

Conservation and Indigenous Peoples: Assessing the Progress since Durban



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Conservation and Indigenous Peoples : Assessing the Progress since Durban

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This review draws on the first four of several country-level studies being carried out as part of a project coordinated by the Forest Peoples Programme with the *Fundacion para la Promocion del Conocimiento Indigena* and Asia Indigenous Peoples' Pact. These studies are:

Chris Kidd and Penninah Zaninka, 2008, *Securing Indigenous Peoples' Rights in Conservation: A review of south-west Uganda.*

Messe Venant with John Nelson, 2008, *Securing Indigenous Peoples' Rights in Conservation: Reviewing and promoting progress in Cameroon.*

PACOS Trust, 2008, *Securing Indigenous Peoples' Rights in Conservation: Reviewing and Promoting Progress in Sabah, Malaysia.*

TebTebba Foundation, 2008, *Philippines Indigenous Peoples and Protected Areas: Review of Policy and Implementation.*

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All the reports from this project are also available on FPP's website:
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Cover photograph: Like many other indigenous peoples, the Benoaq Dayak of East Kalimantan maintain close connections with the spiritual forces that they perceive in nature, which help guard them against sickness and maintain fertility, social equilibrium, honour and health.

Photograph: Marcus Colchester

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Introduction: a 'new paradigm' for Protected Areas

At the World Parks Congress held in Durban in 2003, some 5,000 assembled conservationists announced their adoption of a 'new paradigm' for protected areas which would respect the rights of indigenous peoples and local communities.¹

The Accord celebrated the conservation successes of indigenous peoples. It expressed concern at the lack of recognition, protection and respect given to these efforts. It noted that the costs of protected areas are often borne by local communities. It urged commitment to involve indigenous peoples in establishing and managing protected areas and participate in decision-making on a fair and equitable basis in full respect of their human and social rights.

To implement this new vision, the '*Durban Accord: Action Plan*' notes that the costs of the past success in establishing a global protected area system have been inequitably borne by local communities. To rectify this, a major 'outcome' that it now seeks is that the rights of indigenous peoples be recognised and guaranteed in relation to natural resources and biodiversity conservation.

The Action Plan notes that the current protected area system, while extensive, needs to be considerably expanded to ensure the protection of endangered species. However, development of the system must ensure that the protected area system '*takes full account of the rights, interests and aspirations of indigenous peoples, as well as of their desire to have their lands, territories and resources secured and protected for their own social and cultural survival.*'

The Accord calls on the Conference of Parties of the Convention on Biological Diversity to '*ensure that indigenous and mobile peoples and local communities fully participate in the establishment and management of protected areas and that mechanisms are put in place to guarantee that they share in the benefits from these areas.*'

Noting that in developing countries protected areas exist 'side by side with indigenous peoples' and there is a need for protected areas to contribute to sustainable development, the Accord calls on all countries to '*strictly eliminate resettlement of indigenous peoples and local communities and the involuntary sedentarisation of mobile indigenous peoples without prior, informed consent.*'

The Accord also calls for the creation of '*trans-boundary protected areas for communities separated by national borders, including corridors of connectivity for mobile indigenous peoples who have traditionally migrated across borders.*'

National authorities are encouraged to carry out '*reviews of conservation initiatives including innovative and traditional/customary governance types...*'

¹ These positive elements in the Durban Accord resulted from the long term advocacy by indigenous peoples with the support of human rights organisations that had documented the problems faced by indigenous peoples from conservation. See for example: Andrew Gray, Alejandro Parellada and Helen Newing (eds.), 1997, *From Principles to Practice: Indigenous Peoples and Biodiversity Conservation in Latin America*, Forest Peoples Programme and International Work Group for Indigenous Affairs, Copenhagen; Colchester Marcus and Christian Erni (eds.), 2000, *Indigenous Peoples and Protected Areas in South and Southeast Asia: from Principles to Practice*. Forest Peoples Programme and International Work Group for Indigenous Affairs, Copenhagen; Marcus Colchester, 2003, *Salvaging Nature: Indigenous Peoples, Protected Areas and Biodiversity Conservation*. World Rainforest Movement and Forest Peoples Programme, Montevideo and Moreton-in-Marsh; Dawn Chatty and Marcus Colchester (eds.), 2003, *Conservation and Mobile Indigenous Peoples: displacement, forced settlement and sustainable development*. Berghahn Books, Oxford; John Nelson and Lindsay Hossack (eds.), 2003, *From Principles to Practice: Indigenous Peoples and Protected Areas in Africa*, Forest Peoples Programme, Moreton-in-Marsh

Likewise, protected area authorities are encouraged to *'promote the conditions and ensure the means for the effective engagement of Indigenous Peoples, local communities and other local stakeholders in conservation. The focus of attention should be on building the capacity of communities to engage effectively.'*

A four-page section of the Action Plan relating to the recognition and guaranteeing of indigenous peoples' rights sets out three major targets:

- *All existing and future protected areas shall be managed and established in full compliance with the rights of indigenous peoples, mobile peoples and local communities.*
- *Protected areas shall have representatives chosen by indigenous peoples and local communities in their management proportionate to their rights and interests*
- *Participatory mechanisms for the restitution of indigenous peoples' traditional lands and territories that were incorporated in protected areas without their free and informed consent established and implemented by 2010.*

A large numbers of measures were proposed to achieve these targets the most notable being:

- the acceptance of the indigenous peoples' proposal for the establishment of a Truth and Reconciliation Commission on Indigenous Peoples and Protected Areas to investigate and redress past mistakes,
- that the GEF and World Bank ensure that their revised policies on indigenous peoples are fully consistent with indigenous peoples' rights,
- that governments approve the UN Draft Declaration on the Rights of Indigenous Peoples and ratify ILO Convention 169, recognise the rights of indigenous peoples to their lands, territories and natural resources, and review their conservation laws and policies to ensure their effective involvement and participation,
- that protected area authorities adopt measures, policies and practices which provide for the recognition of and respect for the rights of indigenous peoples and adopt mechanisms to involve them fully in the designation and management of protected areas and promote community conserved areas with their free, prior and informed consent.

