

Human Rights Standards for Conservation

An Analysis of Responsibilities, Rights and Redress for Just Conservation

Harry Jonas, Dilys Roe and Jael E. Makagon

Research Report

November 2014

Biodiversity; Law

Keywords:
Conservation, Human Rights, Indigenous
Peoples, Protected Areas



NATURAL JUSTICE

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Acknowledgements

We would like to thank the Technical Advisory Group of the project who commented on two of the discussion papers upon which this synthesis is based:

Marcus Colchester – Forest Peoples Programme
Leonardo Crippa – Indian Legal Resource Centre
Thomas Greiber – IUCN Environmental Law Centre
Seanna Howard – University of Arizona
Simone Lovera – Global Forest Coalition
Cynthia Morel – Consultant, and Counsel on the Endorois Case
Elisa Morgera – Edinburgh University
Max Ooft – VIDS, Suriname
Sandy Patterson – University of Cape Town
Harry Roque and Gil Anthony Aquino – University of the Philippines
Annalisa Savaresi – Edinburgh University
Kanyinke Sena – Indigenous Peoples of Africa Coordinating Committee
Maui Solomon – Kawatea Chambers, New Zealand
Jenny Springer – Rights and Resources Initiative
Elsa Tsoumani – International legal expert
Niall Watson – World Wildlife Fund

We would also like to thank Francesca Booker and Mike Day, visiting researchers at IIED, who compiled the list of “conservation injustices” in Appendix 1; and Athene Dilke who worked with Natural Justice to conduct the analysis of international instruments, CBD decisions and IUCN resolutions and recommendations summarised in Section 3.

Produced by IIED's Natural Resources Group

The aim of the Natural Resources Group is to build partnerships, capacity and wise decision-making for fair and sustainable use of natural resources. Our priority in pursuing this purpose is on local control and management of natural resources and other ecosystems.

Natural Justice: Lawyers for Communities and the Environment is a non-profit organization, registered in South Africa since 2007. Through its offices in Cape Town, New York, Bangalore and Kota Kinabalu, Natural Justice works at the local level to support Indigenous Peoples and local communities, provide advice at the national level and engage in international processes, such as meeting of the Convention on Biological Diversity.

naturaljustice.org

Published by IIED, November 2014

Harry Jonas, Dilys Roe and Jael E. Makagon. 2014. *Human Rights Standards for Conservation: An Analysis of Responsibilities, Rights and Redress for Just Conservation*. IIED Issue Paper. IIED, London.

<http://pubs.iied.org/14644IIED>

ISBN 978-1-78431-113-1

Printed on recycled paper with vegetable-based inks.

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This research report presents a synthesis of the relevance of human rights standards to different conservation actors, an assessment of current standards and trends in international law, and an analysis of the various redress mechanisms available when rights are violated. It concludes with a number of options for further elaborating a set of minimum human rights standards to be applied to all conservation initiatives. It is hoped that this work will inject fresh energy into the ongoing debate about how best to tackle conservation injustice.

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I have come here to tell you that it is the order of the Administration that you move out of Game Reserve No. 2. The reason for this order is that you are destroying the game. You may go into the Police Zone and seek work on the farms South of Windhoek, or elsewhere. You must take your women and children with you, also your stock... You will have to be out of the Game Reserve the 1st May, 1954. If you are still in the Game Reserve on that day you will be arrested and will be put in gaol. You will be regarded as trespassers... None of you will be allowed to return to Game Reserve No. 2 from Ovamboland... If you have something to say I will listen but I wish to tell you that there is no appeal against this order. The only Bushmen who will be allowed to continue to live in the Game Reserve are those in the employ of the Game Wardens. Convey what you have heard to your absent friends and relatives.

H. Eedes, Native Commissioner of Ovamboland, to the Hai||om people of Etosha, 1954

... injustices to indigenous peoples have been and continue to be caused in the name of conservation of nature and natural resources...

IUCN Resolution No. 4.052, Implementing the UN Declaration on the Rights of Indigenous Peoples, 2008

Activities/interactions related to biological diversity, and the objectives of the Convention on Biological Diversity, such as conservation, ought not to cause indigenous and local communities to be removed from their lands and/or lands and waters traditionally occupied or used by them, as applicable, by force or coercion and without their consent. Where they consent to removal they should be compensated. Whenever possible, these indigenous and local communities should have the right to return to their traditional lands. Such activities/interactions should not cause indigenous and local community members, especially the elderly, the disabled and children to be removed from their families by force or coercion.

Tkarihwaí:ri Code of Ethical Conduct Section 2(19), 2010

The implementation of Article 29.1 of the Declaration [on the Rights of Indigenous Peoples], which affirms the right of indigenous peoples “to the conservation and protection of the environment and the productive capacity of their lands, territories and resources”, is of great importance not only for indigenous peoples but for everyone on the planet. It is well known that indigenous territories contain a wealth of biodiversity and provide environmental benefits of global value. However, the fundamental precondition for the objectives of this article to be met is the recognition, respect and guarantee of the rights of indigenous peoples to their lands, territories and resources. This is the basis for fulfilling other rights contained in the Declaration, particularly the rights of indigenous peoples to self-determination and to determine priorities for their territories. The most effective way to achieve conservation and environmental protection of indigenous peoples’ environments is to secure and protect their rights and support their own forms of conservation and land management.

IUCN statement at the World Conference on Indigenous Peoples, 2014

Foreword

In 2013 Natural Justice published the second edition of *The Living Convention*¹ – the first compilation of the full extent of international law relevant to Indigenous and Tribal peoples and local communities. It sets out the specific provisions of relevant international instruments in an integrated compendium, so that – for example – all provisions from across the full spectrum of international agreements that deal with ‘free, prior and informed consent’ are grouped under the same heading.

Building on its earlier engagement in the Conservation Initiative on Human Rights,² the International Institute for Environment and Development (IIED) is working with Natural Justice and an advisory group of Indigenous and other lawyers and practitioners to further develop *The Living Convention* to provide a clear articulation of minimum human rights standards for stakeholders working in the context of protected areas and other effective area-based conservation measures – as described in Aichi Biodiversity Target 11. Like *The Living Convention*, this approach is based on existing international law and policy.

In this context, the first publication in the Human Rights Standards for Conservation series – *To Which Conservation Actors do International Standards Apply?* – provides an analysis of the relevance of human rights standards to different conservation actors, including governments and their agencies, international organizations, businesses, and non-governmental organizations.

The second publication – *Which International Standards Apply to Conservation Initiatives?* – analyses international instruments, decisions of the Convention on Biological Diversity and IUCN resolutions to provide an assessment of the current standards and normative trends in international law and policy as they relate to conservation initiatives.

The third publication – *Which Redress Mechanisms are Available to Peoples and Communities Affected by Conservation Initiatives?* – provides an analysis of the various redress mechanisms available to individuals, groups and organizations (depending upon the context and mechanism) when their rights are violated by conservation initiatives. It addresses mechanisms within the UN system, in regional human rights systems, as well as those that are not administered by governments, and explains the strengths and weaknesses of each.

This synthesis report provides a summary of these three publications and proposes a number of options for further elaborating a set of minimum human rights standards to be applied to all conservation initiatives. We welcome feedback from all interested parties on these proposals.

Dilys Roe (IIED) and Harry Jonas (Natural Justice), 1 November 2014

Summary

The Vth World Parks Congress (WPC) in 2003 is considered to have ushered in a “new paradigm for protected areas.” The preamble of the Durban Action Plan’s Outcome 5 acknowledges that: “many protected areas have been established without adequate attention to and respect for the rights of Indigenous Peoples, including mobile Indigenous Peoples, and local communities, especially their rights to lands, territories, and resources, and their right freely to consent to activities that affect them.” In this context, there was agreement about a range of targets to be achieved by the following WPC, including that all existing and future protected areas should be established and managed in full compliance with the rights of Indigenous Peoples and local communities (Target 8).

Yet a decade after the Vth WPC, research undertaken by IIED and Natural Justice highlights that many protected areas continue to be established and managed in ways that fail to uphold the rights of Indigenous Peoples and local communities (see Appendix 1). This publication summarises the findings of that research with the aim of stimulating discussion about the issues and spurring decisions about the steps necessary to ensure that ‘21st Century conservation’ is necessarily just conservation.

Section 2 highlights how it is not just States that are obligated to uphold human rights standards but that non-state actors including international organisations, businesses and NGOs (including funders) also have responsibilities. Consequently they should not design, fund or implement conservation initiatives that violate the rights of Indigenous Peoples and/or local communities.

Section 3 provides an overview of international law relevant to conservation and the rights that are provided for within that body of law. The analysis shows that there now exists a very detailed and situation-specific set of internationally agreed rights of Indigenous Peoples and local communities that should be fully considered by actors involved in conservation initiatives. Distilling this large body of international law to identify key standards that should be upheld in all conservation settings is of utmost importance if conservation actors are to play their part in respecting human rights in the areas in which they work.

Section 4 underscores the challenges that Indigenous Peoples and local communities face when seeking redress for harm caused by conservation actors who have violated their rights. It asks whether there is a need for new forms of redress mechanisms to respond to the widespread nature of this problem.

Finally, Section 5 proposes a number of options, each of which presents tangible approaches to address the issues. Options include a collaborative programme of work to elaborate clear standards and develop guidelines for all rights-holders and stakeholders involved in conservation initiatives.

It is hoped that this work will inject fresh energy into the ongoing debate about how best to tackle conservation injustice. In doing so, it aims to provide a firm foundation on which to build a collaborative effort towards ensuring that countries achieve the targets set out in the UN Strategic Plan for Biodiversity 2011-2020 while also upholding internationally agreed human rights standards.

1

Introduction

In September 2014, three events took place in disparate parts of the world that together highlight the multifaceted relationship between human rights and conservation. First, in New York, the UN General Assembly adopted the Outcome Document of the World Conference on Indigenous Peoples (WCIP).³ The document reaffirms and recognizes, among other things: a) support for the United Nations Declaration on the Rights of Indigenous Peoples;⁴ b) commitments to obtain free and informed consent prior to the approval of any project affecting Indigenous Peoples' lands or territories and other resources;⁵ c) commitments to acknowledge, advance and adjudicate the rights of Indigenous Peoples pertaining to lands, territories and resources;⁶ and d) the significant contribution of Indigenous Peoples to the promotion of sustainable development⁷ and ecosystem management, including their associated knowledge.⁸

Second, in eastern Tanzania, members of Uvinje (which is a sub-village of Saadani Village) spent September 2014 living in fear that they would be forcibly removed from their traditional lands and waters due to the expansion of Saadani National Park. The park was created in the 1960s as a game reserve and included land contributed by Saadani Village because of residents' concern at indiscriminate killing of wildlife by outsiders. At that time, the game reserve explicitly allowed for local access and use. But in 2004, the game reserve was gazetted as a national park, thereby prohibiting all access and use by villagers, including from Saadani Village. In 2005, local people discovered that additional coastal land had been incorporated into the official map of the park and that, as a result, they were no longer entitled to live there or to use the land. A decade on, the park's boundaries remain in dispute, and people from Uvinje are currently seeking an urgent injunction to halt their eviction from their ancestral lands.⁹

Third, on the 26th of September 2014, the Kenyan government established a Task Force dedicated to the implementation of the 2010 ruling of the African Commission on Human and Peoples Rights, which recognised rights of the Endorois people over their ancestral land in and around Lake Bogoria in Kenya's Rift Valley. The landmark ruling set a precedent that Indigenous Peoples in Africa are legally entitled to collective ownership of their ancestral lands. Yet, for nearly five years following the ruling there has been little progress towards its implementation, despite intensive lobbying for action by the Endorois Welfare Council, the Endorois' representative body, and calls for implementation by the African Commission.¹⁰

These events each highlight a particular facet of the human rights dimension of conservation initiatives. First, the World Conference on Indigenous Peoples (WCIP) illustrates the universal recognition of the rights of Indigenous Peoples at the international level, and the increasingly nuanced approach by states to the particular challenges faced – and contributions made – by Indigenous Peoples. Second, The Uvinje Village members' ongoing plight presents a sharp contrast to the international consensus. It reminds us that beyond the supportive UN-level statements and regional jurisprudence there remains a significant level of exploitation and marginalization of Indigenous Peoples and local communities at the local level. Speaking at the WCIP, IUCN addressed this issue, stating that: "In terms of [Indigenous Peoples'] rights to lands, territories and resources, there is indeed a large gap between statements and concrete actions."¹¹ Third, the Kenyan government's actions shed light on an issue that blights international and regional justice systems, namely enforcement. Despite winning their case, the Endorois people have yet to see full implementation of the African Commission's recommendations, and continue their struggle against a long-running injustice perpetrated in the name of conservation.

These events underscore a clear need for more work concerning the human rights dimension of conservation initiatives so as to ensure that the international commitments by states and well intentioned initiatives such as IUCN's work on rights-based approaches¹² and the Conservation Initiative on Human Rights¹³ are translated into ethical conservation at the local level.

In this context, the International Institute for Environment and Development (IIED) and Natural Justice worked with an advisory group of Indigenous and other lawyers and practitioners to engage with the key questions inherent to this ongoing injustice. IIED built on its earlier contribution to the Conservation Initiative on Human Rights and Natural Justice drew on *The Living Convention*¹⁴ to develop the building blocks for a clear articulation of minimum human rights standards for rights and stakeholders working in the context of protected areas and other effective area-based conservation measures, as described in Aichi Target 11. Like *The Living Convention*, the approach is based on existing international law and policy.

The first publication in the series – *To Which Conservation Actors do International Standards Apply?* – provides an analysis of the relevance of human rights standards to the following conservation actors:

- Governments and their agencies,
- International organizations,
- Businesses, and
- Non-governmental organizations, including private foundations.

