, and support, we also gratefully acknowledge, among others, Alejandro Argumedo (Asociación ANDES), Andreas Drews (GTZ), Govindaswamy Hariramamurthi and Professor Balakrishnan Nair (Foundation for the Revitalization of Local Health Traditions), Wim Hiemstra (COMPAS), Ilse Köhler-Rollefson (League for Pastoral Peoples and Endogenous Livestock Development and LIFE Network), Florina Lopez Miro and Heraclio Herrera (Kuna Tribe, Panama), Balakrishna Pisupati (United Nations Environment Programme), Suneetha Subramanian (United Nations University), Krystyna Swiderska (International Institute for Environment and Development), and Brendan Tobin (Irish Centre for Human Rights).

2 Sebastian, S., July 26, 2010. "Raikas demand grazing rights in forest land". Hindu Times. Last accessed August 4, 2010, at: <http://www.hindu.com/2010/07/26/stories/2010072658320500.htm>. For more information about the Raikas' struggle for recognition of their grazing rights, see Lokhit Pashu-Palak Sansthan (no date). Last accessed August 4, 2010, at: <http://www.lpps.org>.

3 On September 6, 2010, the Bushbuckridge Traditional Health Practitioners Association engaged in first-round negotiations with Silk SA, a company also based in the UNESCO Kruger to Canyons Biosphere Region. Last accessed September 7, 2010, at <http://natural-justice.blogspot.com/2010/09/bushbuckridge-traditional-health.html>.

4 "REDD" is an acronym for Reducing Emissions from Deforestation and Forest Degradation in Developing Countries. One of the authors was involved in this impromptu protest at the 15th Conference of the Parties of the United Nations Framework Convention on Climate Change in Copenhagen, Denmark. Last accessed August 4, 2010, at: <http://www.iisd.ca/climate/cop15>.

5 See "Rights of Mother Earth". Last accessed August 4, 2010, at: <http://pwccc.wordpress.com/programa/>.

6 Hereinafter referred to as 'communities'.

7 The right to self-determination is enshrined in the common Article 1 of the 1966 International Covenant on Civil and Political Rights (ICCPR) and 1966 International Covenant on Economic, Social and Cultural Rights (CESCR), as well as Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples.

a global movement<sup>8</sup> calling for alternatives to the dominant development model, the latter of which has neither banished poverty nor solved world hunger, but continues to drive widespread biodiversity loss and climate change.<sup>9</sup> The events also highlight two critical sites of struggle towards a new conservation paradigm: at the national and international legislative and policy-making level, where positive laws are made, and at the community level, where the law is implemented.

## INTERNATIONAL RIGHTS AND LOCAL WRONGS

Two major international environmental legal instruments are currently being negotiated under the auspices of their respective United Nations (UN) Conventions that will have far-reaching implications for communities: the (Nagoya) Protocol on Access and Benefit Sharing (ABS)<sup>10</sup> and the programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD).<sup>11</sup> Communities are struggling to fully and effectively participate in both sets of negotiations to ensure that the consequent international instruments provide communities with critical safeguards such as the right to free, prior and informed consent to any activities that take place on their territories or will affect their ways of life.

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Ensuring that communities' rights are enshrined in international and national laws is of paramount importance to ensuring respect and support for biocultural diversity<sup>12</sup> at the local level. As such, communities and their representatives are compelled to engage with the negotiations of multilateral environmental agreements and their protocols and other soft-law instruments. Yet the harsh paradox is that even when hard-fought negotiations result in communities' rights being enshrined in law, their local effects are often muted because of the complex socio-political contexts within which communities live.<sup>13</sup> For example, Linda Siegele *et al.* detail a plethora of rights relating to communities across a range of hard and soft law instruments.<sup>14</sup> Their exhaustive review, including multilateral environmental agreements, human rights instruments, UN agencies' policy documents, and International Union for Conservation of Nature (IUCN) resolutions, illustrates the scale of communities' rights agreed at the international level. However, their telling conclusion is that "good policy is just a starting point – good practice is more difficult to achieve."<sup>15</sup> Similarly, Lorenzo Cotula and James Mayers highlight the gap between what is "on paper" and what happens in practice in the context of local land tenure and REDD projects<sup>16</sup>. They underscore the fact that despite a growing international recognition of communities' rights to self-determine their futures and manage their natural resources,<sup>17</sup> international rights are far from a panacea against local disempowerment or the denial of procedural and substantive justice.

In efforts to secure their rights over natural resources and traditional knowledge and protect their ways of life, communities continue the international struggle for the recognition of their rights across a number of legislative and policy frameworks.<sup>18</sup>

8 Escobar, A., 1998. "Whose Knowledge, Whose Nature? Biodiversity, Conservation and the Political Economy of Social Movements". *Journal of Political Ecology*, 5: 53-82.

9 Secretariat of the Convention on Biological Diversity, 2010. *Global Biodiversity Outlook 3*. Secretariat of the Convention on Biological Diversity: Montreal, Canada.

10 The Protocol on ABS is expected to be adopted at the 10<sup>th</sup> Conference of the Parties of the United Nations Convention on Biological Diversity from October 18-29, 2010, in Nagoya, Japan. For more information, see Tobin, B., 2010. "The Law Giveth and the Law Taketh Away: The Case for Recognition of Customary Law in International ABS and Traditional Knowledge Governance", pages 16-25 in this issue of Policy Matters.

11 REDD is expected to be further discussed at the 16<sup>th</sup> Conference of the Parties of the United Nations Framework Convention on Climate Change from November 29-December 10, 2010, in Cancún, Mexico. For more information, see Lovera, S., 2010. "Rights and REDD: Can They Be Matched?", pages 40-47 in this issue of Policy Matters.

12 Maffi, L., and E. Woodley, 2010. *Biocultural Diversity Conservation: A Global Sourcebook*. Earthscan: UK.

13 For example, see Nelson, F., 2010. "Conservation and Citizenship: Democratizing Natural Resource Governance in Africa", pages 233-241 in this issue of Policy Matters.

14 Siegele, L., D. Roe, A. Giuliani, and N. Winer, 2009. "Conservation and Human Rights, Who Says What?", pages 47-76 in Campese, J., T. Sunderland, T. Greiber, and G. Oviedo (eds.), *Rights-based Approaches: Exploring Issues and Opportunities for Conservation*. CIFOR and IUCN: Bogor, Indonesia.

15 Siegele *et al.*, 2009, page 69.

16 Cotula, L., and J. Mayers, 2009. *Tenure in REDD – Start-point or afterthought?* Natural Resource Issues No. 15. International Institute for Environment and Development (IIED): London, UK, page 23.

17 For example, see Morel, C., 2010. "Communication 276 / 2003 – Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya". *Housing and ESC Rights Law Quarterly*, 7(1). Last accessed July 14, 2010, at: <http://www.cohre.org>; and Morel, C., 2010. "Conservation and Indigenous Peoples' Rights: Must One Necessarily Come at the Expense of the Other?", pages 174-181 in this issue of Policy Matters.

18 For example, see the latest round of the Interregional Negotiating Group of the Ad Hoc Open-ended Working Group on Access and Benefit Sharing, held September 18-21, 2010, in Montreal. Last accessed September 22, 2010, at: <http://www.iisd.ca/biodiv/absing>.

However, international advocacy must be augmented by the improved exercise of rights at the local level. There is a legal maxim that there is no right without a remedy<sup>19</sup>; equally, an international right without local effect is no right at all. Before addressing legal empowerment and rights-based approaches to conservation, a critique of positive (national and international) law from the community perspective illustrates certain inherent challenges.

## BIOCULTURAL DIVERSITY AND THE LAW

Indigenous peoples' and local and mobile communities' diversity of worldviews, cultures, and ways of life are helping to conserve and sustainably use the world's biological diversity.<sup>20</sup> Biological diversity cannot be seen as separate from cultural and linguistic diversity, as "the diversity of life in all its manifestations ... are interrelated (and likely co-evolved) within a complex socio-ecological adaptive system."<sup>21</sup> The multiplicity of interrelated knowledge, innovations, practices, values, and customary laws<sup>22</sup> are embedded within mutually supporting relationships between land, natural resource use, culture, and spirituality.<sup>23</sup> This connectivity underpins communities' dynamic worldviews and understandings of the laws of nature.<sup>24</sup>

Within this context, communities face a number of inter-related challenges when engaging with positive (State) legal systems. Three in particular have ramifications for communities seeking to assert their rights to self-determination and well-being. First, laws compartmentalize the otherwise interdependent aspects of biocultural diversity by drawing legislative borders around them and addressing them as distinct segments. While communities manage integrated landscapes,<sup>25</sup> the State tends to view each resource and associated traditional knowledge through a narrow lens, implementing corresponding laws through agencies that separately address, for example, biodiversity, forests, agriculture, and Indigenous knowledge systems.<sup>26</sup> The result is that communities' lives are disaggregated in law and policy, which effectively fragments their claims to self-determination into specific issue-related sites of struggle.

*The multiplicity of communities' traditions and values that are embedded within land, resource use, and culture underpins their understandings of the laws of nature.*

In addition to the challenge of legal fragmentation, the law affects the very nature of whom or what is defined as 'community'. In general, people have a variety of ways of establishing who is a member of a family or community and who is an outsider. Communities may define



**Figure 1.** The livelihoods of Samburu pastoralists in Kenya are inextricably based on the interlinkages between their livestock, culture, and local biodiversity. © Harry Jonas

19 This maxim is written in Latin as *Ubi jus ibi remedium*. Constitution Society, 2009. "Principles of Constitutional Construction". Last accessed August 4, 2010, at: [http://www.constitution.org/cons/prin\\_cons.htm](http://www.constitution.org/cons/prin_cons.htm).

20 Maffi and Woodley, 2010.

21 Maffi, L., 2010. "What is Biocultural Diversity", pages 3-12 in Maffi and Woodley, 2010, page 5.

22 This is also referred to as 'collective biocultural heritage', which is the knowledge, innovations, and practices of Indigenous peoples and local and mobile communities that are "collectively held and inextricably linked to traditional resources and territories, local economies, the diversity of genes, varieties, species and ecosystems, cultural and spiritual values, and customary laws shaped within the socio-ecological context of communities." This definition was developed at a workshop of research and Indigenous partners of the project on Traditional Knowledge Protection and Customary Law that was held in Peru in May, 2005. See Swiderska, K., 2006. *Banishing the Biopirates: A New Approach to Protecting Traditional Knowledge*, Gatekeeper Series 129. IIED: London. Also see IIED, 2010. "Protecting community rights over traditional knowledge". Last accessed August 24, 2010, at: <http://www.iied.org/natural-resources/key-issues/biodiversity-and-conservation/protecting-community-rights-over-tradition>.

23 See, for example, Descola, P., 1992. "Society of Nature and the Nature of Society", pages 107-157 in Kuper, A. (ed.), *Conceptualizing Society*. European Association of Social Anthropologists, Routledge: London.

24 See, for example, Davidson-Hunt, I., and F. Berkes, 2003. "Learning as You Journey: Anishinaabe Perception of Social-ecological Environments and Adaptive Learning". *Conservation Ecology*, 8(1): 5-26; and Alexander, M., P. Hardin, and M. Arhen, 2009. *Study on Compliance in Relation to the Customary Law of Indigenous and Local Communities, National Law, Across Jurisdictions, and International Law*, CBD Information Document prepared for the 7<sup>th</sup> Meeting of the Ad Hoc Open-ended working Group on Access and Benefit Sharing. UNEP/CBD/WG-ABS/7/INF/5, page 9.

25 Watson, A., L. Alessa, and B. Glaspell, 2003. "The Relationship Between Traditional Ecological Knowledge, Evolving Cultures, and Wilderness Protection in the Circumpolar North". *Conservation Ecology*, 8(1): 2-15.

26 In South Africa, for example, the Department of Environmental Affairs has a mandate to manage the country's biodiversity, but they share responsibility to protect communities' associated traditional knowledge with the Department of Science and Technology.



themselves in a number of different ways and in different contexts, based on multiple factors such as heritage, ethnicity, language, geographical proximity, and shared resources or knowledge.<sup>27</sup> State law, however, is insensitive to local, adaptive conceptions of community and tends to impose an over-generalized and homogeneous classification as a static and rigidly defined entity. This contradicts local realities and can further divide and weaken local institutions and social structures.<sup>28</sup>

*The disaggregation of communities' lives through law and policy fragments their claims to self-determination into issue-specific sites of struggle.*

However, this challenge can be overcome by using the law as the basis for adding a new dimension to local constructions of community that progresses the right to self-determination. For example, in Bushbuckridge, South Africa, a group of traditional healers spread across a large number of villages and from two different language groups came together to define themselves as a community of knowledge holders<sup>29</sup> in the context of new rights provided under South African ABS law.<sup>30</sup> Although this type of law tends to place a disproportionate emphasis on the sharing of traditional knowledge as the means by which to characterize a community<sup>31</sup>, the Bushbuckridge Traditional Health Practitioners are using its provisions to create and occupy a new legal space, within which they are asserting their rights to traditional knowledge and customary practices. All communities are dynamic and issues of self-definition and fluid identity are neither new to traditional communities nor inherently destructive to their

social structures. The critical determinant is whether they are able to engage adequately with legal and policy processes to avoid potential negative impacts of change and drive positive developments according to their own values and priorities.<sup>32</sup>

As a third and cross-cutting challenge inherent to engaging with legal frameworks, positive law (both international and State) may conflict with the customary laws that govern communities' sustainable use of natural resources.<sup>33</sup> For example, the understanding of 'property' under positive law is based on the private rights of a person (human or corporate) to appropriate and alienate physical and intellectual property. In contrast, communities' property systems tend to emphasize relational and collective values of resources.<sup>34</sup> Furthermore, the implementation of positive law tends to overpower and contravene customary law. A system that denies legal pluralism<sup>35</sup> has direct impacts on communities' lives, for example, by undermining the cultural practices and institutions that underpin sustainable ecosystem management.<sup>36</sup> While recognition of communities' customary laws and traditional authority over resources is progressing in some jurisdictions,<sup>37</sup> the challenge of legal pluralism goes beyond the mere co-existence of legal regimes, wherein customary law is applicable only to Indigenous peoples within their territories. Instead, meaningful legal pluralism requires "incorporation directly or indirectly of principles, measures and mechanisms drawn from customary law within national and international legal regimes for the protection of traditional knowledge."<sup>38</sup>

*Legal pluralism goes beyond the mere co-existence of legal regimes and requires the incorporation of aspects of customary law into national and international law.*

27 Agrawal, A., and C. C. Gibson, 1999. "Enchantment and Disenchantment: The Role of Community in Natural Resource Conservation". *World Development*, 27(4): 629-649.

28 Bosch, D., 2003. "Land Conflict Management in South Africa: Lessons Learned from a Land Rights Approach". Last accessed August 4, 2010, at: <http://www.fao.org/docrep/006/j0415t/j0415t0a.htm>.

29 For more information about the Traditional Health Practitioners of Bushbuckridge, including a copy of their biocultural community protocol, see Natural Justice, 2010. Last accessed August 4, 2010, at: <http://www.naturaljustice.org>.

30 Bioprospecting, Access and Benefit Sharing Rules, 2008. *Government Gazette* No. 30739, February 8, 2008. Department of Environmental Affairs and Tourism, Pretoria, South Africa.

31 For example, the San and Nama in Southern Africa share ethnobotanical knowledge of the Hoodia succulent. See Bavikatte, K., H. Jonas, and J. von Braun, 2009. "Shifting Sands of ABS Best Practice: Hoodia from the Community Perspective". United Nations University Traditional Knowledge Initiative. Last accessed August 4, 2010, at: [http://www.unutki.org/default.php?doc\\_id=137](http://www.unutki.org/default.php?doc_id=137).

32 Cotula, L., and P. Mathieu (eds.), 2008. *Legal Empowerment in Practice, Using Legal Tools to Secure Land Rights in Africa*. IIED: London, page 10.

33 Cotula and Mathieu, 2008, page 11.

34 Tobin, B., and E. Taylor 2009. "Across the Great Divide: A Case Study of Complementarity and Conflict Between Customary Law and TK Protection Legislation in Peru". *Initiative for the Prevention of Biopiracy*, Year IV: 11, page 10. Such systems have been described as "...commonly characterized by collective ownership (where the community owns a resource, but individuals may acquire superior rights to or responsibilities for collective property), and communal ownership (where the property is indivisibly owned by the community)." See Tsosie, R., 2007. "Cultural challenges to biotechnology: Native American cultural resources and the concept of cultural harm". *Journal of Law, Medicine & Ethics*, 35: 396, cited in Tobin and Taylor, 2009, page 36.

35 This type of system could be referred to as legal monoculture.

36 Sheleef, L., 2000. *The Future of Tradition: Customary Law, Common Law and Legal Pluralism*. Frank Cass: London, England, and Portland, Oregon.

37 Van Cott, D., 2000. "A Political Analysis of Legal Pluralism in Bolivia and Colombia". *Journal of Latin American Studies*, 32: 207-234.

38 Tobin, B., 2009. "Setting Traditional Knowledge Protection to Rights: Placing Human Rights and Customary Law at the Center of Traditional Knowledge Governance", pages 101-115 in Kamau, E., and G. Winer (eds.), *Genetic Resources, Traditional Knowledge and the Law. Solutions for Access and Benefit Sharing*. Earthscan: UK, page 111. This is arguably a huge challenge and most States are a long way from incorporating Indigenous worldviews into legal and policy frameworks.

These three challenges, among others, highlight the fact that the imposition of international and national environmental laws, which are inherently fragmentary and based on static misperceptions of local realities, has the potential to undermine the interconnected and adaptive systems that underpin biocultural diversity. The implementation of such laws compounds these challenges by requiring communities to engage with disparate stakeholders<sup>39</sup> according to a variety of disconnected regulatory frameworks, many of which may conflict with their customary laws and traditional governance structures. Communities thus face a stark choice to either spurn these inherently limited frameworks (something which is a virtual impossibility considering the ubiquitous nature of State law) or engage with them at the potential expense of becoming complicit in the disaggregation of their otherwise holistic ways of life and governance systems. If the latter is chosen, the resultant challenge is for communities to draw upon and further develop appropriate means to effectively engage with State and international legal and policy frameworks, specifically in ways that accord with their biocultural heritage, support their integrated systems of ecosystem management, are commensurate with their customary laws, and recognize traditional forms of governance. In the absence of such approaches, the very act of using rights can be disempowering and disenfranchising.<sup>40</sup>

## RIGHTS-BASED APPROACHES AND PLURALISM IN CONSERVATION

Rights-based approaches are being promoted as a means to ensure that conservation policy and practice support communities' rights to self-determination and well-being<sup>41</sup> and promote social, cultural, and environmental justice.<sup>42</sup> Such approaches are described as "integrating rights norms, standards, and principles into policy, planning, implementation, and outcomes assessment to help ensure that conservation practice respects rights in all cases, and supports their further realization where possible."<sup>43</sup> They are based on the principle that communities are not merely stakeholders whose views governmental and conservation agencies may take into account, but are rights-holders to whom implementing agencies have statutory obligations. In addition, every right is accompanied by responsibilities and duties to the self and to other individuals and collectives.<sup>44</sup> Communities may take this principle even further by acknowledging their duties to specific plants, totemic animals, or all of Mother Earth.<sup>45</sup> Rights-based approaches must thus acknowledge not only the rights of all parties (including communities) under both positive and customary law, but also their duties.<sup>46</sup> Such an understanding of the fundamental nature of rights ensures that rights-based approaches to conservation are not simply defensive demands by marginalized groups, but are commitments to work constructively towards consensus on the basis of mutual recognition of parties' respective rights and duties.



**Figure 2.** *Gunis* (traditional healers) in Rajasthan have cultural and spiritual values and duties that underpin their use of medicinal plants and the sharing of their knowledge. © Harry Jonas

The integrity<sup>47</sup> of rights-based approaches must be ensured both within institutions and within communities. At the

39 Examples include government agencies, conservation and development NGOs, private sector companies, and researchers.

40 This is also supported by anecdotal evidence by public interest lawyers such as Fatima Hassan (former senior attorney, AIDS Law Project, South Africa) who argues that even when ordinary people do use the law and engage legal systems, the process is often both disempowering because of the asymmetrical "lawyer-client" relationship and dehumanizing because of the Kafkaesque nature of legal proceedings.

41 Reflecting Principle 1 of the Declaration of the United Nations Conference on the Human Environment (Stockholm, June 16, 1972): "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being". Last accessed August 4, 2010, at: <http://www.unep.org/Documents/Multilingual/Default.asp?documentid=97&articleid=1503>.

42 Notably, the environmental justice movement represents "an integration of civil rights and environmental laws that may aptly be described as a quest for environmental civil rights." Roberts, R. G., 1999. "Environmental Justice and Community Empowerment, Learning from the Civil Rights Movement". *American University Law Review*, 48: 229-260, page 232. Also see Greiber, T. (ed.), 2009. *Conservation with Justice: A Rights-Based Approach*. IUCN: Gland, Switzerland, page 2.

43 Campese, J., T. Sunderland, T. Greiber, and G. Oviedo (eds.), 2009. *Rights-based approaches: Exploring Issues and Opportunities for Conservation*. CIFOR and IUCN: Bogor, Indonesia, page 8.

44 In her seminal World War II-era work, Simone Weil argues that rights only exist in relation to corresponding duties and obligations, which transcend the world of competing interests in the pursuit of justice. See Weil, S., 2001. *The Need for Roots: Prelude to a Declaration of Duties Towards Mankind*, 2<sup>nd</sup> edition. Routledge Classics: UK.