A number of specific measures were also recommended to the IUCN to give effect to these proposals. The Accord calls on the IUCN to *'provide advice on reforming national laws, policies and conservation programmes to respect indigenous peoples' and local communities' rights', 'strengthen training of local authorities'* on the rights of indigenous peoples, and conduct an implementation review of prior IUCN policies on Indigenous Peoples.

Indigenous Rights in the Convention on Biological Diversity

Indigenous Peoples and conservationists carried the consensus generated at Durban to the 7th Conference of Parties (COP-7) of the Convention on Biological Diversity which met Kuala Lumpur in 2005. The Durban Accord was notably influential in discussions about the application of the CBD principles to protected areas. Taking account of the Accord, COP-7 explicitly welcomed the outcomes of the World Parks Congress and issued Decision 7.23 of the Conference which:

23. *Recalls* the obligations of the Parties towards indigenous and local communities in accordance with article 8(j) and related provisions and *notes* that the establishment, management and planning of protected areas should take place with the full and effective participation of, and **full respect for the rights of**, indigenous and local communities consistent with national law and applicable international obligations (emphasis added).

COP-7 also adopted a '*Programme of Work on Protected Areas*' which included a Goal and Target on indigenous peoples as follows:

Goal 2.2 To enhance and secure involvement of indigenous and local communities and relevant stakeholders.

Target: Full and effective participation by 2008, of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, consistent with national law and applicable international obligations, and the participation of relevant stakeholders, in the management of existing, and the establishment of new, protected areas (highlight added).

Commitments by the World Conservation Congress

Following the World Parks Congress and COP-7, in 2006, the IUCN's highest body the World Conservation Congress meeting in Bangkok adopted an emergency resolution invoking the Durban Accord, which was co-sponsored by an unprecedented 77 IUCN members, including several governments. The resolution called on the IUCN to '*promote the effective implementation of Output 5 of the Durban Action Plan and the Durban Recommendations ...*' in line with the decisions taken at COP-7. The resolution also called on the IUCN secretariat and members to carry out an implementation review of the extent to which they had put into effect the previous Resolution on Indigenous Peoples adopted 8 years earlier.

Methods used in this study

With support from the Ford Foundation, a project is thus underway to review progress towards the realisation of this 'new paradigm', using the international consensus achieved at Durban, COP-7 and the WCC as a yardstick against which to assess change. The project is designed to identify progress, analyse the reasons for any lack of advances, and then push for national level reform and a renewed international resolve to give practical effect to these past resolutions, agreements and legally-binding decisions.²

At the national and local level this assessment is being carried out by indigenous peoples' organisations, which are reviewing whether and what progress has been made to secure their rights in protected areas and in order to inform and strengthen their inputs into national and local policy dialogues and secure their control of local conservation programmes. So far 8 such country reviews have been commissioned in the following countries: Suriname, Panama, Cameroon, Central African Republic, Uganda, Thailand, Malaysia and the Philippines. At the time of writing four of these case studies have been received in final or draft form.

² The Decisions of the CBD's Conference of Parties are authoritative interpretations of the requirements of the Convention on Biological Diversity agreed by the parties to the Convention, which is an international treaty. For a wide ranging discussion of conservation and human rights see: Jessica Campese and Grazia Borrini-Feyerabend (eds.), 2007, *Conservation and Human Rights*. Special Issue Number 15 of *Policy Matters*.

At the same time, the Forest Peoples Programme, which is coordinating this project in partnership with the *Fundacion para la Promocion del Conocimiento Indigena* and Asia Indigenous Peoples' Pact, is mid-way through an international level review based on a study of the literature and interviews with key institutions.

This interim report seeks to summarise the progress made so far with this assessment. It is necessarily brief and should be accepted as a work in progress. We review here, briefly: first the changing framework of international law regarding indigenous peoples; second, some significant changes in the policies and guidance of the key conservation agencies; and then, finally, focus on our assessment of changes on the ground highlighting the few positive examples where indigenous peoples have secured their rights with the help of conservation agencies and then reviewing the broader situation in the study countries.

This interim review is offered as a discussion document to stimulate further reflection and dialogue between indigenous peoples and conservationists. The aim of the project is that, based on the assessments and raised awareness of the 'new paradigm', indigenous peoples and conservation agencies returning from the World Conservation Congress can renew dialogues at the national level and look for concrete ways of revising policies, laws, institutions and practice so the 'new paradigm' can be realised.

International recognition of indigenous peoples' rights

In September 2007, after over 25 years of discussions and negotiations, the United Nations General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples by a vote of 145 in favour with four against and 11 abstentions. The Declaration, which consolidates the rights of indigenous peoples as already accepted in other human rights instruments and through the jurisprudence of the international human rights treaty bodies, strongly affirms the right of indigenous peoples to own and control their lands in the context of conservation. Relevant operant paragraphs note for example:

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

New policies and guidelines

In response to Durban and other influences, a number of agencies engaged in conservation have modified or are in the process of modifying their policies and programmes towards indigenous peoples. The notes below are not offered as comprehensive summaries of what are in any case very large and highly diverse institutions, which are in no way monolithic in the way they deal with conservation and indigenous peoples. Rather, these summaries seek to highlight the most obvious responses agencies have made following the Durban Accord.