The second publication – *Which International Legal Standards Apply to Conservation Initiatives?* – provides an analysis of the relevant law and policy by presenting analysis of: a) the relevant provisions in international legal instruments, b) decisions of the Conference of the Parties to the Convention on Biological Diversity (CBD), and c) resolutions and recommendations of the International Union for the Conservation of Nature (IUCN).

The third publication in the series – *Which Redress Mechanisms are Available to Peoples and Communities Affected by Conservation Initiatives?* – provides a review of existing judicial and non-judicial redress mechanisms available to Indigenous Peoples and local communities alleging infringement of their rights.

The overall findings of these publications are presented in this publication, in Sections 2-4. Section 5 proposes a number of options for further elaborating a set of minimum human rights standards for conservation initiatives from simple tools and guides for different actors to performance standards. To contextualize the analysis, Appendix 1 contains details of recent and current conservation conflicts.

2

Responsibilities: To Which Conservation Actors do International Standards Apply?

Human rights first appeared in international law in the early 1900s, when international law was widely considered to apply only to states. This perception continues in some places and among some actors. For example, in February 2004, the African Parks Foundation, a Dutch non-profit organisation, signed an agreement with the Ethiopian government to take over the management of Nechsar National Park. At the time, the park was inhabited and used by Kore farmers and Guji cattle herders, who were subsequently evicted by the Ethiopian government to allow for tourism development. The eviction process was highly contentious; houses were burned and access to grazing land restricted. When questioned about the position of African Parks Foundation, the chairman responded with the following statement: "African Parks has never been and will never be involved in questions of a political nature, such as the resettlement of people resettlement is not a matter for our organisation as Governments are sovereign in these matters in every country."¹⁵

But are states and government agencies solely responsible for upholding human rights? Or do international organisations, businesses and conservation organisations – such as the African Parks Foundation and their funders – also have responsibilities? While international human rights law developed in part as a way to protect individuals from the arbitrary use and abuse of power by states, many courts and scholars are now analysing whether other entities also have international legal responsibilities and obligations.

2.1 Who is Responsible for Conservation Justice?

The bulk of global conservation activities involve four main types of actors: government agencies; international organisations, such as the UN and its specialised agencies and international financial institutions; businesses; and national and international NGOs and foundations who implement and/or fund conservation. These diverse actors have different roles, obligations and responsibilities for ensuring just conservation under international law.

States

The standards that apply to states – and hence government conservation agencies such as protected area authorities – include the human rights obligations set forth in the instruments and standards to which they have agreed. In addition to the treaties in the International Bill of Human Rights, these obligations include the UN Declaration on the Rights of Indigenous Peoples, which, while not a formally binding treaty, reflects customary principles of international law and international consensus on the rights of Indigenous Peoples. Pursuant to these treaties and instruments, when undertaking or engaging in conservation-related activities, states should uphold the rights of affected peoples to self-determination, their territories, areas and natural resources, traditional knowledge, cultural integrity and full and effective participation in decision-making, among other rights. States should also ensure that private parties, such as businesses and NGOs, do not violate human rights and should provide an effective remedy if such violations occur.

International Organisations

International organisations are also recognised as being bound by human rights law and should not be used as a vehicle to infringe upon human rights. International organisations have a responsibility not to support conservation activities that violate human rights and to be proactive in preventing activities that infringe upon those rights.

Businesses

Over the past two decades, an increased focus on businesses' rights and duties has resulted in many guidelines for behaviour at the international level.¹⁶ In 2011, UN Special Representative John Ruggie developed a set of UN-endorsed 'Guiding Principles' on business and human rights, which have been broadly accepted by businesses, business organisations, and human rights NGOs.¹⁷ While the legal liabilities of businesses are largely defined by national standards, the Guiding Principles recognise that businesses have international responsibilities that extend beyond national standards as a result of their social licence to operate – regardless of the exact nature of national laws.

As a result, Ruggie based the application of the Guiding Principles (see Box 1) on businesses' social licence to operate rather than their status as subjects of international law: "Whereas governments define the scope of legal compliance, the broader scope of the responsibility to respect is defined by social expectations – as part of what

is sometimes called a company's social licence to operate". Although Ruggie drew a distinction between social responsibility and legal liability, he linked the content of societal expectations to human rights as they are set out in international law – in particular, the major human rights and labour conventions.

BOX 1: EXCERPT FROM RUGGIE'S GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

1. States, as "the primary duty-bearers under international human rights law", must respect, protect and fulfil human rights and fundamental freedoms.
2. Business enterprises should respect human rights, which in essence means that they should do no harm.
3. As part of states' duty to protect against business-related human rights abuses, they must ensure that effective remedies are in place in order to ensure that the duty is not rendered meaningless. Notably, this third principle is limited to human rights abuses that occur within a state's territory and/or jurisdiction.

NGOs, Including Foundations

The roles and responsibilities of NGOs and the private foundations that often fund conservation initiatives are less clear-cut. But the manner in which businesses have been treated under international law is instructive in analysing this issue given the general status of both businesses and NGOs as 'non-state entities'.

While the Guiding Principles do not explicitly extend to conservation NGOs or their non-governmental funders, these entities share similarities with businesses and it can be argued that they are bound by similar principles. In particular, as with businesses, NGOs also operate under a social licence, and this licence is often considered more socially- and environmentally-specific than that of businesses. In this context then, NGOs implementing or funding conservation should, at a minimum, respect human rights and 'do no harm' to Indigenous Peoples and local communities.

Some NGOs have already made individual or collective commitments to respect human rights. A number of NGOs are members of the Conservation Initiative on Human Rights (CIHR), which has developed several principles to guide their conservation work.¹⁸ These include the fundamental commitment to respect human rights and not contribute to infringements of human rights while pursuing their mission. Additionally, there is a proactive commitment to support and promote the protection and realisation of human rights within the scope of conservation programmes. More specifically, the participating conservation organisations have pledged to protect "those who are vulnerable" by making special efforts to avoid harm to them "and to support the protection and fulfilment of their rights within the scope of our conservation programmes".

Bringing these and other NGO principles in line with the Guiding Principles would entail linking a general commitment to "respect human rights" to specific human rights instruments, including the International Bill of Human Rights, ILO Convention 169, and the UN Declaration on the Rights of Indigenous Peoples. Conservation NGOs should avoid causing or contributing to adverse human rights impacts through their own

activities, and seek to prevent or mitigate adverse human rights impacts that are linked to their operations, even if they have not directly contributed to those impacts. Most importantly, this means that NGOs and their funders should refrain from engaging in or supporting conservation initiatives which have the effect of dispossessing Indigenous Peoples and local communities of their lands, territories or resources – as with the African Parks example above.

2.2 Conclusions

While debate continues about the binding nature of various developments in international law, there is an evolving consensus that internationally agreed standards regarding the human rights of Indigenous Peoples and local communities have been established through international instruments, customs and other sources of international law.

International law is a dynamic system that has evolved from generally being seen as applying only to states to one that is widely recognised as setting standards for non-state entities, including international organisations and businesses. Viewed through the lens of the United Nations' 'Protect, Respect and Remedy' human rights framework, in which the social licence of businesses to operate gives rise to their responsibility to respect human rights, other entities with similar or even broader social licences – such as NGOs and philanthropic entities – must also have similar responsibilities to respect human rights.

Regardless of whether conservation initiatives are designed, funded and/or implemented by states, international organisations, businesses or NGOs, they should neither cause nor support the violation of human rights. But what are those rights and where are they enshrined in law? Section 3 provides some insights.

3

Rights: Which International Standards are Applicable to Conservation Initiatives?

Indigenous Peoples and local communities have fought hard for the rights they have secured at the international level. However, one problem for conservation actors in trying to understand these rights – and consequently to respect and uphold them – is that they are enshrined in a very wide range of international instruments including human rights and environmental instruments, and in “hard” (binding) and “soft” (non-binding) agreements (Box 2).

BOX 2: INTERNATIONAL INSTRUMENTS WITH HUMAN RIGHTS IMPLICATIONS IN A CONSERVATION CONTEXT¹⁹

1. Universal Declaration of Human Rights (UDHR)
2. ILO Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries
3. United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP)
4. International Covenant on Civil and Political Rights (ICCPR)
5. International Covenant on Economic, Social and Cultural Rights (ICESCR)
6. International Convention of the Elimination of All Forms of Racial Discrimination (CERD)
7. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
8. Convention on the Rights of the Child
9. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

10. Convention on Biological Diversity (CBD), including:
 - Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization
 - Cartagena Protocol on Biosafety
 - Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol
 - Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities
 - Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity
 - Akwé: Kon Guidelines
 - Strategic Plan for Biodiversity 2010 – 2020 (including the Aichi Biodiversity Targets)
11. United Nations Conference on Environment and Development Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests
12. United Nations Forum on Forests Non-legally Binding Instrument on All Types of Forests
13. Convention on Wetlands of International Importance
14. United Nations Framework Convention on Climate Change
 - Cancun Agreements
15. United Nations Convention to Combat Desertification
16. The International Treaty on Plant Genetic Resources for Food and Agriculture
17. Global Plan of Action for Animal Genetic Resources and the Interlaken Declaration on Animal Genetic Resources
18. FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security
19. FAO Voluntary Guidelines on the Tenure of Land Fisheries and Forests in the Context of National Food Security (FAO Tenure Guidelines)
20. Convention on the Law of the Non-navigational Uses of International Watercourses
21. The Agreement on Trade-Related Aspects of Intellectual Property Rights
22. Convention Concerning the Protection of the World Cultural and Natural Heritage
23. Convention on the Protection and Promotion of the Diversity of Cultural Expressions
24. Convention for the Safeguarding of the Intangible Cultural Heritage
25. Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

These instruments contain a wide range of provisions relevant to upholding Indigenous Peoples' and local communities rights in a conservation context. The links to conservation are obvious for some categories of rights, such as those contained in the Convention on Biological Diversity (CBD). But other rights are equally important and should be actively considered by conservation actors. For example, the UN Declaration states that:

*Indigenous Peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.*²⁰

A conservation initiative that prevents access to traditional medicines, for example by the establishment of a protected area that excludes customary sustainable uses of biodiversity, is a clear violation of this right.²¹

3.1 Diverse Provisions, Diverse Rights

Over 30 non-exhaustive and non-exclusive categories of rights can be identified which can be affected by conservation interventions including:

Substantive Individual and Collective Rights

- Overarching human rights;
- Women;
- Children;
- Indigenous Peoples (collective rights);²²
- Traditional governance systems and customary laws;
- Cultural, spiritual and religious integrity;
- Assimilation;
- Cultural traditions;
- Cultural expressions;
- Knowledge, innovations and practices;
- Education and languages;
- Development;
- Cultural and natural heritage.

Substantive land, and natural resource rights

- Lands and Territories;
- Stewardship, governance, management, and use of territories, lands and natural resources;
- Customary use;
- Sustainable use;
- Equitable conservation of biodiversity;
- Protected areas;

- Sacred natural sites;
- Food and agriculture;
- Water;
- Climate change;
- Forests;
- Deserts.

Procedural Rights

- Benefit sharing;
- Precautionary approach;
- Free, prior and informed consent;
- Cultural, environmental and social impact assessments;
- Information, decision making and access to justice; and
- Capacity building and awareness.²³

Each category consists of provisions from a wide range of international legal instruments. Box 3 illustrates the abridged body of law that relates to just one particular rights category, namely 'cultural, spiritual and religious integrity', and highlights how an exclusionary conservation initiative could lead to its violation.

BOX 3: CULTURAL, SPIRITUAL AND RELIGIOUS INTEGRITY

Indigenous Peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains. (UNDRIP).

Indigenous Peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard (UNDRIP).

Indigenous Peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards (UNDRIP).

In applying the provisions of this Part of the ILO Convention No. 169 governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship (ILO 169).

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits (UDHR).

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language (ICCPR).

States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity (Declaration on the Rights of Minorities).

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching (ICCPR).

3.2 Spotlight on Conservation Law and Policy

Focusing on territory more familiar to conservation actors, the research explored what key international conservation instruments have to say about the issue. We focused on decisions adopted at Conferences of the Parties (COPs) to the CBD and on resolutions and recommendations passed at IUCN General Assemblies and Conservation Congresses.

The CBD makes explicit reference to the rights and needs of Indigenous people and local communities in relation to biodiversity conservation, and a review of the decisions taken since 2004 provides clear evidence that attention to these rights is increasing over time. Table 1 illustrates the increasing focus on the rights of Indigenous Peoples and local communities by parties to the CBD, as evidenced by the increasing percentage of CBD decisions that reference “indigenous and local communities”²⁴ between 2004 (COP 7) and 2012 (COP 11).

Table 1: COP decisions that reference “indigenous and local communities” (%)

	COP 7	COP 8	COP 9	COP 10	COP 11
Indigenous and local communities	48.4%	58.8%	63.9%	66%	72.7%

Protected areas are one of the most common forms of conservation intervention and the CBD is clear on its stance towards Indigenous Peoples' and local communities' rights in this regard. The Programme of Work on Protected Areas (PoWPA) calls for the equitable sharing of costs and benefits as well as full and effective participation. An analysis of all the decisions taken by the CBD since COP 7 illustrates that this concern extends far beyond 'protected areas' as an area of law and policy. The research highlights the fact that parties affirm a wide range of rights and related considerations across the CBD's thematic programmes and crosscutting issues. This includes recognition, respect and support for:

- Areas of social and cultural importance;
- Appropriate information in an accessible language;
- Beliefs, customs, practices and social behaviour;
- Community-based approach(es) to land, water and resource management;
- Cultural, social and environmental impact assessments in specific situations (Akwé: Kon Voluntary Guidelines); cultural diversity; and culturally appropriate approaches;
- Customary laws and traditions;
- Empowerment of Indigenous Peoples and local communities, including women;
- Fair and equitable sharing and distribution of benefits;
- Full, effective or active participation or involvement in relevant decisions;
- Indigenous livelihoods and access to resources; Indigenous Peoples and local communities as custodians of biological diversity; pastoralists and transhumant Indigenous Peoples; and small-scale and artisanal livelihoods;
- Knowledge, innovations and practices of Indigenous Peoples and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, including of natural and cultural landscapes;
- Lands and waters traditionally occupied or used;

- Local needs and products or skills;
- Natural and cultural heritage and values;
- Poverty and hunger alleviation, eradication and elimination;
- “Prior informed consent” over a larger range of decisions that affect Indigenous Peoples and local communities;
- Sacred sites and species; and
- Traditional guardianship or custodianship.