45 Martin, J., and E. Inns, 2010. "Totem poles as a representation of natural law of Indigenous peoples of Clayoquot Sound". *Endogenous Development Magazine*, 6: 15.

46 This may be described as a duties-based approach.

47 For an in-depth discussion of the concept of integrity as it applies to the environment and justice, see Westra, L., 2005. "Ecological Integrity",

institutional level, implementing agencies must improve their understanding of communities' rights and duties and instate measures to ensure that their actions accord with the standards and procedures established by customary, national, and international laws. The Conservation Initiative on Human Rights (CIHR) is a good example of the institutional change that is being undertaken by a consortium of international conservation NGOs that seek to improve the practice of conservation through the integration of human rights.<sup>48</sup> The commitment shown by these organizations is commendable and necessary, but constitutes only part of the multifaceted approach that is required to enact institutional change in policy and practice. The ability of communities to engage as equals in the implementation of environmental laws is also critically important, and legal empowerment is one contributing factor to this transformation.<sup>49</sup>

The need for legal empowerment in the context of rights-based approaches can be illustrated with reference to the IUCN Environmental Law Centre's stepwise approach.<sup>50</sup> This graduated method encourages implementing agencies to ensure that any measures undertaken towards conservation and climate change mitigation are in accordance with stakeholders' rights by following five steps, namely: undertaking a situation analysis; providing information; ensuring participation; taking reasoned decisions; and monitoring and evaluating the implementation of the rights-based approach. The approach provides clear guidance to implementing agencies, but arguably risks being considered a replacement for the independent empowerment of communities.

For example, Element 2 of the Convention on Biological Diversity's Programme of Work on Protected Areas (PoWPA), which addresses governance, participation, equity, and benefit sharing, establishes procedural and substantive standards for States to involve communities in protected areas. Parties are called on, *inter alia*, to "effectively involve indigenous and local communities, *with respect for their rights consistent with national legislation and applicable international obligations*, and stakeholders at all levels of protected areas planning, establishment, governance and management, with particular emphasis on identifying and removing barriers preventing adequate participation."<sup>51</sup> PoWPA's reference to 'effective' involvement, like IUCN's emphasis on 'ensuring' participation, is a subjective term influenced by complex political and social dynamics at the State and local level.<sup>52</sup> Full and effective involvement and participation are not just rights to be ensured by top-down processes, but are also contingent upon empowered communities engaging with implementing agencies as equal but distinct partners. Similarly, IUCN's stipulation that communities are provided information (the lack of which is one of the "barriers preventing adequate participation" noted by PoWPA Activity 2.2.2.) is important, but not as meaningful as communities knowing which information to ask for, obtaining it, and conducting their own processes to formulate and assert their views about and involvement in any proposed protected area. The oft-cited right of communities to provide free, prior and informed consent<sup>53</sup> must also entail the right to refuse to provide such consent; only then could their subsequent involvement in the governance and management of protected areas have local integrity.

Towards the goal of improving equity and benefit sharing, PoWPA also calls on Parties to establish "policies and institutional mechanisms with full participation of indigenous and local communities, to facilitate the *legal recognition*

*Rights-based approaches are not simply defensive demands, but constructive commitments to work towards consensus on the basis of mutual recognition of parties' respective rights and duties.*

pages 574-578 in Mitcham, C. (ed.), *Encyclopedia of Science, Technology, and Ethics, Volume 2*. Macmillan Reference USA: Detroit.

48 CIHR partner organizations include BirdLife International, Conservation International, Fauna & Flora International, IUCN, The Nature Conservancy, Wetlands International, the Wildlife Conservation Society, and the World Wide Fund for Nature. See Roe, D., G. Oviedo, L. Pabon, M. Painter, K. Redford, L. Siegle, J. Springer, D. Thomas, and K. Walker Painemilla, 2010. *Conservation and Human Rights: The Need for International Standards*. IIED: London, United Kingdom; and Springer, J., J. Gastelumendi, G. Oviedo, K. Walker Painemilla, M. Painter, K. Seesink, H. Schneider, and D. Thomas, 2010. "The Conservation Initiative on Human Rights: Promoting Increased Integration of Human Rights in Conservation", pages 81-83 in this issue of Policy Matters.

49 Without corresponding legal empowerment, rights-based approaches will fall foul of the same criticisms that Stephen Golub made of rule of law programmes in the 1990s, which he characterized as privileging judicial reform ("the power of the lawyers") over improving access to justice ("the power of the people"). Golub, S., 2003. *Beyond Rule of Law: Orthodoxy: The Legal Empowerment Alternative*, Rule of Law Series, Number 41. Carnegie Endowment for International Peace: Washington, D. C., page 3.

50 Shelton, D., 2009. "A Rights-based Approach to Conservation", pages 5-36 in Greiber, 2009.

51 Convention on Biological Diversity, Programme of Work on Protected Areas, Activity 2.2.2 (emphasis added). Last accessed August 4, 2010, at: <http://www.cbd.int/protected/pow/learnmore/intro/?prog=p2>.

52 For example, see Madzwamuse, M., 2010. "Rights-based Approaches to Conservation in Protected Areas: What are the Issues for Southern Africa?", pages 223-227 in this issue of Policy Matters.

53 This right is enshrined in Articles 10, 11(2), 19, 28, 29(2), and 32(2) of the United Nations Declaration on the Rights of Indigenous Peoples, 2007. General Assembly Resolution 61/295. Also see Colchester, M., and M. Farhan Ferrari, 2007. *Making FPIC Work: Challenges and Prospects for Indigenous Peoples*. Forest Peoples Programme: United Kingdom.



and effective management of indigenous and local community conserved areas in a manner consistent with the goals of conserving both biodiversity and the knowledge, innovations and practices of indigenous and local communities.”<sup>54</sup> With reference to the discussion above on legal pluralism, Element 2 of PoWPA underscores the need for implementing agencies to recognize and support the right to conservation pluralism – the diversity of community-based approaches to the conservation and sustainable and customary use of biodiversity.

## LEGAL EMPOWERMENT AND ENDOGENOUS DEVELOPMENT

Participatory legal empowerment will further enable communities to gain recognition of and support for the plurality of approaches to conservation law, policy, and practice. Legal empowerment is defined as “the use of legal tools to tackle power asymmetries and help disadvantaged groups have greater control over decisions and processes that affect their lives.”<sup>55</sup> Evidence suggests that non-lawyers are equally equipped to use the law (and sometimes more adept at doing so) to solve local challenges when they are empowered in a legal context.<sup>56</sup> Legal empowerment of the poor<sup>57</sup> is based on the twin principles that law should not remain a monopoly of trained professionals and that in many instances, forms of alternative dispute resolution are more attuned to local realities than formal legal processes. Ideally, the act of using the law becomes as empowering as the outcome of the process itself.<sup>58</sup> By organizing themselves around rights and duties, communities initiate adaptive dialogue processes both internally and vis-à-vis outsiders. Building internal

*Effective legal empowerment is a combination of social mobilization and legal action that acts as a positive feedback loop towards both aims.*

resilience to external influences and responding proactively and according to local values and priorities are both critical to a community’s well-being.<sup>59</sup> A court victory handed to a community, for example, can be supremely useful, but a process that is driven by the community is tangibly more powerful.<sup>60</sup> As such, effective legal empowerment is a combination of social mobilization and legal action<sup>61</sup> that acts as a positive feedback loop towards both aims.

The law is sometimes described as ‘a sword and a shield’.<sup>62</sup> Negotiating in the shadow of the law<sup>63</sup> is an important strategy for communities who might otherwise not have the opportunity to engage with conservation policy and practice. However, law is about more than just establishing due process. When used imaginatively, laws can be the platform for creating an enabling legal and political environment by negotiating “space to place new steps of change”<sup>64</sup> and opening avenues of discussion between disparate groups towards previously unimagined relationships.<sup>65</sup> In this sense, legal empowerment can enable communities to break free from the typical patronizing



**Figure 3.** The law can be used to tackle power asymmetries and build community resilience and well-being.

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54 Convention on Biological Diversity, Programme of Work on Protected Areas, Activity 2.1.3 (emphasis added). Last accessed August 4, 2010, at: <http://www.cbd.int/protected/pow/learnmore/intro/?prog=p2>.

55 Cotula and Mathieu, 2008, page 15.

56 Maru, V., 2006. “Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide”. *The Yale Journal of International Law*, 31: 427-476.

57 This is a reference to the United Nations Development Programme, 2010. “Initiative on Legal Empowerment of the Poor”. Last accessed August 4, 2010, at: <http://www.undp.org/legalempowerment/>.

58 Maru, 2006.

59 Subramanian, S. M., and B. Pisupati, 2009. *Learning from the Practitioners: Benefit Sharing Perspectives from Enterprising Communities*. UNEP and UN University: Nairobi.

60 “The most valuable, useful and transformative legal challenges are those that include communities and that mobilize and educate people so that communities use the law to give effect to their own voices and their own issues.” Hassan, F. (draft in progress). *10 Year History of Treatment Action Campaign*. Treatment Action Campaign: Cape Town, South Africa.

61 Cotula, L., 2007. *Legal Empowerment for Local Resource Control: Securing Local Resource Rights Within Foreign Investment Projects in Africa*. IIED: United Kingdom, page 110.

62 The phrase is used to describe the perceived nature of laws’ ability to ‘attack’ criminality and ‘defend’ against injustice.

63 Cotula and Mathieu, 2008, page 12. ‘Negotiating in the shadow of the law’ references the way the existence of laws that provide rights and obligations can change the dynamic of a meeting of parties, especially in the context of power asymmetries. In this context, rights and obligations can help the weaker party overcome an initially disadvantaged position.

64 Angelou, M., 1993. “Inaugural Poem”. Last accessed on August 4, 2010, at: <http://poetry.eserver.org/angelou.html>.

65 See, for example, Rozzi, R., F. Massardo, C. Anderson, K. Heidinger, and J. A. Silander, Jr., 2006. “Ten principles for bio-cultural conservation



dichotomy of either being ‘spoken at’ or ‘spoken for’.

A recent compilation of case studies highlights the diversity of rights-based approaches that communities and their NGOs are experimenting with.<sup>66</sup> A dominant theme that emerges is the multifaceted attempts by a variety of communities to use the law to conserve their biocultural diversity. It highlights the critical need for the further development and sharing of communities’ methods and approaches to using rights and engaging with the law on their terms, according to their values, and in ways commensurate with their customary laws – in other words, endogenously. Endogenous development is a community process of defining and working towards future plans according to local values and priorities.<sup>67</sup> In contrast with other theories of development that emphasize varying degrees of external input, it draws on a body of experience that suggests that communities are more likely to remain cohesive and sustain their traditions, cultures, spirituality, and natural resources when they develop their future collectively and base their plans on the resources available within the community. Endogenous development does not reject the notion of external agencies providing assistance, but stresses that any interventions must be undertaken only after the free, prior and informed consent of the community is given and when the activities are developed, driven, monitored, and evaluated by the community.<sup>68</sup> Endogenous development theory supports the proposition that the more endogenous the legal education and rights-based approach, the more likely the process is to be genuinely empowering. Biocultural community protocols, described below, are one endogenous rights-based approach that communities are using to affirm their right to self-determination.

## BIOCULTURAL COMMUNITY PROTOCOLS AND THE RIGHT TO DIVERSITY

*Biocultural  
community protocols  
are community-  
specific declarations  
of the right to  
diversity, challenging  
the fragmentary  
nature of State law.*

Biocultural community protocols<sup>69</sup> are a response to the challenges and opportunities set out above. Although each is adapted to its local context, a biocultural community protocol is generally a community-led instrument that promotes participatory advocacy for the recognition of and support for ways of life that are based on the customary sustainable use of biodiversity, according to standards and procedures set out in customary, national, and international laws and policies. In this sense, biocultural community protocols are community-specific declarations of the right to diversity.<sup>70</sup> Their value and integrity lie in the process that communities undertake to develop them, in what they represent to the community, and in their future uses and impacts.

The process of developing and using a biocultural community protocol is an opportunity for communities to reflect on their ways of life, values, customary laws, and priorities and to engage with a variety of supporting legal frameworks and rights. A biocultural approach to the law empowers communities to challenge the fragmentary nature of State law and to instead engage

with it from a more nuanced and integrated perspective and assess how certain laws may assist or hinder their plans for the future. A wide variety of community members are involved by integrating legal empowerment processes with endogenous development and communication methodologies such as group discussions, written documentation, various types of mapping and illustrations, participatory video and photography, performing arts, and locally appropriate monitoring and evaluation.<sup>71</sup> Biocultural community protocols vary in how they are documented, shared, and utilized and have been highlighted as something meaningful and affirmative that a community can be proud of.<sup>72</sup> The approach is intended to mobilize and empower communities to use international and national laws to support the local manifestation of the right

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at the southern tip of the Americas: the approach of the Omora Ethnobotanical Park”. *Ecology and Society*, 11(1): 43-70.

66 Campese *et al.*, 2009.

67 ETC Foundation and COMPAS, 2007. *Learning Endogenous Development: Building on Bio-cultural Diversity*. Practical Action Publishing: United Kingdom.

68 ETC Foundation and COMPAS, 2007.

69 Bavikatte, K., and H. Jonas (eds.), 2009. *Bio-cultural Community Protocols: A Community Approach to Ensuring the Integrity of Environmental Law and Policy*. Natural Justice and UNEP: Montreal.

70 A forthcoming paper by the authors focuses on the notion of the “right to diversity” as a way to define the body of rights required to support a community’s biocultural diversity.

71 See, for example, Taylor, J., 2008. “Naming the Land, San Counter-mapping in Namibia’s West Caprivi”. *Geoforum*, 39: 1766-1775; Hoole, A., and F. Berkes, 2009. “Breaking Down Fences: Recoupling Social-ecological Systems for Biodiversity Conservation in Namibia”. *Geoforum*, 31: 304-317; Tobias, T., 2000. *Chief Kerry’s Moose: A guidebook to land use and occupancy mapping, research design and data collection*. The Union of BC Indian Chiefs and Ecotrust Canada: Vancouver, Canada; Lunch, N., and C. Lunch, 2006. *Insights into Participatory Video: A Handbook for the Field*. InsightShare: UK; Davies, R., and J. Dart, 2005. *The Most Significant Change Technique: A Guide to Its Use*, CARE International: United Kingdom; and Schreckenberger, K., I. Camargo, K. Withnall, C. Corrigan, P. Franks, D. Roe, L. M. Scherl, and V. Richardson, 2010. *Social Assessment of Conservation Initiatives: A review of rapid methodologies*, Natural Resource Issues, No. 22. IIED: London.

72 Köhler-Rollefson, I., 2010. *Bio-cultural Community Protocols for Livestock Keepers*. Lokhit Pashu-Palak Sansthan: Rajasthan, India, page 16.

to self-determination.

Communities establish a firm foundation upon which to develop the future management of their natural resources by setting out their values and customary procedures that govern the management of their natural resources, as well as their procedural and substantive rights to, among other things, be involved in decision-making according to the principle of free, prior and informed consent, develop the specific elements of projects that affect their lands, and ensure that they are involved in the monitoring and evaluation of such projects. This provides clarity to the drivers of external interventions such as protected areas, ABS deals, REDD projects, and payment for ecosystem services schemes, and can help communities gain recognition for, among other things, their territorial sovereignty, community-based natural resource management systems and community conserved areas,<sup>73</sup> *sui generis* laws, sacred natural sites,<sup>74</sup> and globally important agricultural heritage systems. In this regard, biocultural community protocols enable communities to bridge the gap between the customary management of their biocultural heritage and the external management of their resources, as mandated by positive legal frameworks. They also help communities to minimize the power asymmetries that often characterize government-community relations and promote a more participatory and endogenous approach to the future governance of their territories, natural resources, and biodiversity. By enabling a community to be proactive in relation to agencies and frameworks to which they have normally been reactive, protocols have the potential to shift the dynamic of conservation initiatives from merely attempting to 'ensure' communities' participation to becoming inclusive, locally appropriate processes driven by legally empowered communities.

## THE RAIKA

In response to their exclusion from the Kumbalgarh Forest noted above, the Raika pastoralists of Rajasthan, India, developed a protocol to communicate the fullness of the forest's meaning to their lives and the implications of their exclusion to their livelihoods, traditional knowledge, and the surrounding biodiversity and genetic resources.<sup>75</sup> Specifically, they set out their biocultural values and explain how they have developed and preserved unique breeds of livestock and the traditional knowledge associated with them, and how their pastoral lifestyle has co-evolved with the forest ecosystem that they have traditionally conserved and sustainably used. The Raika also detail the customary decision-making process that underpins the provision of free, prior and informed consent to any actions that might impact their grazing rights, animal genetic resources, and associated traditional knowledge. They draw on their description of their ways of life to detail their rights under Indian law<sup>76</sup> and call upon the National Biodiversity Authority to recognize and ensure the *in situ* conservation of their local breeds and associated traditional

knowledge, and ensure that their free, prior and informed consent is obtained according to customary law before any decisions are taken relating to their genetic resources or associated traditional knowledge. They conclude by calling on the Secretariat of the Convention on Biological Diversity and the Food and Agriculture Organization of the United Nations to recognize the contributions of their knowledge, innovations, and practices to the conservation and sustainable use of plant and animal genetic diversity in Rajasthan. Overall, the Raika's protocol is a holistic response to a singular and fragmentary act of government that was undertaken without recourse to the integrated reality of their biocultural heritage.

It illustrates a number of points about the nature of biocultural community protocols as a community-based response to the challenges of engaging with legal frameworks explored above. As highlighted in the first part of this paper, the Raika have international and national rights that were denied at the local level. The endogenous process of developing the protocol served as an opportunity for the community to provide a biocultural critique of their exclusion from the Kumbalgarh



**Figure 4.** The Raika demonstrate in Sadri (Rajasthan, India) for their grazing rights in the Kumbalgarh Forest. © Ilse Köhler-Rollefson

<sup>73</sup> See, for example, Ryan, S., K. Broderick, Y. Sneddon, and K. Andrews, 2010. *Australia's NRM Governance System: Foundations and Principles for Meeting Future Challenges*. Australian Regional NRM Chairs: Canberra.

<sup>74</sup> Wild, R., and C. McLeod (eds.), 2008. *Sacred Natural Sites: Guidelines for Protected Area Managers*. IUCN: Gland, Switzerland.

<sup>75</sup> The Raika bio-cultural protocol and other protocols are available on Natural Justice, 2010.

<sup>76</sup> Biological Diversity Act 2002, Biological Diversity Rules 2004, Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, and the National Policy for Farmers 2007.



Forest, which has far-reaching implications for local diversity. Learning about the laws that support their ways of life helped the Raika develop intra- and inter-community awareness and mobilization to define a forward-looking strategy.<sup>77</sup> By articulating their worldview and providing supporting evidence<sup>78</sup> in the form of a protocol, they have reconstituted the terms of the debate about their exclusion, broadening it to include the effects of the exclusion on their livestock, culture, traditional knowledge, and the health of the forest ecosystem itself, as well as their existing rights under customary, national, and international law. In this sense, biocultural community protocols enable communities to communicate both a focused response to activities on their territories and an integrated and value-laden response to the broader trend towards the legal disaggregation of their ways of life and reification of their traditional knowledge. For the Raika, a protocol serves

*The Raika are reclaiming the law to make a strong moral and legal claim for conservation pluralism.*

as an interface for constructive dialogue about their values and ways of life with government officials in a manner that embodies both the resilience and vulnerabilities of their biocultural diversity. In doing so, they are reclaiming the law to make a strong moral and legal claim for conservation pluralism.

The empirical benefits of pluralism in conservation law, policy, and practice are supported by Nobel laureate Elinor Ostrom's work on the commons. She argues that where certain design principles<sup>79</sup> prevail, local common property resource management systems are likely to avoid<sup>80</sup> what Garret Hardin described as the 'tragedy of the commons'.<sup>81</sup> Similar arguments are made

by proponents of Indigenous peoples' and community conserved areas (ICCAs), which are natural sites, resources, and species' habitats conserved in a voluntary and self-directed way through community values, practices, rules, and institutions.<sup>82</sup> In the context of this paper, the tentative global movement towards the recognition of and support for ICCAs is essentially a community-driven struggle for conservation pluralism. Challenges inherent in community-managed and jointly-managed protected areas have been highlighted,<sup>83</sup> but it is hoped that innovative tools such as biocultural community protocols can assist in their locally appropriate recognition and support.

Community protocols are not a panacea. A recent consultation with community and NGO representatives in Sri Lanka highlighted a number of challenges, including that the process of developing a protocol could be abused by certain parties either from outside or from within the community.<sup>84</sup> This is closely linked to the potential of such processes to further entrench or perpetuate existing power asymmetries at the local level such as the exclusion of women and youth in decision-making mechanisms.<sup>85</sup> The fact that biocultural community protocols may become another top-down imposition by the development industry was raised, with one participant describing the approach as a potential "monster".<sup>86</sup> Ensuring community-based monitoring and evaluation of the approach was also heavily underscored.<sup>87</sup> With the inclusion of "community protocols" in the draft ABS Protocol,<sup>88</sup> which is likely to be adopted at the 10<sup>th</sup> meeting of the Conference of the Parties to the Convention on Biological Diversity in Nagoya in October, 2010, the above concerns have the potential to become reality. The growing challenge to assist communities to determine whether and how to develop

77 Köhler-Rollefson, I., 2010. *Bio-cultural Community Protocols for Livestock Keepers*. Lokhit Pashu-Palak Sanstan: Rajasthan, India; Köhler-Rollefson, I., and E. Matthias, 2010. "Livestock Keepers' Rights: a Rights-based Approach to Invoking Justice for Pastoralists and Biodiversity Conserving Livestock Keepers", pages 113-115 in this issue of Policy Matters.