World Bank: The World Bank adopted a revised safeguard policy on indigenous peoples in 2005.³ While something of an advance on its previous 1991 policy, the revised policy was criticised by indigenous peoples for its unclear protections of indigenous peoples' land rights and the fact that it did not explicitly uphold their right to 'free, prior and informed consent'. The Bank argued that its requirement for 'free, prior and informed consultation' leading to 'broad community support' came close to recognising this right. Specifically with respect to protected areas the policy noted:

(21) In many countries, the lands set aside as legally designated parks and protected areas may overlap with lands and territories that Indigenous Peoples traditionally owned, or customarily used or occupied. The Bank recognizes the significance of these rights of ownership, occupation, or usage, as well as the need for long-term sustainable management of critical ecosystems. Therefore, involuntary restrictions on Indigenous Peoples' access to legally designated parks and protected areas, in particular access to their sacred sites, should be avoided. In exceptional circumstances, where it is not feasible to avoid restricting access, the borrower prepares, with the free, prior, and informed consultation of the affected Indigenous Peoples' communities, a process framework in accordance with the provisions of OP 4.12. The process framework provides guidelines for preparation, during project implementation, of an individual park's and protected areas' management plan, and ensures that the Indigenous Peoples participate in the design, implementation, monitoring, and evaluation of the management plan, and share equitably in the benefits of the parks and protected areas. The management plan should give priority to collaborative arrangements that enable the Indigenous, as the custodians of the resources, to continue to use them in an ecologically sustainable manner.

In 2008, the World Bank published a document summarising the lessons it has learned from projects relating to biodiversity and indigenous peoples. The publication highlights the UN Declaration and emphasises the importance of securing indigenous peoples' land rights, respecting indigenous peoples' decision-making processes and providing adequate resources for capacity building. The report also highlighted the lack of relevant national level legislation in which to implant conservation projects that respect indigenous peoples' rights, notably in Guyana and the Democratic Republic of Congo.⁴ In recent discussions between World Bank staff and indigenous peoples, the World Bank has noted that it now plans to review the implementation of its policy on indigenous peoples with a view to proposing revisions in line with the UN Declaration.

³ FPP, 2007, *Indigenous Peoples & World Bank Projects: A Community Guide to the World Bank's Indigenous Peoples Policy (OP/BP 4.10)*. Forest Peoples Programme, Moreton-in-Marsh.
http://www.forestpeoples.org/documents/ifi_igo/bases/wb_ip_pol_base.shtml

⁴ Claudia Sobrevila, 2008, *The Role of Indigenous Peoples in Biodiversity Conservation: the natural but often forgotten partners*. World Bank, Washington DC.

GEF: In 2006, the GEF published the results of a detailed review of the local level impacts of GEF-supported projects conducted by their monitoring and evaluation department which recognised that there were multiple social failings in large-scale GEF protected area projects, although the study also claimed that such failures were largely in older projects and that the GEF was improving practice in newer protected area projects.⁵ The study was criticised for its lack of attention to impacts felt by indigenous peoples and its lack of acknowledgement that even large 'show case' projects involving indigenous peoples did not adequately address indigenous peoples' needs and priorities.⁶ Although in response to these studies the GEF admitted there was room for improvement in the way its conservation projects address the rights of indigenous peoples, to date no new policy or programme initiative has been announced to bring the GEF into line with the Durban Accord or the UN Declaration.

IUCN: Since Durban, the IUCN has issued renewed guidance about 'indigenous and local communities' aimed at promoting co-managed and community conserved areas.⁷ It has also developed detailed guidance for protected area managers for securing 'sacred natural sites'.⁸ An Indigenous Peoples Specialist Group looked into IUCN's programme with relation to indigenous peoples, noting with disappointment that indigenous peoples are not specifically recognised in the IUCN 2009-2012 inter-sessional programme, only being included in the category of 'vulnerable stakeholders'. The group stressed the need for an IUCN policy of 'prior and informed consent' of indigenous peoples prior to the establishment of protected areas and for more training and capacity-building.⁹ The IUCN's World Commission on Protected Areas also undertook a detailed review of its protected area category system, which paid attention to indigenous peoples' rights. The review emphasises that IUCN Protected Area '*categories are independent of who owns, controls or has responsibility for management*' and stressed the importance of recognising the conservation value of areas owned, controlled and managed by indigenous peoples. Such areas are increasingly referred to by the IUCN as Indigenous and Community Conserved Areas (ICCAs).¹⁰

The IUCN international and regional offices have not, however, undertaken the implementation review of WCC resolutions on indigenous peoples as agreed through the Durban Accord and the follow-up resolution in Bangkok. Efforts to provide guidance for the reform of national laws and policies to give effect to the Durban Accord have also been patchy, at best.¹¹ One explanation for this lack of follow through is that IUCN staff have limited capacity and resources and so cannot act on every resolution passed at the WCC. This begs the question of how IUCN staff should prioritise their work in relation to the plethora of resolutions passed by IUCN members. IUCN members are now proposing the setting up of a collaborative task force on indigenous peoples to

⁵ GEF, 2006, *The Role of Local Benefits in Global Environmental Programs Evaluation Report No. 30*, GEF Evaluation Office, Washington DC.

⁶ Liam Taylor and Tom Griffiths, 2007, *A desk-based review of the treatment of indigenous peoples' and social issues in large and medium-sized GEF biodiversity projects (2005-2006)*. Forest Peoples Programme, Moreton-in-Marsh.