Similarly, the analysis of IUCN resolutions and recommendations reveals a changing attitude to Indigenous Peoples and local communities over the years from a peripheral (or even a non-) issue to one that is increasingly at the forefront of the agenda.

IUCN has endorsed the UN Declaration on the Rights of Indigenous Peoples and also adopted a ‘rights-based approach to conservation’. Resolution 4.056 that adopts this approach clearly states that it is the obligation of “all state and non-state actors” involved in conservation initiatives to “secure for all potentially affected persons and peoples, the substantive and procedural rights that are guaranteed by national and international law”. Subsequently at the Vth World Conservation Congress in 2012, IUCN adopted a new Policy on Conservation and Human Rights for Sustainable Development. Table 2 illustrates the growing percentage of resolutions or recommendations that reference “Indigenous Peoples/local communities” for each World Conservation Congress since the year 2000.

Table 2: The percentage of resolutions and recommendations that reference “Indigenous Peoples/local communities” per Conservation Congress

WCC 2000 (Amman)	WCC 2004 (Bangkok)	WCC 2008 (Barcelona)	WCC 2012 (Jeju)
6.1%	10.2%	14.7%	21.3%

3.3 Conclusions

Our analysis of international law and policy relevant to conservation points to three core conclusions. First, there is a wide range of international instruments, CBD decisions and IUCN resolutions and recommendations that reference the rights of Indigenous Peoples and local communities. The rights exist across a broad legal landscape that includes instrument that focus on human rights, cultural heritage, biodiversity, forests, climate change and agriculture, among others.

Second, the frequency with which the rights of Indigenous Peoples and local communities are referenced in international law and policy, particularly in CBD decisions and IUCN resolutions, is increasing markedly over time.

Third, there now exists a very detailed and situation-specific set of internationally agreed rights of Indigenous Peoples and local communities that should be fully considered by actors involved in conservation initiatives. Distilling this large body of international law to identify key standards that should be upheld in all conservation settings is of utmost importance if conservation actors are to play their part in respecting human rights in the areas in which they work. The question of how best Indigenous Peoples and local communities can seek redress for injustices suffered because of conservation initiatives is considered next.

4

Redress: Which Redress Mechanisms are Relevant to Peoples and Communities Affected by Conservation Initiatives?

Despite growing recognition that Indigenous Peoples and local communities face injustices in the name of conservation, their rights continue to be infringed – as detailed in Appendix 1. The challenges faced by the Endorois people in Kenya after their customary lands were gazetted as a game reserve are common to those seeking redress for conservation-related human rights infringements.

4.1 The Endorois Case

Injustice: The Endorois are an Indigenous community who for centuries have traditionally inhabited the Lake Bogoria area within the Rift Valley province in Kenya²⁵ In 1986, however, after years of unsuccessful negotiations with the Kenyan government, they were evicted from their lands, which led to the loss of livestock and severe economic hardship.

National Level Redress: Unable to reach agreement with the government regarding access to their land and other issues, the community filed a lawsuit in the Kenya High Court alleging that their rights under the 1969 Kenya Constitution had been violated. In April 2002, the High Court ruled against the community, concluding that that the community's claim did not implicate rights provided under the 1969 Kenya Constitution. The community was effectively unable to appeal the High Court's decision due to court delays and uncertainty regarding Kenya's appellate rules.

Non-State Redress: Because of the challenges of obtaining relief at the national level, in 2003, the community with the help of their lawyers sought relief before the African

Commission on Human and Peoples' Rights (African Commission).²⁶ The community alleged several violations of the African Charter on Human and Peoples' Rights (African Charter), and sought restitution of their land, with legal title and clear demarcation. In its 2010 decision, the African Commission first determined it could decide the Endorois' case because they had exhausted domestic remedies. The African Commission also determined that the Endorois are an "indigenous community" and a "people" which entitled them to benefit from provisions of the African Charter that protect collective rights.²⁷ It then found for the community on all its claims, including recommending that Kenya recognize the Endorois' rights of ownership to their ancestral land.

Enforcement: Although hailed as a major victory for the Endorois, the effects of the decision so far are mixed. On one hand, the Endorois community has regained access to most of the land from which it had been excluded and the decision served as a basis of negotiation with UNESCO for including the Endorois in managing their ancestral land. On the other hand, the Kenyan government has not yet implemented many of the recommendations made in the Endorois Decision. In addition, the government is adopting new legislation that does not take the Endorois Decision into account.

The Endorois Decision is indicative of the challenges that many Indigenous Peoples and local communities face when seeking redress for violations of their rights. Lacking effective national mechanisms, they bring claims at the regional or international level (i.e. non-state redress mechanisms). In order to access these mechanisms, procedural requirements, such as exhaustion of domestic remedies, must first be met.²⁸ Even if those requirements are met and a mechanism accepts their case, they must still obtain a decision in their favor. And even if they obtain a favourable decision, enforcement may be difficult for a variety of reasons. Despite these challenges, however, non-state redress mechanisms are a crucial part of the system of ensuring protection of and respect for the human rights of Indigenous Peoples and local communities. The next section provides greater details of the different types of redress mechanisms.

4.2 Evaluating Redress Mechanisms

There are many different kinds of redress mechanisms that Indigenous Peoples and local communities can access when their human rights are impacted by conservation initiatives. These include judicial and non-judicial mechanisms administered at the national as well as the international level, and can be clustered under the following five headings.

1. State-based Mechanisms
2. Intergovernmental Institutions and Processes
3. Financial Institutions
4. Corporate Accountability
5. Alternative Dispute Resolution and Customary Redress Mechanisms.

State-Based Mechanisms

At the national level, redress mechanisms are often close to the facts and can issue binding decisions by which parties must abide. However, as illustrated above in relation to the Endorois, Indigenous Peoples and local communities face many challenges with state-based redress mechanisms, including discrimination, weak rule of law, and non-recognition of collective rights (including to land)²⁹ and customary law.³⁰ The practical challenges in obtaining adequate redress at the national level have also been well documented. These include the conducting of judicial proceedings in courts that are far from the particular community and in languages that are not their native languages. Additionally, communities face challenges of “collusion between private sector entities and governments to deprive Indigenous Peoples of access to justice for their lands.”³¹ Geographical distance, and the failure to recognize indigenous customary law also present national level challenges.

Intergovernmental Institutions and Processes

At the regional and international level, states have generally agreed on a more progressive approach regarding the rights of Indigenous Peoples and local communities, and many non-state based mechanisms have been created to protect these rights. This category refers to redress mechanisms available through the United Nations system, including UN treaty and charter-based mechanisms, as well as the regional human rights systems of Europe, Africa and the Americas.

The United Nations Human Rights System

The UN human rights system is generally divided into two main categories, those based on the Charter of the United Nations and those based on one of the nine core human rights treaties. Charter-based mechanisms include “Special Procedures” – independent experts with mandates to report and advise on human rights from a thematic or country-specific perspective. They can send communications to states and occasionally intergovernmental organisations or non-state actors to bring allegations of human rights violations to their attention.³² While communications are not legally binding, they can be used to put swift public pressure on states to address human rights abuses.

Another Charter mechanism is the Complaint Procedure, which handles complaints from individuals or groups regarding “consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms” by states.³³ Its procedural drawbacks, however, including its complexity and lack of transparency, makes it difficult to judge its effectiveness.³⁴

Finally, the Universal Periodic Review (UPR) is a regular process for reviewing the human rights performance of UN member states. While the UPR is becoming increasingly concerned with indigenous issues, the reviews are periodic, meaning that the UPR is not a mechanism that can address immediate issues.

Treaty-based mechanisms are committees that are empowered to accept complaints from individuals or groups against states if they feel that particular rights protected by one of the nine core UN human rights treaties have been violated. Although the decisions of the committees are not legally binding on states, states have a good faith obligation to implement recommendations made.³⁵

The Inter-American System

The Inter-American System for the protection of human rights is responsible for monitoring and implementing the human rights obligations of the 35 member states that make up the Organization of American States (OAS). It consists of two main bodies: the Inter-American Commission on Human Rights (I-A Commission) and the Inter-American Court of Human Rights (I-A Court). The I-A Commission is accessible by individuals alleging human rights violations against an OAS member state. The I-A Commission can recommend that states take certain actions to address human rights violations, and normative pressure exists to cooperate with the I-A Commission.³⁶ The I-A Court on the other hand is not accessible to individuals, but only to the I-A Commission and States. While many of the I-A Court's judgments are not enforced, states often do comply partially or totally with its judgments.³⁷

The African System

The African human rights system is grounded in the African Charter on Human and Peoples' Rights (African Charter) and is administered by two main bodies: the African Commission on Human and Peoples' Rights (African Commission) and the African Court on Human and Peoples' Rights (African Court). Like the I-A Commission, the African Commission – which is accessible to individuals – can make recommendations to states regarding human rights violations, but enforcement of its recommendations is often weak.³⁸ The African Court, on the other hand, is generally not accessible to individuals unless states have specifically agreed to it. It is empowered to issue binding decisions, although their enforcement will likely be subject to the political will of the states concerned.³⁹

The European System

Like the Americas and Africa, Europe also has a regional human rights system to address human rights violations committed by member states. The main instrument is the European Convention on Human Rights (ECHR), with implementation overseen by the European Court of Human Rights (European Court). The European Court can issue binding decisions that include the award of monetary damages. Unlike the other regional bodies discussed above, which are limited to addressing allegations of human rights entities against states, the European Court can use the 'horizontal effect' of the ECHR to address human rights violations of non-state entities. However, the European Court faces similar challenges in terms of lack of resources.

Financial Institutions

Most international financial institutions (IFIs) such as the World Bank have their own redress mechanisms – called independent accountability mechanisms (IAMs) – to deal with complaints from people affected by IFI-financed projects. Depending upon its mandate, an IAM can analyze whether the IFI has complied with its own policies, resolve disputes between the IFI and a community impacted by a project, or both. IAMs are only empowered to submit their findings and recommendations to the IFI's Board of Directors (Board).⁴⁰ and it is up to the Board to decide whether to act on the IAM's decision.

Corporate Accountability

Despite years of negotiation, there is currently no binding international treaty with which to hold corporations accountable for human rights abuses. Thus, a common venue for seeking to hold corporations accountable is national courts, i.e. state-based judicial mechanisms. In addition to that option, some non-state based mechanisms exist to deal specifically with corporations. These include mechanisms established under the Organisation for Economic Co-operation and Development (OECD).

The OECD Guidelines for Multinational Enterprises and operational-level grievance mechanisms include a dispute resolution mechanism administered at the national level by National Contact Points (NCPs) for resolving conflicts regarding alleged corporate misconduct. States have flexibility to structure NCPs as they see fit, which means that the effectiveness of NCPs varies considerably. In addition to NCPs, companies can also establish project-level grievance mechanisms to address disputes. While these may offer advantages such as relaxed procedures and rapid results, they also face challenges in terms of consistency, transparency and other important factors for obtaining appropriate redress.

Alternative Dispute Resolution and Customary Redress Mechanisms

In addition to the mechanisms discussed above, which are administered by states, intergovernmental organizations, or companies, there are also other kinds of mechanisms that can be used to address human rights impacts of conservation initiatives. One category is forms of alternative dispute resolution, such as the 'Whakatane Mechanism,' a mediation-related initiative by the IUCN that "aims to ensure that conservation policy and practice respect the rights of Indigenous Peoples and local communities, including those specified in the [UN Declaration]."⁴¹ Another category is the customary institutions of Indigenous Peoples and local communities themselves. Indigenous Peoples have their own dispute resolution mechanisms and judicial systems based on their respective customary laws, traditions and practices which will likely be cheaper and more accessible than externally administered redress mechanisms. Additionally, using customary laws and practices as mechanisms to address human rights abuses can facilitate the empowerment and

engagement of Indigenous Peoples and local communities in decisions related to their resources and territories.⁴²

4.3 Conclusions

Each redress mechanism will have its own advantages and drawbacks. While state-based judicial mechanisms can deliver binding, enforceable decisions, they are often inaccessible and hostile to Indigenous people and local communities due to issues of racism, cost or lack of recognition of collective rights. Non-state-based judicial mechanisms may operate under a more progressive rights regime, but their procedures can render them equally difficult to access. While non-judicial mechanisms are often less procedurally complicated, their decisions often face challenges with regard to enforcement and implementation. Ultimately, the redress mechanism selected will depend upon the facts and circumstances of each individual situation.

These challenges raise an important question: should a body focused specifically on the just functioning of conservation initiatives be formed? One model for such a mechanism is the roundtable approach that industries such as soy and palm oil have formed to certify their operations and, in the case of palm oil, to settle disputes. A 'Roundtable on Just Conservation' or a 'Conservation Stewardship Council' could serve as a clearinghouse for states, NGOs and funders to ensure that their conservation initiatives comply with human rights standards. The Roundtable of Council could also house as a dedicated redress mechanism as a means of ensuring access to justice for complainants and the cost-effective resolutions of cases.