78 The Protocol provides detailed information about their traditional livestock breeds. See Natural Justice, 2010.

79 Ostrom sets out 8 design principles in Ostrom, E., 1990. *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge University Press: United Kingdom.

80 Ostrom, E., J. Burger, C. Field, R. Norgaard, and D. Policansky, 1999. "Revisiting the Commons: Local Lessons, Global Challenges." *Science*, New Series, 284(5412): 278-282.

81 Hardin, G., 1968. "The Tragedy of the Commons". *Science*, New Series, 162(3859): 1243-1248.

82 Examples of ICCAs include Indigenous biocultural heritage territories, Indigenous protected areas, cultural land and seascapes, sacred sites and species, migration routes of mobile Indigenous peoples, sustainable resource reserves, communities' fishing grounds, wildlife nesting sites, and others, detailed in Corrigan, C., and A. Granziera, 2010. *A Handbook for the Indigenous and Community Conserved Areas Registry*. UNEP-WCMC: Nairobi, Kenya.

83 Rozzi, et al., 2006; Borrini-Feyerabend, G., 2010. *Strengthening what works – Recognising and supporting the conservation achievements of indigenous peoples and local communities*. IUCN/CEESP briefing note no. 10.

84 Jonas, H., and H. Shrumm, 2010. *Exploring Bio-cultural Community Protocols in the Sri Lankan Context: A Report of an International Consultation and Training-of-Trainers Workshop on Bio-cultural Community Protocols in Avissawella, Sri Lanka*, page 15. Available online at Natural Justice, 2010. This is also reflected in Köhler-Rollefson, 2010.

85 Köhler-Rollefson, I., 2010, page 26.

86 Jonas and Shrumm, 2010, page 15.

87 Jonas and Shrumm, 2010, page 15.

88 Draft Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity. UNEP/CBD/COP/10/5/Add.4. Last accessed August 24, 2010, at: <http://www.cbd.int/doc/meetings/cop/cop-10/official/cop-10-05-add4-en.pdf>.

community protocols should be addressed by inter-community lesson sharing, good practice guidelines, and rigorously tested methodologies and resources.<sup>89</sup>

## CONCLUSION: TOWARDS CONSERVATION PLURALISM

We live in a diverse world. The world's three core areas of biocultural diversity are in regions heavily populated by Indigenous peoples and local and mobile communities.<sup>90</sup> They are also the most threatened, suffering disproportionately high levels of environmental degradation and negative social change.<sup>91</sup> Communities' biocultural diversity is contingent upon the integrity of their traditional knowledge, innovations, and practices<sup>92</sup> and legal systems, all of which differ from the mainstream systems of law and conservation. The concept of diversity challenges the notion that certain people or approaches are inherently better than others. Until recently, communities' diversity has not been valued, and in many instances, has been actively undermined by policy makers and conservation practitioners alike. Recognition of the intrinsic and instrumental value of communities' biocultural diversity is growing, but this not enough. To support biocultural diversity, official recognition and support for the diversity of communities' legal systems (in essence, legal pluralism) and ecosystem management systems (in essence, conservation pluralism) is required. Seen in this light, diversity without pluralism is injustice. In the alternative, the recognition of diversity, matched by complementary forms of pluralism, is an expression of natural law.<sup>93</sup>

*The recognition of diversity and pluralism is an expression of natural law.*

As the world clamours to address unprecedented levels of biodiversity loss and increasingly unpredictable impacts of climate change, communities – who have contributed least to the underlying causes of such change – are being disproportionately affected by both the environmental changes and the measures being implemented to address those changes.<sup>94</sup> In this context, rights-based approaches and legal innovations such as biocultural community protocols have the potential to amplify communities' calls for self-determination, which includes respect for their diversity of ecosystem management practices and legal structures. A diverse world can only be sustained by a plurality of approaches. Rights-based approaches are contributing to a groundswell of recognition of and support for cultures, systems, and approaches that conserve and sustainably use biodiversity and address the root causes and effects of climate change. In turn, they are contributing to a paradigm shift in conservation law, policy, and practice towards the recognition of and support for the right to diversity through legal and conservation pluralism.

### Additional resources:

- [www.naturaljustice.org](http://www.naturaljustice.org)
- <http://natural-justice.blogspot.com>

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<sup>89</sup> Natural Justice is working with partners such as the COMPAS Network, LIFE Network, Global Diversity Foundation, ABS Capacity Development Initiative, UNEP-DELC, UN University, and others in Africa, Asia-Pacific, and Latin America to develop the approach.

<sup>90</sup> These are biological, cultural, and linguistic diversity. See Maffi and Woodley, 2010, plate 2 between pages 154 and 155.

<sup>91</sup> Maffi and Woodley, 2010, plate 3 between pages 154 and 155.

<sup>92</sup> Article 8(j), Convention on Biological Diversity.

<sup>93</sup> Natural law or the law of nature (in Latin, *lex naturalis*) is law whose content derives naturally from human nature or physical nature, and therefore has universal validity. Last accessed on August 4, 2010, at [http://www.newworldencyclopedia.org/entry/Natural\\_law](http://www.newworldencyclopedia.org/entry/Natural_law).

<sup>94</sup> United Nations Department of Economic and Social Affairs, 2009. *State of the World's Indigenous Peoples*. United Nations: New York.



# LIVESTOCK KEEPERS' RIGHTS: A RIGHTS-BASED APPROACH TO INVOKING JUSTICE FOR PASTORALISTS AND BIODIVERSITY CONSERVING LIVESTOCK KEEPERS

*Ilse Köhler-Rollefson and Evelyn Mathias*



**Figure 1.** Soundra, from the village of Mulanur in Tamil Nadu, India, keeps Kangayam stud bulls for breeding. © Ilse Köhler-Rollefson

and are able to reproduce and thrive in areas that otherwise could not be used for food production<sup>1</sup>. However, this diversity is decreasing, primarily because of the exclusion of these low-input production systems from traditional grazing areas. In addition, a handful of industrial monocultures of genetically narrow poultry and pig strains are proliferating – a process similar to the one that is well-known from the crop sector.<sup>2</sup>

Starkly simplified, there are two types of livestock breeds. On one end of the spectrum are the so-called high-performance or high-input breeds that are kept in industrial systems to metabolize concentrate feed into large amounts of meat, milk, and eggs. On the other end are livestock breeds that are managed in extensive pastoralist systems, utilize scarce and scattered natural vegetation, are drought- and disease-resistant, and generate a wide variety of products. The latter type of breeds are a means of accessing and taking advantage of common property resources; for this reason, livestock keepers may be financially poor, but are never destitute. In contrast to land, their animals are a self-replicating asset, analogous to money earning interest in a bank. In fact, in many countries where financial and banking services are not available, the main function of livestock is still as a type of savings account that can be sold whenever cash is needed to pay for unexpected expenditures, school fees, or new acquisitions.

The animals kept in traditional systems have evolved in constant interaction with their environments and are the results of intensive natural and cultural selection. They also retain many of the characteristics of wild animals, often having an urge to migrate, being attuned to predators, and having a strong maternal instinct. Globally, there is a large diversity of breeds that have adapted to their local ecosystems

*Traditional livestock breeds are the result of intensive natural and cultural selection.*

Experts at the Food and Agriculture Organization of the United Nations (FAO) are concerned about this trend in decreasing diversity. In 2007, the first International Technical Conference on Animal Genetic Resources for Food and Agriculture was convened in Switzerland, which resulted in the Global Plan of Action for Animal Genetic Resources.<sup>3</sup> The Global Plan of Action for Animal Genetic Resources provides comprehensive coverage of all aspects of the conservation and sustainable use of animal genetic resources. In its Strategic Priority No. 6, it states the following:

Over millennia, animal species and breeds have been domesticated, developed and maintained for human use. These resources have co-evolved with the social, economic and cultural knowledge and management practices. The historic contribution of indigenous and local communities to animal genetic diversity, and the knowledge systems that manage these resources, needs to be recognized, and their continuity supported. Today, the adaptive animal genetic resources management strategies of these communities continue to have economic, social and cultural significance, and to be highly relevant to food security in many rural subsistence societies, particularly, though not exclusively, in dry

1 FAO, 2009. *Livestock keepers: Guardians of biodiversity*, Animal Production and Health Paper No. 167. FAO: Rome.

2 Gura, S., 2007. *Livestock genetics companies: Concentration and proprietary strategies of an emerging power in the global food economy*. League for Pastoral Peoples and Endogenous Livestock Development: Ober-Ramstadt, Germany.

3 FAO, 2007. *Global Plan of Action for Animal Genetic Resources and the Interlaken Declaration*. FAO: Rome.

lands and mountainous regions.<sup>4</sup>

Nevertheless, the Global Plan of Action on Animal Genetic Resources is grounded in the assumption that governments and scientists are the key actors in conserving breeds. As a description of the situation, it is factually inaccurate because livestock populations retain their fitness traits only if constantly exposed to challenging conditions in their natural environment<sup>5</sup>. As a prescription for ensuring the survival of animal genetic diversity, it is inadequate because only livestock keepers can ensure that local breeds are kept in living production systems. The main role of the government should be to provide an enabling environment and put policies into place that sustain the livestock keepers and their production systems and facilitate biodiversity conservation.

*Only livestock keepers can ensure that local breeds and their genetic diversity are kept in living production systems.*

The LIFE Network is a group of non-governmental organizations and individuals who support community conservation of livestock breeds. Prior to the Interlaken conference, the Network developed the concept of livestock keepers' rights, which seeks to strengthen and reinforce the role of communities in the conservation and sustainable use of local breeds<sup>6</sup>. Livestock keepers' rights are the result of extensive consultations with livestock keepers in Asia, Africa, and elsewhere and are grounded in existing and emerging legal frameworks, especially the United Nations Convention on Biological Diversity (CBD). They encompass the following principles and specific rights:

- Livestock keepers are creators of breeds and custodians of animal genetic resources for food and agriculture;
- Livestock keepers and the sustainable use of traditional breeds are dependent upon the conservation of their respective ecosystems;
- Traditional breeds represent collective property, products of Indigenous knowledge, and cultural expressions of livestock keepers; and
- Livestock keepers have the right to:
  1. Make breeding decisions and breed the breeds they maintain;
  2. Participate in policy formulation and implementation processes concerning animal genetic resources for food and agriculture;
  3. Receive appropriate training and capacity building and equal access to relevant services to enable and support them to raise livestock and better process and market their products;
  4. Participate in the identification of research needs and research design with respect to their genetic resources, as mandated by the principle of free, prior and informed consent enshrined within Article 8(j) of the CBD; and
  5. Effectively access information on issues related to their local breeds and livestock diversity.

These three principles and five rights have been compiled into a "Declaration on Livestock Keepers Rights", which references them to existing legal frameworks.<sup>7</sup> The Declaration also clarifies the term "livestock keeper" by breaking it down into two specific groups: Indigenous livestock keepers representing those communities that have a long-standing cultural association with their livestock and have developed their breeds in interaction with a specific territory or landscape; and ecological livestock keepers who may be modern but adhere to standards corresponding to organic principles, including sustaining their animals largely on natural vegetation or home-grown fodder and crop by-products and without artificial feed additives.

The importance of national level recognition of livestock keepers' rights are supported by a recent FAO publication that explores the role of livestock keepers as guardians of biological diversity<sup>8</sup>. They were also the subject of a recent electronic discussion on the FAO's Global Forum on Food Security and Nutrition in which the importance of local livestock breeds that can utilize common property resources for food security was highlighted. This is a major advantage for poor rural

4 FAO, 2007.

5 Van der Werf, J., H. U. Graser, and R. Frankham (eds.), 2009. *Adaptation and fitness in animal populations: Evolutionary and breeding perspectives on genetic resource management*. Springer: Dordrecht, the Netherlands.

6 Köhler-Rollefson, I., H. S. Rathore, and E. Mathias, 2009. "Local breeds, livelihoods and livestock keepers' rights in South Asia". *Tropical Animal Health and Production*, 41(7): 1061-1070.

7 LIFE Network, 2009. "Declaration on Livestock Keepers Rights". Last accessed August 5, 2010, at: [http://www.pastoralpeoples.org/docs/Declaration\\_on\\_LKRs\\_with\\_initial%20signatories\\_6.pdf](http://www.pastoralpeoples.org/docs/Declaration_on_LKRs_with_initial%20signatories_6.pdf).

8 FAO, 2009.



people, especially women, who are much less likely than men to own land. Despite this, there is currently no government level process for codifying livestock keepers' rights into law; this contrasts with such a process that led to farmers' rights playing an integral role in the International Treaty on Plant Genetic Resources. To overcome this legislative inaction, legal experts associated with the LIFE Network recommended the development of a "Code of Conduct" on how to implement livestock keepers' rights as a form of soft law to which stakeholders such as governments, donors, and scientists can voluntarily adhere. The guidelines are entitled, "Supporting Livelihoods and Local Livestock Breeds: Guidelines for Putting Livestock Keepers' Rights into Practice" and were developed in two stakeholder consultations that took place in Kenya and India in 2009<sup>9</sup>.

*Livestock keepers' rights link the conservation of biodiversity to sustainable rural livelihoods.*

In India, the government is engaging with the concept of Livestock Keepers' Rights, largely due to the Indian LIFE Network's persistent and coordinated campaign. Elsewhere, governments have not taken much interest in the concept, probably because of lack of grassroots pressure. However, whenever there is a discussion about ownership and intellectual

property rights, livestock keepers' rights are very often referred to as a means of protecting the property and interests of small-scale livestock keepers, including, for example, at a recent interdisciplinary workshop on rights to animal genetic resources that was held in Switzerland<sup>10</sup>. Livestock keepers' rights link the conservation of livestock biodiversity and surrounding ecosystems to poverty alleviation and sustainable rural livelihoods. For this reason, the LIFE Network, which is currently led by the League for Pastoral Peoples and Endogenous Livestock Development, will continue to press for livestock keepers' rights in various international such as the CBD and FAO, while trying to forge a broad coalition of pastoralist interest groups to join the movement.



**Figure 2.** The Raika of Rajasthan require secure grazing rights in the Kumbalgarh sanctuary to continue managing this ecosystem. © Ilse Köhler-Rollefson

#### Additional resources:

The Declaration on Livestock Keepers' Rights is available for signature at [www.pastoralpeoples.org/docs/Declaration\\_on\\_LKRs\\_with\\_initial%20signatories\\_6.pdf](http://www.pastoralpeoples.org/docs/Declaration_on_LKRs_with_initial%20signatories_6.pdf)

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9 LIFE Network, 2010. "Supporting livelihoods and local livestock breeds: Guidelines for putting Livestock Keepers' Rights into practice". Last accessed August 5, 2010, at: [http://www.pastoralpeoples.org/docs/LIFE%20Guidelines%20LKR%20March%202009\\_2.pdf](http://www.pastoralpeoples.org/docs/LIFE%20Guidelines%20LKR%20March%202009_2.pdf).

10 Köhler-Rollefson, I., 2010. "Livestock keepers' rights", pages 61-66 in Biber-Klemm, S., and M. Temmermann (eds.), *Rights to animal genetic resources for food and agriculture: Notes from an interdisciplinary workshop*. National Centres of Competence in Research: Berne; Hiemstra, S. J., and M. Ivankovic, 2010. "A need for changes to the animal genetic resources regulatory framework?", pages 56-60 in Biber-Klemm, S., and M. Temmermann (eds.), *Rights to animal genetic resources for food and agriculture: Notes from an interdisciplinary workshop*. National Centres of Competence in Research: Berne.

# A LAW ON SACRED SITES IN GUATEMALA

*Felipe Gomez, Wim Hiemstra, and Bas Verschuuren*

Sacred sites can consist of man-made structures such as temples, shrines, and pilgrimage roads, but many natural places and specific plant and animal species are also of special sacred significance to Indigenous peoples and local communities and play a vital role in their overall well-being. In Guatemala, sacred sites are defined as “naturally or constructed places where cosmic energies are at a confluence to enable communication with ancestors; special places for learning and practicing the spirituality, philosophy, science, technologies and art of the indigenous peoples”<sup>1</sup>. Many sacred sites are an expression of worldviews in which nature is animated; human values are attributed to nature and elements of nature. Sacred natural sites are defined internationally as “areas of land or water having special spiritual significance to peoples and communities”<sup>2</sup> and are recognized as the oldest conserved areas in the world<sup>3</sup>. Approximately 80%<sup>4</sup> of the world’s biodiversity and 95% of the world’s cultural diversity is found on lands belonging to Indigenous peoples and local communities, many of which are recognized as sacred or contain sacred sites<sup>5</sup>. The political and legal recognition of sacred natural sites and their custodians and governance systems can thus help strengthen this primary conservation network and the cultural diversity represented by the people that maintain it<sup>6</sup>. Greater protection of sacred sites is arguably needed and can be secured by asserting and building on existing and emerging rights under national and international law.



**Figure 1.** Maya celebration of Wajxaqib’ B’atz’, the lunar calendar, at Santa Cruz del Quiché, Guatemala. © COMPAS

## THE EMERGENCE OF SACRED SITES WITHIN INTERNATIONAL LEGAL FRAMEWORKS

The need to protect sacred natural sites has been signalled by various international organizations and instruments. In the 1992 United Nations Convention on Biological Diversity (CBD), Articles 8(j) and 10(c) have great potential to support the restoration, protection, and conservation of sacred sites by their traditional custodians<sup>7</sup>. In 2004, the Secretariat of the CBD released the Akwé: Kon voluntary guidelines for cultural, environmental, and social impact assessments for sacred areas<sup>8</sup>. In the United Nations Declaration on the Rights of Indigenous Peoples, adopted in 2007, Article 12 asserts the

1 Oxlajuj Ajpop, 2007. *Iniciativa de Ley de Lugares Sagrados de los Pueblos Indígenas*. Published with the support of ETC COMPAS, SDI, CATIE, and Mecanismo de apoyo de Pueblos Indígenas: Guatemala, page 15.

2 Wild, R., and C. McLeod (eds.), 2009. *Sacred Natural Sites: Guidelines for Protected Area Managers*, Best Practice Protected Area Guidelines Series, No. 16. IUCN and UNESCO: Gland, Switzerland.

3 Dudley, N., L. Higgins-Zogib, and S. Mansourian, 2009. “Links between Protected Areas, Faiths, and Sacred Natural Sites”. *Conservation Biology*, 23(3): 568-577.

4 Secretariat of the Permanent forum on Indigenous Issues, 2009. *State of the World’s Indigenous Peoples*. Department of Economic and Social Affairs Division for Social Policy and Development, United Nations: New York.

5 Sobrevila, C., 2008. *The Role of Indigenous Peoples in Biodiversity Conservation: The Natural but Often Forgotten Partners*. The World Bank: Washington, D.C.

6 Verschuuren, B., R. Wild, J. McNeely, and G. Oviedo (eds.), 2010. *Sacred Natural Sites, Conserving Culture and Nature*. Earth Scan: London.

7 Guatemala signed the CBD on July 10, 1995. Article 8(j) states that contracting parties shall, “[s]ubject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and 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) states, “Each Contracting Party 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”. Last accessed August 23, 2010, at: <http://www.cbd.int/convention/articles.shtml?a=cbd-10>.

8 Secretariat of the Convention on Biological Diversity, 2004. *Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments Regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used*



*At the international level, there are many legal and policy provisions that provide significant political leverage for the recognition and protection of sacred sites.*

right to practice spiritual and religious traditions and access such sites<sup>9</sup>. In the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention for the Safeguarding of Intangible Cultural Heritage<sup>10</sup>, Article 2.1 introduces the concept of “cultural space” through which sacred sites could be subject to the Convention’s purpose (as defined in Article 1), which is to safeguard, ensure respect for, raise awareness about, and provide international cooperation and assistance. Furthermore, Article 7.1 of the International Labour Organization Convention on Indigenous and Tribal Peoples in Independent Countries (ILO 169) states that: “The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development”. Article 14.1 of ILO 169 states: “The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities”<sup>11</sup>.

In addition to these international legal frameworks, protected area and conservation designations such as Indigenous and Community Conserved Areas<sup>12</sup>, UNESCO World Heritage Sites<sup>13</sup> and Biosphere Reserves<sup>14</sup>, Ramsar Sites<sup>15</sup>, and Globally Important Agricultural Heritage Systems<sup>16</sup> create an important space in the policy and practice of conserving, restoring, and protecting sacred sites. This corpus of international legal and policy provisions arguably provides significant political leverage for the recognition and protection of sacred natural sites at the international level, through which signatory States are encouraged or mandated<sup>17</sup> to enact similar provisions at the national level.



**Figure 2.** Felipe Gomez of Oxlajuj Ajpop addressing Guatemalan government representatives on the emerging Social-Environmental Agenda. © Oxlajuj Ajpop

## THE LONG ROAD TO RECOGNITION OF SACRED SITES IN GUATEMALA

Oxlajuj Ajpop<sup>18</sup> is an organization of indigenous Maya spiritual leaders representing Maya, Xinca, and Garífuna groups in Guatemala. Oxlajuj Ajpop has developed a Social-Environmental Agenda for Guatemala based on the Indigenous worldviews and the Rights of Mother Earth<sup>19</sup>. As of 2010, the organization has been engaging in an ongoing dialogue process with the Ministry of Agriculture and Natural Resources, emphasizing the need for a new constitution and legal reforms that respect Mother Earth, Indigenous territories, biodiversity, and a socially and legally pluralistic state. The document, developed in 2009, has been based on consultations with representatives of the three Indigenous peoples of Guatemala (Maya, Garífuna, and Xinca) during

by *Indigenous and Local Communities*. CBD Guidelines Series: Montreal.