⁷ Grazia Borrini-Feyerabend, Ashish Kothari and Gonzalo Oviedo, 2004, *Indigenous and Local Communities and Protected Areas, Towards Equity and Enhanced Conservation: guidance on policy and practice for co-managed protected areas and community conserved areas*. IUCN, Gland.

⁸ Robert Wild and Christopher McLeod (eds.), 2008, *Sacred Natural Sites: guidelines for protected area managers*. IUCN, Gland.

⁹ http://cms.iucn.org/about/union/commissions/cel/cel_working/cel_wt_sg/cel_wg_indigenous/index.cfm

¹⁰ IUCN, 2008, *Guidelines for applying protected area management categories: final draft of revised guidelines*. (July 2008). Ms.

¹¹ IUCN also commissioned a regional review of protected areas and local communities in Latin America see: Laura Meza-Morales, 2006, *Areas Protegidas y Pueblos Indigenas y Tradicionales: diversidad de casos en America Latina y el Caribe*. IUCN, ms.

carry forward the IUCN's commitments in close collaboration with indigenous peoples' organisations.¹²

WWF: Following the Durban and Bangkok meetings the WWF embarked on a renewed dialogue with indigenous peoples particularly with regard to how to include indigenous peoples and local communities in landscape level conservation. The dialogue led to a review of WWF's experience with indigenous peoples and the adoption of a new 'position paper' for the organisation, which aims to bring WWF practice into line with the UN Declaration.¹³ The review also recognises that to make this policy effective, WWF needs to invest more in retraining and building up the capacity of WWF staff, improve its communications, invest more in partnerships and put more effort into monitoring implementation.¹⁴

Conservation International: In response to the Durban Accord and in the lead up to the meeting in Bangkok, CI revised its 1996 draft policy on Indigenous and Traditional Peoples and adopted the revised policy in 2004. This policy is now again under review.¹⁵ The 2004 policy affirms indigenous peoples' rights to their lands, resources and traditional knowledge, rules out CI's involvement in projects that imply resettlement and supports co-management options.¹⁶ CI also established an Indigenous and Traditional Peoples Initiative (ITPI) in 2003 to work directly with indigenous peoples, starting in the Americas. As well as providing grants direct to indigenous peoples in its project areas, the ITPI funds indigenous participation in international meetings on conservation and relevant policy fora.

The Nature Conservancy: TNC has not adopted a policy on indigenous peoples to guide its field programme. The degree to which its field programme have begun to work with indigenous people to promote conservation through securing indigenous peoples' rights varies greatly. In contrast to Asia and Africa, where a rights based approach is not yet evident, in South America TNC has initiated an active programme of work with indigenous peoples to secure conservation values both inside and outside of protected areas. TNC notes that in Latin America many countries have ratified international human rights instruments, which require respect for indigenous rights, including ILO Convention 169 on Indigenous and Tribal Peoples.¹⁷ TNC has also begun to work with indigenous peoples to help them map and claim their lands, as part of its wider strategy to link up protected areas by establishing 'wildlife corridors'.

Wildlife Conservation Society: WCS also has not adopted a policy on indigenous peoples to guide its field programmes. While promoting conventional protected areas, particularly in Latin America, WCS also works with indigenous peoples to involve them in protected area management and seeks to build partnerships with indigenous peoples in buffer zones. Although WCS emphasises this is not an outcome of the Durban Accord, WCS points to the Kaa Iya National Park in the Gran Chaco of Bolivia and the Madididi National Park also in Bolivia, as examples of protected areas established in collaboration with indigenous peoples, where indigenous peoples are involved in the management and get direct benefits from park revenues.

¹² Motion for consideration at the WCC, Barcelona, CGR4.MOT070.

¹³ WWF, 2007, *Indigenous Peoples and Conservation: WWF Statement of Principles. A WWF Position Paper*, ms.

¹⁴ Jenny Springer and Janis Alcorn, 2007, *Strengthening WWF Partnerships with Indigenous Peoples and Local Communities*, ms.

¹⁵ Catriona Brandon, 2007, 'Perspectives on Protected Area and Displacement from within Conservation International' In: Kent H. Redford and Eva Fearn (eds.), 2007, *Protected Areas and Human Displacement: a conservation perspective*. Wildlife Conservation Society, New York:113-120.

¹⁶ Ibid.

¹⁷ Tarsicio Granizo and Paulino Arroyo, 2007, 'Protected Areas and Local Peoples: the experience of The Nature Conservancy in Latin America' In: Kent H. Redford and Eva Fearn (eds.), 2007, *Protected Areas and Human Displacement: a conservation perspective*. Wildlife Conservation Society, New York: 121-124.

WCS has responded emotionally to critiques that have highlighted the negative social impacts of old-fashioned conservation approaches that led to the displacement of indigenous peoples,¹⁸ yet it accepts that conservationists have ethical and moral responsibilities to ensure that the conservation initiatives they get involved in do not harm people and it suggests that conservationists should consider requiring that governments get the free, prior and informed consent of all people that may be denied access to land and resources.¹⁹

Action on the ground: some positive examples

Cameroon: Campo Ma'an

The Bagyeli people of south-western Cameroon were badly affected by the World Bank-funded Chad-Cameroon oil pipeline, which cut through their forests without due respect for their rights and welfare. As part of the package and to offset the direct environmental impacts of the pipeline, the World Bank-GEF also provided funds to strengthen the management and oversight of the Campo Ma'an National Park to the south of the pipeline. For the Bagyeli this was a 'double whammy' as the protected area placed further restrictions on their livelihoods and rights.²⁰