Such a body would require the collaboration of a broad group of conservation actors interested in addressing the serious challenges posed to Indigenous Peoples and local communities by current redress mechanisms. Without pre-guessing the agreed way forwards, a shift in the current status quo is needed because injustice – and a related lack of access to justice – continues to occur in the name of conservation.

5

Next Steps and Options

The purpose of the Human Rights Standards for Conservation series is to ground the ongoing discussion about conservation justice in the realities of today's legal and policy frameworks. It has set out to clarify the current state of law and policy as it relates to conservation initiatives and to present it in a manner that promotes its accessibility to the range of stakeholders involved in – or affected by – conservation initiatives. In this light, it spells out the way the law operates on conservation actors to create human rights obligations, details the basic rights that are enshrined in international law and policy, and evaluates the general weaknesses and specific opportunities that exist in the global redress architecture. By establishing these baselines, it aspires to move conservation actors from stated human rights commitments to action at the local-to-global levels.

It is now incumbent on all rights- and stakeholders to engage with the series' findings and discuss the steps required to ensure that conservation initiatives operate according to internationally agreed human rights standards. A number of progressively ambitious options for furthering this work exist, including the following.

1. The Human Rights Standards for Conservation series' findings could be further distilled and the key rights afforded to Indigenous Peoples and local communities clarified. The rights could then be presented as a set of core standards. The standards would be published as a resource on Human Rights Standards for Conservation and widely disseminated.
2. In addition to the standards, a set of stakeholder-specific guidance and related tools could be developed. These might include, for example, simple checklists for conservation implementers highlighting what standards apply in particular contexts, information on the legal basis for the standards, and details of potential redress actions if the standards are not met. Alternatively, or as well, a resource could be developed to assist Indigenous Peoples and local communities to better know their rights in a conservation context and understand what they might do if they feel they have a grievance. The REDD Desk "Know Your Rights" tool provides a model for what this might look like.

3. The standards and guidance could be further developed so that funders of conservation initiatives could use them to monitor and evaluate the projects they support, and so that third parties would be able to verify project-level activities. This could also be linked to the IUCN 'Green List' of equitable and effective protected areas.
4. A deeper assessment of existing redress mechanisms could be conducted to explore the need for a globally recognized grievance mechanism dedicated to conservation-related disputes, among other things, to increase the efficiency of the way in which complaints are dealt with, and reduce costs for all parties. In this context, a core question would be whether the Whakatane Mechanism is a working model that merely requires scaling-up, or whether further innovation is required in this regard to ensure that Indigenous Peoples and local communities are guaranteed access to justice.
5. The standards, guidance and grievance mechanism could be developed, monitored and upheld by an independent body. The Roundtable on Sustainable Palm Oil (RSPO) provides an example of a body that manages its Principles and Criteria and Complaints System, including the Dispute Settlement Facility. Would a 'Roundtable on Ethical Conservation' or a 'Conservation Stewardship Council' help resolve long-term conservation conflicts and create a robust enabling environment for 21st Century conservation?

Work to date on this initiative has been conducted by a small group of conservation and human rights lawyers and researchers, supported by a technical advisory group again comprised mainly of human rights and environmental lawyers and indigenous rights advocates. This initiative could continue under the auspices of this small group or could be widened into a multi-stakeholder process that allows for more extensive participation. This process might usefully emulate the one that led to the REDD+ Social and Environmental Standards for example, and include a diverse group of representatives from Indigenous Peoples, local communities, NGOs (including private foundations), businesses, international organizations and States.

We invite your feedback on these options and look forward to engaging with you as this initiative moves into the next phase.

Please contact Harry Jonas (harry@naturaljustice.org) or Dilys Roe (dilys.roe@iied.org) for more information or to share your thoughts.

Appendix 1

Recent and Current Conservation-Related Conflicts

AFRICA

1. APF and National Parks, Ethiopia

People or Community: Kore and Guji people. Seven tribes: Suri, Dizi, Me'en, Nyangatom, Kwegu, Bodi, and Mursi, in or around the Omo National Park (ONP).

Location: Omo and Nech Sar National Parks (NSNP), Ethiopia.

Overview: In 2004 around 1,000 Kore families were removed from the NSNP in southern Ethiopia, and resettled outside its borders. Later in the year, almost 500 homes of the Guji-Oromo people were burnt down to force them to move out of the park. This forced displacement was undertaken by the government of Ethiopia in preparation of the park being handed over to a private Dutch-based organisation, the African Parks Foundation (APF), who had been awarded a contract to manage it.

The APF also took over management of the Omo National Park (ONP) in southern Ethiopia in January 2006. ONP was inhabited or used for resources by up to 40,000 people from various ethnic groups. APF have stated that they were not involved in any evictions of people prior to managing the Omo and Nech Sar National Parks.

Redress/Future Actions: In 2007, APF released a statement stating they were withdrawing from management of both NPs citing the claims of human rights organisations and associated potential legal challenges.

Resources:

www.conservationrefugees.org

www.danadeclaration.org/pdf/omotakeover.pdf

www.matthijsblonk.nl/paginas/AfricanParksEthiopieEng.htm

www.ciel.org/Publications/Ethiopia_CERD_7Feb07.pdf

2. Lekiji Village Wildlife Corridor, Kenya

People or Community: 1,050 people within the village (from various tribes including Maasai, Rendile, Turkana and Samburu).

Location: Lekiji Village, Kenya.

Overview: The disputed land is not a protected area, but a 12,000 acre wildlife corridor between two private game reserves (Mpala Research Center and Wildlife Foundation and Ol Jogi) in central Kenya. The community have faced eviction threats since the 1990s. The community originally settled in the area after being gifted them the land after Kenyan independence. The District Commissioner is believed to have sold the land in the late 1990's, which lead to the eviction attempts.

Redress/Future Actions: The Lekiji community has battled in the courts since 1996. They lost their most recent appeal on March 28th 2013, and were given 45 days notice to vacate the land. They have re-appealed the case several times and lost each time.

Resources:

www.justconservation.org/lekiji-a-village-in-a-wildlife-corridor

3. Samburu and AWF, Kenya

People or Community: Around 3000 Samburu families affected.

Location: Eland Downs, Laikipia, Kenya.

Overview: In 2008, the American NGOs Nature Conservancy (NC) and African Wildlife Foundation (AWF) purchased 17,100 acres of land to create the Laikipia National Park (LNP). LNP was to be run by the Kenyan Wildlife Service (KWS). As a result of the park creation, around 2000 families have become squatters on the edge of the area and a further 1,000 families have been forced to relocate.

There have been a number of allegations of harassment by the police (mainly in Samburu East and Isiolo Districts) including beatings, rape and burning of homesteads.

Redress/Future Actions: In June 2012, a lawsuit ('adverse possession claim') was brought by the Samburu Indigenous People of Kenya against AWF and the Kenya government institution, the Kenya Wildlife Service (KWS). A Court ruling has banned KWS from proceeding with the conservation project until a ruling on the Samburus' legal case.

Resources:

www.survivalinternational.org/news/tribes?%5Btribe_id%5D=532

www.theguardian.com/world/2011/dec/14/kenya-samburu-people-evicted-land

www.culturalsurvival.org/news/campaign-update-kenya-samburu-people-advance-court-case-against-us-charity

samburuwatch.org

www.justconservation.org/conservation-and-the-violation-of-the-rights-of-the-samburu

4. Endorois, Kenya

People or Community: Endorois community

Location: Lake Bogoria, Kenya

Overview: The local community were forcibly removed from their land in 1973 in order to create the Lake Bogoria Game Reserve. The evictions forced the Endorois into poverty and prevented them from accessing ancestral lands.

Redress/Future Actions: In February 2010 the evictions were ruled illegal by the African Union (AU) (adopting the decision from the African Commission on Human and People's Rights). The Commission's decision required the Government to grant title to the Endorois and guarantee their permanent use of the lands and pay compensation.

Four years after the ruling by AU, the Kenya Government has not fully implemented the ruling.

Resources:

www.minorityrights.org/10226/briefing-papers/landmark-ruling-provides-major-victory-to-kenyas-indigenous-endorois.html

www.minorityrights.org/12258/press-releases/rights-group-urges-kenyan-government-to-stop-parcelling-endorois-community-land-without-consultation.html

5. Sengwer, Kenya

People or Community: Sengwer/Cherangany people. Around 6000-7000 people.

Location: Embobut Forest in the Cherangany Hills, Elgeyo Marakwet County, Kenya.

Overview: Evictions from the Embobut forest stemmed from World Bank-funded 'Natural Resource Management Project' (NRMP) with the Government of Kenya (GoK). The project began in 2007 with attempted evictions of the Sengwer occurring since. In January 2014, two weeks after a Government deadline to leave the forest, troops were sent to the area 2014 to evict the villagers from their homes. Many homes were burnt as part of this eviction.

Some of the Sengwer have been living in the area since the 18th century. The purpose of the NRMP is to protect the forest as settlement within the forest has caused widespread deforestation and threatened water sources. The project had the effect of changing the boundaries of the forest reserve. The reserve was originally declared in 1964 by the GoK, which effectively outlawed the ancestral lands of many Sengwer.

Redress/Future Actions: An International appeal was initiated and an injunction was issued by the High Court in Eldoret in March 2013 forbidding any evictions until the community's land rights were resolved. The injunction was renewed in November 2013. However, the Kenya police ignored this order when carrying out the January

evictions. The GoK have previously argued that they have paid compensation and gave notice to the community of the evictions.

Redress it still being attempted through the domestic courts. In October 2014 Jim Yong Kim the President of the World Bank appealed to the Kenyan President Uhuru Kenyatta to resolve the conflict.

Resources:

www.theecologist.org/News/news_analysis/2230122/kenya_forest_people_facing_violent_eviction.html

www.forestpeoples.org/sites/fpp/files/news/2013/12/International%20APPEAL%20re%20Embobut%20Forest%20eviction%2009012014.pdf

newint.org/features/web-exclusive/2014/01/23/sengwer-forest-evictions

www.redd-monitor.org/2014/01/24/indigenous-peoples-evicted-and-their-homes-set-on-fire-embobut-forest-kenya

www.sengweraid.co.uk/page6.htm

www.kenyaforestservice.org/index.php?option=com_content&view=article&id=567:brief-on-embobut-forest-&catid=223:hict&Itemid=98

www.theguardian.com/global-development/2014/oct/06/world-bank-chief-kenya-indigenous-people

6. Batwa, Uganda

People or Community: Batwa people.

Location: Bwindi Impenetrable National Park (BINP), Mgahinga Gorilla National Park (MGNP) and Echuya Central Forest Reserve (ECFR), Uganda.

Overview: Historical evictions of the Batwa from the three national parks are now being challenged in Uganda's domestic courts. While colonial protection of the forest started in the 1920s, most Batwa continued to live in the forest and to use its resources until the 1990s, when they were evicted without consultation, adequate compensation or offer of alternative land. This resulted in many Batwa becoming squatters on other people's land and forced many into poverty.

Redress/Future Actions: The United Organisation for Batwa Development in Uganda (UOBDU) has been supporting the Batwa to unite and engage communities in informed advocacy for their human and land rights since its creation in 2000.

On 8th February 2013, the Batwa of Uganda submitted a petition to the Constitutional Court of Uganda seeking recognition of their status as Indigenous Peoples under international law. In addition, they sought redress for the historic marginalisation and continuous human rights violations they have experienced as a result of being

dispossessed of their ancestral forest lands by the government. As of June 2014, the case has yet to be listed as a cause to be heard in court.

Resources:

www.forestpeoples.org/topics/rights-land-natural-resources/news/2014/07/batwa-petition-uganda-s-constitutional-court

www.survivalinternational.org/tribes/pygmies

7. **FACE Project: Rehabilitation of Mt Elgon and Kibale National Park, Uganda**

People or Community: Rural communities in and around the park.

Location: Mt Elgon and Kibale National Park, Uganda.

Overview: The FACE (Forests Absorbing Carbon Dioxide Emission) foundation was formed in 1990, as an initiative of four major Dutch electricity companies of the Dutch Electricity Generating Board. The company has two projects at Kibale National Park and at Mount Elgon National Park. Both have had controversial project histories including human rights abuse allegations, which have marred project implementation. The Mt Elgon project involves the planting of 20 native tree species over a total area of 27 000 ha. In 1992 and 1993, forest dwellers and peasants were evicted under the World Bank's Forestry Rehabilitation Project, co-financed by the EU, followed by further evictions in 2002.

Redress/Future Actions: The project is currently in operation. In response, acts of resistance have been reported such as land occupation, but it is unclear as to whether this has improved conditions for people in the area.

Resources:

ejatlas.org/conflict/face-project-rehabilitation-of-mt-elgon-and-kibale-national-park-uganda

www.face-thefuture.com/en/projects/uganda

www.justconservation.org/uganda-wildlife-authority-evicts-2,200-from-elgon

8. **Saadani villages, Tanzania**

People or Community: Uvinje pastoralists.

Location: Uvinje and Prorokanya sub-villages and, Saadani village, Saadani National Park (SNP), Tanzania.

Overview: The Uvinje face eviction from ancestral coastal land adjacent to the SNP by the Tanzanian Government's Ministry of Natural Resources and Tourism (TANAPA).

The Uvinje were involved in the proposal for the Saadani Game Reserve (SGR) in the 1970s. In the 1990s TANAPA increased the SGR map to include the Uvinje and Prorokanya sub-villages and a portion of Saadani village as part of the SGR. Since 2005, TANAPA has redrawn the boundary lines to create the SNP and has included the Uvinje land.

Redress/Future Actions: Lobbying from the communities resulted in the office of the Prime Minister ordering for the communities not to be evicted. In 2006 TANAPA were instructed by the Bagamoyo Regional and District Commissioner in 2006 to reinstate the land rights of Uvinje. TANAPA has taken no action to reassess boundaries (effectively ignored the DC's 2006 order) but has continued in its efforts to evict villagers from the gazetted coastal land. This case was the focus of an ICCA Consortium alert in July 2014.