9 United Nations Declaration on the Rights of Indigenous Peoples, 2007. UN Doc A/RES/61/295.

10 Signed by Guatemala on October 25, 2006. Convention on the Safeguarding of Intangible Cultural Heritage (CSICH), opened for signature October 17, 2003, UNESCO Doc MISC/2003/CLT/CH/14 (entered into force April 20, 2006).

11 Ratified by the Guatemalan government on June 5, 1996. See ILO 169, 1989. ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries. 28/ILM/1382, 1991.

12 See, for example, the ICCA Registry. UNEP-WCMC, 2010. “Recognising Indigenous and Community Conservation”. Last accessed August 23, 2010, at: <http://www.iccaregistry.org>; and the ICCA Consortium, 2009. Last accessed August 23, 2010, at: <http://www.iccaforum.org>.

13 For UNESCO World Heritage Sites registered by the World Heritage Committee, see UNESCO World Heritage Centre, 2010. “World Heritage List”. Last accessed August 23, 2010, at: <http://whc.unesco.org/en/list>.

14 UNESCO, 2010. “UNESCO’s Man and the Biosphere Programme (MAB)”. Last accessed August 23, 2010, at: [http://portal.unesco.org/science/en/ev.php-URL\\_ID=6393&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/science/en/ev.php-URL_ID=6393&URL_DO=DO_TOPIC&URL_SECTION=201.html).

15 Ramsar Convention on Wetlands of International Importance (no date). Last accessed August 23, 2010, at: <http://www.ramsar.org>.

16 FAO, 2009. “Globally Important Agricultural Heritage Systems”. Last accessed August 23, 2010, at: <http://www.fao.org/nr/giahs/en/>.

17 Whether States are mandated or simply encouraged to do so depends on whether or not the international instrument in question is legally binding. For example, while the Convention on Biological Diversity (and the provisions contained therein) is legally binding, the United Nations Declaration on the Rights of Indigenous Peoples is voluntary.

18 Oxlajuj Ajpop is comprised of different Indigenous groups and is a leading member of the COMPAS Network in Central America to implement endogenous development approaches to bio-cultural diversity based on Indigenous worldviews.

19 Oxlajuj Ajpop, 2009. *Agenda Socio Ambiental desde el Pensamiento de los Pueblos Indígenas por los Derechos de la Madre Tierra*, Guatemala.

meetings held in four different locations in Guatemala. The Agenda elaborates on proposals for state reform, how to deal with pollution and consumerism and changing production systems, and its relation with Indigenous worldviews.

In Santa Cruz del Quiché, Guatemala, Oxlajuj Ajpop is implementing various activities on sacred sites and the environment, including festivals and community education. Over 20 communities are reflecting on the importance of sacred sites, recording and documenting their histories, assessing their current ecological and legal status, and having celebrations to re-sanctify them. In the process, the Indigenous communities are also gaining awareness of their rights to participate in the administration of sacred sites based on their Indigenous management and governance systems<sup>20</sup>. As part of the process of recuperation and revitalization of sacred sites, biocultural community protocols<sup>21</sup> are being developed by two communities to provide an adaptive interface between the communities' rights and traditional ways of life and external entities such as private companies and governments that wish to interact with them. The communities are also participating in dialogues on the law at the national level with the Congress and politicians, thus influencing that process on the basis of their shared experiences and understanding of their rights.

In Guatemala, the National Law for Peace Agreements, signed in 1996, acknowledges the rights of Indigenous peoples to practice their cultures on a specific territory and thereby implicitly acknowledges sacred (natural) sites as part of that territory. Against the legal backdrop of the Peace Agreements and the international obligations outlined above, a Law Proposal on Sacred Sites<sup>22</sup> has been developed over the past 13 years (see Box 1).

Thus far, the Law Proposal for Sacred Sites has not been accepted by all members of the Guatemalan Congress and the government, but negotiations still continue. The aim of the Law Proposal is to achieve recognition for and community

**Box 1.** A chronological overview of the development of the Law Proposal on Sacred Sites.

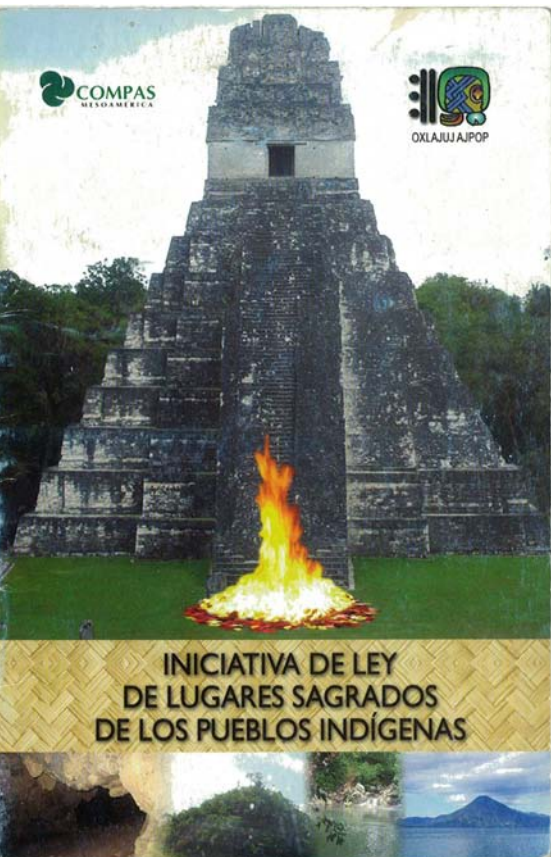
<b>1997</b>	A Commission for the Definition of Sacred Sites was formed on the initiative of Oxlajuj Ajpop.
<b>2003</b>	First draft of the Law Proposal on Sacred Sites presented by Oxlajuj Ajpop to the Commission for the Definition of Sacred Sites.
<b>2006</b>	Renewed governmental agreement to support sacred sites. Oxlajuj Ajpop consulted its member organizations, made a strategic plan, organized linguistic groups of Maya, Garífuna, and Xinca origin to discuss contents related to sacred sites, and formed its own technical and legal team.
<b>2008</b>	Based on dialogues with Indigenous peoples, the Commission for the Definition of Sacred Sites revised and accepted the Law Proposal on Sacred Sites.
<b>June 18, 2008</b>	The Plenary of the Congress of the Republic of Guatemala received the Law Proposal and registered it for its study and approval. It was directly sent to the Commission for Indigenous Peoples, the Commission on Legislation and Constitution, and the Peace Commission.
<b>June, 2008 - August, 2009</b>	Technical and legal advisors of different political parties studied the text and six articles were revised through dialogue processes. Oxlajuj Ajpop and the Commission for the Definition of Sacred Sites succeeded in maintaining the essence of the Law Proposal in the final text.
<b>April 19, 2009</b>	The Law Proposal was fully approved by the 11 deputies of the Peace Commission and 12 deputies of the Commission on Indigenous Peoples of the Congress.
<b>April 8, 2010</b>	In a public meeting, the Commission to Define Sacred Sites and Oxlajuj Ajpop gave a petition to the Congress through the Peace Commission to approve the Law Proposal.

20 Article 66 of the Guatemalan Constitution acknowledges that the Guatemalan state is made up of diverse ethnic groups and that “the state must recognize, respect and promote the ways of life, customs, traditions, forms of social organization, the use of Indigenous traditional dress, languages and dialects”.

21 Bavikatte, K., and H. Jonas (eds.), 2009. *Bio-cultural Community Protocols: A Community Approach to Ensuring the Integrity of Environmental Law and Policy*. UNEP: Nairobi. Also see Jonas, H., H. Shrumm, and K. Bavikatte, 2010. “Biocultural Community Protocols and Conservation Pluralism”, pages 102-112 in this issue of Policy Matters.

22 Oxlajuj Ajpop, 2007.





**Figure 3.** Cover of the Law Proposal on Sacred Sites. © Oxlajuj Ajpop/COMPAS

management over the access to and use, conservation, and administration of sacred sites<sup>23</sup>. If accepted by the government, the Law would arguably set a precedent to incorporate aspects of Mayan and other Indigenous peoples' identities that are central to sacred natural sites into other areas of Guatemalan law such as education, natural resource management, health, and justice.

The Law Proposal focuses on the integral quality of sacred sites as a source of spirituality, territory, knowledge management, reproduction, and a holistic vision of the world. In other words, it expresses the importance of sacred sites to Indigenous peoples' well-being and cosmology. Adoption and implementation of the Law Proposal would enable the Mayan worldview to complement the contemporary, Western state-based system currently adopted by the Guatemalan government<sup>24</sup>. Indigenous organizations would also be assisted with training programmes in administration and biodiversity management. In that sense, the Law Proposal serves as an important step towards the development of a social and legally pluralistic society within Guatemala.

## OPPOSITION FROM THE PRIVATE SECTOR

Within the current political context of Guatemala, not all parties are yet supportive of the Law Proposal. Certain political parties do not recognize or respect historic, spiritual, and cultural rights. These parties are linked to extractive economic enterprises in the country and are concerned that the Law Proposal would restrict their ability to exploit natural resources. Interest groups lobbying the Guatemalan parliament on behalf of the private sector have, on several occasions when the law proposal was being discussed in parliament, put forward that Article 20 affects private property. As a result, the Article was modified in 2009 and now reads: "In cases in which sacred sites are declared sacred and are part of the Cultural Heritage of the Nation, the administration of these sacred sites is coordinated by the Ministry of Culture and Sports and the National Council of Sacred Sites". Although Article 20 still respects rights of Indigenous

peoples, it does not directly enable Indigenous action that may affect access to and ownership and exploitation of private property and natural resources contained therein. This complicates the Indigenous custodianship of sacred sites on private lands<sup>25</sup>. There is good faith that the Law will be approved, though with some adaptations. Importantly, this process has helped mobilize Indigenous communities to recuperate and organize the administration of sacred sites at the local level.

## THE WAY FORWARD

The Indigenous Maya calendar, sacred fire, ancestors, traditional leaders, and community leaders are continuously consulted by spiritual leaders of Oxlajuj Ajpop to get insight and direction about the way forward in the negotiation process. Over the coming years, Sacred Sites Councils based on linguistic territories will be organized. Multidisciplinary groups will be formed, with representatives from both Maya and Western scientific backgrounds to discuss the registration, management, and customary laws related to sacred sites. Furthermore, the Maya and other Indigenous movements will strengthen alliances with civil society movements to put social and political pressure on the Congress of Guatemala to accept the Law Proposal; they also plan to present their efforts to the United Nations Permanent Forum on Indigenous Issues<sup>26</sup>. At

23 Article 1 states that the aim of the Law Proposal is to guarantee the historical, cultural, and spiritual rights of the Indigenous peoples by means of recognition, respect, dignification, use, conservation, administration, and access to sacred sites, constructed or natural, located in the national territory of Guatemala (see Oxlajuj Ajpop, 2007).

24 Article 23 mandates the creation of the National Council of Sacred Sites, a decentralized unit within the state with a legal status and its own resources. Articles 25 and 28 describe the Council of Principals as the highest authority of the National Council of Sacred Sites, consisting of 52 representatives, including 24 from each of the linguistic communities from the Maya, Garífuna, and Xinca origin and 28 representatives from the proportionate size of each linguistic community.

25 Custodians of sacred sites need access to sacred sites for carrying out their responsibilities and customary use such as performing ceremony and ritual. When owners of the land on which sacred sites are located have made no provisions for such activities, custodians face problems regarding the social, material, and spiritual well-being of the communities they represent.

26 UN Permanent Forum on Indigenous Issues, 2006. Last accessed August 23, 2010, at: <http://www.un.org/esa/socdev/unpfii/index.html>.

the local, national, regional, and international levels, different organizations such as Oxlajuj Ajpop, Maya Vision, ETC COMPAS, and the International Union for Conservation of Nature (IUCN) are working together to highlight the importance of sacred sites in the lives of Indigenous peoples. This is indispensable to the self-determination of Indigenous peoples to recuperate their territorial rights, conserve biodiversity, and revitalize traditional knowledge and customary ways of life. Overall, coordination efforts between Indigenous movements and supporting non-governmental organizations and networks should enable Indigenous peoples to revitalize and administer their ancestral sacred sites as they have been doing for centuries.

**Additional resources:**

- [www.compasnet.org](http://www.compasnet.org)
- [www.compasla.org](http://www.compasla.org)
- [www.csvpa.org](http://www.csvpa.org)

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## THE “CARIBOU HEAVEN”: RECOGNIZING A SACRED SITE AND INTEGRATING NASKAPI ECOLOGICAL KNOWLEDGE INTO THE MANAGEMENT OF THE PROPOSED KUURURJUAQ NATIONAL PARK (NUNAVIK, CANADA)

*M. John Mameamskum, Thora Martina Herrmann, and Blanka Füleki*

### RECOGNITION OF CULTURAL SITES AS SACRED AREAS

Sacred sites are increasingly recognized as being vital for the expression and transmission of culture, for the conservation of biodiversity, and as a manifestation of spiritual values related to nature. These sites not only embody important reservoirs of both biological and cultural diversity, but also represent the various human relationships with nature, many of which have existed for centuries or millennia. However, these sites are under threat and in need of support worldwide<sup>1</sup>. Following Recommendation No. 13 of the Vth International Union for Conservation of Nature (IUCN) World Parks Congress in 2003, sites of cultural value (for example, burial sites and places referred to in legends) can be designated as “sacred areas” upon the establishment of protected areas<sup>2</sup>. Areas designated as sacred are given special protection such as limited access for tourism.

One of the first initiatives of collaborative park planning and management in northern Québec is currently underway. The Government of Québec, in partnership with the Kativik Regional Government (which is comprised of 14 northern

1 Oviedo, G., and S. Jeanrenaud, 2007. “Protecting Sacred natural Sites of Indigenous and Traditional Peoples”, pages 77-99 in Mallarach, J.-M., and T. Papayannis (eds.), *Protected Areas and Spirituality*. IUCN: Gland, Switzerland.

2 IUCN, 2003. Vth World Parks Congress, Recommendations.



villages, including the Naskapi community of Kawawachikamach, just south of the 55th parallel), plans to create a vast park that is representative of the tundra ecosystem<sup>3</sup>. The Kuururjuaq National Park project is in keeping with the provincial government's aspiration to create a network of protected areas (including IUCN Categories I, II, III, IV, V, and VI) that covers 12% of the surface area of its land over all biodiversity regions of Québec by 2015<sup>4</sup>. However, an important cultural site for the Naskapi First Nation is believed to be situated within the limits

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This article describes one example of putting IUCN Recommendation No. 13 into practice in the Canadian province of Québec. It first provides an overview of the linkages between Aboriginal peoples and protected areas in Canada, focusing on Aboriginal rights under national and provincial law. It then illustrates the crucial role that caribou (*Rangifer tarandus*) play in the socio-cultural, spiritual, and economic life of the Naskapi people. Next, it explains how Naskapi ecological knowledge was used to designate a culturally significant location, the Caribou Heaven, as a sacred area within the proposed Kuururjuaq National Park in Nunavik, Canada, to ensure its preservation and integrity. The initiative is among the first of such efforts by the Government of Québec to give expression to the importance of and to provide protection to the sacred sites of Aboriginal nations<sup>7</sup>.



**Figure 1.** Map of Eastern Canada and the proposed Kuururjuaq National Park (highlighted in green). © Kativik Regional Government

3 Tundra is a biome in which the tree growth is hindered by low temperatures and short growing seasons. The vegetation is composed of dwarf shrubs, sedges and grasses, mosses, and lichens. There are three types of tundra: Arctic tundra, alpine tundra, and Antarctic tundra.

4 Québec covers an area of 1 667 441 square kilometers (km<sup>2</sup>). In 2010, 8.14% of its territory consisted of protected areas, covering an area of 135 764.88 km<sup>2</sup>. Using the IUCN protected area categories, Québec presently covers the following: IUCN Category Ia = 1 620 km<sup>2</sup> (0.10%); IUCN Category II = 40 442 km<sup>2</sup> (2.43%); IUCN Category III = 67 869 km<sup>2</sup> (4.07%); IUCN Category IV = 3 237 km<sup>2</sup> (0.19%); IUCN Category VI = 4 085 km<sup>2</sup> (0.24%). See Ministry of Sustainable Development, Environment, and Parks, 2010. Last accessed August 9, 2010, at: [http://www.mddep.gouv.qc.ca/biodiversite/aires\\_protegees/registre/Repartition.pdf](http://www.mddep.gouv.qc.ca/biodiversite/aires_protegees/registre/Repartition.pdf).

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7 A second initiative is the Albanel-Témiscamie-Otish National Park project, which is currently in the planning stages. It was initiated in 2005 by

## ABORIGINAL PEOPLES AND CANADA'S PARKS AND PROTECTED AREAS

In 1975, the James Bay Crees, the Inuit of Québec, and the governments of Québec and Canada signed the James Bay and Northern Québec Agreement – the first of the modern-day land claim agreements. This agreement marks the beginning of a thirty-year history in the evolving participation of Aboriginal people in parks and protected areas in Canada. It established the Northern Québec Hunting, Fishing, and Trapping Coordinating Committee – the first of what are now referred to as “co-management bodies” – between provincial and federal government and Inuit and Cree representatives for environmental matters, with a broad range of shared management responsibilities such as advising the appropriate ministers on the establishment of new parks and protected areas<sup>8</sup>. Subsequently, on January 31, 1978, the Naskapi signed the Northeastern Québec Agreement; in 1984, the Inuvialuit Final Agreement established similar management bodies, as well as established national and territorial parks, which enabled the inclusion of Inuvialuit traditional knowledge in management decision-making, preferential economic opportunities for the Inuvialuit associated with the parks, and a strong role in existing and future park and conservation management and planning<sup>9</sup>. The largest protected area that is managed by more than one jurisdiction is the Thelon Game Sanctuary, which is administered by the Nunavut and Northwest Territories governments, Aboriginal organizations, and Indian and Northern Affairs Canada.

*Since 1975, Aboriginal land claim agreements have changed how protected areas are planned, established, and managed in Canada.*

Every modern-day land claim agreement signed since then has contained similar types of provisions. Through land claims and other co-operative agreements, Aboriginal peoples have been involved in establishing more than a quarter of the total lands in protected areas that are administered by federal, provincial, and territorial governments. Two protected areas of more than 10 km<sup>2</sup> have been created in the Northwest Territories through Aboriginal land claim agreements and are under direct Aboriginal administration. Collectively, these agreements in Québec, Labrador, Nunavut, Northwest Territories, Yukon, and British Columbia have changed how parks and protected areas are planned, established, and managed in Canada.

## THE NASKAPI NATION AND THE LINKS BETWEEN NATURE AND CULTURE

The Naskapi are one of the ten First Nations of Québec<sup>10</sup>. The majority of the 1028 people of the Naskapi Nation live in the village of Kawawachikamach, which is located close to Schefferville in north-eastern Québec. Naskapi is the principal language and is spoken by all of the residents, including at the school. The Naskapi still practice many aspects of their traditional way of life and culture. Like many northern communities, they rely on subsistence hunting, fishing, and trapping for a large part of their food supply and for many raw materials. Among the many animal species that inhabit the tundra, caribou have a very special status for the Naskapi culture and caribou hunting is of great importance to them. The Naskapi have been recognized throughout the literature since the eighteenth century as the “Indians of the caribou”<sup>11</sup>. The knowledge that the Naskapi have built about the caribou is extremely rich and accurate, including of the animal’s eating habits, behaviour in different contexts (such as rut or injury), physiological characteristics, diseases that affect it, location, and migration routes. The Naskapi use every part of the caribou for many different purposes (see Box 1<sup>12</sup>).

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the Government of Québec in partnership with the Cree Nation of Mistissini. In this future park, certain sites identified in consultation with the Mistissini Cree Elders and from the literature will be designated as “sacred” in order to ensure their integrity. See Hébert, A., and J. Gagnon, 2005. *Albanel-Témiscamie-Otish National Park Project*. Provisory Master Plan. Cree Nation of Mistissini, Ministère des Ressources naturelles et de la Faune and Société des établissements de plein air du Québec.

8 Canadian Parks Council, 2008. *Aboriginal Peoples and Canada's Parks and Protected Areas*. Last accessed on August 9, 2010, at: <http://www.parks-parcs.ca/english/cpc/aboriginal.php>.

9 Canadian Parks Council, 2008.

10 The province of Québec consists of ten First Nations and the Inuit people.

11 Cartwright, George (Sir), 1911. *Captain Cartwright and His Labrador Journal*, reprinted in 2009, edited by C. W. Townsend. Dana Estes: Boston; Francis, Daniel and Toby Morantz, 1983. *Partners in Furs: A History of the Fur Trade in Eastern James Bay 1600-1870*. McGill-Queen's University Press: Kingston and Montreal; Great Britain, Privy Council, 1927. *In the Matter of the Boundary between the Dominion of Canada and the Colony of Newfoundland in the Labrador Peninsula*, Volume 1. William Clowes and Sons: London; Speck, F. G., 1935. *Naskapi, The Savage Hunters of the Labrador Peninsula*. University of Oklahoma Press: Norman.