Working with the local NGOs, *Centre pour l'Environnement et le Developpement* and Planet Survey, Forest Peoples Programme embarked on a long-term project with the Bagyeli to help them secure their rights and livelihoods in both impact zones. In the pipeline zone, despite the fact that Cameroonian law does not provide ready means for the titling of community lands, through community land use mapping, participatory social mobilization programmes, micro-credit assistance and local level dialogues with Bagyeli, Bantu villagers and the local administration, the NGOs have been able to leverage up land use agreements endorsed by the local government which recognise the Bantu and the Bagyeli's complementary rights over their lands and forests.²¹

In Campo Ma'an, using similar methods, the same NGOs in dialogues with government officials, the World Bank and WWF (Cameroon) have been able to help the Bagyeli secure recognition of their rights to land in the revised management plan of the national park.²² This is a potentially precedent-setting example for a region where most if not all protected areas overlap the customary hunting grounds of so-called 'pygmy' peoples and where the normal result is the active persecution by 'eco- guards' of 'pygmies' pursuing their customary livelihood practices.

The result in Campo Ma'an, however, is far from being full recognition of the rights of indigenous peoples under international law and is likewise very far from being a full realisation of the changes called for under the Durban Accord. It does however bring Campo Ma'an closer into line with new policies being recommended by the CBD Secretariat on how to manage the

¹⁸ Arun Agrawal and Kent H. Redford, 'Conservation and Displacement' In: Kent H. Redford and Eva Fearn (eds.), 2007, *Protected Areas and Human Displacement: a conservation perspective*. Wildlife Conservation Society, New York. Pp. 4-5.

¹⁹ John G. Robinson, 'Introduction' In: Kent H. Redford and Eva Fearn (eds.), 2007, *Protected Areas and Human Displacement: a conservation perspective*. Wildlife Conservation Society, New York: 2-3.

²⁰ John Nelson, Justin Kenrick and Dorothy Jackson, 2001, *Report on a consultation with Bagyeli communities impacted by the Chad Cameroon Pipeline Project*, Forest Peoples Programme, Moreton-in-Marsh, http://www.forestpeoples.org/documents/ifi_igo/ccp_bagyeli_consult_may01_eng.shtml

²¹ John Nelson, 2007, *Securing Indigenous Land Rights in the Cameroon Oil Pipeline Zone*, Forest Peoples Programme, Moreton-in-Marsh. http://www.forestpeoples.org/documents/africa/cameroon_pipeline_jul07_eng.pdf

²² FPP/CED Campo Ma'an report

'bushmeat' crisis in Central Africa, by securing local communities' rights and livelihoods rather than by criminalising them and driving them into the illegal bushmeat trade.²³

Guyana: Wai Wai

The Wai Wai are a Carib-speaking people in the extreme south of Guyana whose presence in Guyana as occupying the Konashen Amerindian District has been recognised since the 1991 Amendment to the Amerindian Act. They were not officially accorded title to their lands, however. Although the area is accessible only by airplane, or by lengthy journeys by truck and river, yet, being right on the border with Brazil, it has been vulnerable to penetration by illegal gold miners and peltry hunters.

In 2004, with direct support from Conservation International (Guyana), the Wai Wai were able to secure title to the entire district, an area covering some 625,000 hectares. The Wai Wai are now working with CI(Guyana) to develop a management plan for the entire area and are in discussions with the Government of Guyana on declaring the entire area a Community Owned Conservation Area. With German aid agency assistance and CI advice an endowment fund is also being set up to cover the running costs of the area.²⁴

Guyana is unusual in being one of the only countries in the Americas which lacks a national protected area system. Conservation agencies are seeking to promote the establishment of further protected areas in Guyana on Shell Beach in the North West, around Mount Roraima on the Venezuelan border and in the Kanuku Mountains in the Rupununi. All these areas are within or overlap indigenous peoples' land claims, yet in these other areas conservationists, such as WWF and CI, are not proposing securing these areas through the titling of indigenous land ownership. Consequently proposals to secure these areas for conservation have all faced setbacks due to the objections of the indigenous peoples who wish to see their rights secured not overridden.

Thailand: JOMPA

Under Thai conservation laws, residence, access and land use, in areas designated as protected watersheds, are strictly prohibited. Yet these same areas are home to some 700,000 members of the country's 'hill tribes' who have also been targeted over decades by community-development and crop substitution programme run by charities sponsored by the Royal Family and by the international development agencies. The result has been chronic insecurity for such peoples.

With the support of the Forest Peoples Programme,²⁵ the Thai indigenous peoples' organisation, IMPECT, has been working with the Hmong and Karen peoples in the Mae Ping watershed to help them map their land use system, document their customary systems of land use and management and engage in dialogue with the local authorities with the aim of regularising their rights, at least to residence, access and use in this area which overlaps the Doi Inthanon and Obluong National Parks. With additional support from the International Work Group of Indigenous Affairs, IMPECT has been able to extend this mapping of community land use to over 40 villages.²⁶

²³ Nasi, R., Brown, D., Wilkie, D., Bennett, E., Tutin, C., van Tol, G., and Christophersen, T., 2008, *Conservation and use of wildlife-based resources: the bushmeat crisis*. Secretariat of the Convention on Biological Diversity, Montreal, and Center for International Forestry Research (CIFOR), Bogor. Technical Series no. 33.

²⁴ http://www.conservation.org/learn/communities/Pages/wai_wai_in_guyana.aspx

²⁵ Funds for this work came from Swedbio and the Hivos/Novib Biodiversity Fund.

²⁶ Highland Mapping Development and Biodiversity Management Project, Inter-Mountain Peoples' Education and Cultures in Thailand Association with Forest Peoples Programme, 2006, *Indigenous Knowledge, Customary Use of Natural Resources and Sustainable Biodiversity Management: Case Study of Hmong and Karen Communities in Thailand*, IMPECT, Chiang Mai.