Resources:

www.ipppmedia.com/frontend/?l=68630

researchimpacts.wordpress.com/

www.justconservation.org/uvanje-village-and-saadani-national-park,-tanzania

www.iccaconsortium.org/?page_id=1704

9. Operation Tokomeza, Tanzania

People or Community: Local people in various locations, such as around Sealous Game Reserve, Tanzania.

Location: Tanzania various locations.

Overview: Not a specific protected area but a botched anti-poaching operation in Tanzania, which resulted in the harassment of local people and the confiscation of livestock, whilst seemingly avoiding poaching strongholds. Although quantities of ivory were confiscated and arrests were made, human rights violations including accusations of beatings, sexual assault, torture and killings were reported as a result of the operation.

The operation was a result of a report in autumn 2013 by the Government's Wildlife Division and the Frankfurt Zoological Society, which concluded that the elephant population of the Sealous Game Reserve had dropped by 80% since 2005.

Members of the country's armed forces, police, game wardens and park rangers carried out the operation. It has been alleged that the operation was deliberately sabotaged in order to halt it.

Redress/Future Actions: Several ministers were fired as a result of the operation, including the Minister for Natural Resources and Tourism. In April 2014 Tanzania's

President Jakaya Kikwete, has appointed an official commission of enquiry into the circumstances of the operation. Operation Tokemeza Two has resumed.

Resources:

www.eturbonews.com/45353/circumstances-botched-operation-tokomeza-stop-poaching-tanzania

allafrica.com/stories/201312230129.html

www.tzaffairs.org/2014/05/operation-tokomeza

www.ipsnews.net/2014/01/anti-poaching-operation-spread-terror-tanzania

10. Loliondo Land and the Tourism Industry, Tanzania

People or Community: Maasai.

Location: Ngorongoro District, Arusha, Tanzania. Bordering the Serengeti National Park.

Overview: An ongoing conflict between Maasai pastoralists and the tourism industry, which is supported by the Tanzanian Government. The issue relates to a 150,000 hectare corridor bordering the Serengeti NP that is used by the Maasai for grazing land in the dry season. The dispute dates back over 20 years, but in the most recent developments, the Government, which argues that the area is being overgrazed, announced in March 2013 plans to split the disputed area - classified as the Loliondo Game Controlled Area (GCA). The Government has proposed that the area should be split into two parts, one that would belong to villagers and the other to the Government.

A major issue for the Loliondo residents, is the granting of a hunting licence (since 1992) to Otterlo Business Corporation Ltd (OBC), registered in the United Arab Emirates. In July 2009, the government evicted the Loliondo residents from the area used for hunting by the OBC. It is estimated that a minimum of 150 Maasai homes were burned, resulting in the loss of property including livestock. It is alleged that up to 20,000 residents of Loliondo were impacted and up to 50,000 livestock were displaced from grazing and water sources.

Another specific case involves Boston based Thomson Safaris (TS) who acquired (as Tanzania Conservation Ltd) 12,617 acres of land known as Sukenya farm, which was developed into a private nature reserve. This has restricted grazing and access to water locations for the Maasai. There are a number of allegations against police and TS security guards of harassment and violence against protestors and people investigating the case.

Redress/ Future actions: Actions by the affected people include protests and boycotts of official procedures as well as official complaint letters and petitions. Local

civic leaders are reportedly threatening to resign if the plan to split the GCA goes ahead.

A constitutional case has been filed against OBC's manager and several authorities responsible for the 2009 evictions. The petition has been amended to include the proposed land use plan and the revocation of village certificates. However, progress has been slow.

For the TS case, in 2010 villagers filed a lawsuit in the High Court of Tanzania, against Tanzania Breweries Limited (TBL), and Tanzania Conservation Limited (TCL). The villagers sued TBL and TCL, asking the court to revoke the company's land title, prevent TCL from converting the land's designated use from pastoralism to tourism, and award damages for the injuries they have suffered due to the exclusion from the land. The villagers claim that TCL, together with local Tanzanian police and Government officials, have conspired to illegally confiscate their land. An injunction application was also filed. The lawsuit was dismissed in 2013 on a procedural technicality. New proceedings were subsequently lodged and are currently pending.

Villagers have also lodged a 1782 discovery against TS in the US courts. A court ruling in April 2014 by a federal magistrate judge in Boston has obligated TS to release documents regarding alleged land grabbing and violence.

Resources:

ejatlas.org/conflict/loliondo-land-vs-tourism-conflict-tanzania

business-humanrights.org/en/thomson-safaris-part-of-wineland-thomson-adventures

www.earthrights.org/media/tanzanian-maasai-villagers-win-fight-information-about-land-grabs-and-forced-eviction-against

www.minorityvoices.org/news.php/en/558/tanzania-maasai-pastoralists-of-soitsambu-village-assert-their-rights-to-ancestral-lands

www.justconservation.org/grabbing-land-for-conservation-in-loliondo,-tanzania

11. Kilombero Valley evictions, Tanzania

People or Community: Around 5,000 villagers - Sukuma and Taturu agro-pastoralists and Iparakuyo Maasai and Barabaig pastoralists.

Location: Kilombero valley flood plain, Morogoro region, Tanzania.

Overview: The area is a designated Ramsar site and the authorities have argued that the residents are degrading the environment. The evictions took place from September 2012 to January 2013. During the evictions, the district authorities forcefully removed many pastoralists and agro-pastoralists (estimated at 5000) and their livestock in Kilombero and Ulanga districts.

Several people have been injured (mainly shot) and at least seven people were killed during the evictions.

Redress/Future Actions: During the evictions, pastoralists filed a court case (No.212 of 2012) against the Government at the High Court of Tanzania in Dar es Salaam. In November 2012, the court ordered the Government to stop the eviction until the primary case was heard. However, the Government ignored this injunction.

As of January 2013, the Government of Tanzania has officially halted the evictions. Yet evictions are still reported by police and park rangers in Kilombero and Ulanga districts without permits from the regional and district authorities.

Resources:

www.justconservation.org/three-sides-of-kilombero-evictions-drive-rare-species,-cattle-burden,-foreign-investments

www.iwgia.org/iwgia_files_publications_files/0615_BRIEFING_pastoralists2606.pdf

12. Kalahari Bushmen, Botswana

People or Community: Gana and Gwi San.

Location: Kalahari Game Reserve (KGR), Ghanzi Province, Botswana.

Overview: The Botswanan Government has previously granted concessions for mineral exploration to diamond companies for an area covering the entire ancestral territories of the Bushmen, in the Central Kalahari Game Reserve (KGR). The majority of the Bushmen were forced to re-locate, and suffered threats and persecution to remove them from the land. The main borehole, used by the bushmen, was cut off in order to forcibly evict them. Despite a ruling by the Botswanan high court in 2006 that the eviction was unlawful, the borehole remained closed and the judge dismissed their case for access to water inside the reserve in 2010. Finally in January 2011 Botswana's Court of Appeal overturned the decision and condemned the government's treatment of the San (Bushmen).

Redress/Future Actions: In 2006 a landmark ruling by the Botswanan High Court recognised the Bushmen's right to live and hunt in the Kalahari Game Reserve. However, no hunting licences to bushmen have been granted since the ruling in 2006. The Government has continued to persecute the bushmen by refusing to provide water, preventing them from hunting, barring their lawyer from the country and requiring them to apply for restrictive permanent permits to enter the KGR.

In 2011 Botswana's Court of Appeal overturned an earlier decision, which prevented the bushmen from accessing water through a borehole in the reserve. The diamond project, valued at 3.3 billion dollars, is currently on hold.

Resources:

www.survivalinternational.org/news/10336

www.survivalinternational.org/news/10371

ejatlas.org/conflict/diamond-extraction-in-the-central-kalahari-game-reserve-botswana

13. San Bushmen Etosha National Park, Namibia

People or Community: Hai//om San.

Location: Etosha National Park (ENP), Ethiopia.

Overview: There have been many historical evictions of San in Namibia dating back to colonial times. However, for the several hundred families of Hai//om San remaining within the ENP, there have been more recent issues of displacement. The Government of the Republic of Namibia said explicitly to the Okaukuejo Hai//om in November, 2011 that the Etosha Hai//om will not be required to move out of the park involuntarily.

Despite this, in March 2012, the Ministry of Environment and Tourism announced that those Hai//om that are not employed in the park, or who are not directly related to a current employee of the park, will have to move out of Etosha NP. The Ministry has said that they will support those that move out of the park by providing housing materials for construction of homes on proposed resettlement farms.

Redress/Future Actions: The Hai//om that are required to resettle have expressed concerns regarding the boreholes, education facilities and land tenure within resettlement areas. As of November 2012, fewer than 10 Etosha Hai//om households had made the move to the resettlement farms.

Resources:

www.justconservation.org/the-haiom-bushmen-of-namibia-etosha-and-resettlement

www.justconservation.org/authenticity-identity-and-humanity-the-haiom-san-and-the-state-of-namibia

14. Demeter International, Katondo Farm Project, Namibia

People or Community: People in the area mainly of Mbukushu and Kwe or Barakwena community (San origin).

Location: Mbukushu District, Namibia.

The project is within the Kavango-Zambezi (KAZA) Transfrontier Conservation Area and borders the Bwabwata National Park (BNP).

Overview: In 2010 Dem-Inter, developed a partnership with Namibia's Labour

Investment Holdings, to develop a 10,000 ha farm on a forested adjacent to the BNP under the company name LIH Demeter Agribusiness. This project was controversial for the following reasons: over 1000 families depend on the land for their livelihood; the water extracted would negatively impact the river downstream; the fertilizers used would jeopardise locals' organic certification; and a lack of transparency with local organisations could lead to land rights confusion. Additionally, the loss of wildlife from the project could also negatively impact tourism and potentially lead to increased human-wildlife interactions.

The Okavango River transects multiple nations so water abstraction at such a level requires the consent of all nations sharing the river and no project of this scale has yet been approved. The company acquired the lands in Namibia through a 25-year leasehold from the area's Traditional Authority, not individual landholders, in exchange for a 15% stake in the US\$20-million investment. The local tribal organisation holds none of the 15%, and the project is subsequently mired in tribal, corporate, and public land disputes.

Redress/Future Actions: Current status of the project is not known. An Environmental Impact Assessment was conducted by Enviro Dynamics in 2010. The local tribal advocacy organization, Kyaramacan Trust, rejected the project, citing livelihood endangerment, ancestral gravesites in the area and environmental impacts. Since 2010 details of the EIA have not been released, nor has any sign of progress of the project.

Resources:

ejatlas.org/conflict/demeter-international-katondo-farm-project-bwabwata-national-park-in-mbukushu-district-namibia

www.namibian.com.na/indexx.php?archive_id=61972&page_type=archive_story_detail&page=2643

15. Batwa, Kahuzi Biega National Park, DRC

People or Community: Batwa people.

Location: Kahuzi Biega National Park (KBNP), Democratic Republic of Congo (DRC).

Overview: There are number of historical cases involving the Batwa including Bwindi Impenetrable NP, Mgahinga NP (both Uganda), Volcanoes NP (Rwanda), Campo Ma'an NP, Lake Lobeke and Boumba-Bek Parks (Cameroon).

In the Kahuzi Biega National Park (KBNP) case, the Batwa were expelled from the park in late 1970's and 1980's. The communities are now attempting redress through the domestic courts. The communities are supported by the Environnement, Ressources Naturelles et Développement (ERND), a local NGO based in South Kivu,

DRC. In 2008, ERND established the Programme d'Accompagnement Judiciaire et Administratif des Peuples Autochtones (PAJA) – Programme for Judicial and Administrative Support for Indigenous Peoples.

Redress/Future Actions: The affected people (66 Batwa claimants representing around 500 families originally evicted) referred their case before a domestic court in 2008 asking for compensation. In 2011, the domestic court accepted the defendant's arguments, in this case the Congolese Government and Congolese Wildlife Authority, and declined jurisdiction of the case.

The plaintiffs appealed the decision and after a period of two years, in 2013, the court of appeal upheld the original decision. Consequently, the claimants, alongside ERND, decided to appeal the case to the Supreme Court in November 2013.

The Batwa have also decided to take their case to the African Commission on Human and Peoples' Rights.

Resources:

www.survivalinternational.org/tribes/pygmies

www.regnskog.no/en/projects/project?key=40818

www.culturalsurvival.org/news/merciless-plight-african-pygmies

16. Digya National Park, Ghana

People or Community: Local communities within the park.

Location: Digya National Park (DNP), Afram Plains, Ghana.

Overview: In March and April 2006 a task force of the Wildlife Division of the Forest Commission of Ghana together with the Ghana Police evicted over 7000 people living along Lake Volta in Digya NP. Many residents had been residing in the park for over 40 years and had been previously displaced by the Akosombo Dam. The residents were given less than a month's notice prior to the eviction, and there was no resettlement plan for them following eviction. The evictees were reportedly beaten and forcibly put on an overloaded ferry that subsequently capsized in Lake Volta. Although NGOs reported that at least 100 persons drowned, only 10 bodies were recovered.

Redress/Future Actions: In April 2006 The Center on Housing Rights and Evictions (COHRE), the Commonwealth Human Rights Initiative (CHRI) and People's Dialogue on Human Settlements issued a media statement. An injunction was obtained on further evictions by Centre for Public Interest Law (CEPIL) and court case was due take place in 2007. There is no further information available on redress or future actions.