12 The authors' translation from the original text in French in Babeux, D., P. Einish, D. Geoffroy, C. Lévesque, S. Nabinacaboo, G. Polèse, M. Paradelle, and R. Robinson, 2008. *Les Savoirs Écologiques des Naskapis: caractérisation, utilisation, transmission - Projet de mobilisation des connaissances réalisé. Dans le cadre de l'initiative des Écosystèmes du Nord*, Environnement Canada, 2004-2008. Institut National de Recherche Scientifique: Montréal. *Editor's note*: the original excerpt will appear in the French version of this issue of Policy Matters.



**Box 1.** A Naskapi elder's description of traditional uses of caribou.

"When we shot down a caribou, we used all parts of his body. Even the bones were crushed and boiled into bone fat and broth that we drank. The marrow was eaten raw. We also used the powder of the burned bones to whiten tanned hides, which we rubbed with this powder. Then, we expanded the skins for the surplus powder to be blown by the wind. The skins of the caribou were used to make tents. We also made sinew with skin – thin strips that were used for fishing nets or fishing rods. These strips were also used to connect the different parts of sleds. The sinew was used to do many other things; for example, we tied our luggage when we wanted to travel. We also made rackets. We dried the meat and reduced it to very fine powder. We also used the shoes and made necklaces with the teeth and also games. When we made a drum, we used a lot of parts of the caribou. We also made toys for children with certain parts of the caribou. We respected this animal a lot because it allowed us to live and it was always present among us."



**Figure 2.** Aerial view of Kawawachikamach. © M. John Mameamskum

## THE LEGEND OF THE CARIBOU HEAVEN

According to Antoine Grégoire, the Montagnais guide of Jacques Rousseau, who travelled to the Labrador-Québec Peninsula during the summer of 1951 to conduct botanical surveys, there is a Naskapi legend about a place on the Koroc River called the Caribou Heaven or "door of the caribou paradise", where the souls of dead caribou go. The soul is then "clothed" in a new body, enabling it to return to the land<sup>13</sup>. Alain Hébert also described it as being "in the middle of the Koroc River valley, located on the west bank of this river, close to the junction with the André Grenier River"<sup>16</sup>.

The Torngat Mountains, the highest range in eastern continental Canada, lie north of the peninsula that separates Ungava Bay from the Labrador Sea. The Koroc River (known to the Inuit as *Kuurrurjuaq* in Inuktitut) rises here and flows for 160 km through a valley that contains a variety of ecosystems. In former times, this valley was used by paleo-Eskimo groups travelling between the coasts of Labrador and Ungava Bay<sup>13</sup>. This region is home to the largest herds of migrating caribou on earth, including the Leaf River herds, the George River herds, and the Mount Torngat herds. A 2001 inventory put the total population of these herds at slightly more than one million head<sup>14</sup>.

Caribou play a central role in the tundra and taiga ecology, including the net effect of forage removal, production of greenhouse gas, and return of nutrients. As caribou convert plant tissue into their body mass and fecal pellets, their local foraging movements and seasonal migrations contribute to redistributing nutrients within and across ecosystems. Caribou also support other species, including external parasites such as mosquitoes. Through the filter-feeding of their larvae, mosquitoes are a key element in nutrient cycling in aquatic systems. Further up the food webs, caribou support large-bodied and medium-sized predators and scavengers such as wolves. As pointed out above, for the people living in the sub-Arctic and Arctic such as the Naskapi Nation, caribou are the basis of their cultures and play in central role in their livelihoods.

A place of great significance to the Naskapi culture is the Caribou Heaven. Based on legends passed down for generations through their families, Naskapi Elders believe that it is a sacred place to which the souls of dead caribou go. The Caribou Heaven, which they call *atiuk weej* in Naskapi or "the house of the caribou" in English, is also related to numerous other legends.

13 Projet de parc de la Kuurrurjuaq (Monts-Torngat-et-Rivière-Koroc), 2005. *État des connaissances*. ARK-Administration régionale Kativik, Service des ressources renouvelables, de l'environnement et de l'aménagement du territoire, Section des parcs: Kuujuaq, Québec.

14 Couturier, S., D. Jean, R. Otto, and S. Rivard, 2004. *Démographie des troupeaux de caribous migrateurs-toundriques (Rangifer tarandus) au Nord-du-Québec et au Labrador*. Ministère des Ressources naturelles, de la Faune et des Parcs, Direction de l'aménagement de la faune du Nord-du-Québec et Direction de la recherche sur la faune: Québec.

15 Rousseau, J., 1953. *Report on the Survey Carried Out in Northern Quebec Labrador*. Montréal Botanical Garden: Montréal, Canada.

16 Hébert, A., 2006. *The Caribou Heaven in the Kuurrurjuaq Park: A legendary belief and maybe a sacred site*. Ministry of Sustainable Development, Environment, and Parks: Québec.

The belief in the Caribou Heaven was formerly widespread throughout the Québec-Labrador region and still lives on in the memories of the Naskapi (and Inuit as well)<sup>17</sup>. Rousseau theorized that the legend may suggest that the ancestors of the Naskapi used to hunt on the Koroc River. He added, however, “No Naskapi for generations has hunted in this place where now only occasional Eskimos venture in winter”<sup>18</sup>. No living Naskapi person knows the exact location of the “house of the caribou”. Only the shamans visited the Caribou Heaven by using their supernatural powers of ‘vision’. Through songs and stories that they created based on their visions, they could call the caribou out of their house to be hunted. Even though Naskapi ancestors used to hunt near the Koroc River, the shamans forbade them to look for that place for fear of disturbing the caribou<sup>19</sup>.



**Figure 3.** Caribou (*Rangifer tarandus*) in the proposed Kuururjuaq National Park. © Robert Frechette/Kativik Regional Government

The legend of Caribou Heaven or the house of the caribou has great importance for the Naskapi culture. In the past, such beliefs served to guide the behaviour of and provide ethical guidelines to the ancestors, who survived largely by hunting caribou. For them, the responsible behaviour promoted by the legend, including using all parts of the caribou killed as a way of showing respect to the soul of the caribou, ensured that the caribou would return to the hunter, thus ensuring the survival of the Naskapi themselves. A number of legends about the house of the caribou live on in the memory of the Naskapi Elders: some tell of people who got lost while looking for the house of the caribou; others provide lessons to those who do not believe in the existence of the Caribou Heaven; still others believe in the soul of the mountain and that of the caribou. Today, the legend serves as a tool for the Naskapi to teach their children the importance of treating all of Nature, not just the caribou, with respect. The legend helps Naskapi and non-Naskapi to understand that everyone is part of Nature and has an important responsibility of stewardship.

## THE KUURURJUAQ NATIONAL PARK

Along with the Labrador Inuit Agreement-in-Principle signed on June 21, 2005, the Canadian, Newfoundland, and Labrador governments and the Labrador Inuit Association signed an agreement aimed at creating the Torngat Mountains National Park Reserve of Canada. In June, 2002, the Government of Québec signed an agreement with the Kativik Regional Government, giving them responsibility for the development and management of the Kuururjuaq National Park, which protects the Torngat mountain foothills in the upstream reaches of the Koroc River<sup>20</sup>. The proposed Kuururjuaq National Park covers nearly the entire watershed of the Koroc River over 4 274 km<sup>2</sup>.

The first meeting between the partners was held on May 11, 2005, in Duchesnay, Québec. Inuit representatives from Nunavik and Nunatsiavut and representatives from the two parks agreed that harmonization of several elements of the master plan for the two entities (the Torngat Mountains National Park Reserve and the Kuururjuaq National Park) was necessary, particularly with respect to monitoring of natural and cultural heritage through close involvement of the Aboriginal peoples of the vast Torngat Mountains region. The first initiative of this kind was taken by the management of Torngat Mountains National Park Reserve in August, 2006. Inuit elders from Nunavik and Nunatsiavut were brought together at the Parks Canada base camp on Shuldham Island in Saglek Bay, Labrador, to begin discussing the Inuit vision for the region with respect to the development of the two parks, as well as their future

*The legend of the Caribou Heaven is a tool for the Naskapi to teach their children about the importance of treating all of Nature with respect.*

<sup>17</sup> Hébert, 2006.

<sup>18</sup> Rousseau, 1953.

<sup>19</sup> Rousseau, 1953.

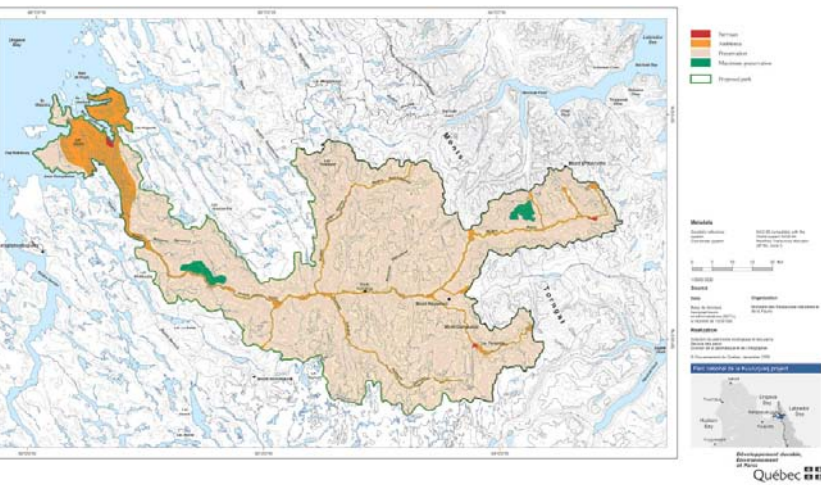
<sup>20</sup> Ministry of Sustainable Development, Environment, and Parks, 2010. “Parc national Kuururjuaq”. Last accessed August 9, 2010, at: [http://www.mddp.gouv.qc.ca/parcs/kuururjuaq/Kuururjuaq\\_en.htm](http://www.mddp.gouv.qc.ca/parcs/kuururjuaq/Kuururjuaq_en.htm).



commitment to preserving the heritage of the Torngat Mountains region<sup>21</sup>.

In March, 2007, the *Ministère du Développement Durable, de l'Environnement, et des Parcs* (Ministry of Sustainable Development, Environment, and Parks) held public hearings in the village of Kangiqsualujjuaq about the creation of the new Kuururjuaq National Park. Close to 200 people attended the hearings, which were simultaneously translated into Inuktitut, French, and English and broadcast to the villages of Nunavik through the community radio stations. A Provisional Master Plan, developed through a consultation process, sets out a proposed boundary, zoning proposals, and a development concept. Based on the degree of fragility of natural and cultural heritage resources, the following four zones were proposed:

- Maximum preservation zones to cover 47 km<sup>2</sup> (1.1% of the area of the park). These are areas that are not accessible to visitors and in which development is prohibited. With the park manager's authorization, scientific research and educational activities can, however, be conducted within their limits;
- Preservation zones to cover 3 768 km<sup>2</sup> (88.2% of the area of the park). This zoning is intended to protect archaeological sites and to safeguard fragile elements of natural heritage. Development within preservation zones will be limited;
- Ambience zones to cover 453 km<sup>2</sup> (10.6% of the area of the park). They will be located primarily in valleys and on shores. Shelters will be developed within the limits of these zones. Their locations will provide access to the Torngat Mountains National Park Reserve in Labrador; and
- Service zones to cover 5 km<sup>2</sup> (0.1% of the area of the park). They will contain the main air access points and accommodation<sup>22</sup>.



**Figure 4.** Proposed zoning plan of the Kuururjuaq National Park.  
© Ministry of Sustainable Development, Environment, and Parks

Through such educational activities, children and adults alike will become aware of cultural issues, Indigenous ecological knowledge of caribou, and how the management practices enshrined in their legends and knowledge encourage the caribou's continued preservation.

## CONCLUSION

Co-operative agreements and land claims that guide protected areas establishment and management can offer a way for government park agencies, Aboriginal communities, and other stakeholders to work together to preserve natural areas that are crucial to Aboriginal culture and sustain Indigenous ways of life, while simultaneously achieving key conservation goals. The case study discussed in this article is an innovative approach to conserving bio-cultural heritage and sharing the ecological, socio-cultural, educational, and economic benefits of protected areas. Representing a significant departure

The Naskapi Elders Advisory Council and the Council of the Naskapi Nation recommended that the site known to them as the Caribou Heaven, which they believe to be situated within the limits of the proposed Kuururjuaq National Park, be designated as a sacred area<sup>23</sup>. They further recommended that a Naskapi Elder should be a member of the committee responsible for managing the park at all times. They also made recommendations regarding the integration of the Caribou Heaven into the cultural and educational facilities and materials of the future park.

Today, the designation of the Caribou Heaven as a sacred area is being considered in a final management plan and there is a strong likelihood that it will be designated as such. The Naskapi prepared a CD containing many variations of the legend of the Caribou Heaven, which they hope will be integrated into the educational programme of the proposed park.

<sup>21</sup> Canadian Parks Council, 2008.

<sup>22</sup> Ministry of Sustainable Development, Environment, and Parks (no date). *Kuururjuaq National Park Project*.

<sup>23</sup> Council of the Naskapi Nation of Kawawachikmach, 2007. *Designation of the Caribou Heaven as a Sacred Area within the Proposed Kuururjuaq National Park*. Brief presented to the public hearing on March 14-15, 2007, in Kangiqsualujjuaq.



from past practices, this case can contribute to enhancing collaborative relationships between Aboriginal communities and parks agencies for cooperative planning and management of parks and shared decision-making. Key lessons from this case include the following:

- Recognizing the importance of cultural and spiritual resources and traditional knowledge as an expression of Aboriginal peoples' relationship to their land;
- Enabling community leadership to express a vision for conservation and use of their aboriginal territories; and
- Ensuring sufficient time, patience, and trust to develop an equitable partnership between the park agency, the Aboriginal communities, and other stakeholders.

As for the overall goal to preserve the ecological and cultural integrity of the great Torngat Mountains region, the Kluane National Park of Canada Management Plan (2004) could serve as a reference for authorities at the two parks. The managers of Wrangell-St. Elias National Park in Alaska and Kluane National Park in the Yukon undertake an integrated planning and management at the broader ecosystem level of the St. Elias Mountains eco-region to enhance the ecological and cultural integrity of the two parks. To achieve this in the Kuururjuaq National Park, it will be crucial to incorporate the ecological knowledge of the Aboriginal peoples, who attach unique meaning to their ancestral lands through their intrinsic relationship with it. For them, this invisible landscape expresses their notion of the harmony that exists between the natural, cultural, and spiritual heritage.

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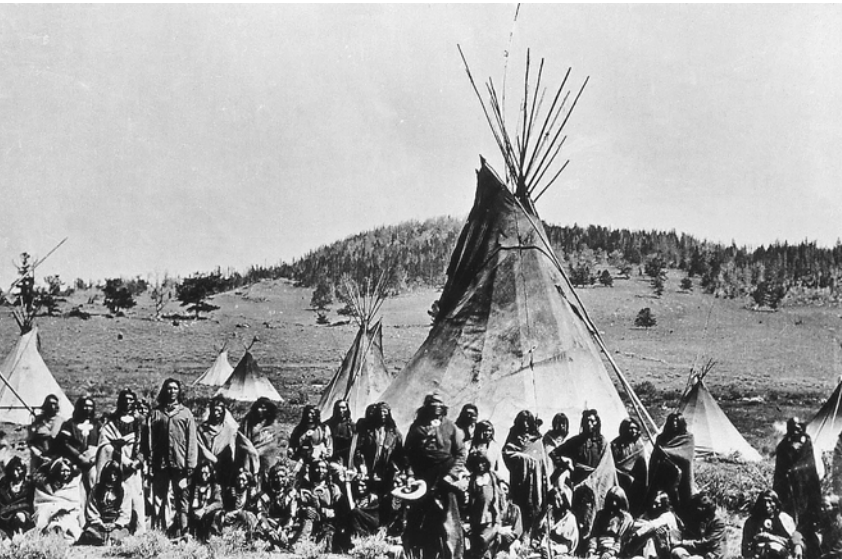
## UN-DISCOVERING WILDERNESS: PROTECTING TRADITIONAL RESOURCE RIGHTS IN U.S. NATIONAL PARKS

*Fernando Villalba<sup>1</sup>*

### Abstract

During its early development, the National Park Service played an active role in the removal of Native Americans from their ancestral lands. In doing so, they were also in effect dislodging intimate knowledge systems that encompass a long-standing dialogue with the landscape. Although international instruments exist to protect traditional resource rights, dominant international and national frameworks are insufficient to adequately protect traditional knowledge. In analyzing this issue, a case study at Pinnacles National Monument is observed. By working with local National Park Service staff and Native community leaders, trust relationships can be developed in a culturally appropriate and productive manner when a concerted effort is exerted by both the park staff and their partnering Tribe. Park managers are displaying a sense not only of moral responsibility to reinstate, at least in part, Native land stewardship systems, but also of urgency to work cooperatively with local Native communities. Native partners especially express the necessity to maintain and restore integrity of traditional practices and knowledge.

<sup>1</sup> This article is based upon the author's Master's thesis, which is in press as of September, 2010. Villalba, F., 2010. *Protecting Traditional Resource Rights in Conservation: Native Knowledge in National Parks*. M.A. thesis. University of California, Davis.



**Figure 1.** Chief Washakie and his warriors in 1871. © National Park Service

*“They stole our Mountain from us and now they want to take away our spiritual way of life...”*  
~ Ola Cassadore Davis (Apache)<sup>2</sup>

Having long endured land dispossession, Native Americans are more recently experiencing appropriation of their intellectual and biological resources.<sup>3</sup> As healthy, intact lands and ecosystems quickly disappear and the limitations of Western sciences are revealed, many scientists seek alternative conservation approaches, including Indigenous methods.<sup>4</sup> Consequently, traditional knowledge of the land is likely to rise in value,<sup>5</sup> and thus gain increasing attention from fields within the Western sciences.

However, critics of the dominant intellectual property rights regime argue that this Western system often legitimizes the appropriation of traditional knowledge without proper credit to and consent from the intellectual originators.<sup>6</sup> Traditional knowledge-holders

and critics of the intellectual property rights regime view these violations as direct challenges to the rights and autonomies of Indigenous peoples.<sup>7</sup> Opponents also believe that these paradigms usually treat traditional knowledge as unprotected public domain.<sup>8</sup> Similarly, throughout colonial history, lands have been ideologically rendered open for exploitation by labeling Native territories as wilderness and devoid of human history, culture, and influence.<sup>9</sup> If the Western land tenure framework – one with principles of individualism and commoditization similar to the intellectual property rights regime – has not provided equitable benefits for Native Americans, the likelihood of the intellectual property rights regime doing so is arguably very low.<sup>10</sup>

As such, Western intellectual property rights fail to fully recognize traditional knowledge as valid ways of knowing.<sup>11</sup> One way that this occurs is through the standardization of creativity under human-centered individualism.<sup>12</sup> This standardization, critics claim, disregards the intergenerational knowledge transmission that is often acknowledged by Indigenous peoples as an important way to develop knowledge (for example, through oral traditions).<sup>13</sup> Likewise, the intellectual property rights regime lacks recognition of the creativity found with and in nature.<sup>14</sup> In contrast, “Native science embraces the inherent

2 LaDuke, W., 2005. *Recovering the Sacred: The Power of Naming and Claiming*. South End Press: Cambridge, page 19, quoting Ola Cassadore Davis in a news release from the Mt. Graham Coalition, August 13, 1998. “Permit to Pray?”. Last accessed September 20, 2010, at: <http://www.mountgraham.org/old-site/WhitePapers/PrayPermit.html>.

3 Shiva, V., 1997. *Biopiracy: The Plunder of Nature and Knowledge*. Cambridge: South End Press.

4 Brockington, D., R. Duffy, and J. Igoe, (eds.), 2008. *Nature Bound: Conservation, Capitalism and the Future of Protected Areas*. London: Earthscan Press, Introduction.

5 Brush, S. B., 1993. “Indigenous Knowledge of Biological Resources and Intellectual Property Rights: The Role of Anthropology.” *American Anthropologist*, 95(3): 653-671.

6 Shiva, 1997. Also see Forbes, J., 1994. “Intellectual Property Rights of Indigenous Peoples”. *The Native*, 30(8): 12; and Mgbeoji, I., 2006. *Global Biopiracy: Patents, Plants and Indigenous Knowledge*. Vancouver: University of British Columbia Press.

7 Simpson, T., 1997. *Indigenous Heritage and Self-Determination: The Cultural and Intellectual Property Rights of Indigenous Peoples*. The Forest Peoples Programme and IWGIA (International Work Group for Indigenous Affairs): Centraltrykkeriet, Denmark. Also see Varese, S., 2003. “Indigenous Epistemologies in the Age of Globalization”, pages 138-153 in Poblete, J. (ed.), *Critical Latin American and Latino Studies*. University of Minnesota Press: Minneapolis-London; and Forbes, J., 1998. “Intellectual Self-Determination and Sovereignty: Implications for Native Studies and for Native Intellectuals”. *Wicazo Sa Review*, 13(1): 11-23.

8 Berkes, F., 2008. *Sacred Ecology: Traditional Ecological Knowledge and Resource Management*, Second edition. Taylor and Francis Press: Ann Arbor, page 35; Shiva, 1997, page 74.