This bottom up approach coincided with a 'Joint Management of Protected Areas' project with the Royal Forest Department, funded by the Danish aid agency, DANIDA, under which options for involving local communities in the management of these protected areas were explored through retraining of protected area managers, dialogues and revised management planning. The community land use maps and customary use reviews, produced with IMPECT/FPP assistance, became material in these dialogues, and after some hesitation were accepted by the parks authorities as accurate portrayals of actual land occupation and use. Informally, officials accepted the presence of the communities in the parks but their status as residents with rights to use their lands was not officially recognised before the JOMPA project was terminated. The communities are now concerned that the progress they have been made will be rolled back.

National reviews

A central part of this review was undertaken by indigenous peoples themselves to review their own situation with respect to protected areas in the light of the Durban Accord and the Decisions of the COP. So far, four of these national reviews have been reported. The findings are summarised here.

Uganda

The study focuses on the situation of the Batwa people of South West Uganda who were expelled from their ancestral lands by the establishment of the Bwindi and Mgahinga Protected Areas and the Echuya Forest Reserve. Concerns have been raised about the situation of these people since the early 1990s. While efforts were made following these complaints to provide tiny plots of land to a small number of the evicted Batwa, these compensation programmes soon ceased. Likewise efforts to involve the Batwa in management have not been followed through. Benefit sharing programmes for local communities are not reaching the Batwa effectively and systems for permitting communities to make strictly limited use of forests resources in Multiple Use Zones have benefited the Batwa less than their dominant neighbours. The Batwa remain a marginalised and immiserated group, with over 45% of the Batwa of SW Uganda still entirely landless and the others eking out a living on tiny pieces of farmland.

The case study, carried out by the United Organisation for Batwa Development in Uganda with the help of Forest Peoples Programme asks: what is the point of conservation organisations and governments making commitments to protect community rights if they do nothing to implement them? The study concludes that while certain frameworks exist and there is growing recognition of community rights in relation to protected areas, genuine participation of the Batwa, based on positions of equality, remains illusory in Uganda. Government authorities continue to act in a paternalistic manner toward communities and merely pass on a few responsibilities to communities rather than empowering Batwa communities to be active partners in decision making and implementation.

The Batwa continue to suffer multiple forms of marginalisation in protected area management. Not only were they arbitrarily evicted from their homeland, thereby suffering the greatest injustices, they also now get the least amount of attention from government in the ongoing efforts to make protected area management more socially responsible. From this review it is clear that despite the call for a new conservation paradigm, and a new set of standards that reflect such a call, in practice, protected area managers in SW Uganda still perceive indigenous peoples as external to conservation and, as a result, the translation of the Durban Action Plan and CBD's Programme of Work on Protected Areas on the ground is far from satisfactory.

Immediate and concerted efforts are required on the part of the Government of Uganda, Uganda Wildlife Authority, and civil society to address these injustices and to put into effect the Durban Action Plan and the CBD Programme of Work on Protected Areas.

As one respondent commented,

Why can't you have a Mutwa on a [management] board? After Apartheid they made sure a black was on boards so it gave confidence. It was an indication to show that you are serious. But if you keep [the Batwa] behind then you are not being serious in trying to help them. [Protected Area Managers] can keep talking but [they] need to take action.

Cameroon

The review assesses the progress being made in relation to the indigenous peoples living in Cameroon's southern forests, especially those Baka, Bakola and Bagyeli living in and around Lobeke, Boumba Bek, Nki and Campo Ma'an National Parks, as well as the Dja Wildlife Reserve that has been declared a World Heritage Site.

This case study, carried out by the 'Pygmy' organisation Okani with the help of Forest Peoples Programme, builds upon work since 2000 by FPP and local partners to document in Central Africa the degree to which the 'new conservation paradigm' recognising community rights is being applied on the ground, and to promote this in conservation projects affecting local and indigenous communities. The research for this Cameroon case study is based upon: outcomes of various processes addressing community rights issues in and around the protected areas mentioned above; regional meetings between donors, practitioners, NGOs and community representatives to explore how to address gaps between international promises and on-the-ground progress; and new interviews with staff of the International Union for the Conservation of Nature (IUCN), Cameroonian government ministries, protected area directors and parks staff, and NGOs working with forest communities all over Cameroon.

This review highlights some of the positive initiatives that have taken place since 2004 to encourage application of the new standards protecting human rights, including the case of Campo Ma'an noted above. However, almost all of this work has been done by civil society organisations, rather than by conservation NGOs or the Cameroonian government.

The report concludes that unfortunately, little progress has been made in Cameroon to secure forest communities' rights. Conservation organisations and donors, and the government, have done little in Cameroon to implement their international commitments to protect community rights in their conservation projects. Most of the new standards to which they have agreed remain unknown at the local level. Yet it is government people at the local level who most need to be informed about these new standards, and be given support to implement them. However, in addition to being impeded by a persistent lack of information and support, they are also constrained by outdated laws which contradict the government's international commitments.

The report identifies the tendency by government and conservation agencies and donors to organise workshops and conferences without any follow-up, and to arrange trainings without any field action. Those initiatives by conservation organisations claiming to target communities are having little impact, and most remain unknown to communities, who are supposed to be the main beneficiaries.

The case study concludes by asking:

What is the point of conservation organisations and governments making commitments to protect community rights if they do nothing to implement them?