Resources:

UN Habitat (2007) - www.gltm.net/jdownloads/GLTN%20Documents/forced_evictions_2solutions.pdf

www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=122243

www.state.gov/j/drl/rls/hrrpt/2006/78737.htm

Aviyor et al. 2013 cmsdata.iucn.org/downloads/parks_19_1_ayivor_et_al.pdf

ASIA**17. Indian National Park Evictions**

People or Community: Available estimates approximate that up to 100,000 – 200,000 people have been forcibly relocated from National Parks (1, 3). This is likely an underestimate given gaps in reporting.

Location: Across India.

Overview: In 2006, the Indian government passed 'The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act', which recognises the rights of forest dwelling tribes and other traditional residents to occupy and cultivate land that they and their ancestors have lived on for generations. However, the Indian Government failed to pass a notification of the Forests Act until January 2008. Without this notification, the Forest Peoples Programme report that forest officials have continued to evict communities – in many cases including forcible removal, involving the burning or bulldozing of villages, harassing people and accounts of arrests on false terms and torture (4, 5). Even after notification, there are further reports of human rights violations as concern from conservationists and counter claims lead to an impasse on the Forest Act 2006.

In 2011, the Indian Government reportedly scrapped its policy of expelling tribal people from wildlife rich areas to turn them into National Parks where there has been no free, prior and informed consent (FPIC). Prior to this ban, Survival estimates that around 100,000 people became conservation refugees. National Geographic News reports this figure higher at up to 200,000 forest dwellers.

More recently, a statement in June 2013 by the President of Kudremukh National Park urged the State government to clear the insecurity of eviction that haunts tribal people living in the National Park (2). This report indicates that the threat of forcible eviction in India's National Parks continues.

Furthermore, Just Conservation detail (6th September 2014) the evolution of violence against communities, underlining that prosecution has been increasingly used against tribal people for 'offences'. Such 'offences' include collecting honey or growing ginger in the forest area.

Redress/Future Actions: In 2007, the Forest People's Programme reported that thousands of people took to the streets in states across India to protest as part of a call to action from the Campaign for Survival and Dignity – a federation of tribal and forest dwellers' organisations from across the country. The protesters wanted an immediate halt to the evictions taking place across India. The protesters claimed forest dwellers are deliberately being targeted to prevent them from claiming their rights under the historic Forest Rights Act.

There is no further available information on redress/future actions.

Resources:

www.survivalinternational.org/news/7278

www.deccanherald.com/content/340280/fear-eviction-haunts-tribal-people.html

news.nationalgeographic.com/news/2007/12/071205-tigers-tribes_2.html

www.forestpeoples.org/topics/rights-land-natural-resources/news/2010/09/thousands-protest-demanding-halt-evictions-and-ame

www.forestpeoples.org/topics/rights-based-conservation/news/2010/09/india-struggle-forests-continues-enforcement-forest-ri

www.rightsandresources.org/news/implementation-of-indias-forest-rights-act-deemed-ineffective

wrm.org.uy/articles-from-the-wrm-bulletin/section1/gathering-support-for-indian-forest-communities-at-the-cdb

www.justconservation.org/government-u-turn-halts-tribal-eviction-from-indias-national-parks

www.justconservation.org/charges-against-nagarahole-tribal-people

18. Similipal Tiger Reserve, India

People or Community: Jamunagarh, Kabatghai and Bakua communities.

Location: India.

Overview: In 2011, the Indian Government reportedly scrapped its policy of expelling tribal people from wildlife rich areas to turn them into National Parks without FPIC. Importantly, Tiger Reserves are excluded from this policy.

Similipal was declared a Tiger Reserve in 1973, and between 1987 and 2013 three out of six villages were removed from Similipal's core zone. For example, in 2010, 62 families were reportedly relocated from Similipal Tiger Reserve. This is not an isolated case and relocation is also reported across other Tiger Reserves in India such as Tadoba-Andheri and Melghat Tiger Reserves in Maharashtra, Achanakmar Tiger Reserve in Chhattisgarh, and Buxa Tiger Reserve in West Bengal.

According to a recent (May 2014) press release from Survival International, wildlife authorities in Odisha are 'determined' to clear the further three tribal communities from 'core areas' inside the Similipal Tiger Reserve. This puts at risk the tribal communities of Jamunagarh, Kabatghai and Bakua. Kabataghai and Jamuna have a combined 61 families, while no information is available on the Bakua community.

In the most recent evictions in December 2013, Survival contend that the 32 re-located families of the Khadia tribe received only a fraction of their compensation, and now endure inadequate living conditions – for example, sheltering under plastic sheets for make-shift homes (1, 2). A compensation package for the Khadia tribe – approved by the National Tiger Conservation Authority - should have included '10lakh for each family, a 10 decimal homestead land and house, as well as a sunken well in the relocation village, medical check-ups for families and rations until the completion of house construction.

Survival note that: "According to Indian law, the villagers' consent needs to be obtained and their claims to their forest land processed before such resettlements can go ahead. But their rights are ignored, and communities are worn down with harassment and promises of money, food, livestock and land – most of which never materializes".

Survival also report that eviction plans are also underway in the neighbouring Satkosia Tiger Reserve.

Redress/Future Actions: There is no readily available information on redress/future actions.

Resources:

www.survivalinternational.org/news/10239

www.theecologist.org/News/news_round_up/2395036/india_tribes_face_eviction_for_tiger_conservation.html

www.newindianexpress.com/states/odisha/32-Families-from-Core-Area-of-Tiger-Reserve-Relocated/2013/12/09/article1936253.ece

www.newindianexpress.com/states/odisha/State-Pushes-for-Human-free-Tiger-Habitat/2014/05/08/article2212181.ece

www.survivalinternational.org/news/7278

www.rightsandresources.org/news/implementation-of-indias-forest-rights-act-deemed-ineffective/

www.rightsandresources.org/news/implementation-of-indias-forest-rights-act-deemed-ineffective/

19. Makalu National Park, Nepal

People or Community: Kulung, Sherpa Yamphu, Sinsawa, Mewahang and Bhote indigenous communities.

Location: Nepal.

Overview: Indigenous Issues Asia report (27th September 2013) that local Indigenous Peoples and their organisations demand the immediate halt to the process of army mobilisation in the Makalu National Park. Local Kulung, Sherpa Yamphu, Sinsawa, Mewahang and Bhote indigenous communities' livelihoods are likely to be at risk with concerns that access to the forest will be denied.

Redress/Future Actions: On the 26th August 2013, local Indigenous Peoples and their organisations submitted a memorandum to the Chairperson of the Council of Ministers and other concerned state agencies. There is no further information on redress/future actions.

Resources:

indigenoussissuesinasia.wordpress.com/2013/10/01/indigenous-peoples-demand-to-stop-army-mobilization-in-nepals-makalu-barun-national-park/

www.lahurnip.org/details.php?id=168

20. Koshi Tappu Conservation Area (Part I), Nepal

People or Community: 14 landless Dalit families.

Location: Nepal.

Overview: The Asian Human Rights Commission (AHRC) report (22nd April 2011) that forestry department officers demolished the homes of 14 landless Dalit families living in the buffer zone of the Koshi Tappu Wildlife Reserve Area.

“The officers came to the village in the middle of the workday when all the villagers, except one old woman, were away. The officers then destroyed the Dalits' homes, food supply, utensils, and other items, and stole any cash they could find in the homes. The affected families were previously informed that they lived in a “buffer zone” area near the forest where people are allowed to live, whereas the Warden and district administration insisted that the families lived in a “core zone” where people are not allowed to live. However, the officers destroyed the Dalits' homes five years after they moved there”.

The Asian Human Rights Commission underline that the removal of the Dalit families' homes is in violation of an agreement between the Government and the National Land Reform Forum dated 27th Nov 2008 (no-one should be displaced from land which they have been using for shelter or cultivation until the land reform process ends & not

without an alternative being provided) as well as the Land Act 2002 and the National Parks and Conservation Act.

Redress/Future Actions: There is no readily available information on redress/future actions.

Resources:

www.humanrights.asia/news/hunger-alerts/AHRC-HAC-005-2011/?searchterm=conservation%20eviction

21. Koshi Tappu Conservation Area (Part II) Nepal

People or Community: 5 villagers (4 children).

Location: Nepal.

Overview: The Asian Human Rights Commission detail (13th May 2011) that they received information that a soldier beat five villagers, including four children that had entered the Koshi Tappu Conservation Area. The case narrative records medical treatment being withdrawn from one of the victims after pressure from the military.

Redress/Future Actions: There is no readily available information on redress/future actions.

Resources:

www.humanrights.asia/news/urgent-appeals/AHRC-UAC-095-2011/?searchterm=conservation

22. Bardia National Park, Nepal

People or Community: Sonahas (not officially recognised in Nepal as indigenous group, but as an ethnic minority).

Location: Nepal.

Overview: Just Conservation describes the case of the Sonahas in Nepal, who previously enjoyed free and unrestricted mobility in their territory for fishing and gold panning. Yet since the 1970s, the Sonahas have gradually been constrained and eventually fully restricted to practice their traditional livelihood activities (fishing and gold panning) in and around Bardia National Park.

Redress/Future Actions: After persistent pressure placed upon the administration of Bardia National Park (BNP), in 2008 the Sonahas were able to negotiate a fishing concession for nine months of each year for those residing in the buffer zone. However, within a couple of months of granting the fishing permits, the BNP administration unilaterally halted the process of issuing and renewing the permits when two Sonahas were arrested and legally charged for poaching a rhino horn.

In 2011, the BNP authority issued three month fishing concessions for Sonahas allowing them to use traditionally fishing techniques only. The Sonahas returned these permits & demanded the reinstatement of previous fishing permits. Eventually they accepted a single week-long permit of gold panning in the BNP issued verbally and at the discretion of the park administrators.

Just Conservation underline: "The Sonahas' actions exemplify a sense of discontentment with and resistance to the state regime of protected areas."

Resources:

www.justconservation.org/chapter-five

23. National Council on Peace and Order's on Encroachment, Thailand

People or Community: Across Thailand, but information on specific cases includes the Province of Buriram where >1000 people have received eviction notices.

Location: Thailand.

Overview: The Asian Human Rights Commission and Human Rights Watch report (July 2014) evictions in Thailand following two orders released by the National Council on Peace and Order on state forest policy. NCPO Order No. 64/2557 issued on 14th June 2014 provides government agencies with additional power to suppress and stop encroachment in land designated as forest, and NCPO Order No. 66/2557 17th June 2014 creates a special unit of the Internal Security Operations Command – an agency comprise of military, police and civilian officials - to aid in the enforcement of NCPO Order NO. 64/2557.

Motivation behind the orders can be seen in NCPO Chairman General Prayuth Chan-ocha's approved plan to increase the country's forested land from 31.5 % to 40 % over the next ten years and has included the reshuffle of 30 Park Directors. The government appears to view all those communities within the forests as 'encroachers'.

There are a number of reported evictions and human rights violations in the media and from rights watch organisation. This includes:

- Bangkok Post details (26th June 2014) the plan to evict 500 families from Dong Yai National Forest Reserve, a UNESCO World Heritage listed site.
- The Asian Human Rights Commission expresses (July 17th 2014) grave concern for the arrest of Prom Jarana, a human rights defender and land rights activist in Buriram province. His arrest comes after the threatened eviction of the Non Din Daeng District and his presence at a peaceful demonstration in Bangkok.
- Human Rights Watch reports (July 19th 2014) that on June 28th 2014, Thai soldiers and forestry officials ordered >1,000 residents in central Buriram province

to leave their villages or face relocation and the destruction of their homes. Human rights abuses include arbitrary arrests and detention of community leaders following the eviction orders. In one case, ten community leaders from Seang Swan were reportedly held without charge for seven days at a military camp in Buriram province.

As of July the 12th 2014, Human Rights Watch report that two villages in Buriram have vacated their houses, but there has been no compensation or financial assistance. Moreover, they add that the two relocation sites set up by military authorities lack adequate shelters and have no access to water.

Khaosod English describes accounts (10th August 2014) from villagers in Nong Pak Van in San Kaeo province that have had their livelihoods destroyed. The villagers had planted rubber trees four years ago after an agreement in 1996 that allowed them to live off land inside Da Pra Ya National Park. The news report underlines that villagers have been living off the land for generations and are having difficulty understanding what is/is not permitted under the law.

Redress/Future Actions: After pressure and demonstrations, the National Council on Peace and Order issued a subsequent order on the 17th June 2014 stating that operations carried out on the basis of order 64/ 2557 must not impact the poor, people with low income and the landless who have lived on the land prior to the order.

Human Rights Watch highlight that this subsequent order has been ignored as military units in Non Din Daeng district continue to carry out forced evictions. The Assembly for the Poor echoes this situation (6), as does the Bangkok Post in an opinion piece.

On the 11th – 12th of July 2014, the Assembly of the Poor invited the mass media, academics, human rights activists and justice minded people to join a trip to observe and monitor the forced relocation of villagers in Noan Dindaeng District, Buriram Province.

There is no further information on redress/future actions.

Resources:

www.humanrights.asia/news/ahrc-news/AHRC-STM-138-2014

www.hrw.org/news/2014/07/19/thailand-military-forcibly-evicts-forest-residents
en.khaosod.co.th/detail.php?newsid=1407667420§ion=

www.bangkokpost.com/news/local/421689/ncpo-evicts-300-park-encroachers

www.bangkokpost.com/most-recent/417510/buriram-forest-encroachers-face-eviction

www.redd-monitor.org/2014/07/11/assembly-of-the-poor-stop-human-rights-abuses-by-thailands-military/

www.bangkokpost.com/opinion/opinion/423532/forest-blitz-hurts-poorest

24. Kaeng Krachen National Park (Part II), Thailand

People or Community: Prominent ethnic Karen activist Po Cha Lee Rakchongcharoen.