9 Spence, M. D., 1999. *Dispossessing the Wilderness*. Oxford University Press: New York.

10 Greaves, T. (ed.), 1994. *Intellectual Property Rights for Indigenous Peoples: A Sourcebook*. Society for Applied Anthropology, Inc.: Oklahoma, page vi.

11 United Nations Document ST/ESA/328, 2009. *State of the World's Indigenous Peoples*. Department of Economic and Social Affairs, Division for Social Policy and Development, Secretariat of the Permanent Forum on Indigenous Issues: New York, page 74.

12 Shiva, 1997, page 7.

13 Mgbeoji, 2006, page 18.

14 Mgbeoji, 2006, page 67.

creativity of nature as the foundation for both knowledge and action with regard to ‘seeking life.’”<sup>15</sup> Rather than viewing them as potential commodities to be exploited, traditional knowledge systems regard biological processes such as those that produce medicinal properties as ingenious actions to be revered.

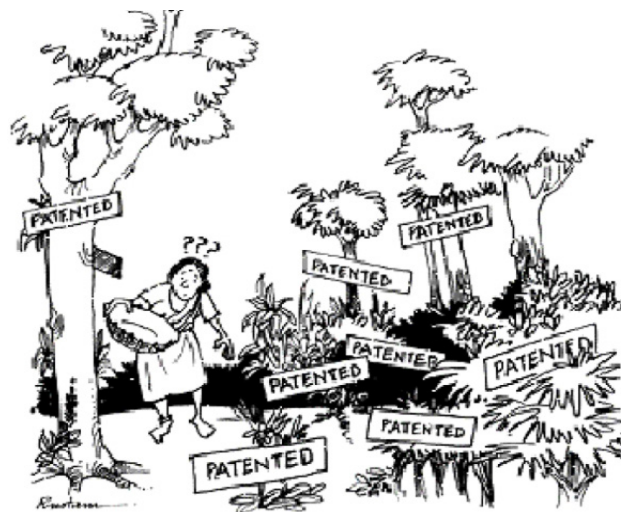
Consequently, legal frameworks of the international community and many Nation-states like the United States of America (U.S.) provide insufficient protection of collectively-held traditional knowledge.<sup>16</sup> Furthermore, these limitations are apparent among U.S. federal conservation agencies like the National Park Service,<sup>17</sup> which, until recently, has historically neglected Native American communities and disregarded their processes of cultural continuity.<sup>18</sup> Thus, in the process of researching and applying traditional knowledge, this may raise concerns that conservation organizations may inadvertently fail to adequately respect traditional rights. When publishing, for example, their scientists and researchers may unintentionally place culturally sensitive information in the public domain, where corporate entities may appropriate traditional knowledge for commercial gain in contravention of the customary laws and values underpinning the transmission and sharing of traditional knowledge.<sup>19</sup>

## TOWARDS TRADITIONAL RESOURCE RIGHTS

In response to the lack of protection for traditional knowledge, advocates call for a new protective structure to be devised. In the 1990s, Darrell A. Posey, a world-renowned anthropologist and biologist, promoted the concept of what he termed “traditional resource rights”. According to the International Society of Ethnobiology (founded by Posey), traditional resource rights are:

...a bundle of basic rights that include human and cultural rights, the right to self-determination, and land and territorial rights...[that] recognize the right of Indigenous peoples and local communities to control the use of plant, animal and other resources, and associated traditional knowledge and technologies.<sup>20</sup>

Traditional resource rights acknowledge that traditional knowledge, land, and traditional resources are essential to Indigenous peoples’ identity and to their self-determination. Posey states that the shift to traditional resource rights “reflects an attempt to build on the concept of intellectual property rights protection and compensation, while recognizing that traditional resources – both tangible and intangible – are also covered... to form the basis for a *sui generis* [of its own kind] system.”<sup>21</sup> These rights also recognize the importance of sacred, cultural, and aesthetic values of natural systems. They respect “the inextricable link between cultural and biological diversity” and thus does not separate efforts to protect the environment and human rights.<sup>22</sup> Asserting these rights has become part of a larger global movement by Indigenous peoples that emerged in the 1980s, through which Native peoples have raised their voices against the neglect for their rights to traditional knowledge and resources.<sup>23</sup>



**Figure 2.** Applying Western intellectual property rights to traditional ecological knowledge often undermines the rights of Indigenous peoples.

© American Association for the Advancement of Science

15 Cajete, G., 2000. *Native Science: Natural Laws of Interdependence*. Clear Light Publishers: Santa Fe, page 15.

16 See Brush, 1993; Shiva, 1997; Forbes, 1994; Mgbeoji, 2006; Simpson, 1997; Greaves, 1994.

17 Ruppert, D., 1994. “Buying Secrets: Federal Government Procurement of Intellectual Cultural Property”, pages 111-128 in Greaves, T. (ed.), 1994. *Intellectual Property Rights for Indigenous Peoples: A Sourcebook*. Society for Applied Anthropology, Inc.: Oklahoma.

18 Keller, R H., and M. F. Turek, 1998. *American Indians and National Parks*. The University of Arizona Press: Tucson; Spence, 1999; Burnham, P., 2000. *Indian Country, God's Country*. Island Press: Washington, D. C.; Crum, S. J., 2000. “Pretending They Didn't Exist: The Timbisha Shoshone Tribe of Death Valley, California and the Death Valley National Monument up to 1933”. *Southern California Quarterly*, 84(3/4): 223-240. Also see Forbes, J., 1970. “Indians Feel Park Service Ignores Them”. *The Sacramento Bee*, August 2, 1970.

19 Berkes, 2008, page 35; Also see Posey, D. A., and G. Dutfield, 1996. *Beyond Intellectual Property: Toward Traditional Resource Rights for Indigenous Peoples and Local Communities*. International Development Research Centre: Ottawa.

20 International Society of Ethnobiology, 2010. Last accessed February 20, 2010, at: <http://www.ethnobiology.net/>.

21 Posey and Dutfield, 1996, page 70.

22 Posey and Dutfield, 1996, page 70.

23 Posey and Dutfield, 1996, page 3.



Similar to traditional resource rights, the discipline of biocultural diversity is a conservation approach founded on the idea that cultures, especially Native cultures, are inseparable from nature.<sup>24</sup> Since the explosion of economic globalization in the 1980s, many noticed the destructive effects that this phenomenon has had (and will continue to have) on the world's biological and culture richness. Furthermore, proponents of biocultural diversity have come to understand that the same globalizing factors are causing the decimation of both and are perpetuated largely by political and economic interests. There is concern that this annihilation is tearing the fabric of life and reducing humanity's ability to effectively address societal problems.<sup>25</sup> As stated by Luisa Maffi, biocultural diversity grew "[o]ut of the coalescence of environmental, cultural, linguistic and human rights issues."<sup>26</sup> To help address this crisis, biocultural diversity conservationists seek to develop mechanisms that perpetuate nature-culture interactions. In other words, like traditional resource rights, proponents of this concept address these interrelated issues with a holistic approach.

## PROVISIONS FOR TRADITIONAL RESOURCE RIGHTS IN INTERNATIONAL INSTRUMENTS

*Traditional knowledge,  
land, and traditional  
resources are essential  
to Indigenous peoples'  
identity and self-  
determination.*

On September 13, 2007, the United Nations General Assembly<sup>27</sup> adopted the Declaration on the Rights of Indigenous Peoples (UNDRIP), which directs Nation-states to respect aboriginal rights of the world's Indigenous peoples.<sup>28</sup> It addresses the many issues faced by Indigenous communities, who are among the most disadvantaged and exploited peoples. Compared to other human rights instruments, UNDRIP recognizes unique rights such as those to traditional territories,<sup>29</sup> including "the right to maintain spiritual relationships with the land."<sup>30</sup> While other international human rights instruments ensure all peoples the right to integrate into dominant society, UNDRIP grants Indigenous peoples in particular the right to self-determination.<sup>31</sup> It explicitly states that they shall have "the right to maintain, control, protect and develop their [own] intellectual property."<sup>32</sup> Indigenous leaders believe that this

right empowers their communities to further develop traditional knowledge systems that work to "protect and preserve the biological diversity of the world,"<sup>33</sup> which can help inform larger conservation efforts. Although it is not yet a signatory to UNDRIP, the U.S. is currently in the process of reconsidering its position and has hosted various dialogues with interested stakeholders, including Native communities.<sup>34</sup>

The 1992 United Nations Convention on Biological Diversity (CBD) aims to protect global biological diversity.<sup>35</sup> One of the most discussed articles of the CBD regarding traditional knowledge is Article 8(j). Directing Parties to acknowledge Indigenous peoples' rights to sustainably use traditional resources, it recognizes their contributions to the enhancement of the Earth's biological diversity and encourages the development of Indigenous land management practices. Article 8(j) also directs Parties to ensure the equitable sharing of benefits when utilizing traditional knowledge.<sup>36</sup> Similarly, Article

24 See Maffi, L. (ed.), 2001. *On Biocultural Diversity: Linking Language, Knowledge and the Environment*. Smithsonian Institution Press: Washington and London.

25 Maffi, 2001; Harmon, D., 2002. *In Light of our Differences: How Diversity in Nature and Culture Makes Us Human*. Smithsonian Institution Press: Washington and London.

26 Maffi, L., 2002. *Endangered Languages, Endangered Knowledge*. United Nations Education, Scientific and Cultural Organization (UNESCO), ISSJ 173/2002. Blackwell Publishing: Oxford, page 386.

27 The only four countries to vote against it were Canada, the U.S., Australia, and New Zealand, though the latter two have since become signatories.

28 United Nations Document A/61/L.67. "Declaration on the Rights of Indigenous Peoples" (UNDRIP), adopted by the UN General Assembly on September 13, 2007.

29 Henriksen, J. B., 2008. *Research on Best Practices for the Implementation of the Principles of ILO Convention No. 169 – Key Principles in Implementing ILO Convention No. 169, Case Study 7*. Produced for Programme to Promote ILO Convention No. 169, pages 9-11.

30 United Nations Document ST/ESA/328, 2009. *State of the World's Indigenous Peoples*. Department of Economic and Social Affairs, Division for Social Policy and Development, Secretariat of the Permanent Forum on Indigenous Issues: New York, page 55.

31 Henriksen, 2008, page 9; Also see Asbjørn, E., and E. Daes, 2000. "Joint Working Paper on the Relationship and Distinction Between the Rights of Persons Belonging to Minorities and those of Indigenous Peoples". UN Document E/CN.4/Sub.2/2000/10, July, 2000, paragraph 8.

32 Article 31, UNDRIP.

33 Malezer, L., 2007. "Statement by the Chairman". Global Indigenous Caucus, on the adoption of the Declaration on the Rights of Indigenous Peoples on September 13, 2007.

34 U.S. Department of State (press release), 2010. "United States Review of the UN Declaration on the Rights of Indigenous Peoples." Bureau of Public Affairs. Last accessed July 8, 2010, at: <http://www.state.gov/r/pa/prs/ps/2010/07/144118.htm>.

35 United Nations Convention on Biological Diversity (CBD), opened for signature June 5, 1992, 1760 UNTS 79 (entered into force December 29, 1993).

36 Article 8(j), CBD.

10(c) seeks to “[p]rotect and encourage customary use of biological resources in accordance with traditional cultural practices.” Article 15, however, may present a contradiction by recognizing the “sovereign rights of States over their natural resources,” which can contravene Indigenous peoples’ rights to traditional lands that lie within Nation-state boundaries.

In 1989, the International Labor Organization adopted Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169).<sup>37</sup> Part II of ILO 169 addresses the issue of land rights. Specifically, Articles 14, 16, and 17 potentially relate to the entitlements defined by traditional resource rights, as they maintain that ancestral claims to lands – and the resources within them – shall be upheld. As for traditional practices, Article 23(1) asserts that communal economies and activities of Indigenous peoples “such as hunting, fishing, trapping and gathering, shall be recognized as important factors in the maintenance of their cultures,” and when working with their communities, governments shall “ensure that these activities are strengthened and promoted.”<sup>38</sup> Together, the Articles of ILO 169 discussed are in line with the principles of traditional resource rights such as the rights to traditional lands, resources, and knowledge and the need for prior informed consent and collaboration with Native communities.

The International Union for Conservation of Nature (IUCN) also addresses a myriad of social issues regarding conservation. The Union’s 1997 Resolutions and Recommendations include a section titled “Indigenous Peoples”. Throughout this document, IUCN seems to reaffirm the principles of UNDRIP, CBD, and ILO 169 in its approach to protecting Indigenous rights. Like these instruments, the IUCN policies contain several key provisions: the protection of the rights of traditional knowledge-holders to develop and exercise their environmentally sustainable practices; the understanding of the intimate and culturally vital connections that Indigenous peoples have with their traditional lands; and the full and equal collaboration and cooperation with Indigenous peoples in conservation efforts that may affect their communities.<sup>39</sup>

Unique to the IUCN policies is the direct mention of the spiritual role that lands and biological resources play in Indigenous cultures. Although this value may be inferred from the language of other instruments, it is explicitly mentioned in IUCN’s Resolution 1.52 concerning “the economic, cultural and spiritual value of coastal and marine areas for indigenous peoples.”<sup>40</sup> Just as traditional resource rights acknowledge the spiritual elements that Native peoples recognize in nature, so do these policies. Thus, the principles of IUCN under the 1997 Resolutions and Recommendations are arguably compatible with the concepts of traditional resource rights.

The U.S. has not yet adopted any of these international instruments, but it has been under pressure to do so. Also, although the U.S. is a member of IUCN, it has abstained from voting on all of the resolutions outlined above. Such U.S. policy in international fora relating to conservation and Indigenous peoples’ rights may prove to be yet another challenge for the National Park Service in helping to perpetuate and protect traditional resource rights – a stark reminder of the structural improvements needed in order to develop more fully equitable and effective relationships between the National Park Service and Native communities.

## DISPOSSESSING NATIVE LANDS, DISLODGING TRADITIONAL KNOWLEDGE

The reality remains that the European occupation of what is now the U.S. has diminished Native American contemporary territories to only four percent of their



**Figure 3.** A Native American fish trap (tribal affiliation unknown) at the shore of Yellowstone Lake in 1961. © National Park Service

<sup>37</sup> ILO 169, opened for signature June 27, 1989, 28 ILM 1382 (entered into force September 5, 1991).

<sup>38</sup> ILO 169, Article 23(1).

<sup>39</sup> International Union for Conservation of Nature and Natural Resources (IUCN), 1997. *Resolutions and Recommendations*. Page Brothers, Ltd.: Norwich, Resolutions 1.49-1.56 and Recommendation 1.57.

<sup>40</sup> IUCN Resolution 1.52.

original extent.<sup>41</sup> This situation continues to affect Indigenous peoples' access to lands, limiting their ability to continue traditional practices. The perpetuation of Indigenous traditions and associated knowledge are now significantly dependent on relations with public land management agencies such as the National Park Service, a federal entity that now manages much of these ancestral lands. However, like many conservation agencies, the National Park Service has historically disregarded not only the long-standing human presence,<sup>42</sup> but also the traditional management methods that have shaped the lands it now manages.<sup>43</sup>

Native American groups have had a long-standing contention with U.S. national parks. One major point of dispute is that national parks have in part been responsible for the dispossession of ancestral territories.<sup>44</sup> In the case of Yellowstone, which became the world's first national park in 1872, Native groups such as bands of Plains Shoshone and Nez Perce were actively removed shortly after the park's establishment.<sup>45</sup> In fact, most, if not all, of the present-day national parks were inhabited by Native Americans at the time that Yellowstone was established.<sup>46</sup> The Timbisha Shoshone had a similar yet unique experience with Death Valley National Monument<sup>47</sup>. While officials unsuccessfully attempted to remove the Timbisha, National Park Service regulations greatly limited the Tribe's subsistence on and management of the traditional resources.<sup>48</sup>

## TRADITIONAL RESOURCE RIGHTS IN THE NATIONAL PARK SERVICE: A CASE STUDY OF THE AMAH MUTSUN TRIBAL BAND AND PINNACLES NATIONAL MONUMENT

Pinnacles National Monument ("Pinnacles"), a unit of the National Park Service, is located in central California about 50 miles east of the coast and 140 miles south of the San Francisco Bay (see Figure 4<sup>49</sup>). It encompasses much of the ancestral territory of the Amah Mutsun, one of eight Ohlone (Costanoan) language groups. The California Mission system and oppressive U.S. Indian policies took a heavy toll on their culture, but the Amah Mutsun Tribal Band is currently restoring traditional knowledge and practices and is petitioning to regain status as a federally recognized Tribe. Building various local partnerships is a major element to this cultural revitalization.

During the last decade, Pinnacles has expanded by over 10 000 acres, including a three-acre field of intact native grassland in McCabe Canyon in need of restoration.<sup>50</sup> Because only about 1 to 2 percent of native grasslands in California are intact, it is extremely rare to come across such an extensive field of this vegetation community.<sup>51</sup> Two of the rare plants found here, deergrass and whiteroot sedge, are important plants to the Amah Mutsun and other California Indians, who use them primarily for basket-weaving and ceremonies.<sup>52</sup> Recognizing the biological and cultural significance of the resources within this newly acquired land, the park developed a Cooperative Grassland Restoration Program with the Amah Mutsun Tribal Band to help restore the grassland and address the Tribe's cultural concerns.

With a team of ethnobotanists, fire ecologists, and biologists, the project was designed with the following main goals: to restore cultural and natural significance of the vegetation at the site; to experiment with the effectiveness of and ecosystem

41 LaDuke, 2005, page 4.

42 Keller and Turek, 1998; Spence, 1999; Burnham, 2000.

43 See Spence, 1999. For discussion on traditional land management methods in California, see Blackburn, T., and K. Anderson (eds.), 1993. *Before the Wilderness: Environmental Management by Native Californians*. Ballena Press: Menlo Park.

44 For a more comprehensive discussion on Native American-National Park Service history, see Keller and Turek, 1998; Spence, 1999; Burnham, 2000; and Nabokov, P. and L. Loendorf, 2004. *Restoring a Presence: American Indians and Yellowstone National Park*. University of Oklahoma Press: Norman.

45 Nabokov and Loendorf, 2004; Norris, F., 2002. *Alaska Subsistence: A National Park Service Management History*. Alaska Support Office, National Park Service, Department of Interior: Anchorage, page 17.

46 Norris, 2002, page 17. Also see Keller and Turek, 1998, page 19.

47 This site was first a national monument, but later proclaimed as a national park in 1994.

48 Crum, S. J., 1998. "A Tripartite State of Affairs: The Timbisha Shoshone Tribe, the National Park Service, and the Bureau of Indian Affairs, 1933-1994." *American Indian Culture and Research Journal*, 22(1): 117-136, pages 118, 126; Fowler, C., 2008. "Historical perspectives on Timbisha Shoshone Land Management Practices, Death Valley, California," pages 43-57 in Reitz, E. C., M. Scarry, and S. J. Scudder (eds.), *Case Studies in Environmental Archeology*. Springer Press: New York, page 44.

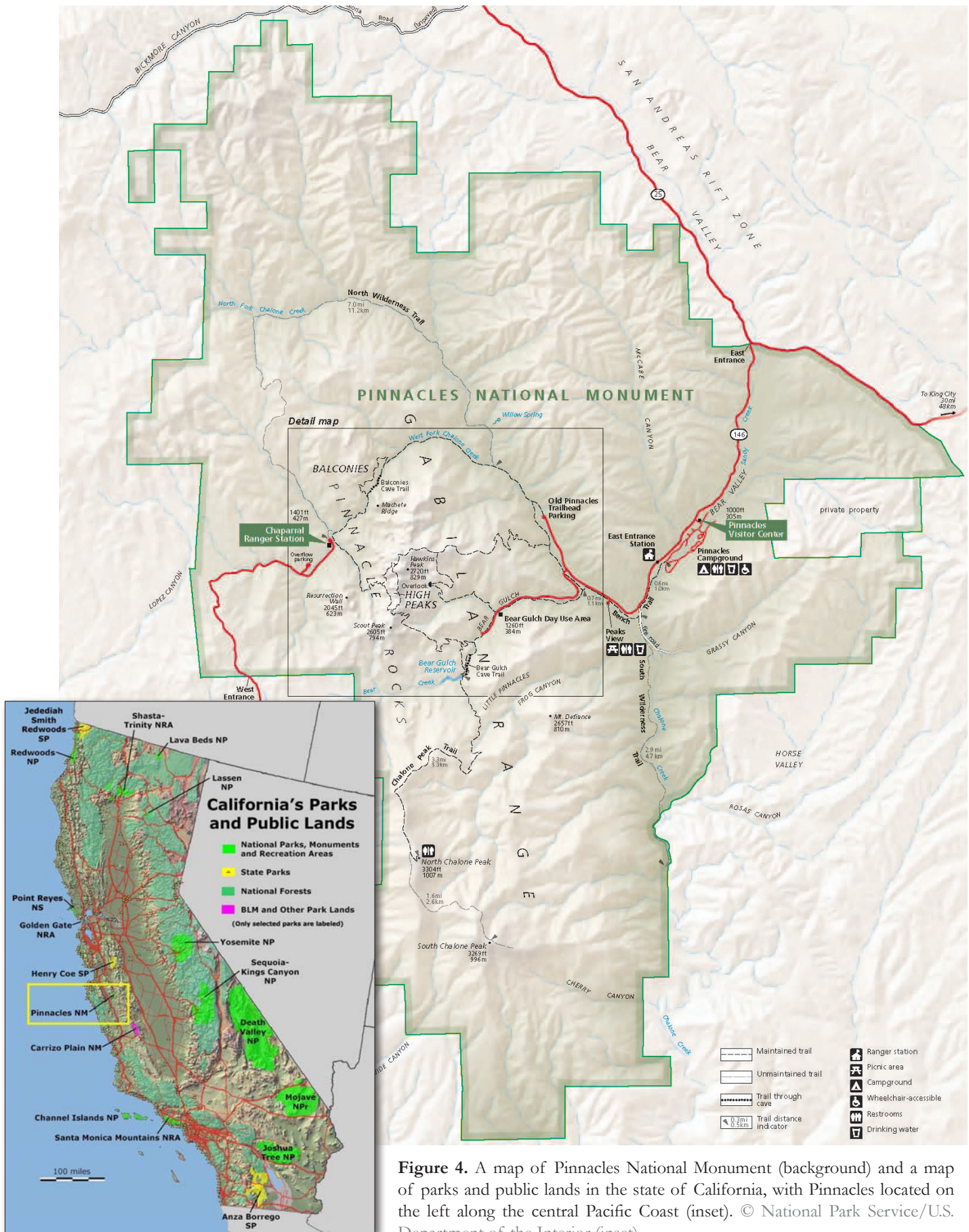
49 Map of California's Parks and Public Lands (inset) provided by U.S. Department of the Interior, U.S. Geological Survey, 2007, modified from National Map. Last accessed September 20, 2010, at: <http://education.usgs.gov/california/maps/parks1.htm>.