Malaysia

The study in Malaysia was carried out by the indigenous peoples' organisation, the PACOS Trust, of the Malaysian State of Sabah in North Borneo. The study reviews national policies and laws related to protected areas and indigenous peoples, summarises the situation nationally and then explores in more detail the situation in Sabah with particular reference to the Crocker Range National Park.

Whereas in Peninsula Malaysia the indigenous peoples, referred to as Orang Asli, are now a small minority and have few rights to their lands under statutory law, in Sarawak and Sabah the Dayaks, KadazanDusuns and Muruts are numerous, even numerically dominant, and their rights are partially recognised under modified colonial land codes introduced by the British in the 1960s, which in part acknowledge 'native customary rights'.²⁷ The gazettement of Protected Areas, however, is considered by the administration to extinguish such rights.

In practice, both in the Peninsula and in the two Borneo States of Sarawak and Sabah, the indigenous peoples continue to use and occupy their customary areas, even where these have been designated as Protected Areas. In Borneo, efforts to resettle the communities have been largely ineffective and resisted. In Sabah, the administration has thus sought to accommodate local people by a variety of informal or semi-authorised methods such as requiring communities to request Occupation Permits in Forest Reserves, conferring with communities when protected areas have been expanded, recruiting local people as 'Honorary Park Rangers' and establishing Community Use Zones, as for example in the Crocker Range National Park. While not amounting to proper recognition of indigenous rights, these measures are accepted as steps in the right direction and evidence that the administration is not inflexible with respect to local communities.

The Bornean States have plural legal regimes which accept that custom is a source of law and rights which are administered by native courts.²⁸ Outside of Protected Areas, in Sabah, this has permitted, to some extent, the recognition of customary systems of land use and conservation, notably of the *Tagal* systems for river and fishery management. The *Tagal* system of controlling community fisheries and limiting the use of natural fish poisons, has been officially acknowledged under the Inland Fisheries and Aquaculture Act of 2003. Another encouraging sign in Sabah is that indigenous peoples are being involved in the drafting of laws recognising indigenous peoples' rights to their traditional knowledge and to benefits from its use.

The Philippines

The situation in the Philippines differs from the other countries reviewed in that the Constitution clearly protects the rights of indigenous peoples, there are laws in effect which clarify how rights to land should be recognised and the principle of Free, Prior and Informed Consent is likewise enshrined in national law. The study, carried out by the Tebtebba Foundation, the Indigenous Peoples' International Centre for Policy Research and Education,

²⁷ For a summary legal analysis see Marcus Colchester, Wee Aik Pang, Wong Meng Chuo and Thomas Jalong, 2007, *Land is Life: Land Rights and Palm Oil Development in Sarawak*. Forest Peoples Programme and SawitWatch, Bogor.

²⁸ Peter R. Phelan, 2003, *The Traditional Legal System of Sabah*, Pusat Kajian Borneo, Kota Kinabalu.

reviews the national framework and implementation measures with respect to indigenous rights and then looks in detail at the situation of the Ayta people affected by the Bataan National Park.

Under the law, the National Biodiversity Strategy and Action Plan recognises the value of indigenous peoples' knowledge of biological resources. The National Integrated Protected Areas Act likewise requires participation in the establishment of protected area, requires due recognition of indigenous cultural communities, protection of their tenures and that tribal communities be represented in Protected Area Management Boards. The Indigenous Peoples Rights Act provides a clear mechanism for the recognition of indigenous peoples rights to ancestral lands and domains and to control what happens on them. A Joint Circular sets out mechanisms for harmonizing indigenous land rights with PA management, giving primary responsibility for such areas to the indigenous peoples as the landowners.

Implementation of these measures is varied. Less than half of all claimed IP lands have yet been titled. Even where overlaps between indigenous peoples' lands and protected areas have been acknowledged transfer of management has often not been carried out. Out of 96 protected areas where there is such overlap, in only 18 have the required Ancestral Domain Sustainable Development and Protection Plans yet been developed. In only 6 areas are indigenous peoples represented on the Protected Area Management Boards and even in these indigenous peoples are reported to have difficulties attending board meetings. A study carried out for the GEF finds that capacity building of indigenous peoples has been deficient.

The Ayta, a Negrito people of western Luzon, trace their occupation of the Bataan area back to long before the Spanish colonised the Philippines in the C16th. They retain close ties to their ancestral domains. Although the area was first designated as a protected area in 1934, it was not until 1987 that a tiny area within the protected area of 41 ha. was allotted to the widely dispersed Ayta as a Reservation. In 2004, the Ayta filed a claim under the IPRA for recognition of their ancestral domain extending over some 10,000 ha., being half of the extent of the Bataan National Park. There has been no progress with this claim since. However the Protected Area Management Board has allotted 2 places for Ayta on the Management Board but no training or outreach has been undertaken to allow them to effectively engage with the Protected Area authorities.

Towards conclusions

Reconciling the needs and rights of human beings with the possibilities and limits of their natural environments has long been recognised as a challenge facing humankind in general and conservation in particular. However, the realisation of the need to ensure that laws and regulations restricting humans' use of nature do not fall unfairly on those whose voice has historically been marginalised and ignored has only come to the fore more recently.

This review suggests that, as far as indigenous peoples are concerned, the 'new paradigm' still exists more on paper than in practice. While positive but isolated examples of progress can be identified, which encouragingly indicate that implementation of the 'new paradigm' is possible, the lack of legal reforms, retraining of conservationists and the implementation of practical measures is blocking wider progress.

Making policy reform effective

The review has identified an encouraging trend among conservation organisations to adopt policies on indigenous peoples and to develop programmes that target assistance at their needs. It is clear that the conservation community, taken as a whole, is aware of the need to respect indigenous peoples' rights and is taking some steps to respond to this demand.