Location: Thailand

Overview: Human Rights Watch report (April 2014) the disappearance of a prominent ethnic Karen activist Po Cha Lee Rakchongcharoen thought to have been arrested in Kaeng Krachen National Park in Petchaburi province. The activist has been involved in a lawsuit against the National Park, Wildlife and Plant Conservation Department, with allegations that in July 2011 this government department were responsible for the destruction and burning of the houses and property of more than 20 Karen families who were living in the Bangkokloybon Villages in the National Park.

Chiangrai Times allege (May 3rd 2014) that the disappearance of the activists is part of a 'deep prejudice' against the Karen people - including the park's chief Chaiwat Limlikitaksom – who are blamed for deforestation. The newspaper underlines that this prejudice allows forest authorities to centralise power over natural resources with no participation from local indigenous communities.

Bangkok post underline (May 19th 2014) that the disappearance of the activist means that he cannot give evidence in their lawsuit against the National Park, Wildlife and Plant Conservation Department. The report also highlights those who will testify in the case fear for their safety.

Redress/Future Actions: On April 21st 2014, the Asia Indigenous Peoples Pact (AIPP) Foundation wrote to the UN Committee on the Elimination of Racial Discrimination. They requested further consideration of the situation of the Karen Indigenous Peoples in the Kaeng Krachan National Park under the Committee on the Elimination of Racial Discrimination's Early Warning and Urgent Action Procedure. There is no further information on redress/future actions.

Resources:

www.hrw.org/news/2014/04/20/thailand-prominent-activist-feared-disappeared

www.chiangraitimes.com/thailands-forest-authorities-make-northern-karen-hill-tribesmen-the-scapegoats-of-deforestation.html

www.forestpeoples.org/sites/fpp/files/news/2014/04/2014Apr21CERD%20EW-UA%20Kaeng%20Krachan%20disappeared.pdf

www.nhrc.or.th/2012/wb/en/news_detail.php?nid=2827&parent_id=1&type=hilight

www.bangkokpost.com/news/local/410489/karen-fear-for-safety-in-eviction-case

25. Kaeng Krachen National Park (Part I), Thailand

People or Community: Karen people.

Location: Thailand.

Overview: Minority Voices report (12th June 2012) that officials at Kaeng Krachan National Park, Phetchaburi Province, stormed and burned 90 homes and rice barns in a Karen Village.

On the 3rd September, Tatkamol Ob-om, a Karen community activist brought the case to the National Human Rights Commission. The activist was shot and killed on the 10th September and a warrant was issued for the arrest of the park director, Chaiwat Limlikiraukson (1). No conviction has followed this warrant.

Note: Such evictions of hill tribes in Thailand have a long history with a policy of relocation from the government stretching back to the 1960s. This is linked to accusations that cultivation by hill tribes is negatively impacting on the watershed and affecting lowland farmers.

Redress/Future Actions: On the 15th of January 2012, the International Indigenous Forum on Biodiversity wrote to the Prime Minister and requested them to take immediate action.

The Forest Peoples Programme, 13th February 2012, requested for consideration of the situation of the Karen Indigenous Peoples in the Kaeng Krachan National Park under the Committee on the Elimination of Racial Discrimination's Early Warning and Urgent Action Procedure.

Subsequently on the, the UN Committee on Elimination of Racial Discrimination expressed concern regarding the forceful eviction and harassment of Karen Indigenous Peoples from Thailand's Kaeng Krachan National Park. After receiving information from AIPP Foundation, the Committee sent a letter to the Permanent Mission of Thailand to the UN on 9th March 2012.

Resources:

www.minorityvoices.org/news.php/en/1141/thailand-indigenous-people-penalised-for-carrying-out-traditional-practices

www.forestpeoples.org/topics/rights-land-natural-resources/publication/2012/request-consideration-situation-karen-indigeno

www.aippnet.org/pdf/CERD_Thailand.pdf

www.culturalsurvival.org/ourpublications/csqa/article/hilltribe-relocation-policy-thailand

www.aippnet.org/pdf/IIFB_ThaiPM_KarenPeople_Final%5B1%5D.pdf

www.forestpeoples.org/topics/rights-land-natural-resources/news/2012/01/karen-people-forcibly-expelled-kaeng-krachan-natio

26. Mo Ko Surin National Park, Thailand

People or Community: Monken people.

Location: Thailand.

Overview: Cultural Survival describe (2008) the case of the Monken people, who traditionally were sea gypsies, living a nomadic life between Thailand and Myanmar (see reference 1 for a full history), as such many have no formal identification or citizenship. Many of their former lands have become National Parks in Thailand, and the Monken have little rights over the land Where Monken people have been settled in National Parks, they have been settled in a manner that does not respect their traditions. This includes the villages and permanent shelters that have been built for the Monken people, which do not pay respect to their traditional culture.

Redress/Future Actions: There is no readily available information on redress/future actions.

Resources:

www.culturalsurvival.org/ourpublications/csqa/article/stranded

www.bangkokpost.com/learning/learning-from-news/286691/tribes-demand-to-be-thai

27. Oddar Meanchey Province, Cambodia

People or Community: Four hundred families Oddar Meanchey Province.

Location: Cambodia.

Overview: The Cambodian Daily details (12th August 2014) the eviction and burning of twenty homes at gunpoint by military police and environmental officials in Oddar Meanchey Province. This has reportedly occurred after villagers refused to obey a court decision ordering four hundred families to make way for a conservation area.

Redress/Future Actions: There is no readily available information on redress/future actions.

Resources:

www.cambodiadaily.com/archives/20-homes-torched-in-forced-eviction-in-oddar-meanchey-654633/

28. Endau-Rompin National Park, Malaysia

People or Community: 118 Orang Asli people of Kampung Peta.

Location: Malaysia

Overview: In March 2012, the Mersing District Land Administrator issued a notice

for the eviction of some 118 Jakun residents, who identify as the Orang Asli groups of Kampung Peta, from Endau-Rompin National Park.

Redress/Future Actions: On the 21st March 2012, Orang Asli groups of Kampung Peta, Mersing, Johor filed an application for leave to apply for judicial review at Johor Bahru High Court against Mersing District Land Administrator's order to evict them from their customary land encompassing the Endau Rompin National Park. The court granted an interim stay pending the outcome of the application.

On the 25th June 2014, Johor Bahru High Court dismissed the application for the judicial review by the Jakun Orang Asli group of Kampung Peta on technical objection. The Orang Asli will appeal the decision.

Resources:

indigenoussissuesinasia.wordpress.com/2012/03/28/malaysia-orang-asli-go-to-court-to-stake-their-land-rights-against-national-park-and-palm-oil-plantation/

www.facebook.com/notes/center-for-orang-asli-concerns-coac/kampung-peta-orang-asli-get-interim-stay-of-eviction-order/419224491454816

www.coac.org.my/beta/main.php?section=news&article_id=91

29. Bakun Islands National Park, Malaysian Borneo

People or Community: Some 500 Bakun people

Location: Sarawak, Malaysian Borneo

Overview: The Borneo Project report (July 2013) that 15 years after the indigenous people of Bakun were forced to leave their land to make way for a dam, the government has issued a notice to declare the Bakun Islands a National Park. The Bakun people were originally evicted from their land due to the dam project and were resettled in Sundai Asap. Yet since then, many Bakun families returned to their lands without permission and an unknown number now live in the area expected to become part of the National Park.

In the Malaysia Chronicle (June 2013), the Sarawak PKP Chief Baru Bian questioned the rationale for the creation of the National Park. He underlined that the planned National Park removes the rights of the Bakun people over the remaining land not flooded by the dam, and accused the government of being inadequate and unfair in their consultations.

The government announced that "...no claim to any rights or privileges in or over the area... shall be entertained", making their stance on land ownership clear.

Redress/Future Actions: In July 2013, The Borneo Project launches a petition on Change.

There is no further information on redress/future actions.

Resources:

borneoproject.org/updates/in-another-blow-bakun-to-be-gazetted-as-national-park

news.mongabay.com/2013/0710-bakun-dam-islands-park-sarawak.html

www.change.org/en-GB/petitions/taib-stop-the-bakun-islands-national-park-land-grab

www.malaysia-chronicle.com/index.php?option=com_k2&view=item&id=126191:barubian-questions-govt-over-national-parks-within-bakun-dam&Itemid=2#axzz3AHk6IJQp

intercontinentalcry.org/proposed-bakun-nature-park-threatens-marooned-indigenous-peoples-in-sarawak-19986/

30. Tesso Nillo National Park, Indonesia

People or Community: At least 1,500 families, or about 10,000 inhabitants, who have lived in settlements inside the Tesso Nillo National Park area for the past decade.

Location: Indonesia.

Overview: Just Conservation reprint (June 2012) an article by Spiegel Online (a German news website) that accused the WWF of working closely with private multinational companies, allowing them access to natural resources including concession areas for palm oil plantations, while restricting the rights of local communities including stakeholders of the Tesso Nillo National Park. Viewpoints from local stakeholders are used to illustrate the problem:

“The WWF is in charge here, and that’s a problem,” says Bahri, who owns a tiny shop and lives in a village near the entrance to the park. No one knows where the borders are, he says. “We used to have small fields of rubber trees, and suddenly we were no longer allowed to go there.”

‘Feri, an environmental activist, calls this form of conservation “racist and neocolonial,” and notes: “There has never been forest without people here.” According to Feri, thousands of small farms were driven out of the Tesso Nilo, and yet the number of wild animals has actually declined since the conservationists arrived. “Tesso Nilo is not an isolated case,” he says.

In a guest article for the Jakarta Post (2013), a researcher for the Dekker Centre describes rising tensions in communities in and around the Tesso Nillo National Park after the Hollywood Actor Harrison Ford filmed his documentary ‘Years of Living Dangerously’. The author reports that many of the communities could now face forced eviction from the palm oil plantations they own within and around the park’s perimeters, some of which people have inhabited for the last decade. Eviction could potentially extend to thousands of families.

WWF view palm oil producers as encroachers and in 2013 proposed a system of voluntary relocation and regulation on plantation development.

Redress/Future Actions: There is no readily available information on redress/future actions.

Resources:

www.justconservation.org/wwf-helps-industry-more-than-environment

www.spiegel.de/international/world/wwf-helps-industry-more-than-environment-a-835712.html

www.thejakartapost.com/news/2013/09/28/who-should-pay-tesso-nilo.html

www.wwf.or.id/en/?28680/Addressing-the-encroachment-problem--in-Tesso-Nilo-National-Park

31. Karimunjawa National Park, Indonesia

People or Community: Potentially affected population of 8,733.

Location: Indonesia.

Overview: The EJ Atlas details (18th August 2014) land and resource use conflicts around the Karimunjawa National Park, the first marine park recognised by the Indonesian government in 1986. The Karimunjawa National Park (KNP) is under control of district government agencies and managed by the KNP Authority with assistance from local NGOs and the Wildlife Conservations Society.

Four main areas of conflict between stakeholders are reported, including large and small-scale fishing, mariculture development, water pollution from infrastructure, and uncontrolled tourism.

The EJ Atlas notes that currently there is no visible organisation or resistance from stakeholders. They describe the visible impact of competing interests with increases in corruption, displacement, social problems (alcoholism and prostitution), land dispossession and a loss of landscape/sense of place.

Redress/Future Actions: Initial zoning of the park took place in 1999, but to respond to socio-economic changes the park was rezoned in line with the adaptive co-management approach in 2005 and 2012.

In the future, Karimunjawa National Park Authority has proposed restricting the number or periods of tourism to reduce pressures on infrastructure and the dependence of local people on tourism.

Resources:

ejatlas.org/conflict/land-and-resource-use-conflicts-on-the-island-of-karimunjawa-indonesia

32. Derawan Island, Indonesia

People or Community: 50 traditional fishermen.

Location: Indonesia.

Overview: The Sangalaki Island in East Kalimantan is of conservation value for the feeding and nesting of two of Indonesia's sea turtles, the green turtle and the hawksbill turtle. The Peoples Coalition of Fishery Justice in Indonesia report (Sept 23rd 2012) that on the nearby Derawan Island, 50 traditional fishermen have been evicted by two conservation organisations.

Redress/Future Actions: There is no readily available information on redress/future actions.

Resources:

scidevnet.wordpress.com/2012/10/11/marine-protected-areas-should-not-evict-traditional-fishing-communities/

33. Chagos Islands Marine Park, British Indian Ocean Territory

People or Community: 4,900 Chagossians.

Location: Chagos Islands, British Indian Ocean Territory.

Overview: The Chagos islanders were first evicted in 1960-70s, so that the largest Island (Diego Garcia) could be used as a US military base. The Chagos Islanders fervently claim their rights to return which were upheld in 2000 by a landmark judgement in the UK courts, only to be overturned by the UK government by Orders in Council passed in 2004. After a series of further judicial battles, the islanders took their case to the EU Court of Human Rights, but this was dismissed on technical grounds in 2012.

In 2008 the Chagos Refugees Group published a proposal to return home (3). This has been viewed by some as incompatible with conservation.

In 2010, the UK Government released plans to designate the islands as a MPA. This represents a further barrier for the Chagossians. Under the plan, no fishing would be permitted, which is a key source of livelihood on the islands. The Minority Rights Group International suggests that this is a politically motivated manoeuvre, rather than being driven by conservation motivations (1). Despite this, it has inspired the backing of many conservation organisations worldwide including the IUCN.

Redress/Future Actions: As part of the WikiLeaks releases in 2010, The Guardian published a copy of a confidential cable from a political counsellor at the US embassy in London to the secretary of state in Washington DC. The cable concerned a meeting between US embassy officials and British Indian Ocean Territory (BIOT) administration

officials at the FCO. The cable acknowledged how “establishing a marine reserve... be the most effective long-term way to prevent any of the Chagos Islands’ former inhabitant or their descendants from resettling”.