50 National Park Service (NPS), Pacific West Region, and University of California, Santa Cruz (UCSC), 2009. "Cooperative Habitat Restoration of a California Grassland." Task Agreement No. J8C07090016; Louie, Denise, interview with author, April 23, 2010.

51 See The Nature Conservancy, 2010. "Preserving California Grasslands." Last accessed on April 20, 2010, at: <http://www.nature.org/>. Also see Elstein, D., 2004. "Restoring California's Native Grasses". *Agricultural Research*, 52(5):17.

52 Striplen, Chuck, interview with author, April 19, 2010.





**Figure 4.** A map of Pinnacles National Monument (background) and a map of parks and public lands in the state of California, with Pinnacles located on the left along the central Pacific Coast (inset). © National Park Service/U.S. Department of the Interior (inset)



response to traditional land management techniques; to reinstate the Tribe's cultural connection to their ancestral lands and resources; and to develop relationships with partners to educate the public about how California Indians have influenced and enhanced the landscapes and how these lands inform contemporary California Indian cultures.<sup>53</sup>

Rather than simply being consulted, it is clear that the Tribe plays an active and decisive role in this partnership. For example, when the park hired an ethnobotany specialist to further develop the trust relationship with the Tribe and recover lost traditional knowledge of plants, tribal members played a key role in selecting the candidate and designing the position's responsibilities. In order to better understand and represent the Tribe's expectations, the park involved the Tribe in developing the specialist's work plan.<sup>54</sup> This serves as a clear example of how Pinnacles staff is looking to develop a reciprocal partnership by listening to the Tribe's concerns and following the principles of international instruments and traditional resource rights.

One major component of the project is researching the effects of Native American burning as a land management tool by employing advanced historical ecology techniques.<sup>55</sup> One

such method is through the examination of phytoliths through morphometric analysis, which may help researchers not only determine plant identification, but also gain information regarding the presence and intervals of traditional fires. "The element of traditional knowledge that we're after," Mutsun tribal member and historical ecologist Chuck Striplen explains, "is how our ancestors managed fire in that particular watershed."<sup>56</sup> Using this information, the park and Tribe will "tap into the wisdom gained through millennia of using fire for vegetation management, and directly apply this knowledge as a tool for modern land management"<sup>57</sup>. In return, the Amah Mutsun will be able to rediscover their ancestral knowledge and land management methods, many of which have not been practiced in over a century and have been locked in the landscape and research material. Together, the park and Tribe are working to simultaneously restore a rare landscape and revitalize the Amah Mutsun culture.

Tribal Band Chairman Valentin Lopez has expressed concern over the intellectual rights to cultural information and traditional knowledge recovered through this project (for example, regarding public access to and commercial exploitation of knowledge regarding culturally important plants). It is difficult to control its use because much of this information is already published and in many archival documents.<sup>58</sup> In response, the staff of Pinnacles is working with the Tribe to develop a mechanism within the partnership and projects to prevent sensitive information from being open to public domain, including that of ceremonial and medicinal plants.<sup>59</sup> Although a more extensive intellectual rights instrument may be of interest to the Tribe in the future for broader protection of traditional knowledge, the park has decided to take steps within their relatively small role to avoid perpetuating any possible exploitation of traditional knowledge.<sup>60</sup>

*The Amah Mutsun Tribe plays an active and decisive role in the partnership with Pinnacles National Monument staff, aiming to apply traditional knowledge and wisdom to modern land management.*



**Figure 5.** Amah Mutsun Tribal Band members and University of California, Santa Cruz researchers meet with Pinnacles National Monument staff in McCabe Canyon to discuss the proposed restoration and research project on June 6, 2009. © National Park Service/Pinnacle National Monument

53 NPS Pacific West Region and UCSC, 2009.

54 NPS Pacific West Region and UCSC, 2009.

55 Striplen, April 19, 2010.

56 Striplen, April 19, 2010.

57 Joint Science Fire Program, 2010. "Exploring the Traditional Use of Fire in the Coastal Mountains of Central California." Project Details. Project ID: 10-1-09-3. Last accessed April 23, 2010, at: [http://www.firescience.gov/JFSP\\_Funded\\_Projects.cfm](http://www.firescience.gov/JFSP_Funded_Projects.cfm).

58 Lopez, Valentin, interview with author, April 28, 2010.

59 Louie, April 23, 2010.

60 Louie, April 23, 2010.

## CONCLUSION

There are major challenges for the protection of traditional resource rights, which continue to be threatened by economic and political interests. Biological resources are also at risk from these same forces. This issue, however, cannot be resolved by solely applying Western dominant structures; no mechanism exists in these regimes to either adequately protect traditional

*The incorporation of traditional resource rights into federal law and policy can be driven by conservation agencies like the National Park Service.*

knowledge or address all conservation issues. However, certain international legal instruments or provisions therein provide the moral and policy framework to protect traditional resource rights. Although the U.S. has still not adopted or fully enacted all of these instruments, they deserve much attention in the dialogue for promoting their principles in U.S. policies regarding Indigenous rights. Conservation agencies such as the National Park Service could drive the incorporation of traditional resource rights into federal law and policy by building collaborative and equitable relationships with local Indigenous communities based upon internationally recognized principles.

To do so, there is arguably a need for a major shift in the federal land management approach to allow for greater acknowledgement and reinstatement of traditional knowledge in the National Park Service.<sup>61</sup> As ethnobiologist Darrel Posey argues, and as demonstrated by the Pinnacles case, listening to local concerns allows for the development and inclusion of *sui generis* systems

to the protection of traditional resource rights and traditional knowledge. However, as long as broader National Park Service policies continue to lack such protection for traditional rights, there will continue to be a structural inequity in the relationships between the National Park Service as a whole and their Native partners. This reality may in turn severely limit the exchange of knowledge that would help develop local conservation efforts, doing so at the expense of both national parks attempting to build stronger relationships with Native peoples and Tribes striving to maintain and restore connections with their aboriginal lands, histories, and resources.

The cooperative partnership between Pinnacles and the Amah Mutsun Tribal Band is an exciting and innovative example of how land management objectives in parks can address traditional resource rights. This case is testament to the synergistic potential in projects that not only recognize the intersection between biological conservation and cultural continuity, but also are founded on principles of equity and respect for traditional resources. If proven effective, the fruits of this labour may also in turn benefit other Native peoples who look to regain their connections to ancestral lands and better understand their traditional land management practices. Other land managers seeking to develop relationships with Native communities would also greatly benefit by learning from this developing collaboration. Such local relationships will determine the future of the National Park Service and, potentially, federal policies on conservation and Indigenous rights. This can begin simply by no longer looking at conservation lands as pristine wilderness, but rather as culturally influenced landscapes.



**Figure 6.** Deergrass (*Muhlenbergia rigens*) (foreground) in McCabe Canyon at the proposed watershed restoration and research site in October, 2006. © National Park Service/Pinnacle National Monument

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<sup>61</sup> See Anderson, M. K., and M. G. Barbour, 2003. "Simulated Indigenous Management: A New Model for Ecological Restoration in National Parks." *Ecological Restoration*, 21(4): 269-277.



# INDIGENOUS RIGHTS AND OBLIGATIONS TO MANAGE TRADITIONAL LAND AND SEA ESTATES IN NORTH AUSTRALIA: THE ROLE OF INDIGENOUS RANGERS AND THE I-TRACKER PROJECT

Rod Kennett, Micha Jackson, Joe Morrison, and Joshua Kitchens

## Abstract

North Australia is a significant reservoir for biodiversity and contains some of the least impacted ecosystems found anywhere, but it also faces a range of environmental threats. Aboriginal and Torres Strait Island peoples living in north Australia have gained significant legal recognition of their rights to own and manage their traditional lands. Many Indigenous community-based land and sea organizations have emerged that support ranger programmes that actively manage traditional estates. Coupled with recognition of land claims, support for ranger programmes is a practical and culturally effective way to support the rights of Indigenous peoples to manage their traditional lands under international, national, and customary laws. The I-Tracker project, an initiative of the North Australian Indigenous Land and Sea Management Alliance (NAILSMA), empowers Indigenous communities by providing them with the tools and skills to effectively collect and manage environmental data. Utilizing robust field computers and internationally-acclaimed CyberTracker® software, the project is underpinned by a set of guiding principles that are centred on the cultural rights and obligations of Traditional Owners. While focused on providing tools to inform local-level management and decision-making, the project also facilitates data sharing to address regional, national, and international environmental issues, thus supporting Australia in meeting its national and international conservation obligations.

## INDIGENOUS NATURAL RESOURCE MANAGEMENT IN NORTH AUSTRALIA

Archaeological evidence shows that Indigenous peoples have occupied north Australia for some 50 000 years<sup>1</sup> and represent the world's oldest living culture<sup>2</sup>. Indigenous Australians hold that they have been 'present on country' (living on their traditional lands) since the creator beings formed the landscape, the people, and the law<sup>3</sup>. This long tradition of custodianship means that Indigenous Australians possess a detailed body of knowledge and practices surrounding the environment and the interconnected spiritual and cultural relationships with their land and sea estates. Indigenous peoples refer to the reciprocal relationships that are inherent to using and managing their estates and resources as 'caring for country'. Long-held traditional rights, responsibilities, and environmental practices continue to be expressed and enacted as significant obligations in contemporary Indigenous society<sup>4</sup>. In the last 20 years, caring for country has become a community-based movement epitomized as being fluid and adaptive by responding to the needs of local leaders or Traditional Owners<sup>5</sup>.

In north Australia, Indigenous Australians' ability to care for country in accordance with their traditions is partially provided for under the Australian Native Title Act 1993<sup>6</sup> and the Aboriginal Land Rights (Northern Territory) Act 1976<sup>7</sup>, and is also spoken to in the Environment Protection and Biodiversity Conservation Act 1999<sup>8</sup>, Australia's main piece of national

1 Roberts, R. G., R. Jones, and M. A. Smith, 1990. "Thermoluminescence dating of a 50,000-year-old human occupation site in northern Australia". *Nature*, 345: 153-156.

2 Flood, J., 2006. *The Original Australians: Story of the Aboriginal People*. Allen & Unwin: Crow's Nest, New South Wales.

3 See Rose, D. B., 1992. *Dingo Makes Us Human*. Cambridge University Press: Melbourne.

4 Smyth, D., 2001. "Management of sea country: Indigenous people's use and management of marine environments", pages 60-74 in Baker, R., J. Davies, and E. Young (eds.), *Working on Country: contemporary Indigenous management of Australia's lands and coastal regions*. Oxford University Press: South Melbourne; Sharp, N., 2002. *Saltwater people. The waves of memory*. Allen and Unwin: Sydney.

5 Morrison, J. H., 2007. "Caring for Country", pages 249-261 in Altman, J., and M. Hinkson (eds.), *Coercive Reconciliation. Stabilise, Normalise, Exit Aboriginal Australia*. Arena Publications Association: North Carlton, Victoria.

6 Native Title Act 1993 (Commonwealth), amended by Native Title Amendment Act 1998 (Commonwealth).

7 Aboriginal Land Rights (Northern Territory) Act 1976 (Commonwealth).

8 Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth).

environmental legislation. International instruments such as the United Nations Convention on Biological Diversity<sup>9</sup> (CBD), ratified in Australia in 1993, and the United Nations Declaration on the Rights of Indigenous Peoples<sup>10</sup> (UNDRIP), endorsed by the Australian government in 2009, also contain provisions relating to the rights of Indigenous Australians to use and manage resources, including the essential role of Indigenous knowledge and practice in conserving biodiversity.

In recent times, north Australia has become globally recognized as a place of high biodiversity value with large numbers of endemic plant and animal species<sup>11</sup> and important populations of species listed as globally threatened by the International Union for Conservation of Nature (IUCN). For example, the waters of north Australia contain a significant proportion of the global population of dugongs<sup>12</sup>, which are classified as Vulnerable to extinction by IUCN. Six of the world's seven species of marine turtles also occur in these waters and northern Australia is home to globally significant breeding populations of green, hawksbill, and flatback turtles<sup>13</sup>; all six of these species are listed as Vulnerable or Endangered by the Environmental Protection and Biodiversity Conservation Act 1999. North Australian coastal environments are among the least human-impacted on the planet<sup>14</sup> and the 'tropical savannas' region, which stretches across north Australia, represents the largest tropical savanna woodland in good condition remaining on the globe and is therefore regarded as very high in global conservation value<sup>15</sup>. In general, woodlands and forests in north Australia are extensive and remain in relatively unmodified condition, in stark contrast to much of the temperate and subtropical woodlands in the rest of Australia, which have been heavily impacted by intensive land use and grazing<sup>16</sup>. However, declining mammal and bird populations, spreading weeds and invasive animals, potential climate change-induced landscape changes, and unsustainable land use practices – including inappropriate fire regimes – are issues faced by Indigenous and non-indigenous land managers alike<sup>17</sup>.

*Indigenous Australians have reciprocal relationships with their land and sea estates based on long-held traditional rights, responsibilities, and environmental practices.*

Compared to the structural disempowerment of many Indigenous peoples in southern Australia and around the world, the Aboriginal and Torres Strait Islander peoples of north Australia, whilst suffering from a violent colonial surge in the late 1800s and early 1900s<sup>18</sup>, have been able to gain some legal recognition of their rights to own and manage their traditional lands. It is estimated that 30 percent of north Australia is now owned by Indigenous peoples, with Native Title interests extending to 80 percent of the north<sup>19</sup>. Successful land claims under the Aboriginal Land Rights (Northern Territory) Act 1976 have transferred almost 50 percent of land in the Northern Territory (around 600 000 square kilometers (km<sup>2</sup>)) to collective Indigenous ownership<sup>20</sup>. A recent analysis of this estate shows that it contains some of the most intact wetlands, rivers and associated riparian zones, and forests in Australia and is therefore of very high conservation value<sup>21</sup>. However, there is still an enormous number of pending and unresolved applications for land rights claimed under Native Title over

9 United Nations Convention on Biological Diversity (CBD), opened for signature June 5, 1992, 1760 UNTS 79 (entered into force December 29, 1993).

10 United Nations Declaration on the Rights of Indigenous Peoples, UN Doc A/RES/61/295 (opened for signature September 13, 2007).

11 Woinarski, J. C. Z., B. Mackey, H. Nix, and B. Traill, 2007. *The Nature of Northern Australia: natural values, ecological processes and future prospects*. Australian National University e-press: Canberra.

12 Marsh, H., C. Eros, P. Corkeron, and B. Breen, 1999. "A conservation strategy for dugongs: implications of Australian research". *Marine and Freshwater Research*, 50: 979-990.

13 Limpus, C., and R. Chatto, 2004. "Marine Turtles", pages 113-136 in National Oceans Office (ed.), *Description of key species groups in the northern planning area*. National Oceans Office: Hobart.

14 Halpern, B. S., S. Walbridge, K. A. Selkoe, C. V. Kappel, F. Micheli, C. D'Agrosa, J. F. Bruno, K. S. Casey, C. Ebert, H. E. Fox, R. Fujita, D. Heinemann, H. S. Lenihan, E. M. P. Madin, M. T. Perry, E. R. Selig, M. Spalding, R. Steneck, and R. Watson, 2008. "A Global Map of Human Impact on Marine Ecosystems". *Science*, 319: 948-952.

15 Woinarski *et al.*, 2007.

16 Woinarski *et al.*, 2007.

17 Woinarski, J. C. Z., M. Armstrong, K. Brennan, A. Fisher, A. D. Griffiths, B. Hill, D. J. Milne, C. Palmer, S. Ward, M. Watson, S. Winderlich, and S. Young, 2010. "Monitoring indicates rapid and severe decline of native small mammals in Kakadu National Park, northern Australia". *Wildlife Research*, 37: 116-126.

18 For a brief history of the impacts of colonial violence and disease on Indigenous Australians, see chapter 4, "Depopulation: A century of struggle (1820s – 1920s)" in Flood, J., 2006. *The Original Australians: Story of the Aboriginal People*. Allen & Unwin: Crow's Nest, New South Wales. For a more detailed description of historical violence committed against Indigenous Australians in north Australia, see Roberts, T., 2005. *Frontier Justice: A history of the gulf country to 1900*. University of Queensland Press: Brisbane.

19 Morrison, J. H., 2007 (in press). "First Australians, their country and knowledge: Threats and Opportunities for the use of IK Across Northern Australia", in *Proceedings of Traditional Knowledge Workshop*. UNESCO: Cairns.

20 Commonwealth of Australia, Department of Foreign Affairs and Trade, 2008. "Indigenous land rights and native title". Last accessed July 31, 2010, at: [http://www.dfat.gov.au/facts/indigenous\\_land\\_rights.html](http://www.dfat.gov.au/facts/indigenous_land_rights.html).

21 Altman, J. C., G. J. Buchanan, and L. Larsen, 2007. "The environmental significance of the Indigenous estate: Natural resource management as economic development in remote Australia". CAEPR Discussion Paper No. 286/2007.

a large area<sup>22</sup>. Currently, 462 Native Title land claims exist in Australia, including over 150 unresolved Native Title claimant applications in the Northern Territory alone (the highest number in the country)<sup>23</sup>.

*Several recent court judgments have granted native title rights to Indigenous peoples over traditional coastal and intertidal estates.*

Several court judgements have also provided some rights to coastal Indigenous peoples over their traditional coastal and intertidal estates (commonly referred to as 'sea country' by Aboriginal peoples living on or near the north Australia coast). In 2001, the High Court of Australia found that claims under the Native Title Act 1993 can be made over the sea, including on intertidal zones, although these rights are non-exclusive. They can include rights to access and extract water for non-commercial purposes, the right to fish, and the right to hunt and gather from the water<sup>24</sup>. In July, 2010, the Federal Court of Australia recognized non-exclusive native title rights of Indigenous Torres Strait Islanders over approximately 37 800 km<sup>2</sup> of sea in the Torres Strait between the Cape York Peninsula and Papua New Guinea<sup>25</sup>. Additionally, the High Court of Australia's 2008 decision in the landmark Blue Mud Bay case granted exclusive ownership of the intertidal zone adjacent to Aboriginal-owned land in a section of the Northern Territory (the adjacent land was originally granted under the Aboriginal Land Rights (Northern Territory) Act 1976 to the low water mark)<sup>26</sup>. The practical ramifications of this decision are still being negotiated, but as a legal decision, it significantly increases the power of Aboriginal peoples to manage their coastal estates, including controlling access and commercial use<sup>27</sup>.

Indigenous peoples living in coastal areas (also referred to as 'Saltwater People' in Australia) may have customary ownership of entire coastal areas; traditional clan ownership of territory in marine areas included the foreshore, reefs, seabed, and even the saltwater itself<sup>28</sup>. Consistent with this interpretation, many Indigenous representatives have stated publicly that they wish to take primary responsibility for sea country, which includes the right to exclude and manage visitors (both professional and recreational) more appropriately<sup>29</sup>.

From the time that settler and then state colonization of north Australia began, Indigenous peoples and communities have experienced profound upheaval. This process of marginalization and disempowerment still persists<sup>30</sup>, with the continuation of the struggle by Indigenous peoples to access and benefit from the abundant natural resources of north Australia arguably far from over. Meanwhile, Indigenous Australians are increasingly looking to establish contemporary management control over, and address a growing array of new threats and issues to, the lands and seas for which they have long-held rights and responsibilities for caring for country<sup>31</sup>. At the same time, they are looking to develop new and innovative livelihood options based on these caring for country obligations for demographically young and growing populations in remote locations across a vast and sparsely populated region<sup>32</sup>.

22 For a geographical perspective of Native Title land claims applications in Australia, see National Native Title Tribunal, 2009. "National Maps". Last accessed July 31, 2010, at: <http://www.nntt.gov.au/Publications-And-Research/Maps-and-Spatial-Reports/Pages/National-Maps.aspx>.

23 National Native Title Tribunal, 2009. "Native Title in Australia". Last accessed July 31, 2010, at: <http://www.nntt.gov.au/Native-Title-In-Australia/Pages/National-Perspective.aspx>.