However, effective implementation of these policies and programme lags far behind the need. Addressing the rights of indigenous peoples is not a central part of the work of any of the organisations reviewed. Those that have carried out serious internal reviews of the effectiveness of their policies and programmes accept that much more needs to be done in terms of prioritising social issues, retraining staff, allocating resources for effective implementation and establishing mechanisms that hold the agencies to account.²⁹ Reviews of conservation practice in Suriname, Guyana, Cameroon and the Central African Republic, for example, show that local staff are rarely informed on new policies on indigenous peoples adopted in the USA or Switzerland, and even where retraining workshops are carried out, resources are not then made available to translate these new policies into reformed practice.

On the other hand the voluntary and international agencies also point out that implementation of conservation regulations and policies is the responsibility of the statutory bodies set up by the State to administer protected areas.

Recognition of rights in law and policy

The need for national legal and policy reforms to accommodate indigenous peoples' rights in protected areas was highlighted by the Durban Accord. Yet this review has found almost no evidence that conservation organisations are rising to meet this challenge. This seems to be either because they lack suitable lawyers or because their legal staff have not been asked to prioritise reforms in favour of indigenous peoples in their work. Likewise the CBD secretariat and the Subsidiary Body for Scientific, Technical and Technological Advice have not been keen to include calls for national legal reforms to ensure respect for indigenous peoples and protection of customary use in their inputs to the discussions of the Conference of Parties. At the national level, the vested interests of officials, prejudicial attitudes towards indigenous peoples and conservative thinking block reforms.

Free, Prior and Informed Consent

This review has also identified that conservation organisations broadly appreciate the need to include a requirement for free, prior and informed consent in their policies and operations. Yet none seem yet to have invested the time and resources needed to develop practical tools and methods to guide their staff into how to put this principle into effect, though legal³⁰ and human rights NGOs have sought to make their own contributions to this approach.³¹

This seems to be an area where collaboration between indigenous peoples, NGOs and conservationists would be of benefit to all.

²⁹ The point has been made before! Marcus Colchester, 1996, Beyond 'participation': indigenous peoples, biological diversity conservation and protected area management. *Unasylva* 186(47):33-39.

³⁰ http://conservationrefugees.org/pdfdoc/Mursi_Land-use_Procedures.pdf

³¹ Marcus Colchester and Maurizio Ferrari, 2007, *Making FPIC Work: Challenges and Prospects for Indigenous Peoples*, Forest Peoples Programme, Moreton-in-Marsh, http://www.forestpeoples.org/documents/law_hr/fpic_synthesis_jun07_eng.pdf

Restitution

As Forest Peoples Programme's senior lawyer, Fergus MacKay has pointed out:

Violations of human rights trigger remedies designed to provide redress for the victims. In international human rights law, access to effective remedies is itself a right. As a general proposition, violation of indigenous peoples' land and resource rights gives rise to both a general remedy and a specific remedy expressed as a stand alone right. The former requires legal recognition, demarcation and titling of indigenous lands and territories, as defined by indigenous law and customs, and/or compensatory measures if damages have been sustained. In the absence of a mutually acceptable agreement to the contrary, the latter involves the right to restitution of lands, territories and resources taken or used without indigenous peoples' free and informed consent and compensation for any damages sustained as a consequence of the deprivation.³²

This argument was expressly endorsed by the Durban Accord which agreed on the need to establish mechanisms for the restitution of indigenous peoples' lands taken for protected areas without their consent, by 2010. This review has, so far, not identified any international conservation organisations that have taken up this challenge. Nor has notable progress to reconstitute rights been uncovered by the national reviews. The partial exception seems to be the Philippines, where recognition of ancestral domain claims and the provision of ancestral domain titles has overlapped previously declared protected areas. However, the tacit practice seems to have been to recognise indigenous rights without getting peoples' consent to the continued control of the area by State agencies. Yet we know from other parts of the world, such as New Zealand, Australia, the USA and Bolivia, that recognition of indigenous peoples' rights to land, community control and management, and honouring the requirement for consent, does not necessarily entail any diminution of these areas' protective functions. Indeed, in many cases, indigenous peoples have accepted these areas retaining their protected area status subject to recognition of rights and equitable benefit sharing. Mutual mistrust needs to be overcome if indigenous rights and conservation effectiveness are both to be achieved.

Final note

It seems to the reviewers that 'conservation' is missing its main best chance to make its efforts effective. While positive examples build up which demonstrate that respect for the rights of, and work with, indigenous peoples and other communities is effective in securing both livelihoods and conservation values, mainstream conservation efforts continue to marginalise and ignore indigenous peoples. Whereas effective partnership seems possible, the continued imposition of the old model of 'fortress conservation' is generating growing conflict with local communities. It is also increasing scepticism among indigenous peoples' organisations about the seriousness of conservation organisations expressed commitment to address indigenous peoples' concerns.

This must change. National governments, CBD focal points, IUCN regional and global programmes, aid and development agencies, donors and conservation organisations need to redouble their efforts to make the Durban Accord and the Decisions of the COP with respect to indigenous peoples a reality.

In the second phase of this project, the aim is to promote dialogue between indigenous peoples and these other players to revisit the conservation approach in their countries and organisations. Let's hope the final version of this review, due out in mid-2009, can offer a more upbeat summary of the progress made since Durban.

³² Fergus MacKay, 2002, *Addressing Past Wrongs: Indigenous Peoples and Protected Areas – the right to restitution of lands and resources*, Forest Peoples Programme, Moreton-in-Marsh, http://www.forestpeoples.org/documents/law_hr/ips_restitution_protected_areas_oct02a_eng.pdf



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