In 2013, at a judicial review, the WikiLeaks evidence was judged to be impermissible with regard to the Vienna Convention for the use of diplomatic archives and documents of a mission. The ruling also judged the MPA as compatible to the UK’s obligations to promote economic and social development of the BIOT, and that there was insufficient evidence of an inappropriate motive behind the establishment of the MPA.

In May 2014, the case was taken to the Appeal court, but the judges ruled against the claimant, the Chagos Refugees Group, in line with previous judicial reviews.

Also in May 2014, the Mauritian government challenged the MPA under the UN Convention of the Law of the Sea. The Permanent Court of Arbitration held this meeting behind closed doors in April – May 2014, and there is little information on the outcome.

Resources:

www.minorityrights.org/12328/briefing-papers/still-dispossessed-the-battle-of-the-chagos-islanders-to-return-to-their-homeland.html

www.newscientist.com/article/dn18536-chagos-marine-protection-plan-condemned-as-unethical.html#.U-NiiONdXTQ

www.zianet.com/tedmorris/dg/returninghome.pdf

chagos-trust.org/sites/default/files/images/evaluation_howell_june08.pdf

onlinelibrary.wiley.com/doi/10.1111/1467-8322.12109/full

AMERICAS

34. Alto Golfo de California y Delta del Rio Colorado Biosphere Reserve, Mexico

People or Community: Cocopah people.

Location: Mexico.

Overview: Inter Press Service News Agency detail (8th September 2014) the case of the Cocopah in Mexico. For over 500 years, the Cocopah have lived along the lower Colorado River and delta in the Mexican states of Baja California and Sonora (1).

In 1993, the Government of Mexico created the Alto Golfo de California y Delta del Rio Colorado Biosphere Reserve, covering the Zanjón, where the Cocopah have traditionally fished. The reserve was created without FPIC (1).

Redress/Future Actions: Rivera de la Torre and Raúl Ramírez Baena took the case to the Inter-American Commission on Human Rights in 2008. They argued that the government had violated the Cocopah's right to consultation, which is outlined in the International Labour Organisation's Convention 169 and has been ratified by the Mexican Government (1).

Despite appealing to various national and international bodies, over the last two decades the government has not listened to the concerns of the Cocopah people until recently. In May 2014, the Interior Ministry agreed to hold a meeting with the fisheries unions. Although, it remains to be seen whether the government will take the Cocopah's demands forward – including the demand to recognise the land and fishing rights of the Cocopah people (2).

Resources:

www.ipsnews.net/2014/09/mexicos-cocopah-people-refuse-to-disappear/
serapaz.org.mx/comunicado-de-prensa-de-la-sociedad-cooperativa-pueblo-indigena-cucapa-chapay-seisjiurrar-cucapa/ [Spanish]

35. Cerro Escalera Regional Conservation Area, Peru

People or Community: Kichwa people.

Location: Peru.

Overview: The Forest Peoples Programme report (October 2012) the resistance of the community of Nuevo Lamas against their eviction from the Cerro Escalera Regional Conservation Area.

Jaime Japulima, President of CEPKA, one of four indigenous federations representing the Kichwa people explained: “this entire area is our ancestral territory yet the Reserve was created without any consultation”.

Redress/Future Actions: In response, community members have refused (October 2012) to leave the conservation area. Subsequently, park authorities have restricted communities' access to the forest for hunting and gathering and have prohibited their traditional system of shifting cultivation. There is readily available information on redress/future actions.

Resources:

www.forestpeoples.org/topics/redd-and-related-initiatives/news/2012/10/return-fortress-conservation-redd-and-green-land-gr#_ftnref4
wrm.org.uy/wp-content/uploads/2013/11/Masking_the_Destruction.pdf

36. Imiria Regional Conservation Area, Peru

People or Community: Shipibo indigenous communities.

Location: Peru.

Overview: The Forest Peoples Programme report (10th Sept 2012) that representatives of 12 Shipibo indigenous communities and neighbouring villages from the Imiria lake region in Ucayali have rejected the establishment of the Imiria Regional Conservation Area. The Protected Area was created in 2010, but local communities are unhappy that it overlaps their traditional territory including the titled lands of seven communities.

Additionally, local communities have rejected the regional government's reports that they gave their consent for the PA.

Redress/Future Actions: In August 2012, in rejection of the PA, Imiria released a 'Declaration of Imiria', which includes the clause:

"... the implementation plan for DS 006 2010 including the Master plan for the ACR Imiria must be suspended until our right to our territories and to Free, prior and informed consent are respected".

There is further information on redress/future actions.

Resources:

www.forestpeoples.org/topics/rights-land-natural-resources/news/2012/09/shipibo-communities-peruvian-amazon-reject-impleme

www.justconservation.org/declaration-of-the-shipobo-regarding-the-imiria-conservation-area

www.forestpeoples.org/sites/fpp/files/news/2012/09/DeclarationImiria_English.pdf

37. Nishnawbe Aski Nation, Canada

People or Community: Cree, Ojibwe, Oji-Cree and Algonquin Indigenous Peoples of the Nishnawbe Aski Nation.

Location: Canada.

Overview: The Forest People's Programme report (8th July 2011) that the Cree, Ojibwe, Oji-Cree and Algonquin Indigenous Peoples of the Nishnawbe Aski Nation have been excluded from the development of the Far North Act, 2010. This Act concerned land use planning and protection in the far north of Canada and imposed a large, interconnected protected area without FPIC or considerations for compensation.

Nine conservation organisations have reportedly supported the Far North Act in some form. This has included: World Wildlife Fund of Canada, CPAWS Wildlands League,

Ecojustice, Environmental Defence, Environment North, Forest Ethics, Ontario Nature, Canadian Boreal Initiative/Ducks Unlimited Canada and the David Suzuki Foundation (1). In a news story, IUCN underline (2nd December 2010) that civil society did not have a benign influence, but through systematic pressure for an increase in protected areas directly impacted upon IP's exclusion.

Redress/Future Actions: There is readily available information on redress/future actions.

Resources:

www.forestpeoples.org/topics/rights-land-natural-resources/news/2011/07/guest-article-nishnawbe-aski-nation-canada-exprop

www.iucn.org/fr/nouvelles_homepage/nouvelles_par_date/2010_news/decembre_news_2010/?6618/Its-easier-to-plead-forgiveness-than-ask-for-permission-the-tension-between-instrumental-conservation-based-planning-and-emerging-principles-of-free-prior-and-informed-consent-in-the-boreal-forest

Notes and References

- 1 <http://naturaljustice.org/library/our-publications/legal-research-resources>
- 2 <https://community.iucn.org/cihr/Pages/default.aspx>
- 3 Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, A/69/L.1, 15 September 2014 (WCIP Outcome Document).
- 4 WCIP Outcome Document, Paragraph 3.
- 5 WCIP Outcome Document, Paragraph 20.
- 6 WCIP Outcome Document, Paragraph 21.
- 7 WCIP Outcome Document, Paragraph 34.
- 8 WCIP Outcome Document, Paragraph 35. The knowledge referred to includes: “knowledge acquired through experience in hunting, gathering, fishing, pastoralism and agriculture, as well as their sciences, technologies and cultures.”
- 9 <http://researchimpacts.wordpress.com/author/researchimpacts/>
- 10 <http://www.minorityrights.org/12695/press-releases/kenyan-task-force-formed-to-implement-the-2010-endorois-ruling.html>
- 11 WCIP, Roundtable 3 of the World Conference on Indigenous Peoples (WCIP): “Indigenous Peoples’ lands, territories and resources” on 23 September. General Assembly Hall, New York.
- 12 Greiber G., M. Janki, M. Orellana, A. Savaresi, and D. Shelton, 2009. Conservation With Justice. IUCN: Gland.
- 13 <https://community.iucn.org/cihr/Pages/default.aspx>
- 14 H.D. Jonas, J. Makagon and H.C. Jonas, 2013. The Living Convention: A Compendium of Internationally Recognized Rights that Support the Integrity and Resilience of Indigenous Peoples’ and Local Communities’ Territories and other Social-ecological Systems. Natural Justice: South Africa and Malaysia. Second Edition.
- 15 www.danadeclaration.org/pdf/omotakeover.pdf.
- 16 Kinley, D. and Tadaki, J. 2004. From talk to walk: the emergence of human rights responsibilities for corporations at international law. Virginia Journal of International Law 44 936-7.

- 17 www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
- 18 www.iucn.org/about/work/programmes/social_policy/sp_themes_hrande/scpl_cibr.
- 19 These instruments were selected after an extensive review on the basis that they were negotiated and agreed through an intergovernmental process and thus confer a degree of legal obligation on state agencies and other actors involved in conservation initiatives.
- 20 UN Declaration on the Rights of Indigenous Peoples, Article 24(1).
- 21 See for example the community protocol of the Traditional Healers of Bushbuckridge who complain of a) overharvesting of medicinal plants from communal areas and b) exclusion from protected areas in Mpumalanga province, South Africa: www.community-protocols.org
- 22 While most other categories include provisions relevant to Indigenous Peoples, this category lists provisions dealing specifically with Indigenous Peoples as peoples.
- 23 We note that this list is a mixture of “rights” such as “no forced assimilation” and broader categories such as “climate change” under which Indigenous people and local communities have certain related rights. Importantly, the categorization is not intended to crystallize any particular view of the law, but rather to identify one approach that may help conservation actors to begin to engage with the law. Moreover, conservation actors should always consult the actual instruments to understand their scope and context.
- 24 This term has been used by the CBD since it was adopted in 1992. At the twelfth COP in October 2014, the COP adopted Decision UNEP/CBD/COP/12/L.26, wherein the Parties decided “to use the terminology “Indigenous Peoples and local communities” in future decisions and secondary documents under the Convention, as appropriate ...”
- 25 Cynthia Morel, *Defending Human Rights in Africa: The Case for Minority and Indigenous Rights*, 1 *Essex Hum. Rts. Rev.* 54, 56 (2003).
- 26 *Ctr. for Minority Rights Dev. (Kenya) v. Kenya*, Comm’n No. 276/03, *Afr. Comm’n H.P.R.* (Feb. 10, 2010) (hereinafter “Endorois Decision”) para. 23.
- 27 Endorois Decision para. 162.
- 28 This is not the case with all mechanisms, and the procedural requirements of non-judicial mechanisms are generally much less stringent than those of judicial or quasi-judicial mechanisms (whether state or non-state) as discussed further below.
- 29 Commission on Human Rights, Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, 31

- December 2004, E/CN.4/2005/84, at para. 72.
- 30 Commission on Human Rights, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, Rodolfo Stavenhagen, 26 January 2004, E/CN.4/2004/80, at para. 9 (2004 Stavenhagen Report).
- 31 See UN Human Rights Council, Study by the Expert Mechanism on the Rights of Indigenous Peoples: Access to justice in the promotion and protection of the rights of Indigenous Peoples, 29 April 2013, A/HRC/EMRIP/2013/2, para. 36.
- 32 United Nations Office of the High Commissioner for Human Rights, Communications, available at <http://www.ohchr.org/en/HRBodies/SP/Pages/Communications.aspx>.
- 33 Office of the High Commissioner for Human Rights, Human Rights Council Complaints Procedure, available at <http://www.ohchr.org/en/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx>
- 34 International Federation for Human Rights, Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms (2012) (FIDH Guide), at 52, available at <http://www.fidh.org/en/globalisation-human-rights/business-and-human-rights/Updated-version-Corporate-8258>.
- 35 In addition to the Charter and treaty-based mechanisms, other UN agencies such as the UNDP and related institutions such as the Global Environment Facility have mechanisms in place to ensure compliance with internal standards and to address complaints arising from their projects.
- 36 Lea Shaver, The Inter-American Human Rights System: An Effective Institution for Regional Rights Protection?, 9 Washington University Global Studies Law Review 639, 644 (2010).
- 37 Fernando Basch et al., The Effectiveness of the Inter-American System of Human Rights Protection: A Quantitative Approach to its Functioning and Compliance With its Decisions, 7 International Journal on Human Rights 12 (2010).
- 38 Frans Viljoen, A Human Rights Court for Africa, and Africans, 30 Brooklyn J. Int'l L. 1, 15 (2004).
- 39 African countries have also entered into regional economic agreements, and some have established tribunals to settle disputes involving the instruments codifying those agreements. Many of these regional tribunals are empowered, explicitly or implicitly, to rule on human rights claims brought by individuals against States. For more information on these regional mechanisms, see the FIDH Guide Part III Chapter 1.D.: D. The Courts of Justice of the African Regional Economic Communities.

- 40 Accountability Counsel, Accountability Resource Guide (July 2012) at 15, available at <http://www.accountabilitycounsel.org/wp-content/uploads/2012/04/ARG-7.1.pdf>.
- 41 IUCN, Update on Whakatane Mechanism, available at http://www.iucn.org/news_homepage/news_by_date/?10728/Update-on-Whakatane-Mechanism.
- 42 Wilson, E. and Blackmore, E. editors (2013) *Dispute or dialogue? Community perspectives on company-led grievance mechanisms*. IIED, London.
- 43 <http://theredddesk.org/resources/know-your-rights-related-redd-guide-indigenous-and-local-community-leaders>
- 44 http://www.iucn.org/about/work/programmes/gpap_home/gpap_quality/gpap_greenlist/
- 45 <http://www.redd-standards.org>

This research report presents a synthesis of the relevance of human rights standards to different conservation actors, an assessment of current standards and trends in international law, and an analysis of the various redress mechanisms available when rights are violated. It concludes with a number of options for further elaborating a set of minimum human rights standards to be applied to all conservation initiatives. It is hoped that this work will inject fresh energy into the ongoing debate about how best to tackle conservation injustice.

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The authors are extremely grateful for funding provided by Irish Aid, Sida (Sweden) and Danida (Denmark). However, the views expressed are solely those of the authors and do not necessarily reflect those of the donors involved.