24 National Native Title Tribunal, 2000. "Native title facts: water, fishing and native title". Last accessed July 31, 2010, at: [http://www.nntt.gov.au/Publications-And-Research/Publications/Documents/Fact%20sheets/Water\\_fishing\\_and\\_native\\_title.pdf](http://www.nntt.gov.au/Publications-And-Research/Publications/Documents/Fact%20sheets/Water_fishing_and_native_title.pdf).

25 National Native Title Tribunal, 2010. "Torres Strait Regional Sea Claim". Last accessed July 31, 2010, at: <http://www.nntt.gov.au/News-and-Communications/Newsletters/Talking-Native-Title/Documents/PR10-09-%20Torres%20Strait%20Regional%20Sea%20Claim%20-%20BACKGROUNDER.pdf>.

26 Northern Territory of Australia v. Arnhem Land Aboriginal Land Trust [2008] High Court of Australia 29 (July 30, 2008).

27 For a brief background and explanation of the case, see National Native Title Tribunal, 2008. "The Blue Mud Bay Decision". Last accessed July 31, 2010, at: <http://www.nntt.gov.au/News-and-Communications/Newsletters/State-E-Newsletters-Archive/Documents/State%20e-newsletter%20NT%20Oct%202008%20-%20attachment.pdf>.

28 Sharp, 2002.

29 Peterson, N., and B. Rigsby (eds.), 1998. "Customary Marine Tenure in Australia". *Oceania Monograph* 48; Morrison, J. H., and P. Josif, 2007. "The Future of Indigenous Sea Country Management", pages 62-67 in Luckert, M. K., B. M. Campbell, J. T. Gorman, and S. T. Garnett (eds.), *Investing in Indigenous Natural Resource Management*. Charles Darwin University Press: Darwin, Northern Territory.

30 Morrison, 2007.

31 These rights and responsibilities stem from the long occupation of the country and were handed down to Indigenous peoples by ancestral beings. These cultural, spiritual, and physical rights and obligations are governed by a complex body of traditional law that tells people how to relate to each other and to their country and the resources they hunt and collect (including, for example, when it is time to gather food and how it should be shared, how to hunt but not take too much, and when and how country should be burnt).

32 Morrison, 2007.



## THE NORTH AUSTRALIAN INDIGENOUS LAND AND SEA MANAGEMENT ALLIANCE

Recognizing the need to support culturally appropriate livelihoods and to better coordinate Indigenous land and sea management and development across north Australia, senior Indigenous leaders of major Indigenous organizations formed the North Australian Indigenous Land and Sea Management Alliance (NAILSMA) in 2001<sup>33</sup>. NAILSMA's mission is to support Aboriginal and Torres Strait Islander land and sea management using strategic approaches to care for country, with an emphasis on practical management by Traditional Owners across north Australia<sup>34</sup> (see Figure 1).

NAILSMA is active in developing and communicating policy change relevant to Indigenous land and sea management. It also secures resources for and coordinates a range of programmes across north Australia, including the following: reinstating traditional fire management by linking traditional burning practices to economic opportunities in areas of carbon and greenhouse gas abatement and trading; aiming to ensure that Indigenous rights to freshwater, including commercial rights, are guaranteed in the developing process of water allocation across north Australia; supporting inter-generational transfer of Indigenous Ecological Knowledge; linking Saltwater People to share tools, knowledge, and skills about marine and coastal management; developing Indigenous leadership; and developing culturally appropriate communication tools.



**Figure 1.** Map of Australia indicating NAILSMA's area of operation. © NAILSMA

A significant impetus for the formation of NAILSMA has been the rapid increase over the past two decades in the number of localized, Indigenous community-based land and sea management organizations, which have emerged in part from the aforementioned desire to manage country in a contemporary context<sup>35</sup>. Many of these organizations support an Indigenous ranger programme – the operational expression of Indigenous management aspirations. Rangers undertake a wide range of activities relevant to biodiversity conservation and protected area management, including cultural mapping and site maintenance, biodiversity and habitat mapping and monitoring, fire management, weed and feral animal control, biosecurity<sup>36</sup> surveillance, and fisheries surveillance. In the majority of cases, ranger programmes operate on Indigenous-owned land<sup>37</sup>; however, some ranger groups are operating on traditional estates that have not been legally recognized under a joint management arrangement or pastoral lease or excision<sup>38</sup>.

Indigenous land and sea management organizations obtain their funding from a range of sources and in innovative ways, including through government programmes, industry agreements, research-based funding, philanthropy, and their own enterprise or community sources. A key role of NAILSMA is to provide networking, communication, training, and other resources to Indigenous rangers as part of its overall mission to support Indigenous land and sea management.

NAILSMA's efforts in advocating for government to invest into Indigenous land and sea management include the Australian Government's 'Working on Country' programme. Since 2007, the Working on Country programme has funded employment of Indigenous peoples through host agencies to perform environmental work on country as a way to support

33 The Kimberley and Northern Land Councils and Balkanu Cape York Development Corporation came together in 2001 to establish NAILSMA. In addition, the Carpentaria Land Council Aboriginal Corporation became a member of the Alliance in 2004.

34 The Alliance was established to broadly support Indigenous land and sea managers in north Australia. Its strategic direction and focus is provided through the Board, which comprises a Chair and executives of the core partners representing each major region, implemented by the NAILSMA CEO through practical projects that operate across the north.

35 Morrison, 2007.

36 The term 'biosecurity' is commonly used in Australia and refers to the protection of people and native and domestic flora and fauna from disease, introduced pests, and other biological threats.

37 That is, land that has been returned to its Traditional Owners through the Aboriginal Land Rights (Northern Territory) Act 1976 and/or the Native Title Act 1993.

38 Pastoral leases are a unique Australian form of land tenure that allow for the use of Crown land by farmers. Pastoral leases historically made up a large percentage of northern Australia and remain substantial today.

Indigenous aspirations to care for country. In 2008, the Working on Country programme was extended and funded to employ 300 Indigenous rangers over five years. From 2007 to 2008, 23 projects were funded and this number is expected to grow in the future<sup>39</sup>.

## I-TRACKER: A NEW TOOL FOR INDIGENOUS RANGERS WORKING ON COUNTRY



**Figure 2.** Example of industrial-strength field computer coupled with CyberTracker® software. © NAILSMA

The large amounts of data generated by ranger activities and the traditional Indigenous knowledge of participating individuals and communities is helping to fill the significant gaps in knowledge and understanding about north Australian terrestrial, coastal, and aquatic ecosystems. Much of north Australia is sparsely populated and Indigenous rangers are often the only locally-based managers present. Furthermore, Indigenous rangers, through their experiences in the management of migratory species such as marine turtles and dugong, recognize the importance of coordinated data collection and sharing to address landscape-scale issues across north Australia. This has led Indigenous ranger programmes to identify as high priority the need for effective information and data management systems that are owned locally and support local decision-making, while supporting cross-regional sharing and collaborative decision-making<sup>40</sup>.

provides Indigenous rangers with practical tools, training, and a data-sharing network to support mapping and monitoring of biodiversity as a practical means of asserting a rights-based approach to caring for country. Field data collected under the I-Tracker programme involves rangers using industrial-strength, touch-screen handheld computers, each with a built-in Global Positioning System (GPS) and coupled with CyberTracker® software and standardized data collection applications (see Figure 2).

In response, NAILSMA developed an initiative called I-Tracker ('Indigenous Tracker'), which

CyberTracker® software is free and has a large and growing community of users around the world; it has been downloaded over 30 000 times in 190 countries<sup>41</sup>. Using CyberTracker® links Australian Indigenous rangers into a global network of similar community-based initiatives. This global network facilitates access to technical expertise and creates opportunities for international exchanges between community-based resource managers.

Designed to assist users with low literacy, customized applications written in the CyberTracker® software are comprised of a series of screens that prompt the user to record observations by responding to a query on a touch screen. For example, in the I-Tracker 'Saltwater Country Patrol' CyberTracker® application, if a ranger records that they have seen a marine turtle, the following screen will ask him or her to record the species by choosing from a pictorial list of marine turtle species, and so on (see Figure 3). The series of observations recorded for each sighting are then associated with a GPS location, date, and time. CyberTracker® also allows for geo-referenced capture of digital images and audio recordings.

Data collected in the field can quickly and easily be uploaded from the ranger's handheld computer to a database (automatically created by the CyberTracker® software) on the office computer, where it can be interrogated, viewed on a map, and used to create customized reports. Figure 4 provides an example of a map created using CyberTracker® software and data

39 Commonwealth of Australia, Department of the Environment, Water, Heritage and the Arts, 2009. "Working on Country, A Retrospective 2007-2008". Last accessed July 31, 2010, at: <http://www.environment.gov.au/indigenous/publications/pubs/working-on-country.pdf>.

40 Jackson, M., D. Burton, and R. Kennett, 2009. "The I-Tracker Report: A review of the I-Tracker data collection and management program across north Australia". Last accessed July 31, 2010, at: <http://www.nailsma.org.au/nailsma/publications/downloads/Itracker-report-web.pdf>.

41 Liebenberg, L., 2008. "The CyberTracker Revolution". Last accessed July 31, 2010, at: <http://rolexawards.com/en/the-laureates/louisliebenberg-the-project.jsp>.

collected using the I-Tracker 'Saltwater Country Patrol' CyberTracker® application. This method of spatial data collection greatly increases the quality of the data by eliminating the inaccuracy associated with inputting data manually into a computer database from handwritten data sheets.

Data collection within the context of the I-Tracker project is underpinned with a set of guiding principles that were developed by project participants. These principles highlight the importance of collecting data appropriately within a community context. They assert that agreements and protocols should be in place to ensure that appropriate community members have given approval for data collection to take place and that use and ownership of the data to be collected has been discussed and agreed. The I-Tracker project is aimed primarily at providing a tool to inform local decision-making about land and sea management. It allows Indigenous peoples to utilize traditional knowledge, as well as scientific data, to monitor changes in the environment over time and make management decisions accordingly. Using I-Tracker tools enables rangers to carry out activities regarded as part of their traditional responsibilities to care for country, while being empowered through a data collection process that involves them in management and communicates information that is recognized and understood by government and other funding and conservation organizations.

The Saltwater Country Patrol CyberTracker® application used in the I-Tracker project was developed in collaboration with Indigenous ranger groups (particularly the Djelk rangers, based in Maningrida, Northern Territory), researchers, and external agencies, some of which engage Indigenous rangers in environmental 'fee-for-service'<sup>42</sup> work. By collaborating with the 'end users' of data (external organizations or individuals interested in working with the data), the I-Tracker programme allows rangers to provide clear and reliable data and reports to fee-for-service contractors. Collaborations with scientists will also ensure that the I-Tracker project can provide a scientifically robust method to monitor spatial and temporal changes in the distribution and abundance of natural resources.

A key value of the I-Tracker network is that it allows data collected at a local scale to be amalgamated at wider regional scales. CyberTracker® data collected with a common application (for example, the Saltwater Country Patrol) can be combined into













Animals	What Kind of Live Animal?	What Kind of Turtle?
Marine Animal-NOT sick/in net 	Live Turtle 	Don't Know Turtle Species
Turtle Nest 	Live Dugong 	Loggerhead Turtle
Turtle Tracks 	Live Dolphon 	Green Turtle
Dead/Sick Animal (Not in net) 	Live Whale 	Leatherback Turtle
Fish Kill 		<b>Olive Ridley Turtle</b>
		Hawksbill Turtle
		Flatback Turtle
		

Figure 3. Replication of CyberTracker© application screen sequence. © NAILSMA

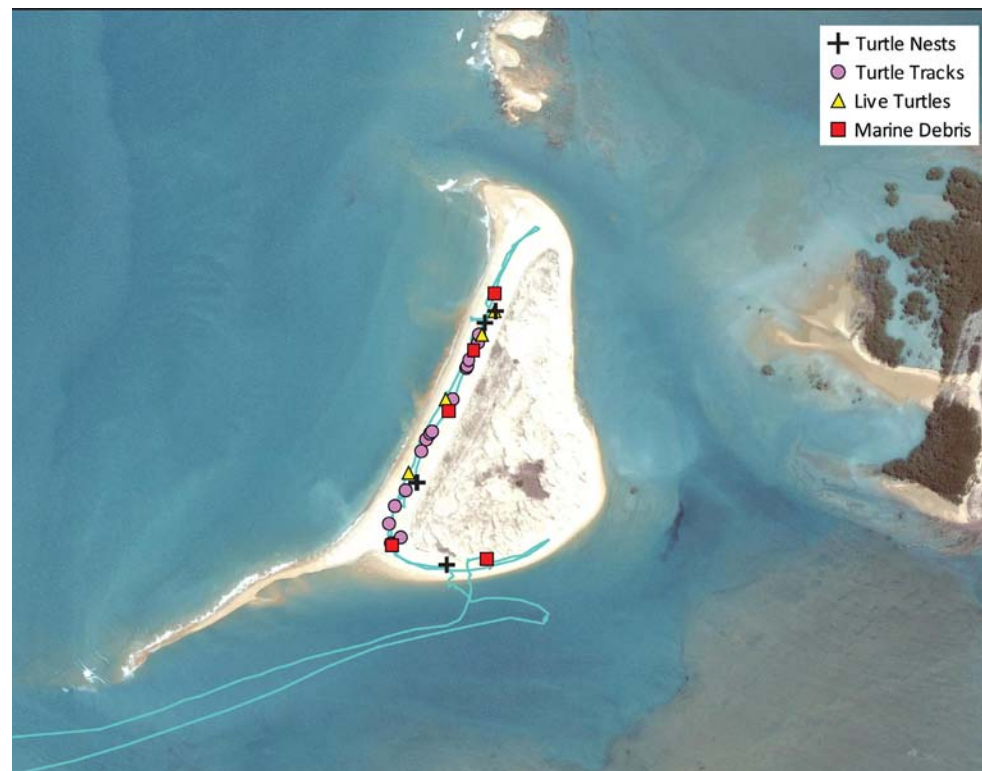


Figure 4. Report created using CyberTracker© data from Baresand Island, Northern Territory, Australia. © NAILSMA (report)/Google (satellite imagery)/TerraMetrics/MapData Services PtyLtd, PSMA/DigitalGlobe (images)

<sup>42</sup> The fee-for-service model, whereby an outsider contractor (for example, a government department, an interested corporate entity such as a mine, or an environmental NGO, among others) pays rangers to conduct specific environmental services (such as monitoring, clean-ups, and so on), has been widely adopted by ranger programmes in north Australia.



a single database. Such pooled data can contribute to regional and national understandings of wildlife population health, adding significant value to data concerning migratory species or regional environmental issues. To test this concept, ten ranger programmes from across north Australia trialled a common CyberTracker® application over a three- to six-month period, yielding 3 408 sightings over 266 patrol days<sup>43</sup>. Combining data from different communities notably raises issues of data ownership and protection and requires the development of appropriate licensing agreements that balance access with ownership rights. I-Tracker's guiding principles are central to the development of such agreements.

Underpinned with guiding principles that are focused on the cultural rights and obligations of Traditional Owners, the I-Tracker project is creating the infrastructure, skills, knowledge, and local capacity for an effective rights-based approach to local land and sea management, which in turn supports Indigenous livelihoods based on traditional rights to caring for country.

## INDIGENOUS RANGER PROGRAMMES AND IMPLEMENTATION OF LEGAL INSTRUMENTS

Indigenous ranger programmes and accompanying environmental monitoring regimes (such as the I-Tracker project) have significant potential to fulfil national and international legal obligations relating to the rights of Indigenous peoples and biodiversity conservation. For example, UNDRIP stipulates that "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their ... lands, territories, waters and coastal seas and other resources" (Article 25). It also calls on states to provide assistance for the conservation and protection of traditional lands (Article 29). Similarly, Article 8(j) of the CBD states that signatories shall "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the

holders of such knowledge". Article 10(c) of the CBD further stipulates that signatories shall "protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements." Support for ranger programmes, coupled with historic and ongoing land claims recognition, is a practical and culturally effective way to implement these provisions and to provide meaningful employment to Indigenous peoples to manage and protect their customary lands.

*The I-Tracker project is creating the local infrastructure and capacity for a rights-based approach to caring for country.*

In that sense, Indigenous ranger programmes in general are one way in which Australia can implement international obligations relating to conservation and biodiversity (such as the CBD) on Indigenous lands. In the last decade, there has been significant development of

and support for Indigenous Protected Areas, which are voluntary declarations made by Indigenous communities in areas of Indigenous-owned land after appropriate community consultation. Indigenous managers receive some support from the Australian Government to carry out land management work in these areas in order to promote conservation of biodiversity and culture. Management of Indigenous Protected Areas is often conducted by Indigenous rangers through a plan of management agreed to by government and relevant local landowners.

The establishment of ranger programmes by local Traditional Owners has involved extensive consultation with local communities, ranger groups, and external stakeholders over almost two decades. Similarly, the Indigenous Protected Areas programme has responded to this growth and Indigenous desires to manage parts of their lands and to place, in some instances, a significant portion of their lands into the National Reserve System. Australia's National Reserve System is the country's primary means of contributing to its international obligations as a signatory to the CBD, which set a target for 10 percent of the world's eight eco-regions to be included in protected areas by 2010. The major target of Australia's National Reserve System is to have at least 10 percent of all bioregions included<sup>44</sup>. Indigenous Protected Areas make a significant contribution to this goal, currently making up more than 23 percent of Australia's National Reserve System, with significant growth predicted as current consultation projects are finalized and new areas funded over the next one to two years.

While not legally binding, Indigenous Protected Area lands are managed for conservation to a standard suitable for inclusion in Australia's National Reserve System. All areas declared as a part of the National Reserve System must meet international

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<sup>43</sup> Jackson *et al.*, 2009.

<sup>44</sup> Commonwealth of Australia, Department of the Environment, Water, Heritage and the Arts, 2010. "National Reserve System". Last accessed July 31, 2010, at: <http://www.environment.gov.au/parks/nrs/index.html>.

standards for the definition of a protected area and each reserve allocates its management category to one of the six categories for protected areas defined by IUCN<sup>45</sup>. Many of the Indigenous ranger groups engaged in the I-Tracker project are managers of Indigenous Protected Areas and the Australian government is currently supporting the development of CyberTracker-based monitoring regimes across the wider Indigenous Protected Areas estate<sup>46</sup>. As such, these programmes also speak to the CBD Programme of Work on Protected Areas, particularly Goal 2.2 of Element 2, which stipulates that CBD signatories ensure the full and effective participation of Indigenous peoples and local communities in the management of existing and establishment of new protected areas<sup>47</sup>.

By enabling them to collect spatial data on threatened species, the I-Tracker project also facilitates the participation of rangers in species-focused national and international conservation frameworks. For example, Australia is a signatory to The Memorandum of Understanding (MoU) on the Conservation and Management of Dugongs (Dugong dugon) and their Habitats throughout their Range<sup>48</sup>, which was developed under the Convention on Migratory Species to facilitate national and international action to achieve conservation outcomes for dugong populations and habitats<sup>49</sup>. Collection, collation, and communication of comparable spatial data on dugong and dugong habitats on Indigenous-managed sea country have the potential to make a valuable contribution to several of the MoU's nine stated objectives. Nationally, species listed as threatened under the Environmental Protection and Biodiversity Conservation Act 1999 have recovery plans with similar aims.

The active participation of Indigenous Australians in local ranger programmes and regionally coordinated initiatives such as NAILSMA provide a mechanism for Australia to meet a number of international obligations regarding biodiversity conservation and Indigenous rights. Government recognition for this opportunity is evidenced by funding support for the Indigenous Protected Area programme, which significantly boosts Australia's overall protected area estate; it also enlists the active engagement of rangers and NAILSMA in data collection activities to improve management of listed species.

## CONCLUSION

The biodiversity of north Australia has become globally recognized for a number of important reasons and Indigenous cultural, linguistic, and long-standing tradition make it possible for the remaining biodiversity to be co-conserved with the broader Australian community. Indigenous land and sea managers understand that their unique skills and cultural obligations do not occur without question or doubt. Consequently, the growing legal and moral recognition of native title rights in Australia and subsequent return of lands and seas to Traditional Owners has catalyzed the development of contemporary land and sea management organizations across tropical northern Australia. These organizations and their initiatives are empowering Indigenous peoples to fulfil long-held rights and responsibilities to look after country. They also assist Australia in meeting its national and international obligations towards the protection of biodiversity and the recognition and support of Indigenous peoples' rights. In the longer term, the growth of localized social capital, infrastructure, skills, knowledge, and Indigenous management delivery across the north through networks like NAILSMA and its I-Tracker programme have the potential to create and support new livelihoods and alternative futures for north Australia's Indigenous peoples and their country.

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45 Dudley, N. (ed.), 2004. *Guidelines for Applying Protected Area Management Categories*. IUCN: Gland, Switzerland.

46 Bruce Rose, personal communication, August, 2010.

47 Secretariat of the Convention on Biological Diversity, 2004. *Programme of Work on Protected Areas*. Last accessed July 31, 2010, at: <http://www.cbd.int/doc/publications/pa-text-en.pdf>

48 United Nations Environment Program (UNEP) and Convention on Migratory Species, 2007. "Memorandum of Understanding on the conservation and management of dugongs and their habitats throughout their range". Last accessed July 31, 2010, at: [http://www.cms.int/species/dugong/pdf/Dugong\\_MoU\\_E.pdf](http://www.cms.int/species/dugong/pdf/Dugong_MoU_E.pdf).

49 United Nations Environment Program (UNEP), 2004. "Conservation and Management of Dugongs". Last accessed July 31, 2010, at: <http://www.cms.int/species/dugong/index.htm>